

## TERMS OF USE

BY ACCEPTING AN ORDER FORM OR CLICKING "CONFIRM PURCHASE" OR BY OTHERWISE ACCESSING, DOWNLOADING, INSTALLING OR OTHERWISE USING ANY OF THE SERVICES, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT ACCESS, DOWNLOAD, INSTALL, OR OTHERWISE USE ANY OF THE SERVICES.

This Services Agreement (this "**Agreement**"), is entered into between **Calyptia, Inc.**, a Delaware corporation with an address of 2261 Market Street, Suite 4121 San Francisco CA 94114 ("**Calyptia**") and the customer accessing, downloading, or using the Subscription Services ("**Customer**"), as follows:

1. **Services.** Calyptia provides support services ("**Support Services**") relating to certain open source software known as "fluentd" and "fluent-bit" ("**Open Source Software**") as packaged by Calyptia, known as "calyptia-fluentd" and "calyptia-fluent-bit" ("**Calyptia Products**"). Calyptia agrees to provide the Support Services to Customer for the Calyptia Products on the terms set out in this Agreement and in an Order Form signed by both Calyptia and Customer ("**Order Form**"). An Order Form template is attached as Exhibit A.
2. **Software.** If Customer receives a license to downloadable software from Calyptia in connection with the Support Services ("**Software**"), then Calyptia hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable right and license under Calyptia's rights in the Software to install and operate the Software in accordance with all applicable Documentation and the restrictions set forth in this Agreement and the applicable Order Form. The Software and the Support Services are collectively referred to herein as the "**Services**".
3. **Restrictions.** Customer will not, directly or indirectly, and will not authorize any person, to the maximum extent permitted by applicable law, to (i) decompile, disassemble, reverse engineer or attempt to reconstruct or discover any elements of; (ii) reproduce, translate, adapt, or modify; (iii) write or develop any program based upon; (iv) sell, sublicense, transfer any rights in, use for the benefit of or to provide services (e.g., as a service bureau), or allow access to unauthorized persons to; (v) transmit unlawful, infringing or harmful data or code to or from; (vi) replicate significant portions of the Calyptia Technology or (vii) otherwise use except as expressly permitted hereunder, in each case of (i) – (vii), the Calyptia Service, Software, APIs, Documentation and Beta Offerings, as applicable (including all technology constituting or used to provide such service) or Calyptia's data (collectively, "Calyptia Technology"). Customer will prevent any unauthorized use of the Calyptia Technology and will immediately notify Calyptia in writing of any unauthorized use of which Customer becomes aware. Customer will immediately terminate any unauthorized use by persons having access to the Calyptia Technology through Customer. Calyptia reserves the right to investigate potential violations of this Agreement. In the event Calyptia reasonably believes a violation has occurred, in addition to any other remedies available at law or in equity (including termination pursuant to Section 3.2), Calyptia will have the right to suspend Authorized Users suspected of the violation from accessing the Calyptia Service for so long as is reasonably necessary to address the potential violation.
4. **Fees and Payment.** Customer agrees to pay Calyptia the fees and any other amounts owing under this Agreement and as specified in the applicable Order Form ("**Fees**"). Unless otherwise set forth on an Order, Fees are due and payable in United States dollars within 30 days after the invoice date, without deduction or setoff. Interest accrues from the due date at the lesser rate of 1.5% per month or the highest rate allowed by law. Customer must pay all federal, state, local, sales, use, value added, excise, or other taxes, fees, or duties arising out of this Agreement or the transactions contemplated by this Agreement (other than taxes based on Calyptia's net income). Except as set forth in this Agreement or as required by law, Fees paid are non-refundable and payment obligations are non-cancelable.
5. **Confidentiality.** "**Confidential Information**" means any information disclosed directly or indirectly by one party ("**Disclosing Party**") to the other party ("**Receiving Party**") pursuant to this Agreement that is either designated as "confidential" or under the circumstances of disclosure or by

