

Nuvelar - Terms and conditions

NUVELAR, Inc. ("NUVELAR") provides software as a service for the streaming of content and social media from a media player (the "Software"). Pursuant to the terms of this Customer Agreement (this "Agreement"), NUVELAR is licensing the Software to USER on a monthly basis.

1. LIMITED USER LICENSE; RESTRICTIONS

NUVELAR hereby grants USER a limited, non-exclusive, non-transferable, non-assignable right to use the Software subject to all the terms and conditions of this Agreement. All rights not expressly granted to USER are reserved by NUVELAR and its licensors. USER shall not:

- use (including making any copies of) the Software beyond the scope of the license granted herein;
- make use of the Software on more than one computer at a time, without prior purchases of additional licenses;
- rent, lease, lend, sell, resell, sublicense, transfer, assign, share, publish, distribute, commercially exploit or make available the Software in any manner whatsoever, to any other third party;
- modify, adapt, translate, create derivative works or improvements based upon any part of the Software other than what may be used in accordance with this License;
- reverse engineer, decompile, disassemble, copy, create derivative works, or otherwise modify the Software, any updates, or any part thereof, nor attempt to locate or obtain its source code;
- alter or remove any trademark, copyright or other proprietary notice of NUVELAR contained within the Software;
- use the Software for purposes of competitive analysis of the Software, the development of a competing software product or service or any other purpose that is to NUVELAR's commercial disadvantage;
- build or create a competitive software product or service using similar ideas, features, functions or graphics of the Software or copy any such ideas, features, functions or graphics of the Software;
- combine the Software or any part thereof with, or incorporate the Software or any part thereof, in any other software or programs;
- use the Software in violation of any foreign, federal, state or local law, regulation or rule; or make use of the Software in any manner not stipulated within this Agreement or the documentation accompanying the Software.

USER agrees not to use the Software to stream or show Content that is defamatory, obscene, indecent, violently graphic, or discriminatory against any class of persons. For purposes of this Agreement, "Content" means the audio and visual information, graphics, text, images, music, software and documents made available in the course of using the Software.

2. PAYMENT TERMS

Fees for the Software are set forth on the NUVELAR website. USER is responsible for paying for all specified fees and agrees to pay NUVELAR on the date any outstanding fees are due. NUVELAR reserves the right to modify its fees and charges and introduce new charges at any time; however such fee changes will not apply during the current Agreement term. All fees are exclusive of any applicable federal or state sales or use taxes. USER is solely responsible for paying all such taxes and government charges. In the event USER has ordered any equipment, USER agrees to pay all equipment related fees on the order date, including, if applicable, all installation fees. USER's failure to pay any outstanding balance within on the applicable due date will result in the immediate suspension of NUVELAR Software and services and deactivation within twenty four (24) hours until such outstanding balance is paid in full. To the fullest extent permitted by law, except as set forth in this Agreement, refunds (if any) are solely at the discretion of NUVELAR. Nothing in this Agreement requires NUVELAR to extend credit to USER. Upon any payment default by USER which is not cured within three (3) business days of written notice from NUVELAR to USER of such payment default, NUVELAR may, in its sole discretion, immediately terminate your access and use of the Software at any time thereafter.

USER agrees to provide NUVELAR with a valid credit card and complete and accurate billing and contact information and hereby authorizes NUVELAR to deduct monthly fees and other charges against such credit card. This information includes such USER's legal company or individual name, street address, e-mail address, and name and telephone number of an authorized billing contact or credit card holder. USER agrees to update all such credit card and other billing and contact information within three (3) business days of any change to it. USER represents and warrants to NUVELAR that any credit card provided to NUVELAR is authorized by such USER individually or by USER's company for use by NUVELAR as provided herein and will not be rejected. If NUVELAR is unable for any reason to bill or process any credit card charges, NUVELAR will take commercially reasonable efforts to contact you by email and notify you to provide another credit card to NUVELAR; provided, however, that USER agrees that NUVELAR may suspend USER's account during such time until USER provides another credit card and USER's charges are processed and paid in full. If any credit card, billing or contact information provided by any USER is false or fraudulent, NUVELAR, in addition to any remedies available by law, reserves the right to immediately terminate your access to the Software.

3. TERM; TERMINATION

If USER signed an annual contract, this Agreement shall be automatically renewed on the anniversary of the effective date of this Agreement and on each anniversary thereafter for an additional term of one year (each, a "Renewal Term"), with each Renewal Term subject to termination as provided herein.

NUVELAR may terminate this Agreement by giving at least thirty (30) days prior written notice to USER.

NUVELAR reserves the right to suspend or terminate any use of the Software by USER for any breach of this Agreement or unauthorized use of the Software. If USER's right to use the Software is suspended or terminated for any reason, USER's license to use the Software immediately terminates without any notice be given to USER. However, all provisions of this Agreement, with the exception of the NUVELAR's license grant to USER, shall remain in full force and effect and shall survive termination. Upon termination of NUVELAR's license grant to USER, USER shall destroy any and all copies of the Software.

4. REPRESENTATIONS AND WARRANTIES

By signing or clicking your consent to this Agreement, USER represents and warrants that it has the legal power and authority to enter into this Agreement (including on behalf of the business entity for whom the signatory is an agent, employee or representative). USER represents and warrants that it has not falsely identified itself nor provided any false information to gain access to the Software and that USER's credit card and billing information is complete and accurate.

USER represents and warrants that it shall: (i) notify NUVELAR immediately of any unauthorized use of any password or account or any other known breach of security with respect to such passwords and accounts; (ii) report to NUVELAR immediately and use reasonable efforts to stop immediately any unauthorized copying or distribution of Content that is known or suspected by USER; and (iii) not impersonate another user or provide false identity information to gain access to or use the Software.

5. INTELLECTUAL PROPERTY

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6. COLLECTION AND USE OF INFORMATION

NUVELAR may, directly or indirectly, through the services of others, collect and store information regarding use of the Software and about equipment on which the Software is installed or through which it otherwise is accessed and used. You agree that NUVELAR may use such information for any purpose related to any use of the Software by USER, including but not limited to, (i) improving the performance of the Software or developing upgrades; and (ii) verifying compliance with the terms of this Agreement and enforcing NUVELAR's rights, including all Intellectual Property Rights in and to the Software.

7. NOTIFICATIONS

Since the Software is a hosted, online application, NUVELAR reserves the right to notify all USERS of the Software of important announcements regarding the operation of the Software via e-mail.

8. DISCLAIMER OF WARRANTY

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NUVELAR AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY, OR COMPLETENESS OF THE SOFTWARE OR ANY EQUIPMENT USED IN CONNECTION WITH THE SOFTWARE ("EQUIPMENT"). NUVELAR AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SOFTWARE OR EQUIPMENT WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE SOFTWARE OR EQUIPMENT WILL MEET USER'S REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY USER THROUGH THE SOFTWARE OR EQUIPMENT WILL MEET USER'S REQUIREMENTS OR EXPECTATIONS, (E) ERRORS OR DEFECTS WILL BE CORRECTED, (F) THE ADDITIONAL COSTS INCURRED TO USE THE SOFTWARE OR EQUIPMENT WILL NOT EXCEED A CERTAIN AMOUNT OF MONEY, OR (G) THE SOFTWARE, EQUIPMENT OR THE SERVER(S) THAT MAKE THE SOFTWARE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SOFTWARE AND EQUIPMENT IS PROVIDED TO YOU STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, NON-FRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY NUVELAR AND ITS LICENSORS.

9. LIMITATION OF LIABILITY

IN NO EVENT SHALL NUVELAR'S AGGREGATE LIABILITY TO USER UNDER THIS AGREEMENT EXCEED THE

AMOUNTS ACTUALLY PAID BY USER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL NUVELAR OR ITS LICENSORS BE LIABLE TO USER FOR ANY USE, INTERRUPTION, DELAY OR INABILITY TO USE THE SOFTWARE. IN NO EVENT SHALL NUVELAR OR ITS LICENSORS BE LIABLE TO USER FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SOFTWARE OR EQUIPMENT, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SOFTWARE OR EQUIPMENT, ANY CONTENT OBTAINED FROM OR THROUGH THE SOFTWARE OR EQUIPMENT, THE AMOUNT OR COST OF THE DATA REQUIRED TO USE THE SOFTWARE OR EQUIPMENT, OR ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE, EVEN IF NUVELAR HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF NUVELAR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION. Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential or certain other types of damages, and to that extent, the exclusions set forth above may not apply to USER.

10. INDEMNIFICATION

USER shall defend, indemnify and hold harmless NUVELAR, its officers, directors, shareholders, agents and employees from and against the full amount of any and all Losses (defined below) incurred as a result of (a) USER's use of the Software, (b) USER's violation of applicable law, or (c) any actual or alleged death of or injury to any person suffered arising out of USER's use of the Software, unless caused by NUVELAR's gross negligence or willful misconduct, provided that NUVELAR (i) promptly gives USER written notice of any claim, (ii) gives USER sole control of the defense and settlement of such claim (provided that USER may not settle or defend any claim unless it unconditionally releases NUVELAR of all liability), and (iii) has not compromised or settled such claim. For purposes of this Agreement, "Losses" means any and all losses, claims, damages, liabilities or actions or proceedings with respect thereto or expenses, including, but not limited to all legal expenses and any and all other expenses incurred in investigating, preparing, serving as a witness in or defending against, any action or proceeding, commenced or threatened, which a party may be subject to (whether or not such party is named as a party) which arise out of or are related to the subject matter of this Agreement.

11.EXPORT CONTROLS

By clicking on the install button or otherwise installing or using the Software, you hereby agree that you will comply with any and all applicable export laws, restrictions and all regulations of the U.S. Department of Commerce, U.S. Department of Treasury, and any other U.S. or foreign agency or authority with regards to this provision of the Agreement. You expressly agree not to export or re-export the Software, nor allow the export or re-export to any country subject to any and all applicable U.S. trade embargoes or to any prohibited destination, in any group specified in the current "Supplement No. 1 to Part 740 or the Commerce Control List specified in the then current Supplement No. 1 to part 738 of the U.S. Export Administration Regulations (or any successor supplement or regulations)."

12. U.S. GOVERNMENT RIGHTS

The Software is commercial computer software, as such term is defined in 48 C.F.R. §2.101. Accordingly, if the Licensee is the US Government or any contractor therefor, Licensee shall receive only those rights with respect to the Software and Documentation as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.

13. CONFIDENTIALITY

Each party that receives Confidential Information (a "Recipient") from the other party (a "Discloser") agrees not to use any Confidential Information (as defined below) for Recipient's own use or for any purpose other than to carry out the subject matter of this Agreement. Recipient shall not disclose any Confidential Information of Disclosure to third parties. Recipient agrees to take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of Disclosure in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized hereunder to have any such information. Recipient further agrees to notify Disclosure in writing of any actual or suspected misuse, misappropriation or unauthorized disclosure of Discloser's Confidential Information which may come to Recipient's attention. "Confidential Information" means any information, technical data or know-how, including, but not limited to, information relating to business and product or service plans, financial projections, customer lists, business forecasts, sales and merchandising, human resources, patents, patent applications, computer object or source code, research, inventions, processes, designs, drawings, engineering, marketing or finance to be confidential or proprietary or which information would, under the circumstances, appear to a reasonable person to be confidential or proprietary. Confidential Information does not include information, technical data or know-how which: (i) is in the possession of Recipient at the time of disclosure, as shown by Recipient's files and records immediately prior to the time of disclosure; or (ii) becomes part of the public knowledge or literature, not as a direct or indirect result of any improper inaction or action of Recipient.

14. COMPLIANCE WITH LAW

USER represents, warrants and covenants that USER's use of the Software and any services will comply with all applicable local, state, federal and foreign laws and regulations (collectively "Applicable Law"), including but not limited to those related to copyright, trademark, data privacy, international communications and the transmission of technical or personal data. USER shall be responsible for determining whether the Software and any services are suitable for USER's use in light of all such Applicable Law. If USER is subject to any Applicable Law and uses the Software, NUVELAR shall not be liable if the Software doesn't meet the requirements of Applicable Law.

15. MISCELLANEOUS

This Agreement constitutes the entire understanding and agreement of the parties with respect to this subject matter and supersedes all prior and contemporaneous agreements or understandings, inducements or conditions, express or implied, written or oral, between the parties. If any provision of this Agreement shall be found invalid or unenforceable, the remainder of this Agreement shall be interpreted so as best to reasonably affect the intent of the parties. This Agreement shall be binding upon, and inure to the benefit of, the successors, executors, heirs, representatives, administrators and permitted assigns of the parties hereto. USER shall have no right to (a) assign this Agreement, by operation of law or otherwise, or (b) subcontract or delegate the performance of its obligations under this Agreement without NUVELAR's prior written consent which may be withheld by NUVELAR in its sole discretion. Any such purported assignment shall be void. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to its choice of law principles. The parties consent to exclusive jurisdiction and venue in the federal and state courts sitting in New Castle County, Delaware. In any action or suit to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees, costs and other expenses. However, in the event of a dispute between the parties hereto with respect to this Agreement, the parties agree to first attempt to resolve the dispute by mediation. No third party is intended to be, and no third party shall be, a third party beneficiary of this Agreement. The parties hereto are independent contractors and shall not be deemed to be agents, representatives, joint venturers or partners of the other party. NUVELAR may use USER's business name, business address, logos, content, and other venue related information in NUVELAR marketing materials including, but not limited to, physical printouts, digital advertising and promotional materials.

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