

MEMFAULT TERMS OF SERVICE

Effective Date: May 3, 2024

THESE TERMS OF SERVICE (“**AGREEMENT**”) SET FORTH THE LEGAL TERMS AND CONDITIONS WHICH GOVERN RELATIONSHIP BETWEEN YOU (“**CUSTOMER**” OR “**YOU**”) AND MEMFAULT, INC. (“**MEMFAULT**”) AND THE RELATED TERMS AND CONDITIONS APPLICABLE TO THE PRODUCT HOSTED BY MEMFAULT OR ITS OUTSOURCED PROVIDER. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF AN ENTITY, THEN ALL PERSONS ASSOCIATED WITH THAT ENTITY WHO ACCESS OR USE THE PRODUCT PURSUANT TO THIS AGREEMENT SHALL BE INCLUDED AS “CUSTOMER” OR “YOU” AND SHALL BE SUBJECT TO ALL OF THE RESTRICTIONS AND LIABILITIES IN THIS AGREEMENT, AND THE ENTITY SHALL BE LIABLE FOR THE COMPLIANCE OR NON-COMPLIANCE OF ALL SUCH PERSONS WITH THIS AGREEMENT.

IF YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT, YOU MUST NOT CLICK “SUBMIT” OR REGISTER FOR AN ACCOUNT AND YOU WILL NOT BE GRANTED ACCESS TO THE PRODUCT. **DO NOT ACCEPT THIS AGREEMENT, REGISTER FOR AN ACCOUNT, OR ACCESS THE PRODUCT UNLESS (1) YOU ARE AUTHORIZED TO ACCEPT AND AGREE TO THIS AGREEMENT AND (2) YOU INTEND TO ENTER INTO AND TO BE BOUND BY THE TERMS OF THIS AGREEMENT.** IF YOU ACCEPT THIS AGREEMENT, REGISTER FOR AN ACCOUNT, OR OTHERWISE ACCESS THE PRODUCT, THIS AGREEMENT WILL BE EFFECTIVE IMMEDIATELY (THE “**EFFECTIVE DATE**”).

FROM TIME TO TIME, MEMFAULT MAY MODIFY THIS AGREEMENT AND POST NOTICE OF SUCH UPDATE IN THE PRODUCT AND/OR BY OTHER MEANS. CHANGES WILL BECOME EFFECTIVE UPON THE DATE SPECIFIED IN THE NOTICE.

IMPORTANT NOTE: The “plain English” descriptions below are intended only as simple summaries of the legal text. They are not legal advice and do not form part of this Agreement.

	1. Subscriptions; Support.
What you get when you subscribe to Memfault’s Product.	1.1 Subscription. Subject to Your compliance with this Agreement and in consideration of timely payment by You of the subscription fees hereunder (if any), Memfault hereby grants to You, solely during the applicable term, a limited, personal, non-exclusive, non-sublicensable, non-transferable, subscription-based and fully revocable right to access and use the Memfault SaaS platform (the “ Platform ”), application programming interfaces (“ APIs ”), and Documentation for Customer’s internal business purposes (a “ Subscription ”). “ Documentation ” means the instruction manuals, user guides, training materials or other materials and information made available to Customer from time to time by Memfault, in either printed or electronic form. “ Product ” means the Platform, APIs, and Documentation.
You may subscribe for the Product on one or more Order Forms.	1.2 Order Forms. Customer may subscribe for the Product through one or more order forms provided by Memfault (each, an “ Order Form ”), or through Memfault’s online subscription process (an “ Online Signup Form ”). Each Order Form or Online Signup Form may contain limitations regarding Customer’s access to and use of the Product, including numbers of users and devices Customer may utilize under its Subscription.
Memfault will provide basic support.	1.3 Support. Memfault will use reasonable efforts to provide technical support by email on weekdays during the hours of 9:00 am through 5:00 pm Pacific time, with the exclusion of U.S. federal holidays.
	2. Control of the Product; Maintenance; Storage and Backups; Excess Traffic.

