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Terms of Use

OpsLevel Terms of Use – T4

Terms of Use

THESE TERMS OF USE ('TERMS OF USE') ARE A LEGAL AGREEMENT BETWEEN J/K LABS INC. ('J/K LABS', 'OPSLEVEL', 'US', 'WE', OR 'OUR') AND THE COMPANY YOU REPRESENT ('YOU' OR 'YOUR') WHERE YOU SUBMIT AN ORDER THAT IS ACCEPTED BY US FOR A SUBSCRIPTION TO OUR PLATFORM AND GOVERNS YOUR ACCESS USE OF OUR PLATFORM. BY SUBMITTING AN ORDER TO SUBSCRIBE FOR THE PLATFORM AND ACCEPTING THESE TERMS OF USE, EITHER THROUGH SUBMITTING THE ORDER, CLICKING TO SIGNIFY ACCEPTANCE, SETTING UP A USER ACCOUNT OR OTHERWISE USING THE PLATFORM, YOU AGREE TO BE BOUND BY ALL OF THEIR PROVISIONS. YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THESE TERMS OF USE ON THE COMPANY'S BEHALF. IF YOU DO NOT AGREE WITH THE TERMS OF USE, YOU SHOULD NOT INDICATE ACCEPTANCE AND MAY NOT USE THE PLATFORM.

PLEASE READ THESE TERMS OF USE CAREFULLY TO ENSURE THAT YOU UNDERSTAND EACH PROVISION. THESE TERMS OF USE CONTAIN A MANDATORY INDIVIDUAL ARBITRATION PROVISION THAT REQUIRES THE USE OF ARBITRATION RESOLVE DISPUTES.

1. Definitions.

- a. "Documentation" means the instructions on how to configure your account on the Platform, provide Teams and Users, and otherwise get the full benefit of the Service will be found in the readme and help files, knowledge base, and other documentation made available at <https://www.opslevel.com/docs>
- b. "Order" means an ordering document or online order specifying the subscription to the Platform that is entered into between you and Opslevel, including any addenda and supplements thereto.
- c. "Production Service" or "Service" is a software microservice, system, workflow or process of a Subscriber which can be defined, created, tracked and/or managed through the Platform .
- d. "Subscriber" is a subscriber to our Platform, and includes you when you subscribe to our Platform through an Order
- e. "Team" is a collection of Users.
- f. "Term" has the meaning given to it in the "Term and Termination" section below.

- g. "User" is a person or system accessing your account within the Platform.
- h. "User Information" means the identifiable information of your personnel, including, but not limited to, names, email addresses, telephone numbers, and other contact information.

2. Subscription Terms.

Subject to payment of all Fees and the terms and conditions of these Terms of Use, where you submit an Order that is accepted by us, we hereby grant you a limited, non-exclusive, non-sublicensable and non-transferable right during the Term to use the Platform only in accordance with the Documentation, solely for your internal purposes. Your right to use the Platform during the Term shall be in accordance with any additional conditions, restrictions or parameters specified in the Order.

You must purchase a subscription through an Order for each Service that you create in the Platform and/or User that you grant access to the Platform . If you exceed the permitted number of Services or Users then you will be charged the applicable additional Fees for the excess Production Services or Users, as defined in the Order. You may add Production Services or Users from the application dashboard as needed, subject to paying applicable additional Fees, and amending or agreeing to a new Order. Users might also be automatically provisioned for you if they log into the Platform through a Single-Sign-On (SSO) integration, which may also be subject to additional fees as set out in the Order.

You are solely responsible for selecting secure User passwords, changing passwords frequently, maintaining the confidentiality of User logons and passwords, and restricting access to the Platform. We assume no responsibility for damage or loss arising from unauthorized access to the Platform and your account due to your failure to protect your account through proper maintenance of User logons and passwords.

The Platform may be subject to limitations as set forth in the Order and/or Documentation, including, but not limited to, limits on disk storage space, the rate of incoming application requests, the number of inbound calls permitted to the API within a specified period of time, and the number of outbound calls the Platform will make to a client API within a specified period of time. You acknowledge that exceeding these other limitations may cause the Platform to malfunction, may accrue additional Fees, or may result in suspension of the Platform until compliance has occurred.

You must configure your own account within the Platform and provide and maintain accurate Team and User information. We may suspend or terminate your use of the Platform at any time if you materially breach any terms of these Terms of Use, including without limitation failing to pay Fees.

3. Restrictions on Use.

You may not use the Platform or Documentation except as permitted in these Terms of Use. Without limiting the foregoing, you may not, and may not cause or permit any third party to, (i) alter, modify or create any derivative works of the Platform, the underlying source code, or the Documentation in any way, including without limitation customization, translation or localization; (ii) rent, lease, license, sublicense, encumber, sell, offer for sale, or otherwise transfer rights to the Platform or Documentation, including for timesharing or as a service bureau; (iii) port, reverse compile, reverse assemble, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Platform; (iv) copy, distribute, link, frame, mirror or otherwise make available any portion of the Platform to any third party; (v) remove or alter any logos, trademarks, links, copyright or other notices, legends or markings from the Platform or Documentation; (vi) attempt to bypass or tamper

with the security, operation of the Platform; (vii) attempt to access the accounts or data of any other customer or user; (viii) use the Platform for benchmarking purposes or otherwise to analyze its workings and features for competitive purposes or in a manner that imposes unusual demands on the service outside of normal functions and operations; (ix) create derivative works based on the Platform except to the extent that enforcement is prohibited by applicable law notwithstanding a contractual provision to the contrary; (x) circumvent any user limits or other timing or use restrictions that are built into the Platform; (xi) frame or mirror any content forming part of the Platform; or (xii) access the Platform in order to (i) build a competitive product or service, or (ii) copy any ideas, features, functions or graphics of the Platform.

4. Proprietary Rights.

a. Reservation of Rights.

Subject to the limited rights expressly granted hereunder, we reserve all rights, title and interest in and to the Platform, including all related intellectual property rights. No rights are granted to you hereunder other than as expressly set forth in these Terms of Use.

b. Your Data.

As between we and you, you exclusively own all rights, title and interest in and to all your Data, where “your Data” means all electronic data or information submitted by you to the Platform, including without limitation any User Information. Your Data is deemed your Confidential Information under these Terms of Use. We shall not access your Data, except (i) to respond to service or technical problems; or (ii) at your request; or (iii) as necessary for the operation of the Platform or billing; or (iv) as provided for below. You hereby grant us a non-exclusive, non-transferable (except in connection with the permitted assignment of this Agreement), irrevocable, worldwide, royalty-free, fully paid-up license for the Term (and for a reasonable period of time thereafter solely in support of any wind down activities, not to exceed thirty (30) days) to use and otherwise exploit your Data as reasonably required to provide the Platform. The forgoing license shall include the right for us to use and copy your Data for the purpose of creating aggregated and anonymized statistical analytics and other deidentified data in respect to Platform use and other Platform and User parameters, characteristics and use and other learnings that may be derived from your Data (“Aggregated Statistics”). We shall own all Aggregated Statistics created from the Customer Data.

c. Suggestions.

We shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual, unrestricted license to use or incorporate into the Platform and/or any other products or services any suggestions, enhancement requests, recommendations or other feedback provided by you relating to the Platform.

5. Support, Security and Privacy.

- a. We shall provide basic support for the Platform as outlined in the Order when you enroll in the Platform.
- b. We shall maintain administrative, physical, and technical safeguards in accordance with good industry practice for protection of the security, confidentiality and integrity of User Information. Without your prior written consent, we shall not (i) modify User Information other than as required for the purpose of providing the Platform, (ii) disclose User Information to a third party (except as needed to perform the Platform or if required to do so by law or governmental process), or (iii) access User Information except to provide the

Platform and prevent or address Platform or technical problems. In the event of an intrusion or other breach of the Platform's security, Company shall use reasonable efforts to (a) notify you of the breach once a full investigation into the nature of the breach has been conducted and concluded and sufficient steps to remediate or correct the breach have occurred to ensure that all customer data is secure and would not be further jeopardized by such notification, and (b) resolve the breach and recover any data disclosed as a result thereof.

6. Fees and Payment Terms.

You shall pay all Fees associated with your use of the Platform as set forth on your Order ('Fees'). Fees must be paid by check or wire transfer. For annual plans: (i) you will pay for a full year's subscription fees based on the initial number of Services, Users or such other variable as may be set out in the Order, which amount is not cancellable or refundable (except as otherwise described in these Terms of Use); (ii) where the number of Services, Users or other applicable variable exceeds the number set out in the Order during the term of your plan ('Overages'), you will pay fees for Overages as set forth on your Order. You agree to pay all Overage charges incurred by check, wire transfer, or other payment method used in connection with a purchase or transaction or other monetary transaction interaction with the Platform at the prices in effect when such charges are incurred. You will pay any applicable taxes, if any, relating to any such purchases, transactions or other monetary transaction interactions. All Fees are payable in United States dollars and are non-cancelable and non-refundable except as otherwise set forth herein. You shall be responsible for and pay all sales, use, value added or other taxes, except for taxes based on our income. Unpaid amounts payments may be assessed a late fee of the lesser of 1% per month or the maximum rate permitted by applicable law. We may suspend or terminate access to the Platform if you fail to make any payments when due.

