



## GENERAL TERMS AND CONDITIONS FOR SYSTEMLINK SOFTWARE

This Agreement together with all of its attachments and the Enterprise Software Solution Documentation, which shall include, inter-alia, the applicable Quote (the “**ESS Documentation**”), contain the entire agreement of the parties relating to its subject matter, and supersede all previous agreements, negotiations and proposals between the parties relating to this subject matter. Amendments and additions to this Agreement shall, in order to be binding on the parties, be made in writing and duly executed by the parties. Capitalized terms used and not defined herein shall have the meanings given to such in the ESS Documentation.

*The National Instruments Software License Agreement - SystemLink attached as **Schedule A** hereto shall apply with respect to any license of **SystemLink Server**, as specified in the applicable ESS Documentation.*

*The National Instruments Enterprise Software License Agreement - SystemLink attached as **Schedule B** hereto shall apply with respect to any license of **SystemLink Enterprise**, as specified in the applicable ESS Documentation.*



## Schedule A

### **NATIONAL INSTRUMENTS SOFTWARE LICENSE AGREEMENT**

#### **SYSTEMLINK**

CAREFULLY READ THIS SOFTWARE LICENSE AGREEMENT ("AGREEMENT"). BY DOWNLOADING THE SOFTWARE AND/OR CLICKING THE APPLICABLE BUTTON TO COMPLETE THE INSTALLATION PROCESS, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT WISH TO BECOME A PARTY TO THIS AGREEMENT AND BE BOUND BY ITS TERMS AND CONDITIONS, DO NOT INSTALL OR USE THE SOFTWARE, AND RETURN THE SOFTWARE (WITH ALL ACCOMPANYING WRITTEN MATERIALS AND THEIR CONTAINERS) WITHIN THIRTY (30) DAYS OF RECEIPT. ALL RETURNS TO NI WILL BE SUBJECT TO NI'S THEN-CURRENT RETURN POLICY. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF AN ENTITY, YOU AGREE THAT YOU HAVE AUTHORITY TO BIND THE ENTITY TO THESE TERMS.

The terms of this Agreement apply to the computer software and other code provided with this Agreement, all updates or upgrades to the software that may be provided later by NI as part of any maintenance, technical support, or other services program for the software, including during any renewal term, unless such update, upgrade, or renewal comes with separate software license terms, and all accompanying documentation and utilities (collectively "Software" or "SOFTWARE"). Software does not include certain third party software that NI provides to you but that is subject to separate license terms either presented at the time of installation or otherwise provided with the Software ("Third Party Software").

#### 1. Grant of License; Restrictions

- A. In consideration of, and conditioned upon, your payment of any applicable fees to NI and subject to the terms set forth in this Agreement, National Instruments Corporation or National Instruments Ireland Resources Ltd. ("NI"), as applicable depending on the country of manufacture, hereby grants you a limited, revocable, non-exclusive right and license to install and use the Software on one (1) physical or virtual computing device (each a "computer") used to manage or monitor hardware targets ("nodes"). For the purposes of this license, multiple physical computing devices each hosting a portion of the Software but which such computing devices act together as one (1) system shall be considered an individual computer. The Software (but not the nodes managed by the Software) must be administered and managed in the country from which the license was purchased or within the European Union if the license was purchased in the European Union. For the purposes of this license, multiple systems interacting with the computing device on which the Software is run and pulling information from the computing device shall not be considered running the Software on a separate computing device.

You are responsible for ensuring that an Approved Volume License Manager, together with the most current license file provided by NI that controls end-user access to the Software (to the extent NI has made the Software compatible with an Approved Volume License Manager) is in use at all times with the Software. An "Approved Volume License Manager" means NI's computer software for controlling end-user access to the Software and that generates applicable usage compliance information ("NI VLM"); FLEXnet or FLEXlm software; or any other third party software approved in writing by NI for controlling end-user access to the Software. If the Approved Volume License Manager is the NI VLM or if NI makes documentation available for the applicable Approved Volume License Manager, such Approved Volume License Manager must be installed and used in accordance with the documentation provided by NI.



Unless otherwise provided in this Agreement or in the applicable documentation provided by NI to you, the term of the license, if purchased and not evaluation, is perpetual and not term. Software is for your internal use only; provided, however, you may manage or monitor nodes on behalf of third parties and may use application programming interfaces included with the Software to create interfaces from the nodes to the Software.

- B. Restrictions. You must not violate any applicable laws in your use of the Software. Unless and only to the extent that this Agreement expressly permits, you must not
- (i) modify or create derivatives of the Software;
  - (ii) install or use the Software in a floating, concurrent, or any other shared context (not including access to the Software from a web browser);
  - (iii) distribute or otherwise make the Software or any password, key, or other access code for the Software available to any third party;
  - (iv) reverse engineer, decompile, or disassemble the Software, unless and only to the extent that applicable law expressly prohibits this restriction;
  - (v) defeat or work around any access restrictions or encryption in the Software, unless and only to the extent that applicable law expressly prohibits this restriction;
  - (vi) sublicense, lease, lend, or rent the Software; or
  - (vii) remove, minimize, block, or modify any titles, logos, trademarks, copyright and patent notices, digital watermarks, disclaimers, or other legal notices that are included in the Software, whether or not they are NI or a third party's.
- C. Your use of the Software must also be in accordance with the applicable documentation that accompanies the Software and not in any manner that circumvents or is intended to circumvent such documentation or the intent of this Agreement.
- D. You may make a reasonable number of copies of the Software solely for backup or archival purposes and a reasonable number of copies of the documentation that accompanies the Software solely for your internal use in connection with your use of the Software.
2. Additional Terms. You may have additional rights and obligations to the Software through special license types and license programs, as set forth in addenda to this Agreement and which are incorporated as part of this Agreement. In the event of a conflict between an addendum and the other terms set forth in this Agreement, the terms of the addendum will control.
- Addendum A Evaluation License; Pre-Release Software Terms
  - Addendum B Volume License Program Terms
  - Addendum C Enterprise Program Terms
3. Third Party Contractors. Your third party contractors may access and use the Software, provided that they do so solely for your benefit, they agree to use the Software solely in accordance with the terms of this Agreement, and you agree to remain liable to NI for any breach by your contractors of this Agreement.
4. Software Services. If you have purchased a perpetual license, you may be required to purchase upgrades or maintenance, technical, or other services for the Software ("Software Services") separately. Except as otherwise provided under a special license type or license program, if you have purchased a term license, the fee for Software Services is included within the fees quoted for the entire term of use.
5. License Term; Termination and Expiration



- A. Term or Subscription Licenses. If you have purchased a term license (also referred to as a “subscription license”), the term of the license will commence on the date of your invoice and, unless terminated pursuant to the provisions in this Agreement, continues for the period of time specified in the product description or other applicable documentation provided to you by NI.
- (i) Unless the product description indicates otherwise, the license will expire automatically at the end of such term.
- (ii) If you have a term license that autorenews, your license will automatically renew for an additional year, unless either party notifies the other at least thirty (30) days prior to the commencement of the renewal term that it is cancelling the renewal. The price for a renewal may change from time to time at NI’s discretion. In such event, NI will provide you with an updated quote at least sixty (60) days prior to the termination of the current term. If you do not agree to the new price, you may provide notice of intent not to renew thirty (30) days prior to the commencement of the renewal term.
- B. Perpetual Licenses. If you have purchased a license and the license is specified as “perpetual” or no period of time is specified in the product description or other applicable documentation provided to you by NI, your license will be perpetual and, unless terminated pursuant to the provisions herein, you have the right to use the Software indefinitely.
- C. Termination. NI conditions its license grant on you complying with the terms set forth in this Agreement, and this Agreement will automatically terminate, immediately and without prior notice, if you fail to comply with its terms.
- D. Effect of Termination or Expiration. Upon termination or expiration of this Agreement, regardless of the reason, the license grants contained herein will terminate and you must immediately cease all use of the Software and destroy all copies of the Software; provided, however, you must deliver the Software and all copies to NI if NI has so demanded in lieu of any destruction. Sections 10, 13, 14, 15, 17, 18, 19, 20.A, and 21 of this Agreement will survive any expiration or termination of this Agreement.
6. Transfer. You may transfer a license to a third party in the same country in which you purchased the license, or within the European Union if you purchased the license in the European Union, provided that (i) you notify NI in writing of such transfer, including the name and location of such third party; (ii) such third party accepts the terms and conditions of this Agreement; and (iii) after such transfer you do not retain any copies of the Software or any of the written materials accompanying the Software. NI may, in its discretion, charge you a fee for the license transfer.
7. Upgrades; Prior Versions. If the Software is an upgrade, you may only use the Software if you have a valid license to use the prior version of the Software, and you may not use both the upgrade and the prior version of the Software concurrently. You may elect to use a prior version of any Software delivered and licensed under this Agreement in lieu of using the Software delivered and licensed under this Agreement (“Delivered Software”), provided (i) you have an authorized copy of the prior version of the Delivered Software; (ii) all use is pursuant to and in accordance with this Agreement; and (iii) notwithstanding anything in this Agreement to the contrary, in no event will NI be required to support any version of the Software, including providing applicable software key codes or hardware keys, other than the then most current version of the Delivered Software.
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9. Software/Hardware Key; Prior Access. You agree to use any software key codes or hardware keys provided by NI solely with the Software for which it is provided. While NI may in its sole discretion provide you with the applicable key or other access to use the Software prior to receipt from you of the applicable license fees, you will remain obligated to pay such fees to NI.
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13. Customer Remedies. NI's sole obligation, and your sole remedy, with respect to the foregoing Limited Warranty will be to, at NI's option, repair or replace the Software or return the fees paid by you to NI for the Software license, in which event you must return or destroy all copies of the Software in accordance with NI's instructions and the license granted to you will terminate without liability on the part of NI by reason of such termination. NI's obligations as set forth in this Section are contingent on you providing NI with written notice of applicable defects during the warranty period. In addition, you must obtain a Return Material Authorization number from NI before returning the Software under warranty to NI, and you agree to pay any expenses for shipment to and from NI.
14. No Other Warranties. **EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NO WARRANTY, EITHER EXPRESS OR IMPLIED, IS MADE BY NI WITH RESPECT TO THE SOFTWARE OR USE OF THE SOFTWARE. NI DOES NOT MAKE ANY WARRANTY OR REPRESENTATION HEREUNDER WITH RESPECT TO ANY THIRD PARTY SOFTWARE, SOURCE CODE, OR**



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15. Limitations Period. You hereby agree not to bring an action to enforce your remedies under the Limited Warranty or for breach of warranty more than one (1) year after the accrual of such cause of action.
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17. Limitation On Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL NI OR ITS LICENSORS, DISTRIBUTORS, OR SUPPLIERS (INCLUDING NI'S AND THEIR DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS) BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING DAMAGES ARISING FROM LOST PROFITS, LOST SAVINGS, LOST BUSINESS OPPORTUNITY, BUSINESS INTERRUPTION, OR LOST OR CORRUPTED DATA OR SOFTWARE, EVEN IF NI OR ITS LICENSORS, DISTRIBUTORS, OR SUPPLIERS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER CAUSED OR CONTRIBUTED TO BY THE NEGLIGENCE OF NI OR OTHERS, AND, EXCEPT AS SET FORTH IN SECTION 16, IN NO EVENT WILL NI'S LIABILITIES UNDER THIS AGREEMENT, WHETHER UNDER CONTRACT LAW, TORT LAW, WARRANTY, OR OTHERWISE, EXCEED THE TOTAL AMOUNT RECEIVED BY NI FOR THE APPLICABLE SOFTWARE LICENSE. You acknowledge that the applicable fees and prices reflect this allocation of risk. To the extent the foregoing limitation of liability is not enforceable or fails of its essential purpose, except for liability for bodily injury or death caused by the Software in the form provided by NI or any liability not capable of being excluded by applicable law, the sole liability of NI to you under or in connection with this Agreement shall be limited to the greater of \$50,000 (U.S.) or the license fee paid to NI for the Software.

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A. NI PRODUCTS ARE NOT DESIGNED, MANUFACTURED, OR TESTED FOR USE IN HAZARDOUS ENVIRONMENTS OR ANY OTHER ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, INCLUDING IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION, AIR TRAFFIC CONTROL SYSTEMS; LIFE SAVING OR LIFE SUSTAINING SYSTEMS OR SUCH OTHER MEDICAL DEVICES; OR ANY OTHER SYSTEM OR APPLICATION IN WHICH THE FAILURE OF THE SOFTWARE COULD LEAD TO DEATH, PERSONAL INJURY, SEVERE PROPERTY DAMAGE, OR ENVIRONMENTAL HARM. YOU WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS NI AND ITS DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, ACTIONS, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) ARISING OUT OF YOUR USE OF THE SOFTWARE FOR HIGH-RISK USES, INCLUDING CLAIMS FOR PRODUCT LIABILITY, PERSONAL INJURY OR DEATH, OR DAMAGE TO PROPERTY, AND REGARDLESS OF WHETHER SUCH CLAIMS ARE FOUNDED IN WHOLE OR IN PART ON THE ALLEGED OR ACTUAL NEGLIGENCE OF NI.

B. YOU ACKNOWLEDGE AND AGREE THAT YOU ARE RESPONSIBLE FOR TAKING STEPS TO PROTECT AGAINST PRODUCT AND SYSTEM FAILURES, INCLUDING PROVIDING BACK-UP OR SHUTDOWN MECHANISMS. BECAUSE EACH END-USER SYSTEM IS CUSTOMIZED AND DIFFERS FROM NI'S TESTING PLATFORMS AND BECAUSE YOU MAY USE NI PRODUCTS IN COMBINATION WITH OTHER PRODUCTS IN A MANNER NOT EVALUATED OR CONTEMPLATED BY NI, YOU ARE ULTIMATELY RESPONSIBLE FOR VERIFYING AND VALIDATING THE SUITABILITY OF NI PRODUCTS FOR YOUR INTENDED USE. YOU WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS NI AND ITS DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, ACTIONS, AND EXPENSES (INCLUDING



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19. U.S. Government Rights. The Software is a "commercial item" developed exclusively at private expense, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are defined or used in the applicable U.S. acquisition regulations. If you are an agency, department, or other entity of the United States Government, the Software is licensed hereunder (i) only as a commercial item and (ii) with only those rights as are granted to all other licensees pursuant to the terms and conditions of this Agreement. You agree not to use, duplicate, or disclose the Software in any way not expressly permitted by this Agreement. Nothing in this Agreement requires NI to produce or furnish technical data for or to you. Manufacturer is National Instruments Corporation or National Instruments Ireland Resources Ltd.

20. Compliance

- A. You agree to make, upon reasonable notice, all applicable records available for review by NI during normal business hours so as to permit NI to verify your compliance with the terms and conditions of this Agreement. NI may, upon written notice, inspect your use of the Software during normal business hours to ensure your compliance with this Agreement. Further, if you are a business or other entity, you agree that upon the request of NI or its authorized representative you will promptly document and certify in writing to NI that your and your employees' use of the Software complies with the terms and conditions of this Agreement. If the results of any such inspection indicate the underpayment by you of applicable fees due and payable to NI, you must immediately pay such amounts to NI and reimburse NI for the cost of such inspection.
- B. You agree that the Software may collect and communicate certain software, hardware, and use information (which may in some circumstances include certain personal data of users, including IP address or email address) to NI or its service providers' servers for the purposes of (i) checking for and performing any updates; (ii) ensuring that you have complied and are complying with the terms and conditions in this Agreement, including your use of valid software key codes, hardware keys, or both; (iii) NI's internal product development; and (iv) providing usage reporting to you. The information collected and communicated does not include any proprietary application data. NI will not provide any of the information to any third party except as required by law or legal process or to enforce compliance with the terms in this Agreement, including your use of valid software key codes, hardware keys, or both.

The owner of the license may assign the license to an employee or third-party contractor ("Authorized User") within the parameters of this Agreement. The owner is solely responsible for informing its Authorized Users of the purposes for which and the circumstances under which information (including certain personal information of such Authorized Users) is processed, for obtaining any necessary consent or permission, and otherwise for complying with applicable privacy laws and regulations with respect to those Authorized Users. If you are using the Software on behalf of an entity that has assigned the license to you as an Authorized User within the parameters of this Agreement, you are not the owner of the license. You understand and agree that data about your usage of the Software may be collected and provided to the owner of the license.





For further details on how NI and its affiliates process data, please see the NI Privacy Statement at <http://www.ni.com/privacy>.

## 21. General

### A. Governing Law; Venue

**If the Software is manufactured in the Republic of Ireland:** This Agreement is governed by the laws of the Republic of Ireland, exclusive of any provisions of the United Nations Convention on the International Sale of Goods, and without regard to principles of conflicts of law. The non-exclusive venue for all actions under this Agreement will be in the courts located in Dublin, the Republic of Ireland, and the parties agree to submit to the jurisdiction of such courts.

**If the Software is not manufactured in the Republic of Ireland:** This Agreement is governed by the laws of the State of Texas, U.S.A., exclusive of any provisions of the United Nations Convention on the International Sale of Goods, and without regard to principles of conflicts of law. The non-exclusive venue for all actions under this Agreement will be in the courts located in Travis County, Texas, U.S.A. and the parties agree to submit to the jurisdiction of such courts.

If you are not sure where the Software is manufactured, please contact National Instruments Corporation, 11500 N. Mopac Expressway, Austin, Texas, U.S.A. 78759-3504 (Attention: Legal Department).

- B. This Agreement constitutes the complete agreement between you and NI regarding use of the Software and supersedes any oral or written proposals, prior agreements, purchase orders, or any other communication between you and NI relating to the subject matter of this Agreement. NI's applicable standard Terms and Conditions of Sale, the current version of which is set forth at <http://www.ni.com/legal/termsosale>, will apply to any technical support services provided as part of Software Services and to any Training & Certification Services; provided, however, as set forth herein the provisions of this Agreement may apply and control with respect to any upgrades or updates or other Software that may be provided as part of or in connection with any such services. No delay or omission by NI to exercise any right or power it has under this Agreement will impair or be construed as a waiver of such right or power. Any waiver by NI of a term of this Agreement must be in writing by NI. The waiver by NI of any breach of any provision hereof will not be construed to be a waiver of any succeeding breach of that provision or of any breach of any other provision. No modification of this Agreement will be effective unless set forth in a writing signed by a duly authorized representative of you and NI. The word "including" as used in this Agreement will be understood as meaning "including without limitation". If you are unable to access the internet to view any of the web pages referred to in this Agreement, you may request the information from your local NI sales office.
- C. If any action is brought by either party to this Agreement against the other regarding the subject matter hereof, the prevailing party will be entitled to recover, in addition to any relief granted, reasonable attorneys' fees and court costs.
- D. If any provision of this Agreement is held invalid, the offending clause will be modified so as to make it enforceable, as modified, and the remainder of this Agreement will continue in full force and effect.
- E. Software is, and Third Party Software and Source Code may be, subject to control under the U.S. Export Administration Regulations (15 CFR Part 730 et. seq.), other applicable U.S. export control laws and regulations, and applicable global export control laws and regulations, including, for products exported from the European Union, the Council Regulation (EC) No. 428/2009. You represent and warrant that you



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## **ADDENDUM A – Evaluation License; Pre-Release Software Terms**

### **Evaluation License; Pre-Release Software**

If you have acquired an evaluation license, you may install and use the Software on one (1) computer in your workplace for internal evaluation purposes only and only for the limited period of the evaluation term.

You acknowledge and agree that the **SOFTWARE IS EVALUATION ONLY AND MAY ALSO BE PRE-RELEASE SOFTWARE. AS SUCH, THE SOFTWARE MAY NOT BE FULLY FUNCTIONAL AND YOU ASSUME THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE SOFTWARE. NI WILL NOT UPDATE THE SOFTWARE, NOR WILL NI SUPPORT THE SOFTWARE. SOFTWARE PROVIDED UNDER AN EVALUATION LICENSE IS PROVIDED WITHOUT WARRANTY OR OBLIGATION OF INDEMNITY ON NI. THE SOFTWARE MAY CONTAIN CODE THAT WILL, AFTER A CERTAIN TIME PERIOD, DEACTIVATE THE SOFTWARE AND RENDER THE SOFTWARE UNUSABLE, AND IT MAY DO SO WITHOUT WARNING.** Upon such deactivation, this Agreement will be considered terminated. NI may in its sole discretion terminate the evaluation license at any time. If the Software consists of pre-release software and is also covered by a separate, written alpha/beta license (the "Beta Agreement") between you and NI, the terms and conditions of the Beta Agreement, which are incorporated herein by reference, will also apply to your use of the Software. In the event of a conflict between this Agreement and the Beta Agreement, the terms of the Beta Agreement will control.

You agree to use reasonable efforts to provide feedback to NI regarding your use of the Software, including promptly reporting to NI errors or bugs that you might find. Any such feedback you disclose to NI, including any changes or suggested changes to NI's current or future products and services (collectively "Feedback"), will be received and treated by NI on a non-confidential and unrestricted basis, notwithstanding any restrictive or proprietary legends to the contrary accompanying or otherwise associated with the Feedback. You hereby grant to NI a worldwide, royalty-free, non-exclusive, perpetual, and irrevocable license to use, copy, and modify Feedback for any purpose, including incorporation or implementation of such Feedback into NI products or services, and to display, market, sublicense, and distribute Feedback as incorporated or embedded in any product or service distributed or offered by NI. The Feedback license set forth herein will survive expiration or termination of the Agreement.



## **ADDENDUM B - Volume License Program Terms**

Volume License Program ("VLP"). The VLP is a program to assist customers in managing their licenses. The following terms apply to the VLP.

1. The quote you obtained from NI or its authorized affiliate regarding the VLP and the VLP Startup Kit ("VLP Documentation") is incorporated into this Agreement. In the event of a conflict between the terms and conditions of this Agreement and the VLP Documentation, the terms and conditions of this Agreement will control.
2. Term. The VLP will be effective the date that NI sends the VLP Startup Kit to you ("VLP Effective Date"). The initial term of the VLP will start on the VLP Effective Date and continue for a period of one (1) year (the "Initial VLP Term"). You may renew the VLP for additional one (1) year periods (the Initial VLP Term and each such renewal term each referred to herein as a "VLP Term").
3. Software under the VLP may be used by your employees only on those computers located at the physical location to which NI delivers the Software unless otherwise specified in the VLP Documentation (the "Site"). The definition of "Site" will also include all of your physical locations located within the same country as the Site. In addition, (i) if your Site is located in North or South America, then all of your physical locations within North and South America will be considered in the same country; (ii) if your Site is located in Europe, Middle East, India, or Africa (including Russia and Mongolia), then any of your physical locations within the foregoing regions will be considered in the same country; and (iii) if your Site is located in Asia Pacific, then all of your physical locations in the region will be considered located in the same country. If you purchase a global VLP, then all of your locations worldwide will be considered in the same country as the Site; provided, however, that the Software must be managed from the region to which NI delivers the Software. Your use of the Software under the VLP will, at all times during the VLP Term and thereafter, be subject to all terms and conditions set forth in the Agreement regarding the specific type of license you have acquired under the VLP (i.e. named user or computer-based).
4. You must acquire and maintain during the VLP Term the Software Services for each individual Software license identified in the VLP Documentation and for which NI makes such Software Services available. Software Services will be described in VLP Documentation. NI reserves the right to restrict Software Service to the then most current version of the Software that is commercially available. You understand that NI may not make available Software Service for all Software available under the VLP. Unless otherwise agreed to by NI in writing, you must maintain during the VLP Term a minimum of five (5) licenses to a version of a single NI software product that is considered by NI to be a development version.
5. You must designate an individual in your organization who is responsible for distributing and overseeing the installation and use of the Software, including use of any master installation media and any Approved Volume License Manager, ("Software Administrator") for each Site. You must promptly notify NI in writing of any changes to a Software Administrator.
6. NI will deliver the master installation for the Software and, if provided for in the applicable written quotation from NI or its authorized affiliate, make available NI's volume license manager to the Software Administrator(s) for internal installation and use by your employees. Software documentation is provided in electronic form only and comes with the master installation for the Software.
7. You are responsible for ensuring that an Approved Volume License Manager, together with the most current license file provided by NI that controls end-user access to the Software (to the extent NI has made the Software compatible with an Approved Volume License Manager) is in use at all times, during the term of the VLP and thereafter, with the Software.



An "Approved Volume License Manager" means NI's computer software for controlling end user access to the Software and that generates applicable usage compliance information ("NI VLM"); FLEXnet or FLEXlm software; or any other third party software approved in writing by NI for controlling end user access to the Software. If the Approved Volume License Manager is the NI VLM or if NI makes documentation available for the applicable Approved Volume License Manager, such Approved Volume License Manager must be installed and used in accordance with the documentation provided by NI.

8. If you have existing licenses for the Software that are to be covered by the VLP, you must notify NI in writing of the product, platform, and serial number information for each such license. Each such license and the individual serial number for each license will, as of the VLP Effective Date, no longer be in effect and will be superseded by the licenses within the VLP, which will have a single, common serial number. You must provide NI with information reasonably requested by NI in order to establish and administer the VLP.
9. You acknowledge and agree that in no event may your use of the Software under the VLP exceed the maximum total number of licenses set forth in the VLP Documentation in addition to any licenses that may be added to the VLP after the VLP Effective Date and any licenses available through the "Overdraft" feature. You agree to pay for licenses accessed through the Overdraft feature.
10. Activity Compliance Logs. Upon request, you agree to provide an activity compliance log ("Activity Compliance Log") for each Site to NI promptly. The Activity Compliance Log must be in a format acceptable to NI.
11. Renewals. If you desire to renew the VLP, you must provide a current Activity Compliance Log to NI at least sixty (60) days before the end of the then current VLP Term. NI or its authorized affiliate will then provide you with a quote for Software Services, any fees for additional VLP licenses added during the VLP Term, including through the "Overdraft" feature, that are applicable ("Additional VLP Fees"), and any fees for new VLP licenses that you request for the renewal VLP Term (the "VLP Renewal Fees"). You must promptly notify NI if the information in the Activity Compliance Log regarding the number of VLP licenses in use changes following your submission, and NI reserves the right to revise the VLP Renewal Fees to reflect any additional VLP licenses used and not reflected in the applicable Activity Compliance Log that you provided to NI at the time you renewed. **IF, PRIOR TO THE END OF THE THEN CURRENT VLP TERM, YOU DO NOT ISSUE A PURCHASE ORDER FOR THE SOFTWARE SERVICES AND ANY ADDITIONAL VLP FEES THAT ARE DUE, (I) THE VLP WILL AUTOMATICALLY TERMINATE AT THE END OF THE CURRENT VLP TERM AND (II) ALL SOFTWARE SERVICES FOR THE VLP WILL AUTOMATICALLY AND IMMEDIATELY TERMINATE AT THE END OF THE THEN CURRENT VLP TERM.**
12. Purchase Orders; Invoices. You must submit purchase orders to NI or its authorized affiliate as follows.
  - i. for initial activation of the VLP: in the amount specified in the applicable written quotation from NI or its authorized affiliate for initial activation of the VLP license and the initial annual user fee for Software Services within the time-frame specified in the quote provided to you
  - ii. for each renewal term: in the amount of VLP Renewal Fees and any Additional VLP Fees prior to the end of the then current VLP Term
13. Software Services are charged on an annual basis. Additional VLP Fees will be pro-rated on a quarterly basis, based on the quarter of the VLP Term in which the Software under such VLP license was first used or such shorter basis as NI may designate.



14. **THE SOFTWARE AND THE APPROVED VOLUME LICENSE MANAGER MAY CONTAIN CODE THAT WILL, FOLLOWING TERMINATION OF THE VLP, DEACTIVATE YOUR ABILITY TO USE THE SOFTWARE UNDER THE VLP. NI MAY ATTEMPT TO PROVIDE YOU WITH AN UPDATED LICENSE FILE, BUT IT IS YOUR RESPONSIBILITY TO OBTAIN SUCH LICENSE FILE FROM NI AND TO INSTALL AND USE THE LICENSE FILE AS SOON AS POSSIBLE AFTER DELIVERY OF SUCH LICENSE FILE, BUT IN NO EVENT NO LATER THAN SIXTY (60) DAYS AFTER THE TERMINATION OF THE VLP.** Upon termination of the VLP, you may continue to use the VLP licenses in effect and for which you have paid the required fees to NI or its authorized affiliate prior to the date of termination (the "Surviving VLP Licenses"), provided that all such use is conducted with an Approved Volume License Manager and otherwise pursuant to the terms and conditions of the Agreement. **IN NO EVENT MAY YOU INCREASE THE NUMBER OF THE SURVIVING VLP LICENSES FOLLOWING THE TERMINATION OF THE VLP. ANY REACTIVATION OF THE VLP FOLLOWING ITS TERMINATION WILL BE AT THE SOLE DISCRETION OF NI AND MAY BE SUBJECT TO REACTIVATION FEES, AND THE VLP EFFECTIVE DATE THEREAFTER WILL BE THE DATE THAT THE VLP IS REACTIVATED BY NI.**
15. You may obtain individual serial numbers for any of the VLP licenses or Surviving VLP Licenses. There may be a charge for conversion. No more than four (4) such conversions may occur per calendar year.
16. Software under a VLP license or a Surviving VLP License is non-transferable and you may not, without the prior written consent of NI or its authorized affiliate, distribute or otherwise provide the Software to any third party or to any of your sites or facilities not expressly identified in the applicable documents from NI.



## **ADDENDUM C - Enterprise Program Terms**

Enterprise Program ("EP"). The following terms apply to the EP.

1. NI or its authorized affiliate and you will enter into NI Enterprise Program documentation ("EP Documentation") that, among other things, identifies the Software items that are covered under the EP; the types and maximum number of your licenses for such Software during the term of the EP; the types and maximum number of any licenses that you will obtain on expiration of the EP term; any of your pre-existing licenses that will be converted to licenses under your EP ("EP Pre-Existing Licenses") and any Software Services that are included. The EP Documentation is incorporated into this Agreement; provided, however, if there is a conflict between the terms and conditions of this Agreement and the EP Documentation, the terms and conditions of this Agreement will prevail and control.
2. Term. The EP will be effective on the date set forth in the EP Documentation or, if not specified, the date that the EP Documentation is signed by NI or its authorized affiliate and sent to you (the "EP Effective Date"). The EP will continue for such term as set forth in the EP Documentation or, if not specified, for three years after the EP Effective Date ("EP Term").
3. You must designate an individual in your organization who is responsible for distributing and overseeing the installation and use of the Software, including use of any master installation media and any approved volume license manager, ("Software Administrator") for each EP Location. You must promptly notify NI in writing of any changes to a Software Administrator.
4. Software may be used under the EP (i) solely in accordance with the terms and conditions set forth in this Agreement regarding the specific type of license applicable to such license type acquired under the EP; (ii) solely at, and on computers located at, the locations designated in the EP Documentation ("EP Locations"); and (iii) solely during the EP Term. You acknowledge and agree that (i) in no event may your use of the Software under the EP exceed the maximum total number of licenses set forth in the EP Documentation and (ii) no NI software (including any copies of the Software) other than the copies of the Software expressly identified in the EP Documentation may be used by you under the EP.
5. You must use, at all times, an Approved Volume License Manager with the most current license file provided to you by NI that controls end-user access to the Software licensed pursuant to the EP. An "Approved Volume License Manager" means NI's computer software for controlling end user access to the Software and that generates applicable usage compliance information ("NI VLM"); FLEXnet or FLEXlm software; or any other third party software approved in writing by NI for controlling end user access to the Software. If the Approved Volume License Manager is the NI VLM or if NI makes documentation available for the applicable Approved Volume License Manager, such Approved Volume License Manager must be installed and used in accordance with the documentation provided by NI.
6. Training & Certification Services. If the services to be provided under your EP include software training classes or "certification preparation" courses and certification testing services for NI software ("Training & Certification Services"), you may use available training credits during the EP Term for your employees to attend applicable training classes regarding the use of the Software or to receive applicable "certification preparation" courses and certification testing services from NI, as specified in the EP Documentation. Training & Certification Services will be provided in accordance with NI's then-current standard policies for software training and certification. Training credits may not be used for customized training that would constitute a "defense service" as defined by International Traffic in Arms Regulations 22 CFR 120.9. Training credits have no cash value and any unused training credits will expire upon termination or expiration of your EP or such other



term set forth in the EP Documentation.

7. Software Services. If the services to be provided under the EP include Software Services, then NI will provide (i) your Software Administrator a master copy of all upgrades after the applicable commercial release date and (ii) the number of your users designated in the EP Documentation with access to NI's application engineers for issues involving the installation and use of the Software and with access to NI's customer on-line technical support system. All services will be provided in accordance with NI's then current standard software maintenance and support policies. NI reserves the right to restrict Software Services to the then most current version of the Software that is commercially available. You understand that NI may not make available Software Services for all Software available under the EP.
8. No Hardware or Hardware Services. You acknowledge and agree that no hardware or hardware-related services are being provided or otherwise made available by NI under the EP.
9. Annual Management Review; Reports
  - A. Upon such periodic basis as set forth in the EP Documentation (but at least annually), your representatives must meet with NI's representatives to discuss the EP and your use of the EP, including evaluating usage of the NI Software and any training credits under the EP and determining the adequacy of licensing levels and number of EP Locations under the EP.
  - B. Thirty (30) days prior to the meeting referenced in sub-section A above or upon such other reasonable basis as NI may request, you must provide NI with (i) an activity compliance log identifying requests for permission to use the Software in a format acceptable to NI ("Activity Compliance Logs") for each of the EP Locations and (ii) a usage log showing check-outs and check-ins of the Software ("Usage Log") as generated by the Approved Volume License Manager for the Software at the EP Locations.
10. EP Fees. The fees that will be charged to you in connection with the EP are set forth in the EP Documentation. Unless set forth otherwise in the EP Documentation, all amounts to be paid by you under the EP will be in U.S. dollars. Amounts set forth in the EP Documentation do not include applicable taxes or import/export duties, and all taxes and other duties relating to any deliverables provided by NI under the EP will be your responsibility and be borne by you. If you acquire a business that has current NI software licenses that you wish to include in the EP, then the fees that may be charged to you in connection with the EP may be increased.
11. Termination
  - A. Either NI or you may in each's discretion terminate the EP upon written notice to the other party, if such other party is in material breach of any of its obligations under these Enterprise Program Terms and such breach has not been cured to the reasonable satisfaction of the non-breaching party within thirty (30) days of receiving written notice of such breach, provided that if the breach is not capable of cure the EP Term will terminate immediately.
  - B. Effect of EP Expiration or Termination. Upon expiration or termination of the EP, you must stop immediately all use of the Software under the EP and you must destroy all copies of the Software, provided however that you must deliver the Software and all copies to NI if NI has so demanded prior to such destruction. Notwithstanding the foregoing, with respect to any licenses from NI for Software covered by the EP that were in effect before the EP Effective Date and that are identified as Pre-Existing NI Software in the EP Documentation ("EP Pre-Existing Software"), if the EP is





terminated by NI based on a breach only of the terms set forth in these Enterprise Program Terms and not based on a failure to comply with any other term of the Agreement, you may use such number of copies of EP Pre-Existing Software as may be designated in the EP Documentation for the post-EP Term, solely at the EP Locations, and pursuant to, and solely in accordance with, the software license agreements that accompany the software. With respect to any copies of the EP Pre-Existing Software that are designated in the EP Documentation for post-EP Term use and that were either the most current version or the immediately prior version of the Software as of the EP Effective Date, provided that the EP Term was not terminated by NI, you may elect to upgrade such copies to the current version of the applicable Software as of the effective date of termination or expiration of the EP Term for use by you solely in accordance with this Section.

- C. Your right to use EP Pre-Existing Software after the EP Term is contingent on your providing NI with the Activity Compliance Logs and Usage Logs within thirty (30) days of the expiration or termination of the EP Term and immediately paying to NI all amounts due but not paid as of the expiration or termination of the EP Term.
  - D. **THE SOFTWARE AND THE APPROVED VOLUME LICENSE MANAGER MAY CONTAIN CODE THAT WILL, FOLLOWING EXPIRATION OR TERMINATION OF THE EP TERM, DEACTIVATE YOUR ABILITY TO USE THE SOFTWARE UNDER THE EP. YOU ACKNOWLEDGE AND AGREE THAT THE SOFTWARE MAY BE AUTOMATICALLY DEACTIVATED OR RENDERED UNUSABLE WITHOUT WARNING UPON THE EXPIRATION OR TERMINATION OF THE EP. IT IS YOUR RESPONSIBILITY TO OBTAIN ANY NECESSARY LICENSE FILES FROM NI TO ENABLE ANY PERMITTED POST-EP TERM USE OF EP PRE-EXISTING SOFTWARE AS DESIGNATED IN THE EP DOCUMENTATION. YOU MUST INSTALL AND USE THE LICENSE FILE AS SOON AS POSSIBLE AFTER DELIVERY OF SUCH LICENSE FILE BY NI, BUT IN NO EVENT NO LATER THAN SIXTY (60) DAYS AFTER THE TERMINATION OF THE EP TERM.**
12. Licenses under the EP are non-transferable and you may not, without the prior written consent of NI or its authorized affiliate, distribute or otherwise provide the Software to any third party or to any of your sites or facilities other than EP Locations.
13. Confidentiality. The terms of your EP Documentation; any proposals or other documents submitted by NI or its authorized affiliate in connection with your EP (including all pricing and fees); and any information about NI product development efforts provided in connection with your EP are considered the confidential information of NI. You must not disclose any NI confidential information to any third party.



## Schedule B

### **NATIONAL INSTRUMENTS ENTERPRISE SOFTWARE LICENSE AGREEMENT SYSTEMLINK**

This Agreement together with all of its attachments and the Enterprise Software Solution Documentation, which may include, inter-alia, an applicable Quote, made by National Instruments Corporation and its affiliates ("NI") and the customer identified in the Quote (the "Customer") contain the entire agreement of the parties relating to its subject matter, and supersede all previous agreements, negotiations and proposals between the parties relating to this subject matter. Capitalized terms used and not defined herein shall have the meanings given to such in the Quote. The terms and conditions detailed herein are only applicable to the Software as defined below.

BY EXECUTING THE APPLICABLE QUOTE, CUSTOMER AGREES TO BE BOUND BY THE TERMS OF THIS AGREEMENT. "Quote" means the quotation or similar ordering document issued by NI to Customer for the purchase of a Software license, and which references, hyperlinks to, or otherwise incorporates by reference, this Agreement.

The terms of this Agreement apply to the computer software and other code provided with this Agreement, all updates or upgrades to the software that may be provided later by NI as part of any maintenance, technical support, or other services program for the software, including during any renewal term, unless such update, upgrade, or renewal comes with separate software license terms, and all accompanying documentation and utilities (collectively "Software"). The term "Software" does not include certain third party software that NI provides to Customer but that is subject to separate license terms either presented at the time of installation or otherwise provided with the Software ("Third Party Software") and Software does not include Source Code, which is defined in and licensed pursuant to the terms available at <https://www.ni.com/en-il/about-ni/legal/software-license-agreement.html>.

#### 1. Grant of License; Restrictions

- A. In consideration of, and conditioned upon, Customer's payment of any applicable fees to NI and subject to the terms set forth in this Agreement, National Instruments Corporation or National Instruments Ireland Resources Ltd. ("NI"), as applicable depending on the country of manufacture, hereby grants Customer a limited, revocable, non-exclusive, non-transferable, non-sublicensable right and license to install and use the Software internally on its systems. The Software (but not the nodes managed by the Software) must be administered and managed in the country from which the license was purchased or within the European Union if the license was purchased in the European Union.

Unless otherwise provided in this Agreement (including without limitation the Quote) or in the applicable documentation provided by NI to Customer, the term of the License ("License Term") is specified in the Quote.

The Software is for Customer's internal use only; provided, however, Customer may manage or monitor nodes on behalf of third parties and may use application programming interfaces included with the Software to create interfaces from the nodes to the Software.

- B. Restrictions. Customer must not violate any applicable laws in Customer's use of the Software. As a condition to the License, and unless and only to the extent that this Agreement expressly permits, Customer must not
- (i) modify, translate, port or create derivatives of the Software;
  - (ii) install or use the Software in a floating, concurrent, or any other shared context (not including access to the Software from a web browser) except for transfers



between Customer's authorized users;

- (iii) distribute or otherwise make the Software or any password, key, or other access code for the Software available to any third party (such as offering it as part of a time-sharing, outsourcing or service bureau environment);
  - (iv) reverse engineer, decompile, or disassemble, or otherwise attempt to discover the source code or non-literal aspects (such as the underlying structure, sequence, organization, file formats, non-public APIs, ideas, or algorithms) of the Software, unless and only to the extent that applicable law expressly prohibits this restriction;
  - (v) defeat or work around any access restrictions or encryption in the Software, unless and only to the extent that applicable law expressly prohibits this restriction;
  - (vi) sublicense, lease, lend, or rent the Software; or
  - (vii) remove, minimize, block, or modify any titles, logos, trademarks, copyright and patent notices, digital watermarks, disclaimers, or other legal notices that are included in the Software, whether or not they are NI or a third party's.
  - (viii) employ any hardware, software, device, or technique to pool connections or reduce the number of users or endpoints that access or use the Software (sometimes referred to as 'virtualisation', 'multiplexing' or 'pooling');
  - (ix) publish or disclose (without NI's prior express written approval) any of the results of stress test, penetration test, or vulnerability scanning or other performance data of the Software;
- C. Customer's use of the Software must also be in accordance with the applicable documentation that accompanies the Software and not in any manner that circumvents or is intended to circumvent such documentation or the intent of this Agreement. Without limiting the generality of the foregoing, Customer shall not use any technical or other means within, or external to, the Software to exceed or circumvent the License scope.
- D. Unless specified otherwise in the Quote, the Software will be delivered to Customer electronically. The Software shall be deemed accepted by Customer upon delivery.
- E. Customer may make a reasonable number of copies of the Software solely for backup or archival purposes and a reasonable number of copies of the documentation that accompanies the Software solely for Customer's internal use in connection with Customer's use of the Software. The Software must be promptly uninstalled from Customer's computers upon the earlier of expiration of the License Term or termination of this Agreement.
2. Additional Terms. Customer may have additional rights and obligations to the Software through special license types and license programs, as set forth in addenda to this Agreement and which are incorporated as part of this Agreement. Additional product-specific provisions may be provided in specific addenda to this Agreement for the relevant product and the terms of which are hereby incorporated into this Agreement. In the event of a conflict between an addendum and the other terms set forth in this Agreement, the terms of the addendum will control.

#### Addendum A Evaluation License; Pre-Release Software Terms

3. Third Party Contractors. Customer's third party contractors may access and use the Software, provided that they do so solely for Customer's benefit, they agree to use the Software solely in accordance with the terms of this Agreement, and Customer agrees to remain liable to NI for any acts and omissions of such contractors (including without limitation any breach by Customer's contractors of this Agreement).



4. Software Services. If Customer have purchased a perpetual license, Customer may be required to purchase upgrades or maintenance, technical, or other services for the Software ("Software Services") separately. Except as otherwise provided under a special license type or license program, if Customer have purchased a term license, the fee for Software Services is included within the fees quoted for the entire License Term.
5. License Term; Termination and Expiration
  - A. Subscription License Model. Unless otherwise specified in the Quote, Customer's License is a term-based license (also referred to as a "subscription license"), the License Term will commence on the date of Customer's invoice and, unless terminated pursuant to the provisions in this Agreement or Customer's Quote specifies otherwise.
    - (ii) Upon expiration of the License Term, Customer's Subscription License will automatically renew for an additional year, unless either party notifies the other at least thirty (30) days prior to the commencement of the renewal term that it wishes not to renew. The price for a renewal may change from time to time at NI's discretion. In such event, NI will provide Customer with an updated quote at least sixty (60) days prior to the termination of the current License Term. If Customer do not agree to the new price, Customer may provide notice of intent not to renew thirty (30) days prior to the commencement of the renewal License Term.
  - B. Perpetual License Model. Only if Customer have purchased a License and the License is specified in the Quote as "Perpetual", Customer's License, and accordingly the License Term, will be perpetual and, unless terminated pursuant to the provisions herein, Customer have the right to use the Software in accordance herewith indefinitely ("Perpetual License").
  - C. Term of Agreement. Unless terminated earlier in accordance herewith, this Agreement remains in effect for the duration of the applicable License Term (the "Term").
  - D. Termination. NI conditions its License grant on Customer complying with the terms set forth in this Agreement, and this Agreement will automatically terminate, immediately and without prior notice, if Customer fail to comply with its terms.
  - E. Effect of Termination or Expiration. Upon termination or expiration of this Agreement, regardless of the reason, the License grants contained herein will terminate and Customer must immediately cease all access to, and use of the Software and destroy all copies of the Software; provided, however, Customer must deliver the Software and all copies to NI if NI has so demanded in lieu of any destruction. Sections 10, 13, 14, 15, 17, 18, 19, 20.A, and 21 of this Agreement will survive any expiration or termination of this Agreement.
6. Transfer. Customer may transfer a License to a third party in the same country in which Customer purchased the license, or within the European Union if Customer purchased the license in the European Union, provided that (i) Customer notify NI in writing of such transfer, including the name and location of such third party; (ii) such third party accepts the terms and conditions of this Agreement; and (iii) after such transfer Customer do not retain any copies of the Software or any of the written materials accompanying the Software. NI may, in its discretion, charge Customer a fee for the license transfer.
7. Upgrades; Prior Versions. If the Software is an upgrade, Customer may only use the Software if Customer have a valid license to use the prior version of the Software, and Customer may not use both the upgrade and the prior version of the Software concurrently. Customer may elect to use a prior version of any Software delivered and licensed under this Agreement in lieu of using the Software delivered and licensed under this Agreement ("Delivered Software"), provided (i) Customer have an authorized copy of the prior version of the Delivered Software; (ii) all use is pursuant to and in accordance with this Agreement;



and (iii) notwithstanding anything in this Agreement to the contrary, in no event will NI be required to support any version of the Software, including providing applicable software key codes or hardware keys, other than the then most current version of the Delivered Software. NI will provide bug fixes and patches only for the most updated versions of the Software. Support will be provided by NI only for Software versions released within 12 months as of the date of the latest Software version release date.

8. Multiple Versions. If NI distributes the Software on installation media containing multiple versions of the Software for use with different operating systems or makes the same available through download, Customer may use the Software with more than one operating system provided that Customer may not use the Software on more computers than Customer are permitted by Customer's license and Customer's use of the Software otherwise is in accordance with the terms of this Agreement.
9. Software/Hardware Key; Prior Access. Customer agrees to use any software key codes or hardware keys provided by NI solely with the Software for which it is provided. While NI may in its sole discretion provide Customer with the applicable key or other access to use the Software prior to receipt from Customer of the applicable license fees, Customer will remain obligated to pay such fees to NI.
10. Copyright; No Other Licenses. The Software, all copies of the Software, related contents, and all rights therein, are licensed and not sold. All rights, title, and interest (including without limitation all intellectual property rights) in and to the Software (as well as all copies of the Software and related contents) are exclusively owned by NI (or its suppliers and licensors, as applicable). The Software, all copies thereof and related content are protected by applicable copyright laws and international treaty provisions. All rights not expressly granted to Customer in this Agreement are reserved to NI (or its suppliers and licensors, as applicable). Further, and without limiting the foregoing, no license or any right of any kind, whether by express license, estoppel, implied license, the doctrine of exhaustion, or otherwise, is granted under any NI patents (whether identified herein or not) or other intellectual property right of NI with respect to any other product of NI or of any third party, including the right to use any such other product.
11. Patent and Trademark Notice. For patents covering National Instruments products, refer to the appropriate location: **Help»Patents** in the Software, the patents.txt file included with the Software (such as on the installation media on which the Software was distributed to Customer), or ni.com/patents. National Instruments, NI, ni.com, and SystemLink are trademarks of National Instruments Corporation. Refer to ni.com/trademarks for more information about National Instruments trademarks. All other product and company names mentioned herein are or may be trademarks or trade names of their respective companies.
12. Limited Warranty. NI warrants, for Customer's benefit alone, that for a period of ninety (90) days from the date the Software is shipped to Customer or, if downloaded, from the date the Software is first downloaded by Customer, (i) the Software will perform substantially in accordance with the performance specifications set forth in the documentation that accompanies the Software and (ii) the installation media on which NI provides the Software (if any) will be free from defects in materials and workmanship under normal use and service (collectively, the "Limited Warranty"). Any replacement Software will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer. Some jurisdictions do not allow exclusion of or limitation on duration of an express or implied warranty or limitation on any applicable statutory rights of a consumer, so the above limitations may not apply to Customer; in such event, such warranties are limited to the minimum warranty period allowed by applicable law. The Limited Warranty is void if failure of the Software has resulted from accident, abuse, misapplication, improper calibration by Customer, third party products (either hardware or software) used by Customer that are not intended by NI for use with the Software,



utilization of an improper hardware or software key, or unauthorized maintenance of the Software.

13. Customer Remedies. NI's sole obligation and liability, and Customer's sole remedy, with respect to the foregoing Limited Warranty will be to, at NI's option, repair or replace the Software or return the pro-rated fees paid by Customer to NI for the Software license, in which event Customer must return or destroy all copies of the Software in accordance with NI's instructions and the License granted to Customer will terminate without liability on the part of NI by reason of such termination. NI's obligations as set forth in this Section are contingent on Customer providing NI with written notice of applicable defects during the warranty period. In addition, Customer must obtain a Return Material Authorization number from NI before returning the Software under warranty to NI, and Customer agrees to pay any expenses for shipment to and from NI.
14. No Other Warranties. **EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NO REPRESENTATION, WARRANTY, GUARANTEE OR CONDITIONS EITHER EXPRESS OR IMPLIED, IS MADE BY NI (OR ITS LICENSORS OR SUPPLIERS) WITH RESPECT TO THE SOFTWARE OR USE OF THE SOFTWARE. NI DOES NOT MAKE ANY WARRANTY GUARANTEE, CONDITIONS OR REPRESENTATION HEREUNDER WITH RESPECT TO ANY THIRD PARTY SOFTWARE, SOURCE CODE, OR SOFTWARE SERVICES. NI DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATION THAT THE SOFTWARE, THE OPERATION OF THE SOFTWARE, OR ANY RELATED SOFTWARE SERVICES, SOURCE CODE, OR THIRD PARTY SOFTWARE WILL BE UNINTERRUPTED, SECURE, OR ERROR FREE AND DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATION REGARDING CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. THERE ARE NO OTHER WARRANTIES THAT MAY ARISE FROM USAGE OF TRADE OR COURSE OF DEALING. NI DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET POSSESSION AND NON-INFRINGEMENT, RELATING TO THE SOFTWARE AND ANY RELATED THIRD PARTY SOFTWARE, SOURCE CODE, AND SOFTWARE SERVICES.**
15. Limitations Period. Customer hereby agree not to bring an action to enforce Customer's remedies under the Limited Warranty or for breach of warranty more than one (1) year after the accrual of such cause of action.
16. Intellectual Property Liability. NI will, at its own expense, defend any claim brought against Customer by a third party resulting from Customer's use of the Software, to the extent that such claim alleges that the Software infringes any patent, copyright, or trademark of such third party, and provided that such claim does not arise from (i) Customer's use of the Software in combination with equipment, devices, software, or code not made by NI; (ii) Customer's use of the Software in a manner not in accordance with this Agreement or for a purpose not intended by NI; (iii) Customer's failure to incorporate Software updates or upgrades provided by NI that would have avoided the alleged infringement; or (iv) any modification of the Software not made by NI. NI's obligations in this Section are further contingent on Customer (a) notifying NI in writing promptly upon Customer's obtaining notice of such impending claim; (b) ceding to NI full control of the defense and settlement of the claim (except that any non-monetary obligation imposed on Customer under a settlement shall require Customer's prior written consent, not to be unreasonably withheld, conditioned or delayed); and (c) Customer's fully cooperating with NI in preparing a defense. If Customer provide to NI the authority, assistance, and information NI needs to defend or settle such claim, NI will pay any final award of damages or settlement with respect to such claim and any expense Customer incur at NI's written request. NI will not



be liable for a settlement made without its prior written consent. If the Software is held to be infringing of the rights stated above in this Section and the use of the Software is enjoined, NI will, or if NI believes the Software might be held to infringe a third party's intellectual property rights NI may, at its option, (i) procure for Customer the right to use the Software; (ii) replace or modify the Software with other software that does not infringe; or (iii) receive Customer's return of the infringing Software and refund to Customer the license fee payment made by Customer to NI for the Software. The foregoing states Customer's sole remedy for, and NI's entire liability and responsibility for, infringement of any patent, trademark, copyright, or other intellectual or industrial property right relating to the Software. **THIS LIMITED INDEMNITY IS IN LIEU OF ANY OTHER STATUTORY OR IMPLIED WARRANTY AGAINST INFRINGEMENT. THE FOREGOING OBLIGATIONS WILL NOT APPLY TO ANY THIRD PARTY SOFTWARE OR TO ANY THIRD PARTY PRODUCTS INCORPORATED IN OR OTHERWISE PROVIDED WITH THE SOFTWARE, AND CUSTOMER AGREES TO LOOK TO THE APPLICABLE THIRD PARTY MANUFACTURER WITH RESPECT TO ANY CLAIMS FOR INFRINGEMENT INVOLVING THIRD PARTY SOFTWARE OR THIRD PARTY PRODUCTS.**

17. Limitation On Liability. **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL NI OR ITS LICENSORS, DISTRIBUTORS, OR SUPPLIERS (INCLUDING NI'S AND THEIR DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS) BE LIABLE UNDER, OR OTHERWISE IN CONNECTION WITH, THIS AGREEMENT FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING DAMAGES ARISING FROM LOST PROFITS, LOST SAVINGS, LOST BUSINESS OPPORTUNITY, WASTE EXPENDITUE, BUSINESS INTERRUPTION, LOST OR DAMAGED REPUTATION OR GOODWILL, THE COST OF PROCURING ANY SUBSTITUTE GOODS OR SERVICES OR LOST OR CORRUPTED DATA OR SOFTWARE, EVEN IF NI OR ITS LICENSORS, DISTRIBUTORS, OR SUPPLIERS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER CAUSED OR CONTRIBUTED TO BY THE NEGLIGENCE OF NI OR OTHERS, AND, IN NO EVENT WILL NI'S LIABILITIES UNDER THIS AGREEMENT, WHETHER UNDER CONTRACT LAW, TORT LAW, WARRANTY, OR OTHERWISE, EXCEED THE TOTAL AMOUNT RECEIVED BY NI FOR THE APPLICABLE SOFTWARE LICENSE WITHIN TWELVE (12) MONTHS PERIOD PRECEDING ANY CLAIM.** Customer acknowledge that the applicable fees and prices reflect this allocation of risk. To the extent the foregoing limitation of liability is not enforceable or fails of its essential purpose, except for liability for bodily injury or death caused by the Software in the form provided by NI or any liability not capable of being excluded by applicable law, the sole liability of NI to Customer under or in connection with this Agreement shall be limited to the greater of \$50,000 (U.S.) or the license fee paid to NI for the Software.

18. **HIGH-RISK USES AND CUSTOMER'S RESPONSIBILITIES**

A. **NI PRODUCTS ARE NOT DESIGNED, MANUFACTURED, OR TESTED FOR USE IN HAZARDOUS ENVIRONMENTS OR ANY OTHER ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, INCLUDING IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION, AIR TRAFFIC CONTROL SYSTEMS; LIFE SAVING OR LIFE SUSTAINING SYSTEMS OR SUCH OTHER MEDICAL DEVICES; OR ANY OTHER SYSTEM OR APPLICATION IN WHICH THE FAILURE OF THE SOFTWARE COULD LEAD TO DEATH, PERSONAL INJURY, SEVERE PROPERTY DAMAGE, OR ENVIRONMENTAL HARM. CUSTOMER WILL**



**DEFEND, INDEMNIFY, AND HOLD HARMLESS NI AND ITS DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, ACTIONS, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) ARISING OUT OF CUSTOMER'S USE OF THE SOFTWARE FOR HIGH-RISK USES, INCLUDING CLAIMS FOR PRODUCT LIABILITY, PERSONAL INJURY OR DEATH, OR DAMAGE TO PROPERTY, AND REGARDLESS OF WHETHER SUCH CLAIMS ARE FOUNDED IN WHOLE OR IN PART ON THE ALLEGED OR ACTUAL NEGLIGENCE OF NI.**

- B. CUSTOMER ACKNOWLEDGE AND AGREE THAT CUSTOMER ARE RESPONSIBLE FOR TAKING STEPS TO PROTECT AGAINST PRODUCT AND SYSTEM FAILURES, INCLUDING PROVIDING BACK-UP OR SHUTDOWN MECHANISMS. BECAUSE EACH END-USER SYSTEM IS CUSTOMIZED AND DIFFERS FROM NI'S TESTING PLATFORMS AND BECAUSE CUSTOMER MAY USE NI PRODUCTS IN COMBINATION WITH OTHER PRODUCTS IN A MANNER NOT EVALUATED OR CONTEMPLATED BY NI, CUSTOMER ARE ULTIMATELY RESPONSIBLE FOR VERIFYING AND VALIDATING THE SUITABILITY OF NI PRODUCTS FOR CUSTOMER'S INTENDED USE. CUSTOMER WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS NI AND ITS DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, ACTIONS, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) ARISING OUT OF CUSTOMER'S INCORPORATION OF THE SOFTWARE IN CUSTOMER'S SYSTEM OR APPLICATION; PROVIDED, HOWEVER, THAT CUSTOMER'S CONTRACTUAL OBLIGATION OF INDEMNIFICATION SHALL NOT EXTEND TO THE PERCENTAGE OF THE CLAIMANT'S DAMAGES OR INJURIES OR THE SETTLEMENT AMOUNT ATTRIBUTABLE TO NI'S NEGLIGENCE OR OTHER FAULT OR TO STRICT LIABILITY IMPOSED UPON NI AS A MATTER OF LAW.**

19. U.S. Government Rights. The Software is a "commercial item" developed exclusively at private expense, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are defined or used in the applicable U.S. acquisition regulations. If Customer are an agency, department, or other entity of the United States Government, the Software is licensed hereunder (i) only as a commercial item and (ii) with only those rights as are granted to all other licensees pursuant to the terms and conditions of this Agreement. Customer agrees not to use, duplicate, or disclose the Software in any way not expressly permitted by this Agreement. Nothing in this Agreement requires NI to produce or furnish technical data for or to Customer. Manufacturer is National Instruments Corporation or National Instruments Ireland Resources Ltd.

20. Compliance

- A. Customer agrees to make, upon reasonable notice, all applicable records available for review by NI during normal business hours so as to permit NI to verify Customer's compliance with the terms and conditions of this Agreement. NI may, upon written notice, inspect Customer's use of the Software during normal business hours to ensure Customer's compliance with this Agreement. Further, if Customer are a business or other entity, Customer agrees that upon the request of NI or its authorized representative Customer will promptly document and certify in writing to NI that Customer's and Customer's employees' use of the Software complies with the terms and conditions of this Agreement. If the results of any such inspection indicate the underpayment by Customer of applicable fees due and payable to NI, Customer must immediately pay such amounts to NI and reimburse NI for the cost of such inspection.





- B. Customer agrees that the Software may collect and communicate certain software, hardware, and use information (which may in some circumstances include certain personal data of users, including IP address or email address) to NI or its service providers' servers for the purposes of (i) checking for and performing any updates; (ii) ensuring that Customer have complied and are complying with the terms and conditions in this Agreement, including Customer's use of valid software key codes, hardware keys, or both; (iii) NI's internal product development; and (iv) providing usage reporting to Customer. The information collected and communicated does not include any proprietary application data. NI will not provide any of the information to any third party except as required by law or legal process or to enforce compliance with the terms in this Agreement, including Customer's use of valid software key codes, hardware keys, or both.

The owner of the license may assign the license to an employee or third-party contractor ("Authorized User") within the parameters of this Agreement. The owner is solely responsible for informing its Authorized Users of the purposes for which and the circumstances under which information (including certain personal information of such Authorized Users) is processed, for obtaining any necessary consent or permission, and otherwise for complying with applicable privacy laws and regulations with respect to those Authorized Users. If Customer are using the Software on behalf of an entity that has assigned the license to Customer as an Authorized User within the parameters of this Agreement, Customer are not the owner of the license. Customer understand and agree that data about Customer's usage of the Software may be collected and provided to the owner of the license.

For further details on how NI and its affiliates process data, please see the NI Privacy Statement at <http://www.ni.com/privacy>.

## 21. General

### A. Governing Law; Venue

**If the Software is manufactured in the Republic of Ireland:** This Agreement is governed by the laws of the Republic of Ireland, exclusive of any provisions of the United Nations Convention on the International Sale of Goods, and without regard to principles of conflicts of law. The non-exclusive venue for all actions under this Agreement will be in the courts located in Dublin, the Republic of Ireland, and the parties agree to submit to the jurisdiction of such courts.

**If the Software is not manufactured in the Republic of Ireland:** This Agreement is governed by the laws of the State of Texas, U.S.A., exclusive of any provisions of the United Nations Convention on the International Sale of Goods, and without regard to principles of conflicts of law. The non-exclusive venue for all actions under this Agreement will be in the courts located in Travis County, Texas, U.S.A. and the parties agree to submit to the jurisdiction of such courts.

If Customer are not sure where the Software is manufactured, please contact National Instruments Corporation, 11500 N. Mopac Expressway, Austin, Texas, U.S.A. 78759-3504 (Attention: Legal Department).

- B. This Agreement constitutes the complete agreement between Customer and NI regarding use of the Software and supersedes any oral or written proposals, prior agreements, purchase orders, or any other communication between Customer and NI relating to the subject matter of this Agreement. NI's applicable standard Terms and Conditions of Sale, the current version of which is set forth at <http://www.ni.com/legal/termsofsale>, will apply to any technical support services provided as part of Software Services and to any Training & Certification Services; provided, however, as set forth herein the provisions of this Agreement may apply and



control with respect to any upgrades or updates or other Software that may be provided as part of or in connection with any such services. No delay or omission by NI to exercise any right or power it has under this Agreement will impair or be construed as a waiver of such right or power. Any waiver by NI of a term of this Agreement must be in writing by NI. The waiver by NI of any breach of any provision hereof will not be construed to be a waiver of any succeeding breach of that provision or of any breach of any other provision. No modification of this Agreement will be effective unless set forth in a writing signed by a duly authorized representative of Customer and NI. The word "including" as used in this Agreement will be understood as meaning "including without limitation". If Customer are unable to access the internet to view any of the web pages referred to in this Agreement, Customer may request the information from Customer's local NI sales office.

- C. If any action is brought by either party to this Agreement against the other regarding the subject matter hereof, the prevailing party will be entitled to recover, in addition to any relief granted, reasonable attorneys' fees and court costs.
- D. If any provision of this Agreement is held invalid, the offending clause will be modified so as to make it enforceable, as modified, and the remainder of this Agreement will continue in full force and effect.
- E. Software is, and Third Party Software and Source Code may be, subject to control under the U.S. Export Administration Regulations (15 CFR Part 730 et. seq.), other applicable U.S. export control laws and regulations, and applicable global export control laws and regulations, including, for products exported from the European Union, the Council Regulation (EC) No. 428/2009. Customer represent and warrant that Customer are not ineligible or otherwise restricted by US or applicable law to receive any copies of the Software, Third Party Software, or Source Code. NI reserves the right not to ship or permit downloading of the Software ordered or otherwise fulfill an order for licenses (including under a Volume License Program or Enterprise Program) if, at any time, NI believes that such shipment or downloading of such Software, Third Party Software, or Source Code or other fulfillment may violate U.S. or other applicable export control laws. Customer agrees that Customer will not export, re-export, or transfer any Software, Third Party Software, or Source Code in violation of any U.S. and applicable global export control laws and that Customer will not export, re-export, or transfer the Software, Third Party Software, or Source Code by any means to (i) any person or entity on OFAC's List of Specially Designated Nationals or on BIS's Denied Persons List, Entity List, or Unverified List, or any other applicable restricted party list or (ii) any prohibited destination, entity, or individual without the required export licenses or authorizations from the U.S. Government or other applicable export licensing authority. For text of the relevant legal materials, see <http://www.ni.com/legal/export-compliance.htm>.
- F. Software may include what is commonly referred to as 'open source' software. Under some of their respective license terms and conditions, NI may be required to provide Customer with notice of the license terms and attribution to the Third Party Software, in which case NI purposes to provide Customer with such information (whether via the Software documentation or otherwise). Notwithstanding anything to the contrary herein, use of the open source software will be subject to the license terms and conditions applicable to such open source software, to the extent required by the applicable licensor (which terms and conditions shall not restrict the license rights granted to Customer hereunder), and to the extent any such license terms and conditions grant Customer rights that are inconsistent with the limited rights granted to Customer in this Agreement, then such rights in the applicable open source license shall take precedence over the rights and restrictions granted in this Agreement, but solely with respect to such open source software. NI will comply with any valid written request



submitted by Customer to NI for exercising any rights Customer may have under such license terms and conditions (but NI makes no commitment on how quickly it will respond to such request).



## **ADDENDUM A – Evaluation License; Pre-Release Software Terms**

### **Evaluation License; Pre-Release Software**

If Customer have acquired an evaluation license, Customer may install and use the Software on one (1) computer in Customer's workplace for internal evaluation purposes only and only for the limited period of the evaluation term.

Customer acknowledge and agree that the **SOFTWARE IS EVALUATION ONLY AND MAY ALSO BE PRE-RELEASE SOFTWARE. AS SUCH, THE SOFTWARE MAY NOT BE FULLY FUNCTIONAL AND CUSTOMER ASSUME THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE SOFTWARE. NI WILL NOT UPDATE THE SOFTWARE, NOR WILL NI SUPPORT THE SOFTWARE. SOFTWARE PROVIDED UNDER AN EVALUATION LICENSE IS PROVIDED WITHOUT WARRANTY OR OBLIGATION OF INDEMNITY ON NI. THE SOFTWARE MAY CONTAIN CODE THAT WILL, AFTER A CERTAIN TIME PERIOD, DEACTIVATE THE SOFTWARE AND RENDER THE SOFTWARE UNUSABLE, AND IT MAY DO SO WITHOUT WARNING.** Upon such deactivation, this Agreement will be considered terminated. NI may in its sole discretion terminate the evaluation license at any time. If the Software consists of pre-release software and is also covered by a separate, written alpha/beta license (the "Beta Agreement") between Customer and NI, the terms and conditions of the Beta Agreement, which are incorporated herein by reference, will also apply to Customer's use of the Software. In the event of a conflict between this Agreement and the Beta Agreement, the terms of the Beta Agreement will control.

Customer agrees to use reasonable efforts to provide feedback to NI regarding Customer's use of the Software, including promptly reporting to NI errors or bugs that Customer might find. Any such feedback Customer disclose to NI, including any changes or suggested changes to NI's current or future products and services (collectively "Feedback"), will be received and treated by NI on a non-confidential and unrestricted basis, notwithstanding any restrictive or proprietary legends to the contrary accompanying or otherwise associated with the Feedback. Customer hereby grant to NI a worldwide, royalty-free, non-exclusive, perpetual, and irrevocable license to use, copy, and modify Feedback for any purpose, including incorporation or implementation of such Feedback into NI products or services, and to display, market, sublicense, and distribute Feedback as incorporated or embedded in any product or service distributed or offered by NI. The Feedback license set forth herein will survive expiration or termination of the Agreement.