NetIQ® End-User License Agreement

IMPORTANT – READ CAREFULLY:

THIS CONSTITUTES A LEGAL AGREEMENT ("AGREEMENT") BETWEEN YOU (EITHER AN INDIVIDUAL OR A LEGAL ENTITY THAT WILL USE THE PRODUCT AND THAT YOU REPRESENT AS AN EMPLOYEE OR AUTHORIZED AGENT, HEREAFTER "YOU," "CUSTOMER," OR "LICENSEE") AND NETIQ CORPORATION ("NETIQ") WITH RESPECT TO THE SOFTWARE IDENTIFIED HEREIN. BY INSTALLING, COPYING, DOWNLOADING OR OTHERWISE ACCESSING THE SOFTWARE YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, NETIQ IS UNWILLING TO LICENSE THE SOFTWARE TO YOU. IN SUCH EVENT, YOU MAY NOT USE OR COPY THE SOFTWARE, AND YOU SHOULD PROMPTLY DESTROY ALL COPIES OF THE SOFTWARE AND ACCOMPANYING DOCUMENTATION ("DOCUMENTATION"), OR NOTIFY NETIQ TO OBTAIN INSTRUCTIONS ON RETURN OF THE UNUSED SOFTWARE IN ACCORDANCE WITH ITS RETURN POLICY.

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4. **SOFTWARE.** If You receive Your first copy of the Software electronically, and a second copy on physical media, the second copy may be used for archival purposes only. This Agreement does not grant You any right to receive, or any license to, any enhancement or update of the Software, or any other NetIQ software.

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7. **LIMITED WARRANTY ON PHYSICAL MEDIA.** NetIQ guarantees DVDs and CD ROMs provided as physical media of Software are free of physical defects for ninety (90) days from date of Your purchase. Your only remedy of such defects is to return and exchange such physical media. NetIQ is not responsible for defects caused by accidents, inappropriate or illegal use of the media.

8. **LIMITATION OF LIABILITY.** NetIQ and its suppliers' cumulative liability to You or any other party for any loss or damages resulting from any claims, demands, or actions arising out of or relating to this Agreement shall not exceed the license fee paid to NetIQ for use of the Software.

9. **EXCLUSION OF CONSEQUENTIAL AND OTHER DAMAGES.** NETIQ AND ITS SUPPLIERS WILL NOT BE LIABLE TO YOU OR ANY THIRD-PARTY CLAIMANT FOR ANY INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, WHETHER BASED ON CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, INDEMNITY OR CONTRIBUTION, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE LIMITATIONS OR EXCLUSIONS IN THIS PARAGRAPH MAY NOT APPLY TO YOU.

10. **PROVISO.** EACH OF THE DISCLAIMERS, LIMITATIONS AND EXCLUSIONS CONTAINED IN THE ABOVE PARAGRAPHS HEADED "DISCLAIMER OF WARRANTIES", "LIMITATION OF

LIABILITY" AND "EXCLUSION OF CONSEQUENTIAL AND OTHER DAMAGES" APPLY TO THE MAXIMUM EXTENT PERMITTED BY LAW.

11.   SPECIAL PROVISIONS REGARDING OPEN SOURCE AND THIRD PARTY SOFTWARE. The software may contain or be distributed with third party software covered by an open source software license ("Open Source Software") or other third party software ("Third Party Software") covered by a different license. If Open Source Software is included, the terms and conditions of this license do not apply to the Open Source Software. If Third Party Software is included, the terms and conditions of this license may not apply to Third Party Software. Information concerning the inclusion of the Open Source Software and Third Party Software not covered by this license, if any, and the notices, license terms and disclaimers applicable to such software is contained in the About Box and-or ThirdPartySoftware.txt file or available on written request to NetIQ.

12.   TERMINATION. Your license to use the Software continues until terminated. 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. You may also terminate this Agreement at any time by notifying NetIQ in writing of termination. On termination, You must destroy all copies of the Software and remove and uninstall all files and copies of the Software from Your information technology systems. Your obligation to pay accrued charges and fees shall survive any termination of this Agreement.

13.   COMMUNICATION. By registering or downloading this product, You make the registered email address available to receive information about NetIQ and our products. To remove Yourself from this mailing list, please log in to www.netiq.com with the account, select Your name in the header area, then select Set Communication Preferences under Manage My Account.

14.   PAYMENT. You are responsible for making full and timely payment for the Software license. You shall pay all of NetIQ's reasonable fees, costs and expenses (including reasonable attorneys' fees) if legal action is required to collect outstanding balances.

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 ANDURISDICTION. 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 copying, distribution, installation, or use of, or access to, the Software. You further agree to keep records sufficient to certify Your compliance with this Agreement (including its Product Use Rights Appendix), and, upon request of NetIQ, provide and certify metrics and-or reports based upon such records and accounting both numbers of copies (by product and version) and network architectures as they may reasonably relate to Your licensing and deployment of the Software. You shall provide NetIQ or an authorized representative with access to records, hardware and employees to perform the audit. Upon NetIQ's or its authorized representative's presentation of their reasonable written commitment(s) to safeguard Your confidential information, You shall fully cooperate with such audit and provide any necessary assistance and access to records and computers. If an audit reveals that You have or at any time have had unlicensed installation, use of, or access to the Software, You will promptly acquire sufficient licenses to cover any shortage. If a material license shortage of five (5) percent or more is found, You must reimburse NetIQ for the costs incurred in the audit and acquire the necessary additional licenses within thirty (30) days without the benefit of any otherwise applicable discount.

21.   EXPORT LAW ASSURANCES. You are responsible for complying with all trade regulations and laws both foreign and domestic. You acknowledge that this Software may only be exported or re-exported in accordance with U.S. Government Export Administration Regulations. Without authorization from the U.S. Government, You may not export or re-export the Software (i) to any prohibited country, person, entity, or end-user as specified by U.S. export controls or (ii) for use in the design, development or production of nuclear, chemical, or biological weapons, or missile technology, or any other prohibited use. **You warrant and represent that neither the Bureau of Export Administration of the U.S. Commerce Department nor any other U.S. Government entity or agency has suspended, revoked or denied, in whole or in part, Your export privileges.** For current information on U.S. export requirements and restrictions visit **www.bis.doc.gov/.**

22.   FORCE MAJEURE. NetIQ and its suppliers shall not be liable in any respect for failures to perform hereunder due wholly or substantially to the elements, acts of God, labor disputes, acts of terrorism, acts of civil or military authority, fires, floods, epidemics, quarantine restrictions, armed hostilities, riots and other unavoidable events beyond the control of NetIQ or its suppliers, and the time for performance of obligations hereunder by NetIQ or its suppliers subject to such event shall be extended for the duration of such event.

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 : (i) 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; (ii) such Software qualifies as "commercial computer software" under the applicable procurement regulations; (iii) 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 (iv) 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 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 property, 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: (i) death or personal injury caused by its negligence or the negligence of its employees, agents or subcontracts, (ii) breach of any implied terms as to title or quiet enjoyment of any Software supplied pursuant to this Agreement, or (iii) fraudulent misrepresentation.

E.   Section 12 (Termination) 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) shall not apply.

G.   Section 19 (Governing Law) 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 all 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.

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 following Software family headers and the product and license type tags 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 termsfor other license types or products do not apply to You.

- LIMITED USE RESTRICTIONS: Notwithstanding the following terms, 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 Identity Tracking for Identity Manager:

DEFINITIONS:

"Collector" means a functional script or agent designed to collect, normalize, and parse content from a variety of Devices.

"Device" means any network-addressable entity of any type or class that is a source of log events (such as network or security device, Microsoft Windows or UNIX server, Microsoft SQL Server instance, application instance, etc.).

"Device Type" means a type or class of object (such as Unix Servers or Universal Adapter).

"Sensor Device" includes but is not limited to intrusion sensors and detector sensors.

"Identity Tracking" refers to the association of an entity (person or object) with security events from a system, database and/or application with which that person interacts. The identity attributes of this User are combined with the data from the security event to provide contextual data for analysis and research.

"Integration Module(s)" means any Identity Manager ("IDM") integration module or collection of IDM drivers available on NetIQ's published price list (including third party integration modules on NetIQ's price list but excluding drivers provided through NetIQ consulting services), regardless of whether purchased directly or indirectly from NetIQ.

"Monitored" means to receive information about entities, either directly or indirectly.

"Organization" means a legal entity, excluding subsidiaries and affiliates with a separate existence for tax purposes or for legal personality purposes. An example of an Organization in the private sector would be a corporation, partnership, or trust, excluding any subsidiaries or affiliates of the Organization possessing a separate tax identification number or company registration number. In the public sector, an example of an Organization would be a specific government body or agency.

"Permitted Derivative Works" means derivative works of Collectors, actions, reports, and Solution Packs, created for internal use in conformance with the license grant.

"Plug-in Software Development Kit" (also known as "Sentinel Plug-in SDK")" means the toolkit with which Collectors, actions, and reports can be built or modified.

"Soft Appliance" means a self-contained installation of the NetIQ Sentinel Software and any other software components designed to run in a virtual machine environment when delivered as a virtual machine image, or on base hardware when delivered as an ISO image.

"Solution Pack" is a predefined set of NetIQ Sentinel content that is imported and deployed into an existing NetIQ Sentinel installation using the Solution Manager in the NetIQ Sentinel Control Center component of the Software. The content within a Solution Pack may include, but is not limited to: correlation rule deployments, including deployment status and associated correlation rules, correlation actions, and dynamic lists; reports; iTRAC workflows, including associated roles; event enrichment, including map definitions and event meta tag configuration; and other associated files added when the Solution Pack is created, such as documentation, example report PDFs, or sample map files.

"Total Operational Events Per Second (EPS)" means the aggregate number of events received by all NetIQ Sentinel collectors for an Organization averaged per second over a 24-hour day. All events received by Collectors count toward this measurement even if they are filtered or dropped by the Collectors.

"Type V Device" means a NetIQ Sentinel Device that is a mainframe security logical partition (LPAR) to be Monitored (e.g., RACF, TopSecret and ACF2) or a mid-range server (e.g., iSeries or HP NonStop).

"User" means a user object in a single directory tree (or other class of object that contains data representing a person, such as objects containing credit card information or PIN numbers) that has (i) access or use rights to any portion of the Software, or (ii) access or use rights to products (devices, hardware, or software) being managed by the Software, regardless of whether the user object is assigned to a person or device. User objects (or other classes of objects) representing the same person that are linked to each other within a single tree and/or linked across multiple trees count as only one User.

LICENSE USE AND RESTRICTIONS:

NetIQ Identity Tracking for Identity Manager

Identity Tracking for Identity Manager is licensed on a per User basis for use with NetIQ Sentinel and Identity Manager for the purpose of Identity Tracking. Licenses are required for each user monitored. Identity Tracking includes:

1. Identity Tracking Solution Pack as defined in the product documentation and includes:

    a)   Identity Tracking Solution Pack includes a nonexclusive and nontransferable license to product derivative works in the form of custom Collectors, reports, actions as supported natively by NetIQ Sentinel and the NetIQ Sentinel Software Development Kit. Any such Permitted Derivative Works must be for the purposes of Identity Tracking and must use or collect events only from devices corresponding to Identity Manager Integration Modules when used with Identity Manager

    b)   NetIQ Sentinel Identity Tracking Driver for Identity Manager

2. Limited use license to NetIQ Sentinel for the purpose of Identity Tracking

    a)   The limited-use license of NetIQ Sentinel provides the right to collect and process events from Devices corresponding to licensed Identity Manager Integration Modules, excluding the Mainframe and Midrange Integration Modules (Type V Devices). The limited use license will be deemed to have been exceeded if: i) used to collect and process events for purposes other than Identity Tracking and/or ii) used to collect events from any Device not corresponding to licensed Identity Manager Integration Modules. In either case, the licensee is obligated to purchase the

appropriate NetIQ Sentinel licensing sufficient to address any proposed expanded usage of NetIQ Sentinel beyond this limited use license.

b) The limited user license included with Identity Tracking does not replace, reduce, or alter the entitlements granted under this End User License Agreement.

3. License to Create Permitted Derivative Works.

Solely as provided in the documentation, NetIQ hereby grants You a nonexclusive and nontransferable license to use the NetIQ Plug-in Software Development Kit to create custom Collectors, actions, or reports. To the extent You acquire additional Solution Pack licenses, NetIQ hereby grants You a nonexclusive and nontransferable license to create derivative works of a Solution Pack for Your internal use. These Permitted Derivative Works may be used solely in conjunction with the Software and for no other purpose.

Novell Compliance Management Platform

Those with an existing entitlement and who are current on maintenance for Compliance Management Platform are granted entitlement and the rights to use Identity Tracking for Identity Manager as described above.

See Schedule A and any "About" file accompanying the Software for additional Third Party Restrictions

END OF PRODUCT USE RIGHTS APPENDIX

NetIQ, the NetIQ logo and the NetIQ Identity Tracking for Identity Manager and NetIQ Sentinel product names are either trademarks or registered trademarks of NetIQ Corporation and its affiliates.

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U.S.A.

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SCHEDULE A

Third Party License Restrictions

RSA Component
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Oracle/Sun Component
Java Technology Restrictions. You may not modify the Java Platform Interface ("JPI", identified as classes contained within the "java" package or any subpackages of the "java" package), by creating additional classes within the JPI or otherwise causing the addition to or modification of the classes in the JPI. In the event that You create an additional class and associated API(s) which (i) extends the functionality of a Java platform, and (ii) is exposed to third party software developers for the purpose of developing additional software which invokes such additional API, You must promptly publish broadly an accurate specification for such API for free use by all developers. You may not create, or authorize Your Customers to create additional classes, interfaces, or subpackages that are in any way identified as "java", "javax", "sun" or similar convention as specified by Sun in any class file naming convention. The Sonic Software Corporation ("SSC") Software includes the JMX™ Technology. JMX and all JMX based trademarks and logos are trademarks or registered trademarks of Sun Microsystems, Inc. in the U.S. and other countries.

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