Memfault decides how to provide its Product.	2.1 <u>Control of the Product</u> . The method and means of providing the Product shall be under the exclusive control, management, and supervision of Memfault. Memfault will provide and operate the Product in a professional and commercially reasonable manner.
You are responsible for your own computer and Internet.	2.2 <u>Infrastructure</u> . Each party shall retain sole responsibility for that party's information technology infrastructure, including computers, servers, software, databases, electronic systems (including database management systems) and networks, whether operated directly by such party or through the use of third-party services.
The Product may not always be available.	2.3 <u>Maintenance</u> . Memfault may schedule maintenance activities from time to time. Memfault will use reasonable efforts to provide advance notice of any maintenance activities that may interrupt access to the Product, unless it is not reasonably able to do so.
You will not overload or disrupt Memfault's systems.	2.4 <u>Disruption by Customer</u> . You shall not take or permit any actions which could interfere with the operation of the Product or any other customer's use of or access to the Product, including by interfering with, intruding into, disrupting, or making repeated accesses or requests that cause performance degradation to any network, equipment, server, or software system used to host or otherwise implement the Product. In addition to any other remedies available to Memfault hereunder, if you or your use of the Product results or may result (in Memfault's reasonable judgment) in any compromise, disruption, or denial of service related to the Product, Memfault may (or may direct its third-party hosting provider to): (a) null-route any IP address/subnet that is deemed by Memfault to be disruptive to Memfault or other Memfault customers, or (b) null-route, filter, suspend, or terminate your access to the Product, data and/or traffic from you, in whole or in part.
	3. Ownership of Intellectual Property; Access and Use Rights Restrictions.
Memfault continues to own all IP related to its Products.	3.1 <u>Ownership</u> . The Product contains proprietary and confidential information of Memfault and its licensors. Except to the extent licenses are expressly granted hereunder, Memfault and its licensors retain all right, title, and interest in and to all intellectual property rights (including patent, trademark, trade secret rights, inventions, copyrights, know-how and trade secrets) in and to the Product. In addition, any additional system software, and the content, organization, graphics, design, compilation, know-how, concepts, methodologies, procedures, and other matters related to the Product are protected under applicable copyrights, trademarks, and other proprietary rights. The use, copying, redistribution, or publication by You of any parts of the Product, except as expressly authorized by this Agreement, is prohibited. Memfault shall own all right, title and interest, in and to any intellectual property created by Memfault and delivered to You pursuant to this Agreement or otherwise created by Memfault in the course of providing the Product or support under this Agreement.

<p>If you do not pay to use Memfault's Product, additional terms apply.</p>	<p>3.2 <u>Free Subscriptions</u>. In addition to the other terms and conditions of this Agreement and any terms specified by Memfault to Customer at the time Customer registers for a non-paid Subscription (a "Free Subscription") the Free Subscription Terms set forth on the Supplemental Terms page at: www.memfault.com/supplemental-terms shall apply in addition to this Agreement. The Free Subscription Terms are hereby incorporated into and made part of this Agreement.</p>
<p>If you get access to the Memfault Product through a Partner of ours, additional terms apply.</p>	<p>3.3 <u>Subscriptions from a Memfault Partner</u>. If Customer receives a Subscription in connection with Customer's purchase of a product from a Memfault partner (a "Partner Subscription"), the Partner Subscription Terms set forth on the Supplemental Terms page at: www.memfault.com/supplemental-terms shall apply in addition to this Agreement. The Partner Subscription Terms are hereby incorporated into and made part of this Agreement.</p>
<p>There are also things you promise that You will not do related to the Product and Memfault's other customers.</p>	<p>3.4 <u>Access and Use Restrictions</u>. You shall not: (a) remove, alter or obscure any of Memfault's or its licensors' copyright notices, proprietary legends, trademark or service mark attributions, patent markings or other indicia of Memfault's or its licensors' ownership or contribution from the Product; (b) reverse compile, disassemble, decompile, engineer, copy, modify, adapt, or create derivative works of or from the Product or any part thereof; (c) make any Product available to, or use the Product for the benefit of, anyone other than You; (d) assign, transfer, sell, resell, license, sublicense, distribute, rent or lease the Product, or include any Product in a service bureau or outsourcing offering; (e) permit direct or indirect access to or use of the Product in a way that circumvents any contractual usage limit; (f) copy the Product or any part, feature, function or user interface thereof (except as expressly otherwise permitted under this Agreement; (g) frame or mirror any part of the Product, other than framing on Your own intranet or otherwise for Your own internal business purpose; (h) access or use any Product if you are a competitor of Memfault or in order to build a competitive product or service; (i) access or use the Product for unlawful or malicious purposes or upload to the Product anything unlawful, misleading, malicious, or discriminatory; (j) perform or attempt to perform any actions that would interfere with the proper working of the Product or Memfault's networks or infrastructure or prevent access or use by Memfault's other customers (including but not limited to any form of dedicated denial-of-service scheme or over-burdening a targeted server with ping requests); (k) upload or transmit to the Product any device, software, or routine that contains any virus, Trojan horse, worm, time bomb, or other computer programming routines that may damage, interfere or attempt to interfere with, or intercept the normal operation of the Product or Memfault's networks; or (l) access or attempt to access any accounts or data other than those explicitly belonging to You or provided by Memfault for Your use.</p>
	<p>4. Your Responsibilities; Customer Data.</p>
<p>You have to give us certain information to enable Your account.</p>	<p>4.1 <u>Account Data</u>. You will provide accurate, current, and complete information required to enable Your use of the Product and will maintain the accuracy of such information. Without limiting any other responsibilities You have under this Agreement, You are responsible for the actions of anybody accessing the Product using Your credentials, and for the actions of any individuals to whom you give access to the Product.</p>

