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hyperI/O LLC.

**hIOmon™**  
File 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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\* 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.

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

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\* 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.

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(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

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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.

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

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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](http://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.

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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.

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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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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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SPECIAL PROVISIONS APPLICABLE TO THE EUROPEAN UNION (EU)  
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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.

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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.

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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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