

ACTIVEUPTIME TERMS AND CONDITIONS

CAREFULLY READ THIS SYSTEMLINK PREDICTIVE DATA MAINTENANCE APPLICATION LICENSE AND SERVICES AGREEMENT ("AGREEMENT"). BY DOWNLOADING AND/OR SUBSCRIBING FOR THE USE OF NI'S PREDICTIVE DATA MAINTENANCE APPLICATION FOR TEST STATIONS AND TEST FACILITIES THAT WORKS WITH NI'S SYSTEMLINK SOFTWARE ("APPLICATION") AND/OR CLICKING THE APPLICABLE BUTTON TO COMPLETE THE INSTALLATION AND/OR SUBSCRIPTION PROCESS, OR BY OTHERWISE EXECUTING THE APPLICABLE ESS DOCUMENTATION (DEFINED BELOW), 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 APPLICATION, AND RETURN THE APPLICATION (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 THIS AGREEMENT ON BEHALF OF AN ENTITY, YOU AGREE AND REPRESENT THAT YOU HAVE AUTHORITY TO BIND THE ENTITY TO THIS AGREEMENT, AND REFERENCES HEREIN TO "YOU", "YOUR" AND THE "COMPANY" SHALL MEAN SUCH ENTITY.

"ESS Documentation" means the quotation or similar ordering document issued by NI to you for the purchase of an Application license, and which references, hyperlinks to, or otherwise incorporates by reference, this Agreement.

The terms and conditions of this Agreement apply to the Application provided with this Agreement, all updates or upgrades to the Application that may be provided later by NI as part of any maintenance, technical support, or other services program for the Application, including during any renewal term (unless such update, upgrade, or renewal comes with separate software license terms), and all accompanying documentation, and utilities, and Driver Interface Software (collectively the "Application"). The term Application 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 Application ("Third Party Software").

1. **Application License.**

- 1.1. In consideration of, and conditioned upon, your payment of any applicable fees to NI and subject to the terms set forth in this Agreement, NI hereby grants to Company a limited, terminable, non-transferable, non-sublicensable, non-exclusive license to use the Application solely for Company's internal use only and/or for the purposes listed under any valid SOW.
- 1.2. The Application may be used in object code form only and does not include source code.
- 1.3. **Restrictions.** You must not violate any applicable laws in your use of the Application. As a condition to the License, and unless and only to the extent that this Agreement expressly permits otherwise, you must not:
 - 1.3.1. modify, translate, port, or create derivatives of the Application;
 - 1.3.2. install or use the Application in a floating, concurrent, or any other shared context;
 - 1.3.3. distribute or otherwise make the Application (or any password, key, or other access code for the Application) available to any third party (such as offering it as part of a time-sharing, outsourcing or service bureau environment);
 - 1.3.4. publicly perform or display the Application;
 - 1.3.5. reverse engineer, decompile, 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 Application, unless and only to the extent that

- applicable law expressly prohibits this restriction;
- 1.3.6. defeat or work around any access restrictions or encryption in the Application, unless and only to the extent that applicable law expressly prohibits this restriction;
 - 1.3.7. sublicense, lease, lend, or rent the Application;
 - 1.3.8. 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 Application, whether or not they are NI or a third party's; cause any of the Application to become subject to a license that requires, as a condition of use, modification, or distribution, that (a) code subject to the license be disclosed or distributed in source code form or (b) others have the right to modify or create derivative works of the code subject to the license;
 - 1.3.9. employ any hardware, software, device, or technique to pool connections or reduce the number of users or endpoints that access or use the Application (sometimes referred to as 'virtualisation', 'multiplexing' or 'pooling');
 - 1.3.10. use the Application in connection with any stress test, penetration test, or vulnerability scanning, or otherwise publish or disclose (without NI's prior express written approval) any of the results of such activities or other performance data of the Application;
 - 1.3.11. use any Application scripting functionality to create an application that performs the functionality of an editor for a graphical programming environment.
- 1.4. Your use of the Application must also be in accordance with the applicable documentation that accompanies the Application 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, you shall not use any technical or other means within, or external to, the Application to exceed or circumvent the license scope.

