

## **Axway Platform and Marketplace Customer**

### **Terms of Use**

**Last Updated: May 1, 2019**

Please read these terms and conditions (these "Terms") carefully as they form a contract between you ("Subscriber" or "you") and Axway, Inc., with its principal place of business at 16220 N. Scottsdale Road, Suite 500, Scottsdale, AZ 85254, USA, along with its parent company and their respective subsidiaries as applicable ("Axway", we", "us", or "our") that governs your access and on-demand use of: (i) the Axway Marketplace and Platform, and the software and service components made available to you via this interface, marketplace.axway.com, platform.axway.com, platform.appcelerator.com, or similar platforms or interfaces made available by Axway and which include copies of or links to these terms and conditions; ii) the Axway Appcelerator Platform provided by Axway for the development and publishing of mobile applications ("Applications"), (iii) storage and processing of runtime code, files, materials, data, text, audio, video, images or other content (collectively, "Content") on the Axway Cloud or Axway Appcelerator Cloud ("Cloud"); and (iv) Application analytics ((i)-(iv) collectively the "Platform"). These Terms govern your use of the Platform and all services and software provided therein, except to the extent all or any portion of the Platform: (a) is the subject of a separate written signed agreement between you and Axway; or (b) is governed by a third-party licensor's terms and conditions. Capitalized terms have the definitions in Section 2 or as otherwise indicated below.

By registering or using the Platform you agree to be bound by these Terms (including your corresponding subscription plan as identified in your ordering documentation or interface) and any modifications to these Terms that may be made from time to time. If you are using the Platform on behalf of an

organization or more than one organization, you are agreeing to these Terms for each such organization and warranting and representing to Axway that you have the authority to bind each such organization to these Terms (in which event, "you" and "your" will refer to that organization as well as you) unless such organization(s) has a separate paid contract in effect with us, in which event the terms of that contract will govern your use of the Platform. You may use the Platform only in compliance with these Terms and only if you have the power to form a contract with Axway and are not barred under any applicable laws from doing so. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, YOU MUST NOT USE THE PLATFORM. Should you have any questions concerning these Terms, please contact your Axway sales representative or renewal representative.

Please note that Axway does not provide warranties for the use of the Marketplace itself or use of the interface/ordering components of the Platform; individual software and services you may license as a result of your use of the Marketplace or Platform may contain warranties. This contract also limits our liability to you. See Sections 17 (NO WARRANTY) and 19 (LIMITATION OF LIABILITY) of these Terms for details. Any software warranties are solely provided by the specific end user license agreement, if any, associated with a particular software download.

## **1. MODIFICATION OF TERMS.**

We reserve the right to revise these Terms from time to time. We will date and post the most current version of these Terms on the Platform website. Any changes will be effective upon posting the revised version of these Terms (or such later effective date as may be indicated at the top of the revised Terms). If in our sole discretion we deem a revision to these Terms to be material, we will notify you via the Platform and/or by email to the email address associated

with your account. Therefore, we encourage you to check the date of these Terms whenever you visit the Platform to see if these Terms have been updated. Your continued access or use of any portion of the Platform constitutes your acceptance of such changes. If you don't agree to any of the changes, we're not obligated to keep providing the Platform, and you must cancel and stop using the Platform.

Despite the foregoing, no such modifications to these Terms shall modify or contradict the terms of any third-party license agreement controlling the licensed product at issue, as described herein.

## **2. DEFINITIONS.**

The following definitions apply to these Terms, along with additional definitions set forth elsewhere throughout these Terms:

“Account” means a unique account established by Subscriber to enable its Registered Users to access and use the Platform on a Subscription basis.

“API Call” shall mean a network request made by the Application to Axway's servers to store data, retrieve data, and/or trigger Communication Events.

“Communication Events” shall mean a push notification sent to an App User's mobile device, or an email sent to an App User's email account. A single API call made by the Application may trigger multiple communication events.

“Runtime” shall mean Axway’s proprietary compiler code necessary to run an Application.

“Subscription” means the right to access and use the Platform for a specified period in exchange for a periodic fee, subject to the Plan restrictions and requirements that are used to describe the selected Plan on the Site. Restrictions and requirements may include any or all of the following: (a)

number of Seats that a Subscriber may use per month or year for a fee; (b) monthly API calls; (c) Content storage capacity; (d) analytics data retention period; (e) service level agreement; and (f) support package.

“Seat” means an active Registered User listed in the membership of an Account at any one time. No two individuals may log onto or use the Subscription Service as the same Registered User, but Subscriber may unregister or deactivate Registered Users and replace them with other Registered Users without penalty, so long as the number of active Registered Users registered at any one time is equal to or less than the number of Seats purchased.

### **3. LICENSE.**

The following license rights apply, respectively, to the various aspects of and products available to you via the Portal.

**A. Platform portals:** Subject to all the terms and conditions contained in these Terms, you have a limited, non-exclusive, revocable license to access and use the Platform portals (for example marketplace.axway.com, platform.axway.com, and/or platform.appcelerator.com if made available to you) for the purposes of discovering software and services to which you may want to subscribe or which you may want to license, and accessing all other information provided on the Platform portals via your login credentials. As between you and Axway, Axway retains all ownership of all information, data, art, likenesses, images, and all other information visible on or communicated via your use under this license.

**B. License for Commercial use of Axway Software and Services:** If you receive downloadable Axway or Axway Appcelerator software or a subscription to an Axway or Axway Appcelerator service, its use is governed in one of two ways: (a) If you are presented with end user license agreement or

similar terms and conditions (for convenience, a “EULA”) that you must accept in order to use the Software (via an electronic checkbox with a link to the applicable EULA or other electronic confirmation mechanism), the EULA terms apply to your use of that particular software or service; (b) if no EULA confirmation is presented to you, these Terms apply. We reserve all other rights to the software and services.

We may automatically check your version of the software. We may also automatically download to your computer or device, or the online interface available to you, new versions of the software.

All software, and access to services, are licensed, not sold. Unless we notify you otherwise, the software or service license ends when your Platform Subscription ends or when your subscription or term license for such software or service ends, whichever occurs first. You must then discontinue use of and uninstall the software and discontinue use of the service, or we may disable it. Notwithstanding the foregoing, you are granted a perpetual license to use the Runtime for Application(s) published during the Subscription Term, as well as any other software which is licensed to you on a basis identified as “perpetual” in your purchase documentation or interface. You must not work around any technical limitations in the software.

The software and services are subject to applicable U.S. export laws and regulations. You must comply with all domestic and international export laws and regulations that apply to the software and services. These laws include restrictions on destinations, end users, and end use. Without limitation, you may not transfer the software, services, or Platform without U.S. government permission to anyone on U.S. government exclusion lists (see the Commerce Department's compliance list at <http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern>). You represent and warrant that you're not

on any of those lists or under the control of or an agent for anyone on those lists or the entities listed above.

**C. Third Party Software and Services:** All transactions using Axway's software or services are between the transacting parties only. The Platform may contain features and functionalities linking you or providing you with certain functionality and access to third party content, including Web sites, directories, servers, networks, systems, information and databases, applications, software, programs, products or services, and the Internet as a whole; you acknowledge that we are not responsible for the functionality of such content or services. We may also provide some content to you as part of the Platform. However, Axway is not an agent of any transacting party, nor or we a direct party in any such transaction. Any fees owed to Axway associated with such transactions are for accommodation or for use of the Platform, including any license or subscription fees for the third-party product which Axway may collect on the third party's behalf via the Portal, for convenience only. Any such activities, and any terms associated with such activities, are solely between you and the applicable third-party. Similarly, we are not responsible for any third-party content you access with the Platform, and you irrevocably waive any claim against us with respect to such sites and third-party content. Axway shall have no liability, obligation or responsibility for any such correspondence, purchase or promotion between you and any such third-party. You should make whatever investigation you feel necessary or appropriate before proceeding with any online or offline transaction with any of these third parties. You are solely responsible for your dealings with any third party related to the Platform, including the delivery of and payment for goods and services. Should you have any problems resulting from your use of any third-party services, or should you suffer data loss or other losses as a result of problems with any of your other service providers or any third-party services, we will not be responsible unless the problem was the

direct result of our breaches. If you choose to download software or subscribe to a service provided by a third party licensor via the Platform, such software may be accompanied by an end user license agreement (“EULA”), which you are required to accept by clicking to “accept” the EULA, by using the software or accessing the services, or by similar electronic confirmation of terms and conditions. You agree to be bound by the terms and conditions of the EULA, which shall supersede any contrary terms herein, except as set forth in subsection 3.D, below.

Open Source Software used in the Platform or accompanying downloaded Software is licensed under the terms of the applicable third-party open source license conditions and/or copyright notices that can be found in the licenses directory, the application readme file, the Documentation or other materials accompanying the Platform. Copyrights to the Open Source Software are held by copyright holders indicated in the copyright notices in the licenses directory or other materials accompanying the Platform. Some Axway software may contain open source components, which are at all times governed by the applicable open source licenses under which they are licensed, even though distributed or sublicensed by Axway to you.

**D. Early Access/Public Beta/Beta/Technical Preview/Trial/Evaluation limited rights.** If you select and use any service or software on the Platform which is identified as “Early Access,” “Public Beta”, “Beta”, “Technical Preview”, “Trial,” or “Evaluation” software or service, your rights are limited as set forth in this paragraph. In consideration for Axway or any third-party provider granting you the ability to access these products on a free and/or early basis and when they might not otherwise be available to you, all provisions of this paragraph shall fully supersede any contrary or inconsistent provisions in these Terms or the EULA which may accompany the software or services. You may

only use Early Access, Public Beta, Beta, Technical Preview, Trial, and Evaluation software and services AT YOUR OWN RISK, and they are offered WITHOUT ANY WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED. Neither Axway, nor any other party, commits to provide any support or maintenance for such software and services. Axway or the third-party licensor may discontinue your right to use or access such software or service at any time, with or without cause, with or without notice. Axway is free to use and incorporate any Feedback you provide regarding such software or services, without royalties, and Axway shall own all such information as incorporated into its products. You may not make use of such software or services in any production environment, using any production data, or for the furtherance of your business operations; rather, they are licensed solely for test use. NEITHER AXWAY, NOR ANY OTHER PARTY, MAKES ANY REPRESENTATIONS, AND YOU ASSUME ALL RISK. AXWAY SHALL HAVE NO INDEMNIFICATION OBLIGATIONS OR LIABILITY OF ANY KIND WHATSOEVER WITH REGARD TO SUCH SOFTWARE AND SERVICES REFERENCED IN THIS PARAGRAPH.

#### **4. YOUR ACCOUNT AND ACCESS TO THE PLATFORM.**

A. You may use the Platform, on a non-exclusive basis, solely in strict compliance with these Terms and all applicable laws.

B. To obtain access to the Platform, you may be required to obtain an account with Axway (become a "Registered User"), by completing a registration form and designating a user ID and password. Until you apply for and are approved for an account your access to the Platform will be limited to the areas of the Platform, if any, that Axway makes available to the general public. When registering with the Platform you must:



(i) provide true, accurate, current and complete information about yourself as requested by the Platform's registration form (such information being the "Registration Data"); and

(ii) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. Axway may deny approval or withdraw such approval at any time in its sole discretion, with or without cause. The Platform may make Internet connections to remote servers to authenticate that you are a Registered User.

Only you may use your Axway account. You must keep your account and passwords confidential and not authorize any third party to access or use the Platform on your behalf, unless we provide an approved mechanism for such use. **Axway will not be liable for any loss or damage arising from any unauthorized use of your accounts.**

C. If a third party such as an employer gave you your account, that party has rights to your account and may: manage your account, reset your password, or suspend or cancel your account; view your account's usage and profile data, including how and when your account is used; and read or store Content in your account. If you are an individual Registered User of the Platform, and the domain of the primary email address associated with your account is owned by an organization and was assigned to you as an employee, contractor or member of such organization, and that organization wishes to establish a commercial relationship with us and add your account to such relationship, then, if you do not change the email address associated with your account, your account may become subject to the commercial relationship between Axway and such organization and controlled by such organization.

## **5. CONSENT TO ELECTRONIC COMMUNICATIONS AND SOLICITATION.**

By registering with Axway, you understand that We, or third party licensors from whom you license products, may send you communications or data regarding the Platform, including but not limited to: (a) notices about your use of the Platform, including any notices concerning violations of use; (b) updates; and (c) promotional information and materials regarding Axway's products and services, via electronic mail. We give you the opportunity to opt-out of receiving promotional electronic mail from us by following the opt-out instructions provided in the message.

