

ScaleOps Terms of Use

Welcome to <https://www.scaleops.com/> (together with its subdomains, Content, Marks and Services, the “Site”). The Site is intended to allow users to receive customized service plans based on their needs, including resource management and cloud based cost savings, via ScaleOps’ proprietary platform (the “Platform”), and receive other services made available by ScaleOps (collectively, the “Services”) and information about our products and Services, all in accordance with and, subject to these Terms. Please read the following Terms of Use carefully before using this Site so that you (“Client”, “you”, or “your”) are aware of your legal rights and obligations with respect to **ScaleOps Labs Ltd.** (“ScaleOps”, “we”, “our” or “us”). By accessing or using the Site, you expressly acknowledge and agree that you are entering a legal agreement with us and have understood and agree to comply with, and be legally bound by, these Terms of Use, together with the Privacy Policy (the “Terms”), which govern your use of the Site, and your use of the Platform during the POC Term (as such terms are defined below). You hereby waive any applicable rights to require an original (non-electronic) signature or delivery or retention of non-electronic records, to the extent not prohibited under applicable law. If you do not agree to be bound by these Terms please do not access or use the Site.

- License and Services.** Subject to your compliance with these Terms, ScaleOps hereby grants you, a no fee, limited, revocable, non-exclusive, non-sublicensable, non-transferable, license to access and use the Platform, during the 30 day proof of concept period commencing on the date on which your Token is received by you (the “POC Term”), in order to allow you to internally evaluate, demonstrate and test the performance and functionality of the Platform (the “POC”) for non-commercial use. **By signing up to a POC, you expressly acknowledge and agree that following the POC, we may send you communications offering you our subscription plans. If you do not wish to receive such communications from us, you may opt-out by contacting us at team@scaleops.com.**
- Modification.** We reserve the right, at our discretion, to change these Terms at any time. Such change will be effective ten (10) days following posting of the revised Terms on the Site, and your continued use of the Site thereafter means that you accept those changes.
- Ability to Accept Terms.** The Site is only intended for individuals aged thirteen (13) years or older. If you are under 13 years please do not visit or use the Site. If you are between 13 and 18 years of age, then you must review these Terms with you parent or guardian before visiting or using the Site to make sure that you and your parent or guardian understand these Terms and agree to them.
- Site Access.** For such time as these Terms are in effect, we hereby grant you permission to visit and use the Site provided that you comply with these Terms and applicable law.
- Restrictions.** You shall not: (i) copy, distribute or modify any part of the Site without our prior written authorization; (ii) use, modify, alter, copy, transfer, sublicense, decompile, disassemble, reverse engineer, or attempt to discover the Platform’s source code, techniques, algorithms or processes create derivative works of, transfer (by sale, resale, license, sublicense, download or otherwise), reproduce, distribute, display or disclose any part of the Site (including Content (defined below)), except as expressly authorized herein; (iii) use the Service for any purpose other than for the POC; (iv) publish or make available in any manner, other than to ScaleOps, any reviews, opinions or impressions about, or experiences with, the Site; (v) use the POC conducted hereunder or any of its results, for any benchmarking, or conducting, investing in or other involvement competing development activities; and/or (vi) disrupt servers or networks connected to the Site; (vii) use or launch any automated system (including without limitation, “robots” and “spiders”) to access the Site; and/or (viii) circumvent, disable or otherwise interfere with security-related features of the Site or features that prevent or restrict use or copying of any Content or that enforce limitations on use of the Site; and/or (ix) use, send, upload, post, transmit or introduce any device, code, routine or other item (including bots, viruses, worms, and Trojan horses) that interferes (or attempts to interfere) with the operation or integrity of the Site, nor any content that is unlawful, infringing, defamatory, deceptive, obscene, fraudulent, harassing, pornographic, or abusive.
- Account.** In order to use some of the services of the Site, such as using the Platform, you may have to create an account on the Platform on behalf of your organization (“Account”). After the required details are provided, you will receive a Platform participation token (the “Token”) which will allow you to install the Platform on your cluster, and access your Account. You represent and warrant that you are authorized to act on behalf of, and bind to these Terms, such entity. Unless you are part of the organization for which an Account was duly created, in which case you may use the Account in accordance with these Terms, You agree not to create an Account for anyone else or use the account of another without their permission. When creating your Account, you must provide accurate and complete information. You are solely responsible for the activity that occurs in your Account, and you must keep your Account password secure. You must notify ScaleOps immediately of any breach of security or unauthorized use of your Account. As between you and ScaleOps, you are solely responsible and liable for the activity that occurs in connection with your Account. If you wish to delete your Account you may send an email request to ScaleOps at team@scaleops.com.