<p>You take responsibility for data you give to Memfault.</p>	<p>4.2 <u>Customer Data</u>. “Customer Data” means all information, content, and data provided by or on behalf of Customer and made available or otherwise distributed through use of the Product and/or stored in the Product by Customer or at Customer’s direction. You have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of Customer Data, as well as for the ownership of Customer Data and right to use and transfer Customer Data to Memfault. MEMFAULT SHALL HAVE NO LIABILITY TO YOU FOR ANY UNAUTHORIZED ACCESS, USE, CORRUPTION, OR LOSS OF ANY OF CUSTOMER DATA, EXCEPT TO THE EXTENT THAT SUCH UNAUTHORIZED ACCESS, USE, CORRUPTION, OR LOSS IS DUE SOLELY TO MEMFAULT’S GROSS NEGLIGENCE OR MISCONDUCT.</p>
<p>Memfault can use your Customer Data to provide the Product.</p>	<p>4.3 <u>License to Customer Data</u>. You grant to Memfault a non-exclusive, worldwide, royalty-free license to store, record, transmit, maintain, use, copy, perform and display Customer Data to the extent reasonably necessary to carry out its obligations under this Agreement and to provide and improve the Product.</p>
<p>Memfault can use certain data for analytics and to improve its products.</p>	<p>4.4 <u>Collection of Certain Data; De-Identified Data Used for Analytics</u>. Memfault may collect data (including data derived from Customer Data) with respect to the aggregate response rate and other aggregate measures of the Product’s performance, as well as information about Customer’s activation, configuration, and use of the Product (collectively, “Usage Data”). Memfault may use Usage Data to verify Customer’s licensing, provide technical support, to improve and enhance the Product, for other development, diagnostic, and corrective purposes, and (solely in anonymized form from which Customer cannot be identified) for marketing purposes in connection with the Product and other Memfault offerings.</p>
<p>Don’t upload any Personal Information unless you have full rights to it. Personal Data is not germane to our solution.</p>	<p>4.5 <u>Personal Data</u>. Customer hereby undertakes that to the extent Customer Data includes any Personal Data (as such term is defined by the GDPR), Customer has and will: (a) provide all appropriate notices to individuals, (b) have any and all necessary ongoing legal bases and consents to share such Personal Data with Memfault for processing in the United States, and (c) comply with applicable privacy laws and data regulations. TO THE FULLEST EXTENT ALLOWABLE BY APPLICABLE LAW, MEMFAULT SHALL HAVE NO LIABILITY TO CUSTOMER FOR ANY UNAUTHORIZED ACCESS TO, OR USE, CORRUPTION, OR LOSS OF, ANY PERSONAL DATA WHICH MAY BE CONTAINED IN THE CUSTOMER DATA, EXCEPT TO THE EXTENT THAT SUCH UNAUTHORIZED ACCESS, USE, CORRUPTION, OR LOSS IS JUDICIALLY DETERMINED TO BE DUE TO MEMFAULT’S GROSS NEGLIGENCE OR WILLFUL BREACH OF THE TERMS OF THIS AGREEMENT. DESPITE ANY OTHER PROVISION OF THIS AGREEMENT, IN THE CASE OF LOSS OF PERSONAL DATA DUE TO ACTIONS OR INACTIONS OF MEMFAULT, CUSTOMER’S SOLE REMEDY SHALL BE FOR MEMFAULT TO RESTORE SUCH PERSONAL DATA FROM THE LATEST AVAILABLE BACKUP, IF ANY.</p>
<p>Memfault’s Privacy Notice applies to your employees’ personal data.</p>	<p>4.6 <u>Privacy Notice</u>. Notwithstanding anything to the contrary in this Agreement, Memfault may use any Personal Data of Customer’s users, e.g., Customer employees or contractors, that Memfault collects or obtains in connection with Customer’s use of the Products in accordance with Memfault’s privacy notice which is available at memfault.com/privacy.</p>

