



# IXCloud Subscription Services Agreement



**PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THIS SERVICE.**

**BY USING THE SERVICE OR CLICKING AGREE (OR AN EQUIVALENT), YOU ARE AGREEING TO BE BOUND BY THIS AGREEMENT. IF YOU ARE AGREEING TO THIS AGREEMENT ON BEHALF OF OR FOR THE BENEFIT OF YOUR EMPLOYER OR A THIRD PARTY, THEN YOU REPRESENT AND WARRANT THAT YOU HAVE THE NECESSARY AUTHORITY TO AGREE TO THIS AGREEMENT ON THEIR BEHALF.**


This agreement is between Numonix, LLC, a Delaware corporation (**Numonix**), and the Customer agreeing to these terms (**Customer**).

## **1. SOFTWARE SERVICE.**

This agreement provides Customer access to and usage of an Internet-based software service, including, without limitation, its features, functions, and user interface, as specified on an order (**Service**).

## **2. USE OF SERVICE(SUBSCRIPTION).**

- a. **Customer Owned Data.** All audio and video files and other data uploaded by Customer to the Service remains the property of Customer, as between Numonix and Customer (**Customer Data**). Customer grants Numonix the right to use the Customer Data solely for purposes of performing under this agreement. During the term of this agreement, Customer may export its Customer Data as allowed by functionality within the Service. If Customer plans to process data of EU residents, then the Data Processing Addendum in our privacy policy <https://numonix.cloud/Compliance/> applies to this agreement.
- b. **Local Laws.** Customer is responsible for compliance with all applicable laws when using the Service, including without limitation, call recording laws and appropriate consents to record.
- c. **Access and Usage.** Customer may allow its contractors to access the Service in compliance with the terms of this agreement, which access must be for the sole benefit of Customer. Customer is responsible for the compliance with this agreement by its contractors.
- d. **Customer Responsibilities.** Customer: (i) must keep its passwords secure and confidential; (ii) is solely responsible for Customer Data and all activity in its account in the Service; (iii) must use commercially reasonable efforts to prevent unauthorized access to its account, and notify Numonix promptly of any such unauthorized access; (iv) backup the Customer Data and ensure that it meets Customer's backup requirements; and (v) may use the Service only in accordance with the Service's technical documentation, policies and applicable law. Please see <https://numonix.cloud/Compliance/> for IXCloud standard policies including Privacy Policy, Cookie Policy, Acceptable Usage Policy (AUP), Fair Usage Policy and API policy.
- e. **Numonix Support.** Numonix must provide Customer support for the Service under the terms of Numonix's Customer Support Policy (**Support**), which is located at <https://numonix.cloud/support/>
- f. **30-Day Trial Version.** If Customer has registered for a trial use of the Service, Customer may access the Service for a 30-day time period (unless extended by Numonix in writing). The Service is provided AS IS with no warranty during this time period. All Customer Data will be deleted after the trial period, unless Customer converts its account to a paid Service.

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- g. **Free Version.** If Customer has registered for a no-charge use of the Service, Customer may access the Service until it is canceled by Numonix (without cause) upon notice sent via email (using its email address in the Service), or by the Customer. **The Service is provided AS IS with no warranty.** All Customer information will be deleted within no longer than 15 days after the no-charge period ends under **Section 7(c)** unless the Customer converts its account to a paid Service.
- h. **Third-Party Services.** The Service interoperates with one or more third party services (e.g. Salesforce, Skype for Business, ShoreTel, AudioCodes, Microsoft Teams, Microsoft Azure, Amazon Web Services etc.) and depends on the continuing availability and access to such third-party service and any data or information interfaces (**Third-Party Services**). If for any reason Numonix cannot access or use the applicable Third-Party Service (including without limitation, change in terms or increase in fees charged by a third-party service provider), Numonix may not be able to provide all of the functions of its Service. No refund or credit will be provided for unavailability of any Third-Party Services.
- i. **API.** Numonix provides access to its free set of application-programming interface (**API**) as part of the Service for no additional fee. Subject to the other terms of this agreement, Numonix grants Customer a non-exclusive, nontransferable, terminable license to interact only with the Service as allowed by the API.
- Customer may not use the API in a manner, as reasonably determined by Numonix, that exceeds reasonable request volume, constitutes excessive or abusive usage, or fails to comply with any part of the API. If any of these occur, Numonix can suspend or terminate Customer's access to the API on a temporary or permanent basis. For usage levels see Fair Usage Policy for guidance on what Numonix considers reasonable <https://numonix.cloud/Compliance/>
  - Numonix may change or remove existing endpoints or fields in API results upon at least 30 day's notice to Customer, but Numonix will use commercially reasonable efforts to support the previous version of the API for at least 6 months. Numonix may add new endpoints or fields in API results without prior notice to Customer.
  - The API is provided on an AS IS basis. Numonix has no liability to Customer as a result of any change, temporary unavailability, suspension, or termination of access to the API.
- j. **Locally Run Software.** Depending on the Service offering purchased, any software provided by Numonix as part of the Service that is designed to run locally (**On-Premise Software**) is licensed to Customer as follows: Numonix grants Customer a non-exclusive, non-transferable license during the term of the order, to use and copy such On-Premise Software in accordance with its technical documentation, solely in connection with the Service.

