GENERAL TERMS AND CONDITIONS FOR O+ SOFTWARE AND RELATED SERVICES

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. Capitalizedterms used and not defined herein shall have the meanings given to such in the ESS Documentation.

*The General Terms and Conditions of Pilot License attached as **Schedule A** hereto shall apply with respect to any Pilot license, SaaS subscriptions and/or services, as specified in the applicable ESS Documentation.*

*The General Terms and Conditions of License attached as **Schedule B** hereto shall apply with respect to any on-premise software license and/or services, as specified in the applicable ESS Documentation.*

*The Software as a Service ("SaaS") General Terms and Conditions attached as **Schedule C** hereto shall apply with respect to any SaaS subscriptions and/or related services, as specified in the applicable ESS Documentation.*

*The General Terms and Conditions of Professional Services ("PST") available online at this link, which will be considered as attached as **Schedule D** hereto by way of reference and shall apply with respect to any Professional Services, as specified in the applicable ESS Documentation.*

1. **Definitions.** The following capitalized terms shall have the meanings set forth below:

   1.1. "**Affiliate**" means any entity (including any entity acquired or created after the Effective Date) that controls, is controlled by, or is under common control with, a Party, where "control" means ownership of more than fifty percent (50%) of the voting securities, or their equivalent, of that entity.

   1.2. "**Fee**" means the payment amount set forth on the ESS Documentation.

   1.3. "**Intellectual Property Rights**" means any and all rights, titles and interests in and to any and all trade secrets, patents, copyrights, service marks and services names, trademarks and trade names, trade dress, designs, know-how, utility models, databases, topography and semiconductor mask works, internet domains, and other intellectual property (such as, but not limited to, software in object or source code form, inventions, algorithms, formulas, processes, discoveries, conceptions, techniques, products, drawings, analyses, and data) anywhere in the world, whether registered or unregistered, and including all applications, registrations, renewals, extensions, continuations, divisions and reissued thereof.

   1.4. "**Pilot**" means, collectively, all Services, the Cloud Service, Pilot Materials and other obligations to be performed and provided by NI in accordance with the Statement of Work ("**SOW**") attached to the ESS Documentation.

   1.5. "**Pilot Materials**" means any documentation, data, materials, information and data whether in tangible or intangible form, provided by NI as part of the Pilot.

   1.6. "**Pilot Period**" means the total period of time set forth attached to the ESS Documentation in accordance with the SOW.

   1.7. "**Services**" means the tasks to be performed by NI during the Pilot Period, pursuant to the SOW. In the event of a conflict between the SOW and this Agreement, this Agreement shall control, except to the extent that the SOW contains an express statement referring to a specific clause of this Agreement that is superseded for the SOW.

   1.8. "**Site**" means the site(s) at which the Pilot is performed, whether on-prem or as a Cloud Service, and which will be accessed and used, for the purpose of Customer evaluating such the Software and/or Cloud Service, which site(s) are identified the ESS Documentation.

   1.9. "**Software**" means the object code version of the NI software program(s) set forth in SOW, including associated documentation and any update, error correction or enhancement provided by NI hereunder.

2. **Performance of the Pilot.** Subject to the provisions set forth in this Agreement, NI shall perform the Services and provide such Software and/or Cloud Service as set forth in the SOW and the ESS Documentation.

3. **Payment.** Customer shall pay NI the Fee in accordance with the payment terms set forth the ESS Documentation. The Fee is nonrefundable and shall be made in United States Dollars. The fees payable hereunder are exclusive of, and Customer will pay, all federal, state, and local, international and other taxes, duties, and fees, such as sales tax, use tax, goods and services taxes, excise taxes and value added taxes, import duties, and customs fees imposed under by any federal, state, local, international or other taxing jurisdiction, related to this Agreement or the Pilot provided under this Agreement, upon presentation of invoices by NI. Any exemption claimed must be supported by proper documentary evidence delivered to NI. To the extent that Customer is required under any laws to withhold tax or any other amounts from payments due to NI hereunder, Customer shall gross up any amounts due to NI so that the net amount payable to NI is the amount set forth in the ESS Documentation. Undisputed overdue amounts shall accrue interest as of the due date at the rate of one and one-half percent (1.5%) per month or the maximum amount allowed by law, whichever is less. In addition, interest at the foregoing rate will accrue from the original due date as to disputed amounts to the extent it is later determined that such amounts were in fact due and payable. Customer (and its affiliates', if applicable) terms and conditions of purchase, if any, set forth in

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each relevant purchase order issued by Customer in connection with this Agreement are hereby waived and rendered null and void.

4. **Cloud Service.** Subject to and conditioned upon the provisions set forth in this Agreement (including without limitation Customer's payment obligations), NI hereby grants to Customer: (i) in case of Cloud Services ordered by the Customer - a limited, non-exclusive, non-sublicensable, non-transferable right, during the Pilot Period, to receive the Cloud Service and in connection therewith, access and use the Cloud Service's software and the Pilot Materials, at the Site, for the sole purpose of internally evaluating the Cloud Service; or (ii) in case of Software license ordered by the Customer - a limited, non-exclusive, non-sublicensable, non-transferable license to install, run, subscribe and otherwise use the Software and the Pilot Materials, at the Site, for the sole purpose of internally evaluating the Software and the Pilot Materials during the Pilot Period.

5. **Hosting of Cloud Service.** Customer acknowledges and agrees that the Cloud Service is hosted by a third party hosting services provider (as of the Effective Date, Amazon Web Services, but NI reserves the right to change third party hosting provider during the duration of the term of this Agreement) ("**Hosting Provider**"), and that accordingly the Cloud Service shall be available in accordance with the Hosting Provider's then-current commitments pursuant to NI's contract with the Hosting Provider. Any change in the Hosting Provider must first be approved by Customer prior to starting the change.

6. **Restrictions.** The right granted pursuant to Section 4 is for internal use only. As a condition to such right, Customer shall not, and shall not permit any third party to, directly or indirectly do any of the following with respect to any Software and/or Cloud Service-software, Cloud Service-content, and/or Pilot Materials (in whole or in part): (a) copy, distribute, transfer, sublicense, adapt, translate, make derivative works of, modify, reverse engineer, decompile, disassemble, or derive, or attempt to derive, the source code of, them; (b) make any modifications to them; (c) remove, alter, or obscure any copyright or other proprietary rights notices or legends contained on or in them; or (d) disclose the results or findings of any Product benchmark test (which results and findings shall be deemed NI's Confidential Information under this Agreement) without the express prior written consent of NI. NI, in its sole discretion, may insert in the Cloud Service a mechanism to make the Cloud Service inoperable after expiration or termination of this Agreement.

7. **Ownership.** Customer acknowledges that no Intellectual Property Rights owned or controlled by NI are transferred pursuant to this Agreement, and that NI and/or its licensors own and shall retain all Intellectual Property Rights in and to the Software, Cloud Service and Pilot Materials, as well as to any modifications, customizations, improvements, derivatives, enhancements, and supplements thereof (if any), as well as any feedback about the Software and/or Cloud Service, regardless of whether the same are approved or unapproved by NI (and regardless of inventorship or authorship). All rights not expressly granted to Customer in this Agreement are hereby reserved by NI. Customer shall continue to own all of the Intellectual Property Rights in and to any data or information provided by Customer to NI under this Agreement.

8. **Confidentiality**. Each party ("**Discloser**") may disclose certain information to the other party ("Recipient") related to or in order to perform under this Agreement (the "**Authorized Purpose**"). "**Confidential Information**" means all documents, records, or other written or electronic materials received by one Party from the other relating to this Agreement and marked as "confidential" or which a reasonable person would recognize as confidential or proprietary considering the nature of the information and/or the circumstances of disclosure. Recipient agrees throughout the term of this Agreement and for a period of three (3) years thereafter, not to: (a) use Discloser's Confidential Information for any purpose, other than for the Authorized Purpose; (b) disclose Discloser's Confidential Information to any third party, except to Recipient's, its Affiliates' and their sub-contractors' employees who (i) have a legitimate "need to know" to accomplish the Authorized Purpose, and (ii) are obligated to protect such Confidential Information pursuant to terms and conditions no less protective of Discloser than those contained in this Agreement; and/or (c) reverse engineer, decompile, disassemble or otherwise analyze the underlying ideas or structure of Discloser's Confidential Information. Recipient shall protect Discloser's Confidential Information as required hereunder using the same degree of care, but no less than a reasonable degree of care, as Recipient uses to protect its own confidential information of a like nature. For clarity, Customer agrees to treat the Software Service and Documentation as NI's proprietary and confidential information hereunder. The obligations set forth in this Section 8 shall not apply to information that can be proved by substantive evidence that: (a) was already known to the Recipient without any prior obligation of confidentiality; (b) is or becomes available to the public or otherwise part of

the public domain without breach of this Agreement; (c) is rightfully received at any time by the Recipient from a third party without an obligation of confidentiality; (d) is disclosed by the disclosing Party to a third party without an obligation of confidentiality; or (e) is independently developed by the Recipient. Upon termination of this Agreement, or otherwise upon written request by a Party, the other Party shall return (or, if instructed by the requesting Party, permanently delete and certify same in writing) all confidential and/or proprietary information of the requesting Party (including any copies or summaries thereof).

9. **Disclaimer of Warranties.** EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN THIS SECTION 9 ABOVE AND TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW, NI MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING, OR RELATING TO, THE SOFTWARE, THE CLOUD SERVICES, PILOT MATERIALS, OR ANY PORTION THEREOF, OR ANY SUPPORT OR OTHER SERVICES PROVIDED TO CUSTOMER HEREUNDER. NI SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AND ANY OTHER WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OF TRADE OR PRACTICE.

