



GENERAL TERMS AND CONDITIONS FOR SUBSCRIPTION SERVICES

These General Terms and Conditions for Subscription and Services ("General Conditions") are effective from the Effective Date by and between **AXWAY SOFTWARE DO BRASIL LTDA.**, having its registered address at Cidade de Barueri, Estado de São Paulo, na Alameda Araguaia, nº 2.190, Torre I, cj. 1.601, Alphaville Industrial, CEP 06455-913, Inscripción CNPJ/MF under nº 18.505.934/0001-40 ("**Axway**") and your company ("**Customer**"). Unless otherwise agreed by the Parties in writing, these General Conditions, , and any Ordering Document executed hereunder shall govern Axway's provision of the Products and Services to Customer (collectively, the "**Agreement**"). The parties hereto may be referred to individually as a "Party" or collectively as the "Parties". IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.

In consideration of the mutual promises herein made, and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS.

When used in the Agreement, the following capitalized terms shall have the following meanings:

- 1.1. "**Affiliate**" means in relation to a Party, any entity which directly or indirectly controls, is controlled by, or is under common control with that Party. For purposes of this definition, the term "control" (including the terms "controlled by" and "under common control with") means the power to direct or cause the direction of the management and policies of a Party (whether through the ownership of voting securities, by contract or otherwise), or ownership of more than 50% of the voting securities of that Party. Notwithstanding the foregoing, all entities listed on Axway Software SA's yearly registration document available at <http://www.finance.axway.fr/en> shall be deemed to be "Affiliates" of Axway.
- 1.2. "**Axway Content**" means all software, data, text, images, audio, video, photographs and other content and material, in any format, that are obtained or derived from Axway that Customer may access through, within, or in conjunction with the use of the Subscription Services. Examples of Axway Content include, but are not limited to, Documentation, Axway data marketplaces and connectors.
- 1.3. "**Deliverable**" means tangible result of Professional Services provided to Customer pursuant to an Ordering Document.
- 1.4. "**Documentation**" means the published specifications, user guides and Service Level Agreement Description document delivered by Axway to Customer (accessible via <https://support.axway.com>) with regard to the applicable Product, Subscription Services or Professional Services.
- 1.5. "**Evaluation**" or "**Free trial**" means a restricted temporary right to access to the Subscription Services for evaluation and non-commercial purpose use of the Product and/or the Subscription Services pursuant to the free trial registration and on-line checkout form published at <https://www.axway.com/node/2495>.
- 1.6. "**Managed Environment**" means either (i) the combination of hardware and software components owned, licensed or managed by Customer and necessary to receive access to the Subscription Services ("Customer Managed Environment"), or (ii) Axway remote hosted services and/or cloud-based software as service to which Axway grants Customer and its Users access as part of the Subscription Services ("Axway Managed



- Environment"). Subject to the terms of the applicable Order Form, Customer Content may be hosted in the Axway Managed Environment.
- 1.7. **"Marketplace"** means an online directory, catalog or marketplace of applications that interoperate with the Subscription Services.
 - 1.8. **"Order Form"** means Axway's standard order form (or other similar document duly executed by the Parties) entered into pursuant to this Agreement which specifies the Subscription Services, Products and/or Professional Services to be ordered by Customer hereunder, and the fees therefor.
 - 1.9. **"Ordering Document"** means collectively the Order Form(s) and SOW(s).
 - 1.10. **"Ordering Document Effective Date"** or **"Effective Date"** means, with respect to each Ordering Document, (i) the effective date specified on the Ordering Document or, if none, the date of the last signature, (ii) with respect to an online checkout form, the date in which Axway enters the completed online checkout form via platform.axway.com, or (iii) if Customer purchased Services through a channel partner, upon Axway's express acceptance of the Ordering Document following its submission by the channel partner.
 - 1.11. **"Products"** means the software products to which Axway permits access to Users as part of the Subscription Services, as specified in an Order Form. Product may include any software agent, application or tool that Axway makes available to Customer for download specifically for purposes of facilitating Customer access to, operation of, and/or use with, the Subscription Services.
 - 1.12. **"Professional Services"** mean installation services, implementation services, consulting services, managed services, and/or training, delivered by Axway to Customer as set forth in an Ordering Document (and specifically excluding Subscription Services).
 - 1.13. **"Customer Content"** means the data and other materials Customer inputs for processing through the Subscription Services hosted within the Axway Managed Environment.
 - 1.14. **"Initial Subscription Term"** and **"Renewal Term"** shall have the meanings ascribed to those terms in Section 9.2 of this Agreement.
 - 1.15. **"Services"** means, collectively, the Subscription Services and Professional Services.
 - 1.16. **"Statement of Work"** or **"SOW"** means Axway's standard statement of work (or other similar document duly executed by the Parties) entered into pursuant to this Agreement that describes the Professional Services to be provided by Axway to Customer.
 - 1.17. **"Subscription Term"** means the period identified in the applicable Order Form during which Axway is required to provide Customer with Subscription Services. Subscription Term includes Initial Subscription Term together with any Renewal Terms, as defined herein.
 - 1.18. **"Subscription Services"** means with respect to the Order Form the subscription services provided by Axway within the Axway Managed Environment or for Customer's installation and use in the Customer Managed Environment, as specified in the applicable Order Form and this Agreement (and specifically excluding Professional Services).
 - 1.19. **"Third Party Content"** means all software, data, text, images, audio, video, photographs and other content and material, in any format, that are obtained or derived from third party sources outside of Axway that Customer may access through, within, or in conjunction with the use of the Subscription Services. Third Party Content includes third-party sourced materials accessed or obtained by using the Subscription Services or any tools provided by Axway under Marketplace.
 - 1.20. **"Usage Metrics"** means the quantitative limitations and units of measure, along with any other grants of or restrictions on use, applicable to the Subscription Services delivered to Customer, as set forth in an Order Form.
 - 1.21. **"Users"** means those employees, contractors, and end users, as applicable, authorized by Customer or on its behalf to use the Subscription Services in accordance with the Agreement and the applicable Ordering Document.



