End User License Agreement & Support and Upgrade Protection (Software Assurance) Agreement

EULA

If you have purchased a right to use SysKit Software, please read this agreement carefully. By allowing the "I agree to the terms and conditions of the end user license agreement" box to remain checked, or by downloading, accessing, installing, registering to or using the Software, any updates, and documentation (collectively "Software"), you accept all the terms and conditions of this agreement. If you do not agree to the terms of this agreement, do not download, install, access or use the Software.

This EULA is a binding legal agreement between you (collectively, "you", "your", "end-user", or "customer") and SysKit, Ltd., including its affiliates, authorized resellers or agents acting on our behalf (collectively, "SysKit", "us", "we", or "our"). If you are using our Software on behalf of a business, that business accepts these terms. You (i.e., the individual reviewing this license agreement) represent and warrant that you (a) are an authorized representative of your company, (b) have the authority to bind your company to the terms of the license agreement, and (c) have not previously violated the terms of any license agreements with us.

You acknowledge that the terms and conditions of the agreement are subject to change without notice, and are effective on the date they are posted. Your continued use of the Software constitutes acceptance of these and all modified terms and conditions. For this reason, we strongly encourage you to revisit this page periodically to review any changes to these terms. **Last updated: August, 2017.**

1 License to Use the Software

The licensed Software is the sole and exclusive property of SysKit, AND the Software is LICENSED, NOT SOLD. By indicating that you accept these terms, you do not become the owner of the licensed Software, but are entitled to use the license according to the terms of this EULA. You must lawfully acquire and order the Software from SysKit, or its authorized resellers, to receive a valid license to use the Software. Downloads are only permitted via our Customer Portal and website. Otherwise you do not have a right to use the Software. License rights are not related to Software media. The rights applicable to licensed Software obtained under this agreement are not related to any order of fulfillment of Software media.

2 License Grant

2.1 License Grant

Subject to your continuous compliance with this Agreement and payment of all applicable license fees, you are granted a limited, worldwide, royalty-free, non-assignable, non-sublicense able, non-transferable and non-exclusive license to use the object code versions of the Software (a) within the scope of the license type, (b) on the permitted number of compatible devices (i.e.,

servers/farms/desktops, collectively, "devices") for the permitted number of users/tenants/farms/servers/desktops as specified in the documentation, and (c) in a manner consistent with the terms of this agreement and applicable documentation, including all additional terms in SECTION 5.

2.2 Subscription Grant

Some Software licenses may be limited for a specific period of time (i.e., subscription based licenses) as defined in SECTION 7. In this case, you have obtained the right to use and access the licensed materials for a specific limited period of time (i.e., the subscription period). At the end of this period, your license and your associated rights, such as Support and Upgrade Protection (Software Assurance), will expire automatically, unless you have renewed your subscription. Upon expiration or termination of the subscription license term, you understand that the Software may cease to operate without prior notice. The subscription based license granted herein is supplemented by specific provisions in SECTION 6.

2.3 Notice

SysKit's Limitations of Liability and Disclaimers as well as the provisions of the section titled "General" shall survive expiration or termination of this agreement. The agreement and your license to use the licensed materials will terminate if you fail to comply with any term or condition in this agreement.

3 License Types

3.1 Beta Software

If the Software you have received or are accessing with this agreement is a pre-commercial release or a beta version, then you understand that the Software is a pre-release, non-commercial version (collectively, "beta version") and does not represent a final product of SysKit, Ltd. The Software may contain bugs, errors and other problems and should not be used in production environments. You understand that SysKit is not obligated to release the product, and ALL PRE-RELEASE OR BETA SOFTWARE IS PROVIDED ON AN "AS IS" BASIS AND SYSKIT, LTD. DISCLAIMS ANY AND ALL WARRANTIES OR LIABILITY TO THE CUSTOMER OF ANY KIND.

3.2 Evaluation Software

If you have downloaded or been given an evaluation version (collectively, "not for sale" ("NFS"), "not for resale" ("NFR"), or "trial"), you may install and access the Software only for the purpose of demonstration, evaluation, and training purposes, and you agree that any output files ("reports" or "Software generated documentation") are used only for internal, non-commercial, and non-production purposes for the period specified by SysKit (or, if not specified, for 30 days). You acknowledge that evaluation Software may not be fully functional. Any attempt to circumvent any expiration date is in violation of this EULA and will immediately terminate your license to use the evaluation version. Notwithstanding anything else in this agreement, SysKit does not offer any warranty, indemnity or support for any evaluation Software. EVALUATION SOFTWARE IS PROVIDED "AS IS". ACCESS TO AND USE OF ANY OUTPUT FILES CREATED WITH SUCH EVALUATION SOFTWARE IS ENTIRELY AT THE CUSTOMER'S OWN RISK.

3.3 Perpetual License

A perpetual license allows you to continue to use the Software for as long as you (a) comply with the terms of the license agreement, including the additional terms in Section 5, (b) have a valid order confirmation, and (c) have proof of payment. Notwithstanding the foregoing, a perpetual license means that you do not owe additional fees for the version you have purchased. It does not include Support and Upgrade Protection (Software Assurance) or upgrades to subsequent versions that are available at additional costs.

3.4 Subscription Edition

If you have obtained or purchased from SysKit, or its authorized reseller, a right to use the Software for a specific period of time (**a "subscription"**) then all of the terms of use applicable to the Software set forth in this license agreement shall remain in force, except that the licensee's right to use the Software shall not be perpetual, but shall instead be limited solely to the term of the subscription **("subscription term" as defined in 6.4).** If SysKit does not receive the recurring subscription payment or cannot validate the license periodically, then the Software may become inactive without additional notice, until SysKit receives the payment or validates the license. A subscription edition requires your agreement to the subscription terms and to the other additional terms as noted in Section 6.

4 Definitions Specific to This Agreement

In this agreement, the following terms shall be interpreted as indicated:

4.1 Agent

For the purpose of this agreement, agents are identified as: outsourcers, consultants, contractors, auditors, disaster recovery services providers, hosted services providers, distributors, agents, representatives, and other third parties providing services to the customer (collectively, and each, an "agent"). SysKit will not have any direct or indirect liability or obligation to any end-users' agents and end-users' agents do not acquire any rights under this agreement. You will be responsible for agent compliance with this agreement, including the additional conditions and limitations as stated in the foregoing and subsequent sections of this agreement.

4.2 Authorized User

Any person or entity (collectively, "authorized users") who has purchased the appropriate number of licenses, and agrees to be bound by the terms expressed in this agreement, **and the additional terms** in Section 5 (Additional Terms and Conditions for Use) and Section 6 (Special Terms for Consultant Subscriptions).

4.3 Consultant

The term "consultant" in this EULA refers to a professional consultant(s) who provides services to a company, other than their own, for a fee. It does not refer to a specific title in a job description.

4.4 Consultant Subscription—Single Use

 A consultant subscription is licensed per consultant, and permits only ONE consultant to use the Software. This license cannot be purchased for or installed on your internal company farms. There are no restrictions on the number of client farms it can be installed on ("unlimited installs"). The consultant must have permission from their client to install the Software on the SharePoint server or any other client device.

4.5 Consultant Subscription—Team Edition

A team subscription permits an unlimited number of consultants within a SINGLE consulting firm to install and use the Software on an unlimited number of client devices; provided that the consultant has permission to install the Software on the client's SharePoint server or any other device in the client's environment. This license is only available to consultant firms, and the Software cannot be installed on, or purchased for, your internal company farms.

4.6 Customer Data

This relates to your name, email, company address, phone number, payment methods or other documentation (collectively, "customer data") provided or submitted by you to us in the course of using our online services (as defined below).

