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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/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 NetIQ, 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

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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

- **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.
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PRODUCT: NetIQ®Change Guardian™:

DEFINITIONS:

"Server Components" refer to any Change Guardian software product component identified as a "server component" in the Documentation.

"Agent" means a single server or workstation having an installed copy of the Change Guardian agent software.

"Module" means a software component characterized as a "module" and made available for optional purchase and installation.

"Object" means the objects set forth in the table below that constitute the licensing metrics for the applicable Modules (such as Microsoft Exchange mailbox, Active Directory Domain or Account, etc)

"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.

FOR CLARITY REGARDING LICENSING:

Change Guardian licensing is described in relation to Change Guardian Instances, each of which requires a dedicated license per Organization for the Objects being monitored by Change Guardian (as more fully described in the License Metrics/Object table below). A Change Guardian Instance will typically consist of (i) at least one Change Guardian Server and (ii) one or more Change Guardian Agents and (iii) a licensed count of monitored Objects.

For each Instance of Change Guardian, you may (i) deploy a reasonable number of copies of the Server Components for the sole purpose of supporting a single Organization (ii) install and use the Policy Editor on any number of systems within a single Organization (iii) install and deploy Modules and Agents for which you have acquired the applicable licenses for use. **FOR CLARITY:** (i) Within a single Change Guardian Instance, a single monitored Object will require only one license, regardless of the number or types of Server Components deployed; (ii) If a single Object is monitored by more than one Change Guardian Instance, then it will require more than one license.

Change Guardian Device and Object Types are as follows unless otherwise defined in your purchase documentation.

LICENSING METRICS/OBJECT TABLE

<u>Module</u>	<u>Object Count</u>
Windows Server	Number of monitored Microsoft Windows server-class logical operating system instances
Windows Workstation	Number of monitored Microsoft Windows workstation-class logical operating system instances
Active Directory and Group Policy	Number of enabled Active Directory User accounts
UNIX Server	Number of monitored UNIX or Linux logical operating system instances
UNIX Workstation	Number of monitored UNIX or Linux logical operating system instances

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ENTITLEMENT ORIGINATING WITH PURCHASE OF CHANGE GUARDIAN FOR ACTIVE DIRECTORY PRIOR TO CHANGE GUARDIAN VERSION 4.0

You may install, use and execute the Change Guardian for Active Directory portion of the Software on the number of agents installed on domain controller servers (as those terms are commonly understood) in Microsoft operating environments specified on your purchase documentation and for which you have paid NetIQ a license fee.

ENTITLEMENT ORIGINATING WITH PURCHASE OF CHANGE GUARDIAN FOR GROUP POLICY PRIOR TO CHANGE GUARDIAN VERSION 4.0

You may install, use and execute the Change Guardian for Group Policy portion of the Software on the number of agents installed on domain controller servers (as those terms are commonly understood) in Microsoft operating environments specified on your purchase documentation and for which you have paid NetIQ a license fee.

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