

## **END USER LICENSE AGREEMENT**

**THIS END USER LICENSE AGREEMENT** (this "**Agreement**") is a legal agreement between StreamWeaver Technologies, Inc. ("StreamWeaver") and you ("You," "your" or "Licensee"), and governs your use of the Licensed Software. Licensee has bought a license to the Licensed Software pursuant to an agreement with an authorized StreamWeaver Reseller. The terms and conditions in this Agreement are solely by and between StreamWeaver and Licensee relating to your use of the Licensed Software. By clicking the "I Agree" button, and/or accessing the Licensed Software, you agree to be bound by the terms and conditions of this Agreement.

**1. DEFINITIONS.** Capitalized terms used but not defined in the main body of the Agreement will be as defined in [Exhibit 1](#).

### **2. LICENSE; RESTRICTIONS ON USE.**

**2.1 License to the Licensed Software, Documentation.** Subject to the terms and conditions of this Agreement, StreamWeaver hereby grants Licensee a non-exclusive, non-transferable, royalty-free license during the License Term only to the Licensed Software in order to allow Authorized Users to: (a) access and use the Licensed Software solely for the purpose of allowing Licensee to help connect and monitor disparate internal Information Technology operations management systems and applications; and (b) to use the Documentation in connection with the foregoing license. Licensee shall insure that all Authorized Users comply with the applicable provisions of this Agreement, including but not limited to, the license scope set forth in this Section 2.1, and the Restrictions on Use set forth below in Section 2.2. Licensee will be primarily liable to StreamWeaver for any and all violations thereof by all such Authorized Users.

**2.2 Restrictions on Use.** Except as expressly provided in this Agreement, Licensee will not make any use or disclosure of the Licensed Software, or the Documentation that is not expressly permitted under this Agreement. Without limiting the foregoing, Licensee will not: (i) reverse engineer, decompile, disassemble, or otherwise attempt to discern the source code or interface protocols of the Licensed Software, (ii) modify or adapt the Licensed Software, or the Documentation; (iii) make any copies of the Licensed Software, or the Documentation; (iv) resell, distribute, or sublicense the Licensed Software, or the Documentation; make the Licensed Software available on a "service bureau" basis; or otherwise allow any third party to use or access the Licensed Software or the Documentation; (v) remove or modify any proprietary markings or restrictive legends placed on the Licensed Software, or the Documentation; (vi) use the Licensed Software, or the Documentation in violation of any applicable law, rule, or regulation or for any purpose not specifically permitted in this Agreement; or (vii) introduce into the Licensed Software any virus, worm, "back door," Trojan Horse, or similar harmful code.

**3. SUPPORT SERVICES.** StreamWeaver will be reasonably available to provide Licensee problem resolution and technical support in connection with the Licensed Software during the Term (the "Support Services"). Licensee may request Support Services from StreamWeaver via email at [support@streamweaver.com](mailto:support@streamweaver.com)

### **4. TERM AND TERMINATION.**

**4.1 Term.** Unless earlier terminated as set forth herein, the initial term of this Agreement is set forth on [Schedule A](#) (the "Term").

**4.2 Termination.** In the event of a material breach of this Agreement by a party, the other party may terminate this Agreement by giving thirty (30) days prior, written notice to the

breaching party; provided, however, that this Agreement will not terminate if the breaching Party has cured the breach before the expiration of such thirty (30) day period.