2. **Equipment**

- 2.1. **Installation**. The Application will read information from sensor boards and other test cells installed in Company's production environment and connected to an instance of SystemLink software. Company's current; however, if such environment does not include certain hardware and software necessary for the Application to function (collectively the "Equipment"), NI will install the Equipment identified in the ESS Documentation within Company's environment at no cost to Company.
- 2.2. **Purpose**. NI will provide the Equipment solely for your usage of the Application for the period of time set forth in the ESS Documentation ("Term") and solely for the purpose of monitoring your equipment at the facility location indicated in the ESS Documentation ("Purpose"). You may not use the NI Equipment for any other purpose.
- 2.3. **Ownership; Delivery; Return**. The Equipment remains the property of NI at all times. You shall not make any alterations, additions, or modifications to the Equipment and shall use it only in accordance with the accompanying documentation. The Equipment provided hereunder is not intended for sale. NI will deliver the Equipment to you. Upon receipt by you and until the Equipment is returned to NI, you shall be responsible for all risk of loss or damage to the Equipment. At the end of the Term, provided You don't renew, NI will assist you with the removal and retrieval of the Equipment. You shall return the Equipment to NI at your own expense, properly packaged and in substantially the same condition as when the Equipment was received by you. NI will invoice you for any damage to the Equipment that occurs while in your possession or while in transit to NI. In regions where it is not possible to return this Equipment to NI, NI will work with you to properly dispose of the Equipment as required.
- 2.4. **Requirements for On-Site Services**. For any services to be performed on your site, you agree to

(i) provide NI with or arrange reasonable access to your applicable documents, tools, equipment, facilities, and systems for NI to provide the on-site services; (ii) provide a safe work environment for NI personnel; (iii) promptly inform NI of any safety hazards of which you become aware that may impact NI personnel; and (iv) notify NI of any on-site policies that may be applicable to NI while performing the relevant services. NI will communicate to you its ability to comply with such policies as well as the potential impact on the scope of the services involved. You further agree to exercise utmost care and diligence and develop an effective security program to always maintain the site in good and safe condition in order to prevent any injuries, deaths to NI personnel who work at your site, and damages and losses to all products delivered by NI that are stored at your site arising or which may arise from or as a result of any theft, arson, vandalism, or any other malicious activities of any third party.

3. **Services**

- 3.1. **Access to Data.** Company will provide NI with access to the data collected by the core server running SystemLink software within Company's facility that is used for testing the Application according to the applicable service level detailed in the ESS Documentation and in accordance with the service levels detailed in Exhibit A attached hereto. Company owns all right, title, and interest, including all intellectual property rights, in and to the information collected by the Application ("**Company Data**"). Company hereby grants to NI a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display Company Data and perform all acts with respect to Company Data as may be necessary for NI to provide Recommendations (as further described in Section 3.2 below) to Company, to provide any support to Company in its use of the Application (which such support will be provided at the sole discretion of NI) as well as improve its Application or in potential future offerings.
- 3.2. **Recommendations.** Company and NI will get notifications based on information collected by the Application. The parties will discuss notifications provided by the Application and discuss potential proposed remediation according to the applicable service level detailed in the ESS Documentation ("**Recommendations**").
- 3.3. Except as specified in this Agreement, NI has no obligation to provide support or provide maintenance, upgrades, modifications, or new releases of the Application, Equipment, or Recommendations to Company or any third party.

4. **Warranty.**

- 4.1. **Limited Warranty.** NI warrants, for your benefit alone, that for a period of ninety (90) days from the date the Application is first accessed by you or, if downloaded, from the date the Application is first downloaded by you, (i) the Application will perform substantially in accordance with the performance specifications set forth in the documentation that accompanies the Application, and (ii) the installation media on which NI provides the Application (if any) will be free from defects in materials and workmanship under normal use and service (collectively, the "Limited Warranty"). Any replacement Application 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 you; 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 Application has resulted from accident, abuse, misapplication, improper calibration by you, third party products (either hardware or software) used by you that are not intended by NI for use with the Application, utilization of an improper hardware or software key, or unauthorized maintenance of the Application.
- 4.2. NI's sole obligation and liability, and your sole remedy, with respect to the foregoing Limited Warranty will be to, at NI's option, repair or replace the Application or return the pro-rated fees

paid by you to NI for the Application license in which event you must return or destroy all copies of the Application 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 Application under warranty to NI, and you agree to pay any expenses for shipment to and from NI.

- 4.3. **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 APPLICATION OR USE OF THE APPLICATION. NI DOES NOT MAKE ANY WARRANTY, GUARANTEE, CONDITION, OR REPRESENTATION HEREUNDER WITH RESPECT TO ANY THIRD PARTY SOFTWARE, SOURCE CODE, OR SOFTWARE SERVICES, OR THAT THE APPLICATION, THE OPERATION OF THE APPLICATION, OR ANY RELATED SOFTWARE SERVICES, SOURCE CODE, OR THIRD PARTY SOFTWARE WILL BE UNINTERRUPTED, SECURE, OR ERROR FREE, OR REGARDING THE CORRECTNESS, ACCURACY, RELIABILITY, OR OTHER PERFORMANCE OF THE APPLICATION. THERE ARE NO OTHER WARRANTIES THAT MAY ARISE FROM USAGE OF TRADE OR COURSE OF DEALING. NI DISCLAIMS ANY AND ALL IMPLIED WARRANTIES AND CONDITIONS, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET POSSESSION, AND NON-INFRINGEMENT, RELATING TO THE APPLICATION AND ANY RELATED THIRD PARTY SOFTWARE, SOURCE CODE, AND SOFTWARE SERVICES.

5. **Intellectual Property Rights.**

NI will retain exclusive ownership of all intellectual property rights (meaning rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, licenses, and any other form of protection afforded by law to inventions, models, designs, technical information, and applications) embedded in the Application, Equipment, Equipment installation, and Recommendations or developed by NI while providing services under this Agreement. Each party will retain all intellectual property that it owned or controlled prior to entering into this Agreement; all intellectual property with respect to the processes, tools, software, and all intellectual property that it develops or acquires from activities independent of its performance under this Agreement.

6. **Confidentiality.**

Company acknowledges that the Application and the Recommendations may contain and constitute of commercially valuable, proprietary trade secrets and confidential information of NI, the development of which involved the expenditure of substantial time and money and the use of skilled development experts. Company agrees to take reasonable security precautions, at least as great as the precautions it takes to safeguard its own confidential information, to prevent disclosure of the Application and the Recommendations and/or any other confidential information disclosed to it by NI as part of the provision of the services hereunder, and Company agrees that NI is a third-party beneficiary of any confidentiality obligations owed by third parties to Company. Company may disclose the existence of the Application and its use of the Application to its affiliates in order to obtain any necessary approvals to proceed under this Agreement, provided that such affiliates must be bound by confidentiality obligations with Company to maintain such information as confidential. Company may not disclose the Application to any other third party and may not disclose the terms of this Agreement or the engagement described by this Agreement to any third party without NI's specific prior written consent.

7. **Parties' Representatives.**

Each party will designate and provide a project manager who will act as the formal point of contact between the parties for all communications, will coordinate all activities to be performed, and will have the responsibility and authority to act on behalf of that party relating to the services.

8. **Term and Termination.**

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 ESS Documentation. Unless the product description and/or your ESS Documentation indicates otherwise, the license will expire automatically at the end of such term.

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 ESS Documentation 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.

NI conditions Company’s right to use the Application, the installation of the Equipment, and Company’s access to the Recommendations on Company complying with the terms set forth herein, and Company’s right to use the Application shall terminate on any failure of Company to comply with any provision herein. Upon expiration or termination of this Agreement, (a) the permissions granted to Company under this Agreement will immediately terminate and (b) Company shall immediately stop further use of the Application. The provisions in Sections 4-7 and 9-13 shall survive any termination or expiration of this Agreement.

9. **Liability.**

9.1. 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.

9.2. **Intellectual Property Liability.** NI will, at its own expense, defend any claim brought against you by a third party resulting from your use of the Application, to the extent that such claim alleges that the Application infringes any patent, copyright, or trademark of such third party protected by the laws of the U.S.A., Canada, Mexico, Japan, Australia, Switzerland, Norway, or the European Union and provided that such claim does not arise from (i) your use of the Application in combination with equipment, devices, software, or code not made by NI; (ii) your use of the Application in a manner not in accordance with this Agreement or for a purpose not intended by NI; (iii) your failure to incorporate Application updates or upgrades provided by NI that would have avoided the alleged infringement; or (iv) any modification of the Application not made by NI. NI’s obligations in this Section are further contingent on you notifying NI in writing promptly upon your obtaining notice of such impending claim and your fully cooperating with NI in preparing a defense. If you 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 you incur at NI’s written request. NI will not be liable for a settlement made without its prior written consent. If the Application is held to be infringing of the rights stated above in this Section and the use of the Application is enjoined, NI will, or if NI believes the Application might be held to infringe a third party’s intellectual property rights NI may, at its option, (i) procure for you the right to use the Application; (ii) replace or modify the Application with other software that does not infringe; or (iii) receive your return of the infringing Application and refund to you the license fee payment made by you to NI for the Application. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NI’S LIABILITY, THE LIABILITY OF ITS LICENSORS AND SUPPLIERS, AND THE LIABILITY OF ITS AND THEIR DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS, UNDER THIS SECTION

(INTELLECTUAL PROPERTY LIABILITY) AND REGARDLESS OF THE REASON FOR SUCH LIABILITY, WILL NOT EXCEED IN THE AGGREGATE \$50,000 (U.S.). The foregoing states your sole remedy for, and NI's sole liability and obligation for, infringement of any patent, trademark, copyright, or other intellectual or industrial property right relating to the Application. 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 APPLICATION, AND YOU AGREE TO LOOK TO THE APPLICABLE THIRD PARTY MANUFACTURER WITH RESPECT TO ANY CLAIMS FOR INFRINGEMENT INVOLVING THIRD PARTY SOFTWARE OR THIRD PARTY PRODUCTS.

