

THIRD-PARTY ADD-ON PROVIDER SERVICES AGREEMENT

THIS THIRD-PARTY ADD-ON PROVIDER SERVICES AGREEMENT (THIS “AGREEMENT”) IS A CONTRACT BETWEEN PROVIDER, IDENTIFIED AS INDICATED IN THE SERVICES AGREEMENT FORM (“PROVIDER”), AND NATIONAL INSTRUMENTS CORPORATION (“NI”), A DELAWARE CORPORATION HAVING AN ADDRESS OF 11500 NORTH MOPAC EXPRESSWAY, AUSTIN, TEXAS 78759. BEFORE YOU ACCEPT THIS AGREEMENT ON BEHALF OF PROVIDER AS INDICATED BELOW, CAREFULLY READ THIS AGREEMENT. BY YOUR CLICKING THE “ACCEPT THIS AGREEMENT” BUTTON BELOW, YOU ACKNOWLEDGE, REPRESENT AND AGREE THAT YOU ARE PROVIDER, OR, IF PROVIDER IS NOT AN INDIVIDUAL, AN OFFICER, MANAGER, PARTNER OR EMPLOYEE OF PROVIDER HAVING FULL AUTHORITY TO BIND PROVIDER TO THE TERMS OF THIS AGREEMENT, AND THAT YOU ARE ACCEPTING AND AGREEING TO THIS AGREEMENT ON BEHALF OF PROVIDER. IF YOU ARE NOT THE PROVIDER OR DO NOT HAVE THE REQUISITE AUTHORITY, OR DO NOT WISH FOR PROVIDER TO BECOME A PARTY TO THIS AGREEMENT AND BE BOUND BY ALL OF ITS TERMS AND CONDITIONS, CLICK THE APPROPRIATE BUTTON TO EXIT THIS SCREEN WITHOUT ACCEPTING THIS AGREEMENT.

Provider has completed the Application Form, as defined below, identifying Provider and one or more add-on software tools that Provider has developed for use with NI’s software and hardware desires to market using the Service as provided below. NI provides a service through which it facilitates the marketing and sale of certain add-ons through NI’s website ni.com, and other channels as determined by NI (the “Service”). Provider desires to use the Service to sell those add-ons set forth in the Application Form that NI has notified Provider that NI has accepted for the Service (the “Add-Ons”). This Agreement sets forth the terms and conditions pursuant to which NI will provide the Service to Provider.

1. DEFINITIONS

1.1 “**Application Form**” means the completed application form that has been submitted by Provider and accepted by NI, that identifies Provider (including Provider’s full and correct legal name, type of entity, jurisdiction of charter, legal address, address for notices under this Agreement, and name and contact information for Provider’s designated employee or other representative for routine contacts under this Agreement), the Add-Ons, and the Marks.

1.2 “**Confidential Information**” means any confidential or proprietary information of NI that is disclosed or otherwise made available in any manner to Provider that at the time of disclosure either (i) is marked as being “Confidential” or “Proprietary”, (ii) is otherwise reasonably identifiable as the confidential or proprietary information of NI, or (iii) under the circumstances of disclosure, or by the nature of the information, should reasonably be considered as confidential or proprietary information. Additionally, Confidential Information includes the existence and terms of this Agreement. Confidential Information does not include information that (a) is in or enters the public

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domain without breach of this Agreement or any other non-disclosure obligation of Provider, (b) Provider was lawfully in possession of prior to first receiving it from NI, as evidenced by written documentation of Provider, (c) Provider can demonstrate was developed by Provider independently and without use of or reference to the Confidential Information, or (d) Provider receives from a third party without restriction on disclosure and without breach of a non-disclosure obligation.

1.3 **“Customers”** means those individuals or businesses that purchase, or may purchase, licenses to the Add-Ons through the Service.

1.4 **“Intellectual Property”** means the worldwide legal rights or interests in intangibles evidenced by or embodied in (i) any idea, design, concept, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, patent applications, trade secrets, confidential business information, and know-how; (ii) any work of authorship, including any copyrights, mask works, industrial designs, moral rights, or neighboring rights recognized by law; (iii) any trademark, service mark, trade dress, and trade name; and (iv) any other similar rights.

1.5 **“Marks”** means those Provider trademarks listed as such in the Application Form.

1.6 **“Service Infrastructure”** means web hosting, infrastructure, platform, software, data processing, data storage or other services or facilities used by NI to enable or facilitate NI’s provision of the Services or any portion of the Services.

1.7 **“Term”** has the meaning set forth in Section 10.1 of the Agreement.

2. SERVICE

2.1 Generally. During the Term, NI shall display the Add-Ons on a portion of NI’s website ni.com (the “Site”) and shall facilitate the sale of licenses for the Add-Ons by the Provider to Customers on Provider’s behalf. Without limiting the generality of Sections 2.2 or 2.5 below, the manner and placement by NI of information relating to the Add-Ons on the Site and the process through which NI facilitates the sale of the Add-Ons, shall be at NI’s sole discretion. NI may (but shall not be obligated to) offer potential customers additional methods to purchase the Add-Ons including by phone or fax, or by including links in LabVIEW or other NI software products to the Site. NI may perform any Services and offer the Add-Ons in any countries in which NI offers its products, but NI shall not be obligated to offer the Add-Ons or perform any Services in all such countries or any particular countr(ies).

2.2 Authorization. To facilitate the marketing and delivery of the Add-Ons Provider authorizes NI to (i) create copies of the Add-Ons in preparation for their distribution to Customers, (ii) provide hosting services to Provider to allow the Add-Ons to be stored, and to facilitate the distribution of the Add-Ons to Customers, (iii) market, offer, and accept orders of the Add-Ons on Provider’s behalf, (iv) provide Customers with access to the Add-Ons and facilitate the downloading and distribution of the Add-Ons to the Customers, and (v) invoice and collect payment from Customers for the Add-Ons.

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2.3 Display of the Add-Ons. Provider shall provide NI, in a format reasonably requested by NI, with a copy of the Add-On, product description and applicable specifications for the Add-Ons, Provider contact information, images, website links, screen shots, icons, logos, and any other materials Provider wishes to have displayed on the Site (collectively, the “Provider Materials”). If at any time during the Term NI makes available to Provider any tools or APIs for use in connection with activating licenses for Add-Ons sold under the Services, Provider shall, at Provider’s own expense, provide the Add-On to NI with such activation functionality implemented. Provider acknowledges and agrees that all such tools and APIs are Confidential Information and that Provider will not use the tools or API’s for any other purpose. Provider shall also provide NI, in a format reasonably requested by NI, with the Marks that Provider wishes to have displayed on the Site. NI reserves the right to remove or edit the Provider Materials, or any portion thereof, at any time.

2.4 Distribution. If Provider provides NI with any and all information required by NI to facilitate the orders, NI agrees to fulfill orders placed through the Service on Provider’s behalf by allowing the Customer to download a copy of the Add-On.

2.5 Order and Payment Processing. Provider may set or change the price at which it wishes to sell licenses for the Add-Ons through the Service by providing NI written notice of the price. NI is not obligated to implement any price change until ninety (90) days after the notice is received by NI. The price will be set by Provider in US Dollars. For countries in which NI sells products in local currencies, NI will periodically convert the US Dollar price into such local currencies in accordance with NI’s then-current standard price conversion procedures, which Provider acknowledges may not track the then-current currency exchange rates. NI will process all payments for purchases of Add-Ons through the Service. If payment is made by credit card, NI’s name will appear on the customer’s credit card statement. NI has sole discretion as to which orders of the Add-Ons it accepts and the time at which it makes the Add-On available to a Customer and processes the payments for the Add-Ons. Provider is always the seller of record, and NI is acting on Provider’s behalf to process the payments. NI may, in its discretion, withhold for investigation or refuse to process any transaction involving Add-Ons or any other products or services on or through the Site or Service. Without limiting the generality of the foregoing, NI may restrict destinations (including destinations to which NI may have previously made the Add-Ons available) to which the Add-Ons are made available or from which the license for the Add-Ons may be purchased. NI is not required to accept any particular order or payment for the Add-Ons, or honor or accept any discounts, coupons, gift certificates, or other offers or incentives made available by Provider. NI may (but shall not be obligated to) facilitate returns and refunds of purchases that were made using the Site or the Services.

2.6 Control of Site and Service. Notwithstanding any provision of this Agreement to the contrary, NI has the right in its sole discretion to determine the content, appearance, design, functionality and all other aspects of the Site, any NI software through which the Service may be provided in whole or in part, and the Service (including the right, from time to time, to re-design, modify, remove and alter the content, appearance, design, functionality, and other aspects of, and prevent or restrict access to, the Site, the NI software, the Service, and the Provider Materials, and any element, aspect, portion or feature thereof) and to delay or suspend listing of, or to refuse to list, or to de-list any or all products in its sole discretion. Provider acknowledges and agrees that: (i) the

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Services currently include a feature under which add-ons sold through the Service may be rated, reviewed and commented on by customers; (ii) that the Add-Ons will be covered by this feature and that ratings, reviews and comments pertaining to the Add-Ons will be publicly displayed at the Site; (iii) NI may, but is not obligated to, monitor or review any ratings, reviews or comments; (iv) NI has no liability related to the content of any such ratings, reviews or comments, whether or not arising under the laws of copyright, libel, privacy, obscenity, or otherwise; and (v) NI may continue the rating, review and comment feature, or modify or discontinue it at any time, without notice.

3. INTELLECTUAL PROPERTY

3.1 Add-On License Grant. Provider hereby grants NI and its wholly-owned subsidiaries an irrevocable (for the Term) worldwide, royalty-free, sub-licensable right and license to copy and distribute the Add-Ons, through the Service, to Customers.

3.2 Provider Content License Grants. Provider hereby grants NI a royalty-free, sub-licensable, non-exclusive, world-wide, irrevocable, right and license to use, copy, modify, create derivative works, distribute and publicly display the Provider Materials and the Marks (collectively, the “Provider Content”) for the purpose of providing and marketing the Service.

3.3 Mark Restrictions. NI shall maintain a level of quality in connection with its use of the Marks that is consistent with general industry standards. Upon request by Provider, NI shall provide Provider with representative samples of the uses of the Marks on the Site. If Provider determines that NI is using the Marks improperly, then Provider shall notify NI in writing, and NI will use commercially reasonable efforts to adjust the use of the Marks to account for Provider’s objections within thirty days of having received the written notice.

3.4 Modified Provider Materials. If Provider reasonably objects to any modifications made by NI to the Provider Materials, it shall notify NI in writing, and NI will use commercially reasonable efforts to adjust the modified materials to account for Provider’s objections within thirty days of having received the written notice.

3.5 Demos. NI and its wholly-owned subsidiaries may activate a reasonable number of copies of the Add-Ons, at no charge, solely for sales and marketing purposes, including demonstrations of the Add-Ons functionality to potential customers (“Marketing Purposes”). The terms of this Agreement shall supersede and replace the terms of any license provided with the Add-Ons as they may apply to NI’s use of the Add-Ons for Marketing Purposes. Provider hereby grants NI and its wholly-owned subsidiaries an irrevocable (for the Term), world-wide, royalty-free right to install, use, perform and display the Add-Ons solely for the Marketing Purposes. Such license grant shall automatically terminate upon the termination of this Agreement.

