



END USER LICENSE AGREEMENT FOR AxSTREAM®

PLEASE READ THIS END USER LICENSE AGREEMENT (“AGREEMENT”) CAREFULLY BEFORE USING THE AxSTREAM® SOFTWARE. BY USING AxSTREAM® SOFTWARE, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT INSTALL, COPY, ACCESS, OR USE THE AxSTREAM® SOFTWARE, AND PROMPTLY RETURN THE AxSTREAM® SOFTWARE TO SOFTINWAY.

IMPORTANT NOTE: To the extent that the AxSTREAM® Software may be used to reproduce, modify, publish, or distribute materials, it is licensed to you only for reproduction, modification, publication, and distribution of non-copyrighted materials, materials in which you own the copyright, or materials you are authorized or legally permitted to reproduce, modify, publish, or distribute. If you are uncertain about your right to copy, modify, publish, or distribute any material, you should contact your legal advisor.

This Agreement is between you and SoftInWay, Inc., a Massachusetts corporation with its principal place of business at 1500 District Avenue, Burlington, MA 01803 (“SoftInWay”) and sets forth all the terms, conditions, obligations, responsibilities, and remedies between you and SoftInWay in regards to your use of SoftInWay’s AxSTREAM® software.

1. Definitions and Terms

- 1.1 **Defined Terms.** Each term defined in the preamble and the recital of this Agreement has its assigned meaning, and each of the following terms has the meaning assigned to it.
- 1.2 **“Agreement”** means this End User License Agreement for AxSTREAM® software.
- 1.3 **“Client”** means a computer used to access a Server.
- 1.4 **“AxSTREAM® Software” and “AxSTREAM®”** means the AxSTREAM® Software Platform, AxCYCLE™ Software or any other software products created by SoftInWay, Inc.
- 1.5 **“Computer”** means a CPU or group of CPUs that access its or their own individual non-cache Random Access Memory.
- 1.6 **“Concurrent Use”** means access, directly or indirectly, by a licensed user, of the AxSTREAM® software executing on a Server.
- 1.7 **“Concurrent Use License”** means a license to install and use the Software, Data, and Documentation on computer(s) on a network, but the number of simultaneous users may not exceed the number of licenses acquired.
- 1.8 **“Confidential Information”** has the meaning assigned to it in Section 10.
- 1.9 **“CPU” or “CPUs”** means a central processing unit or central processing units.
- 1.10 **“Documentation”** means explanatory materials in printed, electronic, or online form accompanying the AxSTREAM® software.
- 1.11 **“Enterprise License”** means a license that grants the purchaser permission to use the AxSTREAM® software on a network on a single site.
- 1.12 **“License Key”** has the meaning assigned to it in Section 11.
- 1.13 **“Licensee”** means the holder of a license for AxSTREAM® software.
- 1.14 **“Named User License”** means that only one named person can use each license and that named person has the right to access the AxSTREAM® software.
- 1.15 **“Representatives”** has the meaning assigned to it in Section 12.3(c).
- 1.16 **“Server”** means a Computer, which permits Concurrent Use by multiple users.
- 1.17 **“Server License”** means a license tied to a specific Computer.
- 1.18 **“Software”** means SoftInWay’s AxSTREAM® software including all computer software now comprising the AxSTREAM® software and all bug fixes, patches, and other updates obtained by you pursuant to this Agreement, and all associated media, including online or electronic documentation.
- 1.19 **“Third-Party Content”** has the meaning assigned to it in Section 3.5.
- 1.20 **“Unauthorized Version”** means the AxSTREAM® software not distributed by SoftInWay.



