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**Addendum A** Evaluation License

**Addendum B** U.S. Government End User Terms

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A. 23. General

- A. A. This Agreement constitutes the complete agreement between you and NI regarding use of the Software and supersedes any oral or written proposals, prior agreements, purchase orders, or any other communication between you and NI relating to the subject matter of this Agreement. The Terms and Conditions of Sale for Kratzer Automation Systems and Services, the current version of which is set forth at <https://www.kratzer-automation.com/fileadmin/legal/en-terms-conditions-of-sale-for-kratzer-systems-and-services.pdf>, will apply to any Software Services provided. No delay or omission by NI to exercise any right or power it has under this Agreement will impair or be construed as a waiver of such right or power. Any waiver by NI of a term of this Agreement must be in writing signed by a duly authorized representative of NI. The waiver by NI of any breach of any provision hereof will not be construed to be a waiver of any succeeding breach of that provision or of any breach of any other provision. No modification of this Agreement will be effective unless set forth in a writing signed by a duly authorized representative of NI. It is agreed that NI shall have the right to change the terms of this Agreement from time to time, by notifying you and/or by publishing the updated version of this Agreement online which shall be binding upon you. The word "including" as used in this Agreement will be understood as meaning "including without limitation". If you are unable to access the internet to view any of the web pages referred to in this Agreement, you may request the information from your local NI sales office.
- A. B. If any action is brought by either party to this Agreement against the other regarding the subject matter hereof, the prevailing party will be entitled to recover, in addition to any relief granted, reasonable attorneys' fees and court costs.
- A. C. 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) the Parties agree that the court making such determination shall have the power to limit the provision, to delete specific words or phrases, or to replace the provision with a provision that is legal, valid and enforceable and that most closely approximates the original legal intent and economic impact of such provision, and this Agreement shall be enforceable as so modified in respect of such jurisdiction. In the event such court does not exercise the power granted to it as aforesaid, then such provision will be ineffective solely as to such jurisdiction, 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.
- A. D. Software is, and Third Party Software and Source Code 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, Regulation (EU) 2021/821 of the European Parliament and of the Council. You represent and warrant that you are not ineligible or otherwise restricted by US or applicable law to receive any copies of the Software, Third Party Software, or Source Code. NI reserves the right not to ship or permit downloading of the Software ordered or otherwise fulfill an order for licenses (including under a Volume License Program or Enterprise Program) if, at any time, NI believes that such shipment or downloading of such Software, Third Party Software, or Source Code or other fulfillment may violate U.S. or other applicable export control laws. You agree that you will not export, re-export, or transfer any Software, Third Party Software, or Source Code in violation of any U.S. and applicable global export control laws and that you will not export, re-export, or transfer the Software, Third Party Software, or Source Code 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>.
- A. E. Software may include what is commonly referred to as 'open source' software. Under some of their respective license terms and conditions, NI may be required to provide you with notice of the license terms and attribution to the Third Party Software, in which case NI purposes to provide you with such information (whether via the Software documentation or otherwise). Notwithstanding anything to the contrary herein, use of the open source software will be subject to the license terms and conditions applicable to such open

source software, to the extent required by the applicable licensor (which terms and conditions shall not restrict the license rights granted to you hereunder), and to the extent any such license terms and conditions grant you rights that are inconsistent with the limited rights granted to you in this Agreement, then such rights in the applicable open source license shall take precedence over the rights and restrictions granted in this Agreement, but solely with respect to such open source software. NI will comply with any valid written request submitted by you to NI for exercising any rights you may have under such license terms and conditions (but NI makes no commitment on how quickly it will respond to such request).

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## **ADDENDUM A - Evaluation License**

### Evaluation License: Pre-Release Software

If you have acquired an evaluation license, you may install and use the Software on one (1) computer in your workplace for internal evaluation purposes only and only for the limited period of the evaluation term.

You may not distribute or transfer any applications you create with Software under an evaluation license. Any application created with Software acquired under an evaluation license is not an Authorized Application.