10. **Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, AND EXCEPT WITH RESPECT TO A BREACH OF SECTION 6 *(RESTRICTIONS)* OR SECTION 8 *(CONFIDENTIALITY)* OF THIS AGREEMENT:

    10.1. IN NO EVENT WILL NI OR ITS AFFILIATES, 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; AND

    10.2. NI'S AGGREGATE LIABILITY UNDER, OR OTHERWISE IN CONNECTION WITH, THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS ACTUALLY PAID BY CUSTOMER TO NI UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT, OR SERIES OF EVENTS, AS THE CASE MAY BE, GIVING RISE TO SUCH LIABILITY. THE FOREGOING LIMITATION WILL NOT APPLY TO NI'S LIABILITY FOR ITS FRAUDOR WILLFUL MISCONDUCT HEREUNDER.

    10.3. THE LIMITATIONS SPECIFIED IN THIS SECTION 10 SHALL SURVIVE AND APPLY EVEN IF (A) ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE; (B) NI OR ITS AFFILIATES, LICENSORS, DISTRIBUTORS, OR SUPPLIERS HAS BEEN ADVISED, OR SHOULD HAVE BEEN AWARE, OF THE POSSIBILITY OF LOSSES, DAMAGES, OR COSTS; (C) ANY REMEDY IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE; (D) REGARDLESS OF WHETHER CAUSED OR CONTRIBUTED TO BY THE NEGLIGENCE OF NI OR OTHERS; AND (E) REGARDLESS OF THE THEORY OF LIABILITY, INCLUDING WITHOUT LIMITATION BREACH OF WARRANTY, NEGLIGENCE, MISREPRESENTATION, STRICT LIABILITY, OR OTHER CONTRACT OR TORT LIABILITY.

    10.4. LIMITATION PERIOD. NI SHALL NOT BE LIABLE FOR ANY CLAIM ARISING FROM AND/OR CONCERNING THIS AGREEMENT AND/OR ITS SUBJECT MATTER BROUGHT MORE THAN TWO YEARS AFTER THE OCCURRENCE CAUSING THE LOSS AND/OR DAMAGE GIVING RISE TO SUCH CLAIM (REGARDLESS OF WHETHER SUCH OCCURRENCE WAS DISCOVERABLE AT THE TIME).

11. **Term and Termination.**

    11.1. <u>Term</u>. This Agreement will remain in effect for the duration of the Pilot Period, unless earlier terminated in accordance with this Section 11.

11.2. <u>Termination for Convenience</u>. (i) in case of Cloud Services ordered by the Customer – NI may terminate this Agreement for its convenience upon written notice to the Customer to be sent at least sixty (60) days before the respective annual anniversary of the Effective Date; and (ii) in case of Software license ordered by the Customer - Either Party may terminate this Agreement for its convenience upon written notice to the other Party to be sent at least sixty (60) days before the respective annual anniversary of the Effective Date.

11.3. <u>Termination for breach</u>. Either Party may terminate this Agreement immediately upon written notice if the other Party materially breaches this Agreement and such breach remains uncured (to the extent it is capable of cure) fourteen (14) days after having received written notice thereof.

11.4. <u>Effect of expiration or termination</u>. Upon expiration or termination, all rights granted to Customer hereunder shall immediately cease. If Customer terminates this Agreement for convenience under Section 11.2, Customer shall be responsible for paying the entirety of the Fee and no refund shall be due to Customer.

11.5. <u>Survival</u>. Any provisions of this Agreement that, in order to fulfill the purposes of such provisions, needs to survive the termination or expiration of this Agreement, shall be deemed to survive for as long as necessary to fulfill such purposes.

12. **Publicity.** Each party agrees that it shall not publish or cause to be disseminated through any press release, public statement, or marketing or selling effort any information that relates to the other party or this Agreement without the prior written approval of the other party.

13. **Governing Law; Jurisdiction.** This Agreement will be governed by, and construed in accordance with, 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 irrevocably agree to submit to the jurisdiction of such courts and waive any jurisdictional, venue, or inconvenient forum objections to such courts. Notwithstanding the foregoing, each Party may seek equitable relief in any court that has competent jurisdiction.

14. **Force Majeure.** Except with respect to payment obligations hereunder, neither Party shall be responsible for delays in performing its obligations hereunder resulting from causes beyond the reasonable control of such Party, including without limitation fire, explosion, flood, war, strike, terrorism, embargo, or riot; provided that the non-performing Party promptly notifies the other Party in writing.

15. **U.S. Government Rights**. The Cloud Service 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 is an agency, department, or other entity of the United States Government, the right to use the Cloud Service is granted hereunder (i) only as a commercial item and (ii) with only those rights as are granted to all other Customers 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.

16. **Trade Compliance**. Software is, and Third Party Software 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 it is not ineligible or otherwise restricted by US or applicable law to receive any copies of the Software or Third Party Software. NI reserves the right not to ship or permit downloading of the Software ordered or otherwise fulfill an order for licenses if, at any time, NI believes that such making available, shipment or downloading of such Software, Third Party Software or other fulfillment may violate U.S. or other applicable export control laws. Customer agrees that it will not export, re-export, or transfer any Software or Third Party Software in violation of any U.S. and applicable global export control laws and that it will not export, re-export, or transfer the Software or Third Party Software 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.

17. **Entire Agreement.** This Agreement (together with its Exhibits) contains the entire agreement and understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements and communications related to such subject matter including any of the Parties' terms and conditions. Any purchase orders issued by Customer are for accounting purposes only and all hyperlinked/pre-printed terms in such purchase orders are rejected.

18. **Amendments and Waivers.** No addition or modification to this Agreement is valid unless made in writing and duly signed by both Parties. No failure or delay in enforcing any right under this Agreement will be deemed a waiver of that right. All waivers shall be made in a duly signed writing. Section headings used herein are for convenience only.

19. **Counterparts.** This Agreement may be executed in one or more counterparts.

20. **Notices.** All notices hereunder shall be in writing and shall be addressed and delivered to the other Party's address stated above and shall be deemed received upon receipt at such address.

21. **Successors and Assigns.** This Agreement binds and benefits each Party and its respective successors and permitted assigns; provided, however Customer shall not assign or transfer this Agreement (or any part thereof) to any third party without the prior written consent of NI, which consent may be withheld at NI's sole discretion. Any unauthorized assignment or transfer shall be null and void. NI may assign or transfer this Agreement (or any part thereof) without restriction.

22. **Independent Contractors.** The relationship of the Parties shall be solely that of independent contractors.

23. **Severability.** If any provision of this Agreement is held to be invalid for any reason, such decision shall not affect the validity of the remaining provisions hereunder.

License General Terms and Conditions
For O+ Software and Related Services

1. **DEFINITIONS.** The following capitalized terms have the meanings set forth below:

1.1 "**Affiliate**" means, with respect to either Party, any person, organization or entity controlling, controlled by or under common control with, such Party. For purposes of this definition only, "control" of another person, organization or entity will mean the possession, directly or indirectly, of the power to direct or cause the direction of the activities, management or policies of such person, organization or entity, whether through the ownership of voting securities, by contract or otherwise. Without limiting the foregoing, "control" will be deemed to exist when a person, organization or entity (i) owns more than fifty percent (50%) of the outstanding voting stock or other ownership interest of the other organization or entity, or (ii) possesses, directly or indirectly the power to elect or appoint more than fifty percent (50%) of the members of the governing body of the other organization or entity.

1.2 "**Annual Actual Usage**" refers to the average number of Chargeable Lines, Nodes, Testers and/or Data Volume in each one year period. The number of Chargeable Lines, Nodes and/or Testers is measured each week for 52 weeks and the number of Chargeable Lines, Nodes and/or Testers for each of the 52 weeks is aggregated and then divided by 52. Data Volume is measured on a quarterly basis and shall be re-set at the beginning of each year.

1.3 "**Chargeable Line**" refers to a Manufacturing and/or Test Line (single, contiguous line of equipment used to assemble and/or test electronic products) that uses the Software to assemble or test one hundred (100) or more units or modules within one calendar week. For the avoidance of doubt, any unit or module that is re-worked during such week shall be considered a separately assembled or tested unit or module (as the case may be). The quote shall specify the nodes to be included in a singleChargeable Line.

1.4 "**Chargeable Node**" refers to a node (unit of equipment used to assemble or test electronic products) that uses the Software to assemble or test one hundred (100) or more units or modules within one calendar week. For the avoidance of doubt, any unit ormodule that is re-worked during such week shall be considered a separately tested unit or module (as the case may be).

1.5 "**Chargeable Tester**" refers to a tester that uses the Software to test one thousand (1000) or more units or devices (such as a chip) within one calendar week. For the avoidance of doubt, any unit or device that is re-tested during such week shall be considered a separately tested unit or device (as the case may be).

1.6 "**Data Volume**" means the quantity of uncompressed, raw machine, process or product data, in bytes, transferred and loaded into the Software for purpose of analysis, received as files or extracts from existing databases, all as specified in the applicable ESS Documentation.

1.7 "**Documentation**" means the user manual and similar documentation provided by NI in conjunction with the Software.

1.8 "**Enhancement**" means an upgrade, update (such as a fix, patch, or error correction), modification, addition, and/or customization.

1.9 "**Feature**" means any feature, process, capability, function, tool, module, or other component made available on or via the Software. (For the avoidance of doubt, Features are part of the Software, and references herein to Software shall be deemed to include the Features).

1.10 "**Hosted Service**" means the provision of the Software as a cloud service.

1.11 "**Intellectual Property**" means any and all inventions, discoveries, improvements, new uses, works of authorship, technical information, data, technology, know-how, show-how, designs, drawings, utility models, topography and semiconductor mask works, specifications, formulas, utility models, methods, techniques, processes, databases, computer software and programs (including object code, source code, and non-literal aspects), ideas, algorithms, architecture, records, documentation, and othersimilar intellectual property or technology, in any form and embodied

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in any media.

