

ARCHIVE Bindplane Free-Trial Subscription Agreement

This Free-Trial Subscription Agreement (this “Agreement”) contains the terms and conditions that govern your access to and use of the Service (as defined below), and is an agreement between observIQ (“observIQ,” “we,” “us,” or “our”) and you or the entity you represent (“you”). This Agreement takes effect when you click an “I Accept,” “Sign up” or similar button or check box presented with these terms or, if earlier, when you access or use the Service (the “Effective Date”). By accepting this Agreement or accessing or using the Service, you agree to be legally bound by this Agreement’s terms. You represent to observIQ that you are lawfully able to enter into contracts (e.g., you are not a minor). If you are entering into this Agreement for an entity, such as the company you work for, you represent that you have legal authority to bind that entity. Capitalized terms not otherwise defined in this Agreement shall have the respective meanings assigned to them in Section 17.

1. **Subscription Authorizations.** Subject to the terms of this Agreement and the applicable Policies and Order, observIQ authorizes you to access and use the Service and Documentation solely for your internal, business use, by and through Authorized Users. This authorization is limited, nonexclusive and nontransferable.
2. **Free Trial.** observIQ will make the Service available to you without charge (whether as part of a free trial, beta release, proof-of-concept implementation or otherwise) until the earlier of (a) the end of the period for which you registered to use the Service without payment, (b) the start date of any Order you enter into to pay for the Service, or (c) termination by observIQ at any time in its sole discretion. Additional free use, trial, beta-release or proof-of-concept terms and conditions may appear on the applicable registration web page or in the applicable Order. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding. If you enter an Order to pay for the Service, then your use of the Service will be subject to a separate Master Subscription Agreement. You and your Affiliates will be jointly liable for compliance with the terms of this Agreement and any Order, and you accept full liability as between the Parties for the actions and inactions of your Affiliates.
3. **observIQ Tools.**
 - 3.1. Although not required, you may install a observIQ software agent on your Hosts to support the collection, and reporting to the Service, of events and metrics (“observIQ Agent”). You may also access the observIQ API, as well as certain client libraries developed and made available by observIQ from time to time that wrap the API (“observIQ Libraries”) solely for your internal, business use to support access

and use of the Service.

3.2. If you elect to use the observIQ Agent or a observIQ Library, you acknowledge and agree that: (a) such observIQ Tool is only made available to support access and use of the Service; (b) observIQ has no liability with respect to any other use of such observIQ Tool; and (c) you are responsible for complying with the applicable license(s) for such observIQ Tool. To the extent any such applicable license requires that observIQ provide you the right to use any open source software in a observIQ Tool that is inconsistent with rights granted in this Agreement, then the rights in the applicable open source license shall take precedence over the rights and restrictions granted in this Agreement, but solely with respect to such open source software.

4. Non-observIQ Services and Material.

4.1. The Service supports integrations and other connections to certain Non-observIQ Services. If an Authorized User chooses to use a Non-observIQ Service with the Service, in doing so, you hereby grant to observIQ permission to interoperate with the Non-observIQ Service. Your acquisition and use of Non-observIQ Services is governed solely by the terms of the relationship between you and the provider of the Non-observIQ Services.

4.2. Although you may be able to connect to or otherwise access Non-observIQ Services or other Non-observIQ Material through the Site or Service, you acknowledge and agree that: (a) observIQ does not control and is not responsible for any Non-observIQ Material; (b) observIQ has no liability with respect to any use of Non-observIQ Material; and (c) you are responsible for complying with observIQ's Policies and with any licenses and other terms applicable to the Non-observIQ Material. Any changes to Non-observIQ Material, including their availability or unavailability, during the Order Term does not affect your obligations under this Agreement.

5. Use of Customer Data. You hereby grant observIQ a worldwide, non-exclusive, royalty-free right and license during the Order Term to use, reproduce, transmit, perform, display and store Customer Data for the purposes of observIQ and, subject to Section 16.3, its Affiliates and third-party Providers providing and supporting the Service for your benefit. Subject to the confidentiality obligations contained in Section 9, you agree observIQ may additionally use Customer Data: (a) to maintain, evaluate, develop and improve its products and services; and (b) in aggregate form only, not attributable to you, for research and marketing purposes. The Privacy Policy does not apply to Customer Data.

