

**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 by the Service Provider (**Service**). Numonix is providing this Service through a reseller or service provider (**Service Provider**), which will pay Numonix for the Service.

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

- a. **Customer Owned Data.** All audio and video files and other data uploaded by Customer or captured by 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. If the 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. **Data Owner.** Is the owner of the Data (Media Calls or Video) being recorded and has the legal control of and responsibility for the data.
- c. **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.
- d. **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.
- e. **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.
- f. **Technical Support.** Customer should contact the Service Provider for technical support issues.
- g. **Third-Party Services.** The Service interoperates with one or more third party

services (e.g. Microsoft Teams, Microsoft Azure, Amazon Web Services, analytical tools 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, a change in terms or increase in fees charged by a third-party service provider), Numonix may not be able to provide all the functions of its Service. No refund or credit will be provided for the unavailability of any Third-Party Services.

### 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. (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. 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, and pricing information. 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 as appropriate the Data Owner (Reseller, Partner or 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 the highest priority to immediately correcting any data breach and will devote such resources as may be required to accomplish that goal. Numonix will provide Data Owner with all available information reasonably necessary to enable Data Owner to fully understand the nature and scope of the data breach. To the extent that Data Owner, in its sole reasonable discretion, deems warranted, Data Owner may provide notice to any or all parties affected by any data breach. In such case, Numonix will consult with the Data Owner 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

- If Customer is providing personal data of an EU resident, then the Data Processing Addendum at \_\_\_\_ applies.

- f. Compliance with Data Protection Laws
- In processing Personal Data in the Numonix Products, Services 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.

## 5. PROPERTY.

- a. **Reservation of Rights.** The Service is the proprietary property of Numonix and its licensors, and all right, title, and interest in and to the Service, 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. Numonix reserves all rights unless expressly granted in this agreement.
- b. **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 (vi) access the Service to build a competitive service or product, or copy any feature, function, or graphic for competitive purposes.
- c. **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.

## 6. TERM AND TERMINATION.

- a. **Term.** This is a usage-based agreement and continues until Customer terminates this agreement, provided that Numonix may terminate this agreement at any time and without notice if Numonix has not been paid by the Service Provider for the Service of Numonix's contract with the Service Provider terminates.
- 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 10-day notice/cure period, if the breach has not been cured.
- c. **Return of Customer Data.**
- *After a 7-day period*, Numonix has no obligation to maintain the Customer Data and will destroy it.
- d. **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.

## **7. 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 greater of \$500 or the amount paid by Customer to Service Provider for the Service for the month in which the claim arose.

## **8. 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.

## **9. 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 suitor 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.

## 10. OTHER TERMS.

- a. **Entire Agreement and Changes.** This agreement constitutes the entire agreement between the parties and supersedes 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 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.
- 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. **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.
- g. **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.
- h. **Export Compliance.** Customer must comply with all applicable export control laws of the United States, foreign jurisdictions and other applicable laws and regulations.
- i. **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.

- j. **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.

## Acceptable Use of the Service.

**All users of the Numonix web-based service (Service) must comply with this Acceptable Use Policy (AUP).**

**This AUP is part of our Subscription Services Agreement (SSA). Your use or continuation of the Service constitutes your acceptance of this AUP. It is your responsibility, and contractual obligation, to ensure that your affiliates, agents, and/or customers (End Users) comply with this AUP.**

- You expressly understand that the evolving nature of the Internet and online commerce makes it necessary for us to reserve the right to make changes to this AUP at any time and without notice, but which will only apply on a prospective basis.
  - This AUP may not represent all possible ways in which you or an End User engage in unacceptable behavior.
  - Numonix encourages prospective customers to carefully review sections of this AUP covering Recording, Intellectual Property Violations, and Security.
  - A thorough review of those sections and the entire AUP may help avoid creating issues under it that will cause Numonix to take action, up to, and including, the termination of a customer's account.
  - Services we provide may be subject to other acceptable use policies.
  - Numonix will provide these acceptable use policies to you on request.
- a. **Scope and Purpose**  
Numonix does not review, edit, censor, or take responsibility for any information customers or End Users may create or store.
- b. **Contacting us about Abuse and Requests for Information about Customers and End Users**
- Individuals who contact Numonix about this AUP, the behavior of our customers, or for other purposes, are required to provide us with accurate information to enable us to contact them and respond to their requests.
    - Numonix does not respond to anonymous correspondence.
    - E-mail addresses used to contact Numonix are set out here [dataprotection@numonix.cloud](mailto:dataprotection@numonix.cloud)
    - Please note that Numonix has created special addresses for certain types of complaints.
    - Complaints misdirected by a Customer or End User may not be responded to by Numonix.
    - Complaints submitted to Numonix are not confidential and may be forwarded to Numonix's Customer or law enforcement, without notice.
    - Numonix does not recognize requests that complaints be kept confidential and will not honor those requests.

- Some abuse complaints may not receive a reply depending on the volume of abuse complaints about that particular issue
- Numonix may disclose information, including information that Customers or End Users consider confidential, in order to comply with a court order, subpoena, summons, discovery request, warrant, regulation, or governmental request, which appears to be valid.
  - Numonix may also disclose such information when it is necessary for us to protect our business, or others, from harm.
  - Numonix assumes no obligation to inform Customers or End Users that Numonix has provided this type of information unless Numonix has affirmatively agreed to do so. In some cases, Numonix may be prohibited by law from giving such notice.

**c. The Services may be used for lawful purposes only**

- Transmission, storage, or presentation of any information, data or material in violation of any applicable law, regulation, this AUP, or our SSA, is prohibited. You may not use the Service to directly facilitate the violation of any law or regulation, including, but not limited to:
  - forging, misrepresenting, omitting or deleting message headers, return mailing information, and/or internet protocol addresses, to conceal or misidentify the origin of a message;
  - creating or sending Internet viruses, worms or Trojan horses, flood or mail bombs, or engaging in denial of service attacks;
  - hacking, and/or subverting, or assisting others in subverting, the security or integrity of our products or systems;
  - disseminating material that may cause us to be subject to attacks on our network, or that which is, but is not limited to, racist, pornographic, hateful material, or those which create customer service or abuse issues for us. Under no circumstances may Numonix's systems be used to gain access or deny access to a system without the permission of the system's owners (or rightful users);
  - probes, port-scans, sweeps and spoofing of systems without the express permission of the owners of those systems; Numonix reserves the right to use probes, port-scans, sweeps and spoofing on any system connected to the Numonix network in the course of performing security assessments and threat management;
  - soliciting the performance of any illegal activity, even if the activity itself is not performed; and/or acting in any manner that might subject us to unfavorable regulatory action, subject us to any liability for any reason, or adversely affect our public image, reputation or goodwill, as determined by us in our sole and exclusive discretion.

**e. Other Intellectual Property Infringement**

- Customers and End Users may not engage in activity that infringes or misappropriates the intellectual property rights of others. This includes but is not limited to trademarks, service marks, trade secrets, software piracy, and patents. Complaints about such activity by Customers or



End Users may be directed to the address at the end of this AUP.

f. **U.S. Export and Import Laws**

- Customers and End Users may not use Numonix's services to engage in a violation of U.S. export and import control laws.
  - More information about U.S. export laws may be found at <http://www.export.gov/exportcontrols.html>

g. **Subpoenas, Warrants, Document Preservation Requests and Other Requests for Information**

- Law enforcement agencies who seek information about Numonix's customers, or their use of Numonix's services, are required to submit a subpoena, or other similar documents, pursuant to which Numonix is required by law to produce this information (Subpoena).
  - Unless specifically required by law and so clearly communicated to Numonix, the subpoena will be transmitted to Numonix's Customer.
- Civil demands for information, such as discovery requests and similar demands (**Civil Demands**), must be part of a filed and pending litigation matter.
  - Responses to Civil Demands are at Numonix's discretion.
  - Responses are subject to a response fee of \$250 per hour.
  - Numonix does not honor requests from civil litigants to limit or to pre-approve response expenses.
  - Civil litigants are encouraged to contact Numonix prior to serving Civil Demands in order to minimize their expenses.
- Numonix understands its obligations to preserve certain electronically stored material.
  - Parties who ask Numonix to preserve this material, must contact Numonix in writing, and describe specifically what information they would like preserved.
  - Preservation of any material is at Customer's cost, which must be paid in advance.