NATIONAL INSTRUMENTS SOFTWARE LICENSE TERMS (SAMPLE CODE)

NOTICE: CAREFULLY READ THESE TERMS AND CONDITIONS ("TERMS"). BY DOWNLOADING, INSTALLING, EXTRACTING, COPYING, OR USING THE CODE, YOU CONSENT TO AND AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT WISH TO BECOME A PARTY TO THIS AGREEMENT AND BE BOUND BY THESE TERMS, DO NOT DOWNLOAD, INSTALL, EXTRACT, COPY, OR USE THE CODE, AND IMMEDIATELY DELETE THE CODE.

1. Definitions. As used herein, the following terms have the following meanings.
   (a) "You" means you, the individual requesting access to and use of the Code, as well as your employer if your access to or use of the Code is within the scope of your employment.
   (b) "NI" means National Instruments Corporation, a Delaware corporation, or such National Instruments Corporation subsidiary as may be identified as being the "Licensee of the Code" in the applicable quote or other offer documentation.
   (c) "Code" means the computer software and other code provided to You by NI with these Terms, all related documentation provided or made available to You by NI, and all patches and fixes that may be provided or made available to You by NI for such software or code. NI provides certain third party software subject to separate license terms either presented at the time of installation or otherwise provided with the Code ("Third Party Software"). Such Third Party Software is not included in the definition of the term "Code".
   (d) "Application" means a software application that implements features and functionality of the Code along with substantial additional features and functionality and that has been thoroughly tested and validated by You in accordance with Your usual production release standards and procedures (but in no event less than reasonable standards and procedures).
   (e) "Permitted Purpose" means Your own internal (i) development, verification and validation of Your Application or (ii) evaluation of the feasibility of such Feedback into NI products or services, and to display, market, sublicense and distribute Feedback a grant to NI a worldwide, royalty free, non-exclusive, non-transferable, non-sublicensable license to use, copy, modify and distribute Feedback that specifically incorporates proprietary or confidential Information or data of You and that has been thoroughly tested and validated by You in accordance with Your usual production release standards and procedures (but in no event less than reasonable standards and procedures).
   (f) "Feedback" means any software, information, instructions, code, or commands designed or developed by You in connection with the development of or experimentation with the Code specifically incorporating NI proprietary or confidential Information or data or any Third Party Software.

2. License Grant; Intellectual Property Rights. NI hereby grants to You and You hereby accept a limited, non-exclusive, non-transferable, non-assignable, non-sublicensable license to access and use the Code solely for the Permitted Purpose, including for any Code provided by NI in source code form, modifying and creating derivative works of the Code solely for the Permitted Purpose. This license is subject to the following restrictions. You shall not (i) reverse engineer, decompile, or disassemble the Code (except to the extent such foregoing restriction is expressly prohibited by applicable law); (ii) disclose or distribute the Code except as expressly permitted in these Terms; (iii) work around any access restrictions in the Code; or (iv) cause any Code to become subject to a license that requires, or purports to require, as a condition of use, modification, or distribution, that (a) the Code be disclosed or distributed in source code form or (b) others have the right to modify or create derivative works of the Code (an "Excluded License"). Third party contractors that You have engaged may exercise the license above solely for Your benefit for the Permitted Purpose, provided that You agree that You will be liable for any and all actions or omissions of the contractor with respect to the use of the Code as if such actions or omissions were Your own. The Code, and all copies of the Code, are (a) owned by NI or its licensors and protected by applicable copyright laws and international treaty provisions and (b) licensed only, and not sold or leased. For patents covering NI products, refer to ni.com/patents. You shall not remove or alter any copyright, patent, trademark, or other legal notices or disclaimers that exist in the Code. All rights not expressly granted to You herein are reserved to NI. Further, and without limiting the foregoing, no license or any right of any kind (whether by express license, implied license, the doctrine of exhaustion, or otherwise) is granted under any NI patents (whether identified herein or not) or other intellectual property rights of NI with respect to any other product of NI or of any third party, including the right to use any such product.

3. Distribution. Except to the extent the Code is designated as “Non-distributable” by NI, You may distribute the Code as included with Your Applications, subject to a license that is substantially in accordance with and at least as protective of NI as these Terms.

4. Confidential Information. If source code provided to You by NI is identified as confidential to NI ("Confidential Information"), You shall maintain such Confidential Information in strict confidence using the same methods that You use to protect Your own confidential information (but in no event less than reasonable methods). You shall not disclose any Confidential Information to any person or entity other than Your employees and permitted third party contractors (described above) who need to know for the Permitted Purpose and who are under confidentiality obligations equivalent to those of these Terms.

