

OEM TEAMS RECORDING SAAS AGREEMENT (TRAAS)





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DATE: _____

SERVICE DESCRIPTION: See Exhibit B

PRICING AND SERVICE TERMS: See executed orders.

SUBSCRIBER SUPPORT:

OEM will provide Level 1 and 2 technical support to Subscribers (initial setup, troubleshooting, and help desk) and respond to initial questions and issues from Subscribers relating to use of the Service. OEM will use commercially reasonable efforts to resolve support issues before escalating them to Numonix. Numonix-provided technical support is described in **Section 3(c)** below.

TERM

Initial Term: _____ Years.

Renewals: This agreement automatically renews for additional 1-year periods, unless either party provides at least 60 days' notice of non-renewal prior to the renewal date (the Initial Term and any Renewal is defined as Term).

Additional Terms attached below and attached to this page are incorporated into this agreement for all purposes.

Numonix, LLC (Numonix)	_____ (OEM)
Signature:	Signature:
Printed Name:	Printed Name:
Title:	Title:
Date:	Date:
Address:	Address:



ADDITIONAL TERMS

01 OEM AND SERVICES TERMS.

- a. **Non-Exclusive OEM.** Numonix provides OEM the non-exclusive right to promote, market, sell, and support the Services to Subscribers.
- b. **Third Party Services.** The Service interoperates with one or more third party services (e.g. Skype for Business, ShoreTel, AudioCodes, Microsoft Teams 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 the Service 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 the Service. No refund or credit will be provided for unavailability of any Third-Party Services.
- c. **Services.** So long as Numonix does not materially degrade the Services, it may change the Services at any time. Numonix may separately price certain additional functionality as add-on modules for a separate fee. OEM determines the pricing for Subscribers.

02 ORDERING AND FULFILLMENT.

- a. **Order Process.** For each Bot subscription to be sold to a Subscriber, OEM must place an order with Numonix. The parties must agree to the terms of the applicable order in writing. All orders are governed by the terms of this agreement.
- b. **SSA.** Each Subscriber must enter into a SSA with OEM before accessing or using the Service. SSA means the subscription services agreement between a Subscriber and OEM for internal use of the Service, with terms materially no less protective of Numonix as the terms of Exhibit A.
- c. **Payments.** OEM will pay Numonix the fees within 30 (thirty days) of receipt of invoice. The fees are exclusive of sales, use, withholding, VAT and other similar taxes, and OEM is responsible for payment of such taxes at the rate and in the manner for the time being prescribed by law.

03 OPERATIONAL OBLIGATIONS.

- a. **Numonix.** Numonix will provide commercially reasonable pre-sales support to OEM.
- b. **OEM.** OEM must:
 - conduct business in a manner that reflects favorably on the Service and the good name, goodwill, and reputation of Numonix;
 - avoid deceptive, false, misleading, or unethical practice that are detrimental to Numonix;
 - make no representations, warranties, or guarantees to Subscribers regarding the specifications, features, or capabilities of Service that are inconsistent with the Service or its features and functionality; and
 - pay its expenses associated with its activities under this agreement.
- c. **Numonix Level 3 Support Obligations.** Numonix will make reasonable commercial efforts to promptly respond to and assist OEM on all technical support issues with the appropriate technical support personnel. More details on Numonix's support program are located at <https://numonix.io/contact-us/#support>

04 INTELLECTUAL PROPERTY AND CONFIDENTIALITY.

- a. **Property of Numonix.** Numonix or its suppliers own all right, title, and interest, including all intellectual property rights, in and to the Service. Numonix reserves all rights not expressly granted.



- b. Mutual Confidentiality.** During the Term and after the Term, neither party may use for any purpose (other than for purposes of this agreement) or disclose to any third party any Confidential Information of the other party. The receiving party may disclose Confidential Information to their employees and contractors with a need to know, and who have confidentiality agreements with the receiving party with terms no less protective than the confidential terms of this agreement.
- **Confidential Information** means all non-public technical and business information a party designates as being confidential or which under the circumstances of disclosure reasonably ought to be treated as confidential, which includes, without limitation, the terms of this agreement, business and marketing plans, technology roadmaps, source code, and trade secrets.
 - **Confidential Information** excludes information that: (i) was previously known without restriction; (ii) is received from a third party without restriction; (iii) is independently developed without use or access to the Confidential Information; or (iv) becomes publicly available through no fault of the receiving party. A party may disclose the Confidential Information of the other party if required by applicable law, or legal process, (at the expense of the other party) but may provide protection for such information and (as allowed by law) prior notice to the other party so that it may seek a protective order.

05 TERM AND TERMINATION.

- a. Termination for Material Breach.** If either party is in breach of any material term of this agreement, the other party may terminate this agreement at the end of a 30-day notice/cure period, if the breach has not been cured.
- b. Termination without Cause.** Both Parties shall have the right to terminate this agreement without cause by providing 60 (sixty) days' notice period to the other Party.
- c. Return or Destroy Material and Transactions After Termination.** Upon termination of this agreement for any reason the Service will terminate, and OEM must destroy the Numonix Confidential Information and any other Numonix property, and at the request of Numonix certify such destruction in writing.

06 WARRANTY.

- a. Numonix** provides a service level for the Service as described at Exhibit C hereto.
- d. LEGAL DISCLAIMER. THE SERVICE MAY ONLY BE USED IN ACCORDANCE WITH APPLICABLE LAWS (INCLUDING WITHOUT LIMITATION, REGARDING RECORDING AND STORING OF TELEPHONE CONVERSATIONS). OEM AND ITS SUBSCRIBERS ARE SOLELY RESPONSIBLE FOR ENSURING THAT THEIR USE OF THE SERVICE ARE IN ACCORDANCE WITH ALL APPLICABLE LAWS.**
- e.** Numonix represents and warrants that Numonix and all its personnel, as well as its Affiliate and its personnel, possess the necessary authorizations, skills and resources required to effectively execute the Service/s in accordance with the terms of this Agreement.
- f.** Numonix represents and warrants that the intellectual property comprised in the Service/s does not infringe any third-party rights.
- g.** The OEM and Numonix represent and warrant that the execution of this Agreement does not, and shall not, violate any obligations imposed under any other contract to which the aforementioned persons are a party.
- h.** The OEM and Numonix represent and warrant that neither Party nor any of its officers, employees or agents have done, or permitted to be done or will do, anything which is in breach of any law that applies to each of them as a technology service provider.



- i. The Parties represent and warrant that the Parties have and will maintain in place throughout the term of this Agreement their own policies and procedures to ensure compliance with the terms of this Agreement and will enforce them promptly and effectively.
- j. **GENERAL DISCLAIMER. NUMONIX MAKES NO OTHER WARRANTIES OR REPRESENTATIONS AS TO THE SERVICES PROVIDED UNDER THIS AGREEMENT. ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED. OEM UNDERSTANDS THAT THE SERVICE MAY NOT BE ERROR FREE OR THAT ITS USE MAY BE INTERRUPTED.**

07 INDEMNITIES.

- a. **By Numonix.** Numonix will defend or settle any third-party claims against OEM to the extent that such claim alleges that the Service violates a copyright, patent, trademark, or other intellectual property right, if OEM 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 OEM, 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: (i) Numonix's compliance with OEM's designs, specification, instructions, or technical information; (ii) a combination of the Service with other technology or aspects where the infringement would not occur but for the combination or (iii) technology or aspects not provided by Numonix. THIS SECTION CONTAINS OEM'S EXCLUSIVE REMEDIES AND NUMONIX'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.
- b. **By OEM.** If a third party makes a claim against Numonix (i) that any part of OEM technology infringes or violates that party's copyright, patent, trademark, or other right, or (ii) based on OEM's acts or omissions relating to this agreement (including by way of example, violations of the U.S. Foreign Corrupt Practices Act, misrepresentations about the quality and nature of the Service), then OEM will defend Numonix against that claim at OEM's expense and pay all costs, damages, and attorney's fees that a court finally awards or that are included in a settlement approved by OEM, provided that Numonix promptly notifies OEM in writing of the claim, cooperates with OEM in the defense, and allows OEM to solely control the defense or settlement of the claim.

08 LIABILITY LIMIT.

- a. **EXCLUSION OF INDIRECT DAMAGES. EXCEPT WITH RESPECT TO EACH PARTY'S INDEMNITY OBLIGATIONS AND EXCEPT FOR THE INFRINGEMENT OR MISAPPROPRIATION BY EITHER PARTY OF THE INTELLECTUAL PROPERTY OF THE OTHER PARTY IN CONNECTION WITH THIS AGREEMENT, TO THE MAXIMUM EXTENT ALLOWED BY LAW, EACH PARTY 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; LOSS OF OR UNAUTHORIZED ACCESS TO DATA OR INFORMATION; 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. TO THE MAXIMUM EXTENT ALLOWED BY LAW, EXCEPT FOR EACH PARTY'S INDEMNITY OBLIGATIONS AND EXCEPT FOR THE INFRINGEMENT OR MISAPPROPRIATION BY EITHER PARTY OF THE INTELLECTUAL PROPERTY OF THE OTHER PARTY IN CONNECTION WITH THIS AGREEMENT, EACH PARTY'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT, OR OTHERWISE) DOES NOT EXCEED THE AMOUNT PAID OR OWED BY OEM WITHIN THE 12-MONTH PRIOR TO THE EVENT THAT GAVE RISE TO THE LIABILITY.**



09 GOVERNING LAW AND FORUM.

This agreement is governed by the laws of the State of Delaware (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 the state of Delaware, and both Parties submit 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.

10 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. Both Parties are 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.
- 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.
- c. **Independent Contractors.** The parties are independent contractors with respect to each other. No partnership, joint venture, or franchise is created. OEM may not bind Numonix in any manner, or make any commitments on behalf of Numonix.
- d. **Enforceability and Force Majeure.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect. Neither party is liable for its non-performance due to events beyond its reasonable control, including but not limited to pandemics, epidemics, natural weather events and disasters, labor disruptions, and disruptions in the supply of utilities.
- 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 will survive (including, without limitation, the confidentiality terms).
- a. **Audit.** No more than once in any 12-month period and upon at least 30 days' advance notice and if Numonix reasonably believes there is a payment dispute, Numonix (or its representative) may audit OEM's compliance with this agreement at any OEM facility. OEM will cooperate with such audit.
- g. **Compliance.** Each party must comply with the following laws: (i) the export laws and regulations of the United States and any other applicable jurisdiction, and (ii) all applicable anti-bribery laws, including but not limited to the U.S Foreign Corrupt Practices Act. Additionally, OEM must comply with all applicable data privacy laws with respect to Subscriber's information.
- h. **Feedback.** If OEM provides feedback or suggestions about the Service, then Numonix (and those it allows to use its technology) may use such information without obligation to OEM.



EXHIBIT A MINIMUM TERMS FOR SUBSCRIBERS

OEM grants Subscriber the right to access and use the Service for its internal operational purposes.

Subscriber grant OEM and its supplier's the right to use any Subscriber data in the Service solely for performing the Service.

Subscriber agrees to: (i) must keep its passwords secure and confidential; (ii) be solely responsible for all Subscriber data in the Service and all activity in its account in the Service; (iii) use commercially reasonable efforts to prevent unauthorized access to its account, and notify OEM promptly of any such unauthorized access; and (iv) use the Service only in accordance with the Service's user guide and applicable law.

The Service interoperates with one or more third party services (e.g. Skype for Business, ShoreTel, AudioCodes, Microsoft Teams 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 the Service 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), OEM and its supplier may not be able to provide all of the functions

Subscriber acknowledges that the notification for recording is disabled, and they will be responsible for notifying parties.

THE SERVICE IS PROVIDED 'AS IS' WITHOUT WARRANTY. ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED. THE SERVICE MAY ONLY BE USED IN ACCORDANCE WITH APPLICABLE LAWS (INCLUDING WITHOUT LIMITATION, REGARDING RECORDING AND STORING OF TELEPHONE CONVERSATIONS). OEM AND ITS SUBSCRIBERS ARE SOLELY RESPONSIBLE FOR ENSURING THAT THEIR USE OF THE SERVICE ARE IN ACCORDANCE WITH ALL APPLICABLE LAWS.

Subscriber agrees that the Service are confidential information and must be protected in the same manner that Subscriber protects its own confidential information, but in no event less than a reasonable manner. Subscriber may not be share this confidential information with any employees or third parties unless they have a need to know the information and have agreed to terms of confidentiality with Subscriber at least as stringent as the terms of this provision.

Subscriber may not (i) remove or alter any proprietary marking or restrictive legends within the Service; (ii) reverse engineer the Service; (iii) sell, resell, rent, or lease the Service, or use the Service in a service-provider capacity on behalf of third parties; (iv) access the Service to build a competitive product or service or to copy any feature, function, or graphic in the Service; (v) 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; (vi) interfere with or disrupt the integrity or performance of the Service; and (vii) attempt to gain unauthorized access to the Service or its related systems or networks.

OEM or its suppliers own all right, title, and interest, including all intellectual property rights, in and to the Service, including all updates and enhancements made to the Service. OEM or its suppliers reserve all rights not expressly granted.

Subscriber agrees that during and after the term of its agreement with OEM, OEM and its suppliers may use and own all anonymized data within the Service for purposes of enhancing the Service, aggregated statistical analysis, technical support, and other business purposes.

Subscriber must agree that the Service may be temporarily suspended for a violation of law by Subscriber.



Neither OEM, nor its suppliers, are liable to Subscriber for any indirect, consequential, incidental, or special damages (including, without limitation, costs of delay, lost profits or revenue, and loss of, destruction to, or unauthorized access to data or information), regardless of the theory of liability (including negligence and strict liability).

Subscriber agrees that upon termination of the agreement between it and the OEM it may no longer access the Service.

OEM can terminate this agreement for Subscriber's breach upon 30 days' notice to Subscriber. Subscriber agrees that any feedback or suggestions that it provides about the Service may be used by OEM and its suppliers without obligation to Subscriber.

Subscriber agrees that a violation of the intellectual property rights in this agreement OEM may cause irreparable harm, and that OEM and its suppliers may seek a court order to stop the violation or prevent a future violation.

EXHIBIT B SERVICE DESCRIPTION

Numonix Recordobot and Capture Service for Microsoft Teams. All media records (.wav & .mp4) are stored in the Azure Storage blob. You can request the data be retrieved and processed. Either Numonix or OEM can store the records.

Media & Metadata

Each recorded interaction will reflect as multiple files in the storage accounts file share. For audio files, a file with a .wav extension together with a file of the same name with a .xml extension will be sent to the storage folder. The .xml file contains all the metadata obtained from Graph for the recorded interaction.

For Video files, a file with a .mp4 extension together with a file of the same name with an .xml extension will be sent to the storage folder

Note: Video Camera recordings and Video Based Screenshare recording are both stored as mp4. Mp4 files do not contain any audio streams. All audio streams from the meeting/call or interaction are found in the wav file.

EXHIBIT C

This SLA applies to paying customers who have entered into a written or electronic subscription services agreement with Recordobot and Numonix collectively ("Recordobot").

Recordobot targets to:

To be available to you at least 99.8%* of the time in any calendar month.

*Subject to data volumes, recording volume and duration time. Recordobot will use reasonable commercial efforts to optimize service and uptime

If Recordobot does not meet this guarantee, subscribers will be eligible for Service Credits as described below. Service Credits are the sole and exclusive remedy for any failure by Recordobot to meet the SLA.

SLA Exclusions:

Recordobot SLA does not apply to any services that expressly exclude this SLA (as stated in the documentation for such services) or any downtime resulting from the following:



- Forces or causes beyond our reasonable control, strikes, labor disputes, riots, insurrections, civil disturbances, explosions, acts of god, acts of nature, war, governmental actions, or orders of domestic or foreign courts or tribunals
- Availability of third-party APIs, credentials or permission errors
- Client internet failure
- Including subscriber security policies blocking communications
- Recordobot Maintenance window
- Customer storage location unavailability
- Customer or subscriber’s premise or hardware failure

Service Credits:

For each standard session of recording Recordobot fails to record, you will be eligible for a credit of up to three days extension on your Recordobot subscription at no extra charge.

Failure to make the Service available to you at least 99.8% of the time, in a calendar month, will grant you credit according to this table:

Monthly uptime percentage	Monthly Downtime (minutes)	Recording subscription extension at no extra charge
>= 99.8% uptime	<= 87	Meeting SLA, no credit.
99.5%-99.8% uptime	87-216	3 days
99.0%-99.5% uptime	216-432	7 days
< 99.0% uptime	> 432	14 days

If any of the above applies, you may notify us via email to support@numonix.io and we will provide you with the appropriate credit. In order to receive the Service Credit, the customer must notify Numonix (Recordobot) no longer than 30 days after the time of failure. The aggregate maximum number of Service Credits to be issued to an Recordobot customer in a single calendar month shall not exceed 45 days of service.

DEFINITIONS:

- **Maintenance Window:** refers to service unavailability due to Recordobot service maintenance. Unless pre-scheduled and announced, scheduled downtime shall not be more than 4 hours per month, for major system configuration changes, upgrades or normal maintenance.
- **Cloud Data:** refers to data (e.g. table data, file attachments, recording etc.) that exist on a third-party service provider site
- **Downtime:** refers to the unavailability of the service, exclusive of the Maintenance Window.
- **Monthly uptime percentage:** refers to the total number of minutes in a calendar month minus the number of minutes of Downtime suffered in a calendar month, divided by the total number of minutes in a calendar month.
- **Recording Session:** refers to the customers standard recording operation sessions for the specific RECORDOBOT and customer

NUMONIX
YOUR RECORDING YOUR WAY