

ScaleOps Terms of Use

Welcome to <https://www.scaleops.com/> (together with its subdomains, Content, and Marks, the "**Website**", and collectively with the 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, with the Platform, the "**Services**") and information about our 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 on behalf of yourself and/or your organization (collectively, the "**Client**", "**you**", or "**your**") are aware of your legal rights and obligations with respect to **ScaleOps Labs Ltd. ("ScaleOps", "we", "our" or "us")**.

By clicking "I AGREE", "I ACCEPT", "GET STARTED", "CONTINUE" or other similar button, or 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 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.

1. **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 proof of concept period set forth under the following webpage: <https://try.scaleops.com/> ("**POC Terms Page**"), or if no such period is specified and/or your use of the Platform is not governed by the POC Terms Page, then during 30 day proof of concept period commencing on the date on which your Token is received by you, unless terminated earlier by ScaleOps (the "**POC Term**"), in order to allow you to internally evaluate, demonstrate and test the performance and functionality of the Platform (the "**POC**") for internal and non-commercial use only. **By signing to this POC and/or agreeing to the Terms, you expressly acknowledge and agree that following the commencing of 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.**
2. **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.
3. **Ability to Accept Terms.** The Site is only intended for individuals aged eighteen (18) years or older.
4. **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.
5. **Restrictions.** You shall not and shall not allow any user or any third party to, directly or indirectly: (i) copy, modify, create derivative works of, or distribute any part of the Site (including by incorporation into its products); (ii) sell, license (or sub-license), lease, assign, transfer, pledge, or share Client's rights under these Terms with any third party; (iii) use the Site or any part thereof, for any benchmarking or testing, or disclose to any third party any testing or benchmarking of the Site (or any part of it); (iv) disassemble, decompile, reverse engineer or attempt to discover the Site's source code or underlying algorithms; (v) use the Site in a manner that violates or infringes any rights of any third party, including but not limited to, privacy rights, publicity rights or intellectual property rights; (vi) breach any of the ScaleOps' Intellectual Property Rights in the Site; (vii) remove or alter any trademarks or other proprietary notices related to the Site; (viii) circumvent, disable or otherwise interfere with security-related features of the Site or features that enforce use limitations; (ix) export, make available or use the Site in any manner prohibited by applicable laws, including without limitation, to sell, distribute, deploy, download or export the Site (a) to or in any countries or regions with respect to which the U.S. and/or the European Union maintains an embargo or sanctions ("**Prohibited Country**"), (b) to any person subject to individual prohibitions (e.g., listed on the U.S. Department of Commerce's Table of Denial Order Forms or the U.S. Department of Treasury's List of Specially Designated Nationals) (collectively, "**Designated Nationals**"), or (c) otherwise in violation of any export or import restrictions or laws and Client represents and warrants that it is not located in, under the control of, or a national or resident of, a Prohibited Country or Designated National; (x) transmit any malicious code (i.e., software viruses, Trojan horses, worms, malware or other computer instructions, devices, or techniques that erase data or programming, infect, disrupt, damage, disable, or shut down a computer system or any component of such computer system) or other unlawful material in connection with the Site; (xi) use the Site (including without limitation the Platform), or any part thereof, to develop, test, support, participate, or invest in, any product, service, feature, activities or functionality that is substantially similar to or competitive with the Site, any of their components or features, or with ScaleOps' business; (xii) engage, establish, open or in any manner whatsoever become involved (directly or indirectly), in any business, occupation, work or any other activity anywhere in the world, which may compete with the ScaleOps' business, existing or planned, in whole or in part; (xiii) solicit, hire, or engage any of the ScaleOps' employees, contractors, consultants, or agents who are or have been involved in the development, delivery, or support of the Site, without the prior written consent of the ScaleOps; (xiv) cause or permit any affiliate or third party to do any of the foregoing. Client shall be and remain fully responsible for its affiliates' compliance with the terms, conditions and restrictions on use contained in these Terms to the extent any

such affiliates use the Site; (xv) use the Service for any purpose other than for the POC; and/or (xvi) use or launch any automated system (including without limitation, "robots" and "spiders") to access the Site.