Memfault will use reasonable efforts to secure Customer Data.	4.7 <u>Security Standards</u> . Memfault will maintain reasonable and appropriate security measures, including technical and organizational safeguards designed to ensure the security and confidentiality of Customer Data. Customer acknowledges that the storage and processing of data, and the assurances published by Amazon (including Amazon Web Services), salesforce.com, and heroku meet the requirements of this Section.
	5. Fees; Payments.
Your promise to pay is not cancellable.	5.1 <u>Accrual of Payment Rights</u> . Memfault's right to collect fees for the Subscription, if applicable, shall accrue on the Effective Date. All amounts accrued or payments made under this Agreement are non-cancellable and nonrefundable.
Some Subscriptions are free. For others, You will have to provide a credit card or be invoiced. Memfault may increase subscription fees periodically.	<p>5.2 <u>Invoicing and Payment</u>.</p> <p>(a) You may have the option for a Subscription which is free of charge for a limited number of Devices, but for which fees apply once you exceed for the first time the limited number of free Devices (an "Overage Fee"). Overage Fees must be paid by credit card, a copy of which will be provided to Memfault upon subscription. By providing Memfault with credit card information, You authorize Memfault to charge such credit card for all applicable Subscriptions in accordance with this Agreement.</p> <p>(b) If you pay for your Subscription on a monthly basis, all amounts must be paid by credit card, a copy of which will be provided to Memfault upon subscription. Memfault will automatically charge You monthly in advance. By providing Memfault with credit card information, You authorize Memfault to charge such credit card for all applicable Subscriptions in accordance with this Agreement.</p> <p>(c) If you pay for your Subscription on an annual basis, Memfault will invoice You at the start of the Subscription term. If Your Subscription is for more than one year, Memfault will invoice You at the start of the Subscription term and each year thereafter. Unless otherwise agreed between Memfault and You, payment of annual fees is due within 30 days of Your receipt of an invoice from Memfault. Any amount which is unpaid when due shall be subject to interest equal to the lower of 1.5% per month or the highest applicable legal rate.</p> <p>(d) Memfault reserves the right to increase fees for any Subscription once in any 12 month period.</p>
If we have to go to collections, You pay that cost.	5.3 <u>Costs of Collection</u> . Memfault shall be entitled to reimbursement for any reasonable costs associated with the collection of any past-due balance.
If taxes are applicable, You will pay them.	5.4 <u>Taxes</u> . All fees are exclusive of any taxes, fees, duties, or other amounts, however designated, and including without limitation value added and withholding taxes that are levied or based upon such fees, or upon this Agreement. Any taxes related to Subscriptions, including but not limited to, withholding taxes, will be paid by You, except that You will not be liable for taxes imposed on Memfault based on Memfault's income.

	6. Warranties; Disclaimer.
You promise that You have the rights to any Customer Data you transfer to Memfault.	6.1 <u>Warranties by Customer</u> . You represent and warrant that You own all Customer Data or have all rights that are necessary to grant Memfault the licensed rights in Customer Data, including any consents required to transfer Personal Data to Memfault pursuant to this Agreement. You further represent and warrant that the Customer Data does not infringe, misappropriate, or violate a third party's intellectual property rights or rights of publicity or privacy, and will not result in the violation of any applicable law or regulation.
If Memfault's Platform does not work, we will fix it.	6.2 <u>Warranty by Memfault</u> . Memfault warrants, that for a period of sixty (60) days after the Effective Date (the " Warranty Period "), when used properly, the Product will be capable of functioning substantially in accordance with the Documentation. This warranty will not apply: (a) unless Customer makes a claim within 30 days of the date on which Customer first noticed the non-conformity, (b) if the error was caused by misuse, modifications, or third-party hardware, software, or services, or (c) if Customer fails to implement all relevant updates to the Platform made available at no charge to Customer. If Memfault breaches the warranty set forth above, Customer's sole and exclusive remedy, and Memfault's sole obligation, shall be for Memfault to, at its expense, repair or replace the Platform to enable it to perform substantially in accordance with the Documentation.
Memfault's product is provided "as is".	6.3 <u>WARRANTY DISCLAIMER</u> . EXCEPT AS EXPRESSLY STATED HEREIN, THE PRODUCT IS PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, AND MEMFAULT HEREBY DISCLAIMS ALL EXPRESS AND ANY IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. MEMFAULT DOES NOT WARRANT THAT THE PRODUCT WILL OPERATE WITHOUT INTERRUPTION, BE ERROR FREE OR THAT THE PRODUCT WILL SUCCEED IN RESOLVING ANY PROBLEM. CUSTOMER ACKNOWLEDGES THAT THE NATURE OF INTERNET-BASED SERVICE DELIVERY IS SUCH THAT CONFIDENTIALITY AND PERFORMANCE CANNOT BE COMPLETELY ASSURED.
	7. Indemnity.
If Memfault gets sued or fined because of Your Customer Data, You will pay all the costs.	7.1 <u>Indemnification</u> . You will defend, indemnify, and hold harmless Memfault from and against any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including court costs, regulatory fines, and reasonable attorneys' fees) (" Claims ") arising out of or relating to: (a) Customer's breach of Section 4.2 or Section 4.5; or (b) an allegation Customer Data infringes or misappropriates the intellectual property rights or privacy rights of any third party or violates any applicable law.
Memfault will let You defend any lawsuit related to Section 7.1	7.2 <u>Conditions</u> . Memfault will give You notice of any Claim promptly upon becoming aware of it, and will give You the opportunity to have sole control of the defense and settlement of any Claim (provided that You will not at any time admit liability or otherwise settle or compromise or attempt to settle or compromise Claim or action except upon the express instructions of Memfault).

