

NetIQ® eDirectory® 8.8  
NetIQ Modular Authentication Services (NMAST™)  
NetIQ iManager, iMonitor, Certificate Server

End-User License Agreement

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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. VERIFICATION.** Licensor has the right to verify Your compliance with this Agreement. You agree to:
- A. Implement internal safeguards to prevent any unauthorized copying, distribution, installation, or use of, or access to, the Software and associated maintenance;
  - B. Keep records sufficient to certify Your compliance with this Agreement (including any Product Use Rights Appendix), and, upon request of Licensor, provide and certify metrics and/or reports based upon such records and account for both numbers of copies (by product and version) and network architectures as they may reasonably relate to Your licensing and deployment of the Software and associated maintenance; and
  - C. Allow a Licensor representative or an independent auditor to inspect and audit Your computers and records, during Your normal business hours, for compliance with the licensing terms for Licensor's software products or associated maintenance. Upon Licensor's and auditor's presentation of their signed written confidentiality statement form 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 within 30 days purchase sufficient licenses and/or subscriptions and associated maintenance to cover the volume and time period of any shortfall without benefit of any otherwise applicable discount. If a material license shortfall of 5% or more is found, You must reimburse Licensor for the costs incurred in the audit.

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**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:

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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

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