

**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) AND 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 POLICIES.

THE SOFTWARE IS PROTECTED BY COPYRIGHT LAWS AND INTERNATIONAL COPYRIGHT TREATIES, AS WELL AS OTHER INTELLECTUAL PROPERTY LAWS AND TREATIES. THE SOFTWARE IS LICENSED, NOT SOLD.

**1. GRANT.** NetIQ Corporation (“NetIQ”) hereby grants to you as licensee, a nonexclusive, nontransferable license, without right of sublicense, to install, use and execute the software identified in the purchase documentation issued to You by NetIQ, together with any updates and modifications to the foregoing, if any, provided to you by NetIQ (collectively “Software”). The Software is licensed solely in machine readable object code format and solely for your internal business use, in accordance with the terms of this Agreement, the Purchase Documentation, the Documentation accompanying this Software, and the applicable product use rights and restrictions (“Product Use Rights”) as set forth in the Product Use Rights Appendix which is hereby attached to this Agreement and incorporated by reference.

**2. EVALUATION USE.** In the event that the Software is licensed only for Evaluation Use, the terms of this paragraph shall apply. Your license to use the Software commences on installation of the Software and, unless you and NetIQ agree to a different period, will terminate after a period of 90 days (the “Evaluation Period”). You may use the Software for an unlimited number of users and servers during the Evaluation Period. At the end of the Evaluation Period, your license to use the Evaluation version of the Software is automatically terminated. You may not extend the time limits of the Software in any manner. At the end of the Evaluation Period You agree to de-install the Software and if required by NetIQ, return all copies or partial copies of the Software or certify to NetIQ that all copies or partial copies of the Software have been deleted from Your computer libraries and/or storage devices and have been destroyed. If You desire to continue Your use of the Software beyond the Evaluation Period, You must contact NetIQ to acquire a license to the Software for the applicable fee. EVALUATION SOFTWARE IS PROVIDED ON AN “AS IS” BASIS, WITHOUT WARRANTIES OR REPRESENTATIONS OF ANY KIND, EITHER EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OR REPRESENTATIONS OF TITLE OR NON-INFRINGEMENT.

**3. RESTRICTIONS.** The rights granted herein are subject to the the restrictions in the Product Use Rights Appendix applicable to the Software specified on Your Purchase Documentation and for which you have paid NetIQ a fee and the following additional restrictions: (i) you may not copy (except for back-up purposes), modify, port, adapt, translate, localize, reverse engineer, de-compile, disassemble or otherwise attempt to discover the source code of the Software, except and only to the extent that it is expressly permitted by the law in effect in the jurisdiction in which you are located notwithstanding this limitation; (ii) you may not create derivative works based on the Software; (iii) you may not remove any patent, trademark, copyright, trade secret or other proprietary notices or labels on the Software or Documentation; (iv) you may not transfer, lease, assign, sublicense, pledge, rent, share or distribute the Software or make it available for timesharing,

service bureau or on-line use, unless previously agreed to in writing by NetIQ; and (v) you may not disclose the results of any performance, functional or other evaluation or benchmarking of the Software to any third party without the prior written permission of NetIQ.

**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.

**5. TITLE.** The Software and Documentation are confidential and proprietary information of NetIQ and/or its suppliers. Title, ownership rights, and intellectual property rights in and to the foregoing shall remain with NetIQ and/or its suppliers. The Software and Documentation are 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.

**6. DISCLAIMER OF WARRANTIES.** THE SOFTWARE IS PROVIDED TO YOU AS IS AND THERE ARE NO WARRANTIES, CLAIMS OR REPRESENTATIONS MADE BY NETIQ OR ITS SUPPLIERS, EITHER EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO THE SOFTWARE, INCLUDING WARRANTIES OR CONDITIONS OF TITLE, QUALITY, PERFORMANCE, NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, NOR ARE THERE ANY WARRANTIES CREATED BY COURSE OF DEALING, COURSE OF PERFORMANCE, OR TRADE USAGE. NETIQ AND ITS SUPPLIERS DO NOT WARRANT THAT THE SOFTWARE WILL MEET YOUR NEEDS OR BE FREE FROM ERRORS, OR THAT THE OPERATIONS OF THE SOFTWARE WILL BE UNINTERRUPTED. NETIQ AND ITS SUPPLIERS DO NOT WARRANT THE ACCURACY OF THE REPORTS GENERATED. THE FOREGOING EXCLUSIONS AND DISCLAIMERS ARE AN ESSENTIAL PART OF THIS AGREEMENT AND FORMED THE BASIS FOR DETERMINING THE PRICE CHARGED FOR THE PRODUCTS. SOME STATES DO NOT ALLOW EXCLUSION OF AN IMPLIED WARRANTY, SO THIS DISCLAIMER MAY NOT APPLY TO YOU.

**7. LIMITED WARRANTY ON PHYSICAL MEDIA.** NetIQ guarantees DVDs and CD ROMs provided as physical media of Software is 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. PROVISIO.** 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 e-mail address available to receive information about NetIQ and our products. To remove yourself from this mailing list, please visit: <http://www.netiq.com/Account/lists.asp>

**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/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 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 in order 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 5% or more is found, you must reimburse NetIQ for the costs incurred in the audit and acquire the necessary additional licenses within 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/](http://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 : (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® Access Gateway for Cloud 1.0:**

#### **DEFINITIONS:**

"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 (a) access or use rights to any portion of the Software, or (b) 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.

1. **LICENSE TYPE:** You must acquire a user license for each User. Each person who accesses or uses the Software must have at least one user object uniquely assigned to that person and access the Software through the user object. Provided that You comply with the above requirements, You are authorized to use an unlimited number of copies of the Software.
2. **SLES - BUNDLE EDITION.** Notwithstanding the license rights in the license agreement accompanying the copy of Novell SUSE Linux Enterprise Server product (SLES) You received with the Software, You agree to use SLES solely for the purpose of running the NetIQ Access Gateway for Cloud Software.

### **END OF PRODUCT USE RIGHTS APPENDIX**

NetIQ, the NetIQ logo and Access Gateway for Cloud are either registered trademarks or trademarks of NetIQ Corporation and its affiliates in certain jurisdictions.

NetIQ Corporation  
1233 West Loop South  
Houston, TX 77027  
U.S.A.

Last modified: March 2012