6. Privacy and Security.

6.1. User Personal Data is required by observIQ to provide and support the Service, for example, to authenticate Authorized Users and to respond to requests for support. You shall ensure that all User Personal Data is accurate and correct at all times during the Order Term. observIQ shall only use User Personal Data in accordance with the Privacy Policy and Applicable Law. Except for limited User Personal Data, you acknowledge the Service is not intended for use by you or any Authorized User to transfer, process, use or store information relating to an identified or identifiable natural person, and you agree to not use the Service for such purpose.

6.2. Without limiting the foregoing, you represent and agree that you shall not include in Customer Data any Sensitive Personal Information. For such purpose, "Sensitive Personal Information" means any information that: (a) must be protected in accordance with specific or heightened security requirements imposed by applicable law or industry standards; or (b) would require notification to government agencies, individuals or law enforcement if subject to unauthorized access, use or disclosure. Examples of Sensitive Personal Information include without limitation government-issued identification numbers (such as driver's license numbers or Social Security numbers), financial account numbers, nonpublic personal information (as defined by the Financial Services Modernization Act of 1999 and applicable regulations), cardholder data (as defined by the PCI DSS), and protected health information (as defined by the Health Insurance Portability and Accountability Act of 1996 and applicable regulations).

7. Requirements and Restrictions.

7.1. You shall be solely responsible for providing, installing and maintaining at your own expense all equipment, facilities and services necessary to enable Authorized Users' access and use of the Service.

7.2. You shall be strictly responsible for the performance of your Affiliates and their personnel (including employees and contractors) and Authorized Users, and their use of the Service and support, in compliance with this Agreement. Without limiting the foregoing, you represent and agree that: (a) you or your licensors have all rights in the User Personal Data and Customer Data (including without limitation having provided all notices and received all consents and authorizations) required for the Parties to perform their respective obligations and exercise their respective rights in connection with this Agreement; and (b) you shall be solely responsible for ensuring that the use of User Personal Data and Customer Data that Authorized Users post, send or otherwise make available using the Service complies with the Acceptable

Use Policy, all Applicable Laws, and any other legal or contractual restrictions relating to User Personal Data or Customer Data.

7.3. Subject to observIQ's compliance with the Privacy Policy, you are solely responsible for ensuring the security and confidentiality of all User Personal Data. Without limiting the foregoing, you shall use commercially reasonable efforts to prevent unauthorized access or use of the Service, and shall contact observIQ promptly if: (a) User Personal Data related to the Service, or any associated password, is lost, stolen or disclosed to an unauthorized person; or (b) you reasonably believe the Service has otherwise been compromised.

7.4. No provision of this Agreement includes the right to, and you shall not, directly or indirectly: (a) enable any person or entity other than Authorized Users to access and use the Service; (b) modify or create any derivative work based upon the Service; (c) engage in, permit or suffer to continue any copying or distribution of the Service; (d) reverse engineer, disassemble or decompile all or any portion of, or attempt to discover or recreate the source code for, any software that is part of the Service (except to the extent such restriction is limited under Applicable Law); (e) access the Service in order to build a competitive solution or to assist any third party to build a competitive solution; (f) remove, obscure or alter any proprietary notice related to the Service; or (g) use or permit others to use the Service other than as described in this Agreement, the Policies and Documentation, or for any unlawful purpose. In the event observIQ believes that you are violating any of the terms set forth in this Section, in addition to any other remedies available at law or in equity, observIQ will have the right to suspend your (or any Authorized User's) access to and use of the Service for so long as is reasonably necessary to address such potential violation. observIQ shall notify you of any such suspension by email and in advance (except in urgent or emergency situations), and work with you in good faith to resolve the potential violation.

7.5. Each Party hereby represents and warrants to the other that the representing Party has the authority to enter into and perform this Agreement, and such Party's entering into this Agreement, and performance of its obligations and exercise of its rights under this Agreement, do not and will not violate any Applicable Laws.

8. Proprietary Rights.

8.1. Subject only to the limited rights expressly granted in this Agreement, as between you and observIQ, you will retain all right, title and interest in and to the Customer Data and all intellectual property rights therein.

8.2. You may provide observIQ with bug reports, suggestions or other feedback related to the Service (collectively, "Feedback"). By submitting any such Feedback,

you hereby assign to observIQ all right, title and interest in and to such Feedback together with all intellectual property rights therein.

8.3. The Service, together with all know-how, processes, methodologies, specifications, designs, inventions, functionality, graphics, user interfaces, techniques, methods, applications, libraries, documentation or other technology and materials of any kind, or any enhancement thereto, used or made available by observIQ to you or any Authorized User in connection with the Service and support, constitute or otherwise involve valuable intellectual property rights of observIQ and all right, title and interest in and to the foregoing will, as between the Parties, be owned by observIQ. No title to or ownership of the Service, or any intellectual property rights associated therewith, is transferred under this Agreement and observIQ reserves all rights not otherwise expressly granted herein.

8.4. observIQ may use your company name and logo to identify you as a customer on the Site, on publicly available customer lists, and in media releases during the term of the Agreement.

9. Confidentiality.

9.1. As used in this Agreement, “Confidential Information” means any information disclosed by one Party, its Affiliates, business partners or their respective employees, contractors or agents (the “Discloser”) that is designated as confidential, either orally or in writing, or that, given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential. Confidential Information includes without limitation: (a) information relating to the Discloser’s or its Affiliates’ technology, customers, business plans, promotional and marketing activities, finances and other business affairs; (b) third-party information that the Discloser is obligated to keep confidential; (c) Customer Data; and (d) the terms of this Agreement. However, Confidential Information does not include any information that: (i) was known to the Party that receives any Confidential Information (the “Recipient”) prior to receiving the same from the Discloser in connection with this Agreement; (ii) is independently developed by the Recipient without reference to or use of the Discloser’s Confidential Information; (iii) is acquired by the Recipient from another source without restriction as to use or disclosure; or (iv) is or becomes publicly available through no fault or action of the Recipient.

9.2. Each Party reserves any and all right, title and interest (including any intellectual property rights) that it may have in or to any Confidential Information that it may disclose to the other Party under this Agreement. The Recipient shall protect Confidential Information of the Discloser against any unauthorized use or

disclosure to the same extent that the Recipient protects its own Confidential Information of a similar nature against unauthorized use or disclosure, but in no event shall use less than a reasonable standard of care to protect such Confidential Information. The Recipient shall use any Confidential Information of the Discloser solely for the purposes for which it is provided by the Discloser. This Section will not be interpreted or construed to prohibit: (a) any use or disclosure which is necessary or appropriate in connection with the Recipient's performance of its obligations or exercise of its rights under this Agreement; (b) any use or disclosure required by applicable law, provided that the Recipient uses reasonable efforts to give the Discloser reasonable advance notice thereof to afford the Discloser an opportunity to intervene and seek an order or other appropriate relief for the protection of its Confidential Information; or (c) any use or disclosure made with the consent of the Discloser. In the event of any breach or threatened breach by the Recipient of its obligations under this Section, the Discloser will be entitled to seek injunctive and other equitable relief to enforce such obligations. These obligations of confidentiality shall survive expiration or termination of this Agreement.

10. Effect of Termination. Upon expiration or earlier termination of your free use of a Service: (a) all rights granted to you with respect to the Service and support will terminate effective as of the effective date of termination; and (b) observIQ shall have no obligation to provide the Service to you or Authorized Users after the effective date of the termination.

11. Anti-Corruption and Export Compliance.

11.1. You shall, in connection with this Agreement: (a) comply with Applicable Laws relating to anti-bribery and anti-corruption, which may include the US Foreign Corrupt Practices Act of 1977 and the UK Bribery Act 2010; (b) comply with Applicable Laws administered by the U.S. Commerce Bureau of Industry and Security, U.S. Treasury Office of Foreign Assets Control or other governmental entity imposing export controls and trade sanctions ("Export Laws"), including designating countries, entities and persons ("Sanctions Targets"); and (c) not directly or indirectly export, re-export or otherwise deliver the Service or support to a Sanctions Target, or broker, finance or otherwise facilitate any transaction in violation of any Export Laws. You represent that you are not a Sanctions Target or prohibited from receiving the Service or support pursuant to this Agreement under Applicable Laws, including Export Laws.

11.2. You represent that you have not received or been offered any illegal or improper bribe, kickback, payment, gift or thing of value from any employee, agent or representative of observIQ or any of its Affiliates or resellers in connection with

this Agreement. The above representation is not intended to include customary and reasonable gifts and entertainment provided in the ordinary course of business, to the extent such gifts and entertainment are permitted by Applicable Law. If you learn of any violation of the above restriction, you shall promptly notify observIQ at legal@bindplane.com.

12. Disclaimers. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT:

12.1. THE SERVICE, SUPPORT AND ALL OTHER ITEMS MADE AVAILABLE BY OBSERVIQ ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. OBSERVIQ ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (a) ERRORS, MISTAKES OR INACCURACIES OF CUSTOMER DATA OR INFORMATION POSTED, TRANSMITTED OR OTHERWISE MADE AVAILABLE THROUGH THE SERVICE, (b) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM USE OF THE SERVICE OR SUPPORT, (c) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SERVICE, OR (d) THE DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF ANY THIRD PARTY NOT UNDER OBSERVIQ'S CONTROL.