You acknowledge and agree that the **SOFTWARE IS EVALUATION ONLY AND MAY ALSO BE PRE-RELEASE SOFTWARE. AS SUCH, THE SOFTWARE MAY NOT BE FULLY FUNCTIONAL AND YOU ASSUME THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE SOFTWARE. NI WILL NOT UPDATE THE SOFTWARE, NOR WILL NI SUPPORT THE SOFTWARE. SOFTWARE PROVIDED UNDER AN EVALUATION LICENSE IS PROVIDED WITHOUT WARRANTY OR OBLIGATION OF INDEMNITY ON NI. THE SOFTWARE MAY CONTAIN CODE THAT WILL, AFTER A CERTAIN TIME PERIOD, DEACTIVATE THE SOFTWARE AND RENDER THE SOFTWARE UNUSABLE, AND IT MAY DO SO WITHOUT WARNING.** Upon such deactivation, this Agreement will be considered terminated. NI may in its sole discretion terminate the evaluation license at any time. If the Software consists of pre-release software and is also covered by a separate, written alpha/beta license (the "Beta Agreement") between you and NI, the terms and conditions of the Beta Agreement, which are incorporated herein by reference, will also apply to your use of the Software. In the event of a conflict between this Agreement and the Beta Agreement, the terms of the Beta Agreement will control.

You agree to use reasonable efforts to provide feedback to NI regarding your use of the Software, including promptly reporting to NI errors or bugs that you might find. Any such feedback you disclose to NI, including any changes or suggested changes to NI's current or future products and services (collectively "Feedback"), will be received and treated by NI on a non-confidential and unrestricted basis, notwithstanding any restrictive or proprietary legends to the contrary accompanying or otherwise associated with the Feedback. You hereby 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. The Feedback license set forth herein will survive expiration or termination of the Agreement.

## **ADDENDUM B – U.S. Government End User Terms**

This Addendum G applies to the Software and subscription services that NI provides to U.S. Government agencies (“Ordering Activity”) or where an Ordering Activity is the end user. Pursuant to FAR 12.212(a), to the extent that any portion of the Agreement are inconsistent with the Federal law, they shall be deemed deleted and unenforceable against the Ordering Activity. In the event of a conflict between other terms in the Agreement and terms in this Addendum G, the terms in this Addendum G shall govern.

- a. **1. Acquisition of Commercial Items.** The NI Software is a commercial item as defined by the Federal Acquisition Regulation (“FAR”) 2.101 and are licensed to Ordering Activity under the applicable terms of FAR Part 12, “Acquisition of Commercial Items” and/or DoD Federal Acquisition Regulation Supplement (“DFARS”) 227.7202, “Commercial computer software and commercial computer software documentation.” Any use, modification, reproduction, release, performance, display, or disclosure by Ordering Activity shall be governed solely by, and prohibited, except as expressly permitted under, the terms of the Agreement.
- b. **2. Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)), the validity, interpretation and enforcement of this Agreement will be governed by and construed in accordance with the Federal laws of the United States, specifically including applicable limitations periods. In the absence of a statutory provision expressly authorizing an equitable remedy, clauses in the Agreement referencing equitable remedies are deemed not applicable to Ordering Activity’s delivery order and are therefore deemed revised to the limited extent necessary to conform. The Ordering agency shall not be required to pay attorneys’ fees or other litigation costs except to the extent expressly authorized by statute.
- c. **3. Ordering Activity Indemnities.** All clauses in the Agreement requiring indemnities by the Ordering Activity are deemed revised to the limited extent necessary to conform with the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), unless such indemnities are otherwise expressly authorized by statute or agency regulations and procedures.
- d. **4. NI Indemnities.** To the extent a clause in the Agreement (1) contravenes the Department of Justice’s right (28 U.S.C. 516) to represent Ordering Activity in any case and/or (2) requires that Ordering Activity give sole control over the litigation and/or settlement, such portion of the clause is deemed to be deleted.
- e. **5. Renewals.** All clauses in the Agreement that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) prohibition on automatic renewal are deemed revised to the limited extent necessary to conform with the Anti-Deficiency Act.
- f. **6. Future Fees or Penalties.** All clauses in the Agreement which require the Ordering Activity to agree in advance to pay fees or penalties in excess of the delivery order price are deemed unenforceable against the Ordering Activity except to the extent that such fees are specifically authorized by the Prompt Payment Act or the Equal Access To Justice Act.
- g. **7. Dispute Resolution and Venue.** This Agreement is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this Agreement shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes.