

**BUOYANT
SUBSCRIPTION SERVICE ORDER
TERMS & CONDITIONS**

PLEASE NOTE THAT THE TERMS OF THIS SUBSCRIPTION AGREEMENT (“AGREEMENT”) SHALL GOVERN YOUR ACCESS TO AND USE OF BUOYANT’S SOFTWARE AND SERVICES. THIS AGREEMENT IS A BINDING, LEGAL AGREEMENT BETWEEN YOU (EITHER AS AN INDIVIDUAL OR AN ENTITY, IF YOU ARE ACTING WITHIN THE SCOPE OF YOUR EMPLOYMENT) (HEREAFTER “**YOU**” “**YOUR**” OR “**CUSTOMER**”) AND BUOYANT, INC. A DELAWARE CORPORATION WITH HEADQUARTERS AT 548 MARKET ST, PMB 43048, SAN FRANCISCO, CA 94104 (HEREAFTER “**BUOYANT**”). IF YOU ARE AN INDIVIDUAL AGREEING TO THE TERMS OF THIS AGREEMENT ON BEHALF OF AN ENTITY, SUCH AS YOUR EMPLOYER, YOU REPRESENT THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THAT ENTITY AND ANY REFERENCE TO “**YOU**” OR “**YOUR**” SHALL REFER TO SUCH ENTITY.

IMPORTANT-READ CAREFULLY: BY CLICKING ON THE CHECKBOX THAT DEMONSTRATES ACCEPTANCE OF THIS AGREEMENT, OR BY ACCESSING, DOWNLOADING, INSTALLING, OR USING BUOYANT’S SOFTWARE OR SERVICES, YOU (THE INDIVIDUAL OR LEGAL ENTITY) AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT OR YOU DO NOT HAVE THE AUTHORITY TO BIND YOUR EMPLOYER, YOU MUST NOT ACCESS, INSTALL THE AGENT, OR USE THE SOFTWARE OR RECEIVE THE SERVICES.

1. **Scope of Agreement.** This Agreement sets forth the terms and conditions under which you may access, download, install, use and test the Buoyant Software and Services.

2. **Subscription.**

2.1 **Hosted Software Subscription.** Subject to the terms and conditions of this Agreement, Buoyant hereby grants You, during the applicable Term (as defined below), a non-transferable, non-sublicensable, non-exclusive license to access and use the hosted software (“**Software**”) designated in Your Order in accordance with the documentation or instructions supplied by Buoyant, for Your internal business purposes for the quantity of units set forth in the Order.

2.2 **Evaluation License.** If You are licensing the Software for evaluation purposes, notwithstanding the terms herein, an evaluation license of the Software is provided “as is” without indemnification, technical support, or warranty of any kind, expressed or implied.

2.3 **Restrictions on Use.** You agree not to (i) copy, modify, reverse engineer, decompile, disassemble, or otherwise attempt to discover any source code of the Software, make derivative works based upon the Software, or use the Software to develop any products; (ii) sell, license, rent, lease, transfer, pledge, or otherwise dispose of or in any way encumber the Software (or any part thereof or access thereto), or use it for the benefit of, any third party or in an production environment; (iii) disclose or otherwise make available to a third party any benchmarking or any comparative information, or other information for competitive purposes, involving the Software or other materials provided by Buoyant; or (iv) remove any product identification, legend, notices of any proprietary or copyright restrictions from the Software. You will not export, or allow the export or re-export of the Software or any Confidential Information, or any direct product thereof, in violation of any applicable export laws, restrictions or regulations of the United States or any applicable foreign agency or authority.

2.4 **Additional Services.** Buoyant may provide technical support and consulting services as set forth on the Order for the Hosted Software subject to Customer’s payment of the fees (collectively “**Services**”). “**Technical Support**” means web-based technical assistance to Your technical contact(s) regarding installation and use of the *Linkerd code*, errors and technical product problems.

