

Prequel Software, Inc.

Service Agreement

Last Modified: September 21, 2023

This Service Agreement (this “**Agreement**”) is a binding contract between you (“**Customer**,” “**you**,” or “**your**”) and Prequel Software, Inc. (“**Prequel**,” “**we**,” or “**us**”). We provide application monitoring and troubleshooting services through our cloud-based platform and downloadable software. This Agreement governs your access to and use of the Service.

This Agreement takes effect when you create an account with us and/or download the software component of the Service by (the “**Effective Date**”). By accessing or using the Service you (a) acknowledge that you have read and understand this Agreement; (b) represent and warrant that you have the right, power, and authority to enter into this Agreement and, if entering into this Agreement for an organization, that you have the legal authority to bind that organization; and (c) accept this Agreement and agree that you are legally bound by its terms.

IF YOU DO NOT ACCEPT THESE TERMS, YOU MAY NOT ACCESS OR USE THE SERVICE.

1. Definitions.

(a) “**Authorized User**” means Customer and Customer’s employees, (i) who are authorized by Customer to access and use the Service under the rights granted to Customer pursuant to this Agreement and (ii) for whom access to the Service has been purchased hereunder.

(b) “**Service**” means the services provided by Prequel under this Agreement through our cloud-based platform and downloadable software.

(c) “**Customer Data**” means, other than Usage Data, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or any other Authorized User through the Service.

(d) “**Documentation**” means Prequel’s end user documentation relating to the Service.

(e) “**Prequel IP**” means the Service, the Documentation, and all intellectual property provided to Customer or any other Authorized User in connection with the foregoing. For the avoidance of doubt, Prequel IP includes Usage Data and any information, data, or other content derived from Prequel’s monitoring of Customer’s access to or use of the Service, but does not include Customer Data.

(f) “**Third-Party Products**” means any products, content, services, information, websites, or other materials that are owned by third parties and are incorporated into or accessible through the Service.

2. Access and Use.

(g) Provision of Access. Subject to and conditioned on your payment of Fees and compliance with all other terms and conditions of this Agreement, Prequel hereby grants you a revocable, non-exclusive, non-transferable, non-sublicensable, limited right to access and use the Service during the Term solely for your internal business operations by Authorized Users in accordance with the terms and conditions herein. Prequel shall provide you with the necessary access credentials to allow you to access the Service.

(h) Documentation License. Subject to the terms and conditions contained in this Agreement, Prequel hereby grants you a non-exclusive, non-sublicensable, non-transferable license for Authorized Users to use the Documentation during the Term solely for your internal business purposes in connection with use of the Service.

(i) Supplemental Terms. Some features of the Service require your affirmative opt-in, and are subject to additional feature-specific terms. Additionally, if your Order Form includes entry into our Design Partner program, your access to the Service will include additional terms specific to the Design Partner program. Supplemental terms for such features and the Design Partner program are located at prequel.dev/supplementalterms (“**Supplemental Terms**”), and are incorporated into this Agreement by reference. To the extent of any inconsistency between the Supplemental Terms and this Agreement, the Supplemental Terms will control.

(j) Downloadable Software. Use of the Service will require the installation and use of downloadable software to your network or cloud infrastructure. Prequel grants you a non-transferable, non-exclusive, non-assignable, limited right for Authorized Users to use downloadable software we provide as part of the Service. Any Third-Party Products that consist of downloadable software are subject to the terms of Section 3(e).

(k) Use Restrictions. You shall not, and shall not permit any Authorized Users to, use the Service, any software component of the Service, or Documentation for any purposes beyond the scope of the access granted in this Agreement. You shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Service, any software component of the Service, or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Service or Documentation except as expressly permitted under this Agreement; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Service, in whole or in part; (iv) remove any proprietary notices from the Service or Documentation; or (v) use the Service or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law, regulation, or rule.

(l) Usage Data. Notwithstanding anything to the contrary in this Agreement, Prequel may monitor Customer's use of the Service and collect and compile data and information related to Customer's use of the Service to be used by Prequel in an aggregated and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Service ("**Usage Data**"). As between Prequel and Customer, all right, title, and interest in Usage Data, and all intellectual property rights therein, belong to and are retained solely by Prequel. You acknowledge that Prequel may compile Usage Data based on Customer Data input into the Service. You agree that Prequel may (i) make Usage Data publicly available in compliance with applicable law, and (ii) use Usage Data to the extent and in the manner permitted under applicable law; *provided* that such Usage Data do not identify Customer or Customer's Confidential Information.