## 6. APPLICATIONS.

A. Except for material that we license to you, we don't claim any ownership of Application(s) that you develop and publish using the Platform or any software or services purchased from the Platform. You will: (i) be solely responsible for the nature and quality (including the storage or transmission thereof) of your Application(s); (ii) ensure that your Application(s) complies with these Terms and any and all applicable laws and regulations including those laws and regulations designed to protect against the unauthorized use and disclosure of personally identifiable information; (iii) promptly handle and resolve any notices and claims relating to your Application(s); (iv) maintain appropriate security, protection and backup copies of the your Application(s). **Axway will have no liability of any kind for or as a result of your Application(s).**

B. You hereby grant Axway and its contractors the right to publish, transmit, and disclose your Application solely to the extent necessary to provide the Platform, as otherwise permitted by these Terms, or to comply with any request of a governmental or regulatory body (including subpoenas or court orders), as otherwise required by law, or to respond to an emergency which Axway

believes in good faith requires Axway to disclose information to assist in preventing the death or serious bodily injury of any person.

C. If you develop Applications for an unrelated third party using the Platform or software and services you purchase via the Platform (“End Customer”), then any distribution of the Application(s) shall be accomplished under a license agreement (“Sublicense Agreement”) between you and the End Customer. Any Sublicense Agreement must contain terms no less protective of Axway under this Agreement. You will promptly notify Axway of any violation of a Sublicense Agreement of which you become aware and will take commercially reasonable efforts to enforce each Sublicense Agreement.

## **7. ANALYTICS.**

Axway may provide platform, timestamp, device identifier, model, manufacturer, operating system, Platform version and geolocation data (collectively “Analytics”), for the time period stated in the Plan, for each Application that is expressly enabled by you to collect such Analytics as part of the Platform. You expressly agree that you will not create any custom fields to collect and send personally identifiable information as part of the Analytics to Axway. We don't claim ownership of any Analytics that is transmitted, stored, or processed by your Application(s). We also don't control, verify, or endorse the Analytics that you make available on the Platform via your Application. You hereby grant Axway and its contractors the right to transmit, use and disclose your Analytics solely to the extent necessary to provide the Platform, as otherwise permitted by these Terms, or to comply with any request of a governmental or regulatory body (including subpoenas or court orders), as otherwise required by law, or to respond to an emergency which Axway believes in good faith requires Axway to disclose information to assist in preventing the death or serious bodily injury of any person. You represent and

warrant that: (a) you have all the rights necessary for your Application to transmit the Analytics to Axway and to grant the rights in this Section; and (b) the storage, use or transmission of the Analytics doesn't violate these Terms and any and all applicable laws and regulations including those laws and regulations designed to protect against the unauthorized use and disclosure of personally identifiable information. Depending on your Plan, the Analytics may be downloaded or made available via the Executive Insights tablet app or a successor app for the same purpose. For avoidance of doubt, you may not use the Platform API or the Analytics export function to: build a competing analytics service, provide Analytics to third parties as a service, or to avoid purchasing sufficient licenses to access Analytics. Axway shall have the right to use the Analytics in perpetuity and to compile and distribute statistical analyses and reports utilizing aggregated Analytics.

## **8. CONTENT IN THE CLOUD.**

Except for material that we license to you, we don't claim ownership of any Content that is transmitted, stored, or processed in your account(s) or by your Application(s) in the Cloud. We also don't control, verify, or endorse the Content that you and others make available on the Platform, in the Cloud or via your Application.

You hereby grant Axway and its contractors the right to transmit, use and disclose your Content solely to the extent necessary to provide the Platform, as otherwise permitted by these Terms, or to comply with any request of a governmental or regulatory body (including subpoenas or court orders), as otherwise required by law, or to respond to an emergency which Axway believes in good faith requires Axway to disclose information to assist in preventing the death or serious bodily injury of any person.

You represent and warrant that: (a) you have all the rights in the Content necessary for you to use the Platform and to grant the rights in this Section; and (b) the storage, use or transmission of the Content doesn't violate any law or these Terms. You will: (a) be solely responsible for the nature, quality and accuracy of the Content; (b) ensure that the Content (including the storage or transmission thereof) complies with these Terms and any and all applicable laws and regulations including those laws and regulations designed to protect against the unauthorized use and disclosure of personally identifiable information; (c) promptly handle and resolve any notices and claims relating to the Content, including any notices sent to you by any person claiming that any Content violates any person's rights, such as take-down notices pursuant to the Digital Millennium Copyright Act and any other notices; and (d) maintain appropriate security, protection and backup copies of the Content, which may include, your use of additional encryption technology to protect the Content from unauthorized access. **Axway will have no liability of any kind as a result of the deletion of, correction of, destruction of, damage to, loss of or failure to store or encrypt any Content.**

You must immediately notify Axway in writing of any unauthorized use of: (a) any Content (b) any account or (c) the Platform that comes to your attention. In the event of any such unauthorized use by any third party that obtained unauthorized access through you, you will take all steps necessary to terminate such unauthorized use. You will provide Axway with such cooperation and assistance related to any such unauthorized use as Axway may reasonably request.

## **9. SUSPENSION AND TERMINATION OF USE OF THE PLATFORM.**

We reserve the right, to temporarily suspend or terminate your access to the Platform at any time in our sole discretion, with or without cause, with or without

notice, and without incurring liability of any kind. For example, we may suspend or terminate your access to or use of the Platform for: (a) the actual or suspected violation of these Terms; (b) the use of the Platform in a manner that may cause Axway to have legal liability or disrupt others' use of the Platform; (c) the suspicion or detection of any malicious code, virus or other harmful code by you or in your account; (d) scheduled downtime and recurring downtime; (e) use of excessive storage capacity, APIs, or bandwidth; or (f) unplanned technical problems and outages. If, in Axway's determination, the suspension might be indefinite and/or Axway has elected to terminate your access to the Platform, Axway will use commercially reasonable efforts to notify you through the Platform and/or by email to the email address associated with your account. **You acknowledge that if your access to the Platform is suspended or terminated, you may no longer have access to the Content that is stored with the Platform.**

**You must remove all of your Content before expiration of your Subscription. Otherwise, any Content you have stored with the Platform or accessed by your Application(s) will not be retrievable, and we will have no obligation to maintain any data stored in your account.**

In addition to other termination provisions, if your account is not currently subject to a paid subscription plan with us, we at our discretion may terminate your account if: (a) you do not engage in any activity in your account within thirty (30) days after becoming a Registered User; or (b) you do not engage in any activity in your account for any period of one hundred and twenty (120) consecutive days. In the event of such termination, any Content you may have stored will be lost.

## **10. ACCEPTABLE USE.**

A. You must not use the Platform to harm others or to create Applications to harm others or the Platform itself. For example, you must not use the Platform to harm, threaten, or harass another person, organization, or Axway and/or to build a similar service. You must not: damage, disable, overburden, or impair the Platform (or any network connected to the Platform); resell or redistribute the Platform or any part of it; use any unauthorized means to modify, reroute, or gain access to the Platform or attempt to carry out these activities; or use any automated process or Platform (such as a bot, a spider, or periodic caching of information stored by Axway) to access or use the Platform. In addition, you promise that you will not and will not encourage or assist any third party to:

1. modify, alter, tamper with, repair or otherwise create derivative works of any Software;
2. reverse engineer, disassemble or decompile the software used to provide or access the Platform, including the Software, or attempt to discover or recreate the source code used to provide or access the Platform, except and only to the extent that the applicable law expressly permits doing so;
3. use the Platform in any manner or for any purpose other than as expressly permitted by these Terms, the Privacy Policy, any user guides or any other policy, instruction or terms applicable to the Platform that are available on the Platform ("Policies");
4. sell, lend, rent, resell, lease, sublicense or otherwise transfer any of the rights granted to you with respect to the Platform to any third party;
5. remove, obscure or alter any proprietary rights notice pertaining to the Platform; access or use the Platform in a way intended to improperly avoid incurring fees or exceeding usage limits or quotas;
6. use the Platform in connection with the operation of nuclear facilities, aircraft navigation, communication systems, medical devices, air traffic control devices, real time control systems or other situations in which the failure of the Platform could lead to death, personal injury, or physical property or environmental damage;

7. use the Platform to: (i) engage in any unlawful or fraudulent activity or perpetrate a hoax or engage in phishing schemes or forgery or other similar falsification or manipulation of data; (ii) send unsolicited or unauthorized junk mail, spam, chain letters, pyramid schemes or any other form of duplicative or unsolicited messages, whether commercial or otherwise; (iii) store or transmit inappropriate Content, such as Content: (a) containing unlawful, defamatory, threatening, pornographic, abusive, libelous or otherwise objectionable material of any kind or nature, (b) containing any material that encourages conduct that could constitute a criminal offense, or (c) in a way that violates or infringes upon the intellectual property rights or the privacy or publicity rights of any person or entity or that may otherwise be unlawful or give rise to civil or criminal liability; (iv) store or transmit any Content that contains or is used to initiate a denial of service attack, software viruses or other harmful or deleterious computer code, files or programs such as Trojan horses, worms, time bombs, cancelbots, or spyware; or (v) abuse, harass, stalk or otherwise violate the legal rights of a third party;
8. interfere with or disrupt servers or networks used by Axway to provide the Platform or used by other users to access the Platform, or violate any third-party regulations, policies or procedures of such servers or networks or harass or interfere with another user's full use and enjoyment of any Software or the Platform;
9. access or attempt to access Axway's other accounts, computer systems or networks not covered by these Terms, through password mining or any other means;
10. cause, in Axway's sole discretion, inordinate burden on the Platform or Axway's system resources or capacity; or
11. share passwords or other access information or devices or otherwise authorize any third party to access or use the Software or the Platform.

B. Axway reserves the right, in its sole discretion, to deactivate, change and/or require you to change your Axway user ID and any custom or vanity URLs, custom links, or vanity domains you may obtain through the Platform for any reason or for no reason. Axway may exercise such right at any time, with



or without prior notice. We will make all judgments concerning the applicability of these guidelines in our sole and exclusive discretion. We reserve the right, in our sole discretion, to determine whether and what action to take in response to each such notification, and any action or inaction in a particular instance will not dictate or limit our response to a future complaint. We will not assume or have any liability for any action or inaction with respect to any Content.

## **11. UPDATES TO THE PLATFORM.**

Axway reserves the right, in its sole discretion, to make necessary unscheduled deployments of changes, updates or enhancements to the Platform at any time. We may add or remove functionalities or features, and we may suspend or stop a Platform altogether. All updates will be licensed pursuant to these Terms. The Platform may make Internet connections to remote servers to check for updates.

## **12. PRIVACY.**

In order to operate and provide the Platform, we, or third party contractors and licensors, collect certain information about you and your Application(s). As part of the Platform, we or contractors or licensors may also automatically upload information about your Application(s), computer or device, your use of the Platform, and Platform performance. We use and protect that information as described in Axway's applicable privacy policy, available upon written request, as well as the data collection provisions set forth in these Terms and the Axway Privacy Statement located at <https://www.axway.com/en/privacy-statement> ("Privacy Policy"). You further acknowledge and agree that we may access or disclose information about you, including the Content, in order to: (a) comply with the law or respond to lawful requests or legal process; (b) protect the rights or property of Axway or our customers, including the enforcement of our agreements or policies governing your use of the Platform; or (c) act on a

good faith belief that such access or disclosure is necessary to protect the personal safety of Axway employees, customers, or the public.

### **13. NO WARRANTY.**

UNLESS OTHERWISE STATED IN THE APPLICABLE ORDER OR EULA APPLICABLE TO THE SOFTWARE OR SERVICE YOU LICENSE, AXWAY PROVIDES THE PLATFORM AND THE CONTENT THEREIN "AS IS", "WITH ALL FAULTS" AND "AS AVAILABLE". TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AXWAY MAKES NO (AND SPECIFICALLY DISCLAIMS ALL) REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THAT THE PLATFORM WILL BE UNINTERRUPTED, ERROR-FREE OR FREE OF HARMFUL COMPONENTS, THAT THE CONTENT WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED, OR ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, AND ANY WARRANTY ARISING OUT OF ANY COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. SOME JURISDICTIONS DO NOT ALLOW THE FOREGOING EXCLUSIONS. IN SUCH AN EVENT SUCH EXCLUSION WILL NOT APPLY SOLELY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

### **14. SUBSCRIBER INDEMNIFICATION.**

To the extent permitted by law, You will defend Axway against any cost, loss, damage, or other liability arising from any third party demand or claim that any Content provided by you, Application(s) created by you, or your use of the Platform in breach of these Terms: (a) infringes a registered patent, registered

trademark, or copyright of a third party, or misappropriates a trade secret (to the extent that such misappropriation is not the result of Axway's actions); or (b) violates applicable law or these Terms. Axway will reasonably notify you of any such claim or demand that is subject to your indemnification obligation.