2.5 **Your Obligations.** You will: (i) provide Buoyant with all information and assistance required to provide the Software and Services and enable Your use thereof; (ii) immediately notify Buoyant of any unauthorized access, use, copying, distribution, or other suspected security breach in connection with the Software; (iii) not send to Buoyant or otherwise use any Content in connection with the Software and Services that otherwise protected by any Intellectual Property or proprietary right of any third party, or for which You do not own or has not procured sufficient license, right, consent and permission to copy, disclose, store, broadcast, transmit, or otherwise use in connection with the Software and this Agreement; (iv) not upload or transmit any Content that contains unencrypted or unmasked: (a) bank, credit card or other financial account identification or login credentials, (b) social security, tax , driver’s license or other government issued identification numbers, or (c) health records of a particular individual unless a business associate agreement is entered into between You and Buoyant; and (v) be responsible for all activity that occurs in Your or Your users’ accounts (and any transactions completed under Your accounts will be deemed to have been lawfully completed by You). If You submit any Content in contravention of this Section 2.5, then You are solely responsible for the consequences of that submission.

3. **Ownership; Feedback.** You acknowledge that the Software is licensed and not sold and that Buoyant at all times retains ownership of all right, title and interest to the Software and Service results and the intellectual property rights related thereto. Upon the request of Buoyant, you shall execute such instruments as reasonably necessary to evidence Buoyant’s ownership

of the Software. Upon reasonable request, you will provide reasonable feedback about the Software ("**Feedback**"), which Feedback shall answer questions posed by Buoyant and disclose: (i) which portions of the Software have been used, (ii) the nature of that use, (iii) the extent or amount of use, (iv) all errors or difficulties discovered and (v) the characteristic conditions and symptoms of the errors and difficulties, in sufficient detail to allow Buoyant to recreate the errors and difficulties itself. You hereby assign to Buoyant, any Feedback, invention (whether or not patentable), work of authorship, mask work, idea, information, or know-how that is conceived, learned or reduced to practice in the course of performance under this Agreement and all the right, title and interest (including, without limitation, all patent rights, design rights, copyrights, trade secret rights and all other intellectual property or proprietary rights) with respect thereto. You will also take any action reasonably requested by Buoyant to evidence, perfect, obtain, maintain, enforce or defend the foregoing.

4. Fees, Taxes, & Payment Terms

4.1 Fees. You will pay Buoyant the fees including applicable taxes as set forth in the Order, invoiced in advance unless otherwise indicated in the Order. In the event that You request additional quantities during the Term, You will pay Buoyant's standard rates in effect at the time of the request, which fees will be invoiced in advance and shall co-term with the current subscription term.

4.2 Expenses. You will reimburse Buoyant for any and all reasonable, out-of-pocket, travel, administrative, equipment, and other expenses approved by You in writing and incurred in conjunction with delivery, implementation of the Software, and any additional services requested, which will be invoiced as incurred.

4.3 Payment. Unless otherwise expressly specified in the Order, payment of all invoices is due within thirty (30) days of the invoice date.

4.4 Taxes. You shall pay all fees and charges set forth in the Order plus any applicable taxes (other than taxes on Buoyant's income) unless You timely furnish satisfactory proof of exemption. If any applicable law requires You to withhold amounts from any payments to Buoyant under this Agreement, (i) You will effect such withholding, remit such amounts to the appropriate taxing authorities and promptly furnish Buoyant with tax receipts evidencing the payments of such amounts and (ii) the sum payable by You upon which the deduction or withholding is based will be increased to the extent necessary to ensure that, after such deduction or withholding, Buoyant receives and retains, free from liability for such deduction or withholding, a net amount equal to the amount Buoyant would have received and retained absent the required deduction or withholding.

4.5 Late Payments. Past due invoices will be subject to interest at the rate of one and one-half percent (1.5%) per month (or, if less, the maximum allowed by applicable law). You will be responsible for any costs of collection efforts, including reasonable attorneys' fees and court costs, and Buoyant reserves the right to suspend its

performance including suspend access to hosted Software pending payment.

5. Warranties; Warranty Disclaimer.

Warranties. Each Party represents and warrants that: (i) it has the right to enter into this Agreement and an Order, doing so will not interfere with its contractual obligations to any third party; (ii) the executed Agreement with Order and/or credit card payment shall constitute a valid binding obligation; and (iii) it will comply with all applicable law in performing its obligations under this Agreement.