	8. Limitation of Liability.
In most cases, neither Party is responsible for indirect damages. Memfault is never liable for certain damages.	8.1 <u>Limitations and Exclusions on Damages.</u> EXCEPT FOR LIABILITY ARISING OUT OF CUSTOMER'S BREACH OF SECTIONS 3.1 OR 3.4, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES INCURRED BY THE OTHER PARTY OR ANY THIRD PARTY. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT WILL MEMFAULT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY SPECIAL OR PUNITIVE DAMAGES, LOSS OF REVENUE OR PROFITS, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, WHETHER CHARACTERIZED AS DIRECT OR INDIRECT. THE LIMITATIONS IN THIS SECTION SHALL APPLY WHETHER THE LIABILITY ARISES FROM AN ACTION IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS AND EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
Memfault's maximum liability to You is limited.	8.2 <u>Maximum Liability.</u> TO THE FULLEST EXTENT ALLOWABLE BY LAW, MEMFAULT'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL IN NO EVENT EXCEED THE AMOUNTS PAID BY CUSTOMER TO MEMFAULT IN THE TWELVE MONTHS PRECEDING ANY CLAIM MADE UNDER THIS AGREEMENT.
The liability limits agreed herein will not apply if the law says they are invalid.	8.3 <u>Exclusions from Limitations on Liability.</u> FOR CLARITY, THE LIMITATIONS IN THIS SECTION 8 DO NOT APPLY TO PAYMENTS DUE TO MEMFAULT UNDER THIS AGREEMENT OR ANY LIABILITY FOR WHICH THE GOVERNING LAW PROHIBITS THE EXCLUSION OR LIMITATION OF LIABILITY. IN ANY JURISDICTION THAT DISALLOWS ANY EXCLUSIONS OF WARRANTIES OR LIMITATION OF LIABILITY, MEMFAULT'S LIABILITY WILL BE LIMITED TO THE GREATEST EXTENT ALLOWED BY LAW.
	9. Confidentiality.
Memfault and You both agree to protect each other's Confidential Information.	9.1 <u>Confidentiality Agreement.</u> Each party undertakes to keep confidential and not disclose to any third party all Confidential Information of the other party that it shall have obtained or received as a result of the discussions leading up to or the entering into or performance of this Agreement. " Confidential Information " includes, without limitation: technical data, know-how, product or service ideas or plans, software codes and designs, security information, algorithms, agreements with third parties, price lists, marketing plans, business plans, financial data, employee and consultant information, customer lists, or other business information disclosed by the disclosing party (whether by oral, written, graphic, or machine-readable format), which Confidential Information is designated in writing to be confidential or proprietary, or which information would, under the circumstances, appear to a reasonable person to be confidential or proprietary. The Product, and Memfault's product road maps, security information, product development plans, pricing, business plans, customer lists, and business and financial information shall be deemed to be Memfault's Confidential Information. The receiving party agrees to take at least the same security precautions to protect against disclosure or unauthorized use of such Confidential Information that the receiving party takes with its own proprietary information, but in no event will the receiving party apply less than reasonable precautions to protect such Confidential Information. Neither party shall use or disclose

	<p>the Confidential Information of the other Party except to exercise rights or fulfill obligations, in each case as expressly permitted under this Agreement or by applicable law, except that the receiving party may use or disclose the disclosing party's Confidential Information under the following circumstances: (a) to its employees, contractors, or agents to the extent necessary for them to perform the receiving party's obligations hereunder; (b) in confidence, to legal counsel, accountants, banks, and financing sources in connection with an actual or proposed merger, acquisition, or similar transaction; (c) in connection with the enforcement of this Agreement, provided such persons are bound by obligations of confidentiality no less restrictive than those contained in this Agreement.</p>
<p>Certain information is never treated as confidential.</p>	<p>9.2 <u>Exceptions</u>. Despite all of the foregoing, Confidential Information will not include any information which: (a) is already lawfully in the receiving party's possession and not subject to any duty of confidentiality; (b) is or becomes generally available to the public through no fault of the receiving party; (c) is disclosed to the receiving party by a third party who may transfer or disclose such information without restriction; (d) is disclosed by the receiving party with the disclosing party's approval; or (e) is independently developed by the receiving party without any use of Confidential Information of the disclosing party.</p>
<p>A Party may be forced by a court to disclose Confidential Information.</p>	<p>9.3 <u>Disclosure Required by Law</u>. In the event that the receiving party is required by law to make any disclosure of any of the Confidential Information of the disclosing party, by subpoena, judicial or administrative order, or otherwise, the receiving party shall first give written notice of such requirement to the disclosing party, and shall permit the disclosing party to intervene in any relevant proceedings to protect its interests in the Confidential Information, and provide full cooperation and assistance to the disclosing party in seeking to obtain such protection.</p>
<p>Money damages may not be enough; a court can force a party to stop doing something.</p>	<p>9.4 <u>Injunctive Relief</u>. Because of the unique and proprietary nature of the Confidential Information, it is understood and agreed that the disclosing party's remedies at law for a breach by the receiving party of its obligations hereunder may be inadequate and that the disclosing party shall be entitled to seek equitable relief (including without limitation provisional and permanent injunctive relief and specific performance).</p>
<p>Each Party has to return or destroy the other party's confidential information when this Agreement ends.</p>	<p>9.5 <u>Return of Confidential Information</u>. Upon expiration or termination of this Agreement, the receiving party will destroy (or at the request of the disclosing party, return) all copies of all Confidential Information of the disclosing party in its possession or under its control. Despite the foregoing, the receiving party: (a) shall not be required to return or destroy copies of the disclosing party's Confidential Information from its backup, disaster recovery, and/or business continuity databases, where doing so would be commercially impracticable, and (b) may retain a single archive copy of the Confidential Information to the extent required to comply with applicable legal and regulatory requirements, provided that in either case the receiving party maintains the Confidential Information in compliance with the terms of this Agreement until destroyed, which shall occur as soon as reasonably practicable.</p>
	<p>10. Term and Termination.</p>

<p>This Agreement is effective until You no longer use Memfault's Product, or until terminated.</p>	<p>10.1 <u>Term</u>. The term of each Subscription is set forth in the Order Form or Online Signup Form. This Agreement shall continue until all Subscriptions and/or Order Forms governed hereby are terminated or expire, or until terminated in accordance with the provisions of Section 10.2.</p>
<p>These are the ways You or Memfault can terminate this Agreement.</p>	<p>10.2 <u>Termination for Cause</u>. This Agreement, and any rights granted hereunder, may be terminated:</p> <p>(a) immediately by either party if the other party commits any material breach of any term of this Agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within 15 days of a written request to remedy the same;</p> <p>(b) by either party if the other Party ceases to function as a going concern or to conduct operations in the normal course of business, or has a petition filed by or against it under any bankruptcy or insolvency laws which petition has not been dismissed or set aside within 60 days of filing; or</p> <p>(c) immediately by Memfault: (i) if Customer is acquired by a competitor of Memfault; (ii) upon Memfault's reasonable determination that Customer's use of the Product poses a threat to Memfault, the Product, or other customers; or (iii) Customer's use of the Product violates any applicable law or regulation.</p>
<p>If you are using Memfault's Product free or for a temporary period, this Agreement will end automatically.</p>	<p>10.3 <u>Term of Free Trials and Beta Periods</u>. Despite any other provision of this Agreement to the contrary, if you are accessing and using a free trial version or beta version of the Product, then this Agreement (and any rights granted to you under this Agreement) shall automatically terminate at the end of the free trial or beta period. In addition, either party may terminate the trial or beta period any time. To continue access to and use of the Product after the end of your trial or beta period, you must subscribe for a standard, commercial, non-trial, non-beta Subscription to the Product.</p>
<p>Certain sections survive termination of this Agreement.</p>	<p>10.4 <u>Survival</u>. The provisions of this Agreement that by their nature and content are intended to survive the termination of this Agreement to achieve the fundamental purposes hereof shall so survive, including Sections 3.1, 3.4, 4-9, 10.4, 10.5, and 11, and all associated definitions.</p>
<p>Termination is not the only remedy for problems.</p>	<p>10.5 <u>Non-Exclusive Remedy</u>. Termination is not an exclusive remedy for breach of this Agreement by either party. All other remedies will be available to the non-breaching party whether or not the non-breaching party terminates this Agreement for breach by the other party.</p>
<p>When this Agreement ends you must stop using the Product.</p>	<p>10.6 <u>Effect of Termination</u>. Upon termination of this Agreement, Customer shall immediately cease using or destroy (or at the sole option of Memfault, return) all copies of the Product in its possession or control, and a duly authorized officer of the Customer shall certify in writing to Memfault that the Customer has complied with such obligation.</p>
	<p>11. Miscellaneous.</p>

Giving up one right doesn't mean a party gives up all rights.	11.1 <u>Waiver</u> . The waiver by either party of a breach or default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.
Neither party can use Memfault's Product in certain regions designated by the U.S. government.	11.2 <u>Import and Export Regulations</u> . The Product is subject to U.S. export controls, specifically Export Administration Regulations. Both parties shall comply with all relevant import and export regulations, including those adopted by the Bureau of Industry and Security of the U.S. Department of Commerce. Customer will not: (a) access or use any Product in a U.S.-embargoed or U.S.-sanctioned country or region; (b) access or use any Product if Customer or any User is named on any U.S. government or other applicable restricted-party list; (c) place any information in the Product that is controlled under the U.S. International Traffic in Arms Regulations or other similar laws; and/or (d) access or use any Product for any purpose prohibited by the United States or applicable international import and export laws and regulations.
If a party cannot perform for a reason that is not its fault, that will not be a breach of this Agreement.	11.3 <u>Force Majeure</u> . Neither party hereto shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including but not limited to fires, floods, earthquakes, pandemic or epidemic illness, strikes (of its own or other employees), insurrection or riots, embargoes, requirements, or regulations of any civil or military authority.
Here's how we provide notices to each other.	11.4 <u>Notices</u> . All notices must be in writing and in English and will be deemed given only when sent by mail (return receipt requested), hand-delivered, or sent by documented overnight delivery service to the party to whom the notice is directed, at its address indicated in the Order Form or Online Signup Form (or such other address as to which the other party has been notified), or sent by email to the email address as may be provided by one party to the other from time to time.
If one section of the Agreement is invalid, that doesn't affect the rest of the Agreement.	11.5 <u>Invalidity and Severability</u> . If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.
You can't assign this Agreement.	11.6 <u>Assignment</u> . Customer may not assign, transfer, or sublicense this Agreement or any of its rights or obligations hereunder without the prior written consent of Memfault. Any attempted assignment in violation of the foregoing will be void.
All disputes will be decided in court in San Francisco under California law.	11.7 <u>Governing Law</u> . This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to conflict of law provisions or the United Nations Convention on the International Sale of Goods. The sole venue for any dispute, claim or controversy arising out of or relating to this Agreement shall be in the courts of San Francisco County, California.

Customer and Memfault are not each other's employees or agents.	11.8 <u>Independent Contractors; No Third Party Beneficiaries</u> . The parties agree that each is an independent contractor and neither party has the right or authority to assume or create any obligation or responsibility on behalf of the other party. This Agreement does not, and is not intended to, confer any benefit on, nor create any right exercisable or enforceable by, any third party.
If there's a lawsuit, the prevailing party gets their legal fees paid by the other party.	11.9 <u>Attorney Fees</u> . If any legal action or other proceeding is brought to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and other costs incurred in the action or proceeding, in addition to any other relief to which the prevailing party may be entitled.
If You are a government agency, certain additional terms apply.	11.10 <u>U.S. Government Use</u> . Any use of the Services by an agency, department, or other entity of the United States government shall be governed solely by the terms of this Agreement.
Memfault can use your name for publicity.	11.11 <u>Publicity</u> . Customer grants to Memfault the right to use Customer's company name and logo as a reference for marketing or promotional purposes on Memfault's website and in other public or private communications with Memfault's existing or potential customers, subject to Customer's standard trademark usage guidelines as provided to Memfault from time to time.
This Agreement is the complete understanding of Your relationship with Memfault.	11.12 <u>Incorporation</u> . This Agreement, including all exhibits, constitutes the complete and exclusive understanding of the Parties, and supersedes all prior and contemporaneous non-disclosure agreements, proposals, negotiations and agreements, all terms and conditions included as part of purchase orders, and all other representations or communications, whether oral or written, with respect to the subject matter hereof. Customer acknowledges and agrees that any purchase order or other document issued or delivered by Customer to Memfault related to the Products or this Agreement that purports to contain legal provisions (e.g., for Customer's administrative convenience or in connection with standard vendor-onboarding processes) will have no binding effect on Memfault.