6. **Account.** In order to use certain 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 in order to start the POC. It is hereby clarified, that during the POC Term, ScaleOps may actively update the Platform configurations, including auto-updates of the Platform. 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 and you warrant that all information you submit during the registration process is, and will thereafter remain, complete and accurate. You are solely responsible for the activity that occurs in your Account, and you must keep your Account password secure. You shall ensure that all of your users which use the Account keep the user ID and password information strictly confidential and not share it with any unauthorized person. You must notify ScaleOps immediately of any breach of security or unauthorized use of your Account and any unauthorized access or use of the Service. As between you and ScaleOps, you are solely responsible and liable for the activity that occurs in connection with your Account. You will ensure that all of your users using the Account comply with these Terms at all times and you are fully responsible and liable for any breach of these Terms by such a user. 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 and/or the POC Terms Page, your right to access and use the Site is free during the POC Term. At the end of the POC Term and/or termination or expiration of these Terms, 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 and to any additional terms related to such a charge, 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 or owned or created by ScaleOps ("**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 non-commercial use only and may not be used, modified, copied, distributed, transmitted, broadcast, displayed, sold, licensed, decompiled, 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 and use it with the explicit written permission of ScaleOps.
 - 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 regardless of inventorship or authorship 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. You shall make, and hereby irrevocably make, all assignments necessary or reasonably requested by ScaleOps to ensure and/or provide ScaleOps the ownership right set forth in this paragraph. 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, 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' 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 may 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 Website may permit the submission, of certain content (including Feedback) 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 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 uploading them.
- 9.2. **Ownership.** You represent and warrant that you own or have the necessary rights and permissions to upload and submit your User Submissions to us. The User Submissions shall be the exclusive property of ScaleOps (including any of the related Intellectual Property Rights (defined below)), and will be assigned and are hereby assigned to ScaleOps by you and you waive all moral rights that it may have in respect thereto. Without derogating from the above, ScaleOps will be free to use or change the User Submission in any manner. Unless the User Submissions are separately referred to, all references herein to Content shall include references to User Submissions.
- 9.3. **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.
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. You will be allowed to disclose Confidential Information to the extent that such disclosure is required by law or by the order of a court of similar judicial or administrative body, provided that you notify ScaleOps of such required disclosure to ScaleOps to seek a protective order or otherwise prevent or restrict such disclosure. 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 contractually 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 destroy permanently or return to us (within our discretion) 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; (iv) 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. **Data and 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 [here](#) ("**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.

Without derogating from the above, while using the Platform and as part of the provided ScaleOps support, the Platform collects monitoring resource-related data (e.g. resource allocation, consumption, utilization of the different workloads running on the cluster, etc.), including ScaleOps internally generated data. None of this data is PI or PII, as ScaleOps does not collect or process such data.

14. **Disclaimer of Warranty.** The Site availability and functionality depends on various factors, such as communication networks, software, hardware and our service providers and contractors. ScaleOps does not warrant or guarantee that the Site and/or Service will operate at all times without disruption or interruption, or that it will be immune from unauthorized access or error-free. THE SERVICE 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. YOU HEREBY ACKNOWLEDGES AND AGREES THAT THE SITE (INCLUDING WITHOUT LIMITATION THE PLATFORM AND SERVICES) 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 WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS, IMPLIED AND STATUTORY, INCLUDING WITHOUT LIMITATION THE

WARRANTIES RELATED TO MERCHANTABILITY, TITLE, NON-INFRINGEMENT, NONINTERFERENCE, AND FITNESS FOR A PARTICULAR PURPOSE.

15. **Limitation of Liability.** 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. 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). THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT. THE EXCLUSIONS AND LIMITATIONS IN THIS SECTION WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND: (A) EVEN IF SCALEOPS HAS BEEN ADVISED, OR SHOULD HAVE BEEN AWARE, OF THE POSSIBILITY OF LOSSES, DAMAGES, OR COSTS; (B) EVEN IF ANY REMEDY IN THESE TERMS FAILS OF ITS ESSENTIAL PURPOSE; AND (C) REGARDLESS OF THE THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, TORT, NEGLIGENCE OR STRICT LIABILITY).
16. **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.

17. **Termination.** ScaleOps, in its sole discretion, has the right to terminate these Terms and/or terminate or suspend your access to the Site, or any part thereof (including to the Platform and Service), immediately at any time and without any notice, with or without cause (including, without any limitation, for a breach of these Terms, if ScaleOps determines suspension or termination is necessary to avoid harm to ScaleOps or its other customers, and/or for any other reason determined by the ScaleOps). 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 and any part thereof. Upon termination or expiration of these Terms, you shall cease all use of the Site and immediately delete and/or return (at ScaleOps' discretion) all copies of ScaleOps IPR in your or any of your representatives possession or control. This Section 17 and Sections 2 (Modification), 5 (Restrictions), 8 (Intellectual Property Rights), 9 (User Submissions), 10 (Confidential Information), 13 (Privacy), 14 (Disclaimer of Warranty), 15 (Limitation of Liability), 16 (Indemnity), and 18 (Independent Contractors) to 21 (General) shall survive termination or expiration of these Terms.
18. **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.
19. **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.
20. **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
21. **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 19, 2024