(m) Reservation of Rights. Prequel reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party, any intellectual property rights or other right, title, or interest in or to the Prequel IP.

(n) Suspension. Notwithstanding anything to the contrary in this Agreement, Prequel may temporarily suspend Customer's and any other Authorized User's access to any portion or all of the Service if: (i) Prequel reasonably determines that (A) you are in violation of the Use Restrictions set forth in Section 2(d); (B) Customer's or any other Authorized User's use of the Prequel IP disrupts or poses a security risk to the Prequel IP or to any other customer or vendor of Prequel; (C) Customer or any other Authorized User is using the Prequel IP for fraudulent or illegal activities; (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) Prequel's provision of the Service to Customer or any other Authorized User is prohibited by applicable law; or (ii) in accordance with 5 (any such suspension described above, a "**Service Suspension**"). Prequel shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Service following any Service Suspension. Prequel shall use commercially reasonable efforts to resume providing access to the Service as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Prequel will have no liability for any damage, liabilities, losses (including any loss of or profits), or any other consequences that Customer or any other Authorized User may incur as a result of a Service Suspension.

3. Customer Responsibilities.

(o) Privacy Policy. Prequel complies with its privacy policy, available at prequel.dev/privacy ("**Privacy Policy**"), in providing the Service. The Privacy Policy is subject to change as described therein. By accessing, using, and providing information to or through the Service, you acknowledge that you have reviewed and accepted our Privacy Policy, and you consent to all actions taken by us with respect to your information in compliance with the then-current version of our Privacy Policy.

(p) Account Use. You are responsible and liable for all uses of the Service and Documentation resulting from access provided by you, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, you are responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by you will be deemed a breach of this Agreement by you. You shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such

Authorized User's use of the Service and shall cause Authorized Users to comply with such provisions.

(q) Customer Data. You hereby grant to Prequel a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Prequel to provide the Service to you, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer Data incorporated within the Usage Data. You will ensure that Customer Data and any Authorized User's use of Customer Data will not violate any policy or terms referenced in or incorporated into this Agreement or any applicable law. You are solely responsible for the development, content, operation, maintenance, and use of Customer Data.

(r) Passwords and Access Credentials. You are responsible for keeping your passwords and access credentials associated with the Service confidential. You will not sell or transfer them to any other person or entity. You will promptly notify us about any unauthorized access to your passwords or access credentials.

(s) Third-Party Products. The Service may permit access to Third-Party Products. For purposes of this Agreement, such Third-Party Products are subject to their own terms and conditions presented to you for acceptance within the Service by website link or otherwise. If you do not agree to abide by the applicable terms for any such Third-Party Products, then you should not install, access, or use such Third-Party Products.

4. Support. This Agreement does not entitle Customer to any support for the Service. However, Prequel agrees to use its reasonable efforts to correct errors in the Service and Documentation within a reasonable time, and shall provide Customer with any corrections it makes generally available to other customers.

5. Fees and Payment. Customer shall pay Prequel the fees set out in the Customer's Order Form within thirty (30) days from the invoice date without offset or deduction. Customer shall make all payments hereunder in US dollars on or before the due date. If Customer fails to make any payment when due, without limiting Prequel's other rights and remedies: (i) Prequel may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; (ii) Customer shall reimburse Prequel for all reasonable costs incurred by Prequel in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and (iii) if such failure continues for thirty (30) days or more, Prequel may suspend, in accordance with Section 2(g), Customer's and all other Authorized Users' access to any portion or all of the Service until such amounts are paid in full. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Prequel's income.

6. Confidential Information. From time to time during the Term, Prequel and Customer may disclose or make available to the other party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media, whether or not marked, designated, or otherwise identified as "confidential" at the time of disclosure (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving party; (c) rightfully obtained by the receiving party on a non-confidential basis from a third party; or (d) independently developed by the receiving party. The receiving party shall not disclose the disclosing party's Confidential Information to any person or entity, except to the receiving party's employees who have a need to know the Confidential Information for the receiving party to exercise its rights or perform its obligations hereunder and who are required to protect the Confidential Information in a manner no less stringent than required under this Agreement. Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent required (i) to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure pursuant to the order shall first have given written notice to the other party and made a reasonable effort to obtain a protective order; or (ii) to establish a party's rights under this Agreement, including to make required court filings. Each party's obligations of non-disclosure with regard to Confidential Information are effective as of the date such Confidential Information is first disclosed to the receiving party and will expire five years thereafter; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

7. Intellectual Property Ownership; Feedback.

(a) Prequel IP and Customer Data. As between you and us, (a) we own all right, title, and interest, including all intellectual property rights, in and to the Prequel IP and (b) you own all right, title, and interest, including all intellectual property rights, in and to Customer Data. You hereby grant to us a non-exclusive, royalty-free, worldwide license to use, reproduce,

display, perform, modify, and distribute the Customer Data and perform all acts with respect to the Customer Data as may be necessary for us to provide the Service to you.

(b) Usage Data. Notwithstanding anything to the contrary in this Agreement, Prequel may monitor Customer's use of the Service and collect and compile Usage Data. As between Prequel and Customer, all right, title, and interest in Usage Data, and all intellectual property rights therein, belong to and are retained solely by Prequel. Customer acknowledges that Prequel may compile Usage Data based on Customer Data input into the Service. Customer agrees that Prequel may (i) make Usage Data publicly available in compliance with applicable law, and (ii) use Usage Data to the extent and in the manner permitted under applicable law; *provided* that such Usage Data do not identify Customer or Customer's Confidential Information

(c) Feedback. If you or any of your employees, contractors, or agents sends or transmits any communications or materials to us suggesting or recommending changes to the Service, including without limitation, new detections, features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), we are free to use such Feedback irrespective of any other obligation or limitation between you and us governing such Feedback. All Feedback is and will be treated as non-confidential. You hereby assign to us on your behalf, and shall cause your employees, contractors, and agents to assign, all right, title, and interest in, and we are free to use, without any attribution or compensation to you or any third party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although we are not required to use any Feedback.

8. Limited Warranty and Warranty Disclaimer.

(d) Prequel warrants that it provides Service using a commercially reasonable level of care and skill. The foregoing warranty does not apply, and Prequel strictly disclaims all warranties, with respect to any Third-Party Products.

(e) Customer Warranty. You warrant that you own all right, title, and interest, including all intellectual property rights, in and to Customer Data, or you have obtained all necessary consents, licenses, permissions, and rights from third parties (including Authorized Users) to transfer and use the Customer Data, and that your use of the Service is in compliance with our Privacy Policy.

(f) Except for the limited warranty set forth in Section 9(A), the Service are provided "as is" and Prequel specifically disclaims all warranties, whether express, implied, statutory, or otherwise. Prequel specifically disclaims all implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement, and all warranties arising from course of dealing, usage, or trade practice. Prequel makes no warranty of any kind that the Service, or any products or results of the use thereof, will meet your or any other person's or entity's requirements, operate without interruption, achieve any intended result, be compatible or work with any of your or any third party's software, system, or other services, or be secure, accurate, complete, free of harmful code, or error-free, or that any errors or defects can or will be corrected.

9. Indemnification.

(g) Prequel Indemnification.

(i) Prequel shall indemnify, defend, and hold Customer harmless from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees ("**Losses**"), incurred by Customer resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that (A) the Service, or any use of the Service in accordance with this Agreement, infringes or misappropriates such third party's intellectual property rights; or (B) Prequel's breach of any representation or warranty contained in Section 8(a), *provided* that Customer promptly notifies Prequel in writing of the Third-Party Claim, cooperates with Prequel, and allows Prequel sole authority to control the defense and settlement of such Third-Party Claim.

(ii) If such a Third-Party Claim is made under Section 9(a)(i)(A) or Prequel reasonably anticipates such a Third-Party Claim will be made, Customer agrees to permit Prequel, at Prequel's sole discretion, to (A) modify or replace the Service, or component or part thereof, to make it non-infringing, or (B) obtain the right for Customer to continue use. If Prequel determines that neither alternative is reasonably available, Prequel may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer. This Section 10(a)(ii) sets forth your sole remedies and our sole liability and obligation for

any actual, threatened, or alleged Third-Party Claims that the Service infringe, misappropriate, or otherwise violate any intellectual property rights of any third party.

(iii) This Section 9(a) will not apply to the extent that any such Third-Party Claim arises from Customer Data or Third-Party Products.

(h) Customer Indemnification. Customer shall indemnify, hold harmless, and, at Prequel's option, defend Prequel and its officers, directors, employees, agents, affiliates, successors, and assigns from and against any and all Losses arising from or relating to any Third-Party Claim (i) that the Customer Data, or any use of the Customer Data in accordance with this Agreement, infringes or misappropriates such third party's intellectual property rights; (ii) based on Customer's or any Authorized User's negligence or willful misconduct or use of the Service in a manner not authorized by this Agreement; or (iii) Customer's breach of any representation and warranty contained in Section 8(b), *provided* that Customer may not settle any Third-Party Claim against Prequel unless Prequel consents to such settlement, and further provided that Prequel will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

10. Limitations of Liability. In no event will Prequel be liable under or in connection with this Agreement under any legal or equitable theory, including breach of contract, tort (including negligence), strict liability, or otherwise, for any: (a) consequential, incidental, indirect, exemplary, special, enhanced, or punitive damages; (b) increased costs, diminution in value or lost business, production, revenues, or profits; (c) loss of goodwill or reputation; (d) use, inability to use, loss, interruption, delay or recovery of any data, or breach of data or system security; or (e) cost of replacement goods or services, in each case regardless of whether Prequel was advised of the possibility of such losses or damages or such losses or damages were otherwise foreseeable. In no event will Prequel's aggregate liability arising out of or related to this Agreement under any legal or equitable theory, including breach of contract, tort (including negligence), strict liability, or otherwise exceed the total amounts paid to Prequel under this Agreement in the six (6) month period preceding the event giving rise to the claim or \$5,000, whichever is greater. The exclusions and limitations in this Section 11 do not apply to the parties' obligations under 9.

11. Term and Termination.

(i) Term. The term of this Agreement begins on the Effective Date and continues until terminated (the "**Initial Term**"). Service that are specified in the applicable Quotation & Order Form to automatically renew will renew automatically at the expiration of the Initial Term for successive terms of equal length (each, a "**Renewal Term**", and together with the Initial Term, the "**Term**") unless earlier terminated pursuant to this Agreement's express provisions or either party gives the other party written notice of non-renewal at least sixty (60) days prior to the expiration of the then-current services period.

(j) Termination. In addition to any other express termination right set forth in this Agreement:

(iv) You may terminate this Agreement for any reason upon sixty (60) days' advance notice.

(v) Either party may terminate this Agreement, effective on written notice to the other party, if the other party materially breaches this Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach.

(vi) Either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files, or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed 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.

(k) Effect of Termination. Upon termination of this Agreement, Customer shall immediately discontinue use of the Prequel IP. No expiration or termination of this Agreement will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination, or entitle Customer to any refund.

(l) Survival. This Section 11(d), Sections 5, 6, 7, 9, 10, 13, 14, and 15, and any right, obligation, or required performance of the parties in this Agreement which, by its express terms or nature and context is intended to survive termination or expiration of this Agreement, will survive any such termination or expiration.

12. Modifications. You acknowledge and agree that we have the right, in our sole discretion, to modify this Agreement from time to time, and that modified terms become effective on posting. You will be notified of any material modifications through direct email communication from us at least thirty (30) days prior to their effective date. You are responsible for reviewing and becoming familiar with any such modifications. Your continued use of the Service after the effective date of the modifications will be deemed acceptance of the modified terms. Pricing terms for the Service shall remain in effect until the commencement of the next Renewal Term, at which point any pricing changes shall apply.

13. Export Regulation. The Service utilize software and technology that may be subject to US export control laws, including the US Export Administration Act and its associated regulations. You shall not, directly or indirectly, export, re-export, or release the Service or the software or technology included in the Service to, or make the Service or the software or technology included in the Service accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, regulation, or rule. You shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Service or the software or technology included in the Service available outside the US.

14. Governing Law and Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Delaware. Any legal suit, action, or proceeding arising out or relating to of this Agreement or the rights granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of Delaware, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

15. Miscellaneous. This Agreement constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. Any notices to us must be sent to our corporate headquarters address available at prequel.dev and must be delivered either in person, by certified or registered mail, return receipt requested and postage prepaid, or by recognized overnight courier service, and are deemed given upon receipt by us. Notwithstanding the foregoing, you hereby consent to receiving electronic communications from us. These electronic communications may include notices about applicable fees and charges, transactional information, and other information concerning or related to the Service. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that such communications be in writing. The invalidity, illegality, or unenforceability of any provision herein does not affect any other provision herein or the validity, legality, or enforceability of such provision in any other jurisdiction. Any failure to act by us with respect to a breach of this Agreement by you or others does not constitute a waiver and will not limit our rights with respect to such breach or any subsequent breaches. This Agreement is personal to you and may not be assigned or transferred for any reason whatsoever without our prior written consent and any action or conduct in violation of the foregoing will be void and without effect. We expressly reserve the right to assign this Agreement and to delegate any of its obligations hereunder.