FREE SUBSCRIPTION TERMS

The following additional terms apply to Free Subscriptions (as defined in the Agreement):

1. All users exercising rights under any Free Subscription to a Memfault Product who are associated in any way with the same Entity (as defined below) must have their accounts registered with Memfault under the same, single organization originally designated by the Customer. For purposes of clarity, the limitations in the Agreement, including, but not limited to the limitations in Section 3.4 of the Agreement, apply in the aggregate to every user of every Free Subscription at an Entity. Creating multiple organizations and accounts within a single Entity shall not operate to expand in any way the use restrictions in the Agreement, and You agree not to create or attempt to create such multiple organizations within a single Entity. **“Entity”** means any corporation, partnership or similar entity, including all of such entity’s parent companies, subsidiaries, and affiliated entities.
2. Free Subscriptions may be used for a maximum of 10 hardware units with the Memfault SDK installed on it (each, a **“Device”**).
3. All Devices must be on a single architecture, with the same or substantially the same chipset and/or firmware image).
4. If the Devices are used for any commercial purpose (excluding only personal/hobbyist use), then all Devices must be owned, controlled and solely used internally by the Entity exercising the rights licensed under this Agreement.
5. Free Subscriptions:
 - 5.1 may send an aggregate maximum of 5 time series metrics per day, calculated including all active Devices;
 - 5.2 may send an aggregate maximum of 10 core dumps uploaded per day, calculated including all active Devices;
 - 5.3 may have a maximum of 3 alerts configured at any one time, calculated including all active Devices;
6. If you breach any term of the Agreement or these Free Subscription Terms, including but not limited to the use restrictions, Memfault may terminate your Free Subscription immediately.
7. Free Subscriptions expire, and all rights terminate, after 30 days. If you wish to begin a paid subscription, please visit: <https://memfault.com/pricing/>.
8. Memfault has no obligation to provide support, including, but not limited to, assistance with onboarding, integration, or consultation, training, or access to Memfault’s product roadmap.

PARTNER SUBSCRIPTION TERMS

The following additional terms apply to Partner Subscriptions (as defined in the Agreement):

1. All users exercising rights under any Partner Subscription to a Memfault Product who are associated in any way with the same Entity (as defined below) must have their accounts registered with Memfault under the same, single organization originally designated by the Customer. For purposes of clarity, the limitations in the Agreement, including, but not limited to the limitations in Section 3.4 of the Agreement, apply in the aggregate to every user of every Partner Subscription at an Entity. Creating multiple organizations and accounts within a single Entity shall not operate to expand in any way the use restrictions in the Agreement, and You agree not to create or attempt to create such multiple organizations within a single Entity. **“Entity”** means any corporation, partnership or similar entity, including all of such entity’s parent companies, subsidiaries, and affiliated entities.

2. Partner Subscriptions may be used for a maximum of 100 hardware units with the Memfault SDK installed on it (each, a “**Device**”).
3. All Devices must be on a single architecture, with the same or substantially the same chipset and/or firmware image).
4. If the Devices are used for any commercial purpose (excluding only personal/hobbyist use), then all Devices must be owned, controlled and solely used internally by the Entity exercising the rights licensed under this Agreement.
5. Partner Subscriptions:
 - 5.1 may send an aggregate maximum of 5 time series metrics per day, calculated including all active Devices;
 - 5.2 may send an aggregate maximum of 10 core dumps uploaded per day, calculated including all active Devices;
 - 5.3 may have a maximum of 3 alerts configured at any one time, calculated including all active Devices;
6. If you breach any term of the Agreement or these Partner Subscription Terms, including but not limited to the use restrictions, Memfault may terminate your Partner Subscription immediately.
7. Customer shall be eligible for prioritized support responses.