the nature of the information itself is reasonably understood by the Receiving Party to be the confidential information of the Disclosing Party. Confidential Information does not include any information which (a) is or becomes generally known and available to the public through no act or omission of the Receiving Party; (b) was already in the Receiving Party's possession at the time of disclosure by the Disclosing Party, as shown by the Receiving Party's contemporaneous records; (c) is lawfully obtained by the Receiving Party from a third party who has the express right to make such disclosure without a duty of confidence; or (d) is independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information. Neither party will use the Confidential Information of the other party for any purpose except to exercise its rights and perform its obligations under this Agreement. Neither party will disclose any Confidential Information of the other party, except to employees and contractors of the Receiving Party with a need to know, or to its advisors, attorneys, accountants, or prospective investors or purchasers, each subject to a written obligation of confidentiality. Each party will take reasonable measures designed to protect the secrecy, and avoid unauthorized access and use, or disclosure, of the Confidential Information of the other party, and will take at least those measures that it takes to protect its own confidential information of a similar nature. A Receiving Party will use reasonable efforts to provide timely notice of compelled disclosure to facilitate confidential treatment of Disclosing Party's Confidential Information, and will furnish only that portion of Confidential Information that it is legally required to disclose, after exercising reasonable efforts to obtain assurance that such information will receive confidential treatment.

6. **Term.** This Agreement shall commence as of the Effective Date and shall continue for a period of three (3) years unless sooner terminated pursuant the terms set out herein (the "**Term**"). This Agreement shall automatically renew for one year periods as long as there is an existing Order Form in effect at the date of expiration of the then-current Term.
7. **Termination.** Either party may terminate this Agreement, effective upon written notice to the other party (the "**Defaulting Party**"), if the Defaulting Party: (a) materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within 30 days after receipt of written notice of such breach; (b) becomes insolvent or admits its inability to pay its debts generally as they become due; (c) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within seven business days or is not dismissed or vacated 45 days after filing; (d) is dissolved or liquidated or takes any corporate action for such purpose; (e) makes a general assignment for the benefit of creditors; or (f) has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business. Notwithstanding anything to the contrary in this section, Calyptia may suspend the Services or terminate this Agreement on written notice if Customer fails to pay any Fees when due and such failure continues for 30 days after Calyptia's written notice to Customer of nonpayment. Any terms that should naturally survive termination or expiration of this Agreement will continue to survive such termination or expiration.
8. **Indemnification.**
  - 8.1 **By Calyptia.** Calyptia will (i) defend, or at its option settle, any claim brought against Customer by a third party to the extent that Customer's use of the Software as authorized in this Agreement constitutes a direct infringement of the intellectual property rights of a third party, and (ii) pay damages awarded in a final judgment, (or amounts agreed in a monetary settlement), in any such claim defended by Calyptia; provided that Customer provides Calyptia (i) prompt written notice of; (ii) sole control over the defense and settlement of; and (iii) all information and assistance reasonably requested by Calyptia in connection with the defense or settlement of, any such claim. If any such claim is brought or threatened, Calyptia may, at its sole option and expense: (a) procure for Customer the right to continue to use the Software; (b) modify the Software to make it non-infringing; (c) replace the Software with non-infringing technology having substantially similar capabilities; or (d) if none of the foregoing is commercially practicable, terminate the applicable Order Form or this Agreement. Notwithstanding the foregoing, Calyptia will have no liability to Customer for any claim arising out of or based upon the use of the Software in combination with software, products or services not provided by Calyptia or Customer's failure to use the Software in accordance with this Agreement.

- 8.2 **Disclaimer.** SECTION 8.1 STATES THE ENTIRE LIABILITY OF CALYPTIA, AND THE EXCLUSIVE REMEDY OF CUSTOMER, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS BY CALYPTIA OR ITS SERVICE OR TECHNOLOGY OR ANY PART THEREOF.
- 8.3 **By Customer.** Notwithstanding anything to the contrary in Section 8.1, Customer will defend or, at its option, settle, any claim brought against Calyptia arising from Customer's use of the Software other than in accordance with this Agreement, and Customer will pay damages finally awarded against Calyptia (or the amount of any settlement Customer enters into) with respect to such claim defended by Customer. Calyptia will provide Customer with (i) prompt written notice of; (ii) sole control over the defense and settlement of; and (iii) all information and assistance reasonably requested by Customer in connection with the defense or settlement of, any such claim. Calyptia may appear, at its own expense, through counsel reasonably acceptable to Customer.
9. **Disclaimer; Limitation of Liability.**
- 9.1 **Limited Warranty.** Each party represents and warrants that it has full power and authority to enter into this Agreement, and to carry out its obligations hereunder. Calyptia warrants that it shall perform the Support Services in a timely, workmanlike, and professional manner in accordance with generally recognized industry standards for similar services. CALYPTIA MAKES NO WARRANTIES EXCEPT FOR THOSE SET OUT HEREIN AND DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 9.2 **Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED TWO (2) TIMES THE AGGREGATE AMOUNTS PAID OR PAYABLE TO CALYPTIA UNDER THIS AGREEMENT IN THE 12 MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM.
10. **Publicity.** Calyptia may, with Customer's prior consent, list Customer as a customer in its promotional and marketing materials, including its website.
11. **Assignment.** Either party may assign this Agreement upon notice to the other party to an Affiliate or as part of a corporate reorganization, upon a change of control, consolidation, merger, reincorporation, sale of all or substantially all of its assets related to this Agreement or a similar transaction or series of transactions ("**Change of Control**"). This Agreement will be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns. "**Affiliate**" means, with respect to a party, a business entity that directly or indirectly controls, is controlled by or is under common control with, such party, where "control" means the direct or indirect ownership of more than 50% of the voting securities of a business entity.
12. **Force Majeure.** Except for the obligation to pay money, neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including an act of war, terrorism, act of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet. The delayed party will give the other party notice of such cause and will use its reasonable commercial efforts to correct such failure or delay in performance.