7. **Payment and Commercial License.** Except as expressly set forth in the Terms, your right to access and use the Site is free during the POC Term. At the end of the POC Term, you may choose to purchase a paid subscription by providing written notice to ScaleOps at team@scaleops.com. You will not be charged for any such access or use of the Site unless you first agree to such charges, but please be aware that any failure to pay applicable charges may result in you not having access to some or all of the Site.
8. **Intellectual Property Rights.**
 - 8.1. **Content and Marks.** The (i) content on the Site, including without limitation, the text, documents, articles, brochures, descriptions, products, software, graphics, photos, sounds, videos, interactive features, and services (collectively, the "**Materials**"), (ii) and User Submissions, as defined below (together with the Materials, the "**Content**"), and (iii) the trademarks, service marks and logos contained therein ("**Marks**"), are the property of ScaleOps and/or its licensors and may be protected by applicable copyright or other intellectual property laws and treaties. "ScaleOps", the ScaleOps logo, and other marks are Marks of ScaleOps or its affiliates. All other trademarks, service marks, and logos used on the Site are the trademarks, service marks, or logos of their respective owners. We reserve all rights not expressly granted in and to the Site and the Content.
 - 8.2. **Use of Content.** Content on the Site is provided to you for your information and personal use only and may not be used, modified, copied, distributed, transmitted, broadcast, displayed, sold, licensed, de-compiled, or otherwise exploited for any other purposes whatsoever without our prior written consent. If you download or print a copy of the Content you must retain all copyright and other proprietary notices contained therein.
 - 8.3. **Ownership.** The Site, including without limitation the Platform and Services, and any add-on services, Marks, Content, underlying data, software, platforms, algorithms, technology, application design, any information, logos, trade-names and brands, services, texts, files, animation, images, sound, music, videos, various applications, organization, structure, specifications, Feedback (defined below), Site "look and feel" and features and any enhancements, improvements and derivatives thereof and all Intellectual Property Rights (defined below) related thereto ("**ScaleOps IPR**") are the property of ScaleOps and/or its licensors who retain at all times all right, title and interest in connection therewith. For the avoidance of doubt, Confidential Information shall be deemed as ScaleOps IPR. No transfer or grant of any rights by ScaleOps is made or is to be implied by any provision of these Terms or by any other provision contained Site with respect to the ScaleOps IPR or otherwise, except for the limited license set forth in Section 1 above. All rights not explicitly granted to you in these Terms are hereby reserved. "**Intellectual Property Rights**" means worldwide, whether registered or not (a) rights associated with works of authorship, designs, mask works and photography including copyrights; (b) trademarks, service marks, domain names, logos, trade names, trade dress, the right to publicity and goodwill rights; (c) patents, patent applications and industrial designs; (d) trade secrets; (e) rights analogous to those set forth herein and any other proprietary rights relating to intangible property; and/or (f) divisions, continuations, renewals, reissues and extensions of the foregoing (as applicable) now existing or hereafter filed, issued, or acquired. Client grants ScaleOps a perpetual, irrevocable, non-exclusive, non-transferable, royalty-free license to any anonymous information, which is derived from the use of the Site (which shall include but not be limited to the metadata, aggregated and/or analytics information) which is not personally identifiable information ("**Analytics Information**"). For the removal of doubt, ScaleOps will be the exclusive owners of the Analytics Information, and ScaleOps may use such Analytics Information for any purpose including for development, to improve ScaleOps's services, for marketing the Site and/or for statistical purposes.
 - 8.4. **Feedback.** Client will be providing ScaleOps with feedback with respect to Client's use of and access to the Site (which shall include but not be limited to feedback, questions, comments, suggestions or the like), this shall be deemed collectively "**Feedback**". Feedback does not include any User Submissions. Feedback is provided by Client "as is" and without any warranties whatsoever. Upon disclosure, Client shall become the sole and exclusive property of ScaleOps, and Client hereby irrevocably assigns to ScaleOps all of its right, title and interest in and to all such Feedback and waives any moral rights it may have in such Feedback
 - 8.5. **Documentation.** To the extent that we make available Documentation (defined below) to you, you are permitted to use such Documentation solely for your use of the Site and solely in connection with its use of the Service during the POC Term. The Documentation shall be considered the Confidential Information of ScaleOps. Unless the Documentation is separately referred to herein, all references in these Terms to the Service shall include the Documentation. "Documentation" means user documentation that ScaleOps generally makes available to its customers, whether in print or digitally, including those that describe the use, features and operation of the Platform.
9. **User Submissions.**
 - 9.1. **Responsibility.** The Site may permit the submission, hosting, sharing and publishing of Content by you and other users, and may collect other materials and information from the cluster on which you install the Platform ("**User Submissions**"). You understand that whether or not such User Submissions are published, we do not guarantee any confidentiality with respect to any User Submissions. You shall be solely responsible for your User Submissions and the consequences of posting, publishing or uploading them. We have complete discretion

whether to publish your User Submissions and we reserve the right in our sole discretion and without further notice to you, to monitor, censor, edit, remove, delete, and/or remove any and all Content posted on the Site (including User Submissions) at any time and for any reason.

- 9.2. **Ownership.** You represent and warrant that you own or have the necessary rights and permissions to use and authorize ScaleOps to use your User Submissions, and to enable inclusion and use thereof as contemplated by the Site and these Terms. Unless the User Submissions are separately referred to, all references herein to Content shall include references to User Submissions.
- 9.3. **License to User Submissions.** By submitting the User Submissions to ScaleOps, you hereby grant ScaleOps a worldwide, irrevocable, non-exclusive, royalty-free, perpetual, sublicenseable and transferable license to use, reproduce, distribute, prepare derivative works of, display, and perform the User Submissions in connection with the Site and ScaleOps' business, including without limitation for publishing and redistributing part or all of your User Submissions (and derivative works thereof) in any media formats and through any media channels and, and you hereby waive any moral rights in your User Submissions, to the extent permitted by law. You also hereby grant each user of the Site or other viewer or user of the User Submission a non-exclusive right to use, reproduce, distribute, prepare derivative works of, display and perform such User Submissions, all in accordance with these Terms.
- 9.4. **Prohibited Content.** You agree that you will not display, post, submit, publish, upload or transmit a User Submission that: (i) is unfair or deceptive under the consumer protection laws of any jurisdiction; (ii) is copyrighted, protected by trade secret or otherwise subject to third party proprietary rights, including privacy and publicity rights, unless you are the owner of such rights; (iii) creates a risk to a person's safety or health, creates a risk to public safety or health, compromises national security, or interferes with an investigation by law enforcement; (iv) impersonates another person; (v) promotes illegal drugs, violates export control laws, relates to illegal gambling, or illegal arms trafficking; (vi) is unlawful, defamatory, libelous, threatening, pornographic, harassing, hateful, racially or ethnically offensive, or encourages conduct that would be considered a criminal offense, gives rise to civil liability, violates any law, or is inappropriate; (vii) involves theft or terrorism; or (viii) is otherwise malicious or fraudulent.
- 9.5. **Exposure.** You understand and acknowledge that when accessing and using the Site: (i) you will be exposed to User Submissions from a variety of sources, and that ScaleOps is not responsible for the accuracy, usefulness, safety, or Intellectual Property Rights of, or relating to, such User Submissions; and (ii) you may be exposed to User Submissions that are inaccurate, offensive, indecent, or objectionable. You hereby agree to waive, and hereby do waive, any legal or equitable rights or remedies you may have against ScaleOps with respect to (i) and (ii) herein.
- 9.6. **Spam.** You agree not to, and will not, use the communications systems provided by the Site to send unauthorized commercial communications and you shall be solely responsible and liable for any such unauthorized communications.
10. **Confidential Information.** You agree to keep confidential and to use only for purposes permitted under these Terms, any ScaleOps proprietary or confidential information disclosed to you pursuant to these Terms or in connection with your use of the Site (including the Platform and any Services) (collectively: "**Confidential Information**"). The obligation of confidentiality shall not apply to information which is publicly available through authorized disclosure, is rightfully known by you prior to the time of disclosure as evidenced in writing, is rightfully obtained from a third party who has the right to disclose it, or which is required by law, government order or request to be disclosed (provided that you shall give written notice to ScaleOps of such disclosure and an opportunity, at ScaleOps' expense, to resist or restrain the scope of such request). You shall not disclose or make available the Confidential Information to any third party, except to your employees that have a need to know such information for the POC and that are bound by obligations at least as protective as provided herein. You shall take measures at a level at least as protective as those taken to protect your own confidential information of like nature (but in no event less than a reasonable level) to protect the Confidential Information. You will promptly notify ScaleOps in writing in the event of any actual or suspected unauthorized use or disclosure of any Confidential Information. At the end of the POC Term, you shall promptly permanently destroy or return to us all Confidential Information, and all copies thereof, in your possession, custody or control.
11. **Information Description.** We attempt to be as accurate as possible. However, we cannot and do not warrant that the Content available on the Site is accurate, complete, reliable, current, or error-free. We reserve the right to make changes in or to the Content, or any part thereof, in our sole judgment, without the requirement of giving any notice prior to or after making such changes to the Content. Your use of the Content, or any part thereof, is made solely at your own risk and responsibility.
12. **Links.**
 - 12.1. The Site may contain links, and may enable you to post content, to third party websites that are not owned or controlled by ScaleOps. We are not affiliated with, have no control over, and assume no responsibility for the

content, privacy policies, or practices of, any third party websites. You: (i) are solely responsible and liable for your use of and linking to third party websites and any content that you may send or post to a third party website; and (ii) expressly release ScaleOps from any and all liability arising from your use of any third party website. Accordingly, we encourage you to read the terms and conditions and privacy policy of each third party website that you may choose to visit.

- 12.2. ScaleOps permits you to link to the Site provided that: (i) you link to but do not replicate any page on this Site; (ii) the hyperlink text shall accurately describe the Content as it appears on the Site; (iii) you shall not misrepresent your relationship with ScaleOps or present any false information about ScaleOps and shall not imply in any way that we are endorsing any services or products, unless we have given you our express prior consent; (iv) you shall not link from a website ("**Third Party Website**") which prohibits linking to third parties; (v) such Third party Website does not contain content that (a) is offensive or controversial (both at our discretion), or (b) infringes any intellectual property, privacy rights, or other rights of any person or entity; and/or (vi) you, and your website, comply with these Terms and applicable law.
13. **Privacy.** While using the Site, certain data, such as personal data or other data, may be made available by you to ScaleOps (the "**Client Data**"). We will use any personal information that we may collect or obtain in connection with the Site in accordance with our privacy policy which is available at ("**Privacy Policy**"). You agree that we may use personal information that you provide or make available to us in accordance with the Privacy Policy. As the exclusive owner of the Client Data, Client hereby warrants, represents and covenants that to the extent the Client Data includes any personal data as defined under applicable law, Client has and will: i) provide all appropriate notices, ii) receive all the required informed consents and/or have any and all ongoing legal bases and permits, and iii) act in compliance with applicable privacy laws and data regulations, as to allow ScaleOps to use the Client Data solely in order to perform ScaleOps' Services (including, without limitation, the provision of such data to ScaleOps (or access thereto) and the transfer of such data by ScaleOps to its affiliates, subsidiaries and subcontractors. Without limiting the generality of the foregoing, ScaleOps may be required to disclose the Client Data: (a) to satisfy any applicable law, regulation, legal process, subpoena or governmental request; and/or (b) to collect, hold and/or manage the Client Data through ScaleOps' authorized third party service providers as reasonable for business purposes, which may be located in a country that does not have the same data protection laws as the data subject's jurisdiction. Client shall defend, hold harmless and indemnify ScaleOps and ScaleOps' affiliates and subsidiaries (including, without limitation, their employees, officers, directors, subcontractors and agents) from and against any and all losses, penalties, fines, damages, liabilities, settlements, costs and expenses, including reasonable attorneys' fees, in connection with Client's failure to comply with any data protection or privacy law or regulation, or breach of this Section 13.
14. **Disclaimer of Warranty and Limitation of Liability.** THE PLATFORM MAY PROVIDE CERTAIN RECOMMENDATIONS BASED ON THE CLIENT'S REQUEST, AND/OR WAYS OF SOLUTION IMPLEMENTATIONS. CLIENT ACKNOWLEDGES AND AGREES THAT THE ANY AND ALL USE OF THE SITE (INCLUDING THE PLATFORM), DIRECTLY AND INDIRECTLY, INCLUDING ANY IMPLEMENTATION OF RECOMMENDATION OR SUGGESTION, IS AT CLIENT'S SOLE DISCRETION AND RESPONSIBILITY. EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS, YOU HEREBYACKNOWLEDGES AND AGREES THAT THE SITE (INCLUDING WITHOUT LIMTIATION THE PLATFORM AND SERIVCES) ARE PROVIDED TO YOU "AS IS" WITHOUT ANY WARRANTIES WHATSOEVER CONCERNING THE USE OR PERFORMANCE THEREOF. SCALEOPS EXPRESSLY DISCLAIMS, AND YOU HEREBY EXPRESSLY WAIVE ALL OTHER WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS, IMPLIED AND STATUTORY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND, ARISING OUT OF OR RELATED TO THESE TERMS AND/OR THE SITE, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, DATA, BUSINESS AND/OR GOODWILL. EXCEPT IN THE EVENT OF SCALEOPS' WILLFUL MISCONDUCT, SCALEOPS'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THESE TERMS AND/OR THE SITE, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL IN NO EVENT EXCEED ONE THOUSAND DOLLARS US (US\$1,000).
15. **Indemnity.** You agree to defend, indemnify and hold harmless ScaleOps and our affiliates, and our respective officers, directors, employees and agents, from and against any and all claims, damages, obligations, losses, liabilities, costs and expenses (including but not limited to attorney's fees) arising from: (i) your use of, or inability to use, the Site; (ii) your User Submissions; (iii) your interaction with any Site user; or (iv) your violation of these Terms.
16. **Termination.** ScaleOps, in its sole discretion, has the right to terminate these Terms and/or your access to the Site, or any part thereof, immediately at any time and with or without cause (including, without any limitation, for a breach of these Terms). ScaleOps shall not be liable to you or any third party for termination of the Site, or any part thereof. If you object to any term or condition of these Terms, or any subsequent modifications thereto, or become dissatisfied with the Site in any way, your only recourse is to immediately discontinue use of the Site.