1.12 "**Intellectual Property Rights**" means any and all rights, titles, and interests (under any jurisdiction or treaty, whether protectable or not, and whether registered or unregistered) in and to Intellectual Property, and includes without limitation patents, copyright and similar authorship rights, personal rights (such as moral rights, rights of privacy, and publicity rights), architectural, building and location (and similar geography-based) rights, topography and semiconductor mask work rights, trade secret and similar confidentiality rights, design rights, industrial property rights, trademark, trade name, trade dress and similar branding rights, as well as: (a) all applications, registrations, renewals, extensions, continuations, continuations-in-part, divisions or reissues of the foregoing rights; and (b) all goodwill associated with the foregoing rights.

1.13 "**Law**" means any federal, state or local law, statute, ordinance, rule or regulation of any jurisdiction.

1.14 "**License Term**" means the subscription term of each Software that is licensed pursuant to this Agreement, as specified in an ESS Documentation.

1.15 "**Professional Services**" means configuration, customization, integration, training, or other professional services.

1.16 "**Software**" means those of NI's proprietary software products (in object code form only) set forth in the ESS Documentation, as well as any Enhancements, derivatives, supplemental features or any additional developments related to the Software provided or made available by NI pursuant to this Agreement.

1.17 "**Testers**" means automatic test equipment (as commonly defined in the semi-conductor industry) using the Software Service. The total number of subscribed Testers is limited as specified in the applicable ESS Documentation.

2. License Grant.

2.1 NI hereby grants Customer a limited, nonexclusive, non-assignable (except as provided in Section 14.1 *(Assignment)* below), non-sublicensable license to do the following solely for Customer's own internal business use (collectively, the "**License**"):

(a) Install the Software in the Customer's central database or hosted cloud servers;

(b) Install the Software's proxy data collection featured on Chargeable Lines, Nodes and/or Testers in the quantities and at the locations (including any Affiliate locations) specified in the ESS Documentation;

(c) Access and use (and permit its Affiliates specified in the ESS Documentation to access and use) the Software for the duration of its corresponding License Term, and subject to any volume usage limitations set forth in the ESS Documentation; and

(d) Make a reasonable number of copies of the Documentation for use of the Software.

To the extent the ESS Documentation specifies quantity, location, duration or other limits or conditions on specific Features ofthe Software, the foregoing License shall be subject to such limits and conditions. As a condition to any rights granted to Customer's Affiliate, each Affiliate shall, in advance and in a signed writing, acknowledge the terms and conditions of this Agreement, and agree to be bound thereby. Without limiting the foregoing, Customer shall remain primarily responsible and liable for such Affiliates' acts and omissions, as fully as if they were the acts and omissions of Customer itself.

2.2 Restrictions. For the avoidance of doubt, copies of the Software and Documentation are only licensed hereunder, and no title inor to such copies (or the Software or Documentation itself) pass to Customer. NI reserves all rights not expressly granted herein, and, except for the License, Customer is granted no other right or license to the Software or Documentation, whether by implied license, estoppel, patent exhaustion, operation of law, or otherwise.

Furthermore, as a condition to the License, Customer shall not (and shall procure that each authorized user does not) do any of the following License restrictions, except as expressly permitted by this Agreement: (a) reproduce the Software; (b) sell, assign, transfer, lease, rent, sublicense, distribute, publicly perform, display or communicate,

frame, mirror, link to, use in a time- sharing, outsourcing, or service bureau environment, or otherwise commercially exploit, the Software; (c) modify, alter, adapt, arrange, or translate the Software; (d) decompile, disassemble, reverse engineer, 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, and algorithms) of, the Software; (e) remove, alter, or conceal, in whole or in part, any copyright, trademark, or other proprietary notices displayed on or in the Software; (f) circumvent, disable or otherwise interfere with security-related or technical featuresor protocols of the Software, such as those that restrict or monitor access or use thereof; (g) make a derivative work of the Software, or use the Software to develop any service or product that is the same as (or substantially similar to) the Software; (h) store or transmit any robot, malware, Trojan horse, spyware, or similar malicious item intended (or that has the potential) to damage or disrupt the Software; (i) use the Software to infringe, misappropriate or violate any third party's Intellectual Property Rights, or any applicable Law. References above to "Software" applies to it whether in whole or in part. To the extent Customer is given the right, under any Law applicable to Customer, to receive information and/or materials for purposes of making the Software interoperable with other software products, and such information and materials are not contained within the Documentation, then if Customer wishes to receive such information and materials for such purpose, Customer shall request from NI (in a detailed writing) access to such information and/or materials, and if NI accepts such request, NI may (in its sole discretion) impose additional conditions on such access and use.

3. **THIRD PARTY SOFTWARE.**

The Software may include third party software components that are subject to open source and/or pass-through commercial licenses and notices ("**Third Party Software**" and "**Third Party Software Terms**", respectively), and to the extent of any conflict between this Agreement and any Third Party Software Terms, the latter shall control. NI may make available a list of such Third Party Software and the Third Party Software Terms in the Documentation or via a supplementary list. Any representations, warranties, guarantees, conditions, indemnities or other commitments made by NI in this Agreement concerning the Software, are made by NI and not by any authors, licensors, or suppliers of, or contributors to, such Third Party Software. Notwithstanding anything in this Agreement to the contrary, NI does not make any representation, warranty, guarantee, or condition, and does not undertake any defense or indemnification, with respect to any Third Party Software. Any use or distribution of open source Third Party Software outside of their licensed use and distribution with the Software under this Agreement, and any use and distribution of a commercial Third Party Software subject to a pass through license, is subject solely to the rights and obligations under the applicable Third Party Software Terms. Any Third Party Software that is separate from, but delivered with, the Software, if any, is provided and licensed solely under the applicable Third Party Software Terms accompanying such Third Party Software. Attached as **Exhibit A** to this Agreement are the Vertica License Terms of Use.

4. **DELIVERY; DEPLOYMENT; SUPPORT AND MAINTENANCE.**

4.1 Delivery. NI agrees to deliver Software in the manner, and in accordance with the schedule, set forth in the corresponding ESSDocumentation, and to deliver license keys for the License Term of each Software (and Feature, if applicable). In the event theESS Documentation does not specify the delivery method, the Software shall be delivered electronically. Acceptance of the Software shall be deemed to occur upon delivery in accordance herewith.

4.2 Deployment. In respect of each ESS Documentation, NI shall provide any set-up and deployment services that are specified therein ("**Deployment Services**") pursuant to a *Deployment Statement of Work* (that reference the corresponding ESS Documentation to which it relates). To the extent of any conflict between the main body of the Agreement and an SOW (if applicable), the former shall prevail, unless and to the extent that the SOW (if applicable) expressly states otherwise. NI may engage its subcontractors to provide Deployment Services (in whole or in part), unless otherwise prohibited by an SOW (if applicable).

4.3 Support and Maintenance. For the duration of the License Term NI shall, in respect of the corresponding Software (or Feature, if applicable), provide Customer with the support and maintenance services as detailed in the Support and Maintenance Terms attached to the ESS Documentation, at the "Silver" level of service ("**Support and Maintenance Services**").

4.4 <u>Hosted Service</u>. Customer acknowledges and agrees that the Software may be hosted by a third party hosting services provider (as of the Effective Date, Amazon Web Services, and NI reserves the right to change third party hosting provider during the duration of the term of this Agreement) ("**Hosting Provider**"), and that accordingly the Software shall be available in accordance with the Hosting Provider's then-current commitments pursuant to NI's contract with the Hosting Provider. Any change of the Hosting Provider must first be approved by Customer prior to starting the change.

5. **PROFESSIONAL SERVICES**.

In the event Customer wishes to receive Professional Services, Customer may request same from NI in writing, and, subject to NI's agreement to provide the Professional Services, such Professional Services shall be set out in sequential Professional Services Agreement attached as **Schedule D**, and shall be charged in accordance with such PSTs. Each PST is hereby deemed incorporated into this Agreement by reference. To the extent of any conflict between the main body of this Agreement and a PST, the former shall prevail, unless and to the extent that the PST expressly states otherwise. NI may engage its subcontractors to provide Professional Services (in whole or in part), unless otherwise prohibited by the PST.

6. **OWNERSHIP**.

Each Party shall retain ownership of all of its Intellectual Property Rights in existence prior to entering into this Agreement. As between the Parties, NI is, and shall remain, the sole and exclusive owner of all Intellectual Property Rights in and to: (a) the Software,
(b) the Documentation, and (c) any Enhancements, and (d) any feedback about the Software, as well as any derivatives and improvements, of or to the foregoing (regardless of inventorship or authorship). Any rights not expressly granted by NI in this Agreement, are hereby reserved.

7. **CONFIDENTIALITY**.

7.1 Each Party (the "**Recipient**") may have access under this Agreement to certain non-public or proprietary information or materials of the other Party (the "**Discloser**"), whether in tangible or intangible form ("**Confidential Information**"). For the avoidance of doubt, it is agreed that the Software, Documentation, and the pricing and payment terms hereunder are, as between the Parties, NI's Confidential Information. Confidential Information will not include information or material which Recipient can demonstrate: (a) was available to the general public at the time of disclosure by Discloser to Recipient hereunder; (b) became part of the public domain after disclosure by Discloser to Recipient hereunder, through no fault of Recipient; (c) was in the Recipient's possession at the time of disclosure by the Discloser hereunder, and was not subject to prior continuing obligations of confidentiality by Recipient to Discloser; (d) was rightfully disclosed to the Recipient by a third party having the lawful right to do so; and/or (e) was independently and rightfully developed by the Recipient without (direct or indirect) use of, or reliance upon, Discloser's Confidential Information. In the event that Recipient is required to disclose Confidential Information of the Discloser pursuant to any law or governmental or judicial order, Recipient will promptly notify the Discloser in writing of suchlaw or order and reasonably cooperate with the Discloser in opposing such disclosure or obtaining such other protective measures. In any event, such disclosure made pursuant to this paragraph will be made solely to the extent required by such lawor order (as the case may be).

