

OpsStack Terms and Conditions

Last updated: December 03, 2017

Please read this Agreement ("Agreement") carefully before using the OpsStack system (the "Service") operated by OpsStack Inc. ("us", "we", or "our").

Your access to and use of the Service is conditioned upon your acceptance of and compliance with this Agreement. This Agreement apply to all customers, visitors, users and others who wish to access or use the Service.

By accessing or using the Service you agree to be bound by this Agreement, which takes effect when you first access or user the Service (the "Effective Date"). If you disagree with any part of this Agreement then you do not have permission to access the Service.

Subscriptions & Billing

Subject to the terms of this Agreement and the applicable Policies and Order, OpsStack Inc. authorizes you to access and use the Service and Documentation solely for your internal, business use, by and through Authorized Users. This authorization is limited, nonexclusive and nontransferable.

Some parts of the Service are billed on a subscription basis ("Subscription(s)"). You will be billed in advance on a recurring and periodic basis ("Billing Cycle"). Billing cycles are set on a monthly basis.

At the end of each Billing Cycle, your Subscription will automatically renew under the exact same conditions unless you cancel it or OpsStack Inc. cancels it. You may cancel your Subscription renewal by contacting the OpsStack Inc. customer support team.

A valid payment method, including credit cards, is required to process the payment for your Subscription. You shall provide OpsStack Inc. with accurate and complete billing information including full name, address, state, zip code, telephone number, and a valid payment method information. By submitting such payment information, you automatically authorize OpsStack Inc. to charge all Subscription fees incurred through your account to any such payment instruments.

Should automatic billing fail to occur for any reason, OpsStack Inc. will issue an electronic invoice indicating that you must proceed manually, within a certain deadline date, with the full payment corresponding to the billing period as indicated on the invoice.

Free Trial

OpsStack Inc. may, at its sole discretion, offer a Subscription with a free trial for a limited period of time ("Free Trial").

You may be required to enter your billing information in order to sign up for the Free Trial.

If you do enter your billing information when signing up for the Free Trial, you will not be charged by OpsStack Inc. until the Free Trial has expired. On the last day of the Free Trial period, unless you cancelled your Subscription, you will be automatically charged the applicable Subscription fees for the type of Subscription you have selected.

At any time and without notice, OpsStack Inc. reserves the right to (i) modify the terms and conditions of the Free Trial offer, or (ii) cancel such Free Trial offer.

Taxes

All prices, fees and amounts are exclusive of taxes, levies, duties or charges imposed by government authorities (collectively, “**Taxes**”). You shall be solely responsible for all sales, service, value-added, use, excise, consumption and any other Taxes on amounts payable by you under this Agreement (other than any Taxes on OpsStack Inc.’s income, revenues, gross receipts, personnel or assets).

Fee Changes

OpsStack Inc., in its sole discretion and at any time, may modify the Subscription fees for the Subscriptions. Any Subscription fee change will become effective at the end of the then-current Billing Cycle.

OpsStack Inc. will provide you with a reasonable prior notice of any change in Subscription fees to give you an opportunity to terminate your Subscription before such change becomes effective.

Your continued use of the Service after the Subscription fee change comes into effect constitutes your agreement to pay the modified Subscription fee amount.

Refunds

Certain refund requests for Subscriptions may be considered by OpsStack Inc. on a case-by-case basis and granted in sole discretion of OpsStack Inc..

Accounts

When you create an account with us, you guarantee that you are above the age of 18, and that the information you provide us is accurate, complete, and current at all times. Inaccurate, incomplete, or obsolete information may result in the immediate termination of your account on the Service.

You are responsible for maintaining the confidentiality of your account and password, including but not limited to the restriction of access to your computer and/or account.

You agree to accept responsibility for any and all activities or actions that occur under your account and/or password, whether your password is with our Service or a third-party service. You must notify us immediately upon becoming aware of any breach of security or unauthorized use of your account.

Service Availability & Support

OpsStack Inc. shall use commercially reasonable efforts to make the Service available for access and use by end users. Subject to this Agreement, OpsStack Inc. shall provide Authorized Users support through the Service and by email with respect to their use of the Service (“**Support**”). Although response times are not guaranteed, OpsStack Inc. shall endeavor to respond to requests for Support within 48 hours

Non-OpsStack Services and Material

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

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

Use of Customer Data

You hereby grant OpsStack, Inc. a worldwide, non-exclusive, royalty-free right and license during the Agreement Term to use, reproduce, transmit, perform, display and store Customer Data for the purposes of OpsStack Inc. and its Affiliates and third-party Providers providing and supporting the Service for your benefit.

Service Requirements & Restrictions

You shall be strictly responsible for the performance of your Authorized Users, Affiliates and their personnel (including employees and contractors), and their use of the Service and Support, in compliance with this Agreement.

You represent and agree that using the Service complies with all Applicable Laws and Regulations.

No provision of this Agreement includes the right to, and you shall not, directly or indirectly: (a) enable any person or entity other than Authorized Users to access and use the Service; (b) modify or create any derivative work based upon the Service; (c) engage in, permit or suffer to continue any copying or distribution of the Service; (d) reverse engineer, disassemble or decompile all or any portion of, or attempt to discover or recreate the source code for, any software that is part of the Service (except to the extent such restriction is limited under Applicable Law); (e) access the Service in order to build a competitive

solution or to assist any third party to build a competitive solution; (f) remove, obscure or alter any proprietary notice related to the Service; or (g) use or permit others to use the Service other than as described in this Agreement, the Policies and Documentation, or for any unlawful purpose.

In the event OpsStack Inc. believes that you are violating any of the terms set forth in this Section, in addition to any other remedies available at law or in equity (including termination), OpsStack, Inc. will have the right to suspend your (or any Authorized User's) access to and use of the Service for so long as is reasonably necessary to address such potential violation. OpsStack, Inc. shall notify you of any such suspension by email and in advance (except in urgent or emergency situations), and work with you in good faith to resolve the potential violation.

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

Property Rights

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

You may provide OpsStack, Inc. with bug reports, suggestions or other feedback related to the Service (collectively, "**Feedback**"). By submitting any such feedback, you hereby assign to OpsStack, Inc. all right, title and interest in and to such feedback together with all intellectual property rights therein.

The Service, together with all know-how, processes, methodologies, specifications, designs, inventions, functionality, graphics, user interfaces, techniques, methods, applications, libraries, documentation or other technology and materials of any kind, or any enhancement thereto, used or made available by OpsStack, Inc. to you or any Authorized User in connection with the Service and Support, constitute or otherwise involve valuable intellectual property rights of OpsStack, Inc. and all right, title and interest in and to the foregoing will, as between the Parties, be owned by OpsStack, Inc..

No title to or ownership of the Service, or any intellectual property rights associated therewith, is transferred under this Agreement and OpsStack, Inc. reserves all rights not otherwise expressly granted herein.

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

Agent License

The Service may include downloadable or installable software such as host agents (the “Agent(s)”). OpsStack Inc. grants you a revocable, non-exclusive, non-transferable, limited license to download, install and use the Agent(s) solely for your internal purposes strictly in accordance with the terms of this Agreement.

Agent Restrictions

You agree not to, and you will not permit others to license, sell, rent, lease, assign, distribute, transmit, host, outsource, disclose or otherwise commercially exploit the Agent(s) or make the Agent(s) available to any third party.

Modifications to Agent(s)

OpsStack Inc. reserves the right to modify, suspend or discontinue, temporarily or permanently, the Agent(s) or any service to which it (they) connect(s), with or without notice and without liability to you.

Effect of Termination

Upon expiration or termination of this Agreement: (a) all rights granted to you with respect to the Service and Support will terminate effective as of the effective date of termination; (b) OpsStack, Inc. shall have no obligation to provide the Service to you or Authorized Users after the effective date of the termination; (c) you shall pay to OpsStack Inc. any amounts payable for your and any Authorized User's use of the Service through the effective date of the termination; and (d) you shall cease all use of the Agent(s) and delete all copies of the Agent(s) from your servers, containers, or other systems.

For up to 15 days from the effective date of termination an Authorized User designated by you will be permitted to continue to access and download the information that is stored in the Service database on the effective date of termination, provided that (i) you have paid all amounts due under this Agreement; (ii) the designated Authorized User shall not otherwise access or use the features or functionality of the Service; and (iii) such access and use shall otherwise continue to be subject to the terms and conditions of this Agreement.