12.2. NEITHER PARTY MAKES ANY WARRANTY OR GUARANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL WARRANTIES, WHETHER IMPLIED, EXPRESS, OR STATUTORY, INCLUDING ANY IMPLIED WARRANTY OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

13. Indemnification. You agree to defend, indemnify and hold harmless observIQ, its affiliates and their respective employees, contractors, agents, officers and directors from and against any and all claims, damages, obligations, losses, liabilities, costs, debt or expenses (including without limitation attorneys' fees) arising out of or related to any claim, suit, action or proceeding by a third party arising out of or relating to Customer Data or your (or an Authorized User's) use of the Service, breach of this Agreement or violation of Applicable Law.

14. Limitations of Liability.

14.1. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS OTHERWISE PROVIDED IN SECTION 14.2: (a) IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATES OR THEIR EMPLOYEES, CONTRACTORS, AGENTS, OFFICERS OR DIRECTORS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF PROFITS, GOODWILL, USE,

DATA OR OTHER INTANGIBLE LOSSES ARISING OUT OF OR RELATING TO THIS AGREEMENT; AND (b) IN NO EVENT SHALL OBSERVIQ'S CUMULATIVE AND AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED TWO HUNDRED U.S. DOLLARS. THE EXCLUSIONS AND LIMITATIONS IN THIS SECTION APPLY WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER BASIS, EVEN IF THE NON-BREACHING PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

14.2. The exclusions and limitations in Section 14.1 shall not apply to your indemnification obligations under Section 13, or Losses arising out of a Party's failure to comply with its confidentiality obligations under Section 9.

15. Modifications. observIQ may modify this Agreement at any time by posting a revised version at (<https://bindplane.com/legal/free-trial-subscription-agreement>) which modifications will become effective as of the first day of the calendar month following the month in which they were first posted. By using the Service after the date on which any modifications enter into effect, you agree to the latest version of this Agreement.

16. Miscellaneous.

16.1. You acknowledge and agree that observIQ shall provide notices to you by email at the address associated with your Order. You shall provide notices to observIQ by email to legal@bindplane.com, with a duplicate copy sent via registered mail, return receipt requested, to the following address: observIQ, Inc. DBA Bindplane Attn: Legal, PO Box 1641, Grand Rapids, MI 49501-1641, or such other address as observIQ may direct from time to time on the Site. You must specify in all such notices that the notice is being given under this Agreement. Emailed notices will be deemed given and received one business day after the email is sent.

16.2. You may not assign, transfer or sublicense all or any of your rights or obligations under this Agreement without observIQ's express prior written consent, and any purported assignment in violation of this Section is void. observIQ may assign, transfer or sublicense all or any of observIQ's rights or obligations under this Agreement without restriction.

16.3. In the ordinary course of its business, observIQ uses third-party service providers (collectively, "Providers") to support the provision of the Service and support generally (i.e., not specifically for you). For instance, observIQ may use Amazon Web Services (AWS) or a similar third party service to host the Service. In addition, observIQ may provide the Service or support through one or more Affiliates. observIQ reserves the right to engage and substitute Providers and

Affiliates as it deems appropriate, but shall remain responsible to you for (a) provision of the Service and support and (b) the actions and omissions of its Providers and Affiliates undertaken in connection with this Agreement.

16.4. The Service is provided to the U.S. Government as “commercial items,” “commercial computer software,” “commercial computer software documentation,” and “technical data” with the same rights and restrictions generally applicable to the Service. If you or any Authorized User is using the Service on behalf of the U.S. Government and these terms fail to meet the U.S. Government’s needs or are inconsistent in any respect with federal law, you and your Authorized Users must immediately discontinue use of the Service. The terms listed above are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.

16.5. The Parties expressly understand and agree that their relationship is that of independent contractors. Nothing in this Agreement shall constitute one Party as an employee, agent, joint venture partner or servant of another.

16.6. observIQ shall have no liability to you, Authorized Users or third parties for any failure or delay in performing any obligation under this Agreement due to circumstances beyond its reasonable control, including without limitation acts of God or nature, fires, floods, strikes, civil disturbances or terrorism or interruptions in power, communications, satellites, the Internet or any other network that are beyond its reasonable control.