For Subscription Services that are specifically designed to allow Customer's clients, agents, customers, suppliers or other third parties to access the Subscription Services to interact with Customer, such third parties will be considered "Users" subject to the terms of this Agreement and the applicable Ordering Document.

2. ACCESS; USE; OWNERSHIP; RESTRICTIONS

- 2.1. **Rights granted.** Axway hereby grants Customer, for the applicable Subscription Term and subject to the terms and conditions of this Agreement and the applicable Ordering Document(s), a limited, non-exclusive, non-transferable, non-sublicensable, irrevocable (except as otherwise set forth herein) right to access and use the Subscription Services, up to the applicable Usage Metric(s), for Customer's internal business purposes only. Axway's Subscription Services are provided in accordance with applicable Documentation and relevant Order Form. Axway may modify the Subscription Services and its Documentation from time to time provided, however, such modification shall not result in any material degradation of the Subscription Services provided to Customer during the then-current Subscription Term. The Subscription Services and any Products may contain or rely upon Third Party Content licensed to Axway under commercial or open source agreements. Customer's right to use such Third Party Content are governed by the terms of any associated license agreement specified by Axway or the Third Party, and not under this Agreement.
- 2.2. **User Limitations.** The following limitations apply to Customer's use of, or access to, the Subscription Service in addition to the Usage Metric(s) and limitations set forth in the relevant Order Form: (a) each User may access the Subscription Service only using his or her issued user ID and password; (b) the access rights granted herein are personal and specific to Users, and no person or entity other than an User will access or use the Subscription Services without the prior written consent of Axway; (c) Customer may change Users by replacing Users who are no longer employed by Customer or who are no longer using the Subscription Services.
- 2.3. **Ownership.** Axway shall retain all right, title and interest (including, without limitation, all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Products, Subscription Services, Axway Content and Documentation and all copies thereof. Customer is granted no rights in the Products, Subscription Services, Axway Content and Documentation other than those limited rights expressly set forth herein and in the relevant Ordering Documents. All right, title, and interest to the Retained Works shall remain with Axway. As used herein, "Retained Works" shall mean: (i) any pre-existing materials, intellectual property, methodology, or know-how, including any of Axway Content, Axway's pre-existing software code, proprietary software tools, or training materials incorporated into the Deliverables; (ii) any modifications or enhancements or additions to any pre-existing materials discovered or reduced to practice in performance under the applicable SOW not specifically created for Customer; and (iii) any Third-Party Content which are integrated with or incorporated into the Deliverables. Except for "Retained Works", all right and title to Deliverables exclusively and explicitly created by Axway for Customer pursuant to the Professional Services shall vest in the Customer upon full payment for such Deliverables. Axway grants Customer a perpetual, royalty-free and non-exclusive license to use and modify the Deliverables (and any Retained Works incorporated therein) for its internal use only, subject to any other express supplemental license terms otherwise applicable to the Deliverable, and to make a reasonable number of copies of the Deliverables for internal use.
- 2.4. **Prohibited Uses and Customer Restrictions.** The Products and Subscription Services, including any portions thereof, may not be used for any purpose that would be a violation of this Agreement or any Ordering Document. Customer shall not (and shall not permit any third party to): (a) copy or otherwise reproduce the Products or Subscription Services (or any portion thereof, including any graphics, functions, or features), except Customer may make a number of copies of the Products for archival purposes only; (b) modify, adapt, alter, or otherwise create derivative works from the Products or Subscription Services, except as expressly approved by Axway in



writing; (c) use (or permit to be used) the Products or Subscription Services for timesharing, service bureau, hosting, service provider or like purposes; (d) distribute, sublicense, repackage, lease, assign, rent, sell, loan, or otherwise transfer the Products or Subscription Services (however, as applicable, the Customer is permitted to license an Application to an App User via an App Store); (e) decrypt, disassemble, extract, reverse engineer, decompile, or attempt to derive the source code of the Products or Subscription Services, except to the extent such activities are permitted under applicable mandatory laws that may not be limited by contract, including, without limitation, laws implementing EU Directive 91/250/EEC provided, however, that Customer shall not exercise any such rights without giving Axway thirty (30) days prior written notice and an opportunity to provide interoperability information or other items to Customer to alleviate the need to engage in the activities that are prohibited under this Agreement; (f) remove, alter or obscure in any way any copyright or other proprietary rights on or within the Products and/or the Documentation; or (g) build a product or service or otherwise commercially exploit directly or indirectly in competition to Axway's Products and/or Subscription Services utilizing or from reference to the trade secrets, Products, Subscription Services, Confidential Information, or other items made available by Axway hereunder.

- 2.5. **Other Restrictions.** Customer's Users shall not use the Products or Subscription Services to: (a) violate any laws or regulations; (b) transmit any material that is obscene or objectionable or that contains viruses or other harmful computer code or files, or (c) infringe the intellectual property or other rights of third parties, or upload, store, share, display, post, e-mail, transmit or otherwise make available any material that infringes any copyright, patent, trademark, trade secret or other proprietary rights of any person or entity. Axway reserves the right to terminate the accounts of any User that commit any such violations. Customer is solely responsible for the conduct of its representatives, protecting its own recorded data, and the results obtained by Customer using the Products and Services, and any direct or indirect consequences thereof.
- 2.6. **Customer's responsibilities.** The Customer shall be responsible for the following: (a) choosing its network accessibility provider, notably in terms of security options, (b) compliance with Axway's recommended minimum technical specifications required to use the Subscription Services, (c) ensuring the confidentiality and the custody of the credentials communicated by Axway, (d) protecting the personal laptops accessing the Subscription Services, (e) the results obtained by using the Subscription Services and any direct or indirect consequences thereof, and (f) appointing one of its employees to serve as the primary point of contact with Axway for any technical issues.
- 2.7. **Documentation and Electronic Access.** Access to the Subscription Services and the Documentation shall be provided by electronic means. Subscription Services shall be deemed delivered when access is made available for download to Customer.

3. FEES, PAYMENT, TAXES.

- 3.1. **Fees.** The fees for the Services shall be set forth in the applicable Ordering Document. In addition to any fees set forth in the Ordering Document, Customer shall reimburse Axway for all mutually agreed expenses actually incurred by Axway in providing any on-site portion of the Services. Except as otherwise specified herein or in an Order Form, (i) Subscription Services fees are based on Usage Metrics purchased and not actual usage, (ii), quantities ordered cannot be decreased during the relevant Subscription Term, and (iii) once an Ordering Document is placed, payment obligations are non-cancelable and fees paid are non-refundable, subject to Section 9.4 of this Agreement. If Customer exceeds the quantity of Services ordered, then Customer must promptly order and pay fees for the excess quantity. Customer agrees that the ordering of Subscription Services are not contingent on the delivery of any future functionality or features, or dependent on any oral or written



public comments made by Axway regarding future functionality or features; however, the preceding does not relieve Axway from fulfilling its obligation to deliver Services the Customer ordered under this Agreement.

- 3.2. **Payment Terms.** Unless otherwise agreed in the applicable Ordering Document, all fees hereunder shall be paid by Customer within thirty (30) days of the date of the invoice. Unless otherwise specified in the Ordering Document, Subscription Services fees shall be invoiced annually in advance, Professional Services fees shall be invoiced monthly in arrears.
- 3.3. **Late Payment; Suspension of Services.** Any late payment will accrue interest charges at the rate of 1% of the outstanding balance per month, or the amount prescribed by law, whichever is lower. If Customer fails to make full payment of the fees set forth in the Ordering Document by more than thirty (30) days after the due date, upon written notice by Axway, Axway may, if such fees remain unpaid subsequent to such written notice, suspend the Customer's right to use the relevant Services and/or the Product.
- 3.4. **Payment Disputes.** Axway will not exercise its rights under Section 3.3 above if Customer disputes the applicable fees reasonably and in good faith and cooperates diligently to resolve the dispute.
- 3.5. **Taxes.** Customer shall pay any taxes, duties, or charges (including any sales, withholding or value added taxes) imposed by any federal, state or local governmental entity for Products or Services provided under this Agreement, except for taxes based solely on Axway's net income, property and employees.
- 3.6. **Purchase Orders.** Customer may submit purchase orders for Customer's internal administrative purposes after execution of the Agreement. Notwithstanding anything to the contrary, no terms or conditions in any Customer purchase order or other similar Customer document will be binding with respect to the subject matter of this Agreement or any Ordering Document, and all such terms are hereby expressly rejected by Axway.
- 3.7. **Partners.** In the event Customer orders Subscription Services through an authorized Axway partner or reseller, this Agreement, excluding this Section 3, shall apply to Customer's use of the Subscription Services.

4. WARRANTY.

- 4.1. **Professional Services Warranty.** Deliverables Warranty. Axway represents and warrants that: (a) the Professional Services will be performed in a professional and workmanlike manner with a degree of care, skill and competence that is consistent with generally accepted industry standards reasonably expected of similar types of engagements, and (b) the Deliverables will substantially conform to the description and specifications set forth in the applicable SOW for a period after delivery or if none stated, a period of thirty (30) days after the date of delivery ("Warranty Period"), provided Axway receives written notification of the non-conformity during the applicable Warranty Period. To the extent any Professional Services or Deliverables do not substantially conform to the foregoing warranties Axway shall promptly re-perform the Professional Services and/or re-submit the Deliverables. If after receiving notice of non-conformity Axway determines that the Professional Services cannot be performed or the Deliverables cannot reasonably be delivered pursuant to the SOW solely due to Axway's fault, Axway may elect to promptly refund the fees paid or waive the fees owed with respect such Professional Services or Deliverable, as Customer's sole and exclusive remedy. This warranty will apply only if: (a) the Deliverable(s) have been properly installed and used by or on behalf of Customer at all times and in accordance with the instructions in the applicable Documentation; and (b) no modification, alteration or addition has been made to the Deliverable(s) other than with Axway's written consent; and (c) Axway receives written notification of the breach during the applicable Warranty Period.
- 4.2. **Subscription Services Performance Warranty.** Axway warrants during the Subscription Term that the applicable Subscription Service will perform substantially in accordance with the Documentation. Customer's sole and exclusive remedy and Axway's sole and exclusive liability for the breach of the foregoing performance warranty shall be one of the following as applicable: 1) if the Ordering Document refers to Service Level Agreement ("SLA")



and SLA credits for SLA failures, Axway will credit Customer according to such provisions; or 2), if the Ordering Document does not provide SLA credits, then Axway shall use commercially reasonable efforts to modify the Subscription Services to restore the non-conforming functionality. If Axway cannot remedy such breach after commercially practicable attempts to do so, either Party may terminate the relevant Order Form in accordance with Section 9.4 below, in which case Customer is entitled to receive a pro-rata refund for any prepaid fees to Axway under the relevant Order Form for the remaining Subscription Term from the date of termination of the Subscription Services. Customer must notify the alleged breach of warranty with reasonable details in writing within thirty (30) days of its occurrence to benefit from this warranty and the remedies stated herein.

