Weaveworks End User Subscription Agreement

THIS END USER SUBSCRIPTION AGREEMENT (THE **"AGREEMENT"**) IS BETWEEN WEAVEWORKS INC. OF 2345 YALE ST. 1st Floor, PALO ALTO, CA 94306 (**"WEAVEWORKS"**), AND THE INDIVIDUAL OR LEGAL ENTITY WHO HAS EXECUTED AND SUBMITTED AN ORDER FORM WHICH INCORPORATES THE TERMS OF THIS AGREEMENT AND EVERY PERSON USING WEAVEWORKS SOFTWARE PURSUANT TO THAT ORDER (**"SUBSCRIBER"**).

BY SUBMITTING THE ORDER FORM, SUBSCRIBER AGREES TO USE THE WEAVEWORKS SOFTWARE IDENTIFIED IN AN ORDER FORM SOLELY IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, AND SUBSCRIBER AGREES THAT IT IS BOUND BY AND IS A PARTY TO THIS AGREEMENT. SUBSCRIBER WARRANTS THAT IT IS AT LEAST EIGHTEEN YEARS OLD AND THAT SUBSCRIBER HAS THE LEGAL CAPACITY TO ENTER INTO CONTRACTS AND IF ACTING ON BEHALF OF A LEGAL ENTITY THAT IT IS DULY AUTHORISED TO PLACE THE ORDER AND BIND THE ENTITY TO THIS AGREEMENT.

SUBSCRIBER'S USE OF THE SOFTWARE IS EXPRESSLY CONDITIONED ON SUBSCRIBER'S ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF SUBSCRIBER DOES NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT SUBMIT AN ORDER.

1. **Interpretation**. Where used in this Agreement the following capitalized terms shall have the following meanings: " **Documentation**" means any on-line read me, help files, or other related explanatory materials that accompany the Licensed Software, regardless of the format. " **Feedback**" means Subscriber feedback relating to the the use of the Licensed Software or Documentation, including reporting bugs, errors and suggestions for fixes or improvements. " **Licensed Software**" means Weaveworks Software (which includes WEAVE NET™, WEAVE SCOPE™ and WEAVE RUN™) identified in the Order Form and which is licensed to the Subscriber on the terms set out in this Agreement. " **Open Source Software**" means third party software that is distributed or otherwise made available without charge for use or development as "free software", "open source software" or similar under licensing or distribution terms which limit or constrain the exercise of proprietary rights in software which incorporates or necessarily works in combination with such open source software. " **Order Form**" mean a completed Weaveworks subscription order form submitted by Subscriber (whether electronically or otherwise) which incorporates the terms of this Agreement by express reference and identifies the Subscriber, the Licensed Software and the applicable Subscription Fee. " **Subscription Fee**" means the subscription fee specified in the Order Form which upon payment in full and in the currency specified confers upon the Subscriber the license described in clause 2 for the applicable Subscription Term. " **Subscription Term**" means the initial term which will expire (if not sooner terminated) on the date specified in the Order Form and if the subscription is renewed any further subscription period renewal which may be specified in the Order Form or otherwise in accordance with the terms of this Agreement. " **Weaveworks Software**" means a Weaveworks computer program, in object code format, including without limitation firmware. The term "Weaveworks Software" also includes any updates, upgrades or other new features, functionality or enhancements to the Weaveworks Software made available to Subscriber. " **Unit**" means a single copy of the Licensed Software which is able to be downloaded to or installed on a physical or virtual computer or server and the Order Form shall specify the number Units for which the Subscriber has subscribed.