Upon termination of these Terms, you shall cease all use of the Site. This Section 16 and Sections 8 (Intellectual Property Rights), 9.3 (License to User Submissions), 10 (Confidential Information), 13 (Privacy), 14 (Warranty Disclaimers), 15 (Indemnity), and 17 (Independent Contractors) to 20 (General) shall survive termination of these Terms.

17. **Independent Contractors.** Client and ScaleOps are independent contractors. Nothing in these Terms creates a partnership, joint venture, agency, or employment relationship between Client and ScaleOps. Client must not under any circumstances make, or undertake, any warranties, representations, commitments or obligations on behalf of ScaleOps.
18. **Assignment.** These Terms, and any rights and licenses granted hereunder, may not be transferred or assigned by you but may be assigned by ScaleOps without restriction or notification to you. Any prohibited assignment shall be null and void.
19. **Governing Law.** ScaleOps reserves the right to discontinue or modify any aspect of the Site at any time. These Terms and the relationship between you and ScaleOps shall be governed by and construed in accordance with the laws of the State of Israel, without regard to its principles of conflict of laws. You agree to submit to the personal and exclusive jurisdiction of the courts located in Tel Aviv, Israel and waive any jurisdictional, venue, or inconvenient forum objections to such courts, provided that ScaleOps may seek injunctive relief in any court of competent jurisdiction
20. **General.** These Terms shall constitute the entire agreement between you and ScaleOps concerning the Site. If any provision of these Terms is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of these Terms, which shall remain in full force and effect. No waiver of any term of these Terms shall be deemed a further or continuing waiver of such term or any other term, and a party's failure to assert any right or provision under these Terms shall not constitute a waiver of such right or provision. **YOU AGREE THAT ANY CAUSE OF ACTION THAT YOU MAY HAVE ARISING OUT OF OR RELATED TO THE SITE MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.**

Last updated: November 14, 2022