PlateSpin® Forge 4
NetIQ End User License Agreement

PLEASE READ THIS AGREEMENT CAREFULLY. BY INSTALLING, DOWNLOADING OR OTHERWISE USING THE SOFTWARE, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE WITH THESE TERMS, YOU ARE NOT PERMITTED TO DOWNLOAD, INSTALL OR USE THE SOFTWARE AND YOU SHOULD NOTIFY THE PARTY FROM WHICH YOU PURCHASED THE SOFTWARE TO OBTAIN A REFUND. THE SOFTWARE MAY NOT BE SOLD, TRANSFERRED, OR FURTHER DISTRIBUTED EXCEPT AS AUTHORIZED BY LICENSOR.

This End User License Agreement ("Agreement") is a legal agreement between You (an entity or a person) and NetIQ Corporation ("Licensor"). The software product identified in the title of this Agreement for which You have acquired licenses, any media and accompanying documentation (collectively the "Software") is protected by the copyright laws and treaties of the United States ("U.S.") and other countries and is subject to the terms of this Agreement. If the laws of Your country of origin require contracts to be in the local language to be enforceable, such local language version may be obtained from Licensor upon written request and shall be deemed to govern Your purchase of licenses to the Software. Any update, mobile application, module or adapter or support release to the Software that You may download or receive that is not accompanied by a license agreement is Software and governed by this Agreement. If the Software is an update or support release, then You must have validly licensed the version and quantity of the Software being updated or supported in order to install or use the update or support release.

LICENSED USE

Commercial Software.

DEFINITIONS:

"Appliance Host" means the hypervisor which hosts the Software as well as the replicated Workloads.

"Management VM" means the management virtual machine containing the Software.

"Migration" means to move or copy a Workload from one computer 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 server that hosts four virtual machines represents five Operating Systems.

"Software Product License Key" means the mechanism that enables You 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 You desire to protect.

"Target Computer" means the computer that receives the Workload, which is a virtual computer running within the Appliance Host.

"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.

LICENSE GRANT.

Licenses purchased for PlateSpin Forge 4 cannot be used for PlateSpin Forge 3.3 or prior versions. The hardware appliance that includes the Appliance Host and PlateSpin Forge 4 is referred to as the "Server Appliance".

Provided that You comply with all of the terms and conditions of this Agreement and the License Grant Restrictions below, Licensor grants You a non-exclusive, non-transferable license, without the right to sublicense, to use the Software in object code form, solely in conjunction with Your use of the Server Appliance, in accordance with the Software License Key associated with the Software. You must purchase the appropriate number of licenses for the number of Workloads and the applicable model of Server Appliance.

1. You are permitted to create a Workload Backup Copy to a single Target Computer and to update that Workload Backup Copy an unlimited number of times.
2. You may assign the license to a specific Workload (an "Assigned Workload"), whatever form such Workload takes; provided however that once assigned, the Workload license applies only to the Assigned Workload until such Assigned Workload is permanently disabled or decommissioned (which would include discarding the computer or deleting and disassembling all the

components that constitute the Assigned Workload) after which the Workload license can be re-assigned to another Workload. You are permitted to re-assign (or Workload transfer) any or all of the Workload licenses You have purchased provided that the Assigned Workload is permanently disabled or decommissioned. In no circumstance other than as described above may You assign a Workload license to a Workload and then temporarily reassign it to another Workload (such as a Workload Migration).

3. You may only use the virtual machines contained within the Server Appliance. You may not create additional virtual machines in order to perform functions other than to protect Workloads on the Server Appliance.

4. You may only use the Management VM for the purposes stated herein and shall not use the Management VM for any other purpose including but not limited to: file sharing, application server, print server and general purpose web server.

5. Other than the Software, the hypervisor and any system utilities, You agree not to install or use any third party software on the virtual machines in the Server Appliance and not to install any third party software on the Appliance Host.

The Software License Key may be a printable digital key, a non-printable file, or any other mechanism used by Licensor for license activation purposes. You agree not to override or attempt to override the Software License Key.

