

## Terms of Service

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BY CLICKING THE "ACCEPT" BUTTON DISPLAYED AS PART OF THE AWS MARKETPLACE PRIVATE OFFER RELATED TO THE NOPS, INC. CLOUD SPEND MANAGEMENT AND COST OPTIMIZATION PLATFORM SUBSCRIPTION SERVICES (THE "SERVICES"), YOU ARE ACCEPTING THE PRACTICES DESCRIBED IN THESE TERMS OF SERVICE. IF YOU DO NOT AGREE TO THESE TERMS OF SERVICE, PLEASE DO NOT USE THE SERVICES AND EXIT IMMEDIATELY. WE RESERVE THE RIGHT TO MODIFY OR AMEND THESE TERMS OF SERVICE FROM TIME TO TIME WITHOUT NOTICE. YOUR CONTINUED USE OF OUR SERVICES FOLLOWING THE POSTING OF CHANGES TO THESE TERMS WILL MEAN YOU ACCEPT THOSE CHANGES. UNLESS WE PROVIDE YOU WITH SPECIFIC NOTICE, NO CHANGES TO OUR TERMS OF USE WILL APPLY RETROACTIVELY.

This is a legal agreement between Subscriber ("Subscriber", "you") and nOps, Inc. ("nOps") that states the material terms and conditions that govern your use of the Services. This agreement, together with the AWS Marketplace Private Offer (the "AWS MPPO"), all subsequent updates, and any supplemental terms mutually agreed upon in writing, collectively constitute the "Agreement" between Subscriber and nOps. BY ACCESSING THE SERVICES, YOU AGREE TO BE LEGALLY BOUND BY THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF SERVICE AND CONDITIONS OF USE STATED HEREIN, PLEASE IMMEDIATELY LEAVE THIS AWS MARKETPLACE OFFERING.

If You subscribe to nOps's Commitment Management offering, the Services are also subject to the provisions of the [Commitment Management Master Service Agreement](#) (the "MSA"). In the event of any conflict between the provisions of this Agreement and the MSA as in effect, the provisions of the MSA shall govern.

**Site Access License.** nOps grants you a limited, revocable, non-exclusive, non-transferable license to access and make use of the Services or their content. This license does not include any resale or commercial use of the Services or their contents; any collection and use of any product listings, descriptions, or prices; any derivative use of the Services or their contents; any downloading or copying of account information for the benefit of another merchant; or any use of data mining, robots, or similar data gathering and extraction tools. The Services and/or any portion of the Services may not be reproduced, sold, resold, visited or otherwise exploited for any commercial purpose without nOps express written consent. You will not use any meta tags or any other "hidden text" utilizing our name or trademarks without our express written consent. Additionally, you agree that you will not: (i) take any action that imposes, or may impose in our sole discretion an unreasonable or disproportionately large load on our infrastructure; (ii) interfere or attempt to interfere with the proper working of the website or any activities conducted as part of the Services; or (iii) bypass any measures we may use to prevent or restrict access to the Services. Any unauthorized use automatically terminates the permissions and/or licenses granted by us to you.

**Copyright and Ownership.** All of the content featured or displayed on the Services, including without limitation text, graphics, photographs, images, moving images, sound, and illustrations ("Content"), is owned by nOps, its licensors, vendors, agents and/or its Content providers. All elements of the Services, including without limitation the general design and the Content, are protected by trade dress, copyright, moral rights, trademark and other laws relating to intellectual property rights. The Services may only be used for the intended purpose for which such Services are being made available. Except as permitted by copyright law, you may not modify any of the materials and you may not copy, distribute, transmit, display, perform, reproduce, publish, license, create derivative works from, transfer or sell any information or work contained on the Services. Except as authorized under the copyright laws, you are responsible for obtaining permission before reusing any copyrighted material that is available on the Services. You shall comply with all applicable domestic and international laws, statutes, ordinances and regulations regarding your use of the Services. The Services, its Content and all related rights shall remain the exclusive property of nOps or its licensors unless otherwise expressly agreed. You will not remove any copyright, trademark or other proprietary notices from material found on these Services.

**Subscriber Data.** nOps claims no ownership rights over the cloud billing and underlying data of our Subscribers, which are submitted to provide the Services. Any information, data that is yours remains yours. These Terms of Service do not grant nOps any licenses or rights to the Subscribers' data except for the limited rights needed for us to provide the Service to you. Notwithstanding the foregoing, we may access Subscribers' data to determine how we can improve our Service.

Similarly, any reporting data we collect from your use of the nOps Service remains yours. By using the nOps Service you agree that we can use this data to provide the Service to you, and you also agree that as long as the data is anonymized and does not identify you, we can combine this data with the anonymized data of other companies to provide benchmarking or to otherwise use it to provide the Service.

nOps utilizes IAM permissions that automatically deploy during onboarding that give nOps read-only access to Subscribers data. nOps does not obtain access to change Subscribers data. More information about our access to Subscriber data can be found [here](#).

**Trademarks/No Endorsement.** Each Party's trademarks shall not be used without the other Party prior written consent.

All trademarks, service marks and trade names of nOps used herein (including but not limited to: nOps name, nOps corporate logo, the Services name, the Services design, and any logos) (collectively "Marks") are trademarks or registered trademarks of nOps or its affiliates, partners, vendors or licensors. You may not use, copy, reproduce, republish, upload, post, transmit, distribute, or modify nOps trademarks in any way, including in advertising or publicity pertaining to distribution of materials on the Services, without nOps prior written consent. You shall not use nOps name or any language, pictures or symbols which could, in nOps judgment, imply nOps endorsement in any (i) written or oral advertising or presentation, or (ii) brochure, newsletter, book, or other written material of whatever nature, without prior written consent.

**Account Registration and Security.** You understand that you may need to create an account on the nOps Platform to have access to all of the parts of the Services. In consideration of your use of the Services, you will: (a) provide true, accurate, current and complete information about yourself and your business as prompted by the Services' registration or subscription page (such information being the "Registration Data") and (b) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, or nOps has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, nOps has the right to suspend or terminate your account and refuse any and all current or future use of the Services (or any portion thereof). You are entirely responsible for the security and confidentiality of your password and account. Furthermore, you are entirely responsible for any and all activities that occur under your account. You will not share your account information or your Subscriber name and password with any third party or permit any third party to login to the Services using your account information. You agree to immediately notify us of any unauthorized use of your account or any other breach of security of which you become aware. You are responsible for taking precautions and providing security measures best suited for your situation and intended use of the Services. We have the right to provide Subscriber billing, account, Content or use records, and related information under certain circumstances (such as in response to legal responsibility, lawful process, orders, subpoenas, or warrants, or to protect our rights, customers or business).

**Solicited Submission Policy.** Where nOps has specifically invited or requested submissions or comments, nOps encourages you to submit content (e.g. comments to blog posts, participation in communities, tips, etc.) to nOps that they have created for consideration in connection with the Site ("Subscriber Submissions"). Subscriber Submissions remain the intellectual property of the Subscriber. By posting content on our Site, you expressly grant nOps a non-exclusive, perpetual, irrevocable, royalty-free, fully paid-up worldwide, fully sub-licensable right to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, transmit, perform and display such content and your name, voice, and/or likeness as contained in your Subscriber Submission, in whole or in part, and in any form throughout the world in any media or technology, whether now known or hereafter discovered, including all promotion, advertising, marketing, merchandising, publicity and any other ancillary uses thereof, and including the unfettered right to sublicense such rights, in perpetuity throughout the universe. Any such Subscriber Submissions are deemed non-confidential and nOps shall be under no obligation to maintain the confidentiality of any information, in whatever form, contained in any Subscriber Submission.

**Advertising.** Neither Party shall make or permit to be made any advertising or public announcement concerning the relationship between the Parties without the prior written consent of the other Party.

**Third Party Links.** From time to time, the Services may contain links to web sites that are not owned, operated or controlled by nOps or its affiliates. All such links are provided solely as a convenience to you. If you use these links, you will leave the Services. Neither we nor any of our respective affiliates are responsible for any content, materials or other information located on or accessible from any other web site. Neither we nor any of our respective affiliates endorse, guarantee, or make any representations or warranties regarding any other web sites, or any content, materials or other information located or accessible from any other web sites, or the results that you may obtain from using any other web sites. If you decide to access any other web sites linked to or from this Services, you do so entirely at your own risk.

**Transactional Partners.** In some cases, we partner with another company to co-promote their services within our Services. In these cases, you are transacting directly with the other party. On those pages, the transactional partners' brand is clearly visible, and their terms of service are posted. When using these partner pages, you are bound by partner terms of service in addition to remaining bound by nOps Terms of Service.

**Inappropriate Material.** You are prohibited from posting or sending any unlawful, threatening, defamatory, libelous, obscene, pornographic or profane material or any material that could constitute or encourage conduct that would be considered a criminal offense or give rise to civil liability, or otherwise violate any law. In addition to any remedies that we may have at law or in equity, if we determine, in our sole discretion, that you have violated or are likely to violate the foregoing prohibitions or the rules in our commenting FAQs linked to here, we may take any action we deem necessary to cure or prevent the violation, including without limitation, banning you from leaving comments or participating in our forums and communities and/or the immediate removal of the related materials from the Services at any time without notice. We will fully cooperate with any law enforcement authorities or court order or subpoena requesting or directing us to disclose the identity of anyone posting such materials.

**Subscription Fees.** Upon the acceptance of an nOps subscription through the AWS MPPO, You shall be charged the corresponding fee for those services or products based on the actual AWS Marketplace offer, whether the full amount or the pro-rata amount of the annual subscription fees as per the Subscriber agreement with nOps, fees which shall appear in the AWS Account used for such subscription purchase. In the event legal action is necessary to collect on balances due, you agree to reimburse nOps for all reasonable expenses incurred to recover sums due, including reasonable attorneys' fees and other legal expenses.

**Term.** The term of this agreement shall align with the corresponding nOps subscription AWS MPPO accepted.

**Termination.** Subscriber or nOps may suspend or terminate your account or your use of this Service at any time, for any reason or for no reason. Subscriber is solely liable for all orders placed, charges incurred, and cloud spend commitments, including but not limited to Savings Plans and Reserved Instances, purchased on behalf of Subscriber prior to termination (including associated costs incurred post termination). If applicable, Subscriber will immediately take ownership of the AWS Account utilized to purchase and manage cloud spend commitments for which is it solely liable. Upon termination for any reason, all rights granted to Subscriber hereunder shall terminate, and nOps shall have the right to suspend performance of the applicable Services.

nOps may also block Subscribers access to our Services in the event that (a) Subscriber breaches these Terms of Service; (b) nOps is unable to verify or authenticate any information Subscriber provided to us; or (c) nOps believes that Subscribers' actions may cause financial loss or legal liability for nOps or the Subscriber.

Upon termination by the Subscriber, any fees prepaid for future Services as of the date of cancellation will not be refunded to

Subscriber.

**Right to Takedown Content.** nOps shall have the right in our sole discretion to edit, refuse to post or remove any material submitted to or posted on the Services at any time without notice. Without limiting the foregoing, we shall have the right to remove any material that we find to be in violation of the provisions hereof or otherwise objectionable, and the additional right to deny any Subscriber who fails to conform to any provision of these Terms of Service access to the Services.

**Representations and Warranties.** You represent that You are over the age of 18, have the right and authority to enter into this Agreement, are fully able and competent to satisfy the terms, conditions, and obligations herein, and Your use of the Services and Services is and will be in compliance with all applicable laws. You have read, understood, agree with, and will abide by the terms of this agreement.

**DISCLAIMERS.** YOUR USE OF THE SERVICES IS AT YOUR RISK. THE INFORMATION, MATERIALS AND SERVICES PROVIDED ON OR THROUGH THE SERVICES ARE PROVIDED "AS IS" WITHOUT ANY WARRANTIES OF ANY KIND INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SECURITY OR NON- INFRINGEMENT OF INTELLECTUAL PROPERTY. NEITHER nOps, NOR ANY OF ITS AFFILIATES WARRANT THE ACCURACY OR COMPLETENESS OF THE INFORMATION, MATERIALS OR SERVICES PROVIDED ON OR THROUGH THE SERVICES. THE FOREGOING EXCLUSIONS OF IMPLIED WARRANTIES DO NOT APPLY TO THE EXTENT PROHIBITED BY LAW. PLEASE REFER TO YOUR LOCAL LAWS FOR ANY SUCH PROHIBITIONS. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM nOps OR THROUGH THE SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.

**LIMITATIONS OF LIABILITY.** EXCEPT AS A RESULT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, nOps DOES NOT ASSUME ANY RESPONSIBILITY, OR WILL BE LIABLE, FOR ANY DAMAGES TO, OR ANY VIRUSES THAT MAY INFECT YOUR COMPUTER, TELECOMMUNICATION EQUIPMENT, OR OTHER PROPERTY CAUSED BY OR ARISING FROM YOUR ACCESS TO, USE OF, OR BROWSING THIS SERVICES, OR YOUR DOWNLOADING OF ANY INFORMATION OR MATERIALS FROM THIS SERVICES. EXCEPT AS A RESULT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT WILL nOps, OR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AFFILIATES, AGENTS, SUCCESSORS OR ASSIGNS, NOR ANY PARTY INVOLVED IN THE CREATION, PRODUCTION OR TRANSMISSION OF THE SERVICES, BE LIABLE TO YOU OR ANYONE ELSE FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, THOSE RESULTING FROM LOST PROFITS, LOST DATA OR BUSINESS INTERRUPTION) ARISING OUT OF THE USE, INABILITY TO USE, OR THE RESULTS OF USE OF THE SERVICES, OR THE MATERIALS, INFORMATION OR SERVICES CONTAINED ON ANY OR ALL OF THE SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT OR ANY OTHER LEGAL THEORY AND WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATIONS OF LIABILITY DO NOT APPLY TO THE EXTENT PROHIBITED BY LAW. PLEASE REFER TO YOUR LOCAL LAWS FOR ANY SUCH PROHIBITIONS.

IN THE EVENT OF ANY PROBLEM WITH THE SERVICES OR ANY CONTENT, YOU AGREE THAT YOUR SOLE REMEDY IS TO CEASE USING THE SERVICES. EXCEPT AS A RESULT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL NOPS' TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), OR OTHERWISE EXCEED THE GREATER OF (A) TWENTY FIVE DOLLARS (US \$25.00) OR (B) THE VALUE OF THE SERVICES PURCHASED OR SUBSCRIBED BY YOU ON THE SERVICES.

Each Party will indemnify, defend and hold the other Party harmless against any claims, losses, liabilities, damages or expenses (including reasonable attorneys' fees and expenses) ("Claims") that arise directly or indirectly out of: (i) the material breach of any provision of this Agreement by the indemnifying Party; (ii) the violation of any applicable laws or any third party right, including without limitation any right of privacy, publicity rights or Intellectual Property Rights; or (iii) the gross negligence or willful misconduct of the indemnifying Party. The indemnified Party will not be entitled to indemnification to the extent that the claim would not have arisen but for the negligent act or willful misconduct of the indemnified Party. The foregoing obligations are conditioned upon the indemnified Party promptly notifying the indemnifying Party in writing of such action. Provided that the indemnifying Party promptly and reasonably investigates and defends any such claim, the indemnifying Party will have control over the defense and settlement of the claim. The Party to be indemnified will furnish, at the indemnifying Party's reasonable request and expense, information and assistance necessary for such defense.

**Release.** In the event that you have a dispute with one or more other Subscribers of the Services, you release nOps (and our officers, directors, agents, subsidiaries, joint ventures and employees) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such disputes.

**Force Majeure.** Neither nOps nor you shall be responsible for damages or for delays or failures in performance resulting from acts or occurrences beyond their reasonable control, including, without limitation: fire, lightning, explosion, power surge or failure, water, acts of God, war, revolution, civil commotion or acts of civil or military authorities or public enemies: any law, order, regulation, ordinance, or requirement of any government or legal body or any representative of any such government or legal body; or labor unrest, including without limitation, strikes, slowdowns, picketing, or boycotts; inability to secure raw materials, transportation facilities, fuel or energy shortages, or acts or omissions of other common carriers.

**Privacy.** Data collection and use, including data collection and use of personally identifiable information is governed by nOps [Privacy Policy](#) which is incorporated into and is a part of this Agreement.

**Governing Law & Jurisdiction.** These Terms of Service shall be governed by the internal law of the State of Delaware, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Delaware.

**General.** A printed version of these Terms of Service will be admissible in judicial and administrative proceedings based upon or relating to these Terms of Service to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

We do not guarantee continuous, uninterrupted or secure access to our Services, and operation of the Services may be

interfered with by numerous factors outside of our control. If any provision of these Terms of Service is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be enforced. You agree that these Terms of Service and all incorporated agreements may be automatically assigned by nOps in our sole discretion. Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section. Our failure to act with respect to a breach by you or others does not waive our right to act with respect to subsequent or similar breaches. These Terms of Service set forth the entire understanding and agreement between us with respect to the subject matter hereof. All sections which by their context ought to survive this agreement shall survive any termination or expiration of this Agreement.

Entire Agreement. These terms and conditions are the entire agreement between the Subscriber and nOps and supersede any prior understandings or agreements (written or oral).

Additional Assistance. If you do not understand any of the foregoing Terms and Conditions or if you have any questions or comments, we invite you to contact our Support Department by email at [info@nops.io](mailto:info@nops.io).

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