- 4.3. **Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THERE ARE NO OTHER WARRANTIES, LIABILITIES OR REMEDIES PROVIDED BY AXWAY, AXWAY'S SUPPLIERS OR ANY OTHER THIRD PARTY WITH RESPECT TO THE SERVICES. OTHER THAN THE FOREGOING EXPRESS WARRANTIES, THE SERVICE AND THE CONTENT THEREIN ARE PROVIDED TO CUSTOMER STRICTLY ON AN "AS IS" BASIS. AXWAY MAKES NO WARRANTY THAT THE SERVICE WILL BE ERROR-FREE, OR FREE FROM INTERRUPTIONS OR OTHER FAILURES OR THAT THE SUBSCRIPTION SERVICE WILL SATISFY CUSTOMER'S SPECIFIC REQUIREMENTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AXWAY DISCLAIMS ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. SOME STATES AND JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY TO CUSTOMER.

5. CONFIDENTIALITY

- 5.1. **Confidential Information Definition.** As used herein, "Confidential Information" means information disclosed by one Party and/or its Affiliate (the "Disclosing Party") to the other Party and/or its Affiliate (the "Receiving Party") pursuant to or in connection with this Agreement that the Disclosing Party identifies as being proprietary or confidential or that, given the nature of the information or the circumstances surrounding disclosure the Receiving Party knows or should know the Disclosing Party considers such information as confidential or proprietary. Axway's Confidential Information includes information regarding products, pre-release products, software, services, pricing, marketing and business plans and financial information. Axway and Customer will treat the terms and conditions of this Agreement as confidential; however, either Party may disclose such information in confidence to its immediate legal and financial consultants as required in the ordinary course of that party's business.
- 5.2. **Confidential Information Exclusions.** Confidential Information shall not include any information that: (a) is already known to the Receiving Party at the time of disclosure, as shown by the Receiving Party's records; (b) is, through no act or failure to act of the Receiving Party, becomes publicly known; (c) is received by the Receiving Party from a third Party without restriction on disclosure or breach of an obligation of confidentiality; (d) is independently developed by the Receiving Party without use or reference to the Confidential Information of the Disclosing Party; or (e) is approved for release by written authorization of the Disclosing Party, but only for the limited purposes of and to the limited recipients of such authorized release.
- 5.3. **Non-Use; Non-Disclosure.**
- 5.3.1. The Receiving Party shall not use any Confidential Information of the Disclosing Party, except for the purposes of performance of this Agreement (the "Purpose") and shall take all reasonable measures (and at least those measures that the Receiving Party applies to protect its own Confidential Information, (but in no event less than reasonable care) to: (i) protect the secrecy of the Disclosing Party's Confidential Information, and (ii) avoid disclosure and unauthorized use of the Disclosing Party's Confidential



Information. Except as expressly approved in writing by the Disclosing Party, the Receiving Party agrees not to disclose any Confidential Information to third parties and shall only forward or otherwise disseminate copies of Confidential Information, in whole or in part, to persons within the Receiving Party's organization (including Affiliates) who have a "need-to-know" for the Purpose and who are subject to a duty of confidentiality with respect to such information that is no less restrictive than the provisions of this Section. If the Receiving Party makes copies of Confidential Information, it shall not remove or obstruct any copyright or other proprietary notices include therein.

5.3.2. A disclosure of Confidential Information by the Receiving Party (i) in response to a valid order by a court or other governmental body, or (ii) otherwise required by law, shall not be considered a breach of this Agreement or a waiver of confidentiality for other purposes; provided, that the Party disclosing such information shall provide prompt written notice in advance thereof to the other Party to enable it to seek a protective order or otherwise prevent such disclosure.

5.4. Ownership; No License.

5.4.1. The Parties agree Confidential Information is the sole exclusive property (including all world-wide rights therein in under patent, copyright, trade secret, confidential information, or other proprietary rights) of the Disclosing Party.

5.4.2. The disclosure of the Confidential Information to the Receiving Party does not in itself confer upon the Receiving Party any license, interest or rights of any kind in or to the Confidential Information.

5.5. Return or Destruction. Except as otherwise set forth herein, the Receiving Party shall promptly return to Disclosing Party (or destroy and certify to the destruction of) all Confidential Information, together with all copies and material relating thereto, upon termination of this Agreement for any reason. Receiving Party may retain a copy for evidentiary or compliance purposes, which copy shall remain subject to all confidentiality obligations under this Section so long as it is retained.

5.6. Confidentiality Term. The Parties' obligations with regard to the Confidential Information shall remain in effect during the term of this Agreement and for a period of five (5) years thereafter.

6. CUSTOMER CONTENT; PRIVACY AND SECURITY

6.1. Customer Content. As part of the Services provided under this Agreement, Customer Data will be stored and processed in the data center region specified in the applicable Ordering Document. Axway shall not access Customer Content except in response to support or technical issues where Customer provides Axway with prior Customer's written authorization required to access such Customer Content. Axway is not responsible for unauthorized access, alteration, theft or destruction of Customer Content arising from Customer's own or its authorized users' actions or omissions in contravention of the Documentation. Customer's ability to recover any lost data resulting from Axway's misconduct is limited to restoration by Axway from the most recent back-up.

6.2. Privacy and Customer Content. If Customer transfers any personal data to Axway in connection with the Services and/or provides Axway access to any Customer Data, then Customer warrants that (i) it is duly authorized to provide personal data to Axway and it does so lawfully in compliance with relevant legislation, (ii) Axway and its Affiliates or its subcontractors, acting on behalf of Axway, may use such data strictly for the purposes of performing its obligations under this Agreement, and (iii) Axway may disclose such data to its Affiliates and its subcontractors for this purpose and may transfer such data to countries outside of the country of origin. Axway and its Affiliates have committed to comply with relevant data protection/privacy legislation, and personal data will be transferred in accordance with Axway Privacy Statement available at <https://www.axway.com/en/privacy-statement>.



- 6.3. **Security.** Axway has implemented reasonable administrative, technical, and physical measures designed to protect Customer personal and confidential information from accidental loss and from unauthorized access, disclosure, use, alteration, or destruction. These security measures are accessible via <https://support.axway.com>. In the event that Axway determines that a security breach will or is likely to cause harm to the Customer or an authorized user, Axway will provide Customer with notice of the security breach as promptly as practicable but in no event later than five (5) working days. After initial notification, Axway will keep Customer updated on a regular basis and provide a reasonably detailed incident report which may include the steps taken by Axway to investigate the security breach and potential measures to be taken by the Customer to minimize potential damages. The parties understand and agree that Axway may be prevented by law, regulation or a third party arrangement from providing such notice(s) and/or reports within the above time frames.

7. INDEMNIFICATION

- 7.1. **Obligations of Axway.** Axway will defend Customer, its Affiliates, directors and employees from and against any claims, suits, or proceedings brought by unaffiliated third parties against Customer: a) that the use of Subscription Services or Deliverables infringe or allegedly infringe any patent, copyright, or trade secret of such third party ("Infringement Claim") and b) indemnify and hold harmless Customer its affiliates, directors and employees against any costs or damages (excluding any increased or enhanced damages arising from Customer's willful infringement) finally awarded against Customer by a court of competent jurisdiction or a settlement amount approved by Axway as a result of such Infringement Claim.
- 7.2. **Obligations of Customer.** Axway's indemnification obligation is contingent upon the Customer: (a) giving immediate written notice to Axway of any such Infringement Claim; (b) giving Axway control of the defense and related settlement negotiations, provided, however that Axway will obtain the Customer's prior written consent, which shall not be unreasonably withheld or delayed, if any settlement of such an Infringement Claim requires Customer to admit liability, take or refrain from taking any particular action other than cessation of use of the infringing Services, Product, or Deliverable, and (c) assisting in the defense at Axway's reasonable request, provided Axway agrees to pay Customer's reasonable expenses in connection therewith. The Customer may participate in such defense and in any settlement discussions directly or through counsel of the Customer's choice, at the Customer's expense, provided such participation does not materially prejudice Axway's sole control of the defense or cause Axway to incur material additional costs in the conduct of such defense.
- 7.3. **Exclusions.** Axway's indemnification obligations shall not apply to the extent such Infringement Claim directly arises from, or is in any manner attributable to: (i) the use of the Product, Service, or Deliverable other than in accordance with this Agreement, (ii) the combination of a Product, Subscription Service, or Deliverable with a non-Axway product not set forth in the Documentation; (iii) use of a non-current version of the Product, Subscription Service or Deliverable when use of a new Axway version made available to Customer would have avoided the infringement; or (iv) any modification of the Products, Subscription Services or Deliverables by Customer, unless such modification was provided for in the Documentation.
- 7.4. **Infringement Cures.** Should Customer's use of the Products, Subscription Services or Deliverables is determined, pursuant to an Infringement Claim, have infringed any third party intellectual property rights, or if in Axway's reasonable judgment such use is likely to be infringing, Axway shall have the right, at Axway's sole option and expense, to either: (a) procure for Customer the right to continue using the infringing Products, Subscription Services, or Deliverables or; (b) replace or modify such Products, Subscription Services, or Deliverables with a functionally equivalent replacement or modification so they become non-infringing. If neither (a) nor (b) is commercially reasonable in Axway's reasonable opinion, Axway may (i) with respect to the uncured Professional Services, Axway may refund the prepaid fees for the relevant Deliverables or (ii) with respect to the purchased



Subscription Services, Axway may terminate the access to the relevant Subscription Services and refund unused prepaid fees calculated against the remainder of the Subscription Term from the date of such termination. THE FOREGOING STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES AND AXWAY'S SOLE AND EXCLUSIVE LIABILITY WITH RESPECT TO INFRINGEMENT CLAIMS.

8. LIMITATION OF LIABILITY.

- 8.1. **Limitation of Liability.** EXCEPT FOR BREACHES OF SECTION 2 "ACCESS; USE; OWNERSHIP; RESTRICTIONS" BY CUSTOMER, SECTION 5 "CONFIDENTIALITY" BY EITHER PARTY OR SECTION 7 "INDEMNIFICATION" BY EITHER PARTY, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY CUSTOMER AND ALL OF ITS AFFILIATES HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM. ANY DAMAGES AGAINST AXWAY SHALL BE REDUCED BY ANY REFUND OR CREDIT RECEIVED BY CUSTOMER UNDER THE AGREEMENT AND ANY SUCH REFUND AND CREDIT SHALL APPLY TOWARDS THE LIMITATION OF LIABILITY.
- 8.2. **Exclusion of Consequential Damages.** EXCEPT FOR BREACHES IN SECTION 2 "ACCESS; USE; OWNERSHIP; RESTRICTIONS" BY CUSTOMER, SECTION 5 "CONFIDENTIALITY" BY EITHER PARTY OR SECTION 7 "INDEMNIFICATION" BY EITHER PARTY, IN NO EVENT SHALL EITHER PARTY AND/OR ITS AFFILIATES BE LIABLE TO ANYONE, WHETHER IN CONTRACT OR TORT, FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY RELATED THE SERVICES, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE EVEN IF A PARTY OR ITS AFFILIATE HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTHING IN THIS AGREEMENT LIMITS OR EXCLUDES ANY LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW. THE ABOVE LIMITATIONS WILL NOT LIMIT CUSTOMER'S OBLIGATION TO PAY IN ANY WAY.
- 8.3. **Evaluation; Free Trial.** With respect to any Free Trial, Axway's aggregate liability will in no event exceed one hundred euros, regardless of any theory of liability, and notwithstanding any provision of this Agreement to the contrary, including Sections 8.1 and 8.2.

9. TERM AND TERMINATION.

- 9.1. **Agreement Term.** This Agreement shall commence from the Effective Date and shall continue until terminated pursuant to this Section.
- 9.2. **Ordering Document Term.** The term of each Service shall be specified in the applicable Ordering Document. Unless terminated earlier in accordance with this Section, the initial term for a particular Subscription Service is the period beginning on the Ordering Document Effective Date and ending on the number of months or years specified in the Ordering Document thereafter ("Initial Subscription Term"). At the end of the Initial Subscription Term, the subscription under that applicable Ordering Document will automatically renew for successive twelve (12) months periods (each, a "Renewal Term"), unless either Party gives the other Party a written notice of termination at least sixty (60) days before expiration of the Initial Subscription Term or the then-current Renewal Term. The Initial Subscription Term and any Renewal Term may each be on a separate Order Form or otherwise specified in an Order Form.
- 9.3. **Free Trial Term.** With respect to a Free Trial, the term begins on the Order Form Effective Date or the receipt of Axway welcome letter sent by email to the Customer and ends on the later of (a) the 30th day following the



Ordering Document Effective Date, and (b) the Free Trial expiration date specified in the Ordering Document or the applicable Axway welcome letter.

- 9.4. **Termination for Breach.** Either Party may terminate this Agreement and/or any Ordering Document hereunder upon material breach by the breaching Party and such breach(es) has remained uncured for a period of thirty (30) days from the date of receipt of written notice by the non-breaching Party.
- 9.5. **Termination for Financial Incapability.** Either party may terminate this Agreement and/or any Ordering Document, immediately, upon written notice to the other Party if the other Party: (a) admit in writing its inability to pay its debts generally as they become due or the winding up of its business; (ii) makes a general assignment for the benefit of its creditors; (iii) institute proceedings to be adjudicated in a voluntary arrangement or consent to the filing of a petition of bankruptcy against it; (iv) be adjudicated by a court of competent jurisdiction as being bankrupt or insolvent; (v) seek reorganization under any bankruptcy legislation, or consent to the filing of a petition seeking such reorganization; or (vi) have a decree entered against it by a court of competent jurisdiction appointing a receiver, liquidator, trustee or assignee in bankruptcy or insolvency covering all or substantially all of such Party's property or providing for the liquidation of such Party's property or business affairs.
- 9.6. **Refund or Payment upon Termination.** If this Agreement is terminated by Customer in accordance with Section 9.4 (Termination for Breach) or Section 9.5 (Termination for Financial Incapability), Axway will provide a pro-rata refund to Customer of any prepaid fees for the remainder of the prepaid term as of the date of termination. If this Agreement is terminated by Axway in accordance with Section 9.4 (Termination for Breach) and Section 9.5 (Termination for Financial Incapability), Customer will pay any unpaid fees covering the remainder of the term of all Ordering Documents. In no event the termination of this Agreement and/or any Ordering Document relieves Customer of its obligation to pay any fees payable to Axway for the period prior to the date of termination.
- 9.7. **Rights and Obligations of Parties Upon Termination.** Upon the termination of this Agreement and/or any Ordering Document for any reason set forth herein, Customer must cease use of the Subscription Services and the Products, remove it from all Customer systems, delete or destroy all copies of the Product in its possession, and certify to Axway in writing the foregoing have been completed thirty (30) days from date of termination. If the Agreement and all Ordering Document are terminated, each Party shall either return to the other Party or destroy (and certify to the destruction of) all Confidential Information of the other Party then in its possession or control. If only certain Ordering Document are terminated, then only such Confidential Information with respect to such Ordering Document shall be returned or destroyed (and the destruction certified to). The termination of this Agreement shall have no impact on the continuing validity and effect of any Ordering Document that may have been entered into between the parties prior to such termination, unless and to the extent such Ordering Document are terminated. Subject to Section 9.6, the termination of this Agreement or any Ordering Document does not relieve Customer of any of its payment obligations under any Ordering Document.
- 9.8. **Customer Content Portability and Deletion.** Upon written request by Customer at least thirty (30) days prior to the date of termination of the applicable Order Form or expiration of the Subscription Term, Axway will make the Customer Content available to Customer for a period of thirty (30) days after such termination or expiration. Axway will provide Customer with archival data in a format mutually determined, subject to a duly executed SOW. After such thirty (30) day period, Axway shall have no obligation to maintain or provide any Customer Content and shall thereafter, unless legally prohibited, delete all data in Axway's possession. Customer shall remain responsible for archiving data in accordance with legal requirements.
- 9.9. **Termination Assistance Services.** Following the termination of this Agreement and/or any Ordering Document, the Parties may agree for Axway to provide transition services pursuant to a duly executed SOW, during which time this Agreement will continue in full force and effect solely to the extent necessary to allow such transition



services to be performed. Axway agrees that the costs for any such services shall be comparable to the fees charged to other customers for similar types of services.

