## NICE SYSTEMS INC. END-USER LICENSE AGREEMENT

- 1. GRANT OF LICENSE FOR REGISTERED USERS. NICE grants you a non-exclusive, perpetual license to use the program with which this license is distributed (the "Software"), including any documentation files accompanying the Software ("Documentation") on a single server (if the Software is server based) or a single personal computer (if the Software is PC based) to support up to the number of simultaneous users for which you have paid the license fee, and to make one backup copy of the Software, provided that (i) the Software is installed on only one server or personal computer; (ii) the Software may NOT be modified; (iii) all copyright notices are maintained on the Software; and (v) you agree to be bound by the terms of this License Agreement. The Software is licensed to you and not sold to you. If you receive the Software in more than one medium, you may only use the one medium which is appropriate for your single server or personal computer. You may not use, install on another computer, or loan, lease or otherwise transfer to another user the other medium. Use of the program is limited to use by your employees, contractors, agents or representatives, provided, however, that all such persons or entities are bound by the provisions of this End-User License Agreement and you shall use reasonable efforts to ensure compliance of all such persons or entities under the terms of this End User License Agreement.
- 2. <u>OWNERSHIP.</u> You have no ownership rights in the Software. Rather, you have a license to use the Software pursuant to the terms of this License Agreement as long as this License Agreement remains in full force and effect. Ownership of the Software, Documentation and all intellectual property rights therein shall remain at all times with NICE. Any other use of the Software by any person, business, corporation, government organization or any other entity, except by your employees, contractors, agents or representatives, for Customer's benefit, is strictly forbidden and is a violation of this License Agreement.
- 3. <u>COPYRIGHT.</u> The Software and Documentation contain material that is protected by United States and international Copyright Law and trade secret law, and by international treaty provisions. All rights not granted to you herein are reserved to NICE. You may not remove any proprietary notice of NICE from any copy of the Software or Documentation. You may not copy the printed materials and Documentation that accompany the Software except to provide training for your employees, contractors, agents or representatives for Customer's benefit and use of the Software.
- 4. <u>RESTRICTIONS.</u> This License Agreement is your proof of license to exercise the rights granted herein and must be retained by you. You must protect the Software and Documentation consistent with NICE's rights therein, including informing persons who are permitted access thereto in order to satisfy your obligations hereunder and maintain the confidentiality of the Software and Documentation. You may not publish, display, disclose, rent, lease, modify, loan, distribute, alter or create derivative works based on the Software or any part thereof. You may not reverse engineer, decompile, translate, adapt, or disassemble the Software, nor shall you attempt to create the source code from the object code for the Software. You may not transmit the Software over any network or between any devices, although you may use the Software to make such transmissions of other materials. You may transfer the Software to another computer you own as long as you only use the Software on one computer at a time.
- 5. <u>LIMITED WARRANTY.</u> NICE WARRANTS FOR A MAXIMUM PERIOD OF SIX (6) MONTHS, AFTER DELIVERY, THAT THE SOFTWARE WILL PERFORM SUBSTANTIALLY IN ACCORDANCE WITH THE DOCUMENTATION. SHOULD THE SOFTWARE NOT SO PERFORM, YOUR EXCLUSIVE REMEDY, AND NICE'S SOLE OBLIGATION UNDER THIS WARRANTY SHALL BE CORRECTION OF THE DEFECT ANY USE BY YOU OF THE SOFTWARE IS AT YOUR OWN RISK. THIS LIMITED WARRANTY IS VOID IF NONPERFORMANCE OF THE SOFTWARE IS DUE TO ABUSE OR MISAPPLICATION. THIS LIMITED WARRANTY IS THE ONLY WARRANTY PROVIDED BY NICE REGARDING THE SOFTWARE. YOU AGREE THAT THE FOREGOING CONSTITUTES YOUR SOLE AND EXCLUSIVE REMEDY OF BREACH BY NICE OR ANY WARRANTIES MADE UNDER THIS AGREEMENT. EXCEPT FOR THE LIMITED WARRANTY ABOVE, THE SOFTWARE IS PROVIDED "AS IS". TO THE MAXIMUM EXTENT PERMITTED BY LAW, NICE DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF

MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE. NICE DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET ANY REQUIREMENTS OR NEEDS YOU MAY HAVE, OR THAT THE SOFTWARE WILL OPERATE ERROR FREE, OR IN AN UNINTERRUPTED FASHION, OR THAT ANY DEFECTS OR ERRORS IN THE SOFTWARE WILL BE CORRECTED, OR THAT THE SOFTWARE IS COMPATIBLE WITH ANY PARTICULAR PLATFORM. NICE IS NOT OBLIGATED TO PROVIDE ANY UPDATES TO THE SOFTWARE. SOME JURISDICTIONS DO NOT ALLOW THE WAIVER OR EXCLUSION OF IMPLIED WARRANTIES.

6. **LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE, OR FOR ANY CLAIM BY ANY OTHER PARTY, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NETHER PARTY'S LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE WITH RESPECT TO THE SOFTWARE AND DOCUMENTATION OR OTHERWISE SHALL NOT EXCEED THE AMOUNT OF THE LICENSE FEE PAID BY YOU FOR THE SOFTWARE AND DOCUMENTATION GIVING RISE TO THE LIABILITY BECAUSE SOME STATES/COUNTRIES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

## 7. **INFRINGEMENT INDEMNITY.**

- Infringement Indemnity. NICE will defend, indemnify, and hold harmless Customer and Customer's owners, officers, directors, and employees (individually and collectively, an "Indemnified Party") from any third party claim, action, suit, or proceeding against an Indemnified Party (a "Claim") to the extent that such Claim is based upon an allegation that NICE Software infringes any right protected by any patent, copyright, trademark or trade secret of any third party that is enforceable in the United States. NICE will indemnify an Indemnified Party for any judgments, settlements, reasonable costs, and reasonable attorneys' fees resulting from a Claim finally awarded by a court of competent jurisdiction in any such Claim after exhaustion of all permissible appeals. NICE's obligations under this Section are conditioned upon the following: (i) within a reasonable time of becoming aware of the Claim, an Indemnified Party provides to NICE prompt written notice of the Claim; provided, however, that failure to give such notice shall not affect the indemnification hereunder except to the extent that NICE has been actually prejudiced thereby; (ii) an Indemnified Party gives to NICE sole authority and control of the defense and/or settlement of the Claim; and (iii) an Indemnified Party provides all relevant information and reasonable assistance requested by NICE to handle the defense and/or settlement of the Claim. An Indemnified Party, at its expense, may hire legal counsel of its choice to participate in an advisory capacity related to discussions, negotiations, or proceedings of the Claim, but such legal counsel shall not, without the prior written consent of NICE, participate in any other capacity with respect to the Claim.
- **(b)** Remedial Measures. If the NICE Software becomes the subject of a Claim, or if NICE reasonably believes that use of such Software may become the subject of a Claim, NICE may, at its own expense and option: (i) procure for CUSTOMER the right to continue use of the Software or (ii) replace the Software with a non-infringing Software; (iii) modify the Software so that it becomes non-infringing; or (iv) CUSTOMER may choose to retain and continue use of such Software if CUSTOMER waives its entitlement to indemnity under this Section 11 with respect to the applicable Claim.
- (c) Exceptions. NICE will have no defense or indemnity obligation for any Claim based on (i) a Software that has been modified by someone other than NICE; (ii) a Software that has been

modified by NICE in accordance with either CUSTOMER-provided specifications or instructions; (iii) a Software that has been used with or combined with hardware or software not furnished by NICE; (iv) combination of Software with Products, if the infringement would not occur but for the combination; or (v) CUSTOMER or End User products or "Third Party Products." The term "Third Party Products" means any products or software supplied to CUSTOMER by a party other than NICE, and may include, without limitation, products or software ordered by CUSTOMER from third parties. However, Third Party Products do not include components of Software that both (i) are not recognizable as standalone items; and (ii) are not identified as separate items on NICE's price list, quotes, orders or documentation. CUSTOMER will indemnify NICE for any judgments, settlements and reasonable attorneys' fees resulting from a Claim to the extent that such Claim is based on subsections (i) or (ii) above, if applicable.

- (d) No Other Remedies Regarding Infringements. THE FOREGOING STATES NICE'S ENTIRE LIABILITY AND AN INDEMNIFIED PARTY'S SOLE AND EXCLUSIVE REMEDIES WITH RESPECT TO ANY INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.
- 8. <u>EXPORT RESTRICTIONS.</u> THIS LICENSE AGREEMENT IS EXPRESSLY MADE SUBJECT TO ANY LAWS, REGULATIONS, ORDERS, OR OTHER RESTRICTIONS ON THE EXPORT FROM THE UNITED STATES OF AMERICA OF THE SOFTWARE OR INFORMATION ABOUT SUCH SOFTWARE WHICH MAY BE IMPOSED FROM TIME TO TIME BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA. YOU SHALL NOT EXPORT THE SOFTWARE, DOCUMENTATION, OR INFORMATION ABOUT THE SOFTWARE AND DOCUMENTATION WITHOUT CONSENT OF NICE AND COMPLIANCE WITH SUCH LAWS, REGULATIONS, ORDERS, OR OTHER RESTRICTIONS.
- 9. <u>TERMINATION.</u> This License Agreement is effective until terminated. You may terminate this License Agreement at any time by destroying or returning to NICE all copies of the Software and Documentation in your possession or under your control. NICE may terminate this License Agreement if NICE finds that you have violated the terms of Section 4 and for both parties, Section 12 of this License Agreement; provided, however, that in the event of a material breach of any terms of this License Agreement other than Sections 4 and 12, a cure period of ten (10) days (the "Cure Period") shall be in effect. In the event that the breaching party is unable to cure such breach during the Cure Period, the non-breaching party may terminate this License Agreement. Upon notification of termination, you agree to destroy or return to NICE all copies of the Software and Documentation and to certify in writing that all known copies, including backup copies, have been destroyed. All provisions relating to confidentiality, proprietary rights, non-disclosure, disclaimer of warranty and limitation of liability shall survive the termination of this License Agreement.
- 10. GENERAL. This License Agreement shall be interpreted construed and governed by and in accordance with the laws of the State of Delaware. Jurisdiction and venue for any suit or proceeding arising under this Agreement or the relationship of the parties shall lie in the courts in Delaware. This License Agreement shall constitute the entire Agreement between the parties hereto. Any waiver or modification of this License Agreement shall only be effective if it is in writing and signed by both parties hereto. The waiver or failure of either party to exercise any right in any respect provided for herein shall not be deemed a waiver of any future right hereunder. If any part of this License Agreement is found invalid or unenforceable by a court of competent jurisdiction, the remainder of this License Agreement shall be interpreted so as to reasonably affect the intention of the parties. No action, regardless of form, arising out of this Agreement may be brought by you more than two (2) years after such cause of action shall have accrued. Either party may assign, sublicense, transfer, pledge, lease, rent or share its rights under this License Agreement upon the prior written consent of the other party, which consent shall not be unreasonably withheld.
- 11. <u>U.S. GOVERNMENT RESTRICTED RIGHTS.</u> The Software (including the Documentation) is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software

clause of DFARS 252.227-7013 or subparagraph (c)(l) and (2) of the Commercial Computer Software-Restricted Rights clause at 48 CFR 52.227-19 as amended, or any successor regulations thereto.

12. CONFIDENTIAL INFORMATION AND NON-DISCLOSURE. The term "Confidential Information" shall include all information provided by each party to the other party, or their affiliates, employees, officers, directors, agents or representatives, including without limitation the terms and conditions of this Agreement, the NICE Software, the Third Party Software, and any and all of a party's design specifications, drawings, written manuals, software programs, business plans, financial information, technical and marketing information and evaluations, service plans and customer information designated orally or in writing as confidential or otherwise which by its nature should be considered confidential. For purposes herein, a party disclosing information shall be deemed the "Disclosing Party" and a party receiving information shall be deemed the "Receiving Party." Confidential Information shall not include information which can be demonstrated: (a) to have been rightfully in the possession of the Receiving Party from a source other than the Disclosing Party prior to the time of disclosure of said information to the Receiving Party ("Time of Disclosure"); (b) to have been in the public domain prior to the Time of Disclosure; (c) to have become part of the public domain after the Time of Disclosure by a publication or by any other means, except an unauthorized act or omission or breach of this Agreement on the part of the Receiving Party, or its employees; (d) to have been supplied to the Receiving Party after the Time of Disclosure without restriction by a third party who is under no obligation to the Disclosing Party to maintain such information in confidence; (e) to be required to be disclosed by law or court order, provided that the Receiving Party shall use best efforts to provide the Disclosing Party with prompt notice sufficient for the Disclosing Party to have a reasonable opportunity to prevent such disclosure and shall use best efforts to limit the information to be disclosed; or (f) to have been independently developed by the Receiving Party, provided that any persons developing same have not had access to Confidential Information and have written evidence demonstrating such independent development.

In consideration of the willingness of the Disclosing Party to disclose Confidential Information to the Receiving Party, the Receiving Party hereby agrees: (a) to use or disclose Confidential Information only for the purpose authorized in writing by the Disclosing Party; (b) to use all reasonable precautions, including without limitation requiring any affiliates, employees, officers, directors, agents or representatives of the Receiving Party with access to Confidential Information of the Receiving Party's obligations under this Section to keep Confidential Information secret and to prevent its disclosure to third parties without the prior written consent of the Disclosing Party; (c) to refrain from copying or distributing such Confidential Information within the Receiving Party's own organization except on a limited "need to know" basis; and (d) to return all documents containing Confidential Information promptly upon the request of the Disclosing Party. In any event, Confidential Information shall be protected by the Receiving Party with the same degree of care as the Receiving Party uses for its own Confidential Information, but no less than a reasonable degree of care.

If the Receiving Party or any of its affiliates, employees, officers, directors, agents or representatives shall attempt to improperly use or knowingly disclose any of the Confidential Information, the Disclosing Party shall have the right, in addition to such other remedies which may be available to it, to injunctive relief enjoining such acts or attempts; it being acknowledged that legal remedies are inadequate.

13. <u>COUNTERPARTS.</u> For the convenience of the parties, copies of this Agreement may be executed in two or more counterparts and signature pages exchanged by facsimile. The parties intend that counterpart copies signed and exchanged as provided in the preceding sentence shall be fully binding as an original handwritten executed copy hereof and all of such copies together shall constitute one instrument.