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1. DEFINITIONS.

1.1 “Computer” means a virtual or physical device that accepts information in digital or similar form and manipulates it for a specific result based on a sequence of instructions, including without limitation desktop computers, laptops, tablets, mobile devices, telecommunication devices, internet-connected devices, and hardware products capable of operating a wide variety of productivity and/or other software applications.

1.2 “Licensed Software Agent” means each version of Waratek’s proprietary computer application and/or program licensed hereunder, and software files and other computer information, proprietary scripting logic embedded within exported file formats, related explanatory written materials and files (“Documentation”) and any modified versions and copies of, and upgrades, new releases or versions provided to you by Waratek at any time to the extent not provided under separate terms.

1.3 “User(s)” mean an individual authorized to use the Licensed Software Agent and Documentation. User(s) may include without limitation employees, consultants, and/or contractors, and, if applicable, your customers.



1.4 “Partner(s)” means a company or individual that is authorized by Waratek to resell the Licensed Software Agent and accompanying Documentation.

2. GRANT OF LICENSE.

2.1 License Grant.

(a) Waratek hereby grants you a limited, non-exclusive, non-transferable license to access and/or use the Licensed Software Agent on any Computer that you own or control solely for your internal business operations and in accordance with the terms and conditions contained herein and for the timeframes designated by Waratek, in its sole and absolute discretion. The terms and conditions of this EULA will govern any content, materials, and/or services accessible from or within the Licensed Software Agent as well as upgrades provided by Waratek that replace or supplement the original Licensed Software Agent, unless such upgrade is accompanied by a separate end user license agreement. You may not transfer, redistribute or sublicense the Licensed Software Agent and, if you sell your Computer to a third party, you must remove the Licensed Software Agent from the Computer before doing so.

(b) The Licensed Software Agent is in use on a Computer when it is loaded into temporary memory or installed in permanent memory (hard drive, CD-ROM or other storage device). You agree to prevent and protect the Computer, the contents of the Licensed Software Agent and/or Documentation from unauthorized use or disclosure, with at least the same degree of care that you use to protect your own confidential and proprietary information, and in no event less than a reasonable degree of care under the circumstances. You agree that you will register this Licensed Software Agent only with a Partner or Waratek and that you will only install a Licensed Software Agent obtained directly from a Partner or Waratek.

(c) Certain components of the Licensed Software Agent may be subject to open-source software (“Open-Source Components”), which means any software license approved as open-source licenses by the Open Source Initiative or any substantially similar licenses, including without limitation any license that, as a condition of distribution of the software licensed under such license, requires that the distributor make the software available in source code format. Open-Source Components are provided "as is," and Waratek makes no warranties regarding the functionality or performance of these components. The Licensed Software Agent includes copies of the license applicable to the Open-Source Components. To the extent there is a conflict between the license terms covering the Open-Source Components and this EULA, the terms of such Open-Source Components licenses shall apply solely with respect to the Open-Source Components. To the extent the terms of the licenses applicable to Open-Source Components prohibit any of the restrictions in this EULA with respect to the Open-Source Component, such restrictions will not apply to such Open-Source Component.

3. LICENSE RESTRICTIONS; OBLIGATIONS.

3.1 **License Restrictions; Use.** You represent and warrant that your Users will also abide by the terms and conditions of this EULA and you acknowledge and agree that you shall be fully responsible for any Users breach of this EULA. You further agree to use commercially reasonable efforts to prevent unauthorized access to, and/or use of the Licensed Software Agent, and will notify Waratek immediately of any such unauthorized use. You shall use the Licensed Software Agent and/or Documentation solely in a manner that complies with all applicable laws in the jurisdictions in which you use the Licensed Software Agent and/or Documentation, including, but not limited to, applicable local, state, federal, and international laws relating to intellectual property, privacy and security.

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3.3 Suspension. Notwithstanding anything herein to the contrary, Waratek reserves the right, without liability to you, to disable and/or suspend your access to and/or use of the Licensed Software Agent in the event (i) of any breach and/or anticipated breach of this EULA, (ii) you and/or you Users use of the Licensed Software Agent disrupts and/or poses a security risk to the Licensed Software Agent and/or any other customer, may harm Waratek's systems and/or any provider of any third-party services and/or may subject Waratek and/or any third-party to liability, (iii) you and/or you Users are using the Licensed Software Agent for fraudulent and/or illegal activities, and/or (iv) Waratek's continued provision of the Licensed Software Agent to you and/or your Users is prohibited by applicable law.

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4.2 Waratek Trademarks. You may not delete, remove, hide, move or alter any trademark, logo, icon, image or text that represents the company name of Waratek and/or its licensors, any derivation thereof, or any icon, image, or text that is likely to be confused with the same. All representations of the Waratek name or mark or any of its licensors names or marks must remain as originally distributed regardless of the presence or absence of a trademark, copyright, or other intellectual property symbol or notice.



5. WARRANTY; LIMITATION OF LIABILITY.

5.1 No Warranty. YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE LICENSED SOFTWARE AGENT IS AT YOUR SOLE RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE LICENSED SOFTWARE AGENT IS PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND WARATEK EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, AND/OR THOSE ARISING BY LAW, STATUTE, USAGE OF TRADE, AND/OR COURSE OF DEALING. WARATEK DOES NOT REPRESENT, WARRANT, AND/OR COVENANT THAT THE LICENSED SOFTWARE AGENT WILL BE AVAILABLE WITHOUT INTERRUPTION OR TOTALLY ERROR-FREE, OR THAT ALL ERRORS (INCLUDING, BUT NOT LIMITED TO, MINOR OR COSMETIC DEFECTS THAT DO NOT SIGNIFICANTLY AND ADVERSELY AFFECT FUNCTIONALITY OR FEATURES) CAN OR WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY WARATEK OR ITS AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY. SHOULD THE LICENSED SOFTWARE AGENT PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO THE ABOVE EXCLUSION AND LIMITATIONS MAY NOT APPLY TO YOU.

5.2 Limitation of Liability. WARATEK'S TOTAL AND CUMULATIVE LIABILITY FOR DIRECT DAMAGES ARISING OUT OF AND/OR IN CONNECTION WITH THIS EULA SHALL IN NO EVENT EXCEED ONE HUNDRED DOLLARS (\$100.00). NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS EULA, IN NO EVENT WILL WARATEK BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, DATA, GOODWILL, AND BUSINESS) EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR PERSONAL INJURY, OR OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION MAY NOT APPLY TO YOU. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE REMEDIES SET FORTH HEREIN FAIL OF ITS ESSENTIAL PURPOSE.

6. INDEMNIFICATION.

You agree to indemnify, defend, and hold harmless Waratek and its officers, directors, employees, contractors and other representatives from and against any and all liabilities, losses, damages, costs, and other expenses (including reasonable attorneys' fees) resulting from any claim or suit arising out of or related to (i) your and/or your Users' breach of this EULA; and (ii) your and/or your Users' use or misuse of the Licensed Software Agent; and/or (iii) your and/or your Users' failure to comply with any law, rule or regulation. Waratek may reasonably participate in the defense of the claim, at its sole expense.

7. THIRD PARTY PROGRAMS/SERVICES.

You agree that Waratek may use third party programs and/or services to provide the Licensed Software Agent described herein (collectively, "Third Party Services/Programs"). To the extent the Licensed Software Agent is bundled with Third Party Services/Programs, such Third Party Services/Programs are governed by their own license terms, which may include open source or free software licenses, and such terms will prevail over this EULA as it relates to your use of the third-party programs. You acknowledge and agree that Waratek shall not be liable for its inability to access and/or retrieve accurate data from Third Party Services/Programs, systems and/or applications that it is dependent upon. Notwithstanding anything herein to the contrary, Waratek is not responsible for any unauthorized access to, alteration of, and/or the



deletion, destruction, damage, loss and/or failure to store any data and/or other information that you and/or Users use in connection with the Licensed Software Agent.

8. GOVERNING LAW; ARBITRATION.

8.1 **Arbitration.** Except as otherwise expressly provided herein, any controversy or claim arising out of or relating to this EULA, or the breach thereof, shall be settled through binding arbitration in accordance with the Judicial Arbitration and Mediation Services (JAMS) International Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction. Exclusive venue for such arbitration shall be Wilmington, Delaware. Notwithstanding the foregoing, neither party shall be precluded from seeking injunctive or similar equitable relief in the courts of any jurisdiction including, but not limited to, temporary restraining orders and preliminary injunctions, to protect its rights, including, without limitation, relating to intellectual property rights and/or confidential information.

8.2 **Governing Law.** Any disputes, claims, or controversies arising out of or relating to the intellectual property rights associated with this Agreement, shall be governed by and construed in accordance with the laws of Ireland, without regard to its conflicts of law principles. All other disputes, claims, or controversies arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, United States, without regard to its conflicts of law principles. You agree to submit to the exclusive jurisdiction of the state and federal courts located in Delaware for the resolution of any such disputes, claims, or controversies

9. OTHER AGREEMENTS.

Use of materials and/or services included in and/or accessed through the Licensed Software Agent may be subject to additional terms and conditions as may be provided by Waratek from time to time. Except as otherwise provided in this EULA, if any terms and/or conditions contained in this EULA conflict with any terms and/or conditions of any other agreement, the terms and/or conditions contained in this EULA shall govern and control solely with respect to the Licensed Software Agent described herein.

10. MISCELLANEOUS

10.1 **Notices.** Except as otherwise permitted in this EULA, notices under this EULA shall be in writing and shall be deemed to have been given (a) five (5) business days after mailing if sent by registered or certified U.S. mail, (b) when transmitted if sent by facsimile or electronic mail, provided that a copy of the notice is promptly sent by another means specified in this section, or (c) when delivered if delivered personally or sent by express courier service.

10.2 **Survival; Severability.** Any terms and/or conditions of this EULA which, by its nature, would survive termination of this EULA, will survive any such termination of this EULA. If any one or more of the provisions of this EULA are for any reason held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions of this EULA will be unimpaired and will remain in full force and effect.

10.3 **Headings; Recitals; Construction; No Waiver.** Paragraph or Section headings are inserted for convenience of reference only and shall have no effect on interpretation or in the construction of this EULA. The recitals are hereby incorporated into the body of this EULA for all intents and purposes as if fully set forth herein. You agree that this EULA shall not be construed against any party by reason of the drafting or preparation thereof. No waiver by Waratek of any breach or default of this EULA shall be deemed to be a waiver of any preceding or subsequent breach or default.

10.4 **Third Parties.** Other than as expressly provided herein, this EULA does not create any rights for any person who is not a party to it, and no person not a party to this EULA may enforce any of its terms or rely on an exclusion or limitation contained in it. Waratek may, in its sole and absolute discretion, use subcontractors or any other third party to install the Licensed Software Agent.



10.5 **Assignment.** You shall have no right to assign or transfer your rights or obligations pursuant to this EULA without the prior written consent of Waratek. The terms and conditions of this EULA will inure to the benefit of, and shall be binding upon, each party's successors and permitted assigns.

10.6 **Export Restrictions.** The Licensed Software Agent and/or Documentation delivered to you under this EULA are subject to U.S. export control laws and regulations and may also be subject to import and export laws of the jurisdiction in which it was obtained, if outside the U.S. You shall abide by all applicable export control laws, rules and regulations applicable to the Licensed Software Agent and/or Documentation. You agree that you will not export, re-export, or transfer the Licensed Software Agent and/or Documentation, in whole or in part, to any country, person, or entity subject to U.S. export restrictions. You specifically agree not to export, re-export, or transfer the Licensed Software Agent and/or Documentation (i) to any country to which the U.S. has embargoed or restricted the export of goods or services, or to any national of any such country, wherever located, who intends to transmit or transport the products back to such country; (ii) to any person or entity who you know or have reason to know will utilize the Licensed Software Agent or portion thereof in the design, development, production or use of nuclear, chemical or biological materials, facilities, or weapons; or (iii) to any person or entity who has been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government.

10.7 **Attorney's Fees.** If Waratek brings an action against you to enforce its rights under this EULA, Waratek shall be entitled to recover costs and expenses, including, without limitation, attorneys' fees and costs, incurred in connection with such action.

10.8 **Interpretation.** Unless the context of this EULA otherwise indicates: (a) words using the singular number should also include the plural and words using the plural number should also include the singular; (b) the terms "hereof," "herein," "hereby" and derivative or similar words refer to this entire EULA; (c) the terms "Article" or "Section" refer to the specified Article or Section of this EULA; (d) the word "including" will mean "including, without limitation;" and (e) when used in the context of a series of items the word "or" will be construed such that the series may include any of the items, all of the items, or any combination of the items.

10.9 **Entire Agreement.** This EULA constitutes the complete agreement and understanding between the parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings between the parties as it relates to the Licensed Software Agent.

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