The Software facilitates the distribution of additional operating systems and applications ("Guest Operating Systems and Applications") to run on a computer system. You must have a licensed copy of each Guest Operating System and Application for such use. You must have licensed any Operating System components the Software installs as part of the conversion process, such as HALs and Kernel modules. You agree to indemnify and hold Licensor harmless against any damages, costs (including legal attorneys' fees and costs) or other liability arising from claims resulting from Your failure to obtain any such required licenses. Licensor shall have the right to participate at its expense in the defense of any such dispute.

Specific Third Party Software. Licensor's contractual arrangements require that Licensor include the following provisions.

1. The Software contains Third Party Software referred to as Microsoft SQL Server 2005 (CAL Versions), and Microsoft Windows Server 2003 Standard R2 with the Server Appliance Software Version 3.1.   Your use of this Third Party Software is subject to the terms and restrictions set forth in the product documentation.

2. The Software includes software licensed from VMware Inc. You agree not to de-compile, disassemble, reverse engineer or otherwise attempt to derive source code from the Product, in whole or in part (or in any instance where the law permits any such action, You agree to provide VMware at least forty-five (45) days advance written notice of Your belief that such action is warranted and permitted and provide VMware with an opportunity to evaluate if the law's requirements necessitate such action). You agree not to allow access to or permit use of the VMware product by any user other than the Forge server or modify or create derivative works based upon the VMware product.

DELIVERY, TITLE & RISK OF LOSS

Delivery.

For delivery from the U.S. to destinations within the U.S.A., delivery terms are FOB Licensor's Dock (INCOTERMS 2000). Licensor will ship ground only and prepay freight from Licensor's Dock to Your forwarder or named destination. All other freight arrangements will be billed to You.

For delivery from the U.S. to destinations outside the U.S.A., delivery terms are DAT (Delivery at Terminal) as defined in INCOTERMS 2000. Licensor will select a carrier and will prepay shipping and handling charges. You will be responsible for all applicable import duties and value added tax, goods and services tax, or other similar taxes and fees.

For delivery within Europe, the Middle-East and Africa ("EMEA"), delivery terms will be Carriage Paid To (C.P.T.) Destination, as defined in INCOTERMS 2000. Licensor will select a carrier, prepay the freight and invoice You for freight and any handling costs. Destinations for E.U. countries will be Your nominated delivery point; for non-E.U. countries, destination will be the point of import. The term C.P.T. does not include the payment by Licensor of taxes or any applicable import duties.

Title & Risk of Loss. For shipment within the United States, title to any deliverables, exclusive of Licensor's rights to intellectual property, and risk of loss will pass to You upon delivery to Your carrier. For shipments from the U.S. to outside the U.S., title to and risk of loss will remain with Licensor until the shipment arrives at the importing country's entry port (or at a bonded warehouse within Canada or Mexico if You so request shipment). For shipments within EMEA (i.e. originating in Ireland), title to and risk of loss passes to You at the Irish shipment point. If You insure shipment, the insurance will protect Licensor's interest until title passes as set forth above. Notwithstanding the above provisions, no title to Software is transferred to You.

Evaluation Software. If the Software is an evaluation version or is provided to You for evaluation purposes, then, unless otherwise approved in writing by an authorized representative of Licensor, Your license to use the Software is limited solely for internal evaluation purposes in non-production use and in accordance with the terms of the evaluation offering under which You received the Software, and expires 90 days from installation (or such other period as may be indicated within the Software). Upon expiration of the evaluation period, You must discontinue use of the Software, return to an original state any actions performed by the Software, and delete the Software entirely from Your system and You may not download the Software again unless approved in writing by an authorized representative of Licensor. The Software may contain an automatic disabling mechanism that prevents its use after a certain period of time.

RESTRICTIONS

License Restrictions. Licensor reserves all rights not expressly granted to You. The Software is licensed for Your internal use only. Except as this Agreement expressly allows, You may not (1) copy (except for back-up purposes), modify, alter, create derivative works, reverse engineer, decompile, or disassemble the Software except and only to the extent expressly permitted by applicable law; (2) transfer, assign, pledge, rent, timeshare, host or lease the Software, or sublicense any of Your license grants or rights

under this Agreement; in whole or in part, without prior written permission of Licensor; (3) remove any patent, trademark, copyright, trade secret or other proprietary notices or labels on the Software or its documentation; or (4) 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 Licensor.

Hosting Restrictions. In the event that You desire to have a third party manage, host (either remotely or virtually) or use the Software on Your behalf, You shall (1) first enter into a valid and binding agreement with such third party that contains terms and conditions to protect Licensor's rights in the Software that are no less prohibitive and/or restrictive than those contained in this Agreement, including, without limitation, the Verification section below; (2) prohibit use by such third party except for the sole benefit of You; and (3) be solely responsible to Licensor for any and all breaches of the above terms and conditions by such third party.

Suite Licenses. If Your license to use the Software is for a suite of products, then for each license only one user may use the products in the suite. The suite license does not allow use of individual products in the suite by multiple users if licensed on a user basis or multiple devices if licensed on a device or server basis.

Upgrade Software. This section applies to You if You have purchased the Software based upon upgrade pricing or otherwise received an upgrade or update to the Software. "Original Product" means the product from which You are upgrading. You are authorized to use the Software only if You are the authorized user of the Original Product and You may use the Software to replace Your licensed unit count of the Original Product on a one-for-one basis, not exceeding the authorized licensed unit count for the Original Software. This Agreement shall replace and govern any license agreement for the surviving units of Original Product. This Agreement is specific to the Software (by product and version) that it accompanies, and You may not re-allocate Your Software licensed unit count to another product or version except under express written permission from Licensor.

Maintenance and Support. Licensor has no obligation to provide support unless You purchase an offering that expressly includes support services. If You make such a purchase and no separate agreement specifically applies to the support services, then the terms of this Agreement will govern the provision of such support services ("Services"). For more information on Licensor's current support offerings, see https://www.NetIQ.com/support.

OWNERSHIP

No title to or ownership of the Software is transferred to You. Licensor and/or its third party licensors retain all right, title and interest in and to all intellectual property rights in the Software and Services, including any adaptations or copies thereof. The Software is not sold to You, You acquire only a conditional license to use the Software. 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 Agreement gives You no rights to such content.

LIMITED WARRANTY

For ninety (90) days from Your date of purchase, Licensor warrants that the Software will substantially conform to its accompanying documentation. If You report the nonconformity to Licensor within ninety (90) days from the date of purchase, Licensor will at its sole discretion either resolve the nonconformity or refund the license fees You paid for the Software. Any unauthorized use or modification to the Software voids this warranty. THE FOREGOING WARRANTY IS YOUR SOLE AND EXCLUSIVE REMEDY AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. The foregoing warranty does not apply to Software provided free of charge. SUCH SOFTWARE IS PROVIDED "AS IS" WITHOUT ANY WARRANTIES OF ANY KIND.

Services. Licensor warrants that any Services purchased will be supplied in a professional manner in accordance with generally accepted industry standards. This warranty will be effective for thirty (30) days following delivery of the Services. Upon any breach of this warranty, Licensor's only obligation is to either correct the Services so that they comply with this warranty or at its option refund the amount You paid to Licensor for the portion of the Services that fail to comply with this warranty. You agree to take appropriate measures to isolate and back up Your systems.

THE SOFTWARE IS NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE OR DISTRIBUTION WITH ON-LINE CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION, COMMUNICATION, OR CONTROL SYSTEMS, DIRECT LIFE SUPPORT MACHINES, WEAPONS SYSTEMS, OR OTHER USES IN WHICH FAILURE OF THE SOFTWARE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

Non-Licensor Products. The Software may include or be bundled with hardware or other software programs or services licensed or sold by an entity other than Licensor. LICENSOR DOES NOT WARRANT NON-LICENSOR PRODUCTS OR SERVICES. ANY SUCH PRODUCTS OR SERVICES ARE PROVIDED ON AN "AS IS" BASIS. WARRANTY SERVICE IF ANY FOR NON-LICENSOR PRODUCTS IS PROVIDED BY THE PRODUCT LICENSOR IN ACCORDANCE WITH THE APPLICABLE LICENSOR WARRANTY.

EXCEPT AS OTHERWISE RESTRICTED BY LAW, LICENSOR DISCLAIMS AND EXCLUDES ANY AND ALL IMPLIED WARRANTIES INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT NOR ARE THERE ANY WARRANTIES CREATED BY COURSE OF DEALING, COURSE OF PERFORMANCE OR TRADE USAGE. LICENSOR MAKES NO WARRANTY, REPRESENTATION OR PROMISE NOT EXPRESSLY SET FORTH IN THIS LIMITED WARRANTY. LICENSOR DOES NOT WARRANT THAT THE SOFTWARE OR

SERVICES WILL SATISFY YOUR REQUIREMENTS, BE COMPATIBLE WITH ALL OPERATING SYSTEMS, OR THAT THE OPERATION OF THE SOFTWARE OR SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. 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 jurisdictions do not allow certain disclaimers and limitations of warranties, so portions of the above limitations may not apply to You. This limited warranty gives You specific rights and You may also have other rights which vary by state or jurisdiction.

LIMITATION OF LIABILITY

Consequential Losses. NEITHER LICENSOR NOR ANY OF ITS THIRD PARTY LICENSORS, SUBSIDIARIES, OR EMPLOYEES WILL IN ANY CASE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, TORT, ECONOMIC OR PUNITIVE DAMAGES, WHETHER BASED ON CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, INDEMNITY OR CONTRIBUTION, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, BUSINESS OR DATA, EVEN IF ADVISED OF THE POSSIBILITY OF THOSE DAMAGES.

Direct Damages. IN NO EVENT WILL LICENSOR'S AGGREGATE LIABILITY FOR DIRECT DAMAGES TO PROPERTY OR PERSON (WHETHER IN ONE INSTANCE OR A SERIES OF INSTANCES) EXCEED 1.25 TIMES THE AMOUNT PAID BY YOU FOR THE SOFTWARE OR SERVICES OUT OF WHICH SUCH CLAIM AROSE (OR $50 (U.S.) IF YOU RECEIVED THE SOFTWARE FREE OF CHARGE). The above exclusions and limitations will not apply to claims relating to death or personal injury caused by the negligence of Licensor or its employees, agents or contractors. In those jurisdictions that do not allow the exclusion or limitation of damages, including, without limitation, damages for breach of any implied terms as to title or quiet enjoyment of any Software obtained pursuant to this Agreement or for fraudulent misrepresentation, Licensor's liability shall be limited or excluded to the maximum extent allowed within those jurisdictions.

GENERAL TERMS

Term. This Agreement becomes effective on the date You legally acquire the Software and will automatically terminate if You breach any of its terms. If the Software is provided to You on a subscription basis, then Your right to possess or use the Software will terminate at the end of the applicable subscription period. Upon termination of this Agreement or any applicable subscription period, You must destroy the original and all copies of the Software or return them to Licensor and delete the Software from Your systems.

Verification. Licensor has the right to verify Your compliance with this Agreement. You agree to: (1) Implement internal safeguards to prevent any unauthorized copying, distribution, installation, use of, or access to, the Software; (2) Keep records sufficient to certify Your compliance with this Agreement (including its Product Use Rights Appendix, if any), 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 (3) Allow a Licensor representative or an independent auditor ("Auditor") to inspect and audit Your, or Your contractor's, computers and records, during Your normal business hours, for compliance with the licensing terms for Licensor's software products. 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 to cover any shortfall without benefit of any otherwise applicable discount and subject to license fees reflecting the duration of the shortfall. If a material license shortfall of 5% or more is found, You must reimburse Licensor for the costs incurred in the audit.

Third Party Software/Open Source. Nothing in this Agreement shall restrict, limit or otherwise affect any rights or obligations You may have, or conditions to which You may be subject, under any applicable open source licenses to any open source code contained in the Software. The Software may include or be bundled with other software programs licensed under different terms and/or licensed by a licensor other than Licensor. Use of any software programs accompanied by a separate license agreement is governed by that separate license agreement. Any third party software that may be provided with the Software is included for use at Your option.

Transfer. This Agreement and the associated licenses purchased for use of the Software may not be transferred or assigned without the prior written approval of Licensor. Any such attempted transfer or assignment shall be void and of no effect. Please contact OrderManagement@netiq.com to request the transfer of licenses and assignment of this Agreement. This Agreement may not be transferred or assigned without the prior written approval of Licensor. Any such attempted assignment shall be void and of no effect.

Law. All matters arising out of or relating to the Agreement will be governed by the substantive laws of the United States and the State of Utah without regard to its choice of law provisions. Any suit, action or proceeding arising out of or relating to the Agreement may only be brought before a federal or state court of appropriate jurisdiction in Utah. If a party initiates Agreement-related legal proceedings, the prevailing party will be entitled to recover reasonable attorneys' fees. If, however, Your country of principal residence is a member state of the European Union or the European Free Trade Association, (1) the courts of Ireland shall have exclusive jurisdiction over any action of law relating to this Agreement; and (2) where the laws of such country of principal residence are required to be applied to any such action of law the laws of that country shall apply. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded.

Entire Agreement. This Agreement, together with any other purchase documents or other agreement between You and Licensor, sets forth the entire understanding and agreement between You and Licensor and may be amended or modified only by a written agreement agreed to by You and an authorized representative of Licensor. NO LICENSOR, DISTRIBUTOR, DEALER, RETAILER, RESELLER, SALES PERSON, OR EMPLOYEE IS AUTHORIZED TO MODIFY THIS AGREEMENT OR TO MAKE ANY REPRESENTATION OR PROMISE THAT IS DIFFERENT FROM, OR IN ADDITION TO, THE TERMS OF THIS AGREEMENT.

Waiver. No waiver of any right under this Agreement will be effective unless in writing, signed by a duly authorized representative of the party to be bound. No waiver of any past or present right arising from any breach or failure to perform will be deemed to be a waiver of any future right arising under this Agreement.

Severability. If any provision in this Agreement is invalid or unenforceable, that provision will be construed, limited, modified or, if necessary, severed, to the extent necessary, to eliminate its invalidity or unenforceability, and the other provisions of this Agreement will remain unaffected.

Export Compliance. You acknowledge that Licensor's products and/or technology are subject to the U.S. Export Administration Regulations (the "EAR") and You agree to comply with the EAR. You will not export or re-export Licensor's products, directly or indirectly, to: (1) any countries that are subject to US export restrictions; (2) any end user who You know or have reason to know will utilize Licensor's products in the design, development or production of nuclear, chemical or biological weapons, or rocket systems, space launch vehicles, and sounding rockets, or unmanned air vehicle systems; or (3) any end user who has been prohibited from participating in the US export transactions by any federal agency of the US government. By downloading or using the Software, You are agreeing to the foregoing and You are representing and warranting that You are not located in, under the control of, or a national or resident of any such country or on any such list. In addition, You are responsible for complying with any local laws in Your jurisdiction which may impact Your right to import, export or use Licensor's products. Please consult the Bureau of Industry and Security web page www.bis.doc.gov before exporting items subject to the EAR. Upon request, Licensor's International Trade Services Department can provide information regarding applicable export restrictions for Licensor products. Licensor assumes no responsibility for Your failure to obtain any necessary export approvals.

U.S. Government Restricted Rights. Use, duplication, or disclosure of any Deliverables by the U.S. Government is subject to the restrictions in FAR 52.227-14 (Dec 2007) Alternate III (Dec 2007), FAR 52.227-19 (Dec 2007), or DFARS 252.227-7013(b)(3) (Nov 1995), or applicable successor clauses.

(112013)