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## 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 RA, to be provided to the Reseller Client via the Reseller 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. **Reseller Client Owned Data.** All audio and video files and other data uploaded by Reseller or Reseller Client, as applicable, to the Third Party Services remains the property of Reseller Client, as between Supplier and Reseller Client ("**Customer Data**"). Reseller or Reseller Client, as applicable, grants Supplier the right to use the Customer Data solely for purposes of providing the Third Party Services. During the Term, Reseller or Reseller Client, as applicable, may export its Customer Data as allowed by functionality within the Third Party Services.
- 3.2. **Access and Usage.** Reseller or Reseller Client, as applicable, 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 Reseller or Reseller Client, as applicable. Reseller or Reseller Client, as applicable, is responsible for the compliance with this Appendix and the Contract by its contractors.
- 3.3. **Reseller or Reseller Client, as applicable, Responsibilities.** Reseller or Reseller Client, as applicable, is solely responsible for Customer Data and all activity in its account in the Third Party Services and Reseller or Reseller Client, as applicable, shall backup the Customer Data and ensure that it meets Reseller or Reseller Client, as applicable, backup requirements.
- 3.4. **30-Day Trial Version.** If Reseller or Reseller Client, as applicable, has registered for a trial use of the Third Party Services, Reseller or Reseller Client, as applicable, 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 Reseller or Reseller Client, as applicable, converts its account to a paid service.
- 3.5. **Free Version.** If Reseller or Reseller Client, as applicable, has registered for a no-charge use of the Service, Reseller or Reseller Client, as applicable, 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 Reseller or Reseller Client, as applicable. All Reseller or Reseller Client, as applicable, information will be deleted after the no-charge period ends, unless Reseller or Reseller Client, as applicable, 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. Reseller or Reseller Client, as applicable, 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 Reseller or Reseller Client, as applicable, 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 Reseller or Reseller Client, as applicable, 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 Reseller or Reseller Client, as applicable.
  - 3.7.3. Supplier has no liability to Reseller or Reseller Client, as applicable, 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 Reseller or Reseller Client, as applicable, 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 Reseller or Reseller Client, as applicable, 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 Reseller or Reseller Client, as applicable, 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 Reseller or Reseller Client, as applicable, 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 Reseller or Reseller Client, as applicable, 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, Reseller or Reseller Client, as applicable, will defend Supplier against that claim at Reseller or Reseller Client, as applicable, expense and pay all costs, damages, and attorneys' fees that a court finally awards or that are included in a settlement approved by Reseller or Reseller Client, as applicable,, provided that Supplier promptly notifies Reseller or Reseller Client, as applicable, of the claim in writing, cooperates with Reseller or Reseller Client, as applicable, in the defense, and allows Reseller or Reseller Client, as applicable, 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. **RESELLER OR RESELLER CLIENT, AS APPLICABLE, FEEDBACK**

If Reseller or Reseller Client, as applicable, 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 Reseller or Reseller Client, as applicable,.

#### 8. **EXPORT COMPLIANCE**

Reseller or Reseller Client, as applicable, 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 Reseller or Reseller Client, as applicable, 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.