3.6 Software Restrictions. NI will not: (i) reverse engineer, decompile, or disassemble the Add-Ons (except to the extent such foregoing restriction is expressly prohibited by applicable law); (ii) use the Add-Ons to gain access to unencrypted data in a manner that defeats the digital content protection provided in the Add-Ons; (iii) sub-license, lease, or rent the Add-Ons; and (iv) directly or indirectly, export, re-export, download, or ship the Add-Ons in violation of the export laws and

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regulations of the U.S.A., provided that Provider has first made available to NI all reasonably requested export control and related information.

3.7 Reservation of Rights. NI acknowledges and agrees that Provider and its licensors shall continue to own all of Provider's interests and rights in and to the Add-Ons (other than elements of the NI software used by Provider in the development of the Add-Ons or incorporated into the Add-Ons (the "NI Elements")), and that all of Provider's rights in and to the Add-Ons not expressly granted by Provider hereunder are reserved to Provider (other than the NI Elements). NI grants no licenses (express, implied, by estoppel or otherwise) pursuant to this Agreement to the NI Elements or any other NI intellectual property.

4. ADD-ON RESPONSIBILITY

4.1 Terms of Sale and EULA. Each sale of an Add-On license is between Provider and the customer, not NI. Provider shall ensure that its End-User License Agreement (the "Provider EULA") is provided as a "click-through" license with each copy of the Add-On provided to a customer. The Provider EULA must comply with all requirements of the National Instruments Software License Agreement for Authorized Application distribution, if applicable, and in any event must contain commercially standard provisions regarding limitation of liability that (i) disclaim all consequential, incidental, indirect, exemplary, punitive and special damages, (ii) limit all damages both for the Provider and for Provider's service providers and distributors, and (iii) disclaim all implied warranties. The Provider EULA should also include any terms or conditions that Provider would like to have in place with the Customer.

4.2 Product Support and Customer Relations. NI shall not be obligated under any circumstances to provide support for the Add-Ons. Provider shall provide the support required by the Provider EULA and any other agreements between Provider and the Customer, and Provider shall provide the same support for the Add-Ons sold through the Service as it does for other licensees of the Add-Ons. Provider will be solely responsible for all customer service issues relating to the Add-Ons (including pricing, Provider Content, the Provider EULA, availability of the Add-Ons, technical support, functionality and warranty of the Add-Ons), order cancellation by Provider or Customer, returns, refunds and adjustments. In interacting with Customers, Provider will always present itself as a separate entity from NI, will never present an Add-On as an NI product, and will not make any statement, claim, or representation that implies sponsorship, endorsement, or affiliation by NI of the Add-Ons or Provider.

4.3 Product Defect. Provider is solely responsible for any non-conformity or defect in the Add-Ons. Provider shall promptly notify NI of any material defects or non-conformities it discovers in the Add-Ons. Provider shall ensure that the sale, use, and delivery of the Add-Ons do not violate any applicable law, regulation or other legal mandate.

5. PROVIDER REPRESENTATIONS AND WARRANTIES

5.1 Provider represents, warrants, and agrees that: (i) the Add-Ons and Provider Content do not and will not infringe any Intellectual Property rights of any third party, and there are no pending or

