



Technical Consulting Services

Terms and Conditions

The terms and conditions detailed herein together with the NI Standard Terms and Conditions of Sale available at ni.com/legal incorporated by reference in its entirety herein (“Agreement”), apply to your (“Customer”, “You,” and “Your”) purchase from NI of any of the Technical Consulting Services described in this document (“Services”). “NI” means the National Instruments Affiliate identified on the quote, order acknowledgement, or invoice, or in the absence of an identified National Instruments Affiliate, National Instruments Corporation (a Delaware Corporation with headquarters at 11500 North Mopac Expressway, Austin, Texas 78759, USA). Customer agrees to be bound by the terms of this Agreement upon acceptance of the Services at the latest. In the event of a conflict of terms between this Agreement and the NI Standard Terms and Conditions of Sale, the terms of this Agreement will prevail. NI expressly objects to and rejects, and Customer expressly waives, any terms and conditions in Customer’s purchase order or other similar document.

1. Services

Attachment A contains the list of the available Services. The particular Service will be identified and detailed in the sales order acknowledgement (“SOA”), invoice, Technical Consulting Services Agreement (“TCSA”) or other document provided by NI.

2. Payment Terms

Payment is due as specified on NI’s quotation. If Customer is approved for credit, payment shall be due within the number of days from the date of invoice stated in the quotation. Payment shall be in the currency listed on the NI invoice. Prices exclude, and Customer is responsible for, any sales, use, service, value added, and taxes arising from the purchase of Services. In addition, in case the payment, in whole or in part, does not occur within the agreed term, NI reserves the right to suspend deliveries or services in relation to all contracts with the given Customer until the date on which the balance is fully paid.

3. Intellectual Property (IP) Rights

NI will retain exclusive ownership of all Intellectual Property Rights (meaning rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, licenses, and any other form of protection afforded by law to inventions, models, designs, technical information, and applications) embedded in the Services or developed by NI while providing Services under this Agreement. NI will retain all IP that it owned or controlled prior to entering into this Agreement; all IP with respect to the processes, tools, and software it uses to perform the Services; and all IP that it develops or acquires from activities independent of its performance under this Agreement. Any use by Customer, including reverse engineering, decompilation, reproduction, modification, distribution, transmission, republication, display, transfer, or performance is prohibited, except as expressly permitted by NI in writing or specifically permitted by a mandatory provision of the applicable law.

4. Customer Responsibilities

To achieve a smooth and successful implementation, Customer will:

- 4.1. Provide all requested information and other materials in a timely manner as requested by NI to perform the Services;
- 4.2. Actively participate in requirements definition(s) and respond to NI personnel questions;
- 4.3. Provide a purchase order for the items in the respective quote;

- 4.4. Arrange access to people, facilities, equipment, documentation, software, and other tools for NI engineers as required to deliver Services.

5. License

Any code provided under this Agreement is subject to the terms and conditions of the NI Software License Terms (Sample Code), which is incorporated by reference in its entirety herein, available at ni.com/samplecodelicense.

6. Customer Provided Materials

With respect to any materials, documentation, and software that Customer provides to NI for the purpose of providing Services to Customer (“Customer Provided Materials”), Customer represents that: (i) Customer has the right to provide the Customer Provided Materials to NI for such purpose; (ii) the Customer Provided Materials do not contain or generate any computer “viruses,” “time bombs,” “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; (iii) unless otherwise first agreed in writing by NI, the Customer Provided Materials do not contain or generate any programs, software, or code that is subject to a license that requires, or purports to require, as a condition of use, modification, or distribution, that (a) the code that is or could become subject to the license, be disclosed or distributed in source code form, or (b) others have the right to modify or create derivative works of the code that is or could become subject to the license.

7. Technical Data

Customer represents and warrants that the Services do not require the disclosure by Customer to NI of any sensitive or 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. Customer is responsible for notifying NI and receiving confirmation in writing by NI to agree to receive such data prior to sending it. NI DOES NOT ACCEPT SENSITIVE OR EXPORT CONTROLLED INFORMATION WITHOUT PRIOR CONFIRMATION IN WRITING BY NI. CUSTOMER SHALL INDEMNIFY AND HOLD NI HARMLESS FOR ALL CLAIMS, DEMANDS, DAMAGES, COSTS, FINES, PENALTIES, ATTORNEY’S FEES, AND ALL OTHER EXPENSES ARISING FROM CUSTOMER’S FAILURE TO COMPLY WITH THIS CLAUSE.

8. Restrictions for Engineering Services

Customer may not utilize services for the performance of “defense services” as defined by International Traffic In Arms Regulations 22 CFR 120.9. NI will only perform services based on its understanding and condition that the goods or services (i) are not for the use in the production or development of any item produced, purchased, or ordered by any entity with a footnote 1 designation in the license requirement column of Supplement No. 4 to Part 744, U.S. Export Administration Regulations and (ii) such a company is not a party to the transaction.

