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**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

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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:

**“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® Sentinel™ 7.1:**

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

"Enforcement Point" means a perimeter security device that provides network security functionality for an IT network. This includes but is not limited to firewalls, proxy servers and VPN devices.

"Total Operational events per second (EPS) " means the aggregate number of events received by all 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 Collector.

"Instance" means the initial copy of the Software necessary for execution of the Software and each additional copy (or partial copy) of the Software stored or loaded in memory or virtual memory.

"Manager" means any single hardware device, program or application for the purpose of Monitoring; acting upon information received, or reporting upon such information or actions, as such functions may be supported in the Software.

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

"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.

"Advisor" refers to the Sentinel vulnerability and exploit detection mapping data feed.

"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.

"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, You create for Your internal use in conformance with the license grant below.

"Sentinel Log Manager Server" means the following components collectively: Communication Server, Data Access Service (DAS), Database, Reporting Server, and Web Server.

"Sentinel Server" means the following components collectively: Communication Server, Correlation Engine, and Data Access Service (DAS).

"Server Component" means the Communication Server, Correlation Engine, and Data Access Service (DAS) components of the Software.

"Solution Pack" is a predefined set of Sentinel content that is imported and deployed into an existing Sentinel installation using the Solution Manager in the 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 metatag configuration; and other associated files added when the Solution Pack is created, such as documentation, example report PDFs, or sample map files.

"Transport" means to access, deliver or otherwise make information or data available to any component of the Software.

"Type I Device" means a Sentinel Device that is a single server operating system, database, security or network device (e.g., firewalls, intrusion detection systems (IDS), intrusion prevention systems (IPS), routers, switches, etc.). Sentinel Devices or software that send their event logs to a management console/device/software or syslog server are counted by the number of primary source devices from which the logs originate.

"Type II Device" means Sentinel Devices that are applications or operating systems on individual desktop computers (e.g., virus scanning per desktop) or hand-held or portable devices.

"Type III Device" means Sentinel Devices that are vulnerability scanner devices or software.

"Type IV Device" means Sentinel Devices that are non-security enterprise applications (e.g., enterprise resource planning (ERP) software, email, application delivery, etc.), log management appliances or software, but does not include syslog servers. Additionally a Type IV Device includes any other Sentinel Device that doesn't qualify as a Type I, Type II, Type III or Type V Device.

"Type V Device" means a 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., AS400).

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

"Soft Appliance" means a self-contained installation of the 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.

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## ENTITLEMENT ORIGINATING WITH PURCHASE OF SENTINEL 7, SECURITY MANAGER 6, AND LATER VERSIONS OF THESE PRODUCTS

### Sentinel Licensing

Enterprise EPS: Your Sentinel deployment is licensed for a Total Operational events per second (EPS) rate not to exceed the total purchased EPS rate and event source Devices limits stated in your purchase agreement. EPS rate and Device limit licenses are cumulative and it is the total amount that defines the licensed capacity. For instance, if a 500 EPS license and a 1000 EPS license are purchased, the total licensed EPS would be cumulative and provide entitlement to 1500 EPS. Use of hardware or any other application that reduces the number of source event Devices directly accessing or utilizing any of the Software (e.g.,, "multiplexing" or "pooling" software or hardware) shall not reduce the number of licenses required; the required number of licenses would equal the number of distinct inputs to the multiplexing or pooling software, hardware or device "front end".

Enterprise EPS licensing allows You to deploy a reasonable number of copies of the Software or Soft Appliance subject to the capacity limitations as stated in your purchase documentation and as further described in the "Enterprise EPS" paragraph above.

Type V Devices are licensed separately for each Type V Device from which event logs are being collected by any Sentinel Server and Sentinel Log Manager Server. No Type V Device component entitlement is included with the Enterprise EPS license.

NetIQ Exploit Detection & Advisor Subscriptions are licensed separately on an annual subscription basis. No NetIQ Exploit Detection & Advisor Subscription entitlement is included with the Enterprise EPS license.

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#### Identity Tracking Solution Pack Licensing

Licensed Capacities: Your Identity Tracking Solution Pack purchase provides a limited use license of Sentinel. This license provides the right to collect and process events from Devices corresponding to licensed NetIQ Identity Manager Integration Modules excluding the Mainframe and Midrange Integration Modules. The license is granted on a per User basis (i.e. unique directory object) as defined in the NetIQ Identity Manager EULA. For example, if You have deployed the Blackboard Integration Module, You are permitted to collect events from the Blackboard Integration Module itself, as well as directly from Blackboard solely for the purposes of Identity Tracking. The Identity Tracking Solution Pack License is limited, however, and will be deemed to have been exceeded if: 1) used to analyze activity for a number of purchased user accounts and/or 2) if the Sentinel deployment is used to collect and process events for purposes other than the Identity Tracking and/or 3) to collect events from any Device not corresponding to licensed NetIQ Identity Manager Integration Modules.

The Identity Tracking Solution Pack License is distinct and independent from the Enterprise EPS, Instance Licensing and Device License models. The Identity Tracking Solution Pack License does not replace, reduce, or alter the entitlements granted under these license models.

#### ENTITLEMENT ORIGINATING WITH PURCHASE OF SENTINEL PRIOR TO VERSION 7

##### Sentinel Licensing

Instance Licensing: Your Sentinel deployment is licensed to operate with the number of purchased Instances to which You have entitlement. An instance license is required for each installation of the Sentinel Server and for each additional copy (or partial copy) of the Sentinel Server stored or loaded in memory or virtual memory.

Type I/II/III/IV/V Devices are licensed separately for each Type I/II/III/IV/V Device for which event logs are collected by any Sentinel Server and Sentinel Log Manager Server. Further, for Server Components not installed, stored, or loaded collectively with other Server Components as part of the Sentinel Server, You must acquire the applicable category of Instance license for each installation and for each additional copy (or partial copy) of each such Server Component stored or loaded in memory or virtual memory beyond the initial copy necessary for execution of such Server Component installed on the hardware.

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