16.7. This Agreement will be interpreted, construed and enforced in all respects in accordance with the laws of the State of New York, without reference to its choice of law principles. Any legal action or proceeding arising under or relating to this Agreement shall be brought exclusively in the state or federal courts located in Grand Rapids, MI, USA, and the Parties expressly consent to personal jurisdiction and venue in those courts.

16.8. This Agreement is the complete and exclusive statement of the agreement between the Parties and supersedes all proposals, oral or written, and all other communications and agreements between the Parties relating to the subject matter of this Agreement. In the event any information posted on the Site from time to time conflicts with any provision of this Agreement, the applicable provision of this Agreement shall control. Any terms and conditions of any other instrument issued by you in connection with this Agreement which are in addition to, inconsistent with or different from the terms and conditions of this Agreement shall be of no force or effect. Additionally, this Agreement supersedes any confidentiality or non-disclosure agreement previously entered into by the Parties with respect your or an Affiliate’s evaluation of the Service or otherwise with respect to the Service. This

Agreement may be modified only in accordance with Section 15 or by a written instrument duly executed by authorized representatives of the Parties. The failure of observIQ to exercise or enforce any condition, term or provision of this Agreement will not operate as a waiver of such condition, term or provision. Any waiver by either Party of any condition, term or provision of this Agreement shall not be construed as a waiver of any other condition, term or provision. If any provision of this Agreement is held invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect.

16.9. This Agreement and any Order may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement or any Order by fax or by email of a scanned copy, or execution and delivery through an electronic signature service (such as DocuSign), shall be effective as delivery of an original executed counterpart of this Agreement or the relevant Order.

17. Definitions. Capitalized terms not otherwise defined in this Agreement shall have the respective meanings assigned to them in this Section 17.

17.1. “Acceptable Use Policy” means observIQ’s Acceptable Use Policy currently published at <https://bindplane.com/legal/acceptable-use-policy>, as it may be updated from time to time.

17.2. “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; “control” (including the terms “controlled by” and “under common control with”) means the direct or indirect ownership of more than 50% of the voting securities of a business entity.

17.3. “Applicable Laws” means any and all governmental laws, rules, regulations or orders that are applicable to a particular Party’s performance under this Agreement.

17.4. “Authorized User” means your individual employee, agent or contractor who is authorized by you or the applicable Affiliate to access and use the Service pursuant to the terms of the applicable Order and this Agreement.

17.5. “Cookie Policy” is part of observIQ’s Privacy Policy currently published at <https://bindplane.com/legal/privacy-policy>, as it may be updated from time to time.

17.6. “Customer Data” means the data, content and other material that you and/or any Authorized User run on or through the Service, cause to interface with the Service, upload to the Service, or otherwise transfer, process, use or store in connection with the Service. Customer Data does not include User Personal Data.

17.7. “Documentation” means such technical and operations documentation as observIQ may make available on the Site or such alternate or successor website as observIQ may designate from time to time.

17.8. “Hosts” means concurrently monitored hosts/servers, as determined on a calendar month basis.

17.9. “Non-observIQ Material” means any third-party material identified in an Order, any publicly available client libraries written by third parties to support use of the Service and licensed on an open source basis, and Non-observIQ Services.

17.10. “Non-observIQ Services” means systems, software and hosted services provided by you or by a third party to which the Service supports integrations or other connections.

17.11. “Order” means a separate (a) online order for a Service completed and submitted by you through the Site and accepted by observIQ, or (b) written order for a Service pursuant to this Agreement executed by both observIQ and you.

17.12. “Policies” means the Acceptable Use Policy, Privacy Policy, Cookie Policy, Terms of Service and any other policy or terms referenced in, or incorporated into, this Agreement or an Order.

17.13. “Privacy Policy” means observIQ’s Privacy Policy currently published at <https://bindplane.com/legal/privacy-policy/>, as it may be updated from time to time.

17.14. “Service” means the subscribed service offering(s) listed in the applicable Order, as such offering(s) are described on the Site. The features and functionality of Service may be modified, enhanced or otherwise changed from time to time.

17.15. “Terms of Service” means terms and conditions that apply to a particular Service currently published at <https://bindplane.com/legal/terms-of-service/>, as they may be updated from time to time. If a term in the applicable Terms of Service conflicts with, or is different than, a term in this Agreement, then the terms in this Agreement will prevail.

17.16. “Site” means <https://bindplane.com/>, or such alternate or successor website as observIQ may designate from time to time.

17.17. “User Personal Data” means identifying information relating to Authorized Users, such as name, user name, billing information and email address, furnished by you or Authorized Users to observIQ in connection with their access and use of the Service.