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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.

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- 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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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.

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F. Section 13 (Communication) above shall not apply.

G. Section 19 (Governing Law) above shall not apply and instead the following shall apply:

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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.

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