- 1.21 “Use” or “Used” means storing, loading, installing, executing, and displaying the AxSTREAM® software.
- 1.22 “Website” means SoftInWay’s websites located at www.softinway.com and its subdomains, or any subsequent URL which may replace them.
2. **Scope of License and Grant.** You may Use the AxSTREAM® software, pursuant to the terms of the particular license(s) you have acquired as specified below. Unless expressly stated otherwise in our license grant, SoftInWay grants to you, and you accept, the non-exclusive, non-transferable, non-assignable, limited right to Use the AxSTREAM® software, without the right to sublicense, in object code form only, and only on a single Computer. SoftInWay reserves the right to include in the AxSTREAM® software one or more devices to ensure that your use of the AxSTREAM® software is consistent with the Use permitted in this Agreement.
- 2.1 **Named User or Enterprise License.** If you have a Named User License or an Enterprise License, the AxSTREAM® software may only be Used by the individual designated by the administrator as the “Named User” for that copy of the AxSTREAM® software. The Named User may Use that particular copy of the AxSTREAM® software on any Computer.
- 2.2 **Server License.** If you have a “Server License,” you must acquire a separate AxSTREAM® software license for each Server on which the AxSTREAM® software is to be installed. Each Client that accesses the Server must also be separately licensed.
- 2.3 **Concurrent Use License.** If you have a Concurrent Use License, you are only authorized to permit the Concurrent Use of the Server on which the Software is installed by the number of Clients for which you have purchased Concurrent Use Licenses. You may only Use the AxSTREAM® software to access Servers on which the AxSTREAM® software is installed if the Use of the AxSTREAM® software on such Server is properly licensed and complies with the conditions and restrictions (including any Concurrent Use restrictions) of such Server license.
3. **License Rights and Restrictions**
- 3.1 **General Restrictions.** You may not, and you may not cause or allow any third party to decompile, disassemble or reverse-engineer the AxSTREAM® software; or create or recreate, or attempt to create or recreate the source code from the object code for the AxSTREAM® software. You may not remove, erase, obscure, or tamper with any copyright, trademark, or any other product identification or proprietary rights notices, seal, or instructional label printed or stamped on, affixed to, or encoded or recorded in or on any AxSTREAM® software or Documentation. You may not transmit the AxSTREAM® software over any network or via a hacking device, although you may use the AxSTREAM® software to make transmissions of diagnostic data messages that are authorized by SoftInWay and you may receive AxSTREAM® software updates authorized by SoftInWay. You may not upload the AxSTREAM® software to a freeware site, shareware site, or any other site. You may not modify the AxSTREAM® software or disable or attempt to circumvent any licensing, anti-piracy or other control or technological features of the Software. You may not copy (including copying onto a bulletin board or similar system) the AxSTREAM® software. You may not lease, lend, sell, market, license, sublicense, distribute, or otherwise grant to any person or entity any right to use the AxSTREAM® software except to the extent expressly permitted in this Agreement. You may not Use the AxSTREAM® software to provide, alone or in combination with any other product or service, any product or service to any person or entity, whether on a fee basis or otherwise. You may not modify, tamper with, translate, or create derivative works of the AxSTREAM® software or the Documentation. You may not combine or merge any part of the AxSTREAM® software or Documentation with or into any other software or documentation. You may not refer to or otherwise use the AxSTREAM® software as part of any effort to develop software (including, without limitation, any routine, script code, or program) having any functional attributes, visual expressions, or other features similar to those of the AxSTREAM® software or to compete with AxSTREAM® software.
- 3.2 **Ownership.** You acknowledge and agree that the AxSTREAM® software is owned and copyrighted by SoftInWay. Your license confers no title, ownership in the AxSTREAM® software and is not a sale to you of any rights in the AxSTREAM® software. All ownership rights remain in SoftInWay.
- 3.3 **Trademarks.** AxSTREAM® is a registered trademark of SoftInWay in the United States of America, and you are prohibited from displaying or otherwise using them in any manner without SoftInWay’s prior written consent. SoftInWay does not grant you any right, license, or interest, to the AxSTREAM® trademark, or any other trademarks confusingly similar to AxSTREAM®, and you agree that no such right, license, or interest shall be asserted by you with respect to the AxSTREAM® trademark. All other marks in the AxSTREAM® software are the marks of their respective owners. All trademarks and copyright notices appearing on the AxSTREAM® packaging, computer application and output data shall not be erased, covered or obscured or deleted in any manner.



- 3.4 **Trade Secrets.** The AxSTREAM® software contains SoftInWay trade secrets. You may not disclose such trade secrets or decompile, reverse engineer, disassemble, or otherwise reduce the AxSTREAM® software to human-perceivable form except to the extent that such rights cannot be excluded by mandatory applicable law.
- 3.5 **Content.** Any non-SoftInWay materials (“**Third-Party Content**”) you access via the AxSTREAM® software (on-line or otherwise) is the property of the applicable owner and may be protected by applicable copyright law. This Agreement grants you no rights to Third-Party Content.
- 3.6 **Copies.** You may only make one (1) copy of the object code of the AxSTREAM® software solely for backup or archival purposes (which you may Use, subject to the terms of this Agreement, to replace the AxSTREAM® software in the event the AxSTREAM® software loaded on your licensed Computer is lost or is damaged and rendered unusable, or when copying is an essential step in the authorized Use of the AxSTREAM® software). You must reproduce all trademarks, copyright and other proprietary or restricted notices in the original AxSTREAM® software on all copies. You may not copy any of the Documentation.
- 3.7 **Upgrades.** If the AxSTREAM® software you purchased is an upgrade of a SoftInWay product, you may now Use that upgraded product only in accordance with this Agreement. If the AxSTREAM® software is an upgrade of a component of a package of software programs that you licensed as a single product, the AxSTREAM® software may be Used only as part of that single product package and not be separated for Use on more than one Computer. You may not loan, rent, lease, or otherwise transfer the original non-upgraded product to another person.
- 3.8 **License Management and Product Usage.** AxSTREAM® products and services contain technology for license management and for the prevention of software piracy. Software products and services contain technology that sends usage and error reports to SoftInWay and our compliance vendor, both in the course of normal usage and in the event of a software crash. This technology causes the products and services to send messages to SoftInWay over the Internet that contain network, device, license, and usage information. This information may include the products and services you accessed, the length of your session, errors that occurred, your IP address, a license identifier, and your SoftInWay Account identifier. In some cases, you can opt out of sending these reports by selecting an option in the applicable product; consult the SoftInWay documentation for instructions. To the extent that any privacy laws or regulations conflict with the terms of this Section 3.8, you hereby waive any rights you may have under such laws and regulations to the extent permitted.
- 3.9 **Software Piracy.** Any mislicensing, unauthorized reproduction, distribution, copying, reverse-engineering, transferring, uploading, tampering, or merging, whether for business or personal use, is a violation of this Agreement. SoftInWay shall report any such violation, or any violation under this Agreement, to the appropriate law enforcement authorities.
4. **Right to Audit.** You shall maintain true, complete, and correct copies of all books and records reflecting the location and use of the AxSTREAM® software in your possession or control, and the license and maintenance fees paid or payable hereunder for a period of a minimum of three (3) years. On at least seven (7) days prior written notice to you, SoftInWay shall be entitled to audit your use of the AxSTREAM® software pursuant to this Agreement. Such that a) if the audit reveals any breach of the terms of this License, you will pay the cost of such audit, and b) SoftInWay will not conduct audits more often than semi-annually, except in the case of SoftInWay’s reason to know that there has been a violation of the terms of this License. An audit shall be conducted by a third party of SoftInWay’s choosing, and the third party shall be entitled to enter onto your premises and, for the sole purpose of confirming compliance with the terms of this Agreement, may: (1) inspect your books and records pertaining to the Use of the AxSTREAM® software and the payment of license fees payable hereunder; (ii) inspect and review the Computer(s) upon which the AxSTREAM® software is installed or Used; and (iii) inspect and review your network, Server, and Computer upon which the AxSTREAM® software could be installed or stored.
5. **Prior Unauthorized Use.** If SoftInWay determines through an audit or any other measure that you Used, or Use, or caused a third party to Use, an Unauthorized Version of the AxSTREAM® software at any time prior to your acceptance of this Agreement, this Agreement will apply retroactively to your prior unauthorized use, and you will be held in violation of this Agreement and liable pursuant to Section 6.
6. **Liability for Breach of Contract.** Your violation of this Agreement may result in civil and criminal penalties against you, and in such suspected case, SoftInWay may immediately conduct an audit of your use of the AxSTREAM® software, and may result in a termination of privileges by rescinding access to the AxSTREAM® software, at SoftInWay’s sole discretion. SoftInWay reserves the right to hold you in violation of this Agreement through minimal proof of infringement or violation of any provision(s) of this Agreement by you, or caused by you, or caused by a third party as a result of your actions.



6.1 **Remedy.** If it is determined through an audit or any other measure that your use of the AxSTREAM® software exceeds or exceeded the use permitted by this Agreement, or you violated any of the terms under this Agreement, then, at SoftInWay's discretion,

- (a) you shall, within 14 days following the date of such determination by SoftInWay's written notification thereof, pay to SoftInWay the full-price of the AxSTREAM® software package at the current market value up to \$624,750, or
- (b) the retroactive Licensee Fees for such excess and prohibited use and, unless SoftInWay terminates this Agreement, obtain and pay for a valid license to bring your use into compliance with this Agreement. In determining the Licensee Fee payable pursuant to the foregoing, all prohibited use of the Software shall be deemed to have commenced on the commencement date of this Agreement, and the rates of such licenses shall be determined without regard to any discount to which you have been entitled had such use been properly licensed prior to its commencement (or deemed commencement).

SoftInWay's remedies set forth in this Section 6 are cumulative and are in addition to, and not in lieu of, all other remedies SoftInWay may have at law or in equity, whether under this Agreement or otherwise. All remedies are at SoftInWay's discretion. Your jurisdiction may give you different rights and SoftInWay advises you of this possibility.

7. **Changes to Terms.** SoftInWay reserves the right at any time to modify the terms of the License granted hereunder, and to add new or additional terms or conditions to this Agreement. Such modifications and additional terms and conditions will be effective immediately upon notice to you, at which time you may terminate the License and uninstall the AxSTREAM® software, return all proprietary materials to SoftInWay, cease using the Trademarks, and this Agreement will terminate.

7.1 **Acknowledgement.** You understand and agree that your continued use of the AxSTREAM® software will be deemed as your acceptance of the modification of the License terms.

8. **Education Software.** If the AxSTREAM® software is identified as an educational version in the Documentation, on the packaging of the AxSTREAM® software, or on the purchase or download page of the Website, and you qualify as an academic end user, you may install and access one (1) copy of the AxSTREAM® software and only for educational purposes and for no other purpose. Additional copies and licenses may be granted with written authorization from SoftInWay. Educational versions of the AxSTREAM® software may not be used for commercial, professional or other for-profit purposes. Notwithstanding the foregoing, you are not entitled to use the AxSTREAM® software unless you qualify in your jurisdiction as an academic end user (e.g., faculty, staff members, and degree, diploma or certificate-seeking students at qualified educational institutions). Work product and other data created with the educational version of the AxSTREAM® software may contain certain notices and limitations that make the data unusable outside the educational use area. You may not export data created using the educational version of the AxSTREAM® software. If you combine or link data created with educational version of the AxSTREAM® software with data otherwise created, then that data may also be affected by these notices and limitations. This Section 8 must remain in compliance with Section 3.

9. **Third-Party and Open Source Software.** SoftInWay is in compliance with the terms and conditions of all licenses for the Open Source Materials used in or distributed with the AxSTREAM® software. Permission is hereby granted, free of charge, to any person obtaining a copy of these software components and associated documentation files to deal in the Software without restriction, including without limitation the rights to use, copy, modify, merge, publish, distribute, sublicense, and/or sell copies of the Software, and to permit persons to whom the Software is furnished to do so, subject to the conditions of this EULA. SoftInWay utilizes the following third-party software in conformity with the licensing requirements:

- 9.1 Open CASCADE and uses Open CASCADE in conformity with the GNU General Public License.
- 9.2 CoolProp
- 9.3 Eigen
- 9.4 ActiPro

10. **Confidentiality.** The AxSTREAM® software, including the source code, object code, and the operational methods of the AxSTREAM® software, and all Documentation, and other materials associated with the AxSTREAM® software, is the Confidential Information of SoftInWay ("**Confidential Information**"). You acknowledge and agree that you will use commercially reasonable efforts to safeguard SoftInWay's Confidential Information and to prevent any unauthorized access, reproduction, disclosure and/or use of any of the Confidential Information, utilizing at least the safeguards that you use for protection of your own confidential information. You may disclose the Confidential Information only to those employees and agents who need to know such information, and in the event the employment or appointment of any such person is terminated, you agree to use your best efforts to recover any Confidential Information in such person's custody or control. You may not remove any copyright notice, trademark notice and/or other proprietary legend or indication of confidentiality set forth on or contained in any of the Confidential Information. You may not use any of the Confidential Information other



than as expressly permitted in this Agreement. You may not, directly or indirectly, either during or subsequent to the term of this Agreement, disclose the existence, content and/or substance of any of the Confidential Information to any third party, nor develop, manufacture, produce and/or distribute any software product(s) derived from or which otherwise use any of the Confidential Information. You must promptly notify SoftInWay in writing of any unauthorized use or disclosure of the Confidential Information, which notice shall include a detailed description of the circumstances of the disclosure and the parties involved. Your obligations hereunder with respect to the Confidential Information shall commence upon the date you accept this Agreement, and shall continue for such time as SoftInWay continues to treat such data as Confidential Information.

11. **Technical Support.** SoftInWay shall provide you with a primary level of AxSTREAM® software support and maintenance for the then current release/version of the AxSTREAM® software, and the immediately preceding release/version of the AxSTREAM® software for a period of six (6) months following the date the subsequent release/version is made generally available to AxSTREAM® software customers, for one year after the date of your receipt of the license file, which enables you to complete the installation and use the AxSTREAM® software (the "License Key"). Technical support for the AxSTREAM® software shall include access to bug fixes and other periodic updates to the AxSTREAM® software and access to the AxSTREAM® user's forum (details of which may change from time to time and be found on the Website). You may purchase additional technical support for a period extending beyond the first year, subject to additional terms and fees; details may be found on the Website. You should note that certain customized technical support and professional services may be obtained from SoftInWay, subject to a separate written agreement between you and SoftInWay. SoftInWay reserves the right to refuse to provide technical support to any SoftInWay customer for abuse or misuse of the provisions of technical support, or for any other violation of the terms of this Agreement.

12. **Remedies and Limitations of Liability**

12.1 **Limited Returns and Defective Media.** If you reject this Agreement, you may obtain a refund of the license fee you paid for the AxSTREAM® software or the AxSTREAM® software upgrade (as applicable) provided that you provide SoftInWay evidence of your payment of the license fee and either deliver to SoftInWay your certification of your destruction of, or return to SoftInWay, the AxSTREAM® software and accompanying documentation, within thirty (30) days from the date you receive the License Key for the Software. If the AxSTREAM® software is delivered to you on any media by SoftInWay and you determine that such media is defective,

- (a) within thirty (30) days from the date of purchase of the AxSTREAM® software, SoftInWay shall, at its option either repair or replace the media, or refund the license fee you paid, provided that you provide SoftInWay evidence of your payment of the license fee and either deliver to SoftInWay your certification of your destruction of, or return to SoftInWay, the AxSTREAM® software and accompanying Documentation, within thirty (30) days from the date of purchase of the AxSTREAM® software.
- (b) more than thirty (30) days from the date of purchase, SoftInWay shall, at its option, either repair or replace the media, provided that you return to SoftInWay the defective media and a check in the amount of the replacement fee, plus any applicable sales tax, and shipping and handling fees. Please contact SoftInWay for the specific replacement charges.
- (c) SoftInWay will not be responsible for replacements or repairs unless you obtain in advance a Return or Repair Authorization from SoftInWay.

THIS SECTION 12.1 SETS FORTH SOFTINWAY'S ENTIRE LIABILITY AND YOUR EXCLUSIVE REMEDIES IN CONNECTION WITH DEFECTS IN MEDIA OR YOUR DISSATISFACTION WITH THE AxSTREAM® SOFTWARE.

12.2 **Limited Warranty and Disclaimers.** You understand and acknowledge that the AxSTREAM® software, although functionally complete, is inherently complex and may not be completely free of errors. Although SoftInWay will make reasonable efforts to correct any material nonconformity between the AxSTREAM® software and its then-current documentation that you bring to SoftInWay's attention with written, documented reports, the AxSTREAM® software is licensed "as is." SoftInWay has no obligation to correct any deficiencies that you may discover, nor does SoftInWay guarantee its service results, or warrant or represent that all program errors can or will be corrected.