**4.3 Effect of Termination or Expiration.** In the event of any termination or expiration of this Agreement: (a) all rights granted hereunder to Licensee will immediately cease, and Licensee will immediately cease all use of the Licensed Software, and the Documentation; provided, however, that Licensee may retain any reports created by Licensee prior to the effective date of expiration or termination through the Licensed Software ("Licensee Reports"); and (b) Licensee will either return to StreamWeaver (or provide StreamWeaver with written certification of the destruction of) all documents, computer files, and other materials containing any Confidential Information (as defined below) that are in Licensee's possession or control. The following provisions will survive any termination or expiration of this Agreement: [Section 1](#) ("Definitions"), [Section 4.3](#) ("Effect of Termination or Expiration"), [Section 5](#) ("Intellectual Property"), [Section 6](#) ("Confidentiality"), [Section 7.3](#) ("Disclaimer"), [Section 8](#) ("Limitation of Liability"), [Section 9](#) ("Indemnification"), [Section 11](#) ("Miscellaneous Provisions").

**5. INTELLECTUAL PROPERTY.** StreamWeaver owns all right, title, and interest in and to the Licensed Software, and the Documentation, including all source code, object code, operating instructions, and interfaces developed for or relating to the Licensed Software, and the Documentation, together with all modifications, enhancements, revisions, changes, copies, partial copies, translations, compilations, and derivative works thereto, including all copyrights and other intellectual property rights relating thereto (the "StreamWeaver Intellectual Property"). Licensee will have no rights with respect to the StreamWeaver Intellectual Property other than those expressly granted under this Agreement. Licensee shall have no right to develop (or to permit any third party to develop) any software tool or other application that interfaces with the Licensed Software.

### **6. CONFIDENTIALITY.**

**6.1 Nondisclosure.** Each party will keep the Confidential Information received from the other party in confidence, will use such Confidential Information only for the purposes contemplated by this Agreement, and will not disclose such Confidential Information to any person or entity except to those of its employees, agents or contractors who need to know such information in order to carry out the activities contemplated by this Agreement, and who are bound to protect the Confidential Information under terms at least as protective of the Confidential Information as the provisions hereof. Each party agrees to take measures to protect the confidentiality of the other party's Confidential Information that, in the aggregate, are no less protective than those measures it uses to protect the confidentiality of its own confidential or proprietary information of similar kind and import (and in any event, no less than commercially reasonable measures).

**6.2 Effect of Termination on Confidential Information.** Upon request or upon the discontinuance, termination or cancellation of this Agreement or of any license covering any Confidential Information, the affected Confidential Information and all copies in whatever medium or form will be returned to the disclosing party or destroyed (with the receiving party certifying such destruction in writing).

### **7. REPRESENTATIONS AND WARRANTIES; DISCLAIMER.**

**7.1 Mutual Representations and Warranties.** Each party represents and warrants that it has the full right, power, and authority to enter into this Agreement, to discharge its obligations hereunder, and to grant the rights granted hereunder.

**7.2 Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 7.1, THE LICENSED SOFTWARE, THE DOCUMENTATION, THE SUPPORT SERVICES, AND OTHER MATERIALS PROVIDED HEREUNDER ARE PROVIDED “AS IS” AND “AS AVAILABLE,” AND STREAMWEAVER MAKES NO WARRANTY WITH RESPECT TO THE SAME OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT AND HEREBY DISCLAIMS ANY AND ALL EXPRESS, IMPLIED, OR STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF TITLE, MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, AVAILABILITY, ERROR-FREE OR UNINTERRUPTED OPERATION, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. TO THE EXTENT THAT STREAMWEAVER MAY NOT AS A MATTER OF APPLICABLE LAW DISCLAIM ANY WARRANTY, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW.

## **8. LIMITATION OF LIABILITY.**

**8.1 Liability Exclusion.** STREAMWEAVER WILL NOT BE LIABLE TO LICENSEE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOST REVENUES OR PROFITS, OR LOSS OF GOODWILL OR REPUTATION) WITH RESPECT TO ANY CLAIMS BASED ON CONTRACT, TORT OR OTHERWISE (INCLUDING NEGLIGENCE AND STRICT LIABILITY) ARISING OUT OF OR RELATING TO THE LICENSED SOFTWARE, THE SUPPORT SERVICES, THE DOCUMENTATION, LICENSEE REPORTS, OR OTHERWISE ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF WHETHER THE PARTY LIABLE OR ALLEGEDLY LIABLE WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.

**8.2 Limitation of Damages.** STREAMWEAVER’S MAXIMUM LIABILITY ARISING OUT OF OR RELATING TO THE LICENSED SOFTWARE, THE SUPPORT SERVICES, THE DOCUMENTATION, OR OTHERWISE ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE CAUSE OF ACTION (WHETHER IN CONTRACT, TORT, BREACH OF WARRANTY, OR OTHERWISE), WILL NOT EXCEED THE LOWER OF: (A) THE AGGREGATE AMOUNT OF THE FEES PAID OR PAYABLE TO STREAMWEAVER BY RESELLER WITH RESPECT TO THE LICENSED SOFTWARE CONTEMPLATED BY THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CLAIM ARISES; OR (B) FIFTY THOUSAND DOLLARS (\$50,000.00 USD).

## **9. INDEMNIFICATION.**

**9.1 Indemnification by StreamWeaver.** StreamWeaver will indemnify, defend, and hold harmless Licensee and its officers, directors, employees, and agents (each, a “Licensee Indemnitee”) from and against any and all liabilities, settlement payments, awards, damages, losses, costs, and expense, including, but not limited to, reasonable attorneys’ fees (collectively, “Losses”) incurred by such Licensee Indemnitees in connection with any third-party claim, action, or proceeding (each, a “Claim”) to the extent arising from, relating to, or alleging that the Licensed Software, or Documentation, infringes or misappropriates any U.S. patent, copyright, trade secret, or other intellectual property right of any third party. Notwithstanding the

foregoing, StreamWeaver shall not be obligated to indemnify, defend, or hold harmless the Licensee Indemnitees hereunder to the extent: (i) the Loss arises from or is based upon use by Licensee, or any Authorized User of: (a) the Licensed Software, in a manner for which they were not authorized by this Agreement; or (b) any unauthorized enhancements, modifications, alterations, or implementations of the Licensed Software; (ii) the Claim arises from use of the Licensed Software in combination with unauthorized modules, apparatus, hardware, software, or other Licensed Software; or (iii) the Claim arises from Licensee’s use of the Licensed Software violates this Agreement or any applicable law, rule, or regulation.

**9.2 Infringement Claims.** In the event that StreamWeaver reasonably determines that the Licensed Software, is likely to be the subject of an claim of infringement or misappropriation of third-party rights, StreamWeaver shall have the right (but not the obligation), at its option to: (i) procure for Licensee the right to continue to use the Licensed Software for the remainder of the then-current Term, (ii) replace the infringing components of the Licensed Software with other components with the same or similar functionality that are reasonably acceptable to Licensee, or (iii) suitably modify the Licensed Software so that it is non-infringing and reasonably acceptable to Licensee. If none of the foregoing options are available to StreamWeaver on commercially reasonable terms, StreamWeaver may terminate this Agreement without further liability to Licensee. This Section 9.2, together with the indemnity provided under Section 9.1, states Licensee’s sole and exclusive remedy, and StreamWeaver’s sole and exclusive liability, regarding infringement or misappropriation of any intellectual property rights of a third party.

**10. Usage of Analytics.** StreamWeaver may use analytics to monitor, identify, and collect trend and usage statistics with respect to Authorized Users and organizations, including, without limitation, how often different features of the Licensed Software are used, how often different buttons and menu items are clicked, execution time for different operations, types of errors, error reports, download locations, versions, platform information, application and Licensed Software, usage, features usage, exception tracking, and operating system information (collectively, “Analytical Information”). Licensee hereby agrees that StreamWeaver may collect such Analytical Information and use it in aggregated form to provide, operate, manage, maintain, and enhance the Licensed Software, and develop new functionality. StreamWeaver shall own all right, title to and interest in such Analytical Information.

**11. Miscellaneous.** All notices, requests, demands and other communications hereunder must be sent in writing and will be deemed given on the next day (if delivered personally), on the date three (3) days after mailing (if mailed by registered or certified mail), or on the next day (if delivered by courier) to the respective addresses of the parties as the respective parties may designate by like notice from time to time. Licensee may not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior, written consent of StreamWeaver. Any assignment or other transfer in violation of this Section will be null and void. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the Parties hereto and their permitted successors and assigns. This Agreement, and any disputes directly or indirectly arising from or relating to this Agreement, will be governed by and construed in accordance with the laws of the State of New York, without regard to principles of conflicts of law. The Parties hereby consent and agree to the exclusive jurisdiction of the state and federal courts located in New York, in New York County, for all suits, actions, or proceedings directly or indirectly arising out of or relating to this Agreement, and waive any and all objections to such courts, including but not limited to objections based on improper venue or inconvenient forum, and each Party hereby irrevocably submits to the

jurisdiction of such courts in any suits, actions or proceedings arising out of or relating to this Agreement. The Parties further agree that service of any process, summons, notice, or documents to a Party by registered or certified mail, or by nationally or internationally recognized private courier service shall be effective service of process for any action, suit, or proceeding brought against such Party in any such court. StreamWeaver reserves the right, at its sole discretion, to modify or replace this Agreement at any time. The rights and remedies of the Parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any Party in exercising any right, power, or privilege under this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. If any provision of this Agreement

is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect, and, if legally permitted, such offending provision will be replaced with an enforceable provision that as nearly as possible effects the Parties' intent. Neither Party will issue any press release or similar materials discussing the Parties' relationship before obtaining the other Party's prior written agreement to any such material. Each Party shall have the right to review and approve the use of their respective marks in any such materials created by or on behalf of the other party prior to the release thereof. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements and commitments with respect thereto. There are no other oral or written understandings, terms or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.

## Exhibit 1

### [Definitions]

“Authorized User” means an employee of Licensee or an individual consultant, vendor, or contractor engaged by and acting under the direction and control of Licensee that Licensee permits to access and use the Licensed Software.

“Confidential Information” means non-public financial, technical or business information of the disclosing party that is marked as confidential at the time of disclosure or that the receiving party should, from the circumstances surrounding its disclosure, know to be confidential. Confidential Information includes, in the case of StreamWeaver, the Licensed Software, any and all source code relating thereto, the Documentation, all pricing and Fees relating to the Licensed Software and related Licensed Software, and any other non-public information or material regarding StreamWeaver’s legal or business affairs, products, Licensed Software, financing, or customers. Confidential Information does not include information that is: (i) known to the receiving party prior to receipt from the other party, (ii) generally known or available in the industry or to the general public through no act or fault of the receiving party, (iii) acquired in good faith from a third party that has no obligation of confidentiality with respect to such information, (iv) required to be disclosed by applicable law, by order of court or by the rules, regulations, or order of any governmental agency (provided, that prior to making any such required disclosure, the receiving party first notifies the disclosing party and cooperates with the disclosing party in its efforts to seek confidential or protective treatment of such information or to minimize the scope of any such required disclosure), or (v) independently developed for one party by employees or agents of that party who do not have access to the Confidential Information of the other party.

“Documentation” means any written specifications, user documentation, training materials, validation test plans, and other documents relating to the Licensed Software that StreamWeaver provides and/or makes available to Licensee.

“Reseller” means an authorized StreamWeaver reseller and/or distributor of the Licensed Software.

“Licensed Software” means the software specified on Schedule A, and includes any Updates thereto, as more fully described in the Documentation.

“License Term” will be as defined on Schedule A.

“Updates” means updates to the Licensed Software that may be periodically made available to Licensee during the Term, if applicable.

**SCHEDULE A**

StreamWeaver Licensed Software: StreamWeaver Platform

License Term: 30 Day Free Trial