2. **License.** Subject to payment of the Subscription Fees and continuing adherence to the terms of this Agreement, the Licensed Software and Documentation are licensed for the Subscription Term to the Subscriber and, for purposes of clarity, are not sold to the Subscriber. Subject to the terms and conditions of this Agreement, Subscriber is hereby granted a time-limited, non-exclusive, non-sublicensable and non-transferable right to install and use such number of Units of the object code version of the Licensed Software as are specified in the Order Form in each case solely for Subscriber's personal and/or internal business purposes. Subscriber agrees to use their best efforts to prevent and protect the contents of the Licensed Software and

Documentation from unauthorized disclosure or use. Weaveworks and its licensors (the "Licensors") reserve all rights, including but not limited to ownership and intellectual property rights, not expressly granted to Subscriber. Where applicable, Licensors are intended third party beneficiaries of this Agreement and have the express right to rely upon and directly enforce its terms. There are no implied licenses granted by Weaveworks under this Agreement and they are expressly excluded to full extent permitted by applicable law. Except as specified above, Subscriber shall have no rights to the Licensed Software.

- **Limitations on Use:** Subscriber may not use the Licensed Software or Documentation except as permitted in this Agreement. Without limiting the foregoing, Subscriber may not use the Licensed Software or Documentation for developing similar or competing applications or providing competing services to others. Subscriber may not: (i) alter, modify, seek to duplicate, or create any derivative works of the Licensed Software, the underlying source code, or the Documentation in any way, including without limitation customization, translation or localization; (ii) port, reverse compile, reverse assemble, reverse engineer, or otherwise attempt to separate any of the components of the Licensed Software or derive the source code for the Licensed Software (except to the extent applicable laws specifically prohibit such restriction); (iii) copy, redistribute, encumber, sell, rent, lease, sublicense, exhibit to the public or otherwise transfer rights or interest to the Licensed Software or Documentation; (iv) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Licensed Software or Documentation; (v) block, disable or otherwise affect any advertising, advertisement banner window, links to other sites and services, or other features that constitute an integral part of the Licensed Software. Subscriber may not release the results of any performance or functional evaluation of any of the Licensed Software to any third party without prior written approval of Weaveworks for each such release. Subscriber may not cause or permit any third party to do any of the foregoing.

- ○ **Third Party Software**. Subscriber acknowledges that the Licensed Software may contain copyright-protected software of other companies (including companies in the Weaveworks Group) which are obtained under a license from such companies. All third party Licensors retain all right, title and interest in and to such software and all copies thereof, including all copyright and other intellectual property and proprietary rights. Subscriber's use of any Licensor's software shall be subject to, and Subscriber shall comply with, the terms and conditions of this Agreement.

3. **Proprietary Rights.** Subscriber acknowledges and agrees that the Licensed Software belongs to Weaveworks or its Licensors. Subscriber agrees that it neither owns nor hereby acquires any claim or right of ownership to the Licensed Software and Documentation or to any related patents, copyrights, trademarks or other intellectual property. Weaveworks and its Licensors retain all right, title and interest in and to all copies of the Documentation and the Licensed Software at all times, regardless of the form or media in or on which the original or other copies may subsequently exist. This license is not a sale of the original or any subsequent copy. The Licensed Software and Documentation are protected by copyright and other intellectual property laws and by international treaties. Subscriber may not make any copies of the Licensed Software, in whole or part, other than in the normal course of using the Licensed Software, or permit anyone else to do so. Any and all unauthorized copies of the Licensed Software or Documentation made by Subscriber are in breach of this Agreement. All content accessed through the Licensed Software, or via the Weaveworks website, is the property of the applicable content owner and may be protected by applicable copyright and trade secrets laws. This Agreement gives Subscriber no rights to such content. All trademarks used in connection with the Licensed Software and Documentation are owned by Weaveworks, its affiliates and/or its Licensors and other suppliers or commercial partners, and no license to use any such trademarks is provided hereunder. All Feedback provided by Subscriber with respect to the Licensed Software and Documentation shall be Weaveworks's property and Subscriber hereby assigns by way of future assignment any copyrights and other intellectual property rights in the Feedback to Weaveworks.

4. **Support**. This Agreement does not entitle Subscriber to receive from Weaveworks or its Licensors hard-copy documentation, support, telephone assistance, enhancements or updates to the Licensed Software or Documentation other than the support expressly specified in the Order Form

or as may be notified, made available on or provided via the Weaveworks website from time to time.