7. Confidentiality.

The Platform and Documentation and all other information disclosed to you will be our 'Confidential Information'. Your User Information and your Data will be your Confidential Information. Each party will keep the other's Confidential Information confidential, will only use it in furtherance of the relationship governed by these Terms of Use, and will not disclose it to any third party unless required to do so by law (in which case notice shall be given of the requirement to allow the other party to object or take other action), or if needed to fulfill its obligations hereunder (in which case any such third party must be bound by similar terms of confidentiality).

8. Injunctive Relief.

You acknowledge and agree that your breach or threatened breach of these Terms of Use shall cause us irreparable damage for which recovery of money damages would be inadequate and that we therefore may obtain timely injunctive relief to protect its rights under these Terms of Use in addition to any and all other remedies available at law or in equity.

9. Indemnification

- a. By Us. We shall defend, indemnify and hold you harmless from and against all claims, losses and damages (including reasonable attorneys' fees) made by a third party that the Platform infringes that third party's intellectual property rights, except to the extent such a claim is based on your misuse of the Platform. If we believe that any portion of the Platform may be subject to such a claim, then we may, at our sole option and expense: (i) procure for you the right to continue using the Platform; (ii) modify or replace the infringing portions of the Platform to allow for continued use, or if these alternatives are not commercially reasonable refund any unused, prepaid Fees and terminate your subscription to the Platform. THIS SECTION STATES OUR

ENTIRE LIABILITY FOR INFRINGEMENT RELATING TO THE SUBJECT MATTER OF THESE TERMS OF USE. As a condition to being indemnified you shall promptly notify us of any claim, and allow us sole control of the defense and settlement of the claim, except that we shall not enter into any settlement affecting your rights or imposing an obligation on you without your prior written consent.

- b. By You. You agree to defend, indemnify and hold J/K Labs Inc. harmless from and against all third party claims, losses and damages, suits, government investigations, fines, actions, damages, settlements, losses, liabilities, costs and expenses (including reasonable attorney's fees) for your gross negligence, willful misconduct, or violation of applicable laws or arising from any of your Data infringing on any third party's rights . As a condition to being indemnified we shall promptly notify you of any claim, and allow you control of the defense and settlement of the claim, except that you shall not enter into any settlement affecting our rights or obligating us without our prior written consent.

10. Warranties; Disclaimers.

- a. **Representations.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.
- b. **Warranties.** We warrant that during an applicable subscription term (a) this Agreement, the Order Forms and the Documentation will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of your Data, (b) We will not materially decrease the overall security of the Platform, and (c) the Platform will perform materially in accordance with the applicable Documentation, For any breach of a warranty above, Your exclusive remedies are those described in the "Term and Termination" section below.
- c. OTHER THAN AS EXPRESSLY PROVIDED FOR ABOVE, WE PROVIDE THE PLATFORM AND DOCUMENTATION 'AS IS' WITHOUT ANY WARRANTY WHATSOEVER AND HEREBY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THAT THE PLATFORM WILL BE FREE FROM ERRORS OR VIRUSES, IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, RELIABILITY, ACCURACY, SECURITY OF DATA, OR ACHIEVEMENT OF RESULTS.
- d. WE DO NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT, SERVICE OR CONTENT ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE PLATFORM OR ANY HYPERLINKED WEBSITE, SERVICE OR CONTENT, AND WE WILL NOT BE A PARTY TO, LIABLE FOR OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES.

11. Limitation of Liability.

NEITHER PARTY SHALL BE LIABLE HEREUNDER TO THE OTHER UNDER ANY LEGAL

OR EQUITABLE THEORY, INCLUDING, WITHOUT LIMITATION, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR STRICT LIABILITY, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR LOST PROFITS, WHETHER OR NOT FORESEEABLE AND EVEN IF SUCH PARTY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT WHERE OTHERWISE EXPLICITLY INDICATED, A PARTY'S LIABILITY ARISING OUT OF OR IN CONNECTION WITH YOUR USE OF THE PLATFORM SHALL NOT EXCEED THE AMOUNTS PAID OR PAYABLE HEREUNDER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY. WITHOUT LIMITING THE FOREGOING, WE SHALL HAVE NO LIABILITY FOR ANY FAILURE OF THE PLATFORM ARISING FROM OR RELATED TO (I) ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS (II) YOUR OR YOUR USERS' FAILURE TO CONFIGURE THE PLATFORM IN CONFORMANCE WITH THE DOCUMENTATION, OR (III) YOUR OR YOUR USERS' FAILURE TO PROVIDE ACCURATE USER INFORMATION TO THE PLATFORM. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION. NOTWITHSTANDING THE FOREGOING, NO LIMITATION OF EITHER PARTY'S LIABILITY SET FORTH IN THIS AGREEMENT SHALL APPLY TO (I) DAMAGES ARISING FROM A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS, (II) DAMAGES ARISING FROM ANY INFRINGEMENT AND/OR MISAPPROPRIATION OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS; (III) ANY CLAIMS FOR NON-PAYMENT; OR (IV) EACH PARTY'S INDEMNIFICATION OBLIGATIONS PURSUANT TO THIS AGREEMENT.

12. Modifications to the Terms of Use.

We reserve the right, at our sole discretion, to modify or replace any part of these Terms of Use by (i) posting revised Terms of Use on and/or through the Platform or (ii) providing notice to you of the change. Modifications will take effect at the end of the prepaid Term.

13. Arbitration.

READ THIS SECTION CAREFULLY BECAUSE IT REQUIRES THE PARTIES TO ARBITRATE THEIR DISPUTES AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM US. For any dispute with us, you agree to first contact us at legal@opslevel.com and attempt to resolve the dispute with us informally. In the unlikely event that we have not been able to resolve a dispute it has with you after sixty (60) days, any controversy or claim arising out of or relating to your use of the Platform, these Terms of Use, or the breach hereof, shall be settled by arbitration in the city of Toronto, Canada, by binding arbitration. Any award shall be final, binding and conclusive. A judgment upon the award rendered may be entered in any court having jurisdiction thereof. Nothing in this Section shall be deemed as preventing either party from seeking injunctive or other equitable relief from the courts as necessary to prevent the actual or threatened infringement, misappropriation, or violation of our data security, intellectual property rights or other proprietary rights.

14. Term and Termination.

Your subscription to the Platform commences on the date set out in the Order Form, and shall continue for the subscription period set out in the Order Form ("Initial Term"). At the end of the Initial Term and any subsequent Renewal Term, your subscription shall automatically renew for additional period (each a "Renewal Term") of the same length as the Initial Term at the prices communicated to you at least sixty (60) days prior to the end of that term (or the same prices as the prior term if no new prices are provided) until terminated by either you or us with at least thirty (30) days notice prior to the end of each such term. The Initial Term and Renewal Term are collectively referred to as the "Term". Either party may

terminate the Terms upon thirty (30) days prior written notice to the other party for a material breach that remains uncured at the expiration of such period. Immediately upon termination of the Terms for any reason, you will (i) cease use of the Platform, (ii) pay in full all Fees due upon termination, and (iii) return or destroy all copies of our Confidential Information. Upon expiration or termination of the Terms for any reason your account shall be deactivated and all Contact Information deleted. All provisions of these Terms of Use which by their nature should survive cancellation or termination shall survive cancellation or termination.

15. Publicity.

You agree that we may identify you as a customer in our promotional and marketing activities and on our website.

16. Miscellaneous.

You will only use the Platform in accordance with applicable law, including, without limitation all export control laws. These Terms of Use shall be governed by and interpreted in accordance with the laws of the province of Ontario without regard to its conflict of laws provisions. Except for an assignment to an affiliate, you may not assign, sublicense, delegate or otherwise transfer any of your rights or obligations under these Terms of Use without our prior written consent. We may assign our agreement with you at our sole discretion. These Terms of Use shall be binding upon and shall inure to the benefit of the parties, their successors and permitted assigns. If any provision of these Terms of Use is held to be invalid or unenforceable, such provision shall be construed to reflect the parties original intent, and the remainder of these Terms of Use shall remain in full force and effect. These Terms of Use and the applicable Order constitute the entire understanding and agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements or understandings. The failure of either party to enforce any of the provisions of these Terms of Use shall not be construed to be a waiver of the right of such party thereafter to enforce such provisions. The parties to these Terms of Use are independent contractors and no agency, partnership, joint venture, employment or similar relationship exists between them. Neither party has the authority to bind the other or incur any obligation on its behalf. Notices required hereunder shall be effective if delivered by email (effective upon transmission, as evidenced by transmission reports), courier or delivery service (effective upon receipt), or first class Canada mail, return receipt requested (effective upon receipt).