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hyperI/O LLC.

hIOmon™
I/O Performance Monitor

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If you have any questions about this EUSLA, please contact the distributor, reseller, or vendor from whom you purchased the Product. hyperI/O LLC can be contacted at 4450 Arapahoe

Avenue, Suite 100, Boulder, Colorado, 80303-9102; Telephone: hyperI/O LLC Customer Support at +1 303.415.2044; email: hIOmonSupportInfo@hyperIO.com.

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- * If You have an upgrade version of the Product, it constitutes a single Product with the Product that you upgraded. You may Use or transfer the upgrade version of the Product only in accordance with the EUSLA.

- * If You have licensed the Product for "**Personal Use**", then You agree that You have licensed the Product as an individual or not-for-profit entity (excluding governmental entities, educational institutions and professional associations) only, and that You may install and "Use on a Single Computer" (as defined within this EUSLA and in accordance with the specific type of "Licensed Usage" stipulated within a separate Product Agreement, if any, covering the licensing terms and conditions of the Product) the Product for Your own personal, internal use and in no event for the benefit of a company, for-profit entity, governmental entity, educational institution or professional association.

- * If You have licensed the Product for "**Business Use**", then You agree that You have licensed the Product on behalf of a for-profit entity, governmental entity, educational institution or professional organization, and that You may install and Use the Product for Your internal use only upon the number of computers for which You have paid License fees and only in accordance with the specific type of "Licensed Usage" stipulated within the Product Agreement covering the licensing terms and conditions of the Product.

- * A unique "Licensed Serial Number", provided by hyperI/O LLC, is required for each licensed Use of the Product. You agree that You will use this Licensed Serial Number in Your response to the request for a Serial Number during the installation of the Product. You also agree to provide the Product ID number generated during the installation of the Product to the distributor, reseller, or vendor from whom you purchased or obtained the Product. This Product ID number is required to subsequently enable and affect the proper licensing of the Product under this EUSLA.

- * **Reservation of Rights.** hyperI/O LLC reserves all rights not expressly granted to You in this EUSLA.

- * The Product provided hereunder may contain or be derived from portions of materials or

software provided by one or more third parties under license to hyperI/O LLC as indicated in the accompanying documentation or otherwise, and each such third party shall have the right to enforce the terms and conditions of this EUSLA against you with respect to such third party's software.

* You agree that You shall only Use the Product in a manner that complies with all applicable laws in the jurisdiction in which you Use the Product, including, but not limited to, applicable restrictions concerning copyright and other intellectual property rights.

* This EUSLA is binding on You as well as your employees, employers, contractors and agents, and on any successors and assignees.

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* Use on a Single Computer. A Product that is licensed upon a "Use on a Single Computer" basis may be used only on a single physical or virtual computer by a single user at any time. In all cases (that is, whether the Product is installed upon a physical or a virtual computer), only one running instance of the hIOMon Manager service component (which is incorporated within the Product) may be used with a single Licensed Serial Number; that is, a single Licensed Serial Number may be used to install and run only one instance of the hIOMon Manager service at any time. Using a single Licensed Serial Number to concurrently run more than one instance of the hIOMon Manager service is not permitted when the Product is licensed upon a "Use on a Single Computer" basis.

In addition, You may transfer the machine-readable portion of the Product from one computer to another computer provided that:

(a) the Product (including any portion or copy thereof) is erased from the first computer,
AND

(b) there is no possibility that the Product will be used on more than one computer at a time.

* Stand-Alone Basis. A Product that is licensed upon a "Stand-Alone Basis" may only be used such that the Product and the functions that it provides are accessible only to persons who

are physically present at the location of the computer upon which the Product is loaded; in addition, You may not allow the Product or its functions to be accessed remotely nor transmit all or any portion of the Product through any network or communication line.

* Network Version. If You have licensed a "Network Version" of the Product, then this EUSLA applies to the installation of the Product upon a single "server." It may not be copied onto multiple systems. Each "node" connected to the "server" must also have its own license of a "node copy" of the Product.

* Time-Limited Basis. A Product that is licensed upon a "Time-Limited Basis" may only be used upon a "Use on a Single Computer" basis for the specific time period or term (as examples, one week or one month) specified and enabled by hyperI/O LLC. The Product must be completely uninstalled/erased from the computer after the specified time period or term has expired.