- 9.3. **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: (A) INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES; (B) DAMAGES ARISING FROM LOST PROFITS, LOST SAVINGS, LOST BUSINESS OPPORTUNITY, WASTE EXPENDITUE, BUSINESS INTERRUPTION, LOST OR DAMAGED REPUTATION OR GOODWILL, OR LOST OR CORRUPTED DATA OR SOFTWARE; OR (C) THE COST OF PROCURING ANY SUBSTITUTE GOODS OR SERVICES. EXCEPT AS SET FORTH IN SECTION 9.2 IN NO EVENT WILL NI'S AGGREGATE LIABILITY UNDER, OR OTHERWISE IN CONNECTION WITH, THIS AGREEMENT EXCEED THE TOTAL AMOUNT RECEIVED BY NI FROM YOU FOR THE APPLICATION LICENSE (FOR A TERM LICENSE, THIS SHALL BE LIMITED TO THE AMOUNT PAID FOR THE CURRENT TERM). THE FOREGOING EXCLUSIONS AND LIMITATION SHALL APPLY: (i) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW; (ii) EVEN IF NI HAS BEEN ADVISED, OR SHOULD HAVE BEEN AWARE, OF THE POSSIBILITY OF LOSSES, DAMAGES, OR COSTS; (iii) EVEN IF ANY REMEDY IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE; AND (iv) REGARDLESS OF THE THEORY OR BASIS OF LIABILITY, AND WHETHER IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION FOR NEGLIGENCE OR BREACH OF STATUTORY DUTY), STRICT LIABILITY, MISREPRESENTATION, RESTITUTION, OR OTHERWISE.
- 9.4. 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 Application 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 otherwise 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 Application during the last twelve (12) months prior to the claim.

10. High-Risk Uses and Your Responsibilities For Your Applications.

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 APPLICATION IN WHICH THE FAILURE OF THE APPLICATION 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 APPLICATION 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.

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 REASONABLE ATTORNEYS' FEES) ARISING OUT OF YOUR AUTHORIZED APPLICATION OR YOUR INCORPORATION OF THE APPLICATION IN YOUR SYSTEM OR APPLICATION; PROVIDED, HOWEVER, THAT YOUR 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.

11. **U.S. Government Rights.**

The Application 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 Application 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 Application 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.

12. **Export Control.**

Company shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), that prohibit or restrict the export or re-export of the NI products and services outside the US.

13. **Miscellaneous.**

13.1. In any event of conflict between the terms of the SystemLink license terms used in conjunction with the Application, and the terms of this Agreement, the terms herein shall prevail.

13.2. The parties to this Agreement are independent contractors. Nothing set forth herein shall obligate Company to make any purchase of licenses to the Application (if NI commercially releases the Application) or any other products or services of NI.

13.3. Company represents and warrants that it has all right and authority to enter into this Agreement; provide NI with the access and information required by this Agreement; and that this Agreement does not conflict with Company's obligations under any other agreement to which it is a party. Company will indemnify NI from any third-party damages and claims arising from Company's breach of the representations and warranties set forth herein.

13.4. This Agreement is governed by the laws of the State of Texas, U.S.A., without regard to conflicts of law provisions and excluding any provisions of the United Nations Convention on the

International Sale of Goods. English is the governing language in construing this Agreement. This Agreement constitutes the entire agreement between the parties regarding the subject matter stated herein and supersedes all previous communications, representations, understandings, and agreements, either oral or written. No modification of this Agreement shall be effective unless set forth in writing signed by a duly authorized representative of each party. A waiver by NI of any breach of any provision hereof shall not be construed to be a waiver of any succeeding breach of that provision or of any breach of any other provision. If any part, term, or provision of this Agreement is held illegal, unenforceable, or in conflict with any applicable and enforceable law, the validity of the remaining portions or provisions of this Agreement shall not be affected. If any provision of this Agreement, or the application thereof, shall for any reason and to any extent be determined by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall be interpreted so as best to reasonably ensure the intent of the parties. Unless expressly stated otherwise herein, all remedies provided for herein are cumulative and in addition to and not instead of any other remedies available to either party at law, in equity, or otherwise. The parties are independent contractors and not partners, joint venturers, agents, employees, or employers of the other.

EXHIBIT A

Service Levels

1. **Level 1**: Evaluation, Solution Design Implementation, App Support, Training
2. **Level 2**: Evaluation, Solution Design, Implementation, App Support, Training, Dashboard Customization, Quarterly Health Checks, Remote Monitoring
3. **Level 3**: Evaluation, Solution Design, Implementation, App Support, Training, Dashboard Customization, Quarterly Health Checks, Remote Monitoring, Predictive Modeling, Predictive Maintenance, NI Equipment Repair