5. **Term and Termination.**

   ○ The term of the subscription is specified in the order. All subscriptions automatically renew for the same term unless the subscriber explicitly cancels the renewal of the subscription. Any increase in the Subscription Fee will be notified to Subscriber prior to renewal and shall be effective at the next renewal date.

   ○ This Agreement shall automatically terminate if Subscriber fails to comply with its material terms and conditions (which include clauses 3, 4 and Subscriber's obligation to make timely payment of Subscription Fees) and, if breach is not material, Subscriber fails to remedy the breach within 30 days of the relevant breach. Immediately upon the expiry of the Subscription Term or termination for any reason, Subscriber shall immediately cease and cause its authorized users to cease to use the Licensed Software and return or delete and destroy all copies of the Licensed Software and Documentation in Subscriber's possession, custody or control and if requested Subscriber shall certify to Weaveworks in writing that such return or destruction has occurred. The following terms of this Agreement survive any expiration or termination hereof: 1 and 3 − 15. 6.3 **Audit.** Subscriber agrees to maintain complete and accurate records during the Subscription Term and for three years thereafter of its users and deployment of Licensed Software (including location and the number of Units used) such as will enable Weaveworks to confirm the Subscriber has complied with the terms of this Agreement and paid the applicable Subscription Fees. Upon at least 7 days' notice Subscriber will make its records available for audit by Weaveworks or its agents, and if requested provide copies of the same. Where the Subscriber is found not to have conformed to the terms of the Agreement it shall promptly do so including by making prompt payment in full of any Subscription Fee found to be underpaid. If the total underpayment is in aggregate more than 5% of the applicable

Subscriptions Fee(s) due under one or more Order Forms placed by the Subscriber then the Subscriber shall be liable for and pay the costs of the audit.

6. **NO WARRANTY.** SUBSCRIBER AGREES IT IS BEST PLACED TO DETERMINE THE SUITABLITY OF THE LICENSED SOFTWARE FOR ITS OWN PURPOSES AND THAT THE LICENSED SOFTWARE AND DOCUMENTATION ARE PROVIDED "AS IS" AND THAT WEAVEWORKS AND ITS LICENSORS MAKE NO OTHER WARRANTY AS TO THE LICENSED SOFTWARE OR DOCUMENTATION, INCLUDING WITHOUT LIMITATION UNINTERRUPTED USE, ACCURACY, AND DATA LOSS. WEAVEWORKS AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE (AND WHETHER OR NOT WEAVEWORKS KNOWS OR SHOULD HAVE KNOWN OF SUCH PURPOSE), RELATED TO THE LICENSED SOFTWARE OR DOCUMENTATION, ITS USE OR ANY INABILITY TO USE IT, THE RESULTS OF ITS USE AND THIS AGREEMENT. WEAVEWORKS AND ITS LICENSORS DO NOT WARRANT THAT THE LICENSED SOFTWARE OR DOCUMENTATION OR ANY RESULTS OF USE THEREOF WILL BE FREE OF DEFECTS, ERRORS OR VIRUSES, RELIABLE OR ABLE TO OPERATE ON AN UNINTERRUPTED BASIS OR IN A PARTICULAR ENVIRONMENT OR THAT ERRORS THEREIN, IF ANY, WILL BE CORRECTED.

7. 8.1 **Weaveworks Intellectual Property Indemnity.** Weaveworks shall defend or at its sole option, settle, at its own expense any suit, action or proceedings brought in a court of competent jurisdiction against Subscriber by a third party to the extent that it is based on a claim that the Licensed Software infringes any United States issued patent or any copyright or trade secret (an "**IP Action**"), and Weaveworks shall pay any damages finally awarded against Subscriber in an IP Action, or those damages agreed to paid by Weaveworks in settlement of the IP Action, except that Weaveworks shall be relieved of the foregoing liability and obligations unless Subscriber (a) gives Weaveworks prompt written notice of each such claim; (2) tenders to Weaveworks sole control of defense or settlement of each such IP Action; and (c) cooperates with Weaveworks in defending or settling each such IP Action. Further, if Weaveworks receives notice of a claim that the Licensed Software infringes or misappropriates any third party rights, or if the use of the Licensed Software has been enjoined by any court as a result of such allegation, Weaveworks may at its sole option and expense (i) procure permission or license to allow the Subscriber to continue to use the Licensed Software; (ii) modify the Licensed Software to overcome any alleged infringement; and (iii) replace the Licensed Software with other software of equal or equivalent functionality. If