Only hyperI/O LLC may, at its sole discretion, extend the specific time period/time allowed for use of the Product on a "Time-Limited Basis", and any such extension is only permitted by the express, written consent of hyperI/O LLC and for the specific time period/term specified by hyperI/O LLC. Any "trial" or "demonstration" version of the Product is licensed upon a "Time-Limited Basis". Any re-installation of the Product that is licensed upon a "Time-Limited Basis" and whose specific time period/term has expired upon a computer system is prohibited upon the same computer system; that is, You are not permitted to re-install the Product licensed on a "Time-Limited Basis" upon the same computer system after the specified time period/term has expired (unless otherwise authorized by hyperI/O LLC through its express consent). Any subsequent use of the Product licensed upon a "Time-Limited Basis" upon another, different computer system once the specified time period/term has expired is permitted only in accordance with the specific type of "Licensed Usage" stipulated within the Product Agreement covering the licensing terms and conditions of the Product.

* Consultants Package Version. A "Consultants Package" version of the Product provides to You one or more unique Licensed Serial Numbers that can be used to install the Product, which is licensed to You upon a "Use on a Single Computer" basis and a "Time-Limited Basis". In addition, this version of the Product allows You to use the same Licensed Serial Number (after the installed copy of the Product using this Licensed Serial Number has been uninstalled or expired) again upon a different computer (upon which the Product has not yet been installed) for the specific time period or term permitted by the "Time-Limited Basis".

* Freeware Version. If You have licensed a "freeware" version of the Product, then the Product may be used by You upon a "Personal Use" basis only and may not be used upon a "Business Use" basis (both of which are defined within "GRANT OF LICENSE" above).

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You may make one (1) archival copy of the machine-readable portion of the Product for backup purposes only in support of your own use of the Product on a single computer, provided that You reproduce on the copy all copyright and other proprietary rights notices included on the originals

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6. LIMITATION ON REVERSE ENGINEERING, DECOMPILATION, AND DISASSEMBLY.

The Product contains hyperI/O LLC trade secrets, and You may not reverse engineer, decompile, disassemble, try to work around any technical limitations within the Product, or otherwise attempt to extract the source code embodied in the Product or engage in any other activities to obtain underlying information that is not visible to the user in connection with normal use of the Product, except and only to the extent that it is expressly permitted by applicable law notwithstanding this limitation.

In particular, You agree not for any purpose to transmit the Product or display the Product's object code on any computer screen or to make any hardcopy memory dumps of the Product's object code. If You believe that You require information related to the interoperability of the Product with other programs, You shall not decompile or disassemble the Product to obtain such information, and You agree to request such information from hyperI/O LLC at the address listed above. Upon receiving such a request, hyperI/O LLC shall determine whether You require such information for a legitimate purpose and, if so, hyperI/O LLC will provide such information to You within a reasonable time and on reasonable conditions.

In any event, You will notify hyperI/O LLC of any information derived from reverse engineering or such other activities, and the results thereof will constitute the confidential information of hyperI/O LLC that may be used only in connection with the Product.

In those jurisdictions where hyperI/O LLC's consent is not required for disassembly or decompilation, you will provide upon request by hyperI/O LLC reasonably detailed information regarding any disassembly or decompilation. You may not decrypt the Product unless decryption is a necessary part of the operation of the Product.

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Without prejudice to any other rights, hyperI/O LLC may cancel this EUSLA if You do not abide by the terms and conditions of this EUSLA, in which case you must destroy all copies of the Product and all of its component parts in any form. No notice shall be required from hyperI/O LLC to effectuate such termination. Upon termination, hyperI/O LLC may also enforce any and all rights provided by law. The provisions of this EUSLA that protect the proprietary rights of hyperI/O LLC will continue in force after termination.

You may terminate this Agreement at any time by destroying all copies of the Product in your possession or control.

8. SUPPORT SERVICES.

hyperI/O LLC uses a variety of methods (e.g., in-product, Internet, and phone) to provide technical support and other program usage assistance in connection with the Product (collectively, "Support Services"). The terms and conditions governing the offering of these services, some of which have fees chargeable to You, are announced by hyperI/O LLC from time-to-time. Consult the hyperI/O LLC web site (www.hyperIO.com) for the most up-to-date information relating to these Support Services and any associated charges.

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You agree that hyperI/O LLC and its affiliates may collect and use technical information you provide as a part of Support Services related to the Product. hyperI/O LLC agrees not to use this information in a form that personally identifies you.

10. EXPORT RESTRICTIONS.

The Product is subject to United States export laws and regulations and You agree to comply with all such domestic (as well as international) export laws and regulations that apply to the Product. You agree that you will not export or re-export the Product (or any portions thereof) to any country, person or entity subject to U.S. export restrictions. You specifically agree not to export or re-export the Product (or any portions thereof): (i) to any country subject to a U.S. embargo or trade restriction; (ii) to any person or entity who you know or have reason to know will utilize the Product (or any portions thereof) in the production of nuclear, chemical or biological weapons; or (iii) to any person or entity who has been denied export privileges by the U.S. government.

11. LIMITED WARRANTY.

hyperI/O LLC warrants to You that for a period of thirty (30) days from the date of purchase, as evidenced by a copy of the receipt, the media on which Product is furnished (if any) will be free of defects in materials and workmanship under normal use. Except for the foregoing, Product is provided "AS IS". Your exclusive remedy and hyperI/O LLC's entire liability under this limited warranty will be at hyperI/O LLC's option to replace Product media or refund the fee paid for

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To the maximum extent permitted by applicable law, hyperI/O LLC and its suppliers provide the Product and any (if any) Support Services AS IS AND WITH ALL FAULTS, and hereby disclaim all warranties, guarantees and conditions, either express, implied or statutory, including, but not limited to, any (if any) implied warranties or conditions of merchantability, of fitness for a particular purpose, of lack of viruses, of accuracy or completeness of responses, of results, and of lack of negligence or lack of workmanlike effort, all with regard to the Product, and the provision of or failure to provide Support Services. Due to the various hardware and software environments into which the Product may be used, NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE IS OFFERED. hyperI/O LLC IS NOT OBLIGATED TO PROVIDE ANY UPDATES, UPGRADES OR SUPPORT SERVICES TO/FOR THE PRODUCT.

hyperI/O LLC does not warrant or assume responsibility for the accuracy or completeness of any information, text, graphics, links or other items contained within the Product.

ALSO, THERE IS NO WARRANTY OR CONDITION OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION OR NON-INFRINGEMENT, WITH REGARD TO THE PRODUCT. THE ENTIRE RISK AS TO THE QUALITY OF OR ARISING OUT OF USE OR PERFORMANCE OF THE PRODUCT AND SUPPORT SERVICES, IF ANY, REMAINS WITH YOU.

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Any representation, other than the warranties set forth in this EUSLA, will not bind hyperI/O LLC. You assume full responsibility for the selection of the Product to achieve your intended results, and for the downloading, use and results obtained from the Product. You also assume the entire risk as it applies to the quality and performance of the Product. Should the Product prove defective, You (and not hyperI/O LLC, or its distributors or dealers) assume the entire cost of all necessary servicing, repair or correction.

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TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL hyperI/O LLC OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION OR DATA, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE PRODUCT, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS EUSLA, EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY, GUARANTEE, OR CONDITION OF hyperI/O LLC OR ANY SUPPLIER, AND EVEN IF hyperI/O LLC OR ANY SUPPLIER HAS BEEN ADVISED OF OR SHOULD HAVE KNOWN ABOUT THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME STATES (OR OTHER JURISDICTIONS) DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

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If You distribute the Product in violation of this EUSLA, You hereby indemnify, hold harmless and defend hyperI/O LLC from and against any and all claims or lawsuits, including attorney's fees and costs that arise, result from or are connected with the use or distribution of the Product in violation of this EUSLA.

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18. NOTE ON USE LIMITATIONS.

The Product is not intended for use in medical, life-saving, or life-sustaining applications.

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20. APPLICABLE LAW.

If You acquired this Product in the United States, this EUSLA is governed by the laws of the

State of Colorado without regard to conflicts of law provisions, and You hereby consent to the exclusive jurisdiction of the state and federal courts sitting in the State of Colorado. Any and all unresolved disputes arising under this EUSLA shall be submitted to arbitration in the State of Colorado; except that, to the extent that you have breached or have indicated your intention to breach this EUSLA in any manner which may cause continuing or irreparable harm to hyperI/O LLC (including, but not limited to, any breach that may impact hyperI/O's intellectual property rights, or a breach by reverse engineering), hyperI/O LLC may seek injunctive relief, or any other appropriate relief, in any court of competent jurisdiction. Any arbitration of a dispute under this Agreement shall be conducted under the rules then prevailing of the American Arbitration Association. The arbitrator's award shall be binding and may be entered as a judgment in any court of competent jurisdiction. This EUSLA will not be governed by the United Nations Convention of Contracts for the International Sale of Goods, the application of which is hereby expressly excluded.

If You acquired this Product in Canada, unless expressly prohibited by local law, this EUSLA is governed by the laws in force in the Province of Ontario, Canada; and, in respect of any dispute which may arise hereunder, you consent to the jurisdiction of the federal and provincial courts sitting in Toronto, Ontario. If this Product was acquired outside the United States, then local law may apply.

21. COMPLIANCE WITH LICENSES.

If You are a business or organization, You agree that upon request of hyperI/O LLC (or hyperI/O LLC's authorized representative), You will within thirty (30) days fully document and certify that Your use of the Product at the time of the request is in conformity with Your valid licenses from hyperI/O LLC.

22. ENTIRE AGREEMENT.

This EUSLA (including any addendum or amendment to this EUSLA which is included with the Product) are the entire and exclusive agreement between You and hyperI/O LLC relating to the Product and the support services (if any) and they supersede all prior or contemporaneous oral or written communications, proposals and representations with respect to the Product or any other subject matter covered by this EUSLA. To the extent the terms of any hyperI/O LLC policies or programs for support services conflict with the terms of this EUSLA, the terms of this EUSLA shall control. The terms and conditions contained in this EUSLA may not be modified except in a writing duly signed by You and an authorized representative of hyperI/O LLC. If any provision of this EUSLA is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable, and such decision shall not affect the enforceability of such provision under other circumstances, or of the remaining provisions hereof under all circumstances.

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If You downloaded the Product in the European Union (EU), then the following provisions also apply to you. If there is any inconsistency between the terms of the EUSLA set out above and the following provisions, the following provisions shall take precedence.

1. DECOMPILATION.

You agree not for any purpose to transmit the Software or display the Product's object code on any computer screen or to make any hard copy memory dumps of the Product's object code. If You believe that You require information related to the interoperability of the Product with other programs, You shall not decompile or disassemble the Product to obtain such information, and You agree to request such information from hyperI/O LLC at the address listed above. Upon receiving such a request, hyperI/O LLC shall determine whether You require such information for a legitimate purpose and, if so, hyperI/O LLC will provide such information to You within a reasonable time and on reasonable conditions.

2. LIMITED WARRANTY: EXCEPT AS STATED ABOVE IN THIS AGREEMENT, AND AS PROVIDED BELOW UNDER THE HEADING "STATUTORY RIGHTS", THE PRODUCT IS PROVIDED "AS-IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

3. LIMITATION OF REMEDY AND DAMAGES: THE LIMITATIONS OF REMEDIES AND DAMAGES IN THE EUSLA SHALL NOT APPLY TO PERSONAL INJURY (INCLUDING DEATH) TO ANY PERSON CAUSED BY hyperI/O LLC's NEGLIGENCE AND ARE SUBJECT TO THE PROVISION SET OUT BELOW UNDER THE HEADING "STATUTORY RIGHTS".

4. STATUTORY RIGHTS.

Irish law provides that certain conditions and warranties may be implied in contracts for the sale of goods and in contracts for the supply of services. Such conditions and warranties are hereby excluded, to the extent such exclusion, in the context of this transaction, is lawful under Irish law. Conversely, such conditions and warranties, insofar as they may not be lawfully excluded, shall apply. Accordingly nothing in this EUSLA shall prejudice any rights that You may enjoy by virtue of Sections 12, 13, 14 or 15 of the Irish Sale of Goods Act 1893 (as amended).

5. GENERAL.

This EUSLA is governed by the laws of the Republic of Ireland. The local language version of this EUSLA shall apply to Product downloaded in the EU. This EUSLA is the entire agreement between hyperI/O LLC and You, and You agree that hyperI/O LLC will not have any liability

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*** End of hyperI/O LLC Software License Agreement (EUSLA) ***
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