7.2 Recipient will use the Discloser's Confidential Information solely for the purpose of Recipient performing its obligations and/or exercising its rights under this Agreement. Recipient will not disclose or make available the Discloser's Confidential Information to any third party, except to its employees, legal advisors, and potential investors that have a need to know such information and that are bound by obligations at least as protective as provided herein. Recipient will remain liable at all times for the acts or omissions of said recipients. Recipient will take measures at a level at least as protective as those taken to protect its own Confidential Information of like nature (but in no event less than a reasonable level) to protect the Discloser's Confidential Information from disclosure to a third party or other unauthorized use. Recipient will promptly notify Discloser in writing in the event of any actual or suspected unauthorized use or disclosure of the Discloser's Confidential Information.

7.3 Each Party acknowledges that in the event of a breach or threatened breach of this Section *(Confidentiality)* by the other Party, the non-breaching Party may suffer irreparable harm or damage for which monetary damages will be inadequate, and will, therefore, be entitled to injunctive relief and specific performance to enforce the obligations under this Section *(Confidentiality)* without the need to post a bond.

8. <u>WARRANTY; DISCLAIMER.</u>

8.1 For a period of ninety (90) days from the invoice date, NI warrants that (a) the Software will perform substantially in accordance with the applicable documentation provided with the Software and (b) the Professional Services will be performed in a good and workmanlike manner. If NI receives notice of a defect or non-conformance during the applicable warranty period, NI will, in its sole discretion: (i) repair or replace the affected Software, or (ii) re-perform the affected Professional Services. The above warranty is Customer's sole and exclusive remedy, and NI's sole and exclusive obligation and liability, for a warranty claim under this subsection; Provided, however, that NI determines in good faith that the defect is not due to any misuse, abuse, neglect, negligence, or unauthorized repair of the Software. Any enhancement provided as part of the foregoing remedy will not re- commence the warranty period and is warranted for the remainder of the warranty period as then in effect.

8.2 EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SOFTWARE, DOCUMENTATION, AND OTHER ITEMS PROVIDED OR MADE AVAILABLE BY NI ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND ALL EXPRESS, IMPLIED AND STATUTORY CONDIITONS AND WARRANTIES (INCLUDING WITHOUTLIMITATION ANY IMPLIED CONDITIONS OR WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET POSSESSION, NON-INFRINGEMENT, OR QUALITY OF SERVICE, OR THAT OTHERWISE ARISE FROM A COURSE OF PERFORMANCE OR USAGE OF TRADE) ARE HEREBY DISCLAIMED. NI DOES NOT MAKE ANY REPRESENTATION, WARRANTY, GUARANTEEOR CONDITION REGARDING THE EFFECTIVENESS, USEFULNESS, RELIABILITY, COMPLETENESS, OR QUALITY OF THE SOFTWARE, DOCUMENTATION, OR SUCH OTHER ITEMS, OR THAT USE THEREOF WILL BEUNINTERRUPTED, SECURE OR ERROR-FREE.

8.3 NI PRODUCTS ARE NOT DESIGNED OR TESTED FOR USE IN HAZARDOUS ENVIRONMENTS OR ANY OTHER ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, INCLUDING IN THE OPERATION OF NUCLEARFACILITIES, 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 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.

8.4 YOU ACKNOWLEDGE AND AGREE THAT YOU ARE RESPONSIBLE FOR TAKING STEPS TO PROTECT AGAINSTPRODUCT 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 SOFTWARE 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' NEGLIGENCE OR OTHER FAULT OR TO STRICT LIABILITY IMPOSED UPON NI AS A MATTER OF LAW.

9. **INDEMNIFICATION**.

9.1 <u>Indemnification by NI</u>. Subject to Sections 9.3 *(Exceptions)* and 11 *(Limitation of Liability)* hereof, NI shall indemnify and hold harmless the Customer for any amounts finally awarded against or imposed upon Customer by the court (or otherwise agreed in settlement) under any third party demand or claim made against the Customer alleging that Customer's use of the Software in accordance with this Agreement infringes such third party's Intellectual Property Rights (a "**Claim**"). As a condition to such defense and indemnification, Customer agrees: (A) to provide NI with prompt written notice of the Claim; (B) to cede 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); (C) to provide NI with all information and assistance reasonably requested by NI; and (D) not to admit any liability under (or otherwise compromise) the Claim. Customer may participate in the defense of the Claim at its own cost and expense. The foregoing represents NI's sole liability, and Customer's sole remedy, for any and all Claims.

9.2 <u>NI Efforts</u>. Should the Software (in whole or in part) become, or in NI's opinion be likely to become, the subject of a Claim, then Customer permits NI, at NI's option and expense, to either: (a) obtain for Customer the right to continue using the Software (or part thereof); or (b) replace or modify the Software (or part thereof) so that it's use hereunder becomes non-infringing; *provided, however,* that if (a) and (b) are not, in NI's opinion, commercially feasible, NI may terminate this Agreement immediately upon written notice to Customer, and shall promptly provide Customer with a pro rata refund of the License fees paid by Customer based on the remaining License Term.

9.3 <u>Exceptions</u>. NI will have no liability or obligation under this Section *(Indemnification)* with respect to any Claim to the extent arising from: (i) a modification to the Software not made by NI or with NI's written approval; (ii) the combination of the Software with any third party product or service; (iii) use of the Software in a manner that is not intended by this Agreement; and/or (iv)NI complying with Customer's instructions or specifications.

10. **TERM AND TERMINATION**.

10.1 <u>Term</u>. Unless earlier terminated as set forth below or extended upon mutual agreement of the parties, the term of this Agreement shall be for the period set forth in the applicable ESS Documentation (the "**Term**"). Customer (and its affiliates', if applicable) terms and conditions of purchase, if any, set forth in each relevant purchase order issued by Customer in connection with this Agreement are hereby waived and rendered null and void.

10.2 Either Party may terminate this Agreement for its convenience upon written notice to the other Party to be sent at least sixty (60) days before the respective annual anniversary of the Start Date.

10.3 <u>Termination for Breach</u>. Each Party may terminate this Agreement or any ESS Documentation immediately upon written noticeto the other Party if the other Party commits a material breach under this Agreement or such ESS Documentation (as applicable)and, if curable, fails to cure that breach within thirty (30) days after receipt of written notice specifying the material breach (except that for payment defaults, such cure period will be seven days).

10.4 <u>Termination for Bankruptcy</u>. Each Party may terminate this Agreement upon written notice to the other Party upon the occurrence of any of the following events in respect of such other Party: (a) a receiver is appointed for the other Party or its property, which appointment is not dismissed within sixty (60) days; (b) the other Party makes a general assignment for the benefit of its creditors; (c) the other Party commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief Law, which proceedings are not dismissed within sixty (60) days; or (d) the other Party is liquidating, dissolving or ceasing normal business operations.

10.5 <u>Other Termination Rights</u>. Each Party shall have whatever other termination rights are specified in the ESS Documentation.

10.6 <u>Consequences of Termination; Survival</u>. Upon termination of this Agreement for any reason, all ESS Documentations shall automatically terminate. Upon expiration or termination of each ESS Documentation, its License shall automatically terminate,Customer shall cease all access and use of the Software and Documentation, and shall (as directed) permanently uninstall, destroy, or return all copies of the Software and other Confidential Information of NI in Customer's possession or control. Anyprovisions of this Agreement that, in order to fulfill the purposes of such provisions, need to survive the termination or expiration of this Agreement, shall be deemed to survive for as long as necessary to fulfill such purposes, as shall Sections 6 *(Ownership)*through 13 *(General)* inclusive. Notwithstanding the foregoing, termination or expiration of this Agreement shall not relieve Customer of its payment obligations to NI that are outstanding on the date of termination or expiration.

11. <u>LIMITATION OF LIABILITY</u>.

11.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL NEITHER PARTY OR ITS AFFILIATES, LICENSORS, DISTRIBUTORS, OR SUPPLIERS (INCLUDING 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.

11.2 NI'S AGGREGATE LIABILITY UNDER, OR OTHERWISE IN CONNECTION WITH, THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS ACTUALLY PAID BY CUSTOMER TO NI UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT, OR SERIES OF EVENTS, AS THE CASE MAY BE, GIVINGRISE TO SUCH LIABILITY. THE FOREGOING LIMITATION WILL NOT APPLY TO NI'S LIABILITY FOR ITS FRAUDOR WILLFUL MISCONDUCT HEREUNDER.

11.3 THE EXCLUSIONS AND LIMITATION IN THIS SECTION *(LIMITATION OF LIABILITY)* WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND: (A) EVEN IF NI OR ITS AFFILIATES, LICENSORS,DISTRIBUTORS, OR SUPPLIERS HAS BEEN ADVISED, OR SHOULD HAVE BEEN AWARE, OF THE POSSIBILITY OF LOSSES, DAMAGES, OR COSTS; (B) EVEN IF ANY REMEDY IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE; (C) REGARDLESS OF WHETHER CAUSED OR CONTRIBUTED TO BY THE NEGLIGENCE OF NI OR OTHERS; AND (D) REGARDLESS OF THE THEORY OF LIABILITY, INCLUDING WITHOUT LIMITATION BREACH OF WARRANTY, NEGLIGENCE, MISREPRESENTATION, STRICT LIABILITY, OR OTHER CONTRACT OR TORT LIABILITY.

11.4 LIMITATION PERIOD. NI SHALL NOT BE LIABLE FOR ANY CLAIM ARISING FROM AND/OR CONCERNING THIS AGREEMENT AND/OR ITS SUBJECT MATTER BROUGHT MORE THAN TWO YEARS AFTER THE OCCURRENCECAUSING THE LOSS AND/OR DAMAGE GIVING RISE TO SUCH CLAIM (REGARDLESS OF WHETHER SUCH OCCURRENCE WAS DISCOVERABLE AT THE TIME).

12. <u>FEES AND AUDITS</u>.

12.1 <u>Fees</u>. Customer will pay NI the License fees, the Deployment fees and any applicable OSAT support and maintenance fees, specified in the ESS Documentation. Professional Services fees shall be specified in accordance with the corresponding PST.