none of the foregoing is effective or commercially viable in the reasonable opinion of Weaveworks it shall have the right to terminate the licenses granted under this Agreement. If Weaveworks terminates the licenses pursuant to this clause 8.1 it shall refund the applicable and last-paid Subscription Fee and Subscriber shall forthwith deliver up to Weaveworks or destroy all copies of the Licensed Software in accordance with clause 6.2. 8.2 **LIMITATION ON INTELLECTUAL PROPERTY INDEMNITY.** THE RIGHTS GRANTED TO SUBSCRIBER UNDER CLAUSE 8.1 WILL BE SUBSCRIBER'S SOLE AND EXCLUSIVE REMEDY AND WEAVEWORKS' SOLE OBLIGATION FOR ANY ALLEGED INFRINGEMENT OF INTELLECTUAL PROPERTY OR OTHER PROPRIETARY RIGHT. WEAVEWORKS SHALL HAVE NO LIABILITY, INCLUDING UNDER CLAUSE 8.1, FOR ANY CLAIM BASED UPON OR ARISING FROM SUBSCRIBER USING LICENSED SOFTWARE (i) WHICH HAS BEEN MODIFIED WITHOUT THE PRIOR WRITTEN APPROVAL OF WEAVEWORKS; (ii) WHICH IS BEING USED OUTSIDE THE SUBSCRIPTION TERM OR THE TERMS OF THIS AGREEMENT; (iii) IN CONNECTION WITH THE USE OF THIRD PARTY SOFTWARE (INCLUDING OPEN SOURCE SOFTWARE), HARDWARE OR OTHER TECHNOLOGY NOT PROVIDED BY WEAVEWORKS (WHERE THE LICENSED SOFTWARE ALONE WOULD NOT INFRINGE); (iv) WHICH IS NOT THE LATEST VERSION OR RELEASE (IF SUCH LATER VERSION WOULD HAVE AVOIDED THE ALLEGED INFRINGEMENT OR CLAIM); OR (v) FOLLOWING TERMINATION OR EXPIRATION OF THIS AGREEMENT. 8.3 **Subscriber Use Indemnity.** Except with respect to an IP Action which Weaveworks is obliged to indemnify under clause 8.1, Subscriber shall defend at its own expense any suit, action or proceedings brought against Weaveworks or its Licensors by a third party based on any claim arising in connection with the Subscriber's use of Licensed Software (a "**Use Action**") and Subscriber agrees to indemnify and hold harmless Weaveworks and Licensors in relation to any such Use Action, including the payment of any damages and costs finally awarded against Weaveworks provided that Weaveworks shall (i) promptly notify Subscriber of any Use Action which comes to its attention and (ii) tender sole control of the Use action to Subscriber (save where any proposed settlement would have a materially adverse effect on the business of Weaveworks or its Licensors) (iii) co-operate with the Subscriber in any defense of the Use Action, at Subscriber's expense. Should Weaveworks demur in the conduct of the defense it shall have the right to participate at its own expense and pursue its own interests in relation to defending itself in the Use Action.