### 3. SERVICE LEVEL AGREEMENT & WARRANTY.

- a. **Warranty.** Numonix warrants to Customer: (i) that commercially reasonable efforts will be made to maintain the online availability of the Service for a minimum of availability in any given month as provided in the SLA located at <https://numonix.cloud/support/> & <https://numonix.cloud/Compliance/> (ii) the functionality or features of the Service may change but will not materially decrease during any paid term; and (iii) that the Support may change but will not materially degrade during any paid term.
- b. **DISCLAIMER.** NUMONIX DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE. WHILE NUMONIX TAKES REASONABLE PHYSICAL, TECHNICAL, AND ADMINISTRATIVE MEASURES TO SECURE THE SERVICE, NUMONIX DOES NOT GUARANTEE THAT THE SERVICE CANNOT BE COMPROMISED. CUSTOMER UNDERSTANDS THAT THE SERVICE MAY NOT BE ERROR FREE, AND USE MAY BE INTERRUPTED.

### 4. PAYMENT.

Customer must pay all fees as specified on the order, but if not specified, then within 30 days of receipt of an invoice. Customer is responsible for the payment of all sales, use, withholding, VAT, and other similar taxes. This agreement contemplates one or more orders for the Service, which orders are governed by the terms of this agreement. Non – Payment and nonrenewal are considered Termination under **Section 7(f)**.

## 5. MUTUAL CONFIDENTIALITY.

- a. **Definition of Confidential Information.** Confidential Information *means* all non-public information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally, visually, or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**Confidential Information**). Numonix's Confidential Information includes, without limitation, the Service, its user interface design and layout, and pricing information, and the On-Premise Software. Customer's Confidential Information includes, without limitation, the Customer Data.
- b. **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care), and it may not disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement.
- c. **Exclusions.** Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser; (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser; (iii) is received from a third party without breach of any obligation owed to Discloser; or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order but will provide Discloser with advance notice to seek a protective order.
- d. Data Security Measures.
  - **Security Measures.** In order to protect Customer's Confidential Information, Numonix: (i) implements and maintains all reasonable security measures appropriate to the nature of the Confidential Information including, without limitation, technical, physical, administrative, and organizational controls, and will maintain the confidentiality, security, and integrity of such Confidential Information; (ii) implements and maintains industry standard systems and procedures for detecting, preventing, and responding to attacks, intrusions, or other systems failures and regularly tests, or otherwise monitors the effectiveness of the safeguards' key controls, systems, and procedures; (iii) designates an employee or employees to coordinate implementation and maintenance of its Security Measures (as defined below); and (iv) identifies reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of Customer's Confidential Information that could result in the unauthorized disclosure, misuse, alteration, destruction, or other compromise of such information, and assesses the sufficiency of any safeguards in place to control these risks (collectively, **Security Measures**).
  - **Notice of Data Breach.** If Numonix knows that Customer Confidential Information has been accessed, disclosed, or acquired without proper authorization and contrary to the terms of this agreement, Numonix will promptly alert Customer of any such data breach, and immediately take such actions as may be necessary to preserve forensic evidence and eliminate the cause of the data breach. Numonix will give highest priority to immediately correcting any data breach and will devote such resources as may be required to accomplish that goal. Numonix will provide Customer with all available information reasonably necessary to enable Customer to fully understand the nature and scope of the data breach. To the extent that Customer, in its sole reasonable discretion, deems warranted, Customer may provide notice to any or all parties affected by any data breach. In such case, Numonix will consult with Customer in a timely fashion regarding appropriate steps required to notify third parties. Numonix will provide Customer with information about what Numonix has done or plans to do to minimize any harmful effect of the unauthorized use or disclosure of, or access to, Confidential Information.
- e. Data Protection Agreement
  - IXCloud offers a data processing agreement(DPA) that defines Numonix and Customer's obligations under GDPR, and includes the EU's approved Standard Contractual Clauses for the handling of data collected in the European Economic Area and Switzerland outside of those areas. If Customer has a need for this agreement, Customer should please request it from Customer's IXCloud account representative.

f. Compliance with Data Protection Laws

- In processing Personal Data in the Numonix Products and through the Professional Services to Customer, Numonix shall comply with applicable legal requirements for privacy, data protection and confidentiality of communications. Such applicable legal requirements include the Standards for the Protection of Personal Information of Residents of the Commonwealth of Massachusetts (201 CMR 17.00), the California Consumer Privacy Act of 2018 (the "CCPA"), and other applicable United States data protection laws at the state level, and implementing national legislation, and Regulation 2016/679 (also known as GDPR), if applicable. Numonix shall not (i) sell Personal Data as defined under the CCPA, or (ii) retain, use, or disclose Personal Data for any purpose other than for the specific purpose of providing the Numonix Services. Numonix is certified under the Privacy Shield to cover the transfer of data collected in the European Economic Area and Switzerland to the United States.

## 6. PROPERTY.

- Reservation of Rights.** The Service and the On-Premise Software are the proprietary property of Numonix and its licensors, and all right, title, and interest in and to the Service and the On-Premise Software, including all associated intellectual property rights, remain only with Numonix. Customer may not remove or modify any proprietary marking or restrictive legends in the Service or On-Premise Software. Numonix reserves all rights unless expressly granted in this agreement.
- Restrictions.** Customer *may not*: (i) sell, resell, rent, or lease the Service or use it in a service-provider capacity; (ii) use the Service to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise objectionable, unlawful, or tortious material, or to store or transmit material in violation of third-party rights; (iii) interfere with or disrupt the integrity or performance of the Service; (iv) attempt to gain unauthorized access to the Service or its related systems or networks; (v) reverse engineer the Service or the On-Premise Software; or (vi) access the Service or use the On-Premise Software to build a competitive service or product, or copy any feature, function, or graphic for competitive purposes.
- Statistical Information.** Numonix may compile statistical information related to the performance of the Service and may make such information publicly available, provided that such information does not identify Customer Data, and there is no means to re-identify Customer Data. Numonix retains all intellectual property rights in such information.

## 7. TERM AND TERMINATION.

- Term.** This agreement continues until all orders have expired or are terminated for material breach under **Section 7(b)**.
- Mutual Termination for Material Breach.** If either party is in material breach of this agreement, the other party may terminate this agreement at the end of a written 30-day notice/cure period, if the breach has not been cured.
- Return of Customer Data.
  - *Within 15 days after termination*, upon request of the Customer, Numonix will make the Service available for Customer to export Customer Data as provided in **Section 2(a)**. If Customer needs additional assistance beyond the services Numonix provides to other customers under Support, then Numonix will provide such services at its then current hourly rates.
  - *After such 15-day period*, Numonix has no obligation to maintain the Customer Data and will destroy it.
- Return Numonix Property Upon Termination.** Upon termination of this agreement for any reason, Customer must pay Numonix for any unpaid amounts and destroy or return all property of Numonix. Upon Numonix's request, Customer will confirm in writing its compliance with this destruction or return requirement.
- Suspension for Violations of Law.** Numonix may temporarily suspend the Service and/or remove the applicable Customer Data if it in good faith believes that, as part of using the Service, Customer has violated a law. Numonix will attempt to contact Customer in advance.
- Suspension for Non-Payment.** Numonix may temporarily or permanently suspend the Service if the Customer is more than 30 days late on any payment due pursuant to an order or a confirmation of renewal. See **Section 7(c)** for data return and retention.

## 8. LIABILITY LIMIT.

- a. Exclusion of Indirect Damages. Numonix is not liable for any indirect, special, incidental, or consequential damages arising out of or related to this agreement (including, without limitation, costs of delay; and lost profits, revenue, or anticipated cost savings), even if it knows of the possibility or foreseeability of such damage or loss.
- b. Total Limit on Liability. Numonix's total liability arising out of or related to this agreement (whether in contract, tort, or otherwise) does not exceed the amount paid by Customer within the 12-month period prior to the event that gave rise to the liability.

## 9. DEFENSE OF THIRD-PARTY CLAIMS.

- a. Numonix will defend or settle any third-party claim against Customer to the extent that such claim alleges that Numonix technology used to provide the Service violates a copyright, patent, trademark, or other intellectual property right, if Customer promptly notifies Numonix of the claim in writing, cooperates with Numonix in the defense, and allows Numonix to solely control the defense or settlement of the claim. *Costs.* Numonix will pay infringement claim defense costs it incurs in defending Customer, Numonix-negotiated settlement amounts, and court-awarded damages. *Process.* If such a claim appears likely, then Numonix may modify the Service, procure the necessary rights, or replace it with the functional equivalent. If Numonix determines that none of these are reasonably available, then Numonix may terminate the Service and refund any prepaid and unused fees. *Exclusions.* Numonix has no obligation for any claim arising from: Numonix's compliance with Customer's specifications; a combination of the Service with other technology or aspects where the infringement would not occur but for the combination; use of Customer Data; or technology or aspects not provided by Numonix. THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND NUMONIX'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.
- b. If a third party claims against Numonix that any part of the Customer Data infringes or violates that party's patent, copyright, or other right, Customer will defend Numonix against that claim at Customer's expense and pay all costs, damages, and attorneys' fees that a court finally awards or that are included in a settlement approved by Customer, provided that Numonix promptly notifies Customer of the claim in writing, cooperates with Customer in the defense, and allows Customer to solely control the defense or settlement of the claim.


## 10. GOVERNING LAW AND FORUM.

**This agreement is governed by the laws of the State of Florida (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of this agreement. Any suit or legal proceeding must be exclusively brought in the federal or state courts for Palm Beach County, Florida, and Customer submits to this personal jurisdiction and venue. Nothing in this agreement prevents either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.**

**If the Customer is located outside the United States, then this agreement is governed by the laws of Florida, without regard to conflict of laws principles. Any dispute between customer and Numonix arising out of or related to this agreement must be exclusively determined by binding arbitration in Palm Beach County, FL, US in English, under the then current commercial or international rules of The International Centre For Dispute Resolution. The decisions of the arbitrators may be entered in any court of competent jurisdiction. Nothing in this agreement prevents either party from seeking injunctive relief in any court of competent jurisdiction. The prevailing party in any arbitration or litigation is entitled to recover its attorneys' fees and costs from the other party.**

## 11. OTHER TERMS.

- a. **Entire Agreement and Changes.** This agreement and the order constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this agreement. No representation, promise, or inducement not included in this agreement is binding. No modification or waiver of any term of this agreement is effective unless both parties sign it, however this agreement may be modified through an online process provided by Numonix.
- b. **No Assignment.** Neither party may assign or transfer this agreement to a third party, nor delegate any duty, except that the agreement and all orders may be assigned, without the consent of the other party, as part of a merger or sale of all or substantially all the businesses or assets of a party.

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- c. **Independent Contractors.** The parties are independent contractors with respect to each other.
  - d. **Enforceability and Force Majeure.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect. Except for the payment of monies, neither party is liable for events beyond its reasonable control, including, without limitation, force majeure events.
  - e. **Money Damages Insufficient.** Any breach by a party of this agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach of this agreement.
  - f. **No Additional Terms.** Numonix rejects additional or conflicting terms of a Customer's form-purchasing document.
  - g. **Order of Precedence.** If there is an inconsistency between this agreement and an order, the order prevails.
  - h. **Survival of Terms.** Any terms, that by their nature survive termination of this agreement for a party to assert its rights and receive the protections of this agreement, will survive (including, without limitation, the confidentiality terms). The UN Convention on Contracts for the International Sale of Goods does not apply.
  - i. **Feedback.** If Customer provides feedback or suggestions about the Service, then Numonix (and those it allows to use its technology) may use such information without obligation to Customer.
  - j. **Export Compliance.** Customer must comply with all applicable export control laws of the United States, foreign jurisdictions and other applicable laws and regulations.
  - k. **Restricted Rights.** If Customer is a United States government agency or acquired the license to the software hereunder pursuant to a government contract or with government funds, then as defined in FAR §2.101, DFAR §252.227-7014(a)(1) and DFAR §252.227-7014(a)(5) or otherwise, all software provided in connection with this agreement are "commercial items," "commercial computer software" or "commercial computer software documentation." Consistent with DFAR §227.7202 and FAR §12.212, any use, modification, reproduction, release, performance, display, disclosure or distribution by or for the United States government is governed solely by the terms of this agreement and is prohibited except to the extent permitted by the terms of this agreement.
  - l. **Clause Required by Microsoft.** Every user of the Service must personally notify other participants prior to invoking any action in the Service that will initiate recording or persisting of media.