- (a) EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, SOFTINWAY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS. IN PARTICULAR, YOU ACKNOWLEDGE THAT THE AxSTREAM® SOFTWARE IS PROVIDED "AS IS" AND YOU ACCEPT THE ENTIRE RISK AS TO THE SOFTWARE'S QUALITY AND PERFORMANCE.
- (b) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SOFTINWAY, ITS AFFILIATED COMPANIES AND THEIR LICENSORS DISCLAIM ALL OTHER REPRESENTATIONS, TERMS AND



CONDITIONS, WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED BY STATUTE, COLLATERALLY, OR THE PARTIES' COURSE OF DEALINGS OR OTHERWISE, REGARDING THE AxSTREAM® SOFTWARE, RELATED DOCUMENTATION AND OTHER MATERIALS AND SERVICES INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY OR SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS IN THE SOFTWARE.

- (c) SOFTINWAY DOES NOT WARRANT THAT THE AxSTREAM® SOFTWARE SHALL PERFORM WITHOUT INTERRUPTION OR BE ERROR FREE, OR THAT IT IS FREE FROM BUGS, VIRUSES, ERRORS OR OTHER PROGRAM LIMITATIONS.
- (d) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY SOFTINWAY OR ITS LICENSORS, THEIR RESPECTIVE EMPLOYEES, DISTRIBUTORS, DEALERS OR AGENTS, SHALL INCREASE THE SCOPE OF THE ABOVE REPRESENTATIONS, WARRANTIES, TERMS OR CONDITIONS IN CONNECTION WITH THE AxSTREAM® SOFTWARE OR ANY SERVICE RELATED THERETO.
- (e) SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OF IMPLIED REPRESENTATIONS, WARRANTIES, TERMS OR CONDITIONS, SO THE ABOVE EXCLUSIONS MAY NOT FULLY APPLY TO YOU. IN THAT EVENT, TO THE EXTENT YOUR JURISDICTION PERMITS SUCH LIMITATIONS, ANY IMPLIED REPRESENTATIONS, WARRANTIES, TERMS OR CONDITIONS ARE LIMITED IN DURATION TO THIRTY (30) DAYS FROM THE DATE YOU PURCHASED THE AxSTREAM® SOFTWARE OR TO THE SHORTEST PERIOD PERMITTED BY APPLICABLE LAW, IF LONGER. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY HAVE OTHER RIGHTS AS WELL, WHICH MAY VARY ACCORDING TO JURISDICTION.

12.3 Limitation of Liability and Damages:

- (a) UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, NEGLIGENCE, CONTRACT OR OTHERWISE, SHALL SOFTINWAY BE LIABLE UNDER THIS AGREEMENT OR IN CONNECTION WITH ITS SUBJECT MATTER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, OR EXTRA-CONTRACTUAL DAMAGES OF ANY KIND, LOSS OF GOODWILL, LOSS OF PERSONNEL SALARIES, LOST PROFITS OR REVENUE, DAMAGES DUE TO WORK STOPPAGE AND/OR COMPUTER FAILURE OR MALFUNCTION, AND/OR COSTS OF PROCURING SUBSTITUTE SOFTWARE OR SERVICES, WHETHER OR NOT FORESEEABLE, EVEN IF THE EXCLUSIVE REMEDIES PROVIDED BY THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE AND EVEN IF YOU HAVE ADVISED SOFTINWAY OF THE POSSIBILITY OR PROBABILITY OF SUCH DAMAGES.
- (b) THE ENTIRE AND SOLE LIABILITY OF SOFTINWAY, AND ITS AFFILIATES, LICENSORS, THIRD-PARTY CONTENT OR SERVICE PROVIDERS, DISTRIBUTORS, DEALERS OR SUPPLIERS ("REPRESENTATIVES") FOR ANY REASON SHALL BE LIMITED TO THE AMOUNT PAID BY YOU TO SOFTINWAY FOR THE AxSTREAM® SOFTWARE OR SERVICES IN RELATION TO WHICH THE CLAIM ARISES, EXCEPT AS MAY BE REQUIRED BY APPLICABLE LAWS.
- (c) THE LIMITATIONS OF LIABILITY SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN SOFTINWAY AND YOU. YOU AGREE AND ACKNOWLEDGE THAT SOFTINWAY WOULD NOT BE ABLE TO HAVE PROVIDED THE SOFTWARE AND/OR THE RELATED SERVICES AND MATERIALS WITHOUT SUCH LIMITATIONS.

