



NCS Service Terms

Last Updated: July 25, 2020

This Agreement is between you and the entity you represent ("Customer", "You", "Your") and the applicable Nkponani Cloud Services contracting entity under the Agreement ("NOBUS Cloud Service" or "NCS")

The Service Terms below govern your use of the Services. Capitalized terms used in these Service Terms but not defined below are defined in the [NCS Customer Agreement](#) or other agreement with us governing your use of the Services (the "Agreement"). For purposes of these Service Terms, "Your Content" includes any "Company Content" and any "Customer Content," and "NOBUS Content" includes "NOBUS Properties."

1. General Service Terms (Applicable to All Services)

1.1. You may not transfer outside the Services any software (including related documentation) you obtain from us or third party licensors in connection with the Services without specific authorization to do so.

1.2. You must comply with current technical documentation applicable to the Services (including applicable developer guides) posted on the NCS Site.

1.3. You will provide information or other materials related to Your Content (including copies of any client-side applications) as reasonably requested by us to verify your compliance with the Agreement. You will reasonably cooperate with us to identify the source of any problem with the Services that we reasonably believe may be attributable to Your Content or any end user materials that you control.

1.4. In connection with your use of the Services, you are responsible for maintaining licenses and adhering to the license terms of any software you run. If we reasonably believe any of Your Content violates the law, infringes or misappropriates the rights of any third party, or otherwise violates a material term of the Agreement (including the documentation, the Service Terms, or the Acceptable Use Policy) ("Prohibited Content"), we will notify you of the Prohibited Content and may request that such content be removed from the Services or access to it be disabled. If you do not remove or disable

access to the Prohibited Content within 24 hours of our notice, we may remove or disable access to the Prohibited Content or suspend the Services to the extent we are able to remove or disable access to the Prohibited Content. Notwithstanding the foregoing, we may remove or disable access to any Prohibited Content without prior notice in connection with illegal content, where the content may disrupt or threaten the Services or in accordance with applicable law or any judicial, regulatory or other governmental order or request. In the event that we remove Your Content without prior notice, we will provide prompt notice to you unless prohibited by law. We will suspend the accounts of repeat infringers in appropriate circumstances.

1.5. You will ensure that all information you provide to us via the NCS Site (e.g., information provided in connection with your registration for the Services, requests for increased usage limits) is accurate, complete, and not misleading.

1.6. From time to time, we may apply upgrades, patches, bug fixes, or other maintenance to the Services and NCS Content ("Maintenance"). We agree to use reasonable efforts to provide you with prior notice of any scheduled Maintenance (except for emergency Maintenance), and you agree to use reasonable efforts to comply with any Maintenance requirements that we notify you about.

1.7. If your Agreement does not include a provision on NCS Confidential Information, and you and NCS do not have an effective non-disclosure agreement in place, then you agree that you will not disclose NCS Confidential Information (as defined in the NCS Customer Agreement), except as required by law.

1.8. You may perform benchmarks or comparative tests or evaluations (each, a "Benchmark") of the Services. If you perform or disclose, or direct or permit any third party to perform or disclose, any Benchmark of any of the Services, you (i) will include in any disclosure, and will disclose to us, all information necessary to replicate such Benchmark, and (ii) agree that we may perform and disclose the results of Benchmarks of your products or services, irrespective of any restrictions on Benchmarks in the terms governing your products or services.

1.9. Only the applicable NCS Contracting Party (as defined in the NCS Customer Agreement) will have obligations with respect to each NCS account, and no other NCS Contracting Party has any obligation with respect to such account. The NCS Contracting Party for an account may change as described in the Agreement. Invoices for each account will reflect the NCS Contracting Party that is responsible for that account during the applicable billing period.

If, as of the time of a change of the NCS Contracting Party responsible for your account, you have made an up-front payment for any Services under such account, then the NCS Contracting Party you paid such up-front payment to may remain the NCS Contracting Party for the applicable account only with respect to the Services related to such up-front payment.

1.10. When you use a Service, you may be able to use or be required to use one or more other Services (each, an “Associated Service”), and when you use an Associated Service, you are subject to the terms and fees that apply to that Associated Service.

1.11. If you process the personal data of End Users or other identifiable individuals in your use of a Service, you are responsible for providing legally adequate privacy notices and obtaining necessary consents for the processing of such data. You represent to us that you have provided all necessary privacy notices and obtained all necessary consents. You are responsible for processing such data in accordance with applicable law.

1.12. If you have been charged for a Service for a period when that Service was unavailable (as defined in the applicable Service Level Agreement for each Service), you may request a Service credit equal to any charged amounts for such period.

1.13. If you are a customer that is subject to any government regulation on information security, user data security, PCI-DSS or any other related regulatory compliance policies of any country, you agree that your use of the Services complies with the relevant policies that apply to you.

1.14. Data Protection.

1.14.1 These Service Terms incorporate the [NCS Data Processing Addendum](#) (“DPA”), when it applies to your use of the NCS Services to process Customer Data (as defined in the DPA). The DPA is effective as of 25 May 2020 and replaces and supersedes any previously agreed data processing addendum between you and NCS relating to the Directive 95/46/EC.

1.15. Following closure of your NCS account, we will delete Your Content in accordance with the Documentation.

2. NCS Flexible Compute Services

2.1. In conjunction with the Services, you may be allowed to use certain software (including related documentation) developed and owned by Microsoft Corporation or its licensors (collectively, the “Microsoft Software”).

2.1.1. If you use the Microsoft Software, Microsoft and its licensors require that you agree to these additional terms and conditions:

- The Microsoft Software is neither sold nor distributed to you, and you may use it solely in conjunction with the Services.
- You may not transfer or use the Microsoft Software outside the Services.
- You may not remove, modify, or obscure any copyright, trademark, or other proprietary rights notices that are contained in or on the Microsoft Software.
- You may not reverse engineer, decompile, or disassemble the Microsoft Software, except to the extent expressly permitted by applicable law.
- Microsoft disclaims, to the extent permitted by applicable law, all warranties by Microsoft and any liability by Microsoft or its suppliers for any damages, whether direct, indirect, or consequential, arising from the Services.
- Microsoft is not responsible for providing any support in connection with the Services. Do not contact Microsoft for support.
- You are not granted any right to use the Microsoft Software in any application controlling aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles, weaponry systems, or any similar scenario (collectively, “High Risk Use”). Microsoft and its suppliers disclaim any express or implied warranty of fitness for High Risk Use. High Risk Use does not include utilization of the Microsoft Software for administrative purposes, to store configuration data, engineering and/or configuration tools, or other non-control applications, the failure of which would not result in death, personal injury, or severe physical or environmental damage. These non-controlling applications may communicate with the applications that perform the control, but must not be directly or indirectly responsible for the control function.
- Microsoft is an intended third-party beneficiary of this Section 5.1.1, with the right to enforce its provisions.
- By using Microsoft software, you agree to be bound by the terms and conditions of the [Microsoft End User License Agreement](#) and the [Microsoft Services Terms and Conditions](#)
- SQL Server Web Edition may be used only to support public and Internet accessible Web pages, Web sites, Web applications, or Web services. It may not be used to support line of business applications (e.g., Customer Relationship Management, Enterprise Resource Management, and other similar applications).
- Microsoft is an intended third-party beneficiary of this Section 10.4, with the right to enforce its provisions.

2.1.2. For any instance running Microsoft Software (each, a “Microsoft Instance”), you may not use nesting, container, or similar technologies to sell or resell multiple instances, portions of an instance, or containers running within the Microsoft Instance, unless (a) you are the ultimate end user of the Microsoft Instance, (b) you have supplemented the Microsoft Instance with your own applications, or (c) you have added primary and significant functionality to the Microsoft Instance.

2.2. In conjunction with the Services, you may be allowed to use certain software (including related support, maintenance, and documentation) developed, owned, or provided by third parties or their licensors. Use of third party software is subject to these additional terms and conditions:

- By using Red Hat, Inc.’s software, you agree to be bound by the terms and conditions of the [Red Hat Cloud Software Subscription Agreement](#). Red Hat also disclaims any (i) warranties with respect to Red Hat, Inc. software; and (ii) liability for any damages, whether direct, indirect, incidental, special, punitive or consequential, and any loss of profits, revenue, data or data use, arising from use of Red Hat, Inc. software.
- By using SUSE LLC’s software, you agree to be bound by the terms and conditions of the [SUSE End User License Agreement](#) and the [SUSE Terms and Conditions](#).

3. NCS EyesOn

NCS EyesOn collects and stores certain information for the Services you are monitoring, including CPU utilization, data transfer, and disk usage and activity (collectively, “EyesOn Metric Data”). EyesOn Metric Data may be used by NCS to maintain and provide the Services (including development and improvement of the Services).

4. NCS Access Management (NAM)

4.1. We may change user credentials created by you using NAM if we determine in our reasonable discretion that a change is necessary for the protection of your NCS account and resources, and we will promptly notify you of any such change.

