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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 AND 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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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.

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 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 terms for 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

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NetIQ Corporation
1233 West Loop South
Houston, TX 77027
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SCHEDULE A

Third Party License Restrictions

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Oracle/Sun Component

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