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15. ASSIGNMENT. Neither this Agreement nor any rights granted hereunder may be sold, leased, assigned, or otherwise transferred, in whole or in part, by You, whether voluntary or by operation of law. Any such attempted assignment shall be void and of no effect without the prior written consent of NetIQ.

16. ENTIRE AGREEMENT. This Agreement represents the complete agreement concerning this license and supersedes (i) all prior agreements and representations with respect to its subject matter; and (ii) prevails over any conflicting or additional terms of any order, acknowledgment, or similar communication between the parties. It may be amended only by a writing executed by both parties.

17. SEVERABILITY. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable.

18. WAIVER. The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach.

19. GOVERNING LAW/JURISDICTION. This Agreement shall be governed by and construed under Washington law as such law applies to agreements between Washington residents entered into and to be performed within Washington, except as governed by Federal law. If any term of this Agreement is inconsistent with any provision of the Uniform Computer Information Transactions Act (“UCITA”), as UCITA may be enacted in the state whose law applies, such term shall be enforced to the full extent allowed by law.

20. AUDIT RIGHTS. NetIQ may, upon fifteen (15) days’ advance notice and at its expense, conduct an annual audit, during Your normal business hours, of Your use of the Software and Documentation to verify compliance with this Agreement. You agree to implement internal safeguards to prevent any unauthorized

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23. U.S. GOVERNMENT RESTRICTED RIGHTS. By accepting delivery of or installing or using the Software, the U.S. Government or its prime contractor or subcontractor (at any tier) hereby agrees that notwithstanding anything to the contrary, and to the maximum extent possible under federal law : (a) the acquisition of such Software is governed by FAR Part 12 or DFAR 227.7202-4, as applicable and to the extent such provisions are consistent with this Agreement; (b) such Software qualifies as "commercial computer software" under the applicable procurement regulations; (c) any modifications provided by NetIQ in connection with such Software are either minor derivative modifications or are of a type generally available in the commercial marketplace; and (d) the U.S. Government will be bound by the commercial terms and conditions and restricted rights contained in this Agreement, and no other license terms shall be incorporated into this Agreement except by mutual written consent.

IF YOU ARE A LICENSEE IN EUROPE, THE MIDDLE EAST OR AFRICA, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THE FOLLOWING TERMS APPLY TO YOU:

A. NetIQ under this Agreement is NetIQ Europe Limited with its registered offices at Building 2, 2nd Floor, Parkmore East Business Park, Galway, Republic of Ireland. All references to "NetIQ", the licensor of NetIQ software, or NetIQ Corporation (or a subsidiary of NetIQ Corporation) shall refer to NetIQ Europe Limited.

B. If the laws of the country in which You are located require that contracts be in the local language in order to be enforceable, the version of this Agreement that shall govern is the translated version of this

Agreement in the local language that is produced by NetIQ within a reasonable time following Your written request to NetIQ.

C. Section 5 (Title) shall not apply and instead the following shall apply:

“TITLE. NetIQ and its licensors own all the underlying intellectual property rights in and to the Software and Documentation. The Software and Documentation are NetIQ’s confidential protected by the copyright laws of the United States and international copyright treaties. Title, ownership rights, and intellectual property rights in and to the content accessed through the Software are the property of the applicable content owner and may be protected by applicable copyright or other law. This license gives You no rights to such content. This license does not convey to You an interest in or to the Software, but only grants You a limited right of use, which may be revocable in accordance with the terms of this Agreement.”

D. The limitations of liability in this Agreement shall not exclude or limit NetIQ’s liability for: (1) death or personal injury caused by its negligence or the negligence of its employees, agents or subcontracts, (2) breach of any implied terms as to title or quiet enjoyment of any Software supplied pursuant to this Agreement, or (3) fraudulent misrepresentation.

E. Section 12 (Termination) above shall not apply and instead the following shall apply:

“TERMINATION. Your license to use the Software continues unless terminated as provided in this Section. This license will terminate automatically if You fail to comply with any term hereof. No notice shall be required from NetIQ to effect such termination. On termination, You shall destroy all copies of the Software. Your obligation to pay accrued charges and fees shall survive any termination of this Agreement.”

F. Section 13 (Communication) above shall not apply.

G. Section 19 (Governing Law) above shall not apply and instead the following shall apply:

“GOVERNING LAW. The Agreement is governed by the laws of the Republic of Ireland. You hereby agree that for the benefit of NetIQ, and without prejudice to the right of NetIQ to take proceedings in relation hereto before any other court of competent jurisdiction, that the courts of Ireland shall have exclusive jurisdiction to hear and determine any suit, action or proceedings that might arise out of or in connection with this Agreement and for such purposes You irrevocably submit to the jurisdiction of such courts. Any arbitration provision above shall not apply.

H. You acknowledge and agree that the benefits of certain provisions of this Agreement are expressed to be for NetIQ Europe Limited and NetIQ Corporation. You further acknowledge that each and any of the foregoing shall be entitled in its or their own right to require by You the due performance of each such provision as aforesaid and to this end, that NetIQ Europe Limited is entering into this Agreement not only in its own right, but also as trustee and agent for NetIQ Corporation.

THE FOLLOWING APPENDIX IS INCORPORATED INTO THIS AGREEMENT BY REFERENCE.

NETIQ PRODUCT USE RIGHTS APPENDIX

COMMON TERMS - All Products

- **DEFINITIONS:** As used in this appendix, “Software” means a specific NetIQ software product for which You have Purchase Documentation issued to You by NetIQ or NetIQ’s agent. Unless defined in this appendix, capitalized terms have the meaning given in the parent Agreement.
- **STANDARD TERMS:** Use the Software family headers and the product and license type tags below to locate the Product Use Rights terms applicable to the Software. Your usage of the Software must be consistent with such terms and with the unit count on Your purchase documentation. Product use rights terms below for other license types or products do not apply to You.
- **LIMITED USE RESTRICTIONS:** Notwithstanding the standard terms below, Your rights may be limited by restrictions which were part of Your Software license acquisition. If such restrictions apply to Your license, then You must apply the restrictions in the broadest possible manner in interpreting Your product and license type rights below.

PRODUCT: NetIQ® Cloud Marketplace 2.2:

LICENSE TYPE:

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END OF PRODUCT USE RIGHTS APPENDIX

ADDENDUM

APPLE THIRD PARTY RIGHTS

The Software contains intellectual property licensed from Apple. Apple requires that NetIQ include certain minimum terms in this Agreement. You hereby agree to and acknowledge the following terms (for purposes of this addendum, the term “Licensed Application” refers to the NetIQ Cloud Manager mobile Software).

1. Acknowledgment: You acknowledge that this Agreement is concluded between You and NetIQ only, and not with Apple, and NetIQ, not Apple, is solely responsible for the Licensed Application and the content thereof. To the extent that this Agreement provides for usage rules for the Licensed Application that are less restrictive than the Usage Rules set forth for Licensed Applications in, or otherwise are in conflict with, the App Store Terms of Service, then those more restrictive terms in the App Store Terms of Service also apply.

2. Scope of License: Your license to use the Licensed Application is limited to a non-transferable license to use the Licensed Application on an iOS Product that You own or control and as permitted by the Usage Rules set forth in the App Store Terms of Service.

3. Maintenance and Support: You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Licensed Application.

4. Warranty: In the event of any failure of the Licensed Application to conform to any applicable warranty, then pursuant to the refund provision in the Agreement, You may notify Apple, and Apple will refund the purchase price for the Licensed Application. To the maximum extent permitted by applicable

law, Apple will have no other warranty obligation whatsoever with respect to the Licensed Application.

5. Product Claims: You acknowledge that Apple is not responsible for addressing any claims relating to the Licensed Application or Your possession and/or use of that Licensed Application, including, but not limited to: (i) product liability claims; (ii) any claim that the Licensed Application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.

6. Intellectual Property Rights: You acknowledge that, in the event of any third party claim that the Licensed Application or Your use of that Licensed Application infringes that third party's intellectual property rights, Apple will not be responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim.

7. Legal Compliance: You represent and warrant that (i) You are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) You are not listed on any U.S. Government list of prohibited or restricted parties.

8. Third Party Terms of Agreement: You must comply with applicable third party terms of agreements when using Your Application, e.g., if use VoIP, then You must not be in violation of Your wireless data service agreement when using the Licensed Application.

9. Third Party Beneficiary: Apple, and Apple's subsidiaries, are third party beneficiaries of the Agreement. Upon Your acceptance of the terms and conditions of the Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce the Agreement against You as a third party beneficiary thereof.

END OF ADDENDUM

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