- 9.10. **Survival.** The following Sections will survive termination or expiration of the Agreement: 2 "ACCESS; USE; OWNERSHIP; RESTRICTIONS", 3 "FEES; PAYMENT; TAXES"; 9 "TERM AND TERMINATION"; 4.3 "WARRANTY DISCLAIMER"; 5 "CONFIDENTIALITY"; 8 "LIMITATION OF LIABILITY"; 10 "MISCELLANEOUS"; and 1 "DEFINITIONS".

10. MISCELLANEOUS

- 10.1. **Assignment.** This Agreement and any licenses granted hereunder may not be assigned or transferred in whole or in part by either Party without the other Party's prior written consent, which shall not be unreasonably withheld. Notwithstanding the foregoing, Axway may assign and transfer its rights and obligations under this Agreement, without the consent of Customer, to an Affiliate. All rights and obligations arising out of this Agreement shall inure to the benefit of, be binding upon and enforceable by the Parties and their respective permitted successors and assigns.
- 10.2. **Audit; Reporting.** During the Term of this Agreement, but not more than once (1) annually, either Party may, at its own expense and on dates and times mutually agreed by the Parties, conduct an audit of the other Party, with the scope determined by the Parties in advance of such audit, solely to verify compliance with the terms of this Agreement and any Ordering Document. In addition to any such audit rights, Customer agrees, upon written request by Axway, provide Axway with a written report certified by an officer, verifying its usage is in compliance with the applicable Usage Metric(s) and stating the physical site(s) and computer systems with respect to which Customer is using any Products or Subscription Services. In the event of any use in excess of the Usage Metrics, Customer will promptly pay an additional fee for such excess in accordance with Section 3.1 above.
- 10.3. **Non-Solicitation.** For the Term of this Agreement and for the period of twelve (12) months thereafter, neither Party shall, without the prior written consent of the other Party, actively endeavor to solicit or entice away any person employed or engaged by the other Party in the performance or administration of this Agreement. If a Party breaches the foregoing obligation, the breaching party shall pay to the non-breaching Party twelve times the most current monthly base salary of the relevant person, such sum deemed by both Parties to be fair compensation for the loss suffered as a result of the breach. This Section shall not apply to any individual who can be proven to have responded to a bona fide published recruitment advertisement where the recruited person is not recruited to work for or with a Party's personnel or department involved in this Agreement. Nothing in this Section is intended to restrict the right of any individual to seek employment with whomsoever they wish, but is intended to provide for due compensation where such a situation occurs as a result of entering into this Agreement recognizing that loss of experienced personnel can have a serious effect upon any employer.
- 10.4. **Ethics; Anti-Corruption.** Each Party is expected to conduct its business free from any unlawful or fraudulent activity and to acknowledge and apply the principles set forth in its own code of conduct. Customer agree that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Axway employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Customer learns of any violation of the above restriction, Customer will use reasonable efforts to promptly notify Axway Ethics Office: axway.ethics.notification@axway.com.
- 10.5. **Insurance.** Throughout the Subscription Term of this Agreement Axway will carry reasonably sufficient insurance commensurate of the Services provided pursuant to any Ordering Document hereunder. Axway will, upon written request, provide the necessary documentation evidencing such insurance to Customer.



- 10.6. **Publicity; References.** The Customer must include Axway's name any time it refers to the Product and/or the Subscription Services. Provided that Axway complies with any trademark usage requirements notified by Customer, Axway may refer to Customer as one of Axway's customers and use Customer's logo as part of such reference. With Customer's prior written approval, which will not be unreasonably withheld, Axway may issue a press release announcing the relationship between Axway and Customer.
- 10.7. **Entire Agreement; Order of Precedence.** This Agreement contains the entire understanding of the parties hereto relating to the Products, Services, and Documentation (including written reference to information contained in a URL or referenced policies), and supersedes any prior or contemporaneous written or oral communications (including through Axway internal portal), representations, agreement or understandings between the Parties with respect to the Products, Services, and Documentation. It is expressly agreed that the terms of this Agreement and any Ordering Document shall supersede the terms in any Customer purchase order, procurement internet portal, or other similar non-Axway document and no terms included in any such purchase order, portal, or other non-Axway document shall apply to the Services ordered. Customer may submit purchase orders for Customer's internal administrative purposes after execution of the Agreement. In the event of any conflict between the terms of this Agreement and any Ordering Document, the applicable Ordering Document shall take precedence. This Agreement and any Ordering Document hereunder may be amended only in writing signed by the authorized representatives of the Parties hereto; however, Axway may update applicable Documentation, including by posting updated documents on Axway's websites.
- 10.8. **Severability; Waiver.** If any Section in this Agreement shall be determined to be partially void or unenforceable by any court or body of competent jurisdiction or by virtue of any relevant legislation, that section shall be void or unenforceable to that extent only and no further, and the validity and enforceability of the other Sections of this Agreement shall remain in full force and effect. No waiver, neglect or forbearance of any right under this Agreement shall be deemed a waiver unless contained in writing and signed by a duly authorized representative of the Party purporting to make the waiver, and no waiver of any past or present right arising from any breach or failure to perform shall be deemed to be a waiver of any future right arising under this Agreement.
- 10.9. **Independent Contractors.** Customer and Axway shall perform their duties pursuant to this Agreement as independent contractors. Nothing in this Agreement shall be construed to create or deemed to create a joint venture, partnership or other joint relationship between Customer and Axway. Neither Party shall have the authority or power to bind, to contract in the name of or have the ability to incur any obligation on behalf of the other Party.
- 10.10. **Export Controls.** Both Parties acknowledge that use of the Subscription Services, Products, Axway Content and Third Party Content may be subject to U.S. and European export and import laws. Both Parties agrees to comply with all applicable export and import laws and regulations. Customer acknowledges that the Subscription Services, Products, Axway Content and Third Party Content may not be exported or re-exported to any U.S. or EU embargoed countries or to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Persons List or Entity List, or otherwise exported or re-exported without the appropriate license or authorization. Without limiting the foregoing, (i) each Party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) Customer shall not access or use Subscription Services, Products, Axway Content and Third Party Content in violation of any U.S. export embargo, prohibition or restriction. Specifically, Customer covenants that it will not, directly or indirectly, sell, export, re-export, transfer, divert, or otherwise dispose of any products, software, or technology (including products derived from or based on such technology) received from Axway under this Agreement to any destination, entity, or person prohibited by the laws or regulations of the United States or EU, without



obtaining prior authorization from the competent government authorities as required by those laws and regulations.

- 10.11. **Third Party Software.** Certain Third Party Software may be provided with Subscription Services that is subject to the accompanying license(s), if any, of its respective owner(s). To the extent portions of the Product are distributed under and subject to open source licenses obligating Axway to make the source code for such portions publicly available (such as the GNU General Public License ("GPL") or the GNU Library General Public License ("LGPL")), Axway will make such source code portions (including Axway modifications, as appropriate) available upon request for a period of up to three (3) years from the date of distribution. Such request can be made in writing to Axway Software - Tour W, 102 Terrasse Boieldieu, 92085 Paris La Défense Cedex, France ATTN: Legal Department. Customer may obtain a copy of the GPL at <http://www.gnu.org/licenses/gpl.html>, and a copy of the LGPL at <http://www.gnu.org/licenses/lgpl.html>.
- 10.12. **Force Majeure.** A Party's performance under this Agreement is excused if that Party is unable to perform under this Agreement due to an event beyond its reasonable control, including without limitation, natural disasters, labor unrest, government restrictions (including the denial or cancellation of any export or other license), electrical, internet, or telecommunication outage that is not caused by the obligated party, acts of terrorism, and the like ("Force Majeure Event"). Both Parties will use reasonable efforts to mitigate the effect of a Force Majeure Event. If such event continues for more than thirty (30) days starting on the day the Force Majeure Event starts, either Party may cancel unperformed services upon written notice. This section doesn't excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Customer's obligation to pay for the services.
- 10.13. **Equitable Relief.** Each Party acknowledges that damages alone will be an inadequate remedy for breach of this Agreement pertaining to protection of a Party's intellectual property rights or Confidential Information. Accordingly, each Party will have the right, in addition to any other remedies available at law or in equity, to seek temporary, preliminary and/or permanent injunctive relief to restrain any breach, threatened breach, or otherwise to specifically enforce any of such obligations in this Agreement.
- 10.14. **Enhancement Analysis.** Axway may analyze Customer's usage history and statistics (collectively, "Enhancement Data") for Axway's internal purposes, including to improve and enhance the Software and related services. Unless otherwise specified in an Ordering Document, Customer authorizes and will not interfere with the Software's transmission of Enhancement Data to Axway. Axway may make information derived from its analysis of Enhancement Data publicly available, provided that the publicized information does not include any Enhancement Data that has not been aggregated and anonymized. For the purposes of this Agreement, aggregated and anonymized Enhancement Data means Enhancement Data that (i) has been aggregated with other data, and (ii) does not contain information that identifies Customer or its Users. For the sake of clarity, aggregated and anonymized data is not Confidential Information of Customer.
- 10.15. **Third Party Beneficiaries.** Except as expressly set forth in this Agreement, no Sections of this Agreement are intended nor will be interpreted to provide or create any third party beneficiary rights or any other rights of any kind in any other party.
- 10.16. **Applicable Law; Jurisdictional Matters; Escalation.** The validity, construction and enforcement of this Agreement shall be determined in accordance with the laws of Brazil. Should any dispute arise, the Parties will use all reasonable efforts to attempt to resolve the dispute in good faith by senior level negotiations. The dispute shall be referred by a written request to an officer of each Party who has authority to resolve the dispute and who is not directly involved with the subject matter of this Agreement who shall meet within fifteen (15) days from the dispatch of the written request in order to attempt to resolve the dispute. If the dispute is not resolved through negotiation, both Parties agree that the Courts of São Paulo will have exclusive jurisdiction in connection with



the resolution of the dispute. The United Nations Convention on the International Sale of Goods shall not apply to this Agreement.

10.17. **Notices.** All notices or other communications permitted pursuant to this Agreement shall be in writing and shall be deemed to have been delivered, if mailed by first class mail, postage prepaid or sent by express overnight courier service to Axway at the address set forth in the Ordering Document, and to Customer at the address set forth in the Ordering Document, or to such other address as any such Party may have designated by like notice forwarded to the other Party hereto. If Axway's address is not identified in the Ordering Document, then notices to Axway must be delivered to its main office address, as published at www.axway.com, Attention: Legal Department. Notice periods will begin on the day following delivery. Either party may from time to time change its address by giving the other party notice of the change in accordance with this Section.