13. **Governing Law.** This Agreement will be governed by and construed under the laws of the State of California without reference to conflict of laws principles. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded. All disputes arising out of or related to this Agreement will be subject to the exclusive jurisdiction of the state and federal courts located in San Diego County, California, and the parties hereby agree and consent to the exclusive jurisdiction and venue of these courts.
14. **Notices.** Any notice required or permitted to be given in accordance with this Agreement will be effective if it is in writing and sent by email, certified or registered mail, or insured courier, return receipt requested, to the appropriate party at the address set forth on the applicable Order and with the appropriate postage affixed. Either party may change its address for receipt of notice by notice to the other party in accordance with this Section. Notices are deemed given 2 business days following the date of mailing or 1 business day following delivery to a courier.
15. **General.** This Agreement (together with all Order Forms and Exhibits) is the sole agreement of the parties concerning the subject matter hereof, and it supersedes all prior agreements and understandings with respect to the subject matter. No terms of any purchase order, acknowledgement or other form provided by Customer will modify this Agreement, regardless of any failure of Calyptia to object to such terms. Any ambiguity in this Agreement will be interpreted equitably without regard to which party drafted the language. This Agreement may only be amended by a writing signed by both parties. This Agreement may be executed in counterparts. The headings in this Agreement are inserted for convenience and are not intended to affect the interpretation of this Agreement. The relationship between the parties will be that of independent contractors. Calyptia may use subcontractors. Waiver of any term of this Agreement or forbearance to enforce any term by either party will not constitute a waiver as to any subsequent breach or failure of the same term or a waiver of any other term of this Agreement. Any provision found to be unlawful, unenforceable or void will be severed from the remainder of this Agreement, and the Agreement will continue in full force and effect without the severed provision.

#### ACCEPTED AND AGREED

"Calyptia"	"Customer"
Calyptia, Inc.	-
Signature:	Signature:
Name:	Name:
Title:	Title:

## EXHIBIT A

### ORDER FORM TEMPLATE

This Order Form (“**Order Form**”) is entered into as of \_\_\_\_\_, 20\_\_\_\_ (“**Order Date**”), between the Customer listed below and **Calyptia, Inc.**, a Delaware corporation with an address of 2261 Market Street, Suite 4121 San Francisco CA 94114 (“**Calyptia**”).

<b>Customer:</b>	<b>Contact:</b>
<b>Address:</b>	<b>Phone:</b>
	<b>Email:</b>

### Support Services and Fee Information

<b>Support Services:</b>	
<b>Software:</b>	
<b>Term:</b>	
<b>Fees:</b>	
<b>Special Terms:</b>	

This Order Form is subject to the Services Agreement (the “**Agreement**”) entered into by and between Calyptia and the customer identified above (“**Customer**”). All Fees are billed up-front annually. To the extent there is a conflict between this Order Form, the Agreement, and Customer’s purchase order, this Order Form shall govern.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to sign this Order Form and agree to the Agreement, effective upon the date of the last signature below.

### ACCEPTED AND AGREED

<b>“Calyptia”</b>	<b>“Customer”</b>
Calyptia, Inc.	-
Signature:	Signature:
Name:	Name:
Title:	Title: