

Numeris

Subscription Terms of Use



These Subscription Terms of Use (“**Terms**”), together with any applicable Order Form that references these Terms of Use (collectively, the “**Agreement**”) are a legal agreement between the entity identified as the Subscriber on the Order Form, and Numeris. Numeris and Subscriber are sometimes referred to individually as a “**Party**” and collectively as the “**Parties**”.

This Agreement governs Subscriber’s subscription to the Numeris Service(s) set out in the applicable Order Form(s) and access to, and use of, the Service Data associated with the Service(s). By signing an Order Form, or by accessing or using Service Data, Subscriber agrees to these Terms.

Documents referenced in these Terms but not attached to the Order Form may be found at www.numeris.ca/subscription-terms/ and are incorporated into this Agreement by reference, including the Data Use Policy, and the applicable Product Specific Terms. These documents contain additional terms and conditions for the Services licensed under this Agreement and may be changed from time to time. Subscriber should review such documents carefully, both at the time of signing and periodically thereafter, and fully understand all terms and conditions applicable to Services licensed.

ARTICLE 1 – DEFINITIONS

In this Agreement, the following words shall have the following meanings:

- (a) “**Affiliates**” means with respect to any person, any other person that, either directly or indirectly, controls, is controlled by or is under common control with such person. A person shall be deemed to “**Control**” another person if such person: (a) possesses the legal, beneficial or equitable ownership (directly or indirectly) of more than fifty percent (50%) of the capital stock (or other ownership interest, if not a corporation) of such other person; or (b) possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other person, whether through the ownership of voting securities, by contract or otherwise.
- (b) “**Authorized Affiliates**” means the Authorized Affiliates set out in Appendix 1 to the Order Form as may be amended or supplemented from time to time in accordance with the provisions of the Order Form.
- (c) “**Data**” means Numeris data or information of whatever nature, in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form), images, still and moving, and includes data owned by, or licensed to, Numeris.
- (d) “**Data Use Policy**” means the data use policy for the applicable Service Data published by Numeris, and updated from time to time, which governs Subscriber’s use of the Service Data.
- (e) “**Order Form**” means the order form signed by the Subscriber that sets out the Service(s) subscribed to by the Subscriber.
- (f) “**Personal Information**” means any information relating to an identified or identifiable individual, including, but not limited to, name, postal address, email address, telephone number, date of birth, social insurance number, driver’s license number, other government-issued identification number, or any other personal information unique tracker.
- (g) “**Privacy Laws**” means the *Personal Information Protection and Electronic Documents Act* (Canada, S.C. 2000, c.5), as amended or supplemented from time to time, and any other Applicable Law in the Territory now in force or that may in the future come into force governing the collection, use, disclosure and protection of Personal Information.

- (h) **“Product Specific Terms”** refers to the additional terms and conditions applicable for each subscribed Service that govern Subscriber’s subscription to the Service(s) described in the Order Form and the associated Service Data, including the applicable Data Use Policy.
- (i) **“Service”** refers to the Service(s) subscribed to by the Subscriber, as set out in the applicable Order Form(s).
- (j) **“Service Data”** means the Data published by Numeris as part of a Service and, for the avoidance of doubt, includes any third party Data received by Numeris and included in the Service Data.
- (k) **“Subscriber”** means the Subscriber and the Authorized Affiliates identified on the Order Form.
- (l) **“Subscription Period”** means the duration of the Subscription as set out in the Order Form.

ARTICLE 2– LICENSE

2.1 License.

- (a) Subject to the terms, conditions and restrictions set forth in this Agreement, Numeris grants to Subscriber and its Authorized Affiliates a personal, limited, royalty-free, non-exclusive, non-sublicensable, and non-transferable license (the **“License”**) during the Service Subscription Period to access and use the Service Data solely for the applicable permitted purposes set out in the Product Specific Terms.
- (b) Subscriber will, and will ensure that all Authorized Affiliates, comply with all of Subscriber’s obligations under this Agreement, including the Product Specific Terms. Subscriber is responsible for the conduct of its Authorized Affiliates, including any breach of this Agreement. Further, Numeris shall have all rights for recourse against Authorized Affiliates as it would against Subscriber. Subscriber will remain fully liable to Numeris for all obligations under this Agreement.

2.2 Restrictions and Commitments.

Subscriber shall not, and shall not permit its Authorized Affiliates or others under its control to do the following with respect to the Services:

- (a) use the Services and Service Data in a manner that circumvents the Data Use Policy or Product Specific Terms;
- (b) license, sub-license, sell, re-sell, rent, lease, transfer, publish, distribute, or otherwise make any portion of the Service Data available for access by third parties except as otherwise expressly provided in this Agreement and the Data Use Policy;
- (c) knowingly combine Service Data with data from another source to produce an aggregated dataset without Numeris’ express prior written consent;
- (d) take or permit any action that does or could lead to the identification or discovery of Personal Information in the Service Data;
- (e) use the Services and Service Data in a way that violates or infringes upon the rights of a third party, including those pertaining to: contract, intellectual property, privacy, or publicity;
- (f) create computer software or any data processing systems or to provide similar data or information for commercial purposes, without express prior written agreement of Numeris;
- (g) fail to use commercially reasonable efforts to not interfere with or disrupt the integrity, operation, or performance of the Services or the Service Data; and
- (h) fail to use commercially reasonable efforts not to interfere with the use or enjoyment of it by others.

2.3 Ownership and Intellectual Property Rights. Subscriber acknowledges and confirms that Numeris has undertaken extensive research and expense to create and develop the Service Data and that the Service Data constitutes valuable intellectual property and trade secrets of Numeris. This Agreement does not convey any right, title or interest in the Service Data whatsoever to Subscriber other than the limited license expressly set out herein. Subscriber shall protect the proprietary rights of Numeris in the Service Data with the same degree of care used to protect its own proprietary rights. Subscriber shall honour and comply with all reasonable requests made by Numeris to protect its rights in the Service Data. Subscriber shall not remove any copyright notice or other notification or trade name or marks of Numeris that appear in the Service Data. Subscriber acknowledges and agrees that Numeris is entitled to share all of its Service Data (including Service Data relating to Subscriber's audience measurements) with other Numeris subscribers, as well as the public, in accordance with Numeris' policies and procedures. For greater certainty, the preceding sentence does not apply to any Confidential Information of Subscriber.

2.4 Fees. Fees for access and use of the Service Data are determined by Numeris and invoiced as set out in the Order Form. Subscriber agrees to pay its fees, plus all applicable taxes thereon, when due, and agrees that it will abide by all applicable fee policies of Numeris. Numeris may suspend Subscriber's right to access and use the Service Data for non-payment or late payment of fees, in accordance with the Subscription Fee Policy available online at www.numeris.ca/subscription-terms/.

2.5 Confidentiality. "**Confidential Information**" means all information of a Party to this Agreement or any affiliate of such Party that is generally not known to the public and that is disclosed by or on behalf such Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**") or that is otherwise learned by or comes into the possession or knowledge of the Receiving Party in connection with, or as a result of, this Agreement. The Receiving Party will not use the Confidential Information for any purpose other than for purposes of fulfilling its obligations under this Agreement. Except as required by law, the Receiving Party will not disclose or provide access to any Confidential Information to any third party, and will use commercially reasonable efforts in accordance with leading industry practices to protect the Confidential Information from any misappropriation or unauthorized use or disclosure. This paragraph shall not apply to information that: (a) is or becomes publicly known through no wrongful act of Receiving Party; (b) was already known by the Receiving Party at the time of initial disclosure by the Disclosing Party; (c) is independently developed by the Receiving Party without reference to, or use of, the Confidential Information; (d) is received by the Receiving Party from a third party authorized to make such disclosure without restriction of confidentiality; or (e) is approved in writing for release by the Disclosing Party or otherwise identified in writing by the Disclosing Party as no longer confidential. Unless otherwise prohibited by law, if the Receiving Party is required by law, court order or other legal process to disclose any Confidential Information, Receiving Party will promptly notify the Disclosing Party in writing to allow the Disclosing Party to seek a protective order or other appropriate remedy, and will reasonably cooperate with the Disclosing Party to obtain such protective order or other appropriate remedy.

2.6 Privacy. Numeris will conduct, collect, use, disclose and maintain the Service Data in compliance with all applicable laws, legal rules and regulations, including all applicable Privacy Laws.

2.7 Changes to Numeris Services and Data. Numeris reserves the right at any time to modify, suspend, or discontinue providing the Services or Service Data, in whole or in part. In the event Numeris anticipates that any such action will significantly affect Subscriber's use of the Service Data licensed hereunder in a negative way, Numeris will endeavor to provide Subscriber with advance notice.

ARTICLE 3 – SUBSCRIPTION PERIOD, RENEWAL AND TERMINATION

3.1 Subscription Period and Renewal. The Subscription Period for the Service is as set out in the Order Form. Thereafter, the Subscription Period shall be automatically renewed annually for additional one (1) year renewal periods (the initial renewal period and each subsequent renewal period are together and each referred to as a "**Renewal Subscription Period**"), unless either Party gives written notice of non-renewal to the other Party as set out in Section 3.2 below. Collectively, the Subscription Period and any Renewal Subscription Period shall constitute the "**Service Subscription Period**" for each Order Form.

3.2 Notice of Non-Renewal.

- (a) Numeris may give written notice of non-renewal to the Subscriber at least sixty (60) days prior to the end of the Service Subscription Period.
- (b) Subscriber may give written notice of non-renewal to Numeris as follows:
 - (i) If Subscriber is identified as Publisher–Broadcaster or Publisher–Digital on the applicable Order Form and subscribes to the Radio Meter Service or the TV Meter Service, Subscriber must give at least twenty-four (24) months written notice prior to the end of the Service Subscription Period for all applicable subscribed Services as set forth in the Mandatory Radio Broadcaster Subscription Policy and the Mandatory Television Broadcaster Subscription Policy; and
 - (ii) All other Subscribers must give at least sixty (60) days written notice prior to the end of the Service Subscription Period.
- (c) In the event either Party gives notice of non-renewal as specified above, the Service Subscription Period shall expire as of the end of the then current Service Subscription Period. The Service Subscription Period is subject to the termination rights of the Parties under this Agreement.

3.3 Suspension and Termination.

- (a) Numeris reserves the right to suspend Subscriber's privileges, including Subscriber's right to access and use the Service Data, on written notice to Subscriber if Subscriber has breached any term or provision of this Agreement and such breach is not remedied to Numeris' reasonable satisfaction within fifteen (15) days of written notice of such breach being given to Subscriber.
- (b) Numeris may terminate this Agreement on written notice to Subscriber if Subscriber has breached any term or provision of this Agreement and such breach is not remedied to Numeris' reasonable satisfaction within thirty (30) days of written notice of such breach being given to Subscriber.
- (c) Either Party may terminate the Agreement upon written notice: (a) upon the commencement by or against the other Party of any application proposal, assignment or other proceeding under any bankruptcy, insolvency or reorganization laws or other similar laws; or (b) upon the appointment of a receiver for the other Party, or the levy, seizure, assignment or sale for or by any creditor or of substantially all of the other Party's property. If Numeris terminates the Agreement in accordance within this Section, Subscriber must pay within 30 days all amounts that have accrued prior to such termination, as well as all sums remaining unpaid for the Services for the duration of the Service Subscription Period plus related taxes and expenses. The non-breaching Party may agree in its sole discretion to extend the 30-day period for so long as the breaching Party continues reasonable efforts to cure the breach.

3.4 Effect of Termination. Upon the expiration or other termination of this Agreement:

- (a) Subscriber shall pay any outstanding invoices and other accrued payments owed to Numeris through the date of such expiration or termination;
- (b) Subscriber shall immediately cease using any and all Service Data for new projects or purposes;
- (c) All Service Data received electronically by the Subscriber and all materials, records and other works that contain or reference any Service Data shall be removed from Subscriber's servers, hard drives and other storage devices and all tapes, discs and similar media containing any Service Data will be fully erased or destroyed; provided that reports, materials and other works created by Subscriber that are based on, incorporate or reference any Service Data may be retained. Upon request from Numeris, Subscriber will certify that the foregoing obligations have been satisfied. Notwithstanding the preceding, Service Data contained in system-backup media, such as for example backup tapes, need not be erased or destroyed so long as the backup media are maintained in confidence, are not readily accessible to users, are not otherwise restored onto Subscriber's systems, and that any such Service

Data contained in system-backup media are overwritten in the ordinary course of reuse of those system-backup media; and

- (d) The remedies of either Party otherwise available to it at law or in equity in relation to any rights accrued under this Agreement prior to such expiration or termination shall not be affected.

ARTICLE 4 – SECURITY

4.1 Security and Management of Service Data. Subscriber will:

- (a) Implement and maintain all appropriate technical, physical and organizational security and confidentiality measures as necessary to protect against unauthorized or unlawful processing of Service Data and against accidental loss, alteration, disclosure or destruction of, misuse of, or damage to, Service Data held or processed by or on behalf of Subscriber, and to take all reasonable steps to ensure the reliability of any of Subscriber's staff or approved contractors who have access to or are responsible for the processing of Service Data;
- (b) Promptly inform Numeris if there is any breach or suspected breach of security related to the Service Data and/or Confidential Information; and
- (c) Protect the Service Data with the same degree of care that the Subscriber uses to protect and safeguard its own like information, but not less than the degree of care that would be exercised by a prudent person given the sensitivity and strategic value of the Service Data.

ARTICLE 5 – LIABILITIES AND REMEDIES

5.1 Disclaimer. Numeris uses good faith efforts in collecting and compiling the Service Data. However, Subscriber acknowledges that the Service Data is provided “as is” without warranty of any kind, either express or implied, to the fullest extent permitted under applicable law, including without limitation, any warranties of merchantability or fitness for a particular purpose or non-infringement. Numeris will use commercially reasonable efforts to correct any material error in the Service Data, and will bring such correction to Subscriber’s attention upon becoming aware of any such material error. Numeris does not warrant the accuracy or completeness of the Service Data, nor that the supply of the Service Data will be uninterrupted or error-free. All use of and reliance on the Service Data shall be at Subscriber’s sole risk.

5.2 Indemnity. Subscriber shall indemnify and save harmless Numeris from any and all losses, damages, liability, costs (including reasonable legal fees and expenses) resulting directly or indirectly from any finally adjudicated claim against Numeris by a third party arising out of or related to: (i) any misuse by Subscriber of the Service Data; or (ii) any other breach by Subscriber of any of its representations, warranties or covenants hereunder.

5.3 Liability. Numeris is a non-profit organization. Accordingly, the following provisions shall bind Subscriber and shall be for the protection of Numeris and its officers, directors, employees and agents (collectively and individually the “**Releasees**”). Subscriber releases and waives any right to assert claims against the Releasees relating to this Agreement or the Service Data howsoever arising including in contract or in tort, for any loss, injury or damage including all consequential and incidental damages whether caused directly or indirectly by any act or omission of the Releasees, and without limiting the generality of the foregoing, for any injury or damage whatsoever and howsoever caused arising out of any errors, omissions or inaccuracies in any Service Data provided or furnished by Numeris, or arising out of any variations in the procedures or methods used by Numeris in creating the Service Data, provided however, that such release and waiver shall not apply to Numeris’ indemnity obligation under Section 5.4 nor to limit liability for any malicious or intentional acts or omissions of the Releasees.

5.4 Intellectual Property and Privacy Indemnity. Numeris agrees to indemnify Subscriber and hold it harmless, and, at Numeris’ expense, defend Subscriber against, any third party claim or demand brought against Subscriber asserting that: (a) the Service Data provided by Numeris hereunder, or Subscriber’s use thereof in accordance with this Agreement, infringes or violates any copyright, trademark or other proprietary

rights of any third party or (b) any violation by Numeris, or any of its employees of any Privacy Law in relation to this Agreement; provided that (i) Subscriber promptly notifies Numeris in writing of the claim (provided that if Subscriber fails to provide such prompt notification, Numeris will not be relieved of its indemnification obligations except to the extent prejudiced by such delay); (ii) Numeris has sole control of the settlement and defense of any action to which this indemnity relates; and (iii) Subscriber reasonably cooperates with Numeris to facilitate such defense. No settlement or compromise of a claim may be made by Numeris without Subscriber's prior written consent (not to be unreasonably withheld) if such settlement or compromise contains an admission of liability on the part of Subscriber or imposes a positive obligation on Subscriber. Notwithstanding the foregoing, Numeris will not be liable under this Section for claims arising from the combination of Service Data with other information or data if the combination is the cause of such claim or from the modification of any Service Data by Subscriber (where such combination or modification of Service Data is the sole cause of such claim) or any breach by Subscriber of the License or any other provision of this Agreement. Should any Service Data become or, in Numeris' reasonable opinion, is likely to become, the subject of a claim for infringement, then Numeris may, at its sole option and expense, procure all necessary rights in order for Subscriber to continue using the Service Data in accordance with the License, modify the Service Data to make it non-infringing or terminate this Agreement, in which case Subscriber shall receive a pro rata refund of prepaid unearned fees to the date of termination. The foregoing provides Subscriber's sole and exclusive remedy with respect to allegations of infringement.

5.5 Remedies. Subscriber hereby agrees that monetary damages alone will not compensate or remedy Numeris with respect to any breach of this Agreement by Subscriber. Upon any breach or threatened breach of this Agreement by Subscriber or any of its employees or representatives, Numeris shall be entitled to injunctive relief to enforce this Agreement, but nothing herein shall preclude Numeris from pursuing any action or other remedy for any breach or threatened breach of this Agreement, all of which shall be cumulative. Without limiting the generality of the foregoing, Numeris shall be entitled on prior reasonable notice to suspend Subscriber's rights under this Agreement, including access to the Service Data, upon any breach or threatened breach of this Agreement by Subscriber or any of its employees or representatives, including any non-payment or late payment of fees.

5.6 Monitoring. Upon reasonable prior written notice to Subscriber, and no more than once in any rolling twelve (12) month period, Numeris may require Subscriber to accurately complete a self-audit questionnaire or other statement to verify Subscriber's compliance with the terms and conditions of this Agreement, including Subscriber's use of the Service Data, the accuracy of which must be certified by the Subscriber.

ARTICLE 6 – GENERAL PROVISIONS

6.1 Further Assurances. Each of Numeris and Subscriber shall from time to time execute and deliver such documents, instruments and filings, and do all acts and things as either Party may reasonably require of the other Party to effectively carry out the full intent and meaning of this Agreement.

6.2 Time of the Essence. Time shall be of the essence of this Agreement.

6.3 Benefit of the Agreement. This Agreement shall enure to the benefit of and be binding upon the Parties and their successors and permitted assigns.

6.4 Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the Parties hereto with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the Parties other than as expressly set forth in this Agreement.

6.5 Amendments and Waiver. No modification of, or amendment to, this Agreement shall be valid or binding unless made in writing and duly executed by both of the Parties. No waiver of any breach of any term or provision of this Agreement shall be effective or binding unless made in writing and signed by the Party purporting to give the same and, unless otherwise provided, shall be limited to the specific breach waived.

6.6 Assignment. This Agreement may not be assigned by Subscriber without the prior written consent of Numeris, not to be unreasonably withheld.

6.7 Notices. Any notice required or permitted to be given pursuant to this Agreement (other than notices of changes in Product Specific Terms, which may be given by email or by notification and posting on Numeris websites) shall be in writing and shall be given by email, registered or certified mail or by courier (with delivery receipt requested) to the address designated in the recipient Party's contact information in the Order Form, or at such other address a Party shall hereafter inform the other Party by written notice given as aforesaid. Any communication shall be conclusively deemed to have been given on the earlier of "read" or "delivery" receipt, as applicable, or the third business day following emailing, mailing or deposit with the courier, as applicable.

6.8 Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario. The Parties hereto each hereby irrevocably submit and attorn to the exclusive jurisdiction of the courts of the Province of Ontario.

6.9 Relationship of the Parties. This Agreement shall not be construed as creating any partnership, principal-agent, master-servant, joint venture, or similar relationship between the Parties. Neither Subscriber nor Numeris shall have any right or authority whatsoever to obligate or commit the other, whether in contract or otherwise.

6.10 Severability. Any provision of this Agreement that is prohibited or unenforceable will be ineffective to the extent of such prohibition without invalidating the remaining provisions.

6.11 Force Majeure. Neither Party shall be liable to the other Party for any loss, injury, delay, damage or other casualty suffered or incurred by such other Party due to strikes, labour disputes, riots, storms, fires, explosions, act of God, war or any other cause similar thereto which is beyond the reasonable control of that Party, and any failure or delay by any of the Parties in performance of any of its obligations under this Agreement due to one or more of the foregoing causes shall not be considered a breach of this Agreement.

6.12 Interpretation. In this Agreement, words importing a singular number only shall include the plural and vice versa. The division of this Agreement into Articles and sections and the insertion of headings are for convenient reference only, and shall affect neither the construction nor the interpretation of this Agreement.

6.13 Trademarks. Except as expressly set forth in this Agreement, nothing in this Agreement shall be deemed to give either Party any rights to use any of the other Party's trademarks or official marks or trade names without such other Party's specific, written consent, other than as required by Numeris to report station or program name information.

6.14 Rights Granted. Except as expressly provided herein, the rights herein granted and this Agreement are personal to and are for the benefit of the Parties hereto and are not for the benefit of any third person, firm or corporation, and nothing herein contained shall be construed to create any rights in any third parties under, as a result of, or in connection with this Agreement.

6.15 Survival. The following sections shall survive the expiry or termination of this Agreement for any reason: Sections 2.3 (Ownership and Intellectual Property Rights), 2.5 (Confidentiality), 3.4 (Effect of Termination), 5.1 (Disclaimer), 5.2 (Indemnity), 5.3 (Liability), 5.5 (Remedies), 6.4 (Entire Agreement), 6.8 (Governing Law and Jurisdiction), 6.9 (Relationship of the Parties), 6.10 (Severability), 6.12 (Interpretation), 6.13 (Trademarks), and 6.15 (Survival). The provisions of Section 5.4 (Intellectual Property and Privacy Indemnity) shall survive expiration or termination of this Agreement, but only with respect to claims of intellectual property infringement that arose from acts or circumstances that occurred prior to such termination or expiration.

6.16 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same agreement. This Agreement may be executed by facsimile signature or other electronic means and such signatures shall be deemed to bind each Party as if they were original signatures. No signatory hereto shall be bound until both Parties named below have duly executed, or caused to be duly executed, a counterpart of this agreement whether signed with original signatures, in counterparts, by facsimile, or other electronic means.