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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.
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- 1.3 **“Authorized User”** means an individual and/or entity that is authorized via receipt of a license to Use the Software.
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- 1.17 **“Representatives”** has the meaning assigned to it in Section 11.3(c).



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 - 2.4 **Change of User.** In order to change the identity and/or contact information of the named User for your company, you must: 1) be an active customer (either within the term of a license or actively paying for technical support/updates); and 2) pay an administrative charge of \$500.00 USD (plus applicable sales tax) per change request. Your Use of the AxSTREAM® software is an acknowledgment of this EULA and your assurance that you will not be utilizing any/all previously downloaded versions on computers and/or servers that were previously used with the AxSTREAM® software. You agree that you will remove and delete all prior instances of the AxSTREAM® software from computers and/or servers no longer authorized for Use with the Software.
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12.2 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.

- 13. 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.
- 14. 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. All 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. In no event of termination shall you be entitled to a refund of any license or other fees previously paid. 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.
- 15. 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, losses, 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. This clause shall survive the termination of the license, or the termination of this Agreement.
- 16. 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.
- 17. Representation and Warranties.** Each Party represents to the other that they have the requisite authority to enter into this Agreement.
- 18. General Provisions**
- 18.1 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, without regard to 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.
- 18.2 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) Physical Address: SoftInWay, Inc., 20 Burlington Mall Road, Suite 450, Burlington, MA 01803, USA; or
(b) E-mail Address: axstream@softinway.com



- 18.3 **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.
- 18.4 **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.
- 18.5 **Knowing and Voluntary Execution.** You hereby confirm that you understand the terms of, and voluntarily and knowingly execute, this Agreement with the intent of being legally bound by the terms thereof.
- 18.6 **No Construction against Drafter.** As each Party has had the opportunity to review and negotiate this Agreement prior to entering said Agreement, 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.
- 18.7 **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.
- 18.8 **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.
- 18.9 **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.
- 18.10 **Intellectual Property.** This Agreement does not limit any rights SoftInWay may have under trade secret, copyright, patent, trademark, or other laws.

20. End User Data and Data Protection.

- 20.1 **Data Processing.** End User acknowledges, agrees and grants to SoftInWay the right, to the extent permitted by applicable law, to process and retain data, including End User Data, shared by End User related to a security event, for the legitimate interest of operating, providing, maintaining, developing, and improving security technologies and services, including for purposes compatible with providing such services. To the extent SoftInWay processes personal data on behalf of End User as a processor in the meaning given in data protection laws, it will do so in accordance with the following section.
- 20.2 **Subcontractors.** SoftInWay will take appropriate measures to safeguard the confidentiality of End User Data. Except where required by law, SoftInWay will not share End User Data with third parties other than with selected subcontractors. SoftInWay will impose appropriate contractual obligations upon such subcontractors that are no less protective than this section and SoftInWay will remain responsible for the subcontractor's compliance with this EULA and for any acts or omissions of the subcontractor that cause SoftInWay to breach any of its obligations under this EULA.
- 20.3 **Compliance with Laws.** SoftInWay will process End User Data in accordance with applicable data protection laws, including both U.S. and EU data protection laws. End User represents and warrants that its Use of SoftInWay products/services, its authorization for SoftInWay's access to data, and any related submission of data to SoftInWay, including any End User Data contained therein, complies with all applicable laws, including those related to data privacy, data security, electronic communication and the export of technical, personal or sensitive data.
- 20.4 **Confidentiality of Personal Data.** SoftInWay will ensure that personnel it authorizes to process personal data have committed themselves to confidentiality or are under appropriate statutory obligation of confidentiality.
- 20.5 **Security.** SoftInWay has implemented practices and policies to maintain appropriate organizational, physical and technical measures to safeguard the confidentiality and security of personal data to comply with applicable laws.



SoftInWay, Inc.
20 Burlington Mall Road, Suite 450
Burlington, MA 01803
781-328-4310

20.6 Security Incident Notification. In the event of a Security Incident affecting End User personal data, SoftInWay will without undue delay:

- i. inform End User of the Security Incident;
- ii. investigate and provide End User with detailed information about the Security Incident; and
- iii. take reasonable steps to mitigate the effects and minimize any damage resulting from the Security Incident as required by applicable law.

BY INSTALLING THE AxSTREAM® SOFTWARE OR USING THE AxSTREAM® SOFTWARE, YOU ACCEPT AND AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT.