
Appendix - Flow Down Terms: Numonix IX Cloud

1. DEFINITIONS

In this Appendix the following terms and expressions shall have the following meanings:

Third Party in the context of this Appendix means Numonix, LLC, a Delaware Corporation

Third Party Services means the Third Party Software and associated services and support services if applicable to be provided by Supplier under the Contract.

Third Party Software means the third party software specified in the MSA, to be provided to the Customer by Supplier pursuant to the Contract

2. ORDER OF PRECEDENCE

In the event of any conflict or inconsistency between any of the provisions in the Contract and this Appendix, with respect to the provision of this Third Party Services, the provisions of this Appendix shall prevail.

3. USE OF SERVICE

- 3.1. **Customer Owned Data.** All audio and video files and other data uploaded by Customer to the Third Party Services remains the property of Customer, as between Supplier and Customer ("**Customer Data**"). Customer grants Supplier the right to use the Customer Data solely for purposes of providing the Third Party Services. During the Term, Customer may export its Customer Data as allowed by functionality within the Third Party Services.
- 3.2. **Access and Usage.** Customer may allow its contractors to access the Third Party Services in compliance with the terms of this Appendix and the Contract, which access must be for the sole benefit of Customer. Customer is responsible for the compliance with this Appendix and the Contract by its contractors.
- 3.3. **Customer Responsibilities.** Customer is solely responsible for Customer Data and all activity in its account in the Third Party Services and Customer shall backup the Customer Data and ensure that it meets Customer's backup requirements.
- 3.4. **30-Day Trial Version.** If Customer has registered for a trial use of the Third Party Services, Customer may access the Service for a thirty (30) day time period (unless extended by Supplier in writing). All Customer Data will be deleted after the trial period, unless Customer converts its account to a paid service.
- 3.5. **Free Version.** If Customer has registered for a no-charge use of the Service, Customer may access the Service until it is cancelled by Supplier (without cause) upon notice sent via email (using its email address in the Service), or by the Customer. All Customer information will be deleted after the no-charge period ends, unless Customer converts its account to a paid Service.
- 3.6. **Service Interoperability.** The Third Party Services interoperate with one or more third party services (including, without limitation, Salesforce, Skype for Business, ShoreTel, AudioCodes, Microsoft Teams) and depends on the continuing availability and access to such third party services and any data or information interfaces. If for any reason Supplier cannot access or use the applicable third party services (including without limitation, change in terms or increase in fees charged by a third party service provider), Supplier may not be able to provide all of the functions of the Third Party Services. No refund or credit will be provided for unavailability of any third party services.
- 3.7. **API.** Supplier provides access to its free set of application-programming interface ("**API**") as part of the Third Party Services for no additional fee.
 - 3.7.1. Customer may not use the API in a manner, as reasonably determined by Supplier, that exceeds reasonable request volume, constitutes excessive or abusive usage, or fails to comply with any part of the API. If any of these occur, Supplier can suspend or terminate Customer's access to the API on a temporary or permanent basis.
 - 3.7.2. Supplier may change or remove existing endpoints or fields in API results upon at least thirty (30) day's notice to Customer, but Supplier will use commercially reasonable endeavours to support the previous version of the API for at least six (6) months. Supplier may add new endpoints or fields in API results without prior notice to Customer.
 - 3.7.3. Supplier has no liability to Customer as a result of any change, temporary unavailability, suspension, or termination of access to the API.
- 3.8. **Statistical Information.** Supplier may compile statistical information related to the performance of the Third Party Services 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. Supplier retains all intellectual property rights in such information .

4. LIMITATION OF LIABILITY

- 4.1. Supplier's total liability arising out of or related to the Third Party Services (whether in contract, tort, or otherwise) does not exceed the amount paid by Customer for the Third Party Services within the twelve (12) month period prior to the event that gave rise to the liability.
- 4.2. Supplier will defend or settle any third party claim against Customer to the extent that such claim alleges that Supplier technology used to provide the Third Party Services violates a copyright, patent, trademark, or other intellectual property right, if Customer promptly notifies Supplier of the claim in writing, cooperates with Supplier in the defense, and allows Supplier to solely control the defense or settlement of the claim.
- 4.2.1. **Costs.** Supplier will pay infringement claim defense costs it incurs in defending Customer, Supplier-negotiated settlement amounts, and court-awarded damages.
- 4.2.2. **Process.** If such a claim appears likely, then Supplier may modify the Third Party Services, procure the necessary rights, or replace it with the functional equivalent. If Supplier determines that none of these are reasonably available, then Supplier may terminate the Third Party Services and refund any prepaid and unused fees.
- 4.2.3. **Exclusions.** Supplier has no obligation for any claim arising from: Supplier's compliance with Customer's specifications; a combination of the Third Party Services 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 Supplier.

THIS PARAGRAPH 4.2 CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND SUPPLIER'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.

- 4.3. If a third party claims against Supplier that any part of the Customer Data infringes or violates that party's patent, copyright, or other right, Customer will defend Supplier 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 Supplier 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.

5. EXCLUSION OF TERMS

The UN Convention on Contracts for the International Sale of Goods does not apply.

6. INDEPENDENT CONTRACTORS

The Parties are independent contractors with respect to each other.

7. CUSTOMER FEEDBACK

If Customer provides feedback or suggestions about the Third Party Services, then Supplier (and those it allows to use its technology) may use such information without obligation to Customer.

8. EXPORT COMPLIANCE

Customer must comply with all applicable export control laws of the UK, United States, foreign jurisdictions and other applicable laws and regulations.

9. 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 Appendix and the Contract and is prohibited except to the extent permitted by the terms of this Appendix and the Contract.

10. CLAUSE REQUIRED BY MICROSOFT

Every user of the Third Party Services must personally notify other participants prior to invoking any action in the Third Party Services that will initiate recording or persisting of media.