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threatened claims of any kind related to the Add-Ons or the Provider Content; (ii) Provider has the authority to grant the rights, licenses and authorizations granted pursuant to this Agreement; (iii) the Add-Ons will perform substantially in accordance with the product description and any and all specifications relating to the Add-Ons; (iv) Provider will at all times comply with the Provider EULA and any other agreements between Provider and the Customer relating to the Add-Ons or any related services; (v) Provider's entering into this Agreement and the consummation of the transactions contemplated hereunder do not and will not conflict with any other agreement to which Provider is a party or violate any law to which Provider or the Add-On is subject, including any export control law and any privacy or data collection law; (vi) the Add-Ons do not violate any law to which Provider or the Add-On is subject, including any export control law and any privacy or data collection law; (vii) Provider and the Add-Ons are in compliance with the provisions of the National Instruments Software License Agreement for any NI software used by Licensor in the creation of the Add-On; (viii) in exercising its rights and performing its obligations under this Agreement, Provider shall comply with all applicable laws, regulations, and other legal mandates; (ix) Provider has used and shall continue to use secure software development best practices, processes and tools in developing and providing any support for the Add-Ons, and none of the Add-Ons is known to contain any security vulnerabilities or to contain or generate any computer viruses or other programs, software, information, instructions, code or commands designed or likely to cause damage to, or enable or facilitate unauthorized access to, software, data, or files; or any access-preventing code or mechanisms except a license management mechanism consistent with the license granted to the Customer; (x) Provider shall promptly notify NI in writing on learning of any security vulnerabilities in any Add-On; (xi) Provider shall promptly notify NI in writing on making any changes to the Add-On that Provider makes available to customers generally; and (xii) Provider shall provide reasonably requested export control information to NI. The provisions of this Section 5.1 survive any termination or expiration of this Agreement.

6. FEES AND PAYMENT TERMS

6.1 Generally. Provider shall pay NI, as the fee for the Services, thirty percent (30%) of the following:

the money collected by NI for the sale of licenses for Add-Ons during the Term, including for Add-Ons that are returned for refunds, less the money collected for sales, value added, goods and services, use or similar tax required to be collected by NI for the sale of licenses for Add-Ons to Customers ("Sales Tax"),

6.2 Payment Terms. Within thirty (30) days of the end of each calendar quarter, NI shall pay, in accordance with wire transfer payment instructions provided by Provider to NI in such manner as instructed by NI, to Provider the money collected by NI during that quarter for the sale of licenses for Add-Ons less: (i) applicable Sales Tax; (ii) money collected for Add-Ons that were both purchased and returned for a refund during that quarter; (iii) seventy percent (70%) of the cost of any returns or refunds processed by NI during that quarter for Add-Ons purchased in preceding quarters; (iv) any amounts owed to NI by Provider, including the fee for the Services set forth in Section 6.1 above (collectively, the "Quarterly Provider Payment"). NI will calculate Quarterly Provider Payments for sales not made in U.S. Dollars ("Foreign-Currency Sales") in accordance

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with Section 6.3 below. With each Quarterly Provider Payment, NI shall provide Provider with a statement that sets forth the relevant information used in calculating the Quarterly Provider Payment. Notwithstanding any authorization or instruction from Provider, NI shall have no obligation to pursue collection activities for amounts owed by Customers for the purchase of licenses for Add-Ons through the Service, and NI shall have no payment obligations to Provider relating to any such unpaid amounts.

6.3 Currency Conversion. All payments made to Provider shall be made in U.S. Dollars. The portion of each Quarterly Provider Payment resulting from that quarter's Foreign-Currency Sales shall be calculated in accordance with this Section. The portion of each Quarterly Provider Payment resulting from Foreign-Currency Sales shall be converted (on the date payment is made to Provider) from the foreign currency in which the sale was made into U.S. dollars (in accordance with NI's then standard currency conversion procedures).

6.4 Sales Tax. NI shall collect, and remit to each appropriate taxing authority, applicable Sales Tax for the sales of licenses for Add-Ons facilitated by NI pursuant to this Agreement.

7. CONFIDENTIAL INFORMATION

7.1 Generally. Provider acknowledges that NI may disclose certain Confidential Information to Provider in the course of providing the Services. Provider shall not provide NI any confidential information of its own or of a third party.

7.2 Restrictions. Provider agrees that it shall not disclose, disseminate, publish, or otherwise divulge Confidential Information to third parties, and that it shall not use any Confidential Information for any purpose other than fulfilling its obligations under this Agreement. Further, Provider shall take reasonable security precautions, at least as great as the precautions it takes to safeguard its own confidential information, to prevent disclosure and unauthorized use of the Confidential Information and agrees NI is a third-party beneficiary of any confidentiality obligations owed by third parties to Provider.

7.3 Continuing Obligations. Upon the termination of this Agreement, Provider shall immediately cease all use of NI's Confidential Information and shall immediately return to NI all materials containing Confidential Information, and to the extent Confidential Information is stored upon Provider's computers, destroy or completely erase such Confidential Information and certify to NI in writing that such destruction or erasure has been completed.

8. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITIES

8.1 DISCLAIMER OF WARRANTIES. THE SERVICE, INCLUDING ALL CONTENT, SOFTWARE, FUNCTIONS, MATERIALS AND INFORMATION MADE AVAILABLE BY NI OR ANY OF ITS AFFILIATES ON THE SITE OR PROVIDED BY NI OR ANY OF ITS AFFILIATES IN CONNECTION WITH THE SERVICES, ARE PROVIDED "AS-IS." PROVIDER USES THE SERVICE AT ITS OWN RISK. TO THE FULLEST EXTENT PERMISSIBLE BY LAW, NI, ON BEHALF OF ITSELF AND ITS AFFILIATES, DISCLAIMS:

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(1) ANY REPRESENTATIONS OR WARRANTIES REGARDING THIS AGREEMENT, THE SITE, THE SERVICE OR THE TRANSACTIONS CONTEMPLATED HEREBY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT; (2) ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE; AND (3) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY IN TORT, WHETHER OR NOT ARISING FROM ITS OR THEIR NEGLIGENCE. NI DOES NOT WARRANT THAT THE SITE OR THE SERVICES WILL MEET PROVIDER'S REQUIREMENTS OR BE AVAILABLE, TIMELY, SECURE, UNINTERRUPTED OR ERROR FREE, AND NI WILL NOT BE LIABLE FOR ANY SERVICE INTERRUPTIONS, INCLUDING, BUT NOT LIMITED TO SYSTEM FAILURES, TELECOMMUNICATIONS FAILURES, SERVICE INFRASTRUCTURE FAILURES, OR OTHER INTERRUPTIONS THAT MAY AFFECT THE RECEIPT, PROCESSING, ACCEPTANCE, COMPLETION OR SETTLEMENT OF ANY TRANSACTIONS.

8.2 LIMITATION OF LIABILITY. OTHER THAN WITH RESPECT TO CONTRACTUAL INDEMNIFICATION OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT, NEITHER PARTY SHALL BE RESPONSIBLE OR HELD LIABLE TO THE OTHER FOR PUNITIVE, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, LOST PROFITS, COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOSS OF USE OF ANY PROPERTY, LOSS OF PROFITS, LOSS OF PRODUCT, OR BUSINESS INTERRUPTION, HOWEVER THE SAME MAY BE CAUSED, INCLUDING DAMAGES RELATING TO THE FAULT, NEGLIGENCE, STRICT LIABILITY, OR PROFESSIONAL MALPRACTICE OF EITHER PARTY; EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NI'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREUNDER WILL NOT EXCEED THE TOTAL AMOUNT PAID BY PROVIDER TO NI FOR THE SERVICE DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CLAIM OR LIABILITY AROSE.

8.3 Insurance. If NI indicates as part of its acceptance of the Application Form that NI requires Provider to maintain such insurance, or if NI gives Provider 120 days notice that NI requires Provider to maintain such insurance (an "Insurance Notice"), Provider agrees to maintain standard commercial general liability insurance, including errors and omissions liability insurance, and professional liability insurance. Such insurance shall be provided in an amount specified by NI as part of the Application Form acceptance or the Insurance Notice and shall provide for waivers of subrogation in favor of NI dating from the execution of this Agreement (or, when the insurance is first required by an Insurance Notice, dating from 120 days after the Insurance Notice). Provider shall add NI as an additional insured on the policy or policies of insurance and, upon NI's request, shall provide NI with copies of certificates of insurance evidencing NI's status as an additional insured.

9. INDEMNIFICATION

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9.1 Generally. Provider shall indemnify, defend, and hold harmless NI, its affiliates, and its and their officers, directors, employees, and agents (the “Indemnified Parties”) from and against any and all losses, liabilities, damages, actions, claims, demands, settlements, judgments, and any other expense, including, but not limited to, attorneys’ fees and expenses, that are asserted against, incurred, or suffered by the Indemnified Parties and that arise out of or relate to (i) the sale, licensing, distribution or use of the Add-Ons, (ii) any actual or alleged breach by Provider of this Agreement, or (iii) the infringement by Provider, the Add-Ons, the Provider Content, and/or the Marks, of any third party’s Intellectual Property rights. Any indemnification obligation under this Agreement shall apply even if due in part to the Indemnified Parties’ concurrent negligence or other fault or strict liability without regard to fault; provided, however, that Provider’s contractual obligation of indemnification hereunder shall not extend to the percentage of the claimant’s damages or injuries or the settlement amount attributable to the Indemnified Parties’ negligence. Provider may not settle any claim for which it is indemnifying an Indemnified Party without first obtaining the Indemnified Party’s written consent to the settlement, unless such settlement is only for money paid by Provider. An Indemnified Party may, at its own expense, participate in and be represented by its own counsel in defense and settlement of the claim.

9.2 Cumulative Remedies. All rights and remedies of the parties under this Agreement shall be cumulative and in addition to all rights and remedies available to the parties at law or in equity.

10. TERM AND TERMINATION; SUSPENSION OF SERVICE

10.1 Term. This Agreement shall commence on the Effective Date and shall continue until terminated as provided below (the “Term”).

10.2 Termination at Will. NI may terminate this Agreement for convenience by providing Provider written notice specifying the date of termination at least thirty (30) days prior to such date of termination. Provider may terminate this Agreement for convenience by providing NI written notice specifying the date of termination at least ninety (90) days prior to such date of termination.

10.3 Termination for Cause. If either party materially fails to perform its obligations under this Agreement and such failure continues for thirty (30) days after receipt of written notice thereof from the other party, then the non-breaching party may terminate this Agreement for cause by providing notice of termination to the other party setting forth a date of termination at least sixty (60) days from date on which the notice of termination is delivered. If any representation or warranty of Provider under Section 5 is false or is breached, then NI may terminate this Agreement for cause by providing notice of termination to Provider setting forth a date of termination at least sixty (60) days from date on which the notice of termination is delivered.

10.4 Termination for Insolvency. Either party may terminate this Agreement immediately if the other party becomes insolvent, dissolves, makes an assignment for the benefit of, or enters into any composition or arrangement with, creditors, or if there is an appointment of a receiver or trustee or a liquidation of the business of such other party, or if bankruptcy, reorganization, insolvency or arrangement proceedings or proceedings under any other laws relating to the relief of debtors are commenced by or against such other party.

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10.5 Suspension of Services. NI may at any time, without liability, immediately, and without notice, suspend providing the Services for Provider if NI reasonably determines that: (a) any of the representations and warranties in Section 5 is false or Provider is in breach of any provision of this Agreement; or (b) there is a threat or attack on the Service Infrastructure or other event that may create a risk to the Services or the Service Infrastructure. NI shall, however, use commercially reasonable efforts to give Provider such notice of any suspension of Services as may be reasonable under the circumstances. This Section 10.4 is in addition to, and not instead of or in limitation of, any other rights of NI.

11. MISCELLANEOUS

11.1 Assignment. Neither party may assign this Agreement, by operation of law, merger, or otherwise, without the prior written consent of the other party, except that NI may assign this Agreement to any subsidiary of National Instruments Corporation without Provider's consent. Any change in control of Provider shall be deemed to be an assignment by Provider for purposes of this Section 11.1.

11.2 Severability. If any provision of this Agreement is determined to be illegal or unenforceable, then such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the parties in a manner that complies with applicable law. The invalidity or unenforceability of any provision of this Agreement, in whole or in part, shall neither impair nor affect the validity or enforceability of any other provisions of this Agreement.

11.3 Entire Agreement. This Agreement embodies the entire understanding between the parties regarding the subject matter hereof and supersedes all prior representations, discussions and communications, whether oral or written. No change, alteration, or modification hereof may be made except in a writing signed by both parties.

11.4 Status of Parties; No Fiduciary Relationship or Duty. Provider and NI's relationship is solely as independent contractors and in no way is Provider to be construed as a partner, joint venturer, or agent of NI in any respect under this Agreement, and Provider shall not represent to the contrary, either expressly, implicitly, by appearance or otherwise. Nothing in this Agreement shall be understood as creating a trust or other fiduciary relationship. In no event shall NI or any of its employees, officers, directors, contractors, attorneys, or professional advisors be understood as having any fiduciary or professional duty or obligation to Provider or any Customer

11.5 Waiver. The failure to insist upon strict compliance with any of the provisions of this Agreement shall not be deemed a waiver of any such provision, nor shall any waiver or relinquishment of any right or power hereunder, at any one or more times, be deemed a waiver or relinquishment of such right or power at any other time or times.

11.6 Notices. All notices that are required to be in writing shall be given in person, by overnight mail or by certified mail (return receipt requested), or by email to the email address indicated below. All notices intended for Provider shall be addressed to Provider's notice address in the

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Application Form. All notices intended for NI shall be addressed to National Instruments Corporation, 11500 N. Mopac Expressway, Austin, Texas 78759, Attn: Group Manager, Tools Network, email labviewtoolsnetwork@ni.com. Either party may change its notice address and email address by giving notice of the change in the manner described in this Section 11.6. Any notice of change of address will be effective only upon receipt. All other notices shall be effective when received, or, if mailed as provided for above, no later than five (5) days following the date of such mailing.

11.7 Survival. Any provision of this Agreement whose applicability is not limited to the Term or some other time period, either expressly or by reasonable implication, shall survive the expiration or termination of this Agreement.

11.8 Injunctive Relief. Provider agrees that NI will suffer substantial and irreparable harm, for which there is no adequate remedy at law, in the event Provider breaches any of the provisions of Article 7. Therefore, in the event of such breach, Provider agrees that NI shall be entitled to immediate injunctive relief without posting of bond in any court of competent jurisdiction.

11.9 Force Majeure. If a party is prevented from performing or is unable to perform any of its obligations under this Agreement due to causes beyond the reasonable control of that Party, including any act of God, fire, casualty, flood, war, terrorism, strike, lockout, riot, failure of telecommunications, failure of Service Infrastructure, or insurrection, then its performance will be excused, and the time for the performance will be extended, for the period of delay or inability to perform due to such occurrences.

11.10 Governing Law. This Agreement is deemed to have been entered into in the State of Texas, and its interpretation, construction, and the remedies for enforcement or breach are to be applied pursuant to, and in accordance with, the laws of the State of Texas excluding any rule or principle that would refer to and apply the substantive law of another state, country, or jurisdiction. Further, the parties agree that any such claim or cause of action shall be brought in the state or federal courts located in Austin, Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts.

11.11 Construction. The Section headings in this Agreement are for reference purposes only and are to be given no effect in the construction or interpretation of this Agreement. As used in this Agreement, the words “hereof” and “hereunder” and other words of similar import refer to this entire Agreement and not any separate portion hereof, unless otherwise specified. As used in this Agreement, the word “including” and its derivatives (such as “include” and “includes”) shall be interpreted as if it were followed by the phrase “without limitation”. The parties agree that this Agreement will not be construed against either party as the drafter of this Agreement, and any rule, principle, law or regulation that provides that the language of a contract be construed against the drafter will not apply to this Agreement.

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