8. **LIMITATION OF LIABILITY.**
   - **EXCLUSION OF DAMAGES.** SUBSCRIBER UNDERSTANDS AND AGREES THAT ALL USE OF THE LICENSED SOFTWARE IS AT ITS OWN RISK. TO THE FULLEST EXTENT PERMITTED BY LAW, WEAVEWORKS

AND ITS LICENSORS SHALL NOT BE LIABLE FOR ANY DAMAGES, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL OR EQUITABLE THEORY, ARISING FROM THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INCIDENTAL DAMAGES, EVEN IF WEAVEWORKS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SUBSCRIBER AGREES THAT IT SHALL HAVE THE SOLE RESPONSIBILITY FOR PROTECTING ITS DATA, BY PERIODIC BACKUP OR OTHERWISE, USED IN CONNECTION WITH THE LICENSED SOFTWARE. IN ANY CASE, WEAVEWORKS' SOLE LIABILITY AND SUBSCRIBER'S EXCLUSIVE REMEDY UNDER ANY PROVISION OF THIS AGREEMENT SHALL BE THE REPLACEMENT OF LICENSED SOFTWARE WHICH IS ACKNOWLEDGED TO BE DEFECTIVE, WITH THE EXCEPTION OF DEATH OR PERSONAL INJURY CAUSED BY THE NEGLIGENCE OF WEAVEWORKS TO THE EXTENT APPLICABLE LAW PROHIBITS THE LIMITATION OF DAMAGES IN SUCH CASES. 9.2 **LIABILITY CAP.** SUBSCRIBER ACKNOWLEDGES THAT THE SUBSCRIPTION FEES CHARGED BY WEAVEWORKS REFLECT THE OVERALL ALLOCATION OF RISK BETWEEN THE PARTIES, INCLUDING THE PROVISIONS FOR LIMITATION OF LIABILITY AND THE EXCLUSIVE REMEDIES PROVIDED FOR IN THIS AGREEMENT. ACCORDINGLY THE TOTAL LIABILITY OF WEAVEWORKS ARISING OUT OF IN CONNECTION WITH THIS AGREEMENT TO SUBSCRIBER SHALL NOT EXCEED THE SUBSCRIPTION FEE PAID BY SUBSCRIBER IN THE 12 MONTH PERIOD IMMEDIATELY PRECEEDING THE EVENT GIVING RISE TO A LIABILITY.

9. **Confidentiality**. "**Confidential Information**" shall mean the Licensed Software and Documentation and all other information disclosed to Subscriber that Weaveworks characterizes as confidential at the time of its disclosure either in writing or orally, except for information which Subscriber can demonstrate: (a) is previously rightfully known to Subscriber without restriction on disclosure; (b) is or becomes, from no act or failure to act on Subscriber's part, generally known in the relevant industry or public domain; (c) is disclosed to Subscriber by a third party as a matter of right and without

restriction on disclosure; or (d) is independently developed by Subscriber without access to the Confidential Information. Subscriber shall use Subscriber's best efforts to preserve and protect the confidentiality of the Confidential Information at all times, both during the Subscription term and for a period of at least 3 years after expiry or termination of this Agreement, provided, however, that any source code Subscriber receives shall be held in confidence in perpetuity. Subscriber shall not disclose, disseminate or otherwise publish or communicate Confidential Information to any person, firm, corporation or other third party without the prior written consent of Weaveworks. Subscriber shall not use any Confidential Information other than in the course of the activities permitted hereunder. Subscriber shall notify Weaveworks in writing immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement, and will cooperate with Weaveworks in every reasonable way to regain possession of Confidential Information and prevent any further unauthorized use. If Subscriber is legally compelled to disclose any of the Confidential Information, then, prior to such disclosure, Subscriber will (i) immediately notify Weaveworks prior to such disclosure to allow Weaveworks an opportunity to contest the disclosure, (ii) assert the privileged and confidential nature of the Confidential Information, and (iii) cooperate fully with Weaveworks in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. In the event such protection is not obtained, Subscriber shall disclose the Confidential Information only to the extent necessary to comply with the applicable legal requirements.

10. **Injunctive Relief**. Subscriber acknowledge and agree that Subscriber's breach or threatened breach of this Agreement, and in particular any actual or threatened infringement of proprietary rights in the Licensed Software or Confidential Information shall cause Weaveworks irreparable damage for which recovery of monetary damages would be inadequate and that Weaveworks therefore may obtain timely injunctive relief to protect its rights under this Agreement in addition to any and all other remedies available at law or in equity.

11. **Export Controls.** The Licensed Software and Documentation and the underlying information and technology may not be downloaded, transported, transferred or otherwise exported or re-exported (i) into (or to a national or resident of) any country to which the U.S. has embargoed goods; or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. By downloading or using the Licensed Software and/or Documentation, Subscriber is agreeing to the foregoing and Subscriber represents and warrants that Subscriber is not located in, under the control of, or a national or resident of any such country or on any such list and Subscriber agree to comply with all export laws and other applicable laws.

12. **US. Government End Users.** The Licensed Software and Documentation each were developed by private financing and constitute "Commercial Items," as that term is defined at 48 C.F.R. §2.101. The Licensed Software consists of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. §12.212. Consistent with 48 C.F.R. §12.212 and 48 C.F.R. §227.7202-1 through 227.7202-4, all U.S. Government End Users acquire only those rights in the Licensed Software and the Documentation that are specifically provided by this Agreement. Consistent with 48 C.F.R. §12.211, all U.S. Government End Users acquire only technical data and the rights in that data customarily as specifically provided in this Agreement.

13. **Miscellaneous.** (a) This Agreement (including any separate terms set out in Order Forms) constitutes the entire agreement between the parties concerning the subject matter hereof, which may only be modified by a written amendment signed by an authorized executive of Weaveworks; to the extent of any inconsistency, this Agreement shall prevail over any additional statements or exchanges between the parties in correspondence or any other document. (b) Except to the extent applicable law, if any, provides otherwise, this Agreement shall be governed by the laws of California, U.S.A., excluding its conflict of law provisions. (c) Subscriber expressly agrees that jurisdiction for any claim or dispute arising from the use of the Weaveworks Product resides in the federal and state courts situated in the San Francisco County, California, U.S.A., and Subscriber consents to the personal jurisdiction thereof. (d) This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods. (e) If any part of this Agreement is held invalid or unenforceable, that part shall be construed to reflect the parties' original intent, and the remaining portions remain in full force and effect, or Weaveworks may at its option terminate this Agreement. (f) The controlling language of this Agreement is English. If Subscriber has received a translation into another language, it has been provided for Subscriber's convenience only. (g) A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof. (h) Subscriber may not assign or otherwise transfer by operation of law or otherwise this Agreement or any rights or obligations herein. Weaveworks may assign this Agreement to any entity at its sole discretion. (i) This Agreement shall be binding upon and shall inure to the benefit of the parties, their successors and permitted assigns (k) Except where expressly specified, the Subscription Fee payable to Weaveworks is exclusive of all state, federal and local sales and other taxes including value added tax and taxes shall be paid by the Subscriber in addition to and at the same time as the Subscription Fees. Where Weaveworks must account for the relevant taxes, Subscriber shall provide Weaveworks with any additional information which may be required in order to account to the relevant tax authority (l) In addition to

communications sent by post or electronically to the Subscriber's address or place or business notified in the Order Form, for the purposes of this Agreement, notices from Weaveworks may be given to Subscriber by posting them on the Weaveworks website at http://weave.works/ or such other method as Weaveworks chooses in its sole discretion. Subscriber may give any notice required by this Agreement by written notice sent to support@weave.works.

14. **User Outside the U.S.** If the Subscriber is using the Licensed Software or Documentation outside the U.S.A., then the following additional terms shall apply: (a) Subscriber confirm that this Agreement and all related documentation is and will be authoritative only in the original English language version; (b) Subscriber is responsible for complying with any local laws in Subscriber's jurisdiction which might impact Subscriber's right to import, export or use the Licensed Software and Documentation, and Subscriber represents that it has complied with any regulations or registration procedures required by applicable law to make this license enforceable.

By submitting an order to Weaveworks, Subscriber represents that it has reviewed and agree to be bound by this Agreement. If Subscriber does not agree to be bound by this Agreement in its entirety, do not submit an order.