Customer acknowledges that the License fees are charged according to the number of Chargeable Lines, Nodes and/or Testersused, and shall be subject to the true-up mechanism described in Section 12.4 *(True-Up)* below.

12.2 <u>Invoicing and Payment</u>. Invoicing and payment shall be in accordance with the payment schedule and method set forth in the applicable ESS Documentation or PST (as the case may be). Except as may be expressly provided otherwise in this Agreement, all fees are nonrefundable, non-cancelable, and without right of set-off. Except as may be expressly provided otherwise in the ESS Documentation, all fees are priced and payable in US Dollars. Overdue amounts shall accrue interest as of the due date at the rate of one and one-half percent (1.5%) per month or the maximum amount allowed by law, whichever is less. In addition,interest at the foregoing rate will accrue from the original due date as to disputed amounts to the extent it is later determined that such amounts were in fact due and payable. NI may assign its right to invoice and receive payments under this Agreement to its Affiliates.

12.3 <u>Administrative Purchase Orders</u>. In the event that Customer's business practices require a purchase order be issued prior to payment of any NI invoice issued pursuant to the ESS Documentation, Customer shall issue the applicable purchase order prior to the invoice issuance date set forth in said ESS Documentation; *provided, however,* that the issuance of such purchase order shall not be a prerequisite to the issuance of the invoice on said issuance date. Any terms or conditions (whether printed, hyperlinked, or otherwise) in a purchase order which purport to modify or supplement this Agreement (or the ESS Documentation), shall be void and of no effect.

12.4 <u>True-Up</u>. Prior to the end of each year of the License Term under the ESS Documentation, NI shall determine the Annual Actual Usage of Chargeable Lines, Nodes and/or Testers and perform a true up calculation. In the event that the Annual Actual Usageof Chargeable Lines, Nodes and/or Testers for such prior year is greater than the number of licenses for which the License wasinvoiced by NI for that year, NI shall invoice Customer the excess between the Annual Actual Usage of Chargeable Lines, Nodes and/or Testers used and number of licenses for which Customer was invoiced in said prior year. Such true up shall also be performed following expiration of the License Term (in respect of the year immediately prior).

12.5 <u>Taxes</u>.

(a) All sums payable under or pursuant to this Agreement are exclusive of VAT (including any other similar sales or purchase tax or duty levied by any other jurisdiction), if any. All sums payable under this Agreement shall be paid free and clear of any deductions, set offs or withholdings. Where deductions or withholdings are required to be made by law, the paying partyshall be obliged to pay such amount as will, after the deduction or withholding has been made, leave the party entitled to payment with the same amount as it would have been entitled to receive in the absence of such requirement to make a deduction or withholding (provided that if the paid party subsequently receives credit for such deduction or withholding, then the paid party shall pay back to the paying party an amount equal to such credit up to the amount previously paid by thepaying party).

(b) Customer shall reimburse NI, or pay directly to the appropriate tax authority, or timely issue a valid tax exemption certificate, for sales or use taxes legally imposed upon the transactions arising out of this Agreement. NI agrees to cooperate in a reasonable manner with Customer for the purpose of minimizing all taxes that are to be paid directly or indirectly by Customer. NI shall bear and pay all federal, state, and local taxes based upon or measured by its net income.

12.6 <u>Audit</u>. Customer shall maintain in the ordinary course of business appropriate records in connection with this Agreement throughout the term of this Agreement and for at least two (2) years thereafter. Customer agrees that NI may audit such records to determine Customer's compliance with this Agreement. Any such audit shall be at NI's expense, require reasonable notice and be performed during Customer's normal business hours. If an audit reveals underpayments of fees due pursuant to this Agreement, then Customer shall immediately pay NI such underpayments, together with the costs reasonably incurred by NI in connection with the audit and obtaining compliance with this subsection. Annual Actual Usage of Data Volume shall be audited quarterly, and Customer shall be invoiced for any Data Volume overload on a quarterly basis.

13. **DATA PRIVACY.**

13.1 Customer hereby 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 names or email

address) to NI, its Affiliates 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 of this Agreement (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.

13.2 Customer may be authorized to assign the right to use the Software to an employee or third-party contractor ("Authorized User") within the parameters of this Agreement. Customer 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.

13.3 For further details on how NI and its Affiliates process data, please see the NI Privacy Statement at http://www.ni.com/legal/privacy/unitedstates/us/.

14. GENERAL.

14.1 Assignment. This Agreement may not be assigned, in whole or in part, by either Party without the prior express written consent of the other Party; except, however, that NI may, upon written notice, assign this Agreement in whole to a successor in connection with a merger, consolidation, or acquisition of all or substantially all of NI's assets or business relating to this Agreement. Any prohibited assignment will be null and void. Subject to the provisions of this Section *(Assignment)*, this Agreement will bind and benefit each Party and its respective successors and assigns. Notwithstanding the foregoing, any NI obligation hereunder may be performed (in whole or in part), and any NI right or remedy may be exercised (in whole or in part), by an Affiliate of NI.

14.2 Notices. All notices required or permitted under this Agreement shall be made in writing and shall be sent by personal delivery, reputable overnight courier service (e.g., FedEx, UPS, DHL, etc.) or by registered or certified mail, return receipt requested, addressed to the other party at the address set forth above. The date of such notice shall be deemed to be the day it is delivered, if delivered personally or by courier, or five (5) days after date of dispatch, if mailed.

14.3 Governing Law. This Agreement will be governed by, and construed in accordance with, 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 irrevocably agree to submit to the jurisdiction of such courts and waive any jurisdictional, venue, or inconvenient forum objections to such courts. Notwithstanding the foregoing, each Party may seek equitable relief in any court that has competent jurisdiction.

14.4 Force Majeure. Except for payment obligations, neither Party will be liable for failure or delay in performance of any of its obligations under or in connection with this Agreement arising out of any event or circumstance beyond that Party's reasonable control, including without limitation an Act of God, fire, flood, lightning, war, revolution, act of terrorism, riot, civil commotion, adverse weather condition, adverse traffic condition, strike, lock-out or other industrial action, and failure of supply of power, fuel, transport, equipment, raw materials, or other goods or services.

14.5 Relationship of the Parties. In the performance of this Agreement, NI is acting as an independent contractor, and neither NI nor its employees are the servants, agents, or employees of Customer. Customer will not interfere in NI's engagement of its employees or its assignment of its employees to perform Services for Customer. Neither Party has the right to bind the other to any agreement or commitment with a third party, or to incur any obligation or liability on behalf of the other Party, without the other Party's prior express written consent. Nothing in this Agreement shall be construed to create a relationship of employer and employee, principal and agent, joint venture, partnership, association, or otherwise between NI and Customer.

14.6 Waiver and Remedies. No failure or delay on the part of either Party in exercising any right or remedy hereunder will operate as a waiver thereof, nor will any single or partial exercise of any such right or remedy preclude any other or further exercise thereof, or the exercise of any other right or remedy. Any waiver granted hereunder must be in writing, duly signed by the waiving Party, and will be valid only in the specific instance in which given. Except as may be expressly provided otherwise in this Agreement, no right or remedy conferred upon or reserved by either Party under this Agreement is intended to be, or will be deemed, exclusive of any other right or remedy under this

Agreement, at law, or in equity, but will be cumulative of such other rights and remedies.

14.7 <u>Severability</u>. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, then: (a) the remaining provisions of this Agreement shall remain in full force and effect; and (b) such provision will be ineffective solely as to such jurisdiction (and only to the extent and for the duration of such illegality, invalidity or unenforceability), and will be substituted (in respect of such jurisdiction) with a valid, legal and enforceable provision that most closely approximates the original legal intent and economic impact of such provision.

14.8 <u>Publicity</u>. NI may use Customer's name and logo on its website and in its promotional materials to state that Customer is a customer of NI. Furthermore, Customer shall assist NI to publish certain mutually acceptable press release(s), case studies, andsimilar promotional communications.

14.9 <u>U.S. Government Rights</u>. 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 theapplicable U.S. acquisition regulations. If Customer is 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 Customers 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.

14.10 <u>Trade Compliance</u>. Software is, and Third Party Software 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 it is not ineligible or otherwise restricted by US or applicable law to receive any copies of the Software or Third Party Software. NI reserves the right not to ship or permit downloading of the Software ordered or otherwise fulfill an ESS Documentation for licenses if, at any time, NI believes that such shipment or downloadingof such Software, Third Party Software or other fulfillment may violate U.S. or other applicable export control laws. Customer agrees that it will not export, re-export, or transfer any Software or Third Party Software in violation of any U.S. and applicable global export control laws and that it will not export, re-export, or transfer the Software or Third Party Software 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.

14.11 <u>Entire Agreement and Amendments</u>. This Agreement together with the ESS Documentation represents the entire agreement of the Parties with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous oral or written understandings statements and agreements by the Parties with respect to such subject matter. In entering into this Agreement, neither Party is relying on any representation or statement not expressly specified in this Agreement. This Agreement may only be amended by a written instrument duly signed by each Party. In the event of a conflictor inconsistency between the terms of the main body of this Agreement and the ESS Documentation, then, the former shall prevail, unless (and in such a case, solely to the extent that) the ESS Documentation or this Agreement expressly states otherwise. The section and subsection headings used in this Agreement are for convenience only. This Agreement may be executed in counterparts each of which will be considered an original, but all of which together will constitute one and the same instrument.

14.12 <u>Language</u>. This Agreement is in the English language only, which language shall be controlling in all respects, and all versionshereof in any other language shall not be binding on the parties hereto. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

Schedule C
SaaS General Terms and Conditions
For O+ Software and Related Services

1. **Definitions**. The following capitalized terms have the meanings set forth below:

    1.1   "**Affiliates**" means any entity or person which a Party controls, controls such Party, or is under common control with a Party, directly or indirectly, but only so long as such control exists. As used above, "control" means (i) beneficial ownership of more than fifty percent (50%) of the voting securities of a corporation or other business organization with voting securities, or (ii) more than a fifty percent (50%) interest in the net assets or profits of a partnership or other business organization without voting securities.