Confidentiality

As used in this Agreement, “**Confidential Information**” means any information disclosed by one Party, its Affiliates, business partners or their respective employees, contractors or agents (the “**Discloser**”) that is designated as confidential, either orally or in writing, or that, given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential. Confidential Information includes without limitation: (a) information relating to the Discloser's or its Affiliates' technology, customers, business plans, promotional and marketing activities, finances and other business affairs; (b) third-party information that the Discloser is obligated to keep confidential; (c) Customer Data; and (d) the terms of this Agreement. However, Confidential Information does not include any information that: (i) was known to the Party that receives any Confidential Information (the “**Recipient**”) prior to receiving the same from the

Discloser in connection with this Agreement; (ii) is independently developed by the Recipient without reference to or use of the Discloser's Confidential Information; (iii) is acquired by the Recipient from another source without restriction as to use or disclosure; or (iv) is or becomes publicly available through no fault or action of the Recipient.

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

Indemnification

You agree to defend, indemnify and hold harmless OpsStack Inc. and its licensee and licensors, and their employees, contractors, agents, officers and directors, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees), resulting from or arising out of a) your use and access of the Service, by you or any person using your account and password, or b) a breach of these Terms.

Limitation Of Liability

In no event shall OpsStack Inc., nor its directors, employees, partners, agents, suppliers, or affiliates, be liable for any indirect, incidental, special, consequential or punitive damages, including without limitation, loss of profits, data, use, goodwill, or other intangible losses, resulting from (i) your access to or use of or inability to access or use the Service; (ii) any conduct or content of any third party on the Service; (iii) any content obtained from the Service; and (iv) unauthorized access, use or alteration of your transmissions or content, whether based on warranty, contract, tort (including negligence) or any other legal theory, whether or not we have been informed of the possibility of such damage, and even if a remedy set forth herein is found to have failed of its essential purpose.

Disclaimer

Your use of the Service is at your sole risk. The Service is provided on an "AS IS" and "AS AVAILABLE" basis. The Service is provided without warranties of any kind, whether express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, non-infringement or course of performance.

OpsStack Inc. its subsidiaries, affiliates, and its licensors do not warrant that a) the Service will function uninterrupted, secure or available at any particular time or location; b) any errors or defects will be corrected; c) the Service is free of viruses or other harmful components; or d) the results of using the Service will meet your requirements.

Exclusions

Some jurisdictions do not allow the exclusion of certain warranties or the exclusion or limitation of liability for consequential or incidental damages, so the limitations above may not apply to you.

Governing Law

This Agreement shall be governed and construed in accordance with the laws of Delaware, United States, without regard to its conflict of law provisions.

Our failure to enforce any right or provision of this Agreement will not be considered a waiver of those rights. If any provision of these Terms is held to be invalid or unenforceable by a court, the remaining provisions of this Agreement will remain in effect.

This Agreement constitutes the entire agreement between us regarding our Service, and supersedes and replaces any prior agreements we might have had between us regarding the Service.

Changes

We reserve the right, at our sole discretion, to modify or replace this Agreement at any time. If a revision is material we will provide at least 30 days notice prior to any new agreement taking effect. What constitutes a material change will be determined at our sole discretion.

By continuing to access or use our Service after any revisions become effective, you agree to be bound by the revised agreement. If you do not agree to the new agreement, you are no longer authorized to use the Service.

Contact Us

If you have any questions about this Agreement, please contact us.

Definitions

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

“Affiliate” means, with respect to a Party, a business entity that directly or indirectly controls, is controlled by or is under common control with, such Party; “control” (including the terms “controlled by” and “under common control with”) means the direct or indirect ownership of more than 50% of the voting securities of a business entity.

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

“Authorized User” means your individual employee, agent or contractor or, subject to Section 2.2, Affiliate, who is authorized by you or the applicable Affiliate to access and use the Service pursuant to the terms of the applicable Order and this Agreement.

“Container” means an isolated, self-contained software operating environment that includes application software and limited operating system libraries and settings.

“Customer Data” means the data, content and other material that you and/or any Authorized User run on or through the Service, cause to interface with the Service, upload to the Service, or otherwise transfer, process, use or store in connection with the Service.

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

“Service” means the subscribed service offering(s), as such offering(s) are described at <https://www.OpsStack.io>. The features and functionality of Service may be modified, enhanced or otherwise changed from time to time, provided such change does not result in a material adverse change to the applicable Service (in its entirety) as it existed at the Effective Date.