

## Terms of Service

Your use of NI's web-hosted services is subject to the terms of a legal agreement between You and NI. "NI" means National Instruments Corporation, whose principal place of business is 11500 North Mopac Expressway, Austin, Texas 78759, United States. This document explains how the agreement is made up, and sets out some of the terms of that agreement. This Agreement supersedes the ni.com Terms of Use.

**1. Definitions.** As used in this Agreement, the following capitalized terms have the meanings given below: "**Documentation**" means the user guides, quick reference guides, and other technical and operations manuals and specifications for the Services located on the NI Site as such documentation may be updated by NI from time to time.

"**Effective Date**" means the date you first utilize the Services or upload any of Your Content to the NI Site.

"**Mark**" means the trade name, trademarks, service marks or other indicia of origin of a party.

"**NI Contractor**" means any third party service provider which NI may engage at any time to provide or make available web hosting, infrastructure, platform, software, data processing, data storage or other services or facilities to or for use by NI to enable or facilitate NI's provision of the Services or any portion of the Services.

"**NI Site**" means the NI web sites located at ni.com, niwsc.com, and any successor or alias thereto designated by NI.

"**Public Software**" means any software, documentation or other material that contains, or is derived (in whole or in part) from, any software, documentation or other material that is distributed as free software, open source software (e.g., Linux) or similar licensing or distribution models, including, but not limited to software, documentation or other material licensed or distributed under any of the following licenses or distribution models, or licenses or distribution models similar to any of the following: (a) the GNU General Public License (GPL); Lesser/Library GPL (LGPL), or Free Documentation License; (b) The Artistic License (e.g., PERL); (c) the Mozilla Public License; (d) the Netscape Public License; (e) the Sun Community Source License (SCSL); (f) the Sun Industry Standards License (SISL); (g) the BSD License; and (h) the Apache License.

"**Service Account**" means Your user account created through the NI Hosted Services User Portal.

"**Service Description**" means the description of the features, functions, pricing, limitations, restrictions (including acceptable use policies and the service terms for specific Services) associated with a Service and posted on the NI Site, as such descriptions may be updated by NI from time to time.

"**Services**" means web-hosted services that NI makes available during the term of this Agreement for which You register through the NI Hosted Services User Portal. Each Service is more specifically described in the applicable Service Description.

"**SLAs**" means all service level agreements that NI offers with respect to the Services and posts on the NI Site, as such service level agreements may be updated by NI from time to time. The SLAs that NI offers with respect to the Services are currently located at users.niwsc.com/legal or any successor or alias thereto designated by NI.

"**SSP**" means technical support provided by NI with description located on the NI Site.

"**You**" means solely the individual natural person who created the Service Account through the NI Hosted Services Portal.

"**Your Content**" means any data or other software content that You may (a) transmit to the Services pursuant to this Agreement, or (b) develop and/or use in connection with the Services. Your Content includes software, data and content that You upload to the NI site. In no event, however, shall the term "Your Content" include any software, code, documentation or media elements provided or made available by NI or an NI Contractor.

## 2. Web Services.

**2.1 Authorization.** Subject to the terms of this Agreement, NI hereby grants You a limited, non-exclusive, non-transferable, non-sublicenseable right and license, in and under NI's intellectual property rights, to access and use the Services solely as necessary for Your internal business purposes. If You use the Services in the scope of Your employment: You may use the Services solely as necessary for Your employer's internal business purpose; Your employer is bound by the obligations, representations and warranties of You in this

Agreement; and You represent and warrant that You have the right and authority to bind Your employer to this Agreement.

## **2.2 Limitations; Implementation.**

**2.2.1.** NI may change, discontinue, or deprecate any of the Services, or the features or functionality of any of the Services from time to time, but will continue to support the previous version of any API changed, discontinued or deprecated for six (6) months after the change, discontinuation, or deprecation (except to the extent the change, discontinuation, or deprecation was required to address a security or licensing issue, to comply with applicable law, or was implemented by an NI Contractor (in which case NI will continue to support the previous version of the API for such period, if any, that the NI Contractor supports it, but in no event longer than six (6) months after the change, discontinuation, or deprecation)).

**2.2.2.** You may not interfere or attempt to interfere in any manner with the functionality or proper working of the Services; try to gain unauthorized access to any service, data, account or network by any means; or use the Services in any manner that may interfere with the use of the Services or similar services by others who are entitled to use the Services or similar services.