12.4 Your Responsibilities. You are responsible for the supervision, management and control of the Use of the AxSTREAM® software, and output of the AxSTREAM® software, including, without limitation, (i) the selection of the AxSTREAM® software for your intended Use; (ii) determining the appropriate Use and users of the AxSTREAM® software, and the use of the output from the AxSTREAM® software; (iii) determining the appropriate process for testing the accuracy of the AxSTREAM® software and evaluating any output from the AxSTREAM® software and its application in your environment; and (iv) determining the appropriate process for backing-up the Software and related data and causing the back-up to occur, to prevent the loss of data in the event the AxSTREAM® software malfunctions or is damaged. You acknowledge that the AxSTREAM® software is a tool to be Used by qualified, trained users, that it is not designed to be a substitute for professional judgment or independent testing or analysis, and that you bear the sole responsibility for the use of any results obtained from the AxSTREAM® software

12.5 Survival of this Section 12. The provisions of this Section 12 shall survive termination of this Agreement and the License granted hereunder.

13. Export Controls.



13.1 General Export Controls. You may not download, distribute, export, re-export, or redistribute the AxSTREAM® software, including any underlying information or technology, (i) into, or to a national or resident of any country to which the United States of America has embargoed goods; (ii) to anyone on the United States of America's Treasury Department's list of Specially Designated Nationals or the United States of America's Commerce Department's Table of Denial Orders; and/or (iii) otherwise in breach of United States laws and regulations related to exports and to all administrative acts of the US Government pursuant to such laws and regulations. By downloading or Using the AxSTREAM® software, you agree to the foregoing and represent and warrant that you are not located in, under the control of, or a national or resident of any country or on any such list in breach of this Section 13. In addition, you are responsible for complying with any local laws in your jurisdiction which may impact your right to import, export or Use the AxSTREAM® software, and you represent that you have complied with any regulations or registration procedures required by applicable law to make this license enforceable.

13.2 Required Licenses for Approved End Use. SoftInWay is subject to U.S. laws and regulations controlling the export of technical data, computer software, and other commodities for an end use that may require a license from the applicable agency of the United States government and/or may require written assurances by you that you will not Use the AxSTREAM® software for a restricted end use without prior approval of such agency. SoftInWay neither represents that a license is required, nor that, if required, it will be issued. By downloading or Using the AxSTREAM® software, you agree to the foregoing and will provide written assurances that you will Use the software in compliance with the existing export terms complaint with United States Department of Commerce Bureau of Industry and Security commodity classification of ECCN EAR99.

- (a) You warrant that AxSTREAM® Software is not for Nuclear Test, Chemical Weapon Test, nor Missile Test, and that AxSTREAM® software will not be re-exported to any country or national of another country without prior written permission from SoftInWay and the applicable agency of the United States government.

- 14. U.S. Government End Users.** All SoftInWay products and related documents are commercial in nature. The AxSTREAM® software and Documentation are "Commercial Items", as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Any use, modification, reproduction, release, performance, display or disclosure of the AxSTREAM® software and accompanying Documentation by the United States Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.
- 15. Termination.** This Agreement is effective until terminated by you or SoftInWay. Your rights under this Agreement will terminate automatically without notice from SoftInWay if you fail to comply with any term(s) of this Agreement. Upon any such termination, you must notify SoftInWay of such breach and immediately discontinue all Use of the AxSTREAM® software, and immediately destroy the AxSTREAM® software together with all copies, and uninstall the AxSTREAM® software from any Computers on which you have installed the AxSTREAM® software. The provisions of this Agreement, other than your license to use the Software, shall survive the termination of the license, or any termination of this Agreement. You agree that SoftInWay will not be liable to you or to any third party for termination of your license as a result of any violation of this Agreement. You agree that SoftInWay will not be liable to you or to any third party for termination of your license as a result of any violation of this Agreement.
- 16. Indemnification.** You agree to indemnify and hold SoftInWay, its officers, directors, members, employees, agents, subsidiaries, affiliates successors and assigns harmless from and against any demands, loss, liability, claims or expenses, including attorneys' fees, made against SoftInWay by any third party due to or arising out of or in connection with your Use of the AxSTREAM® software. If SoftInWay takes any action against you as a result of your violation of this Agreement, SoftInWay will be entitled to recover from you, and you agree to pay, all reasonable attorneys' fees and costs of such action, in addition to any other relief granted to SoftInWay. The provisions of this Agreement (other than your license to use the Software) shall survive the termination of the license, or the termination of this Agreement.
- 17. Reference.** SoftInWay may use and reference your name and, with your prior consent, your logo and marks, as a reference in connection with the AxSTREAM® software and/or in SoftInWay's advertising, publicity efforts and Website.
- 18. Representation and Warranties.** Each Party represents to the other that they have the requisite authority to enter into this Agreement.



19. **General Provisions**

- 19.1 **Governing Law.** This Agreement is deemed to have been entered into the Commonwealth of Massachusetts as an instrument under seal. This Agreement will be governed by the laws of the Commonwealth of Massachusetts, USA, except for that body of law dealing with conflicts of law. The application to this Agreement of the United Nations Convention on Contracts for the International Sale of Goods is hereby expressly excluded. In the event of any dispute involving this Agreement, the Parties consent to personal service by USPS priority mail, certified mail or commercial courier, and the exclusive jurisdiction and venue in either the state or federal courts in the Commonwealth of Massachusetts.
- 19.2 **Notice.** If you have questions regarding the AxSTREAM® software, or you wish or are required to notify SoftInWay under this Agreement, you should contact SoftInWay at:
- (a) Address: SoftInWay, Inc., 1500 District Avenue, Burlington, MA 01803, USA
 - (b) Facsimile: (781) 685-4942
 - (c) E-mail: axstream@softinway.com
- 19.3 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, (a) such provision will be deemed amended to achieve as nearly as possible the same effect as the original provision, and (ii) the legality, validity, and enforceability, of the remaining provisions of this Agreement will not be affected or impaired thereby.
- 19.4 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns; provided, however, that you are prohibited from assigning any rights or obligations under this Agreement to any person or entity. Any transfer of control of substantially all of the assets or business of SoftInWay to a third party by any means, including without limitation, stock acquisition or merger, shall be deemed to be a permitted assignment for purposes of this Agreement.
- 19.5 **Knowing and Voluntary Execution.** You hereby confirm that you understand the terms of, and voluntary and knowingly execute, this Agreement with the intent of being legally bound by the terms thereof.
- 19.6 **No Construction against Drafter.** This Agreement shall be fairly interpreted in accordance with its terms and without any strict construction against either party. Any ambiguity will not be interpreted against the drafting party.
- 19.7 **Entire Agreement.** This Agreement constitutes the entire and sole agreement between you and SoftInWay and supersedes any prior or contemporaneous negotiations, understandings or agreements, whether oral or in writing, concerning the subject matter hereof.
- 19.8 **Amendment.** This Agreement may be amended from time to time pursuant to Section 7.
- 19.9 **Waiver.** No term or provision hereof shall be deemed waived and no breach hereof shall be deemed consented to or excused, unless such waiver, consent or excuse shall be expressly made in writing and signed by the Party claimed to have so waived, consented or excused. Should either Party consent, waive or excuse a breach by the other Party, such consent, waiver or excuse shall not constitute a consent to, waiver of, or excuse of any other different or subsequent breach, whether or not of the same kind as the original breach.
- 19.10 **Headings and Captions.** The headings and captions contained in this Agreement shall not be considered to be part hereof for purposes of interpreting or applying this Agreement, but are for convenience of reference only.
- 19.11 **Intellectual Property.** This Agreement does not limit any rights SoftInWay may have under trade secret, copyright, patent, trademark, or other laws.

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