    1.2   "**Annual Actual Usage**" refers to the average number of Chargeable Lines, Nodes, Testers and/or Data Volume in each one year period. The number of Chargeable Lines, Nodes and/or Testers is measured each week for 52 weeks and the number of Chargeable Lines, Nodes and/or Testers for each of the 52 weeks is aggregated and then divided by 52. Data Volume is measured on a quarterly basis and shall be re-set at the beginning of each year.

    1.3   "**Authorized User**" means an employee of the Customer or an individual contractor hired directly by Customer solely when working at Customer's premises, which employee or individual contractor is given access to the SaaS Solution. The total number, and the concurrent number, of Authorized Users are limited as specified in the applicable ESS Documentation.

    1.4   "**Customer Data**" means all electronic data or information submitted by Customer to the SaaS-services.

    1.5   "**Data Volume**" means the quantity of uncompressed, raw machine, process or product data, in bytes, transferred and loaded into the Software for purpose of analysis, received as files or extracts from existing databases, all as specified in the applicable ESS Documentation.

    1.6   "**Documentation**" means the operating instructions and user manuals for the Software Service, as well as other similar items that explain the capabilities and operation of the Software Service, and regardless of the medium in which made available.

    1.7   "**Hosting Provider**" means Amazon Web Services, Inc. or Microsoft Azure.

    1.8   "**Intellectual Property**" means patents (including patent applications, reissues, divisions, continuations and extensions thereof), utility models, copyrights, design rights, database rights, moral rights, trade secrets, applications for any of the foregoing and any other intellectual or proprietary rights or protection existing under the laws of any country or bi-lateral or multi-lateral international treaty regime.

    1.9   "**Line**" refers to a manufacturing and/or test line (single, contiguous line of equipment used to assemble and/or test electronic products) using the Software Service.

    1.10 "**Node**" refers to a node (unit of equipment used to assemble or test electronic products) using the Software Service. The total number of licensed Nodes is a specific Line is limited as specified in the applicable ESS Documentation.

    1.11 "**Object Code**" means software in machine-readable and executable form resulting from compilation or assembly of Source Code, which is readable by machines, but is not generally readable by humans without reverse assembly, reverse compiling or reverse engineering.

    1.12 "**SaaS Solution**" means the service platform and infrastructure, including the Software Service, Documentation and third party hardware and software as described in the SOW (if applicable) or in the ESS Documentation, all as hosted by the Hosting Provider and made available through the Internet for remote access and use by the Customer.

    1.13 "**Software**" means the Object Code version of the NI software programs, as set forth in the applicable ESS Documentation, including without limitation the initial Statement of Work (SOW) attached to the applicable ESS Documentation (if applicable), all as may be amended or supplemented from time to time by the parties in writing, including all copies thereof. The Software includes all updates and upgrades, error corrections, or enhancements of such Software that are provided at no additional charge as part of Support and Maintenance Services.

    1.14 "**Software Service**" means the cloud-based, software-as-a-service version of the Software, to which NI grants Customer access under the terms and conditions of this Agreement.

1.15 "**Source Code**" means software in human-readable, high-level language form, which when compiled or assembled becomes Object Code.

1.16 "**Subscription Term**" means the term, commencing as of the Start Date, during which the Customer is granted access to the Software Service, as set forth in the applicable ESS Documentation.

1.17 "**Testers**" means automatic test equipment (as commonly defined in the semi-conductor industry) using the Software Service. The total number of subscribed Testers is limited as specified in the applicable ESS Documentation.

2. **Right to Use**. Subject to the provisions set forth in this Agreement (and in particular Customer's payment obligations), NI hereby grants to Customer a limited, nonexclusive, worldwide, nontransferable (except as provided in Section 16.1 (Assignment) below) right to use, during the Subscription Term, solely to access and use (and permit Authorized Users to access and use) the Software Service and Documentation for up to (but not exceeding) the total number of subscribed Testers/Nodes and/or Data Volume, all for Customer's internal business purposes only. NI reserves all rights in and to the Software Service and Documentation not expressly granted herein. It is hereby clarified that Customer shall not be entitled to copy and/or use the Software Service locally on its premises, unless otherwise agreed by NI in writing.

2.1. **Restrictions**.

The license granted under Section 2 is conditional on Customer's compliance with the following restrictions:

(a) Customer shall not, and shall ensure that each Authorized User does not: (i) disclose, provide access to, sublicense, rent, lease, distribute, sell, or transfer the SaaS Solution, or any part thereof (or any related user names or passwords) to any third party, including without limitation to any Customer assembly, test, and testing suppliers or foundry, except as otherwise expressly provided in this Agreement; (ii) reverse engineer, reverse assemble, decompile or disassemble all or any portion of the SaaS Solution, or any part thereof, or otherwise attempt to reconstruct or discover any source code or underlying ideas or algorithms of the SaaS Solution, or any part thereof, including but not limited to the Software Service by any means whatsoever; (iii) circumvent, disable, or otherwise interfere with security-related features of the SaaS Solution, or features that enforce limitations on the use thereof, or otherwise interfere with the integrity or proper operation of the SaaS Solution; (iv) copy, modify, translate, adapt, create derivative works of, publicly perform or publicly display the SaaS Solution, or any part thereof; (v) use any automated means to access or use the SaaS Solution other than the authorized equipment specified in the ESS Documentation (vi) use or offer the SaaS Solution or any part thereof as part of a service bureau or timesharing arrangement, or use the SaaS Solution in any unlawful manner or for any deceptive, unethical, or unlawful purpose; (vii) use the SaaS Solution or any part thereof, including but not limited to the Software Service to develop a product or service that competes with the SaaS Solution or any part thereof; or (viii) disclose or publish the results of the SaaS Solution, including any benchmark or evaluation test of the SaaS Solution (other than results limited to a specific issue, such as, by way of example, an email alert, and provided that such disclosures are made within an electronic file attached to an email), without NI's prior express written consent, which may be withheld for any reason whatsoever.

(b) Customer shall not remove or alter any copyright notices, proprietary information notices or restricted rights notices contained in the SaaS Solution or any portion thereof, including but not limited to the Software Service.

3. **Customer Data**. Customer hereby grants to NI a limited, non-exclusive, non-transferable license to use, upload, display, copy and store Customer Data for the term of this Agreement for the purpose of providing the SaaS Solution under this Agreement. Customer agrees that it shall have sole responsibility and liability for: (i) acquiring any and all authorization(s) necessary for use of Customer Data as contemplated by this Agreement; and (ii) ensuring that Customer Data does not infringe or violate the privacy rights or Intellectual Property rights of any third party. Subject to the foregoing, Customer shall retain exclusive ownership of Customer Data.

4. **Support**. As of the Start Date and for the duration of the Subscription Term, NI shall provide Customer with the Support and Maintenance Services described in the Support and Maintenance Terms attached to the ESS Documentation at the "Silver" level of service. In addition, NI shall provide such other support and maintenance services as may be agreed upon by the Parties in a separately executed statement of work.

5. **Security and Privacy Levels**. The security and privacy levels of Customer's data and files shall be as described in the ESS Documentation. For clarity, Customer may temporarily suspend NI's access to the Customer's network (required in order for NI to provide the SaaS Solution) in the event Customer has reasonable grounds to believe that the security of its networks is threatened or compromised or to protect data or computer systems in case of emergencies (collectively, "Data Breach").

In the event of such suspension or intended suspension, Customer shall so notify NI promptly in writing. Upon receipt of such notice, NI will cooperate with Customer on a 24x7 basis in the provision of Support Services in order to assist Customer to address the Data Breach.

6. **Data Privacy**. Customer hereby agrees that the Software Service may collect and communicate certain software, hardware, and use information (which may in some circumstances include certain personal data of users, including names or email address) to NI, its Affiliates 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 of this Agreement (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. It shall be clarified that information collected by the Software Service as set forth in this section shall not be part of the Customer Data.

Customer may be authorized to assign the right to use the Software Service to an employee or third-party contractor ("Authorized User") within the parameters of this Agreement. Customer 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.

For further details on how NI and its Affiliates process data, please see the NI Privacy Statement at http://www.ni.com/legal/privacy/unitedstates/us/.

7. **Ownership Rights**. Each Party shall retain ownership of all of its Intellectual Property rights in existence prior to entering into this Agreement. Neither Party grants to the other Party any license under its Intellectual Property rights, except as otherwise expressly provided herein. Each Party shall retain all of its right, title and interest in and to its preexisting confidential information (which, in the case of NI, shall include the Software Service and Documentation, as well as any derivatives and improvements, of or to the foregoing (regardless of inventorship or authorship)), including all of its Intellectual Property rights related thereto, and to each whole or partial copy thereof, including any modifications, derivative works, enhancements or improvements thereof made by either Party. Any modifications, derivative works, enhancements or improvements made to the Software Service or Documentation by NI or anyone acting under NI's written approval shall be deemed part of the Software Service and Documentation (as applicable) and rights thereto will be granted to Customer under the terms of this Section.

8. **Confidentiality**. Each party ("Discloser") may disclose certain information to the other party ("Recipient") related to or in order to perform under this Agreement (the "Authorized Purpose"). "Confidential Information" means all documents, records, or other written or electronic materials received by one Party from the other relating to this Agreement and marked as "confidential" or which a reasonable person would recognize as confidential or proprietary considering the nature of the information and/or the circumstances of disclosure. Recipient agrees throughout the term of this Agreement and for a period of three (3) years thereafter, not to: (a) use Discloser's Confidential Information for any purpose, other than for the Authorized Purpose; (b) disclose Discloser's Confidential Information to any third party, except to Recipient's, its Affiliates' and their sub-contractors' employees who (i) have a legitimate "need to know" to accomplish the Authorized Purpose, and (ii) are obligated to protect such Confidential Information pursuant to terms and conditions no less protective of Discloser than those contained in this Agreement; and/or (c) reverse engineer, decompile, disassemble or otherwise analyze the underlying ideas or structure of Discloser's Confidential Information. Recipient shall protect Discloser's Confidential Information as required hereunder using the same degree of care, but no less than a reasonable degree of care, as Recipient uses to protect its own confidential information of a like nature. For clarity, Customer agrees to treat the Software Service and Documentation as NI's proprietary and confidential information hereunder. The obligations set forth in this Section 88 shall not apply to information that can be proved by substantive evidence that: (a) was already known to the Recipient without any prior obligation of confidentiality; (b) is or becomes available to the public or otherwise part of the public domain without breach of this Agreement; (c) is rightfully received at any time by the Recipient from a third party without an obligation of confidentiality; (d) is disclosed by the disclosing Party to a third party without an obligation of confidentiality; or (e) is independently developed by the Recipient. Upon termination of this Agreement, or otherwise upon written request by a Party, the other Party shall return (or, if instructed by the requesting Party, permanently delete and certify same in writing) all confidential and/or proprietary information of the requesting Party (including any copies or summaries thereof).

9. **Representations and Warranties**.

9.1. By NI. NI represents and warrants that: (a) it has all right and authority to enter into this Agreement and to grant the rights and perform the obligations set forth herein; (b) entering into and performing under this Agreement will not violate any other agreement to which NI is a party; (c) for a period of thirty (30) days following the Start Date, the Software Service will conform in all material respects to the functional specifications set out in the Documentation and applicable portions of the ESS Documentation;. Any warranty claim must be brought within the aforesaid 30-day period and in writing (accompanied by reasonable detail), and will be subject to the Software Service: (A) having been properly used by Customer; and (B) not having been modified by persons other than NI. Customer's sole and exclusive remedy, and NI's sole and exclusive obligation and liability, for a warranty claim under this subsection will be for NI to make commercially reasonable efforts to provide an enhancement remedying the defects; Provided, however, that NI determines in good faith that the defect is not due to any misuse, abuse, neglect, negligence, or unauthorized repair of the Software Service. Any enhancement provided as part of the foregoing remedy will not re-commence the warranty period and is warranted for the remainder of the warranty period as then in effect.

9.2. By Customer. Customer represents and warrants that: (a) it has all right and authority to enter into this Agreement and to perform the obligations set forth herein; and (b) entering into and performing under this Agreement will not violate any other agreement to which Customer is a party or by which it is bound.

9.3. Disclaimer of Warranties. EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN THIS SECTION 9 ABOVE AND TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW, NI MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING, OR RELATING TO, THE SAAS SOLUTION, OR ANY PORTION THEREOF, OR ANY SUPPORT OR OTHER SERVICES PROVIDED TO CUSTOMER HEREUNDER. NI SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AND ANY OTHER WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OF TRADE OR PRACTICE.

10. **Indemnification.**

10.1. Indemnification by NI. NI shall defend, indemnify and hold harmless Customer from any amounts finally awarded against or imposed upon Customer by a court (or otherwise agreed in settlement) under any third party demand or claim made against the Customer alleging that Customer's use of the Software in accordance with this Agreement infringes third party's Intellectual Property rights (a "Claim"), as well as for any out-of-pocket legal expenses (including reasonably attorney's fees) reasonably incurred by Customer under the Claim. As a condition to such defense and indemnification, Customer will provide NI with written notice of the claim, reasonable assistance, at NI's request and expense, in the defense of same, and provide all reasonably requested information that Customer possesses about the claim. NI shall have sole authority to control any litigation relating to such claim and disposition of any such claim. Notwithstanding anything to the contrary herein, NI shall not enter into any compromise or settlement to the extent that such settlement imposes a monetary obligation on Customer without Customer's prior written consent, which shall not be unreasonably withheld. Customer may employ counsel at its own expense to assist it with respect to any such claim.

10.2. NI Efforts. If the licensed use of the Software Service becomes the subject of an infringement claim, NI shall promptly obtain such licenses, or make such replacements or modifications, as are necessary for Customer to continue its licensed use of the Software Service without infringement. If NI, in its sole opinion, is unable to achieve either of the foregoing within thirty (30) days (or such longer period as reasonably determined by Customer) after the finding of infringement by a Court or the award by a Court of an injunction, as applicable, NI shall promptly provide Customer with a pro rata refund of the fees paid by Customer based on the remaining License Term. Nothing in this paragraph shall limit any other remedy of the Customer.

10.3. Exceptions. Notwithstanding anything in this Agreement to the contrary, NI will have no liability or obligation under this Agreement, including without limitation under this Section 910, with respect to any claim, damage or loss arising from: (i) a modification to the Software Service (or any derivative works thereof) not made by NI or with NI's written approval, to the extent such infringement would have been avoided in the absence of such modification; (ii) the combination or use of Software Service (or any derivative works thereof) in a manner that is not intended by this Agreement, to the extent the infringement would not have occurred absent such combination or use; or (iii) use of the Software with equipment not authorized by NI.

11. **Term and Termination.**

11.1. Term. Unless earlier terminated as set forth below or extended upon mutual agreement of the parties, the term of this Agreement shall be for the period set forth in the applicable ESS Documentation. Customer (and its affiliates', if applicable) terms and conditions of purchase, if any, set forth in each relevant purchase order issued by Customer in connection with this Agreement are hereby waived and rendered null and void.

11.2. Termination for Convenience. NI may terminate this Agreement for its convenience upon written notice to the Customer to be sent at least sixty (60) days before the respective annual anniversary of the Start Date.

11.3. Termination for Breach. Without prejudice to any other right or remedy which may be available to it, either Party may terminate this Agreement by giving (a) written notice in the event that the other Party commits a material breach of this Agreement and such breach is capable of remedy, fails to cure such breach within such sixty (60) days of receiving written notice thereof from the non-breaching Party; or (b) where such breach is not capable of remedy, thirty (30) days written notice.

11.4. Other Termination Rights. In addition, either Party may terminate this Agreement by delivering written notice to the other Party upon the occurrence of any of the following events: (i) a receiver is appointed for the other Party or its property, which appointment is not dismissed within sixty (60) days; (ii) the other Party makes a general assignment for the benefit of its creditors; (iii) the other Party commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief law, which proceedings are not dismissed within sixty (60) days; or (iv) the other Party is liquidating, dissolving or ceasing normal business operations.

11.5. Survival. Upon termination or expiration of this Agreement for any reason, the Subscription Term shall be deemed terminated and the license granted hereunder shall terminate and Customer's use of the Software Service shall cease. Any provisions of this Agreement that, in order to fulfill the purposes of such provisions, need to survive the termination or expiration of this Agreement, shall be deemed to survive for as long as necessary to fulfill such purposes. Notwithstanding the foregoing, termination or expiration of this Agreement shall not relieve Customer of its payment obligations to NI that are outstanding on the Start Date of termination or expiration.

11.6. Return of Customer Data. Upon Customer's request within ten (10) business days after the Start Date of termination or any expiry of the term, NI will return all Customer Data by making available to Customer for downloading a file (within ten (10) business days of such availability) of all Customer Data in its possession. After such ten (10) business day period, NI shall have no right to maintain or process and transfer any Customer Data and shall thereafter delete all Customer Data in its system or otherwise in its possession or under its control.

12. Limitation of Liability.

12.1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL NI OR ITS AFFILIATES, LICENSORS, DISTRIBUTORS, OR SUPPLIERS (INCLUDING NI 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.

12.2. IN NO EVENT WILL NI CUMULATIVE TOTAL LIABILITY UNDER THIS AGREEMENT EXCEED (A) THE AMOUNTS ACTUALLY PAID BY CUSTOMER TO NI UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT, OR SERIES OF EVENTS, AS THE CASE MAY BE, GIVING RISE TO SUCH LIABILITY.

12.3. THE LIMITATIONS SPECIFIED IN THIS SECTION 12 SHALL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

12.4. THE EXCLUSIONS AND LIMITATION IN THIS SECTION 12 (LIMITATION OF LIABILITY) WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND: (A) EVEN IF NI OR ITS AFFILIATES, LICENSORS, DISTRIBUTORS, OR SUPPLIERS HAS BEEN ADVISED, OR SHOULD HAVE BEEN AWARE, OF THE POSSIBILITY OF LOSSES, DAMAGES, OR COSTS; (B) EVEN IF ANY REMEDY IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE; (C) REGARDLESS OF WHETHER CAUSED OR CONTRIBUTED TO BY THE NEGLIGENCE OF NI OR OTHERS; AND (D) REGARDLESS OF THE THEORY OF LIABILITY, INCLUDING WITHOUT LIMITATION BREACH OF WARRANTY, NEGLIGENCE, MISREPRESENTATION, STRICT LIABILITY, OR OTHER CONTRACT OR TORT LIABILITY.

12.5. LIMITATION PERIOD. NI SHALL NOT BE LIABLE FOR ANY CLAIM ARISING FROM AND/OR CONCERNING THIS AGREEMENT AND/OR ITS SUBJECT MATTER BROUGHT MORE THAN TWO YEARS AFTER THE OCCURRENCE CAUSING THE LOSS AND/OR DAMAGE GIVING RISE TO SUCH CLAIM (REGARDLESS OF WHETHER SUCH OCCURRENCE WAS DISCOVERABLE AT THE TIME.

13. <u>High-risk Uses and Responsibilities.</u>

13.1. NI PRODUCTS ARE NOT DESIGNED 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 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.

13.2. CUSTOMER ACKNOWLEDGE AND AGREE THAT IT IS 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 IS ULTIMATELY RESPONSIBLE FOR VERIFYING AND VALIDATING THE SUITABILITY OF NI PRODUCTS FOR ITS 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 AUTHORIZED APPLICATION OR INCORPORATION OF THE SOFTWARE IN ITS 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 NEGLIGENCE OR OTHER FAULT OR TO STRICT LIABILITY IMPOSED UPON NI AS A MATTER OF LAW.