**2.2.3.** You may not falsify any protocol or email header information (e.g., “spoofing”), or compile or use the Services to send unsolicited bulk or commercial messages (“spam”).

**2.2.4.** You may not compile or use the Services for the purpose of any fraudulent or illegal activities, including activities that violate anti-spamming laws and regulations; or use the Services to create or transmit any obscene or scandalous works.

**2.2.5.** You may not remove, obscure, or alter any notice of any Mark, or other intellectual property or proprietary right, or any legal or regulatory notice or link, appearing on or contained within the Services.

**2.2.6.** You may not, and may not attempt to, modify, alter, tamper with, repair, or otherwise create derivative works of any software provided by NI or its licensors, or NI Contractors, which facilitates the Services.

**2.2.7.** You may not disassemble or decompile the software which facilitates the Services.

**2.2.8.** You may not use software, media elements, fonts, or documentation provided or made available by NI or any NI Contractor in connection with Services, other than as part of normal use of the Services as permitted by this Agreement.

**2.2.9.** You may not use any Public Software, or any other software or code, in connection with the Services in any manner that requires, pursuant to the license applicable to such Public Software or such other software, that the software facilitating the Services be (a) disclosed or distributed in source code form, (b) made available free of charge to recipients, or (c) modifiable without restriction by recipients.

**2.2.10.** You must comply with any technical limitations in the Services, and/or in any software used or provided in connection with the Services, that only allow You to use them in certain ways, and You may not work around any technical limitations in the Services or software.

**2.3. Your Account.** You may not allow multiple individuals to share one Service Account.

**2.3.1. Your Password.** When You complete the Service Account creation process, NI will issue to You a password. NI will promptly notify You of any change to the password via the email address You associated with Your Service Account.

**2.3.2. Security of Password.** You are responsible for maintaining the secrecy and security of Your password. Your password is for Your internal use only. You may not sell, transfer or sublicense Your password to any

other party. Except to the extent caused by NI's breach of its obligations under Section 3.1 or the gross negligence or willful misconduct of NI, You are responsible for all activities that occur under Your password, regardless of whether such activities are undertaken by agents and subcontractors or any other third party.

**2.3.3. Compromise.** You must contact NI immediately in writing if You believe any misuse or misappropriation of Your password keys is occurring, or is otherwise lost, stolen, or compromised, or if You believe that there may have been any security incidents or any misuse of your Services account.

**2.4. Support.** NI will provide customer support to You as is generally made available without charge to other users of the Services. In addition, You may enroll for SSP subject to the applicable terms.

### **3. Security and Backup.**

**3.1. Security.** NI will use commercially reasonable efforts to establish and maintain administrative, technical and physical safeguards for the Services that are designed to (a) protect the security and integrity of the Services, (b) guard against anticipated threats or hazards to the security and integrity of the Services, and (c) protect against the accidental or unauthorized access, use, alteration or disclosure of Your Content.

**3.2. Other Security and Backup.** NI is not responsible for any unauthorized access to, alteration of, or the deletion, destruction, damage, loss or failure to store any of Your Content or other data that You submit or use in connection with Your account or the Services (including as a result of Your errors, acts or omissions).

**3.3. Access.** NI will not disclose any of Your Content, except: (a) if You expressly authorize NI to do so in connection with Your use of the Services; or (b) as necessary to provide the Services, or to comply with the Agreement or the request of a governmental or regulatory body, subpoenas or court orders. If NI receives a subpoena, court order, or other request from a governmental or regulatory body requesting the disclosure of Your Content, NI will give You reasonable notice to allow You to seek a protective order or other appropriate remedy (except to the extent NI's compliance with the foregoing would cause it to violate a court order or other legal requirement).

### **4. Service Availability.**

**4.1. Service Availability; SLAs.** NI will make the Services available consistent with the manner in which NI makes the Services generally available to other users of the Services, including with the same features and functionality, upgrades, new features, and SLAs. NI may change the existing SLAs or add SLAs for other Services from time to time. NI does not make any representations or guarantees regarding uptime or availability of the Services.

**4.2. Service Interruptions.** The Services may be unavailable at certain times, including during any unanticipated or unscheduled downtime or unavailability of all or any portion of the Services as a result of system failures or force majeure events described in Section 10.8 (collectively, "**Service Interruptions**"). NI will use commercially reasonable efforts, circumstances permitting, to provide information regarding any Service Interruption and the restoration of use and access to the Services following the Service Interruption, including by information sent to Your email address. If there are any Service Interruptions, You may receive service credits in accordance with the terms of the SLAs.

**4.3. Service Suspensions.** NI may suspend Your access to any portion or all of the Services if NI reasonably determines that: (a) there is a threat or attack on the Services (including a denial of service attack) or other event that may create a risk to the Services, You or any other NI customer (in which case the suspension shall be only for such period as NI may reasonably determine in light of the circumstances); (b) Your use of the Services (i) disrupts, or poses a security risk to, the Services or any other NI customer, (ii) may harm NI's systems or any other NI customer, or (iii) may subject NI or any third party to liability; (c) You are using the Services for fraudulent or illegal activities; (d) subject to applicable law, You have ceased to continue business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its

assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding; (e) You are using the Services in breach of this Agreement; or (f) You are in default of payment obligations hereunder and there is an unusual spike or increase in Your use of the Services (collectively, "**Service Suspensions**"). NI will make commercially reasonable efforts, circumstances permitting, to provide written notice of any Service Suspension to You (including notices sent to Your email address) and to provide updates regarding resumption of Services following any Service Suspension. You agree that NI will have no liability for any damage, liabilities, losses (including any loss of data or profits) or any other consequences that You may incur as a result of any Service Suspension and You will not be entitled to service credits under the SLAs for any Service Suspension.

## **5. Term; Termination.**

**5.1. Term.** The term of this Agreement will commence on the Effective Date and will continue until the expiration of the time period specified for each Service when You register for it through the NI Hosted Services User Portal.

### **5.2. Termination for Convenience.**

NI may terminate this Agreement without cause upon 60 days prior written notice to You.

### **5.3. Termination for Cause.**

**5.3.1. By Either Party.** Either party may terminate this Agreement upon 30 days prior written notice for any material default or breach of this Agreement by the other party (including any breach or default resulting in a Service Suspension), unless the defaulting party has cured such failure or default within such 30-day period.

**5.3.2. By NI.** NI may terminate this Agreement immediately upon 30 days prior written notice to You unless You have cured such failure or default within such 30-day period if NI determines that: (a) Your use of the Services disrupts or poses a security risk to the Services or any other NI customer, may harm NI's systems or any other NI customer, or may subject NI or any third party to liability; (b) You are using the Services for fraudulent or illegal activities; (c) You are using the Services in breach of this Agreement; or (d) NI's continued provision of any of the Services to You is prohibited by applicable law.

**5.4. Effect of Termination.** Upon termination of this Agreement for any reason: (a) You will remain liable for all undisputed fees, charges and any other payment obligations that have been incurred through the date of termination with respect to the Services; and (b) all license or other rights granted to either party under this Agreement will immediately terminate. Upon expiration or termination of the Services NI will retain Your Content and make it available to You, in a manner determined by NI, for 90 days after expiration or termination (the "retention period"). NI reserves the right to charge You for reasonable costs incurred in making Your Content available to You during the retention period. Following the expiration of the retention period, NI will disable your account and then delete Your Content remaining. In addition to any payment obligations arising prior to termination, the following sections will survive any termination of this Agreement: 1, 4, 5.4, 6, 7, 8.1, 8.3, and 9.

## **6. Intellectual Property; Proprietary Rights; Software.**

**6.1. Reservation of Rights by NI.** Other than the limited use and access rights and licenses expressly set forth in this Agreement, NI reserves all right, title and interest (including all intellectual property and proprietary rights) in and to: (a) the Services; (b) NI's Marks; and (c) any other technology and software that NI provides or uses to provide the Services. You do not, by virtue of this Agreement, acquire any ownership interest or rights in the foregoing, except for the limited use and access rights described in this Agreement. Any and all software provided by NI or its licensors in connection with the Services is subject to the terms of the applicable software license agreements provided with the software and any additional limitations and restrictions set forth in this Agreement. If other terms come with any software licensed by a third party, those terms apply to Your use of that third party software.

**6.2. Reservation of Rights by You.** NI does not, by virtue of this Agreement or otherwise, acquire any ownership interest or rights in Your Content. Except to the extent permitted by applicable law in the absence of an express license or other grant, NI will not use Your Content without Your prior written consent.

**6.3. Non-exclusive Rights.** The use rights granted by NI in this Agreement with respect to the Services are nonexclusive, and both parties reserve the right to (a) itself act as a developer of products or services related to any of the products that the other party may develop in connection with the other party's use of the Services; and (b) appoint third parties as developers or systems integrators who may offer products or services which compete with the other party. However, (a) NI may not resell, distribute or otherwise commercially exploit Your Content without Your prior written consent, and (b) except as otherwise provided in this Agreement, You may not resell, distribute or otherwise commercially exploit the Services or NI's Marks.

**6.4. Feedback.** In the event You elect in connection with any of the Services, to communicate to NI suggestions for improvements to the Services, ("**Feedback**"), NI will own all right, title, and interest in and to the same, even if You designated the Feedback as confidential, and NI will be entitled to use and disclose the Feedback without restriction.

**6.5. Non-Assertion.** During the term of the Agreement, You will not assert, nor will You authorize or assist any third party to assert, against NI, its affiliates or any of their respective customers, vendors, business partners, or licensors, any patent infringement claim with respect to any Services that You elect to use.

## **7. Representations, Warranties, Disclaimers.**

### **7.1. Warranties.**

**7.1.1.** Each party represents and warrants to the other that (a) it has full power and authority to enter in and perform this Agreement, (b) the execution and delivery of this Agreement has been duly authorized, (c) it will comply with all applicable laws, rules, regulations and ordinances in the performance of this Agreement, and (d) its performance hereunder does not breach any other agreement to which it is bound.

**7.1.2.** You warrant and represent that Your Content does not consist of or contain (a) any export controlled technology or technical data identified on any U.S. export control list and or other applicable export control lists, including but not limited to the U.S. International Traffic in Arms Regulations, U.S. Export Administration Regulations, and so forth, (b) any obscene, scandalous or illegal content, or (c) any viruses, worms, trojan horses or other malware or malicious code.

**7.1.3** You warrant and represent that Your Content will not be uploaded from a location or a person located in any of the current U.S. Economic Trade Embargoed/Sanctioned countries.

### **7.2. Disclaimers.**

**7.2.1.** THE SERVICES AND ALL TECHNOLOGY, SOFTWARE, FUNCTIONS, CONTENT, IMAGES, MATERIALS AND OTHER DATA OR INFORMATION PROVIDED BY NI OR ITS LICENSORS IN CONNECTION THEREWITH (COLLECTIVELY THE "**SERVICE OFFERINGS**") ARE PROVIDED "AS IS". NI AND ITS LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE SERVICE OFFERINGS. NI AND ITS LICENSORS DISCLAIM ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE. NI AND ITS LICENSORS DO NOT WARRANT THAT THE SERVICE OFFERINGS WILL BE UNINTERRUPTED OR ERROR FREE, OR FREE OF HARMFUL COMPONENTS, OR THAT YOUR CONTENT STORED WITHIN THE SERVICE OFFERINGS WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. NI AND ITS LICENSORS WILL NOT BE

RESPONSIBLE FOR ANY SERVICE INTERRUPTIONS. NO ADVICE OR INFORMATION OBTAINED BY YOU FROM NI, ITS AFFILIATES OR FROM ANY THIRD PARTY OR THROUGH THE SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

**7.2.2.** You acknowledge and agree that: (a) You have no expectation and have received no assurances that Your business relationship with NI or its affiliates will continue beyond the term (or its earlier termination), that any investment by You in Your content will be recovered or recouped, or that You will obtain any anticipated amount of profits; and (b) You will not have or acquire by virtue of this Agreement or otherwise any vested, proprietary or other right in the promotion of any services provided by NI or its affiliates or in any goodwill created by Your efforts.

**7.3. Limitations of Liability.** EXCEPT FOR OBLIGATIONS UNDER SECTION 8 (INDEMNIFICATION), BREACH OF ANY NDA ENTERED INTO IN CONNECTION WITH THE SERVICES OR BREACH OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, AND GROSSLY NEGLIGENT OR INTENTIONALLY WRONGFUL ACTS OR OMISSIONS, NEITHER PARTY NOR ANY OF THEIR RESPECTIVE LICENSORS, AGENTS AND CONTRACTORS WILL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER LOSSES (EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) IN CONNECTION WITH THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY SUCH DAMAGES RESULTING FROM: (A) THE USE OR THE INABILITY TO USE THE SERVICES; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES; (C) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR CONTENT; OR (D) ANY THIRD PARTY CONTENT. IN ANY CASE, EXCEPT FOR OBLIGATIONS UNDER SECTION 8 (INDEMNIFICATION), BREACH OF ANY NDA ENTERED INTO IN CONNECTION WITH THE SERVICES OR BREACH OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, AND GROSSLY NEGLIGENT OR INTENTIONALLY WRONGFUL ACTS OR OMISSIONS, NEITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY UNDER THIS AGREEMENT WILL EXCEED THE AMOUNTS PAYABLE OR PAID BY YOU TO NI FOR YOUR USE OF THE SERVICES DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM. NOTHING IN THIS SECTION 7.3 WILL LIMIT YOUR OBLIGATION TO PAY NI FOR YOUR USE OF THE SERVICES.

## **8. Indemnification.**

**8.1. Indemnification of NI.** You agree to indemnify, defend and hold NI, its affiliates and licensors, and each of their respective employees, officers, directors, agents and representatives, harmless from and against any and all losses, damages, liabilities, judgments, penalties, fines, costs and expenses (including reasonable attorneys fees), whether commenced or threatened (collectively, "**Losses**"), arising out of or related to any of the following: (a) Your use of the Services in a manner not authorized or contemplated by this Agreement, (b) any breach of the warranty of Section 7.1.2., or (c) any third party claim alleging that Your use of the Services is in violation of applicable law or infringes, misappropriates or violates any third party rights.

**8.2. Indemnification of You.** NI will indemnify, defend and hold You harmless from and against any and all Losses arising out of or in connection with any third party claim alleging that the Services violate applicable law or infringe, misappropriate or violate third-party rights or applicable law (except to the extent caused by Your Content).

**8.3. Remedy.** If any portion of the Services is, or in NI's opinion is likely to be, held to constitute, an infringing item, NI may at its election and expense either: (a) replace the alleged infringing portion with a non-infringing equivalent; (b) modify the alleged infringing portion to make it non-infringing; or (c) immediately terminate the allegedly infringing portion of the Services or this Agreement. SECTIONS 8.2 AND 8.3 CONSTITUTE YOUR SOLE AND EXCLUSIVE REMEDIES AND NI'S ENTIRE OBLIGATION TO YOU WITH RESPECT TO ANY CLAIM THAT THE SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE THE RIGHTS OF ANY THIRD PARTY.

**8.4. Procedures.** In connection with any third party claims pursuant to Sections 8.1 or 8.2, the indemnified parties: (a) will give the indemnifying party prompt written notice of such claim; (b) will cooperate reasonably with the indemnifying party (at the indemnifying party's expense) in connection with the defense and settlement of such claim; (c) will permit the indemnifying party to control the defense and settlement of such claim, provided that the indemnifying party may not consent to the entry of any judgment or enter into any settlement with respect to such claim without the indemnified party's prior written consent (which will not be unreasonably withheld); and (d) may at its expense participate in the defense and settlement of such claim with counsel of its own choosing, provided that the indemnified party may not consent to the entry of any judgment or enter into any settlement with respect to such claim without the indemnifying party's prior written consent (which will not be unreasonably withheld).

## **9. Miscellaneous.**

**9.1. Export Compliance.** In addition to Your warranties and representations in Articles 7.1.2 and 7.1.3, You agree to comply with all applicable export and re-export control laws and regulations, including but not limited to the U.S. Export Administration Regulations, the U.S. International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the U.S. Office of Foreign Assets Control, and other applicable nation country export control regulations in connection with this Agreement. Without limiting the foregoing, NI is responsible for compliance related to its provision of the Services to You, and You are responsible for compliance related to its provision of any of Your content.

**9.2. Independent Contractors.** Nothing in this Agreement is intended to or creates any type of joint venture, employee-employer, creditor-debtor, escrow, partnership, or any fiduciary relationship between You, NI or their respective affiliates. Further, neither party will be deemed to be an agent or representative of the other by virtue of this Agreement. Neither party is authorized to, and will not attempt to, create or assume any obligation or liability, express or implied, in the name of or otherwise on behalf of the other party. Without limiting the generality of the foregoing, neither party will enter into any contract, agreement or other commitment, make any warranty or guaranty, or incur any obligation or liability in the name or otherwise on behalf of the other party.