Warranty Disclaimer. Except for the limited warranties provided in this Agreement and any statutory warranty requirements which may not be limited or excluded, the Software and Services, provided hereunder are provided "as is" and Buoyant makes no warranties, whether express, implied or statutory regarding or relating to the Software and Services provided to You under this Agreement. Buoyant does not represent or warrant that the Software and Services will be delivered free of any interruptions, delays, omission or errors or in a secure manner. The Software and Services may be subject to limitations, delay and other problems inherent in the use of the internet and electronic communications. Buoyant is not responsible for any delays, delivery failures, or loss of Content or damages resulting therefrom. THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, AND ALL SUCH WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OR TRADE ARE HEREBY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW.

6. Term and Termination. This Agreement shall commence on upon the acceptance of these terms or the access to the Software and remain in force for the duration of Your Order unless terminated earlier in accordance with this Section 6 (the "**Term**"). Either party may terminate this Agreement for any reason or no reason immediately by written notice to the other party. Upon expiration or termination of this Agreement, all licenses granted will terminate and you shall immediately cease use of the Software and delete any Software locally stored, any Buoyant Confidential Information and data (including all copies and extracts of thereof) then in your possession or control together with any and all documents, notes and other materials regarding the Software, and confirm in writing as to such action. Upon expiration or termination hereof for any reason, the terms of the following sections shall survive: 3-8.

INDEMNIFICATION AND LIMITATION OF LIABILITY

7.1 Indemnification. Buoyant will indemnify, defend or settle any action brought against You to the extent that it is based upon a claim that the Software, as delivered under this Agreement and used within the scope of this Agreement, directly infringes any United States patent or copyright, or misappropriates any trade secret, and will pay any damages that are finally awarded against You for such infringement or misappropriation, provided that You:

(i) promptly notify Buoyant in writing of the claim; (ii) reasonably cooperate with Buoyant and provide Buoyant, at Buoyant's expense, with all assistance, information, and authority reasonably required for the defense and settlement of the claim; and (iii) grant Buoyant the sole control of the defense and all related settlement negotiations.

7.2 Injunctive Relief. If an injunction is, or in Buoyant's opinion is likely to be, threatened, sought or obtained against Your use of the Software as a result of a third party infringement claim, Buoyant may, at its sole option and expense, (i) procure for You the right to continue using the affected Software, (ii) replace or modify the affected Software with a functional equivalent so that it does not infringe, or, (iii) terminate the Software License and refund any pre-paid but unused fees received from You for the then outstanding Term on a pro rata basis, if applicable.

7.3 Disclaimer of Liability. Buoyant shall have no liability or obligations for any third party claim, if (i) You are in breach of the Agreement; or (ii) if the claim of infringement based upon (a) modifications to the Software or Service results made by a party other than Buoyant, if a claim would not have occurred but for such modifications; (b) Your failure to use the then current, unaltered version of the applicable Software (including any maintenance release provided by Buoyant to avoid a claim); (c) use, operation or combination of the applicable Software with any programs, data, equipment or documentation, if such infringement would have been avoided but for such use, operation or combination; (d) any open source software or third party software; or (e) Your use of the Software or Service other than in accordance with this Agreement and the Documentation. The foregoing constitutes the entire liability of Buoyant, and Your sole and exclusive remedy, with respect to any third party claims of infringement of intellectual property rights of any kind.

7.4 Limitation of Liability. BUOYANT'S AGGREGATE LIABILITY TO YOU FOR DAMAGES CONCERNING PERFORMANCE OR NONPERFORMANCE BY BUOYANT OR IN ANY WAY RELATED TO THIS AGREEMENT, AND REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, SHALL NOT EXCEED THE FEES RECEIVED BY BUOYANT FROM YOU FOR THE AFFECTED SOFTWARE AND/OR SERVICE FOR THE TWELVE (12) MONTH PERIOD PRECEDING THE OCCURRENCE OF SUCH LIABILITY. FURTHER, BUOYANT WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, LOSS OF BUSINESS REVENUE, LOSS OF CONTENT, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY CLAIM OR DEMAND BY ANY OTHER PARTY, HOWEVER CAUSED AND (TO THE FULLEST EXTENT PERMITTED BY LAW) UNDER

ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE) EVEN IF BUOYANT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOU ACKNOWLEDGE THAT THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

8. Confidentiality, Nondisclosure, Content

8.1 Nondisclosure. Scope and Definition. "**Confidential Information**" means all information of a Party ("**Disclosing Party**") disclosed to the other Party ("**Receiving Party**"), whether orally or in writing, that is designated in writing or identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be confidential due to the nature of the information disclosed and the circumstances surrounding the disclosure. The Software, logins, passwords and other access codes and any and all information regarding Buoyant's business, products and services are the Confidential Information of Buoyant. Content is and shall remain Your Confidential Information. "**Content**" means data provided, uploaded, made available, or transmitted by You to Buoyant in connection with the Software or to address a Technical Support issue. Content does not include client account or relationship data that Buoyant uses in connection with a Technical Support request, or data collected by Buoyant to verify the support entitlement or to facilitate any communications.

8.2 Confidential Information will not include information which (i) is or becomes a part of the public domain through no act or omission of the Receiving Party; (ii) was in the Receiving Party's lawful possession prior to the disclosure and had not been obtained by the Receiving Party either directly or indirectly from the Disclosing Party; (iii) is lawfully disclosed to the Receiving Party by a third party without restriction on disclosure; (iv) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information; or (v) is disclosed by operation of law, provided that the Disclosing Party receive notice of such disclosure, to the extent permissible under applicable law, and opportunity to oppose or limit it. The parties agree to hold each other's Confidential Information in confidence during the Term and for three (3) years after the termination of this Agreement.

8.3 Personal Data. To the extent You provide personal data to Buoyant as part of the Content, Buoyant will treat such personal data as Your Confidential Information.

8.4 Use of Content. Buoyant may review and analyze Content to address a Technical Support request. Buoyant may use the results of that review and analysis, in combination with (i) data Buoyant collects from other customers regarding their use of the Software (such as configuration, performance, and usage data) and (ii) information Buoyant maintains about its customer's account, to provide support to Buoyant customers, and to improve Buoyant products, services, and user experiences.

8.6 Disclosure of Content. If Buoyant is required by a subpoena, court order, agency action, or any other

legal or regulatory requirement, to disclose any Content, Buoyant will provide Client with notice and a copy of the demand, as soon as practicable, unless Buoyant is prohibited from doing so pursuant to applicable law or regulation. At Your request and expense, Buoyant will take reasonable steps to contest and to limit the scope of any required disclosure.

8.7 Equitable Relief. The Receiving Party acknowledges that unauthorized disclosure of the Disclosing Party's Confidential Information may cause substantial harm to the Disclosing Party for which damages alone might not be a sufficient remedy and, therefore, that upon any such unauthorized disclosure by the Receiving Party, the Disclosing Party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law or in equity.

8.8 Information Security. In accordance with applicable data protection laws, Buoyant shall take all commercially reasonable measures, but in no event less than industry standard for a provider of similar products and services as Buoyant, to protect the security and confidentiality of Your personal data against any accidental or illicit destruction, alteration or unauthorized access or disclosure to third parties.

General. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to the principles of conflicts of law and without application of the UN Convention on Contracts for the International Sale of Goods. No waiver of rights under this Agreement by either party

shall constitute a subsequent waiver of any right under this Agreement and all waivers must be in writing. In the event that any term of this Agreement is held by a court to be unenforceable, such provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. If any provision of this Agreement is held invalid or unenforceable under applicable law by a court of competent jurisdiction, it shall be replaced with the valid provision that most closely reflects the intent of the Parties and the remaining provisions of the Agreement will remain in full force and effect. Although fully assignable and transferable by Buoyant, You may not assign this Agreement without the prior written consent of Buoyant, and any such attempted assignment or transfer shall be void and without effect. This Agreement may only be modified by a written document executed by the parties hereto. All notices, including notices of address change, required to be sent hereunder will be in writing and will be deemed to have been given when delivered by nationally recognized express courier to the address listed below for Client or to the following for Buoyant: 548 Market St, PMB 43038, San Francisco, CA 94104-5401, Attn: Legal, and via email to legal@buoyant.io. This Agreement is the complete agreement between the parties hereto concerning the subject matter of this Agreement and replaces any prior oral or written communications between the parties with respect thereto.