9. Out of Scope Services

Services under this Agreement do not include, inter alia:

- 9.1. Services or support on the end application or system level. Customer is ultimately responsible for verifying and validating the suitability and reliability of the Services whenever the results of the Services are incorporated in its system or application, including the appropriate design, process, and safety level of such system or application;
- 9.2. Services related to third-party products; and
- 9.3. Development of any turnkey solution.

10. Warranty

NI warrants that the Services will be performed in a good and workmanlike manner. Unless agreed otherwise, NI makes no other express or implied warranties with respect to the Services, including but not limited to (i) any warranty concerning the results to be obtained from the Services or (ii) the results of any recommendation NI may make, including without limitation any implied warranties concerning the performance, merchantability, suitability, non-infringement, or fitness for a particular purpose of any of the deliverables or of any system that may result from the implementation of any recommendation NI may provide. In order to receive warranty remedies, deficiencies in the Services must be reported to NI in writing within ninety (90) days of completion of the Services. If NI receives notice of a defect or nonconformance during the above-mentioned period, NI will, in its discretion:

- i Re-perform the affected Services; or
- ii Refund the fees paid for the affected Services.

11. Liability

NI WILL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, IN NO EVENT SHALL THE AGGREGATE LIABILITY FOR DAMAGES OF NI, ITS EMPLOYEES OR AGENTS, ARISING FROM THESE TERMS WHETHER BY CONTRACT OR TORT EXCEED THE AMOUNTS CUSTOMER ACTUALLY PAID NI FOR THE SERVICES.

12. Security of On-site Services

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

13. Geographic Limitation

Services offerings may vary globally according to the laws and regulations of the country in which the service is offered. Service options and on-site response times will vary by geography and certain options may not be available for purchase in Customer's location. THE OBLIGATION OF NI TO SUPPLY THE SERVICES IS SUBJECT TO LOCAL SERVICE AVAILABILITY AND MAY BE SUBJECT TO ADDITIONAL FEES.

14. Project Manager

Both Parties will designate and provide a project manager who (i) will act as the formal point of contact between the Parties for all communications and any modifications to the scope, requirements, or responsibilities; (ii) will coordinate all activities to be performed; and (iii) will have the responsibility and authority to act on behalf of that Party relating to the Services ("Project Manager").

15. Expiration, Termination

- 15.1. Unless specified otherwise in the SOA, invoice, Technical Consulting Services Agreement, or other document provided by NI, Customer has the right to request NI's performance of the Services within one (1) year from the SOA date.
- 15.2. Either Party may terminate this Agreement for convenience by providing ten (10) days written notice to the other Party. Either Party may terminate this Agreement if the other Party commits a material breach of the Agreement and the breach is not cured within thirty (30) days of receipt of written notice from the injured Party. NI will invoice Customer for the Services carried out until the date the notice of termination is received or delivered.

16. Miscellaneous

This Agreement, including the terms referenced and incorporated herein and any appendices, constitutes the entire agreement as to the subject matter herein and supersedes all prior or contemporaneous communications or understandings, whether oral or written, between the Parties. This Agreement may NOT be altered, supplemented, or amended by the use of any other document(s) unless otherwise agreed to in writing by NI. A waiver of any provision of this Agreement shall not be construed as a waiver or modification of any other term herein. If any part, term, or provision of this Agreement is held illegal, unenforceable, or in conflict with any applicable and enforceable law, the validity of the remaining portions or provisions of this Agreement shall not be affected.

17. Changes to this Agreement

NI reserves the right to change the terms of this Agreement without any notification to the Customer, and Customer is bound to accept such changes, when effective. When becoming aware of any change of this Agreement, Customer has the right to raise its concerns to NI in writing within ten (10) business days from the date of such actual or presumed awareness. If no notices are received, it will be deemed that Customer has accepted all such changes without any reservation. However, all Services purchased by the Customer before such changes will be governed by the terms of the Agreement effective at the time of purchase.

Attachment A. Available Services

Service	Description
Design Assistance	An NI engineer assists the Customer in building an appropriate design/architecture based on the Customer's project requirements. The NI engineer assists the Customer to configure the NI system and guides the Customer on setting it up. Once the system is configured and set up, the NI engineer may provide basic getting started training and best practices to the Customer. The service may include the work on and provision of certain Sample Code.
Code Review	An NI engineer reviews Customer's software architecture in the style of IEEE Standards Association Guidelines (1028) and recommends changes based on NI products to improve performance, stability, and scalability. The Service may include the work on and provision of certain Sample Code.
Upgrade Assistance	An NI engineer provides recommendations on technologies to upgrade to, specific changes to the hardware and/or software architecture. The NI Engineer guides the Customer to implement the suggested changes while providing basic best practices for upgrading. The Service may include the work on and provision of certain Sample Code.