**9.3. Assignment; Binding Effect.** Neither party may assign or otherwise transfer this Agreement or any of its rights and obligations under this Agreement or any portion of this Agreement without the prior written approval of the other party; provided, however that either party may assign or otherwise transfer this Agreement or any of its rights or obligations under this Agreement without the consent of the other party by way of merger, acquisition or sale of all or substantially all of its assets to any affiliate or as part of a corporate reorganization; provided that such assignee has the necessary resources and expertise to perform the assignor's obligations under this Agreement and agrees in writing to do so. This Agreement will be binding on and inure to the benefit of NI and You and their respective permitted successors and permitted assigns.

**9.4. No Waivers.** To be effective, any waiver by a party of any of its rights or the other party's obligations under this Agreement must be made in a writing signed by the waiving party. No failure or forbearance by either party to insist upon or enforce performance of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement or otherwise constitutes a waiver or relinquishment to any extent of such party's right to assert or rely upon any such provision, right, or remedy in that or any other instance; rather, the same will be and remain in full force and effect.

**9.5. Governing Law.** This Agreement will be governed by the laws of the state of Texas without reference to any rules regarding conflict of laws. The parties irrevocably consent to exclusive jurisdiction and venue of the state and federal courts of located in Travis County, Texas with respect to any dispute arising from this Agreement. Notwithstanding the foregoing, NI may seek injunctive or other relief in any state, federal, or national court of competent jurisdiction for any actual or alleged infringement of NI's or any third party's intellectual property or other proprietary rights. The parties expressly exclude the application of the United Nations Convention for the International Sale of Goods to this Agreement.

**9.6. Force Majeure.** Neither party will be liable for any delay or failure to perform its obligations under this Agreement where such delay or failure results from any cause beyond its reasonable control, including, but not limited to, acts of God; labor disputes or other industrial disturbances; electrical or power outage; utilities or telecommunications failures; earthquake, storms or other elements of nature; blockages; embargoes; riots; acts or orders of government; acts of terrorism; or war.

**9.7. Severability.** If any term of this Agreement or the application thereof to any person, entity or circumstance will at any time or to any extent be determined by a court of competent jurisdiction to be invalid or unenforceable under any provision of applicable law, to the full extent the applicable law may be waived, it is hereby waived. To the extent such law cannot be waived, the invalid or unenforceable term will be replaced by a valid term which comes closest to the intentions of the parties to this Agreement. In case such replacement term cannot be agreed upon, the invalidity of the term in question will not affect the validity of any other term or this Agreement as a whole.

**9.8. Entire Agreement; Amendment.** The Documentation, Service Descriptions, and SLAs are incorporated into and made a part of this Agreement. This Agreement (including all documents incorporated by reference into this Agreement) sets forth the entire understanding of the parties with respect to the subject matter of this Agreement. No modification or amendment of any of the provisions of this Agreement will be effective unless in writing and signed by the parties to this Agreement; provided, however, that You agree that NI may amend this Agreement effective on 60 days notice (which notice may be given by posting the amended Agreement at an NI Site, sending it to the email address provided in connection with the Service Account, or presenting it to You when You log on to any of the Services (the earliest of such events being the date on which the 60-day period begins)), but such an amendment will apply only to Your use of the Services from and after the effective date of the Amendment. If You do not want to be bound by the amended Agreement You may terminate the Services, effective upon expiration of the 60-day period, by giving notice to NI by email to [service.programs@ni.com](mailto:service.programs@ni.com) by no later than 30 days after the date of NI's notice to You described above. If You fail to give such notice to NI within such 30-day period You shall be deemed to have accepted such amended Agreement. Any such amendment will not be understood as extending the term of this Agreement or waiving any right of NI to suspend Services or terminate this Agreement. Unless otherwise provided herein, this Agreement constitutes the complete and final agreement between NI and You with respect to the Services, and supersedes any and all prior or contemporaneous oral or written agreements between them concerning the Services. By way of clarification, nothing in this Agreement will supersede any (a) acceptable use policies or the service terms for specific Services, or (b) agreement with respect to services offered by NI that are not covered by this Agreement (e.g., any beta services).