



End-User License Agreement

This End-User License Agreement ("EULA") is entered into between Network Intelligence Corporation ("Network Intelligence", "we", "our" or "us") and the Customer ("Customer", "you" or "your") identified on an accepted sales or purchase order ("Order Agreement") for use of the software listed on the same and all associated media (collectively, the "Software") and all related printed materials and "online" or electronic documentation (collectively, the "Documentation"). You agree to be bound by the terms of this EULA.

- 1) **Grant of License.** The Software is licensed, not sold, and the license granted herein is non-exclusive and non-transferable. You may install and use the purchased quantity of Software on a single computer, and you may make one (1) copy of the Software and Documentation solely for backup or archival purposes. You may NOT rent, lease, sublicense, assign or otherwise transfer either the Software or Documentation. You also may not publicly publish any performance test results regarding use of the Software.

The following license provisions shall apply for use of the Software identified in a purchase as Test and/or Cold Standby;

a) Test: Test systems are licensed for non-production environments only.

b) Cold Standby: (i) Cold Standby systems are licensed for use as cold-standby deployments only, except as specifically provided in this sub-paragraph; (ii) In the event the production system that the Cold Standby system has been purchased with is unavailable due to failure or maintenance, the Cold Standby system may be used in a production environment. In no event may redundant system pairs operate concurrently beyond the use required due to failure or maintenance. Use of the Cold Standby system in a production environment shall be subject to the license restrictions of the production environment it is replacing.

- 2) **Other rights and limitations.** You may NOT Reverse engineer, decompile, disassemble or otherwise attempt to derive the source code of the Software. You may NOT modify, copy (except as authorized herein), translate or create derivative works of the Software, or alter, remove or obscure any copyright, trademark or other proprietary notice or disclaimer, or any export restriction or similar notice, contained on the Software or Documentation. You shall reproduce all such notices on any copy of the Software or Documentation made in accordance with this EULA. The Software is licensed as a single product. Its component parts may not be separated for use on more than one computer. You shall notify us promptly in writing of any unauthorized distribution, possession, alteration, transfer, reproduction or other unauthorized use of the Software or Documentation, or any improper or wrongful use of our trademarks or trade names, of which you become aware.
- 3) **Term and Termination.** Unless earlier terminated in accordance with the provisions set forth herein, the term of this EULA shall be perpetual. Without prejudice to any other rights, we may terminate this EULA if you fail to comply with any of the terms or conditions hereof. Upon termination, you shall cease using the Software and destroy all copies of the Software and Documentation in your possession.

- 4) **Upgrades.** If the Software is an upgrade of a Network Intelligence product, you may use that upgraded product only in accordance with this EULA.
- 5) **Title and Copyright.** Except for the rights expressly granted herein, all right, title and interest in and to the Software and Documentation shall remain solely with Network Intelligence. For purposes of Section 117 of the Copyright Act of 1976, as amended, and for all other purposes, Network Intelligence shall be considered the owner of the Software and Documentation and any copies thereof, and of all copyright, trade secret, patent, trademark and other intellectual property rights therein. Certain of the Software products provided hereunder may be owned by one or more third parties and licensed to Network Intelligence ("Embedded Software"). You and we intend and agree that Software products provided hereunder and owned by any third parties are being sublicensed to you and that such third parties retain ownership of and title to such products.
- 6) **Dual-Media Software.** You may receive the Software in more than one medium. Regardless of the type or size of the media you receive, you may use only that one medium that is appropriate for the single computer indicated on the Order Agreement. You may not use or install the other medium on another computer. You may not loan, rent, lease, or otherwise transfer the other medium to another user.
- 7) **U.S. Government Restricted Rights.** The Software and Documentation are provided with restricted rights. Use, duplication, or disclosure by the Government is subject to restriction as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software Restricted Rights at 48 CFR 52.227-19, as applicable. Manufacturer is Network Intelligence Corporation, 200 Lowder Brook Dr., Suite 2000, Westwood, MA 02090.
- 8) **Governing Law and Jurisdiction.** This EULA shall be construed, and the relations of the parties shall be determined, in accordance with the laws of the Commonwealth of Massachusetts in the United States, as such laws apply to contracts between residents of Massachusetts. Neither the United Nations Treaty for International Sale of Goods nor the Uniform Computer Information Transactions Act ("UCITA") shall govern this Agreement. If any or all portions of the Software were acquired outside of the United States, local laws may apply. All disputes arising under this Agreement shall be brought in the District Court of the Commonwealth of Massachusetts in Middlesex County or the Federal District Court of Eastern Massachusetts as permitted by law.
- 9) **Limited Warranty.** Network Intelligence warrants that the Software, as delivered, will conform in all material respects to the user documentation for a period of ninety (90) days from the date of delivery (the "Warranty Period").
- 10) **Remedies.** Network Intelligence's sole responsibility under the limited warranty will be to use reasonable efforts to correct material reproducible errors in the Software that are reported to Network Intelligence within the Warranty Period

or, if any material reproducible error in the Software cannot be corrected using commercially reasonable efforts, to refund the license fee paid by you to us. Network Intelligence does not warrant that the Software will be free of errors, or that all program errors will be corrected. The foregoing states our entire liability to you, and your exclusive remedy for, a breach of the limited warranty. If we determine that any reported problem with the Software for which you request warranty services is not covered by the warranty hereunder, you shall pay or reimburse us for all costs of investigating and responding to such request at our then prevailing time and materials rates. In no event shall we have any obligation to make repairs or replacements required, in whole or in part, as the result of: (i) normal wear and tear; (ii) accident, disaster, or event of force majeure; (iii) misuse, fault, or negligence of or by you; (iv) use of the Software in a manner for which it was not designed; (v) causes external to the Software; or, (vi) use of the Software in combination with equipment or software not supplied by Network Intelligence. Any replacement Software will be warranted for the remainder of the original warranty period or thirty (30) days from the date of delivery, whichever is longer. Outside the United States, neither these remedies nor any support services offered by Network Intelligence are available without proof of purchase from an authorized reseller.

11) **No Other Warranties.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE EXPRESS WARRANTIES SET FORTH HEREIN ARE THE ONLY WARRANTIES GIVEN BY NETWORK INTELLIGENCE WITH RESPECT TO THE SOFTWARE FURNISHED HEREUNDER. NETWORK INTELLIGENCE MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED OR ARISING BY CUSTOM OR TRADE USAGE, AND SPECIFICALLY MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. SAID EXPRESS WARRANTIES SHALL NOT BE ENLARGED OR OTHERWISE AFFECTED BY NETWORK INTELLIGENCE'S RENDERING OF TECHNICAL OR OTHER ADVICE OR SERVICE IN CONNECTION WITH THE PRODUCTS.

- 12) **Limitation of Liability.** NETWORK INTELLIGENCE'S LIABILITY IN CONTRACT, TORT, OR OTHERWISE ARISING OUT OF OR IN CONNECTION WITH ANY PRODUCTS, OR ANY OUTPUT OF ANY PRODUCTS OR ANY SALES OR LICENSE AGREEMENT WITH YOU SHALL NOT EXCEED THE AMOUNT PAID BY YOU TO NETWORK INTELLIGENCE FOR PRODUCTS. IN NO EVENT SHALL NETWORK INTELLIGENCE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, TORT, OR CONSEQUENTIAL DAMAGES (INCLUDING ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS OR LOSS OF BUSINESS) ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THE PRODUCTS OR NETWORK INTELLIGENCE'S PERFORMANCE OF SERVICES, EVEN IF NETWORK INTELLIGENCE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 13) **Confidentiality.** You agree to hold the Software and Documentation in strict confidence and not to disclose or make available the same in any form to any third party unless required by law.
- 14) **Entire Agreement.** This EULA constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communications, whether written or oral. This EULA may only be amended by you with a written document signed by both parties. The terms on any Order Agreement or similar document will have no effect.
- 15) **Miscellaneous.** You may not delegate any duties nor assign any rights hereunder without our prior written consent and any such attempted delegation or assignment shall be deemed void absent our consent. In the event that any provision contained herein shall be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The failure by either party to enforce, or the waiver by either party of a breach of any provision contained herein shall not constitute a waiver of any other breach or of such provision.

Software Subscription and Hardware Maintenance Agreement

This Software Subscription and Hardware Maintenance Agreement ("SHMA") is entered into between Network Intelligence Corporation or its authorized reseller ("Network Intelligence", "we", "our" or "us") and the Customer ("Customer", "you" or "your") identified on an accepted sales or purchase order ("Order Agreement") for maintenance. Subject to the terms and conditions of this SHMA and payment of the appropriate fees, we agree to provide certain technical support services ("Support Services") to you.

1) Support Services.

- a) Support Access. Qualified personnel will: (1) Aid in the diagnosis of, and correct, Material Defects (as defined below); and, (2) Provide advice through selected examples on how to use the Product by way of phone, e-mail, and web-based technical assistance. We will provide such reasonable support for unaltered versions of the Products. The number for telephone support is (781) 375-9000, or such other number or numbers as we shall advise you of from time to time. All support hours are U.S. Eastern Time and shall be determined by your purchased Coverage level. Standard and Extended Coverage hours shall be subject to change by Network Intelligence upon written notice and exclude holidays that Network Intelligence is not open for business.
 - i) Standard Coverage: Monday through Friday, 8:30 a.m. – 5:30 p.m., U.S. Eastern Time.
 - ii) Extended Coverage: Monday through Friday from 3:00 a.m. – 9:00 p.m., U.S. Eastern Time.
 - iii) Premium Coverage: Twenty-four (24) hours a day, seven (7) days a week.
- b) Product Updates. We shall make available all bug fixes, updates, and enhancements to the Product that we in our sole discretion: (1) deem to be logical improvements to the Product; (2) make generally available to licensees of the Product; and, (3) do not separately price or market.
- c) Material Defect. A Material Defect is any reported malfunction, error or other defect in the Product that can be reproduced by us and constitutes a material substantial nonconformity from the Product documentation. We shall have no obligation to correct a Material Defect or provide other support services if the Material Defect in the Product is caused by a malfunction of hardware or software not supplied by us, modification of the Product not made by or authorized by us, operator error, use of the Product in a manner not in accordance with the Product documentation, or use of the Product does not include all updates available from Network Intelligence. Notwithstanding anything to the contrary contained herein, we do not in any event warrant or represent that all Material Defects, whether in Software or Hardware, can or will be corrected.
- d) Response Process for Material Defects. If a Material Defect is identified in the Product, we shall use commercially reasonable efforts to provide one of the following at our sole discretion: (1) an existing or new correction; and, (2) a viable work around or plan for correction of the Material Defect.
- e) Knowledge Base. You shall have access to the Network Intelligence on-line help Customer Care knowledge base.

2) Hardware Warranty and Hardware Support Services.

- a) Hardware Warranty. For Products purchased after January 1, 2004, Network Intelligence warrants that the Hardware will be free from material defects in materials and manufacturing workmanship for a period of thirty-six (36) months from the date of purchase. Our obligations with respect to the hardware warranty under this section are subject to the limitations set forth in Section 1(c) above.
- b) Material Defect. If a material defect is identified in the Product, we shall use commercially reasonable efforts to provide one of the following at our sole discretion: (1) an electronic remedy; (2) spare part replacement; or, (3) Advance Replacement of Hardware.
- c) Advance Replacement. Solely on the approval of a Network Intelligence customer care representative and subject to the Network Intelligence Return Material Authorization ("RMA") procedures, we shall use commercially reasonable efforts to Advance Replace a defective Product. Advance Replacement shall mean to ship a replacement Product to you prior to the defective Product being returned to us for repair.

3) Obligations of Customer.

- a) Cooperation. During the term of this SHMA, you agree to: Notify us immediately upon discovery of any Material Defect in the Product; Properly back-up the Product; Maintain an electronic mail link-up with us via the Internet; Provide access (electronic or physical) to your system containing the Product at no cost if such is required to provide the Support Services, including but not limited to, the necessary computer time and related support services required by us; and, Provide any other reasonable supporting data and assistance to aid in the identification and correction of Material Defects.
- b) Designated Contact. You shall designate a contact person from your organization (which may be changed by notice to us, the "Designated Contact") to be the sole contact between you and us for the coordination and receipt of the Support Services. The Designated Contact shall be knowledgeable of the operation of your system containing the Product and your use of the Product. The Designated Contact shall be trained on the proper use of the Product.
- c) End-User License Agreement. During the term of this SHMA, you will maintain in effect the End-User License Agreement for each Software Product you have purchased. If the End-User License Agreement is terminated for any reason, this SHMA will terminate concurrently therewith.
- d) Intellectual Property Rights. We and you agree that ownership and use of any and all Software Products and any related confidential information, documentation or other materials provided hereunder, including without limitation any and all updates and upgrades to Software Products subsequently provided to you, shall be governed by the End-User License Agreement.

- 4) **Fees, Term and Termination.**
- a) **Initial Term.** The Initial Term of this Agreement is twelve (12) months (or such longer period if indicated and purchased via an Order Agreement) and shall commence on the first day the Product is registered with Network Intelligence, or thirty (30) days from the date of purchase, whichever occurs first.
 - b) **Renewal Term.** Your current Maintenance Support shall automatically renew in annual terms ("Renewal Terms"). The fee for the Renewal Term shall be provided to you with no less than thirty (30) days notice prior to the commencement of the new term. You may discontinue Support Services in Renewal Terms by providing written notice terminating this SHMA prior to the effective date of the Renewal Term.
 - c) **Reinstatement Fees for Lapsed Maintenance Support.** If you choose to allow this SHMA to lapse, you may at a later time elect to reinstate this SHMA and receive the Support Services in exchange for the applicable fees. Reinstatement shall become effective upon payment of the following: (i) the then current annual Maintenance Support Fee for the Renewal Term, and (iii) the prorated SHMA Fee allocable to the lapsed period from the effective date of termination to the effective date of reinstatement of this SHMA.
 - d) **Termination.** In addition to any termination pursuant to the provisions of clause (b) above, this SHMA may further be terminated: by either party in the event the other party materially breaches a provision of this SHMA and the breaching party fails to cure such breach within thirty (30) days after notice of such breach from the non-breaching party; provided, however, that this SHMA may not be terminated if such breach cannot be cured within such thirty (30)-day period and the breaching party takes steps within such thirty (30) day period to cure the breach and thereafter cures such breach as soon as practicable.
- 5) **Limited Warranty and Limitation of Liability.**
- a) **Standard of Care.** We warrant that the Support Services will be provided in a professional manner.
 - b) **No Other Warranties.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE EXPRESS WARRANTIES SET FORTH HEREIN ARE THE ONLY WARRANTIES GIVEN BY NETWORK INTELLIGENCE WITH RESPECT TO THE SERVICES FURNISHED HEREUNDER. NETWORK INTELLIGENCE MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED OR ARISING BY CUSTOM OR TRADE USAGE, AND SPECIFICALLY MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. SAID EXPRESS WARRANTIES SHALL NOT BE ENLARGED OR OTHERWISE AFFECTED BY NETWORK INTELLIGENCE'S RENDERING OF TECHNICAL OR OTHER ADVICE OR SERVICE IN CONNECTION WITH THE PRODUCT.
 - c) **Limitation of Liability.** NETWORK INTELLIGENCE'S LIABILITY IN CONTRACT, TORT, OR OTHERWISE ARISING OUT OF OR IN CONNECTION WITH ANY SERVICES, PRODUCTS, OR ANY OUTPUT OF ANY PRODUCTS OR ANY SALES OR LICENSE AGREEMENT WITH YOU SHALL NOT EXCEED THE AMOUNT PAID BY YOU TO NETWORK INTELLIGENCE IN MAINTENANCE SUPPORT FEES FOR THE PRIOR TWELVE (12) MONTH PERIOD. IN NO EVENT SHALL NETWORK INTELLIGENCE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, TORT, OR CONSEQUENTIAL DAMAGES (INCLUDING ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS OR LOSS OF BUSINESS) ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THE PRODUCTS OR NETWORK INTELLIGENCE'S PERFORMANCE OF SERVICES, EVEN IF NETWORK INTELLIGENCE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 6) **Force Majeure.** In the event that either party is prevented from performing any of its non-monetary obligations under this SHMA due to any cause beyond its reasonable control, the affected party's performance shall be excused and the time for performance shall be extended for the period of delay due to such occurrence.
- 7) **Governing Law and Jurisdiction.** This SHMA shall be construed, and the relations of the parties shall be determined, in accordance with the laws of the Commonwealth of Massachusetts in the United States, as such laws apply to contracts between residents of Massachusetts. Neither the United Nations Treaty for International Sale of Goods nor the Uniform Computer Information Transactions Act ("UCITA") shall govern this Agreement. All disputes arising under this Agreement shall be brought in the District Court of the Commonwealth of Massachusetts in Middlesex County or the Federal District Court of Eastern Massachusetts as permitted by law.
- 8) **Entire Agreement.** This SHMA constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communications, whether written or oral. This SHMA may only be amended by you with a written document signed by both parties. The terms on any Order Agreement or similar document will have no effect.
- 9) **Miscellaneous.** You may not delegate any duties nor assign any rights hereunder without our prior written consent and any such attempted delegation or assignment shall be deemed void absent consent from us. In the event that any provision contained herein shall be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The failure by either party to enforce, or the waiver by either party of a breach of any provision contained herein shall not constitute a waiver of any other breach or of such provision.