4.6.1 Notice

For clarity, SysKit does not store credit card data, or accept credit card payments via the phone. Credit card transactions are conducted and stored by, and transmitted to, our PCI compliant ecommerce payment provider. When you place an order, you acknowledge this notice. This also means that a separate account containing your payment method is held and stored with our ecommerce provider.

4.7 Customer Portal

SysKit Software downloads, license keys, proof of license, Support and Upgrade Protection (Software Assurance), eligible upgrade downloads and customer data are stored in the Customer Portal.

4.8 Electronic Software Delivery

All SysKit Software is delivered electronically.

4.9 Major Version Releases (Updates)

Significant changes to the Software are available for customers who (a) have active Support and Upgrade Protection (Software Assurance), (b) purchase the license to upgrade, or (c) have a subscription that automatically includes Support and Upgrade Protection (Software Assurance). Major version releases are indicated by a change in the first number of the version's numerical value (i.e., from 4.1.0 to 5.0 indicating a MAJOR version change). Eligible customers can download the major version releases in the Customer Portal. Care should be taken to follow instructions for updates (i.e., backing up any databases prior to updating as indicated in the release notes, blog or instructions for upgrading to major version releases).

4.10 Minor Releases (Updates)

Minor releases or updates are updates, bug fixes, feature enhancements or improvements, or other data relating to the Software (collectively, "updates"). Updates are made available at no additional charge to customers who have the right to use the Software. Minor releases are assigned unique version numbers (i.e., 4.1.2 and 4.1.3, etc.). All updates must be installed by the end-user via the download link in the Customer Portal. You understand that if you choose not to install the update, the Software may not perform properly. In some instances, an update may be required for functionality of the Software, and you must complete the installation in order to continue using the Software.

4.11 Non-Production License

A non-production license is defined as covering development, quality assurance, passive farms, or all farms that are not used for production purposes.

4.12 Online Services

Online services are defined as a website or IP address, or ancillary services rendered to you by SysKit to which you are being granted access under this agreement (i.e., Customer Portal, support tickets, live chat, billing accounts maintained by our ecommerce provider).

4.13 Site License

For the purpose of licensing, a site is defined by each data center. Each data center requires a site license. The site license is a perpetual license, allowing unlimited users to access the Software, and can be installed on an unlimited number of farms within each data center.

4.14 Software

"Software" means (a) any SysKit proprietary computer Software program identified on the www.syskit.com website, (b) related Software documentation and materials, (c) any updates to the media or related Software documentation, (d) machine-readable instructions and data programs in machine-readable formats, (e) audio-visual content (such as images, text, recordings, or pictures), and (f) Software keys (collectively, "Software" or "products"). The Software does NOT include any versions of the source code.

4.15 Support and Upgrade Protection (Software Assurance)

For an additional and a recurring fee, SysKit offers "Support and Upgrade Protection (Software Assurance)" to licensed users. Support and Upgrade Protection (Software Assurance) includes Upgrade Protection: (1) any generally released updates, patches, and bug fixes for the Software ("updates") when and if released at SysKit's sole discretion, (2) major version upgrades, and Standard Support: (3) web-based support, email, live chat and phone support.

4.16 Support Portal

This is an online service to enable customers to submit questions or receive online technical support. The Support Portal enables customers to log and track the progress of the problem/request from inception to its resolution. You are able to submit tickets 24 hours a day, 7 days a week, even outside the normal support operating hours. The customer Knowledge Base is an online article-based help site.

5 Additional Terms and Conditions for Use

In addition to all other terms in this agreement, the following conditions apply to customer use:

5.1 User Obligation

The customer agrees that it will not use the Software, or permits its agents to use the Software other than as permitted by this agreement and that it will not use the Software in a manner inconsistent with its design or documentation. The end-user will not attempt to do any of the foregoing, encourage others to do so, or otherwise attempt to bypass or circumvent any usage restrictions in this agreement. You shall not commit any act or omission that could result in damage to SysKit's reputation.

5.2 No Assignment

The End-User will not, and will not allow any Authorized user, Agent or other third party to resell, assign, rent, give, transfer, pass title to, lease, copy, provide access to or sublicense (including without limitation on a timeshare, subscription service, hosted service, or outsourced basis) any product to any third party (for use in its business operations or otherwise) or anyone else besides authorized users (including its agents) in accordance with the express terms of this agreement, or permit anyone besides authorized users (or its agents) to use any data or information not owned by the end-user that is generated by the products. In the event that the end-user grants any security interest in any products, the secured party has no right to use or transfer the products. This agreement does not and is not intended to confer any rights or remedies upon any person other than the parties involved.

5.3 Uncontrolled System

The end-user will be responsible for any use of the software on any hardware systems not owned, leased or controlled by the end-user.

5.3.1 Viruses

You agree to use and ensure that your authorized users use due care and diligence to avoid introducing any software viruses or other contaminant (including any bugs, worms, logic bombs, Trojan horses or any other self-propagating or other such program) that may infect or cause damage to the Software, the Services or SysKit's systems, or otherwise disrupt the provision of the Software.

5.4 System Compatibility

The end-user is responsible for and must use systems and equipment compatible with the Software, as SysKit specifies in its online product pages and installation requirements.

5.5 Compliance with Laws

You represent and warrant to SysKit that you and any of your agents shall comply with all applicable laws, regulations, rules, ordinances, and orders regarding its use of the Software, including data protection and privacy laws.

5.6 Export Control

You may not use the Software, or allow the transfer, transmission, export or re-export of all or any part of the Software or any product thereof, in violation of any export control laws or regulations of the United States, the EU, or any other relevant jurisdiction. The end-user is solely responsible for determining the existence and application of any such law to any proposed import and export and for obtaining any needed authorization. The end-user agrees not to export, directly or indirectly, any product (or any direct product thereof) from any country in violation of applicable laws.

5.7 License Keys

The Software may require an electronic license key as a condition to use the Software. Each license key delivered to the customer by SysKit, Ltd. shall be used solely by the specific company or its agents and may not be shared or transferred by the customer to any other company. Additional or replacement license keys may be obtained from SysKit, Ltd. All license keys are stored in the Customer Portal.

5.8 Deactivation

You may not reinstall the Software on a second device unless the original fails or is taken out of service. If a license key is required you will need to contact SysKit Support and request approval to reinstall the Software on a new device, and you must then certify to SysKit that you uninstalled the Software from the original device.

5.8.1 Notice
If you have purchased a right to use unlimited licenses for the Software, paragraph 5.8 does not apply to you. If you have purchased a consultant subscription, paragraph 5.8 does not apply to you.

5.9 No Reverse Engineering

You shall not reverse engineer, decompile, disassemble, decipher, decrypt, or otherwise seek to discover or obtain the source code or non-public APIs to products (including any data structure or similar materials produced by the products), except to the extent expressly permitted by applicable law despite this prohibition (and then only upon advance notice to SysKit).

5.10 No Modifications

You shall not modify, adapt or create derivative works of any Software (excluding end-user modifications and end-user plug-ins), or remove or obscure any proprietary or other notices of SysKit or any third party contained in any product (including any information or data generated by the products).

5.11 Permitted Use for Agents

End-users' agents are permitted to use the Software, but solely for the benefit of the customer, and only at the customer's installed location. The customer shall be responsible for compliance by its agents with the terms and conditions of this agreement.

5.11.1 Notice
For clarity, this paragraph 5.11 does not apply to subscription edition Software.

5.12 Termination for Inappropriate Use

 If any part of this agreement is violated, or discovered to be in breach, SysKit, Ltd. retains the right to disable functionality, including, without limitation, reporting, license moves, and user management, and other remedies at our disposal.

5.13 Indemnification

YOU WILL INDEMNIFY, DEFEND AND HOLD HARMLESS SYSKIT, LTD. FROM AND AGAINST ANY AND ALL CLAIMS, COSTS, DAMAGES, LOSSES, LIABILITIES, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS) ARISING OUT OF OR IN CONNECTION WITH ANY CLAIM ARISING FROM OR RELATING TO (A) ANY BREACH BY THE END-USER (INCLUDING ITS AGENTS) OF THIS AGREEMENT, (B) ANY END-USER DATA, (C) ANY END-USER MODIFICATIONS, END-USER PLUG-INS OR OTHER MODIFICATIONS OF OR COMBINATIONS WITH A PRODUCT, OR ANY SERVICE OR PRODUCT OFFERED BY THE END-USER IN CONNECTION WITH OR RELATED TO A PRODUCT, (D) ANY UNCONTROLLED SYSTEMS, OR (E) ANY REPRESENTATIONS OR WARRANTIES MADE BY THE END-USER (INCLUDING ANY AGENT) REGARDING A PRODUCT TO THIRD PARTIES. THIS INDEMNIFICATION OBLIGATION IS SUBJECT TO THE END-USER RECEIVING (I) PROMPT WRITTEN NOTICE OF SUCH CLAIM (BUT IN ANY EVENT NOTICE IN SUFFICIENT TIME FOR THE END-USER TO RESPOND WITHOUT PREJUDICE); (II) THE EXCLUSIVE RIGHT TO CONTROL AND DIRECT THE INVESTIGATION, DEFENSE, OR SETTLEMENT OF SUCH CLAIM, PROVIDED THAT SYSKIT, LTD. MAY PARTICIPATE IN THE CLAIM AT ITS OWN EXPENSE AND THE END-USER MAY

NOT SETTLE ANY CLAIM WITHOUT OUR PRIOR WRITTEN CONSENT; AND (III) ALL REASONABLE NECESSARY COOPERATION OF SYSKIT, LTD. AT THE END-USER'S EXPENSE.

6 Special Terms for Consultant Subscriptions

6.1 Attestation

If you have purchased the right to use the consultant subscription, you hereby attest and warrant to SysKit that you are a consultant as defined in <u>Section 4.4.</u> You will not knowingly, for purposes of circumventing the costs, purchase a consultant license, if you do not have the appropriate right to do so. You understand that only consultants may use the consultant subscription editions. Notwithstanding any of the foregoing, the customer agrees to the following additional terms:

6.2 Email Activation

You agree that consultant subscription requires mandatory activation and email validation. You will complete the process providing SysKit, Ltd. with accurate information. Your use of the Software is suspended until you complete the activation and email validation process.

6.3 Email Requirements

Software must be activated using a business issued email belonging to the registered user. General email addresses are not permitted (i.e., Support@abc.com), and neither are email addresses issued from Gmail, Hotmail, Yahoo, etc. You MUST identify the specific "end-user" during the activation process.

6.4 Subscription Term

The initial term and any renewal term(s) commence upon paying the applicable fees, unless otherwise agreed. The initial subscription term is a minimum of one year or other mutually agreed upon period, and decided at the time of purchase. Consultants may access and use their licenses during the applicable subscription term (defined below). Upon expiration of the subscription, the Software will cease to operate.

6.5 Not for Internal Farms

Neither the team nor the consultant subscription edition may be installed on INTERNAL farms.

6.6 Prohibited Use

Your client may not receive any administrator, configuration, or similar access to the product.

6.6.1 Notice

For clarity, consultants may permit their clients to interact with the product for the purposes of training or demonstration, including sharing of reports or farm documentation.

6.7 No Billing for Use of Software

You may not bill clients for your use of the Software itself.

6.8 Consultant License Transfers

No transfers may be made, without the express written consent of SysKit, Ltd. Upon termination of the consultant's employment, the employing consultant firm or consultant may request to transfer the right to use this license to another consultant. The following conditions apply: (a) the request to transfer must be done prior to any transfer, by notifying SysKit or its authorized reseller

in writing, if by email to SysKit, then to sales@syskit.com; (b) the name and the email address of the new consultant must be submitted to SysKit or its authorized reseller when the request is made; and (c) the new consultant is bound to all the terms of use and obligations under this agreement. Upon receipt of a request to transfer use, SysKit will at its sole discretion determine the validity of the transfer.

6.9 Termination for Misuse

You understand that if SysKit finds that you have purchased a subscription license, and you do not have the right to use it, we will cancel your subscription immediately. If you are entitled to a refund, we will either (a) refund the pro-rated amount consistent with the length of time elapsed since purchase, or (b) issue a credit for the unused amount towards purchase of the appropriate license. Note that you may not be entitled to a refund, depending upon the amount of time that has lapsed.

7 Subscription and Renewals

7.1 Auto Renewals

Customers can elect to automatically renew for successive terms of the same period, whereby each subsequent renewal will be charged to your chosen method of payment, indicated in the initial order. Automatic renewals are charged at SysKit's then-current rates unless otherwise agreed. You agree that you will maintain your customer data (as defined in Section 4.6). SysKit is not responsible for inaccurate, outdated, or incomplete customer data that could cause cancelation or renewal of your subscription. You take full responsibility for your automatic renewal and any fees associated for subsequent renewals, and the customer data on which those renewals are based.

7.2 Disabling Auto Renewal

If you do not want automatic renewals, then you must check the box indicating you do not want "automatic renewals". In this case, you agree that your subscription will expire at the end of the subscription term, and will cease to work. To continue using your subscription, you should place a new order via our website, with our sales team or with an authorized reseller.

7.3 Support and Upgrade Protection (Software Assurance) Renewals

At the end of each Support and Upgrade Protection (Software Assurance) term, the customer must renew for a subsequent term as described below. If the Support and Upgrade Protection (Software Assurance) is not renewed after expiry or during the "grace period" of one month after the expiry date, and the user wishes to renew on a later note, renewal will not be possible and a new license should be purchased.

7.4 Payments

Payments can be made in three ways: (a) directly to SysKit (wire transfer only) as described in Section 9 (Payment and Fees), (b) online via our website (for Credit Card and PayPal payment), or (c) for consultant subscriptions, through auto renewals, as described above in Section 7.1 (Auto Renewals).

7.5 Cancelations

You may cancel the services at any time, with or without cause. To cancel, simply send an email to sales@syskit.com.

7.6 Refunds

Cancelations made within the first 30 days will be eligible for a full refund, and you will not be able to use the subscription Software. Cancelations after 30 days will not be eligible for a refund, and in this case your subscription will end at the end of your current subscription term, and you will not be billed for subsequent terms.

8 Important Customer Obligations

8.1 Accuracy of Customer Data

The customer will provide accurate, current and complete information when using any online services of SysKit, Ltd. or its affiliates. The customer agrees to update its information if it changes. It is the responsibility of the end-user to ensure that all customer data reflects the latest and most accurate information.

8.2 Passwords and Usernames

The end-user will keep all its passwords and usernames confidential and will not share them with third parties. The end-user is responsible for all actions taken through its accounts.

9 Payments and Fees

The methods and conditions of payment to be made to SysKit, Ltd. or its affiliates (authorized resellers or ecommerce providers) are as follows:

9.1 Payments to Authorized Reseller

If the end-user has ordered products from an SysKit authorized reseller, then the sections of this agreement referring to orders with SysKit, or payments to SysKit, do not apply for those products. Instead, the end-user agrees to pay our authorized reseller the fees separately agreed with the authorized reseller. No SysKit authorized reseller may change the terms of this agreement, but they may impose additional fees for the price of the Software. No promises, warranties or agreements by SysKit authorized resellers are binding on SysKit.

9.2 Prices

Prices charged by SysKit or its authorized resellers shall not vary from the prices quoted by SysKit or its authorized resellers in its bid, with the exception of (a) any price adjustments authorized or (b) any request for quote validity extension. All quotes that are expired upon purchase are subject to then-current pricing, unless otherwise agreed upon as mentioned above.