5. Unreleased Code. THE CODE IS NOT A RELEASED PRODUCT. YOU ACKNOWLEDGE THAT THE CODE IS NOT A COMPLETE PRODUCT, APPLICATION, OR SOLUTION; THAT THE CODE MAY NOT BE FULLY FUNCTIONAL; THAT THE CODE MAY NOT HAVE BEEN TESTED OR VALIDATED; AND THAT THE CODE MAY HAVE BUGS, ERRORS, AND OTHER DEFECTS. NI is under no obligation to (i) release the Code as a standard product or as part of any standard product, (ii) update the Code, or (iii) provide any support or technical assistance in connection with the Code.

6. Materials Provided by You. If You have provided NI with any code, documentation, or other materials to use in connection with creating the Code ("Your Materials"), You hereby (a) confirm that NI has an non-exclusive, non-transferable, non-assignable, non-sublicensable license to use, copy, modify, create derivative works of, and distribute Your Materials as reasonably necessary for the purpose of creating the Code and providing it to You and (b) represent and warrant that You have all necessary rights to provide and license Your Materials as described above; that Your Materials are not subject to an Excluded License; and that Your Materials do not consist of or contain any (1) "viruses", "worms", "trap doors", or other programs, software, information, instructions, code, or commands designed or likely to cause damage to, or enable or facilitate unauthorized access to, software, data, or files or (2) export controlled technology or technical data identified on any U.S. export control list or other applicable export control list, including the U.S. International Traffic in Arms Regulations, U.S. Export Administration Regulations, and so forth.

7. Feedback. Any feedback regarding Your use of the Code that You disclose to NI, including errors or bugs that You might find and any changes or suggested changes to the Code or any current or future products and services of NI (collectively "Feedback"), shall be received and treated by NI on a non-confidential and unrestricted basis, other than Feedback that specifically incorporates proprietary or confidential Information or data of You and that is identified to NI as such. You grant to NI a worldwide, royalty-free, non-exclusive, perpetual, and irrevocable license to use, copy, and modify Feedback for any purpose, including incorporation or implementation of such Feedback into NI products or services, and to display, market, sublicense and distribute Feedback as incorporated or embedded in any product or service distributed or offered by NI.

8. DISCLAIMER OF WARRANTIES. YOU ASSUME ALL RISKS AS TO YOUR APPLICATIONS AND THE USE OF THE CODE. THE CODE, ANY TECHNICAL ASSISTANCE, AND ANY THIRD PARTY SOFTWARE ARE PROVIDED "AS IS WITH ALL FAULTS", WITHOUT WARRANTY OF ANY KIND, AND NO WARRANTIES, EITHER EXPRESS OR IMPLIED, ARE MADE WITH RESPECT THERE TO, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, OR ANY OTHER WARRANTIES THAT MAY ARISE FROM USAGE OF TRADE OR COURSE OF DEALING, AND ANY AND ALL SUCH IMPLIED WARRANTIES ARE HEREBY DISCLAIMED.
9. LIMITATION OF LIABILITY. NI SHALL NOT BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES; ANY LOSS OF PROFITS, SALES, BUSINESS, OR DATA; OR DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THESE TERMS, THE CODE, ANY TECHNICAL ASSISTANCE, YOUR MATERIALS, OR ANY THIRD PARTY SOFTWARE. THE FOREGOING LIMITATION OF LIABILITY IS COMPLETE AND EXCLUSIVE AND REFLECTS AN ALLOCATION OF RISK BETWEEN YOU AND NI IN VIEW OF THE FEES CHARGED BY NI.

10. WARNING. THE CODE IS NOT FAULT-TOLERANT AND HAS NOT BEEN TESTED OR CERTIFIED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, INCLUDING WITHOUT LIMITATION IN THE OPERATION OF NUCLEAR FACILITIES, AIR TRAFFIC CONTROL, WEAPONS SYSTEMS, LIFE-SUPPORT MACHINES, OR ANY OTHER APPLICATION IN WHICH THE FAILURE OF THE CODE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR PROPERTY DAMAGE. THE CODE IS NOT INTENDED TO BE USED OR INCORPORATED IN YOUR APPLICATION OR SYSTEM WITHOUT FULLY TESTING AND VALIDATING THE READINESS OF YOUR APPLICATION OR SYSTEM. YOU ACKNOWLEDGE THAT YOU ARE ULTIMATELY RESPONSIBLE FOR VERIFYING AND VALIDATING YOUR APPLICATION OR SYSTEM, INCLUDING THE APPROPRIATE DESIGN, PROCESS, AND SAFETY LEVEL OF SUCH APPLICATION OR SYSTEM. YOU AGREE TO TAKE PRECAUTIONS IN USING THE CODE, SUCH AS NOT USING ANY CODE WHERE PERSONAL INJURY OR PROPERTY DAMAGE MAY RESULT, AND MAINTAINING FULL BACKUPS OF STORAGE MEDIA.

11. Term and Termination. These Terms begin upon Your acceptance of the Code and continue until terminated. You may terminate these Terms by ceasing all use of the Code. NI conditions its license grant on You complying with the terms set forth herein, and these Terms shall terminate on any failure of You to comply with any provision herein. Upon expiration or termination of these Terms, (a) the licenses granted to You hereunder will immediately terminate and (b) You shall immediately stop further use of the Code and delete and destroy all copies of the Code. The restrictions and reservation of rights in Section 2 (except the first sentence) and Sections 4 through 15 shall survive any termination or expiration of these Terms.

12. Indemnification. You shall indemnify, defend, and hold NI and its affiliates, and their respective employees, officers, directors, employees, agents, and licensors (collectively, the “Indemnified Parties”) harmless from and against any and all claims, actions, damages, liabilities, losses, costs, and expenses, including reasonable attorneys’ fees, arising out of or in connection with any (a) use or distribution of the Code by You or persons to whom You provide the Code or access to it, or (b) any of Your Applications; regardless of whether caused or contributed to by any negligence on the part of NI, any Indemnified Party, or others. NI reserves the right to assume the exclusive defense of any matter subject to indemnification by You at NI’s own expense, and You agree to use Your best efforts to cooperate with NI in the defense of any claim or action.

13. U.S. Government Restricted Rights. If You are an agency, department, or other entity of the United States Government (“Government”), the use, duplication, reproduction, release, modification, disclosure, or transfer of the Code, including technical data or manuals, is provided with Restricted Rights under Federal Acquisition Regulation 52.227-14 for government agencies and as supplemented by Defense Federal Acquisition Regulation Supplement Section 252.227-7014 for military agencies. The Code may include commercial computer software and the related documentation may be commercial computer software documentation. Such commercial computer software is subject to the restricted rights set forth in Federal Acquisition Regulation 52.227-19. The use of the Code and related documentation is further restricted in accordance with these Terms or any modification hereinto. The Contractor/Manufacturer is National Instruments Corporation, 11500 North Mopac Expressway, Austin, Texas, U.S.A., 78759-3304.

14. Export. The Code is, and Third Party Software provided by NI within the Code may be, subject to control under the U.S. Export Administration Regulations and other applicable U.S. and other applicable jurisdictions (including but not limited to any jurisdiction in which the software is downloaded or used). You agree not to export, re-export, or transfer the Code or any Third Party Software provided by NI with the Code via any means to any prohibited destination, entity, or individual without the required export licenses or authorizations from the U.S. Government or any other applicable government. For text of the relevant legal materials, see http://www.ni.com/legal/export-compliance.htm.

15. General. These Terms are governed by the laws of the State of Texas, U.S.A., without regard to conflicts of law provisions, and excluding any provisions of the United Nations Convention on the International Sale of Goods. English is the governing language in construing these Terms. These Terms constitute the entire agreement between the parties regarding the subject matter stated herein and supersede all previous communications, representations, understandings, and agreements, either oral or written. No modification of these Terms shall be effective unless set forth in writing signed by a duly authorized representative of NI. A waiver by NI of any breach of any provision hereof shall not be construed to be a waiver of any succeeding breach of that provision or of any breach of any other provision. If any part, term, or provision of these Terms is held illegal, unenforceable, or in conflict with any applicable and enforceable law, the validity of the remaining portions or provisions of these Terms shall not be affected. If any provision of these Terms, or the application thereof, shall for any reason and to any extent be determined by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall be interpreted so as best to reasonably ensure the intent of the parties. Unless expressly stated otherwise herein, all remedies provided for herein are cumulative and in addition to and not instead of any other remedies available to either party at law, in equity, or otherwise. The parties are independent contractors and not partners, joint venturers, agents, employees, or employers of the other. All NI software products are licensed pursuant to the software license agreements provided with the software. Please visit ni.com/legal to view a copy of the current NI General Purpose Software License Agreement.

rev. May 1, 2016