

THIS END USER LICENSE AGREEMENT ("EULA") FOR NODEWEAVER SOFTWARE IS A LEGAL AGREEMENT BETWEEN YOU (THE SOFTWARE END USER) AND NODEWEAVER CORPORATION ("NodeWeaver")

### **1. Definitions**

**1.1.** For the purposes of this EULA, the following words, when used with initial capital letters, shall have the meanings set forth below, and shall have the same meaning in singular as well as in plural. Services: all the software maintenance and support services provided by NodeWeaver on a secondary basis and only per Your explicit subscription. Software: the software object of this Agreement, constituted by the product identified in the title of this Agreement, the media (if any) and the accompanying documentation. You: the individual or legal entity who wants to purchase the right to use the Software.

### **2. Subject of the contract**

**2.1.** The subject of this agreement is the license to use the Software against Your payment of the amount due.

**2.2.** The Software may be licensed to You together with maintenance and/or support services. These services are provided by NodeWeaver only per Your explicit request and specific subscription.

### **3. Rights and licenses**

**3.1.** Subject to the terms and conditions of this Agreement (including Your payment obligations), NodeWeaver grants to You a limited, non-exclusive, non-transferable right and license (a) to install, execute and use, and permit Authorized Users to execute and use, the Licensed Software internally within Your organization solely for the Permitted Purpose; and (b) to the extent NodeWeaver makes available to You, by way of download or other form of distribution, any software components, tools, materials or technology intended for use in connection with the Licensed Software, to store, install, execute and use the same internally within Your organization, solely in connection with Your authorized use of the Licensed Software.

**3.2.** Except for the rights granted in **Section 3.1**, no other rights in or to any Licensed Software or other NodeWeaver IP, express or implied, are granted to You. Without limiting the foregoing, except to the extent expressly authorized by this Agreement, You may not: (a) transfer to any other Person or entity, any of its rights to use the Licensed Software; (b) sell, resell, license, sublicense, distribute, rent, lease or share any Licensed Software; (c) permit any Person who is not an Authorized User to use or access any Licensed Software; (d) use any Licensed Software other than for the Permitted Purpose; (e) modify or create any derivative works based upon any Licensed Software or other NodeWeaver IP; (f) copy any feature, design or graphic in any Licensed Software or other NodeWeaver IP; (g) reverse engineer, decompile, disassemble or attempt to derive the source code or architecture of any Licensed Software, except to the extent such activities cannot be restricted under applicable Law; (h) use or access any Licensed Software or other NodeWeaver IP in order to build a competitive solution or to assist someone else to build a competitive solution; (i) use the Licensed Software for performance, benchmarking or comparison testing or analysis or disclose to any third party or otherwise disseminate any results thereof (all of which shall be considered Confidential Information of NodeWeaver) without NodeWeaver's prior written consent; (j) alter, remove or conceal any government restricted rights notice or any copyright, trademark, trade name or other proprietary marking or notice that may appear in Licensed Software or any other NodeWeaver IP; (k) use the Licensed Software in a manner that violates any applicable Law; or (l) permit any other Person to do any of the foregoing.

**3.3.** You are solely responsible for Your relationships with all of Your Authorized Users and Affiliates, for their use of the Licensed Software, and for ensuring that they comply with all the terms and conditions of this Agreement. Any violation of the terms and/or conditions of this Agreement by an Authorized User or Affiliate of Yours shall be deemed to be a violation by You of such terms and conditions.

### **4. Ownership**

**4.1.** As between the Parties, all Intellectual Property Rights in and to the Licensed Software and other NodeWeaver IP are and shall remain the sole property of NodeWeaver and its Affiliates and their respective licensors, as applicable, and You shall acquire no right of ownership or use with respect thereto except for the limited license right specified in **Section 3**. Without limiting the foregoing, You acknowledge that the Licensed Software and the inventions, know-how and methodology embodied therein are proprietary to, and are the valuable trade secrets of, NodeWeaver and its Affiliates and licensors, as applicable, and constitute Confidential Information of NodeWeaver.

**4.2.** You, Your Affiliates or Authorized Users may from time to time provide NodeWeaver with suggestions, comments, recommendations and/or feedback regarding the Software Products and/or NodeWeaver's related technologies ("**Feedback**"). Any and all Feedback is and shall be given entirely voluntarily and without compensation. As between the Parties, all Feedback shall be exclusively owned by NodeWeaver and NodeWeaver shall be freely entitled to reproduce, prepare derivative works of, disclose to third Persons, display and perform (publicly or otherwise), sell, lease, license, distribute, and otherwise use and exploit any and all such Feedback, at its sole discretion, without obligation or liability of any kind to You or to any other Person.

## **5. Limited Warranty**

**5.1. Representations and Warranties.** NodeWeaver represents and warrants that:

- A. entering into and fully performing its obligations under this Agreement does not and will not violate any agreement or obligation existing between NodeWeaver and any third party;
- B. the Licensed Products will be provided free and clear of any and all third party liens, assignments, security interests or encumbrances of any kind;
- C. the Licensed Products do not contain any destructive or harmful software code or other technology designed to disrupt, damage or interfere with any use of the Licensed Products, including any code containing viruses, Trojan horses, worms, backdoors, trap doors, time-out devices (except for those properly used in connection with time-based licenses), and shall be free from Contamination.
- D. NodeWeaver and its Personnel are the exclusive creators and developers of all Licensed Products or NodeWeaver has sufficient rights and licenses from third parties to provide the Licensed Products;
- E. the Licensed Products do not and will not infringe or misappropriate any Intellectual Property Rights or trademark of any third party;
- F. the Licensed Products do not and will not defame or violate the privacy rights of any third party

**5.2.** In the event of any nonconformance with any of the warranties specified in this Section 5, You will promptly (and in no event later than thirty (30) days after the non-conforming Licensed Software was provided) notify NodeWeaver of such nonconformance and NodeWeaver will, following receipt of such notice from You, use commercially reasonable efforts to remedy the nonconformance in accordance with and subject to the M&S Policy. If NodeWeaver fails to do so within thirty (30) days of such notice, and such nonconformance has the effect of materially diminishing the functionality and value of the Licensed Software as a whole, then You shall have the right to terminate this Agreement upon notice and recover the license fees paid to NodeWeaver, provided, however, that such termination shall not be permitted if, within such thirty (30) day period, NodeWeaver has provided You with reasonable assurances that such nonconformance will be remedied within a reasonable period of time. The foregoing sets forth Your exclusive remedies, and the sole liability of NodeWeaver, in the event of any nonconformance with any of the warranties set forth in this **Section 5.1**. For the avoidance of doubt, NodeWeaver shall have no liability under this **Section 5.2** with respect to any nonconformance related to any issue described in the section of the M&S Policy entitled "Certain Exclusions."

**5.3. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 5, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NODEWEAVER IS PROVIDING THE LICENSED SOFTWARE AND MAINTENANCE & SUPPORT SERVICES ON AN "AS IS" AND "AS AVAILABLE" BASIS AND NODEWEAVER DOES NOT MAKE, AND HEREBY EXPRESSLY DISCLAIMS, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED SOFTWARE AND SUCH SERVICES OR THEIR PERFORMANCE, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. IN PARTICULAR, NODEWEAVER DOES NOT WARRANT THAT THE LICENSED SOFTWARE OR ANY RELATED SERVICES WILL MEET YOUR EXPECTATIONS OR BE SECURE, ACCURATE, ERROR-FREE, OR OPERATE ON AN UNINTERRUPTED BASIS OR IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE OR SYSTEM. WITHOUT LIMITING THE FOREGOING, NODEWEAVER WILL NOT BE LIABLE FOR ANY PROBLEMS WITH THE LICENSED SOFTWARE OR MAINTENANCE & SUPPORT SERVICES ATTRIBUTABLE TO THIRD-PARTY APPLICATIONS, FORCE MAJEURE OR YOUR OR ANY AUTHORIZED USER'S COMPUTERS OR NETWORK.**

**4.4.** You acknowledge that the Licensed Software was not designed to Your individual requirements and that You are solely responsible for confirming that the Licensed Software meets such requirements. The Licensed Software is compatible only with specific computers and operating systems. There is no warranty if You use the Software with any computer or operating system other than indicated. For further compatibility information, please contact NodeWeaver or one of its authorized partners. You agree that Your license of the Licensed Software is not contingent on the delivery of any future functionality or features, or dependent on any statements made by NodeWeaver regarding possible future functionality or features. The Licensed Products are not designed, manufactured, or intended for use or resale as on-line control equipment in hazardous environments requiring fail-safe performance, including, but not limited to, the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Licensed Products could lead directly to death, personal injury, or severe physical or environmental damage. The warranty provisions in this Section 4 do not cover the Software provided for free (unpaid trial licenses). Such free Software is provided "as is" without warranty of any kind

## **6. Limitation of liability**

**6.1. EXCEPT FOR LIABILITY ARISING FROM A WILLFUL OR INTENTIONAL BREACH OF CONFIDENTIALITY OR FROM A BREACH OF PROPRIETARY RIGHTS, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY LOSS OF DATA, LOSS OF BUSINESS OR PROFITS, OR ANY OTHER SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY SORT, WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE, ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.**

**6.2. NODEWEAVER'S AGGREGATE LIABILITY TO YOU ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL IN NO EVENT EXCEED THE TOTAL LICENSE FEES ACTUALLY PAID BY YOU TO NODEWEAVER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE APPLICABLE CLAIM OCCURRED.**

**6.3.** THE LIMITATIONS OF LIABILITY AND DAMAGE EXCLUSIONS CONTAINED IN THIS AGREEMENT WILL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS (OR LACK THEREOF) OF ANY REMEDIES PROVIDED HEREIN. THESE LIMITATIONS AND EXCLUSIONS ARE REFLECTED IN THE PRICING OF THE LICENSED SOFTWARE AND MAINTENANCE & SUPPORT SERVICES, AND THEY REPRESENT AN AGREED ALLOCATION OF RISK BETWEEN THE PARTIES AND ARE AN ESSENTIAL PART OF THIS AGREEMENT.

**6.4.** ANY ACTION BY EITHER PARTY RELATED TO AN ACTUAL OR ALLEGED BREACH OF THIS AGREEMENT BY THE OTHER PARTY, OTHER THAN A WILLFUL OR INTENTIONAL BREACH OF (CONFIDENTIALITY OR A BREACH OF PROPRIETARY RIGHTS, MUST BE COMMENCED WITHIN ONE YEAR AFTER THE DATE ON WHICH THE BREACH IS DISCOVERED. ANY ACTION NOT BROUGHT WITHIN THAT ONE-YEAR PERIOD SHALL BE BARRED, WITHOUT REGARD TO ANY LONGER LIMITATIONS PERIOD SET FORTH IN ANY APPLICABLE LAW OR STATUTE.

#### **7. General terms**

**7.1.** This Agreement becomes effective starting on the date You legally acquire the Software and will automatically terminate if You breach any of its terms.

**7.2.** You may not transfer or assign this Agreement to any third party without the prior written approval of NodeWeaver.

#### **8. Governing Law and Jurisdiction**

**8.1.** This Agreement shall be governed by the laws of the United States. Any claim or dispute arising in connection with this Agreement shall be brought exclusively in the courts of competent jurisdiction.

**8.2.** This Agreement is the entire agreement between You and NodeWeaver and herein may only be amended or modified by a writing duly executed by the parties, i.e. by You and by an authorized NodeWeaver representative. No licensor, distributor, dealer, retailer, reseller, commercial agent or employee is authorized to modify this agreement or to make any representation or warranty that is different from, or in addition to, the terms of this agreement.

#### **9. No waiver**

**9.1.** No waiver of any right under this EULA will be deemed effective unless contained in writing signed by a duly authorized representative of the party against whom the waiver is to be asserted. No waiver of any past or present right arising from any breach or failure to perform will be deemed to be a waiver of any future rights arising out of this EULA.

#### **10. Severability**

**10.1.** If any term of this EULA is found to be invalid or unenforceable, it will be construed, limited, modified, or cancelled, if necessary, to the least extent necessary to make it enforceable, and the remaining portions of this Agreement will remain in full force and effect.