9.3 Payments and Orders Directly with SysKit

If you have placed your order directly with SysKit, then your purchase involves a purchase order and fees are payable directly to SysKit **by wire transfer only**. Upon receipt of a purchase order, submitted to SysKit by the customer, SysKit's request(s) for payment shall be made to the customer, accompanied by an invoice describing, as appropriate, the products delivered. Minimum purchase order value should be $500 USD or its equivalent on other supported

currencies. SysKit reserves the right to reject such the purchase orders and redirect the purchase to the SysKit online webshop.

9.3.1 Payment Terms

The customer must pay all fees by their due date specified at the time of order or otherwise within 30 days of SysKit's invoice or notice.

9.3.2 Currency

The currency or currencies in which payment is made to SysKit will be made in the currency or currencies in which the payment has been requested in the quote.

9.3.3 Late Payments

Late payments are subject to interest charges of 1.0% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all collection expenses. The customer will continue to be charged until the balance is paid in full.

9.3.4 Termination for Non-Payment

In the event of any termination resulting from the customer's failure to pay any applicable fees, without prejudice to any other remedy for any breach of this agreement, by written notice of default sent to the customer, SysKit may terminate this agreement in whole or in part. The customer will continue to be responsible for any licenses fees, and period of usage, even if termination for non-payment occurs.

9.3.5 Unpaid Balance

The customer will pay the unpaid balance due, calculated in accordance with this section and this agreement. SysKit will bill the customer for such unpaid fees and charges.

9.3.6 Notice

The customer acknowledges that the foregoing does not rely on the future availability of any products in agreeing to or making its payments hereunder.

9.4 Renewal Fees for Subscription-Based Users

Fees will be charged as described in Section 7 (Subscription and Renewals).

9.5 Website Orders

If you have placed your order through our website, you agree to use our PCI compliant "payment provider". A separate billing account is created with the payment provider after a purchase is made. You agree to provide correct and accurate customer data to the payment provider, and agree to be bound by their terms and conditions.

9.6 Taxes/Exemptions/VAT

Payments made by the customer under this agreement exclude any taxes or duties payable in respect of the products in the jurisdiction where the payment is either made or received. To the extent that any such taxes or duties are payable by SysKit, Ltd. the customer must pay to SysKit the amount of such taxes or duties in addition to any fees owed under this agreement. Notwithstanding the foregoing, the customer may have obtained an exemption from relevant taxes or duties as of the time such taxes or duties are levied or assessed. In that case, the customer will have the right to provide to SysKit any such exemption information, and SysKit will use reasonable efforts to provide such invoicing documents as may enable the customer to obtain a refund or credit for the amount so paid from any relevant revenue authority if such a refund or credit is available.

9.7 Support and Upgrade Protection (Software Assurance) Fees

SysKit, Ltd.'s annual Support and Upgrade Protection (Software Assurance) is billed at 30% of the list price of Software, on a recurring basis. Notices are sent to the email addresses on file, and the customer is responsible for placing a new order to continue the Support and Upgrade Protection (Software Assurance).

10 Intellectual Property

10.1 Ownership

The Software (including any related content or information contained therein), copies, modifications and derivative works of the product, and the underlying Software (including any incorporating feedback) are the intellectual property of and are owned by SysKit. The structure, organization, and source code of the Software are the valuable trade secrets and confidential information of SysKit. The Software is protected by law, including but not limited to the copyright laws of the United States and other countries, and by international treaty provisions. Except as expressly stated herein, this agreement does not grant the customer any intellectual property rights in the Software. All rights not expressly granted are reserved by SysKit, Ltd.

10.2 Copyrights and Trademarks

Unless otherwise expressly noted, all materials, including images, illustrations, designs, icons, service marks, logos and photographs appearing anywhere on SysKit's website are protected by worldwide copyright laws and treaty provisions. The copyright on such materials is held by the original creator of the materials. None of the materials may be copied, reproduced, displayed, modified, published, uploaded, posted, transmitted, or distributed in any form, or by any means without SysKit's prior written permission.

10.3 Customer Feedback

This relates to comments, suggestions, or materials (including, to the extent disclosed to SysKit, any end-user modifications, but excluding end-user plug-ins) that end-users may provide to SysKit, about or in connection with the products, including any ideas, concepts, know-how, or techniques contained therein. The end-user may provide feedback in connection with maintenance and otherwise. The end-user hereby grants SysKit a worldwide, royalty-free, non-exclusive, perpetual and irrevocable license to use, copy, modify, and otherwise exploit the feedback for any purpose, including incorporating or implementing the feedback in the products. The end-user agrees that SysKit may exploit all feedback without any restriction or obligation on account of intellectual property rights or otherwise. For clarity, no feedback will be deemed the end-user's confidential information, and nothing in this agreement (including Section 12 (Confidentiality)) limits SysKit's right to independently use, develop, evaluate, or market products, whether incorporating feedback or otherwise.

10.4 Smart Errors

With your consent, the Software may automatically collect non-personally identifiable usage data within certain log files, and may electronically transmit those log files to SysKit, Ltd. The customer further acknowledges and agrees that such usage data collected by the Software shall constitute

the property of SysKit, Ltd., and may be used by us in any way without further approval from the customer.

11 Online Services and Electronic Communications

11.1 Use of Customer Data

Personal data collected through the online services may be transferred, stored, and processed in the United States or any other country in which SysKit or its Affiliates maintain operations. This includes any personal data the customer collects using the online services. By using the online services, the customer consents to the transfer of personal data outside of the end-user's country.

11.1.1 Account Information and Customer Data

SysKit does not claim ownership of any Customer Data. You hereby grant to SysKit a nonexclusive, worldwide, royalty-free, fully paid, transferable license to host, cache, record, copy and display Customer Data solely for the purpose of providing the Software or Services.

11.2 Privacy

Both parties undertake to act in full compliance with the provisions of the privacy and protection laws. As between the parties, the end-user retains all right, title and interest in and to customer data. SysKit acquires no rights in customer data, other than the rights the end-user grants to use for the applicable online service as described in Section 11.3. This does not apply to Software or services SysKit licenses to the end user, or to information that is submitted as feedback or smart errors, as defined in Section 10.3 and Section 10.4.

11.3 Services by Affiliates

Your access to and use of any affiliate online services (e.g. Cleverbridge "ecommerce provider") is governed by the terms, conditions, disclaimers, and notices found on such site.

11.3.1 Notice

EXCEPT AS EXPRESSLY AGREED BY SYSKIT OR ITS AFFILIATES, YOUR USE OF SYSKIT ONLINE SERVICES IS AT YOUR OWN RISK UNDER THE WARRANTY AND LIABILITY LIMITATIONS OF SECTIONS 23 AND SECTION 24.

12 Non-Disclosure/Confidentiality

The customer shall not disclose to any person or entity any information about the Software or other SysKit, Ltd. confidential information that is furnished to or otherwise becomes known to the customer, except that the customer may disclose such information on a need-to-know basis to its employees who are obligated to maintain the confidentiality of such information. The customer's obligation to maintain the confidentiality of such information shall not apply to information that (a) was known to the customer before receiving such information, (b) is in the public domain, (c) is received by the customer from a third party who was legally entitled to make an unrestricted disclosure.

13 Headings

The section headings herein are inserted for convenience only and shall not be construed to limit or modify the scope of any provision of this agreement.

14 Publicity Notice

SysKit, Ltd. may identify customers in product promotional material or on its website. The customer may request that SysKit ceases identifying an end-user at any time by submitting an email to sales@syskit.com. Requests can take up to 30 days to process.