14. <u>Fees, Payments and Audit.</u>

14.1. Fees. Customer will pay NI the fees set out in the applicable ESS Documentation, in accordance with the payment terms set forth below, which fees are inclusive of the annual Software Service fees payable during the applicable Subscription Term for the number of subscribed Testers/Nodes and/or Data Volume (as specified in the applicable ESS Documentation), and NI's provision of support and maintenance services at the "Silver" level of service (described in the SLA throughout the Subscription Term. Fees for additional services, if applicable, will be as stated in the applicable statement of work, as **<u>Schedule D</u>** to this Agreement, or as stated in an agreed purchase ESS Documentation if not stated in Schedule D or agreed statement of work. All fees payable hereunder will be priced and settled in US Dollars unless otherwise agreed in the ESS Documentation. Undisputed overdue amounts shall accrue interest as of the due date at the rate of one percent (1%) per month or the maximum amount allowed by law, whichever is less. In addition, interest at the foregoing rate will accrue from the original due date as to disputed amounts to the extent it is later determined that such amounts were in fact due and payable.

14.2. Payment Terms. Fees are payable annually in advance and are invoiced and due as set forth in the applicable ESS Documentation. All fees payable under this Agreement are non-refundable and non-cancellable.

14.3. True-Up. Prior to the end of each year of the Term under the ESS Documentation, NI shall determine the Annual Actual Usage of Chargeable Lines, Nodes and/or Testers and perform a true up calculation. In the event that the Annual Actual Usage of Chargeable Lines, Nodes and/or Testers for such prior year is greater than the number of subscriptions for which the Customer was invoiced by NI for that year, NI shall invoice Customer the excess between the Annual Actual Usage of Chargeable Lines, Nodes and/or Testers used and number of subscriptions for which Customer was invoiced in said prior year. Such true up shall also be performed following expiration of the Term (in

respect of the year immediately prior).

14.4. Audit. Customer shall maintain in the ordinary course of business appropriate records in connection with this Agreement throughout the term of this Agreement and for at least two (2) years thereafter. Customer agrees that NI may audit such records to determine Customer's compliance with this Agreement. Any such audit shall be at NI's expense, require reasonable notice and be performed during Customer's normal business hours. If an audit reveals underpayments of fees due pursuant to this Agreement, then Customer shall immediately pay NI such underpayments, together with the costs reasonably incurred by NI in connection with the audit and obtaining compliance with this subsection. Annual Actual Usage of Data Volume shall be audited quarterly, and Customer shall be invoiced for any Data Volume overload on a quarterly basis.

15. <u>Taxes</u>.

(a) All sums payable under or pursuant to this Agreement are exclusive of VAT (including any other similar sales or purchase tax or duty levied by any other jurisdiction), if any. All sums payable under this Agreement shall be paid free and clear of any deductions, set offs or withholdings. Where deductions or withholdings are required to be made by law, the paying party shall be obliged to pay such amount as will, after the deduction or withholding has been made, leave the party entitled to payment with the same amount as it would have been entitled to receive in the absence of such requirement to make a deduction or withholding (provided that if the paid party subsequently receives credit for such deduction or withholding, then the paid party shall pay back to the paying party an amount equal to such credit up to the amount previously paid by the paying party).

(b) Customer shall reimburse NI, or pay directly to the appropriate tax authority, or timely issue a valid tax exemption certificate, for sales or use taxes legally imposed upon the transactions arising out of this Agreement. NI agrees to cooperate in a reasonable manner with Customer for the purpose of minimizing all taxes that are to be paid directly or indirectly by Customer. NI shall bear and pay all federal, state, and local taxes based upon or measured by its net income.

16. <u>General Provisions</u>.

16.1. Assignment. Neither Party may assign this Agreement or any rights or obligations hereunder without the prior written consent of the other Party, and any purported assignment without such consent will be null and void. Notwithstanding the foregoing, any transfer or assignment of this Agreement or any rights or obligations hereunder as a result of a merger, sale, transfer or disposition of the majority of a Party's voting stock or all or substantially all of its assets relating to the subject matter of this Agreement shall not require the consent of the non-assigning Party, provided that the assignee agrees to be bound by the terms of this Agreement and to perform any and all of the assigning Party's obligations under this Agreement. Subject to the foregoing, the rights and liabilities of the Parties under this Agreement will bind and benefit the Parties' respective successors and permitted assigns.

16.2. Force Majeure. NI shall not be responsible or liable for failures of its obligations under this Agreement to the extent that such failure is due to causes beyond NI's control, which may include, but is not limited to, acts of God, war, terrorism, acts of any government or agency thereof, fire, explosion, epidemic, quarantine restrictions, strikes, delivery services, telecommunication providers, lockouts, embargoes, severe weather conditions, delay in transportation, or delay of supplier or subcontractors.

16.3. Notices. All notices required or permitted under this Agreement shall be made in writing and shall be sent by personal delivery, reputable overnight courier service (e.g., FedEx, UPS, DHL, etc.) or by registered or certified mail, return receipt requested, addressed to the other Party at the address set forth above. The date of such notice shall be deemed to be the day it is delivered, if delivered personally or by courier, or five (5) days after date of dispatch, if mailed.

16.4. Other Activities. Each Party reserves the right to be engaged in, solely or jointly with third parties, marketing, development, or other activities with respect to technologies or products which are competitive with technologies or products purchased, used or implemented in conjunction with this Agreement and the relationship between the Parties hereunder shall not prevent any such activities by either Party, subject, always, to the confidentiality obligations provided herein.

16.5. Governing Law. This Agreement will be governed by, and construed in accordance with, 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 irrevocably agree to submit to the jurisdiction of

such courts and waive any jurisdictional, venue, or inconvenient forum objections to such courts. Notwithstanding the foregoing, each Party may seek equitable relief in any court that has competent jurisdiction.

16.6. Relationship of the Parties. In the performance of this Agreement, NI is acting as an independent contractor, and neither NI nor its employees are the servants, agents, or employees of Customer. Customer will not interfere in NI's engagement of its employees or its assignment of its employees to perform Services for Customer. Neither Party has the right to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other Party without the other Party's written consent. Nothing in this Agreement shall be construed to create a relationship of employer and employee, principal and agent, joint venture, partnership or association between NI and Customer.

16.7. Non-Waiver. The failure of either Party at any time to require performance by the other Party of any provision hereof shall not affect in any way, or act as a waiver of, the right to require the other Party to perform in accordance with this Agreement at any other time, nor shall the waiver of either Party of a breach of a provision of this Agreement be held or taken to be a waiver of the provision itself.

16.8. Severability. If any term of this Agreement is held to be invalid or unenforceable for any reason, the remainder of the provisions shall continue in full force and effect, and the Parties shall substitute a valid provision with the same intent and economic effect.

16.9. Headings. The paragraph headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or extent of such paragraph, or in any way affect such agreements.

16.10. Publicity. Customer shall assist NI to publish certain mutually acceptable press release(s) or other communications. Each party agrees that it shall not publish or cause to be disseminated through any press release, public statement, or marketing or selling effort any information that relates to the other party or this Agreement without the prior written approval of the other party.

16.11. Export Control. Each Party shall comply with all applicable export and import control laws and regulations including but not limited to the US Export Administration Regulations (including prohibited party lists issued by other federal governments), catch-all regulations and all national and international embargoes. Each Party further agrees that it will not knowingly transfer, divert, export or re-export, directly or indirectly, any product, software, including software source code, or technology restricted by such regulations or by other applicable national regulations, received from the other Party under this Agreement, or any direct product of such software or technical data to any person, firm, entity, country or destination to which such transfer, diversion, export or re-export is restricted or prohibited, without obtaining prior written authorization from the applicable competent government authorities to the extent required by those laws.

16.12. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument. Faxed signatures shall have the same legal affect as original signatures.

16.13. Entire Agreement. This Agreement contains the Parties' entire understanding with respect to the matters contained herein and supersedes any prior oral or written understandings with respect to the subject matter hereof. There are no promises, covenants or undertakings other than those set forth herein and therein. This Agreement may not be modified except by a writing signed by both Parties. In the event of a conflict or inconsistency between the terms of the main body of this Agreement and the ESS Documentation, then, the former shall prevail, unless (and in such a case, solely to the extent that) the ESS Documentation or this Agreement expressly states otherwise.

16.14. 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 is 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 Customers 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.

16.15. Trade Compliance. Software is, and Third Party Software 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 it is not ineligible or otherwise restricted by US or applicable law to receive any copies of the Software or Third Party Software. NI reserves the right not to ship or permit downloading of the Software ordered or otherwise fulfill an ESS Documentation for licenses and/or subscriptions if, at any time, NI believes that such shipment or downloading of such Software, Third Party Software or other fulfillment may violate U.S. or other applicable export control laws. Customer agrees that it will not export, re-export, or transfer any Software or Third Party Software in violation of any U.S. and applicable global export control laws and that it will not export, re-export, or transfer the Software or Third Party Software 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.

16.16. Language. This Agreement is in the English language only, which language shall be controlling in all respects, and all versions hereof in any other language shall not be binding on the parties hereto. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

Exhibit A

Vertica for use with NI ESS

Terms for Use of Vertica Licenses purchased from NI

1. Licenses to use the Vertica software are purchased from NI per Terabyte ("TB") of compressed data log files ("Vertica Licenses");

2. Pricing: One time charge of $5000 per TB.

3. Vertica Licenses can be used for the entire Term of the Agreement

4. Vertica Licenses can only be used with the NI Software under the terms of the Agreement and not for any other purposes or with any other software or product;

5. Upon termination of the Agreement, use of Vertica Licenses also terminates;

6. There is no true-down credit.

7. **An annual true-up shall be performed and additional licenses shall be charged for if TB's have increased.**