

Effective Date: November 4th, 2019

Syxsense Manage / Syxsense Secure / Syxsense Enterprise

TERMS OF USE

1) SOFTWARE AS A SERVICE USE RIGHTS

Pursuant to this Agreement, Syxsense, Inc. (“Syxsense”) will provide the customer that accepts these Terms of Use (“Customer”) access to and use of Syxsense’s web based subscription service technologies described below, to the extent set forth on the electronic or written order between Syxsense and Customer to which these Terms of Use are attached or that reference these Terms of Use (“Order”). These Terms of Use are incorporated into the Order, and these Terms of Use and the Order are together referred to as the “Agreement”. Unless otherwise stated in an Order, these Terms of Use are subject to change through written notice from Syxsense to all customers.

Subject to the terms and conditions of the Agreement (without limitation, to the negative covenants in Sections 2.b., 5 and 6), to the extent set forth in the applicable Order, and for the term of and subject to any additional restrictions in the Order, Syxsense grants Customer the non-exclusive, non-sub-licensable, revocable, royalty-free and fully paid up (other than as set forth in the Order), right to: access and use Syxsense (as defined below) through the cloud on a Software as a Service (“SaaS”) basis; and download and use the Interface (as defined below) solely for use in connection with the Syxsense rights specified in the Order.

a. Syxsense Service

Syxsense Manage/Secure and Enterprise are Syxsense’s proprietary web-based functionality to manage and secure Endpoint Devices. Syxsense is used in conjunction with certain proprietary Syxsense interface software (“Interface”). Syxsense will provide Syxsense functionality through CloudManagementSuite.com or its successor web site, a Syxsense Domain, through which Customer may also download the Interface for installation on the Customer computer devices.

The Syxsense and Interface as applicable, are referred to as the “Service” in this Agreement.

b. Beta Features

If Customer is invited to access any beta features of the Service or a Customer accesses any beta features of the Service, then the following additional terms apply: Customer understands that these features may change and may not become generally available. These features are provided AS IS, with all faults.

2) PARTIES' RESPONSIBILITIES WITH RESPECT TO SERVICES

a. Syxsense Responsibilities

Syxsense will use commercially reasonable efforts to make the Service available 24 hours a day, except for planned and emergency maintenance and events outside of the control of Syxsense.

Syxsense will provide Customer email support for the Service during Syxsense's business hours and using Syxsense's standard policies, and will provide additional higher levels of support (if purchased by the Customer) as further set forth in the relevant Order and as detailed in Syxsense's Support FAQ document which is incorporated into this Agreement by reference.

Additional responsibilities pertaining to delivery of the Service are defined at the Responsibilities FAQ page (which is incorporated into this Agreement by reference) and will be periodically updated to comply with regulatory requirements, enhance delivery and use as well as improvements to operational efficiency and to meet the general business needs of Syxsense and its customers. Syxsense will make reasonable commercial efforts to electronically notify Customer of any significant changes.

b. Customer Responsibilities

The up to date list of Customer responsibilities relative to the use of Service are available at the Responsibilities FAQ page. Syxsense will make reasonable commercial efforts to notify Customer of significant changes.

Access by Employees and Contractors, and Service Providers. Customer may allow its employees and contractors to access the Service in compliance with the terms of this Agreement, which access must be for the sole benefit of Customer, and clients (if acting as a service provider to them). Customer is responsible for the compliance with this Agreement by its employees, contractors and clients, as applicable.

Restrictions and Responsibilities. Unless written approval is obtained from Syxsense, Customer may not sell, resell, rent or lease the Service or any component of it, Furthermore Customer agrees not to (i) use the Service to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party rights (including without limitation any privacy rights), (ii) interfere with or disrupt the integrity or performance of the Service, or (iii) attempt to gain unauthorized access to the Service or its related systems or networks. Customer is solely responsible for Customer Data (defined below), must use commercially reasonable efforts to prevent unauthorized access to the Service, must notify Syxsense promptly of any such unauthorized access, and may use the Service only in accordance with its user guide and applicable law.

Customer Data. All data entered or uploaded by Customer remains the sole property of Customer, as between Syxsense and Customer ("**Customer Data**"), subject to the other terms of

this Agreement. Customer grants Syxsense a non-exclusive term license to use, modify and otherwise make available the Customer Data for purposes of Syxsense performing under this agreement. Customer shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. Customer may at any time download the Customer Data as allowed for as part of the Service.

Aggregate Data. Syxsense may use during and after this agreement all aggregate non-identifiable information and data for purposes of enhancing the Service, technical support and other business purposes, including without limitation the limited data set and de-identification of information regulations.

3) PAYMENT TERMS

a. Payment: The Customer shall pay the fees for the Service to Syxsense in accordance with the Order, in advance.

Syxsense shall invoice the Customer following receipt of the Order or on completion of free trial period; the Service fee shall be subject to change with 30 days notice.

If Syxsense has not received payment within 30 days of the due date, and without prejudice to any other rights and remedies of Syxsense, may, without liability to the Customer, suspend Customer access to all or part of the Services and at the discretion of Syxsense Delete any and all Customer Data stored on Syxsense's Servers. Syxsense shall be under no obligation to provide any or all of the Services while any invoices remain unpaid. Interest shall accrue on any amounts due at the maximum amount as allowed by law.

b. Cancellation. Subscriptions may be cancelled within 30 days prior to the end of the then-current annual term. Unless otherwise stated in the Order, subscriptions will auto-renew for the same term as the original Order term. There are no refunds after payment is made.

c. General. Customer must pay all fees with a credit card, BACS or ACH upon receipt of an invoice from Syxsense. If the credit card or ACH is not valid or the payment is not otherwise made, Customer must pay the amount owed upon receipt of an invoice. Customer is responsible for sales, use, VAT and other similar taxes.

d. Fee Changes. All fees may be changed on 30 days advance notice, unless otherwise described in the Order.

4) WARRANTY/SERVICE LEVEL AGREEMENT/DISCLAIMERS

a. Mutual Compliance with Laws Warranty. Each party represents and warrants to the other party that it will comply with all applicable laws regarding its performance under this agreement.

b. Availability Warranty/SLA. Details are available at the SLA FAQ page (which is incorporated into this Agreement by reference) on the Syxsense SLA.

c. Limited Remedy. Customer's exclusive remedy and Syxsense's sole obligation for breach of the availability/SLA warranty will be for Syxsense to provide a credit equal to one (1) day of Service for each day the Service is not available for more than one (1) hour in total in a given day. Such credits have no cash value, are usable only with respect to a discount against future Services and must be claimed within the calendar month in which the lack of availability occurs or will be forfeited.

d. SERVICE PROVIDED BY SYXSENSE. Neither Syxsense nor its licensors assume any liability or responsibility for damage or injury (including death) to Customer, Equipment, Data, other person, or property arising from any use of the Service.

e. DISCLAIMERS. SYXSENSE DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THAT THE SERVICE WILL BE UNINTERRUPTED, ERROR FREE OR WITHOUT DELAY, AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTY OF NON-INFRINGEMENT. WHILE SYXSENSE TAKES REASONABLE PHYSICAL, TECHNICAL AND ADMINISTRATIVE MEASURE TO SECURE THE SERVICE, SYXSENSE DOES NOT GUARANTY THAT THE SERVICE CANNOT BE COMPROMISED.

5) MUTUAL CONFIDENTIALITY

a. Definition of Confidential Information. Confidential Information means all non-public information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**Confidential Information**). Syxsense's Confidential Information includes without limitation the non-public portions of the Service.

b. Protection of Confidential Information. The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees, contractors and clients (as the case may be) who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement. The Recipient may disclose Confidential Information to the extent required by law or legal process.

c. Exclusions. Confidential Information *excludes* information that: Is or becomes generally known to the public without breach of any obligation owed to Discloser, Was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, Is received from a third party without breach of any obligation owed to Discloser, or

Was independently developed by the Recipient without use or access to the Confidential Information.

6) PROPRIETARY RIGHTS

a. Reservation of Rights by Syxsense. The software, workflow processes, user interface, designs, know-how and other technologies provided by Syxsense as part of the Service are the proprietary property of Syxsense and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with Syxsense. Syxsense reserves all rights unless expressly granted in this Agreement.

b. Customer Restrictions. Customer may not:

Use the Service or the Licensed Documentation (defined below) beyond its internal operations; Reverse engineer the Service or the Licensed Documentation;

Remove or modify any proprietary marking or restrictive legends in the Service; or

Access the Service to build a competitive product or service, or copy any feature, function or graphic of the Service for competitive purposes.

c. Licensed Documentation. The user guide, console guide, sample data, marketing materials and other material provided or accessible through the Service, are licensed to Customer as follows: Syxsense grants Customer a non-exclusive, license for the duration of the Service to use such materials for Customer's internal use solely with the Service, with the right to make additional copies of the material for such duration and purpose (Licensed Documentation).

7) LIMITS ON LIABILITY

a. NO INDIRECT DAMAGE. SYXSENSE IS NOT LIABLE FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION, COSTS OF DELAY, LOSS OF DATA OR INFORMATION, OR LOST PROFITS) ARISING UNDER OR RELATED TO THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

b. LIMIT. SYXSENSE'S LIABILITY FOR ALL DAMAGES ARISING UNDER OR RELATED TO THIS AGREEMENT (IN CONTRACT, TORT OR OTHERWISE) DOES NOT EXCEED THE ACTUAL AMOUNT PAID BY CUSTOMER WITHIN THE 12 MONTH PERIOD PRECEDING THE EVENT WHICH GAVE RISE TO THE CLAIM.

8) TERM, TERMINATION, AND RETURN OF DATA

a. Term. Syxsense Service

The Service will continue in accordance with the Order. Unless otherwise stated in the Order the Service term will be Annual and may be terminated with or without or cause by either party upon at least 30 days advance notice.

b. Termination for Material Breach. Either party may terminate this Agreement and the applicable Orders if the other party material breaches any term of the agreement or an order and does not cure the breach within 30 days of receipt of notice of breach.

Additional terms are in the Term, Termination and Return of Data FAQ page (which is incorporated into this agreement for all purposes).

c. Return of Data. Details are outlined in the Term, Termination and Return of Data FAQ page.

d. Customer Actions upon Termination. Upon termination, Customer must pay any unpaid fees and destroy all Syxsense property. Customer upon request will confirm that it has complied with this requirement.

e. Suspension of Service for Violations of Law. Syxsense may immediately suspend the Service and remove applicable Customer Data if it in good faith believes that, as part of using the Service, Customer may have violated a law. Syxsense may try to contact Customer in advance, but it is not required to do so.

9) INDEMNITY

a. General Indemnity. Customer must indemnify, defend, and hold harmless Syxsense against all third-party claims (including without limitation by governmental agencies), demands, damages, costs, penalties, fines, and expenses (including reasonable attorneys' fees and costs) arising out of or related to: Customer's breach of any term in this Agreement, Any unauthorized use, access or distribution of the Service by Customer.

10) GOVERNING LAW AND FORUM FOR DISPUTES.

a. California Law and Location for Dispute Process. This agreement is governed by the laws of the State of California, without regard to conflict of laws principles. Any dispute arising out of or related to this agreement must be exclusively brought in the state and federal courts for Orange County, California. Customer consents to the personal jurisdiction of such courts and waives any claim that it is an inconvenient forum. The prevailing party in litigation is entitled to recover its attorneys' fees and costs from the other party.

11) OTHER TERMS

a. Consent to Electronic Communications and Transactions. Customer will have the ability to enter into agreements, authorizations, consents and applications; make referrals; or engage in other transactions electronically. CUSTOMER AGREES THAT ITS ELECTRONIC SUBMISSIONS VIA THE SERVICES IN CONNECTION WITH SUCH ACTIVITIES CONSTITUTE ITS AGREEMENT TO BE BOUND BY SUCH AGREEMENTS AND TRANSACTIONS, AND APPLIES TO ALL DATA RELATING TO SUCH TRANSACTIONS. Customer represents and warrants that it has the authority to take such actions.

b. Entire Agreement and Changes. This Agreement constitutes the entire agreement between the parties, and supersedes all prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this agreement. No representation, promise or inducement not included in this agreement is binding. No modification or waiver of any term of this agreement is effective unless both parties sign it.

c. Feedback. By submitting ideas, suggestions or feedback to Syxsense regarding the Service, Customer agrees that: (i) such items submitted do not contain confidential or proprietary information; and (ii) Customer hereby grants Syxsense an irrevocable, unlimited, royalty-free and fully-paid, perpetual worldwide, fully sub-licensable license to use such items for any business purpose.

d. No Assignment. Neither party may assign or transfer this Agreement or an order to a third party, except that this Agreement with all orders may be assigned (without the consent) as part of a merger, or sale of all or substantially all of the business or assets, of a party.

e. Independent Contractors and Enforceability. The parties are independent contractors with respect to each other. If any term of this agreement is invalid or unenforceable, the other terms remain in effect.

f. No Additional Terms. Syxsense rejects additional or conflicting terms of a form-purchasing document.

g. Order of Precedence. If there is an inconsistency between these Terms of Use and the Order, the Order prevails.

h. Survival of Terms. All terms survive the Term that by their nature survive for a party to assert its rights and receive the protections of this agreement.

i. CISG Not Apply. The Convention on Contracts for the International Sale of Goods does not apply.

j. Customer Name. Syxsense may use Customer's name and logo in customer lists and related promotional materials describing Customer as a customer of Syxsense, which use must be in accordance with Customer's trademark guidelines and policies.

FAQ

Syxsense Responsibilities

Frequently Asked Questions (FAQ)

The following FAQ outlines both parties' basic responsibilities in delivery and utilization of Syxsense services as referenced in the Syxsense Terms of Use.

This FAQ will be updated on a regular basis to ensure regulatory compliance, allow adjustments for various changes in workflow, updated product features and operational efficiency.

1. *Q: Does the Syxsense Service use Cookies?*

A: Yes, the Syxsense Service does use cookies and by using the Service you agree to this use. Cookies are small text files that are placed on your computer by websites that you visit. They are widely used in order to make websites work, or work more efficiently, as well as to provide information to the owners of the site. The list below describes the cookies we use in this site and what we use them for. None of the cookies we use collect personal data from visitors. If you continue to use our site without disabling cookies (see the link below), we will accept this as your deemed consent to collect analytical data in this way.

We use – Session ID cookies – these are stored only temporarily during a browsing session and are deleted from the user's device when the browser is closed.

Google analytics tracking cookies – these track your visit through our site and provide us with statistics on our website usage. Flash cookies, which allow you to view media files.

This website does not use any third-party cookies. Most web browsers allow some control of most cookies through the browser settings. To find out more about cookies, including how to see what cookies have been set and how to manage and delete them, visit www.allaboutcookies.org

Syxsense Services Warranty/ SLA

Frequently Asked Questions (FAQ)

The following FAQ outlines the Warranty and Service Level Agreement as referenced in the Syxsense Terms of Service, Section 4 – Warranty/ Service Level Agreement, item b.

This page will be updated on a regular basis to ensure regulatory compliance, reflect updated product features and current network and system performance.

Syxsense Services

1. **Q: Does Syxsense guarantee a system uptime and reliability?**

A: Syxsense makes every reasonable effort to maintain an uptime of 99% but makes no guarantee.

Syxsense Services

Term, Termination and Return of Data

Frequently Asked Questions (FAQ)

The following FAQ outlines the Syxsense Term, Termination and Return of Data policy as referenced in the Syxsense Terms of Service Agreement, Section 2 – Term, Termination and Return of Data. This FAQ will be updated on a regular basis.

Syxsense Services

1. **Q: If I terminate my contract with Syxsense, will I have an opportunity to download my data?**

A: Syxsense recommends that the Customer initiate or perform their data export prior to the actual termination date of the contract. The Customer data will only be provided in Microsoft Excel (.XLS) or Comma Separated Values (.CSV) file format and only includes inventory data

2. **Q: What happens to my data after the actual termination date?**

A: Syxsense will attempt to retain the Customer's data for an additional 60 days (**Data Retention Period**) as a safeguard in the event that the client requires additional data from the system.

3. **Q: If I discover that I need additional information during the Data Retention Period, how can I obtain the additional data?**

A: Please contact the Syxsense Helpdesk at helpdesk@Syxsense.com for assistance, please note additional charges may apply at a standard rate of \$200 an hour (minimum 30 minutes).

4. **Q: During the 60-day Data Retention Period, will Syxsense continue to maintain privacy, security and integrity of my data?**

A: Syxsense will continue to extend the protections during the data retention period.

5. Q: What data can I download from the system?

A: Syxsense recommends contacting support for assistance in identifying data to export from Syxsense – prior to the actual termination date. If Customer contacts support for assistance after the support coverage has terminated, Syxsense may charge the Customer the standard rate of \$200 an hour (minimum 30 minutes).

6. Q: Will Syxsense maintain a copy of my data?

A: After the **Data Retention Period** is completed, Syxsense will properly dispose and/or delete any customer data. Customer will solely be responsible for complying with any records retention requirements.

7. Q: What does Syxsense consider an “Abandoned Account”?

A: An abandoned account means a Customer has discontinued service (but has failed to formally terminate its account with the Service) by a combination of non-payment of the current or previous month fees. At the 31st day, the account is deemed “Abandoned” and the account is officially terminated.

8. Q: What happens to my data if my account is deemed “Abandoned” and terminated?

A: After the account is deemed “abandoned” or/and terminated, Syxsense will attempt to hold the data for an additional 60 days (**Data Retention Period**). Syxsense will then properly dispose and/or delete any customer data. Customer will solely be responsible for complying with all data retention requirements.