4.2. We may change, discontinue, or deprecate support for any third-party identity provider at any time without prior notice.

5. NCS Domain and DNS

5.1. You may not create a hosted zone for a domain that you do not own or have authority over.

5.2. All Domain Name System (DNS) records (other than Private DNS records) used in connection with NCS Domain and DNS will be publicly available, and NCS will have no liability for disclosure of those DNS records.

6. NCS Fast Transit (NFT)

6.1. You are responsible for protecting your NCS Fast Transit (NFT) connections, including using physical security, firewalls, and other network security tools as appropriate.

6.2. NCS will permit data center operators or other service providers to connect your hardware to NCS'S hardware at the NCS Fast Transit (NFT) location(s) that you select. NCS will provide the necessary information to enable the data center operator or other service provider to establish and monitor this connection, including your name, email address, network configuration, activity information, and NCS account number.

6.3. You are responsible for your separate relationship with the data center operator or other service provider, including compliance with your agreement with, and the policies and procedures of, the data center operator or other service provider, and payment of applicable fees to the data center operator or other service provider. You are responsible for providing or procuring (and NCS will not own or be responsible for) any equipment or cabling necessary to establish this dedicated connection.

6.4. If the connection you establish as part of NCS Fast Transit (NFT) is temporarily unavailable or terminated, you are responsible for setting up an alternative network path, to route your NCS traffic over the public Internet and NCS'S standard bandwidth charges will apply.

7. NCS Professional Services

7.1. "NOBUS Professional Services" are advisory and consulting services that NCS provides under a statement of work ("SOW") to help you use the other Services. NCS Professional Services are "Services" for purposes of the Agreement.

7.2. NCS or any of its affiliates may enter into a SOW with you to provide NCS Professional Services. For the purposes of each SOW, the term "NOBUS" in the SOW and the Agreement refers to the NCS entity that executes the SOW, and no other NCS entity has any obligations under that SOW. Each SOW (together with the Agreement) is intended by the parties as the final, complete, and exclusive terms of their agreement and supersedes all prior agreements and understandings (whether oral or written) between the parties with respect to the subject matter of that SOW.

7.3. NCS will invoice you monthly for the NCS Professional Services. Payments for NCS Professional Services are not refundable.

7.4. NCS does not provide legal or compliance advice. You are responsible for making your own assessment of whether your use of the Services meets applicable legal and regulatory requirements.

7.5. Other than Third Party Content, Content that NCS provides as part of the NCS Professional Services is NCS Content. You are solely responsible for testing, deploying, maintaining and supporting Content provided or recommended by NCS.

7.6. NCS may develop Content consisting of either (a) documents and diagrams ("Documents") or (b) software (in source or object code form), sample code, or scripts ("Software") for you as part of the NCS Professional Services (such Documents and Software, "Developed Content"). Subject to any non-Disclosure agreement in effect between you and NCS, NCS is not precluded from developing, using, or selling products or services that are similar to or related to the Developed Content. Any Developed Content provided to you by NCS as part of the NCS Professional Services under a SOW is licensed under the following terms:

- NCS licenses any Documents to you under the Creative Commons Attribution 4.0 International License (CC-BY 4.0); and
- NCS licenses any Software to you under the Apache License, Version 2.0.

7.7. Some Developed Content may include NCS Content or Third Party Content provided under a separate license. In the event of a conflict between Section 45.6 above and any separate license, the separate license will control with respect to such NCS Content or Third Party Content.

7.8. Any materials or information that you own or license from a third party and provide to NCS for the purposes of the NCS Professional Services are Your Content. If you choose to provide access to Your Content to NCS, then you will ensure that you have adequate rights and permissions to do so.

7.9. If there is a conflict between this Section 45 and any NCS Implementation Services Addendum between you and NCS, the terms of the NCS Implementation Services Addendum will control, and references to "Implementation Services" in that addendum include NCS Professional Services.

8. NCS Training

8.1. "NOBUS Training" means the training programs that NCS provides in connection with the Services, and includes instructor-led and self-paced digital classes, labs, and other training sessions and materials. NCS Training is a "Service" for purposes of the Agreement. To arrange private instructor-led NCS Training for your employees or others, NCS or any of its affiliates may enter into a training order with you (a "Training Order"). References to "NOBUS" in each Training Order mean the NCS entity that executes it, and no other NCS entity will have any obligations under such Training Order. To the extent there is a conflict between the Agreement and a Training Order, the Training Order controls.