

PlateSpin® Migrate 9.3
NetIQ® End-User License Agreement

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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

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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

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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: PlateSpin® Migrate 9.3:

DEFINITIONS:

“Conversion” means to move or copy a Workload from one computer or to another.

“Operating System” means software that controls the operation of a computer and directs the processing of programs (as by assigning storage space in memory and controlling input and output functions). An Operating System may be installed either directly on a computer system or within a virtual machine. For example a virtual machine host server that hosts four virtual machines represents five Operating Systems.

“Software Product License Key” means the mechanism that enables GE to install and use the Software subject to the restrictions set out in this Agreement and may be a printable digital key, a non-printable file or any other mechanism used by Licensor for license activation purposes.

“Source Computer” means the computer that contains the Workload that a user wishes to move or copy onto another computer.

“Target Computer” means the computer that receives the Workload, whether in the form of a physical computer without an Operating System or a physical computer which is running a virtual operating environment.

“Workload” means the software stack (Operating System, middleware, applications, data) that is installed and can run on a physical computer that has no other Operating System software loaded onto it, or that is installed and can run in a specialized virtual operating environment or hypervisor. For example, a physical server running a single Windows or Linux Operating System is running a single workload. A physical server running a hypervisor and 4 virtual machines is running 5 workloads.

“Workload Backup Copy” means a copy of a Workload, which may exist in any form, either encapsulated in an image file or installed on a computer, but it may not be used concurrently with the Workload to perform the normal tasks of the Workload.

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