15 License Certifications and Audits

15.1 Audit Requests

Upon SysKit's written request, the customer will provide SysKit with a signed certification certifying that all products are being used pursuant to the terms of this agreement, including any access and user limitations. With prior reasonable notice of at least 10 days, SysKit (or its authorized agent) may audit the use of the products by the customer, its authorized users and agents; provided such audit is during regular business hours.

15.2 Reasonable Assistance

The end-user will provide reasonable assistance and access to information in the course of any audit.

15.3 Audit Costs

The end-user is responsible for such audit costs only in the event that the audit reveals that the end-user's use of the products is not in accordance with any term of this agreement. In the event that any certification or audit reveals that the end-user has exceeded its permitted number of authorized users or devices, SysKit may invoice the end-user for any past or ongoing excessive use and the end-user will pay the invoice in accordance with Section 9 (Payments and Fees). This remedy is without prejudice to any other remedies available to SysKit at law or equity or under this agreement.

15.4 Embedded Software Audit Reporting

The end-user understands that SysKit may report audit results to any applicable embedded Software licensor, or may assign the right to audit the end-user to an embedded Software licensor. When the audit is assigned, then notwithstanding anything else in this agreement to the contrary, SysKit and its third-party auditors will not be responsible for the end-user's costs incurred in cooperating with the audit.

16 Customer Acknowledgements

16.1 No Obligation TO PROVIDE SUPPORT

SysKit shall not be obligated to provide any technical support for Software, or to provide major upgrades that have been released, unless the customer is current in payment of fees for Support and Upgrade Protection (Software Assurance). This excludes minor updates that are required for the basic stability of the Software that SysKit may provide at its sole discretion. SysKit shall not be obliged to provide any technical or other support for its free, open source Software, like SysKit Pulse and SharePoint Data Generator.

16.2 Changes to Products and Services

We may modify, or change, or release a new version of our online services and/or Software and related documents from time to time. In some cases, additional fees may apply for additional services and products offered. After an update, we may discontinue or disable access to all or some of the features, and/or may modify the functionality of features. SysKit, at its sole discretion, reserves the right to discontinue a product, and to add or remove features at any time, without prior notice. This excludes changes that are required for the basic functionality of the Software.

16.3 Delivery

Delivery of all Software is through ESD (as defined in Section 4.9). The customer acknowledges that, at the time of ordering, both a billing and a delivery contact must be input to create the Customer Portal account. This account is created upon ordering either through the website or directly through SysKit. Upon settlement of payment or purchase, login credentials and a password are sent to the customer's email to retrieve the Software download and license keys.

16.4 Authorization to Store Customer Data

The customer hereby acknowledges and agrees that certain information (including, without limitation, your name, username, email address and contact information, which may be deemed "personal information" for the purposes of various state, federal or other privacy laws) may be collected, transmitted, stored, and used by SysKit and its online services, and affiliates. You hereby expressly authorize and consent to the collection, transmission, storage, and use of such information by SysKit, its online services, and affiliates.

16.4.1 Microsoft Office 365 Access
To the extent applicable, you agree to allow SysKit to access your then-current Microsoft Office 365 account for the sole purpose of performing SysKit's obligations under the Agreement.

16.4.2 Notice:
THE CUSTOMER ACKNOWLEDGES AND AGREES THAT SUCH DATA WILL NOT BE SHARED WITH ANY THIRD PARTIES, EXCEPT: (A) IN THE EVENT OF A SALE OF ALL OR SUBSTANTIALLY ALL OF SYSKIT'S ASSETS RELATING TO THE SOFTWARE TO ANOTHER PARTY, (B) IN ORDER TO COMPLY WITH LAW, OR LAW ENFORCEMENT AGENCIES, OR (C) TO PROTECT SYSKIT'S RIGHTS UNDER THIS AGREEMENT.

16.5 Downtime

SysKit, Ltd. shall not be obligated to provide Software service to run fulltime. Software service unavailability will be attributed to the regular maintenance or other external factors outside our control (for example, natural and weather disasters, war, acts of terrorism, government action or a network or device failure external to our data centers, including at your site or between your site and our data center).

16.6 Third-Party Restrictions

SysKit, Ltd. uses other service providers (for example, Microsoft Azure) to produce a Software or service presented to the end-user. The aforementioned third party services are subject to their own limitations and guarantees and therefore SysKit shall not by any chance be held responsible in the case of their failure, which could result in SysKit Software being unavailable or misbehaving.

16.7 Force Majeure

This agreement does not apply to any performance or availability issues (a) that result from the use of services, hardware or Software not provided by us, including but not limited to issues resulting from inadequate bandwidth or related to third-party Software or services; (b) caused by your use of a Service after we advised you to adjust your use of the Service; (c) during or with respect to preview, prerelease, beta or trial versions of a service, feature or Software; (d) that result from your unauthorized action or lack of action when required, or from your employees, agents, contractors or vendors or anyone gaining access to our network by means of your passwords or equipment or otherwise resulting from your failure to follow appropriate security practices; (e) that result from your failure to adhere to any required configurations, use supported platforms, follow any policies for acceptable use, or use the Service in a manner inconsistent with the features and functionality of the Service (for example, attempts to perform operations that are not supported) or inconsistent with our published guidance; (f) that result from faulty input, instructions or arguments (for example, requests to access files that do not exist) or (g) that result from your attempts to perform operations that exceed prescribed quotas or that resulted from our throttling of suspected abusive behavior.

17 Breach

In the event that the customer materially breaches any provision of this agreement, this agreement shall be deemed to automatically terminate, with or without notice from SysKit. The failure of SysKit, Ltd. to insist upon strict adherence to provisions of this license agreement shall in no way constitute a waiver of the relevant provisions or any subsequent breach. Following termination of this license agreement, the customer shall, upon SysKit's written notice (as described in Section 18 (Notices)), promptly discontinue its use of the Software.

18 Notices

18.1 Form of Notice

All notices, requests, claims, demands and other communications between the parties shall be in writing.

18.2 Method of Notice

Notices permitted or required to be given hereunder shall be deemed sufficient if given by (a) registered or certified mail, postage prepaid, return receipt requested, (b) private courier service, or (c) facsimile addressed to the respective addresses of the parties as first above written or at such other addresses as the respective parties may designate by like notice from time to time.

18.3 Receipt of Notice

All notices shall be effective upon (a) receipt by the party to which notice is given, or (b) on the 5th day following mailing, whichever occurs first.

19 Termination

19.1 Duration

This agreement will continue so long as you have a license to the Software or an ongoing subscription, unless earlier terminated. SysKit may suspend or terminate this agreement and the end-user's account, with respect to one or more of the products, if the end-user fails to comply with the terms and conditions of this agreement, including any failure to pay fees when due. SysKit may terminate any free account or evaluation usage at any time at its sole discretion.

19.2 Termination

The end-user may terminate this agreement at any time with notice to SysKit.

19.3 Termination Effect

Immediately upon termination of any license or subscription right granted under this agreement, the end-user's license to Software will cease, and the end-user must at its own cost: (a) cease using (and require all authorized users, and anyone else to cease using) all the terminated products; (b) remove all copies of the Software from its computer systems and any uncontrolled systems; and (c) return to SysKit all Software or provide SysKit with written certification that it has destroyed all copies of the Software and other SysKit confidential information in its possession, custody or control. Upon termination of this agreement for whatever reason, the end-user will not be entitled to credits or refunds for any unused portion of this agreement, including but not limited to unused Support and Upgrade Protection (Software Assurance) and support.

19.4 Survival of Termination

All payment and other obligations accrued as of the date of any expiration or termination of this agreement, and Sections 5.1 (USER OBLIGATIONS), 5.2 (NO ASSIGNMENT), 5.6 (EXPORT CONTROL), 5.13 (INDEMNIFICATION), SECTION 6 (SPECIAL TERMS FOR CONSULTANTS), 9 (PAYMENT AND FEES), 10 (INTELLECTUAL PROPERTY), 12 (CONFIDENTIALITY), 14 (PUBLICITY RIGHTS), 15 (LICENSE CERTIFICATIONS AND AUDITS), 19 (TERMINATION), 20 (INFRINGEMENT INDEMNIFICATION), 21 (GOVERNMENT END-USERS), 22 (GENERAL), 23 (WARRANTIES), 24 (LIMITATION OF LIABILITY), AND 26 (GOVERNING LAW AND JURISDICTION) WILL SURVIVE THE TERMINATION OF THIS AGREEMENT, HOWSOEVER CAUSED, BUT THIS WILL NOT IMPLY OR CREATE ANY CONTINUED RIGHT TO USE THE SOFTWARE AFTER TERMINATION OF THIS AGREEMENT.

20 Infringement Indemnification

20.1 SysKit shall indemnify and hold the customer harmless from liability to unaffiliated third parties resulting from a final judgment of infringement of the Software by any United States copyright or misappropriation of any trade secret, provided that SysKit, Ltd. is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement of any such claim or proceeding. SysKit, Ltd. will not be responsible for any settlement it does not approve in writing.

20.2 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, SYSKIT'S REPRESENTATIONS, WARRANTIES, INDEMNIFICATION AND DEFENSE OBLIGATIONS SHALL NOT APPLY TO: (I) THE EXTENT THAT THE SOFTWARE HAS BEEN MODIFIED BY

PARTIES OTHER THAN SYSKIT; (II) PREVIOUS RELEASES OF THE SOFTWARE WHERE THE CUSTOMER IS NOT SUBSCRIBING TO SUPPORT AND UPGRADE PROTECTION (SOFTWARE ASSURANCE), WHERE UPDATES OR NEWER RELEASE WOULD NOT HAVE GIVEN RISE TO THE INFRINGEMENT CLAIM; (III) CLAIMS CAUSED BY THE CUSTOMER'S NEGLIGENCE, ABUSE, MISUSE OR MISAPPLICATION OF THE SOFTWARE OR ANY PORTION THEREOF; (IV) COMBINATIONS OF THE SOFTWARE OR ANY PORTION THEREOF WITH OTHER PRODUCTS, PROCESSES OR MATERIALS NOT PROVIDED BY SYSKIT, LTD., WHERE THE ALLEGED INFRINGEMENT ARISES OUT OF OR RELATES TO SUCH COMBINATION; OR (V) WHERE THE CUSTOMER OR ANY OF ITS CUSTOMERS OR AGENTS CONTINUES ALLEGEDLY INFRINGING ACTIVITY AFTER BEING NOTIFIED THEREOF AND AFTER BEING PROVIDED WITH MODIFICATIONS THAT WOULD HAVE AVOIDED THE ALLEGED INFRINGEMENT.

20.3 THE END-USER AGREES TO INDEMNIFY AND HOLD SYSKIT HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, COSTS, EXPENSES, DAMAGES, LIABILITIES AND LEGAL FEES THAT SYSKIT MAY SUFFER OR INCUR AS A RESULT OF ANY DISPUTE THAT MAY ARISE, IN ANY WAY WHATSOEVER, IN CONNECTION WITH ANY BREACH OF SECTION 20.2 AND SECTION 5.13.

21 Notice to Government Users—Restricted Rights Notice

21.1 Notice

Any Software provided to the United States of America, including its agencies or instrumentalities (collectively, the "U.S. government") is subject to RESTRICTED RIGHTS. If this Software or related documentation is delivered to the U.S. government or if anyone is licensing it on behalf of the U.S. government, the following notice is applicable:

21.2 U.S. Government End-Users

The products are commercial computer Software. If the user or licensee of the products is an agency, department, or other entity of the United States government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Software, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement or by the terms of this agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. The products were developed fully at private expense, and the manufacturer is SysKit, Ltd., Krste Pavletića 1, 10000 Zagreb, Croatia, Europe. All other use is prohibited.

22 General Provisions

22.1 Contract Amendments

This agreement may only be modified in writing, signed by an Authorized Officer of SysKit, Ltd.

22.2 Governing Language

The English version of this agreement will be the version used when interpreting or construing this agreement. The English language shall govern all correspondence and other documents pertaining to the contract and all such documents that are exchanged by the parties shall be written in the same language.

22.3 Entire Agreement

This is the entire agreement between SysKit ltd. And the customer relating to the Software and it supersedes any prior representations, discussions, undertakings, communications, or advertising relating to the Software.

22.4 Independent Contractors

Nothing in this agreement shall be construed as constituting either party as a partner of the other or to create any other form of legal association that would give one party the express or implied right, power or authority to create any duty or obligation of the other party.

22.5 Accuracy and Completeness

The Software and access to any websites, SysKit or online services are provided "as is" and with all faults.

22.6 Projections

Except for the representations and warranties contained in SECTION 23 (LIMITED WARRANTY), SysKit does not make any representation or warranty as to the future revenue, profitability or success of the Software or related documents, or any representation or warranty arising from statute or otherwise in law.

22.7 Merchantability

Other than those offered and statutory warranties and remedies, SysKit, Ltd. And its affiliates disclaim all warranties, conditions, representations, and terms, express or implied, whether by statute, common law, custom, usage, or otherwise, as to any matter, including but not limited to performance, security, non-infringement of third party rights, integration, merchantability, quiet enjoyment, satisfactory quality, and fitness for any particular purpose. Other than such offered and statutory warranties and remedies, in SECTION 23 (LIMITED WARRANTY).

22.8 No Other Warranty/Representation

The limited warranty in SECTION 23 (LIMITED WARRANTY) and any statutory warranty and remedy that cannot be excluded or limited under law are the only warranties and exclusive remedies applicable to the Software.

22.9 Disclaimer

The foregoing limitations and exclusions apply to the extent permitted by applicable law in the customer's jurisdiction. This limitation of liability may not be valid in some jurisdictions. The customer may have rights that cannot be waived under consumer protection and other laws. SysKit does not seek to limit its warranty or remedies to any extent not permitted by law. See SECTION 26 (GOVERNING LAW AND JURIDISTICTION) for jurisdiction-specific statements.

22.10 Severability

In the event that any provision of this license agreement is held invalid or unenforceable, the remainder of this agreement shall remain valid and enforceable according to its terms. The provisions of sections 5.1 (USER OBLIGATIONS), 5.2 (NO ASSIGNMENT), 5.6 (EXPORT CONTROL), 5.13 (INDEMNIFICATION), 6 (SPECIAL TERMS FOR CONSULTANTS), 9 (PAYMENT AND FEES), 10 (INTELLECTUAL PROPERTY), 12 (CONFIDENTIALITY), 14 (PUBLICITY RIGHTS), 15 (LICENSE CERTIFICATIONS AND AUDITS), 19 (TERMINATION), 20 (INFRINGEMENT INDEMNIFICATION), 21

23 Limited Warranty Remedy

23.1 THE ENTIRE LIABILITY OF SYSKIT AND ITS AFFILIATES RELATED TO SUCH WARRANTY CLAIM AND THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY UNDER ANY WARRANTY WILL BE LIMITED TO EITHER, AT SYSKIT'S OPTION, SUPPORT OF THE SOFTWARE BASED ON THE WARRANTY CLAIM, UPGRADE OF THE SOFTWARE, OR, IF SUPPORT OR UPGRADE IS NOT PRACTICABLE AT SYSKIT'S DETERMINATION, REFUND OF THE LICENSE FEE THE CUSTOMER PAID FOR THE SOFTWARE (IF ANY).

23.2 THE LIMITED WARRANTY SET FORTH IN THIS SECTION GIVES CUSTOMER-SPECIFIC LEGAL RIGHTS. THE CUSTOMER MAY HAVE ADDITIONAL RIGHTS UNDER LAW THAT MAY VARY FROM JURISDICTION TO JURISDICTION. SYSKIT DOES NOT SEEK TO LIMIT THE CUSTOMER'S WARRANTY RIGHTS TO ANY EXTENT NOT PERMITTED BY LAW. PLEASE SEE SECTION 26 (GOVERNING LAW AND JURIDISTICTION) FOR JURISDICTION-SPECIFIC PROVISIONS.

23.3 **Disclaimer of Warranties.** ALL SOFTWARE AND SERVICES ARE PROVIDED "AS IS" AND "WITH ALL FAULTS" AND WITHOUT ANY WARRANTY. EACH OF THE SYSKIT ENTITIES HEREBY DISCLAIMS ALL WARRANTIES, CONDITIONS AND DUTIES OF ANY KIND (IF ANY), EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY OF MERCHANTABILITY, OF FITNESS FOR ANY PARTICULAR PURPOSE, OF ACCURACY, OF SYSTEM INTEGRATION OR COMPATIBILITY, OF WORKMANLIKE EFFORT OR OF NON–NEGLIGENT PERFORMANCE. THE FOREGOING DISCLAIMERS INCLUDE, WITHOUT LIMITATION, ANY WARRANTY, DUTY OR CONDITION THAT THE SOFTWARE OR SERVICES WILL BE UNINTERRUPTED, RELIABLE, AVAILABLE AT ANY PARTICULAR TIME, SECURE, ERROR-FREE OR VIRUS-FREE OR CORRESPOND TO ANY CONDITION; THAT MESSAGES OR REQUESTS WILL BE DELIVERED; THAT DEFECTS WILL BE CORRECTED OR THAT THE SOFTWARE OR SERVICES, ANY CONTENT, SYSTEMS, SERVERS AND INFORMATION THAT IS IN OR UTILIZED BY THE SOFTWARE AND/OR SERVICES WILL BE FREE OF HARMFUL ASPECTS. ALSO, THERE IS NO WARRANTY OF TITLE OR AGAINST INTERFERENCE WITH ANYONE'S ENJOYMENT OF THE SOFTWARE OR SERVICES OR AGAINST INFRINGEMENT.

24 Limitation of Liability

24.1 EXCEPT FOR THE EXCLUSIVE REMEDY OFFERED BY SYSKIT ABOVE AND ANY REMEDIES THAT CANNOT BE EXCLUDED OR LIMITED UNDER LAW, SYSKIT, ITS AFFILIATES, SUPPLIERS, AND CERTIFICATE AUTHORITIES WILL NOT BE LIABLE TO YOU FOR ANY LOSS, DAMAGES, CLAIMS, OR COSTS WHATSOEVER INCLUDING ANY CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, ANY LOST PROFITS OR LOST SAVINGS, ANY DAMAGES RESULTING FROM BUSINESS INTERRUPTION, PERSONAL INJURY OR FAILURE TO MEET ANY DUTY OF CARE, OR CLAIMS BY A THIRD PARTY, EVEN IF AN SYSKIT REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, DAMAGES, CLAIMS OR COSTS. IN ANY EVENT, SYSKIT'S AGGREGATE LIABILITY AND THAT OF ITS AFFILIATES, SUPPLIERS, AND CERTIFICATE AUTHORITIES UNDER OR IN CONNECTION WITH THIS AGREEMENT, WILL BE LIMITED TO THE AMOUNT PAID FOR THE SOFTWARE, IF ANY. THIS LIMITATION WILL APPLY EVEN IN THE EVENT OF A FUNDAMENTAL OR MATERIAL BREACH OR A BREACH OF THE FUNDAMENTAL OR MATERIAL TERMS OF THIS AGREEMENT.

24.2 THE FOREGOING LIMITATIONS AND EXCLUSIONS APPLY TO THE EXTENT PERMITTED BY APPLICABLE LAW IN YOUR JURISDICTION. THIS LIMITATION OF LIABILITY MAY NOT BE VALID IN SOME JURISDICTIONS. YOU MAY HAVE RIGHTS THAT CANNOT BE WAIVED UNDER CONSUMER PROTECTION AND OTHER LAWS. SYSKIT DOES NOT SEEK TO LIMIT YOUR WARRANTY OR REMEDIES TO ANY EXTENT NOT PERMITTED BY LAW. SEE SECTION 26 (GOVERNING LAW AND JURIDISTICITION) FOR JURISDICTION-SPECIFIC STATEMENTS.

25 Other Disclaimers

NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT FOR THE END-USER'S BREACH OF ANY LICENSE OR USE RESTRICTIONS RELATING TO THE PRODUCTS, IN NO EVENT SHALL EITHER PARTY (OR THEIR RESPECTIVE THIRD PARTY SUPPLIERS/LICENSORS) BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS OR REVENUE) WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT. THE END-USER SPECIFICALLY UNDERSTANDS AND AGREES THAT SYSKIT (ON BEHALF OF ITSELF AND ITS THIRD-PARTY SUPPLIERS/LICENSORS) DISCLAIMS ALL WARRANTIES AND LIABILITY WITH RESPECT TO LOSS, LOSS OF USE OR CORRUPTION OF ANY END-USER DATA (OR OTHER DATA THE END-USER MAY PROVIDE) AND THE COSTS OF PROCUREMENT OF ANY SUBSTITUTE GOODS.

26 Governing Law and Jurisdiction

SYSKIT, LTD. IS A GOVERNMENT OF THE REPUBLIC OF CROATIA ENTITY, AND THIS AGREEMENT IS GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE GOVERNMENT OF THE REPUBLIC OF CROATIA, IN THE CITY OF ZAGREB, CROATIA, EXCLUDING ITS CHOICE OF LAW PRINCIPLES. YOU AGREE THAT ALL CLAIMS YOU MAY HAVE AGAINST SYSKIT, LTD. (D.O.O.) ARISING FROM OR RELATING TO ITS PRODUCTS OR SERVICES, OR THE BREACH THEREOF, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, SHALL LIKEWISE BE GOVERNED BY THE LAWS OF THE GOVERNMENT OF THE REPUBLIC OF CROATIA, EXCLUDING ITS CHOICE-OF-LAW PRINCIPLES. YOU HEREBY CONSENT TO THE EXCLUSIVE JURISDICTION AND VENUE OF COURTS IN ZAGREB, CROATIA. USE OF ANY PRODUCTS OR SERVICES IS UNAUTHORIZED IN ANY JURISDICTION THAT DOES NOT GIVE EFFECT TO ALL PROVISIONS OF THESE TERMS AND CONDITIONS, INCLUDING, WITHOUT LIMITATION, THIS PARAGRAPH.

27 Exclusion of the United Nations Convention (CISG) and UCITA

THE TERMS OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE SALE OF GOODS DO NOT APPLY TO THIS AGREEMENT. THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT (UCITA) SHALL NOT APPLY TO THIS AGREEMENT REGARDLESS OF WHEN OR WHERE ADOPTED.

Support and Upgrade Protection (Software Assurance) Agreement

SysKit's Support and Upgrade Protection (Software Assurance) is an option available to all customers at the time that your license is purchased. Below are the terms and conditions of the Support and Upgrade Protection (Software Assurance) agreement, applicable to customers who have paid for this service.

1 Support and Upgrade Protection (Software Assurance) Fees

For additional fees, as noted on our website, SysKit, Ltd. offers "Support and Upgrade Protection (Software Assurance)" to end-users. Support and Upgrade Protection (Software Assurance) includes Upgrade Protection: (1) any generally released updates, patches, and bug fixes for the Software ("updates") when and if released at SysKit's sole discretion, (2) major version upgrades, and Standard Support: (3) web-based support, email, live chat and phone support.

2 Renewal Notices

SysKit sends out renewal notices to the registered email on file according to the following schedule: (a) 30 days prior to the expiration, (b) on the day of expiration, and (c) final notice occurs 30 days after expiration has occurred.

3 Failure to Renew

While customers are not required to purchase Support and Upgrade Protection (Software Assurance), it is highly recommended. End-users without Support and Upgrade Protection (Software Assurance) are not entitled to technical support and free upgrades and will be required to pay additional license fees for version upgrades. If the Support and Upgrade Protection (Software Assurance) is not renewed prior expiry of the current Support and Upgrade Protection (Software Assurance) or during the "grace period" of one month after the expiry date, renewal won't be possible on a later note. If you choose to purchase Support and Upgrade Protection (Software Assurance) at a future date, Support and Upgrade Protection (Software Assurance) is not payable retroactively and the new license should be purchased.

4 Software Updates and Upgrades

SysKit shall provide minor updates (commercially available to all customers, regardless of enrollment in the Support and Upgrade Protection (Software Assurance) program) applicable to the Software for which the customer is currently licensed, or major upgrades if the customer is eligible to receive them. The customer must be current in payment and have active Support and Upgrade Protection (Software Assurance) in order to receive major upgrades. These updates are communicated on our product websites, through email campaigns (if you are subscribed). The download links are always maintained within the Customer Portal (the customer account that is created upon purchase of our Software), located at: https://my.syskit.com/.

5 Support and Upgrade Protection (Software Assurance) for Subscription Users

Consultant subscriptions are inclusive of Support and Upgrade Protection (Software Assurance)—therefore no additional purchase is necessary. At the end of the term or upon cancelation of the subscription, the Support and Upgrade Protection (Software Assurance) terminates, as does the subscription, unless the consultant(s) elects to renew their subscription.

6 Definitions

While SysKit's support team works diligently to resolve all issues expediently, there are times when triage is necessary. The support team will use all reasonable efforts in the diagnosis and resolution of errors, in accordance with the specifications set forth in this agreement. "Error" means the failure of the Software to conform to the technical specifications as defined in the technical documentation applicable to the Software, as delivered by SysKit, to the customer.

Error	Definition
Urgent	An error that renders the Software inoperable, critically affecting the customer's business operations, data integrity and/or users, and for which the customer has not been able to establish a workaround. Urgent level support is reserved for technical difficulties involving Software that is already installed and operating in production environments.
High	An error that causes the Software to be severely limited or degraded, significantly affecting the customer's business operations and user productivity, and for which the customer has not been able to establish a workaround.
Normal	An error that causes the Software to be limited or degraded, but where a customer's business operations and user productivity can substantially continue, or for which the customer has a workaround or alternative configuration.
Low	An error that has no significant adverse effect on use of the Software.

7 Error Resolution/Escalation Support Stages

Support Levels	Definition
Level 1 Support	All errors start at this stage. To determine the root cause of the issue, our support team will need specific error messages, event logs and screenshots, and the Software version you are using. The goal of Level 1 Support is to get a complete description of the symptoms, configuration information, revision level information, and detail on reproducibility of the error.
Level 2 Support	This involves resolving the error by correlating the error with other known Software issues, reproducing the error, and localizing Software defects, as applicable. The goal of Level 2 Support is to provide the support contact with a fix or workaround for the error.
Level 3 Support	Level 3 Support is specifically for issues that require a patch, bug fix or update, and require longer resolution times.

8 Standard Support

Standard Technical and Customer Support	
Hours of Coverage	Standard Support Hours
Available Support Channels	Web, Phone, Email and Chat
Number of Cases	20 per Year
Remote Assistance	NA
Standard Support Hours	Support is provided Monday–Friday between the hours of 7AM–6PM EST. Support is not available on Saturday, Sunday, or any major US holidays.
Phone	US & Canada: +1 (855) 855-5071 International: +1 (631) 406-4900 EUROPE: +44 (0)20 3322-2034
Online Support	Customers can submit online web-based support requests 24/7 at https://support.syskit.com. *We strongly encourage existing and potential customers to use the online support service to submit technical requests, as this assigns ticket numbers, and provides a means for tracking your ticket and the responses.
Knowledge Base	Our Knowledge Base is also a great place to start to troubleshoot commonly known issues. You can find it at help pages for each product site.

9 Reseller Support Contacts

Customers who purchased Software through an authorized reseller are able to contact their reseller directly when a technical issue arises. Those designated contacts are expected to relay the technical support-related issues and communications immediately to SysKit. However, we invite all customers to contact SysKit directly, as this might be faster.

10 Support Request Acknowledgment

After submitting a web-based support request, the requester will receive an initial acknowledgment that will include confirmation of receipt of the support request by SysKit and assignment of a tracking number for that support request.

11 Response, Resolution, and Escalation

SysKit shall use commercially reasonable efforts to respond to support requests. Normal response times vary from 8 hours to 48 hours, depending upon the time received. The "response time" is the maximum time elapsed between receipt of the support request by SysKit's technical support team and when SysKit expects to provide an initial response to your support request.

SLA	Initial response time	Ongoing response time
Urgent	8 business hours (during support working hours)	1 business day or as agreed
High	1 business day (during support working hours)	2 business day or as agreed
Normal	2 business days (during support working hours)	7 business day or as agreed
Low	2 business days (during support working hours)	7 business day or as agreed

12 Customer Cooperation And Obligations

12.1. Each customer shall assist SysKit and/or its agents in resolving any error, including replicating the error and retrieving applicable workstation, server, and log file data relating to the error, as required. Additional technical information may be required from the customer to resolve an error and any delays in providing that technical information may impact the resolution time.

12.2. To receive the most effective support, the customer agrees to promptly install applicable Software updates provided by SysKit. Failure to implement such updates may render the Software unusable or non-conforming to the applicable documentation. SysKit's ability to provide technical support and maintenance services to the customer may be limited if the customer has not properly implemented all updates provided.

12.3. The customer agrees to give SysKit, Ltd. access to the installed Software as necessary for SysKit to determine the cause of the problem and find a resolution. The customer is solely responsible for the customer's data, information, and Software, including making back-up copies, and maintaining security.

12.4. If the customer requests SysKit, Ltd. to provide technical support and maintenance services for (a) problems caused by the customer's use of the Software outside the scope of the Software license or documentation, or by any changes or modifications to the Software not authorized by SysKit, (b) problems caused by any changes to the customer's system environment, or (c) any problem for which SysKit is not obligated to provide technical support and maintenance services, those technical support and maintenance services are subject to the availability of SysKit personnel and will be billed to the customer at SysKit's standard time and materials consulting rates at the time of such service.

13 Limitations

13.1. SysKit, Ltd. shall have no obligation to correct errors or respond to support queries arising from a customer's negligence, misuse or impermissible alteration of the Software or the combination or merging of the Software with any hardware or Software not identified as compatible in the applicable product documentation.

13.2. SysKit, Ltd. shall have no obligation to correct errors except with respect to (a) the then-current version of the Software, and (b) the immediately preceding version of such Software. As used herein, a "version" is any version of the Software designated, at the sole discretion of SysKit, by a change in the version number to the left of the first decimal point.

13.3. SysKit, Ltd. reserves the right to modify the terms and conditions applicable to the Support and Upgrade Protection (Software Assurance) at any time with 30 days' prior notice; provided, however, that any such modification may not materially increase a customer's obligations nor reduce SysKit's obligations with respect to the Support and Upgrade Protection (Software Assurance) for the duration of such customer's then-current Support and Upgrade Protection (Software Assurance) subscription term.