## 15. AXWAY INDEMNIFICATION.

A. Axway agrees to defend, settle and indemnify Subscriber from and against any amounts payable under judgment, court order or settlement brought by any unaffiliated third party against Subscriber to the extent that such action results from actual or alleged infringement by any the Platform or any Axway Product of any third-party copyright, trade secret or patent. In connection with any allegation of infringement of any such third-party rights, Subscriber shall (and it shall be a condition of reliance upon the indemnity for Subscriber to):

- immediately notify Axway in writing of the allegation; and
- allow Axway sole control of the defense and any related settlement negotiations; and
- cooperate in good faith in the said defense and comply with all of Axway's reasonable requests (at Axway's expense) in defending or settling the claim.

B. Should Subscriber's use of the Platform or software or service be determined to have infringed any third-party rights, or if in Axway's judgment, such use is likely to be infringing, Axway shall endeavor at its option do one of the following, at its own expense:

- procure for Subscriber the right to continue owning or using the item, as applicable, OR
- replace or modify the item to make its use non-infringing while yielding substantially equivalent functionality.

If and only if the previous options are not successful or are not, in Axway's reasonable judgment, commercially reasonable, then Axway may terminate this Agreement as it applies to the specific item and the corresponding rights of use. Subscriber agrees to destroy or return the affected items (if applicable) to Axway on its written request, and Axway will then return the applicable unused portion of subscription or license fees to Subscriber (in the case of a perpetual license, as prorated over a five (5) year term commencing on the date of Delivery of the applicable software by Axway). The obligations of Axway in this Article 11 will not apply to the extent that the infringement or claim thereof is based on (i) use of the item other than in accordance with this Agreement, or (ii) modifications or additions to the item by Subscriber anyone other than at Axway's direction or (iii) use of other than the most recent version of any item if and from the time Axway informs Subscriber in writing that infringement or misappropriation may be avoided by use of the most recent version of such item. THIS SECTION 15 SETS FORTH THE FULL SCOPE OF AXWAY'S OR ANY THIRD-PARTY LICENSOR'S LIABILITY AND SUBSCRIBER'S EXCLUSIVE REMEDY, TO THE EXTENT PERMITTED BY LAW, FOR ANY ACTUAL OR ALLEGED INFRINGEMENT OF THIRD-PARTY RIGHTS IN CONNECTION WITH THE PLATFORM OR ANY CONTENT, SERVICE OR SOFTWARE AVAILABLE THEREIN TO SUBSCRIBER.

#### **16. LIMITATION OF LIABILITY.**

TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL AXWAY, ITS AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS, LICENSORS, OR THIRD PARTY PROVIDERS OF SOFTWARE OR SERVICES VIA THE PORTAL, BE LIABLE FOR (A): ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, COVER OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST

PROFITS, REVENUE, GOODWILL, USE OR CONTENT) HOWEVER CAUSED, UNDER ANY THEORY OF LIABILITY, INCLUDING, WITHOUT LIMITATION, CONTRACT, TORT, WARRANTY, NEGLIGENCE OR OTHERWISE, EVEN IF AXWAY HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE AGGREGATE LIABILITY OF AXWAY AND ITS AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS OR LICENSORS, RELATING TO THE PLATFORM WILL BE LIMITED TO THE GREATER OF AN AMOUNT EQUAL TO THREE MONTHS OF YOUR SUBSCRIPTION FEE FOR THE PLATFORM, OR THE AMOUNT PAID BY YOU TO AXWAY FOR THE SOFTWARE GIVING RISE TO THE LIABILITY AND DOWNLOADED FROM THE PLATFORM DURING THE IMMEDIATELY PRECEDING 12 MONTHS. THE LIMITATIONS AND EXCLUSIONS ALSO APPLY IF THIS REMEDY DOES NOT FULLY COMPENSATE YOU FOR ANY LOSSES OR FAILS OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES. IN SUCH AN EVENT THIS LIMITATION WILL NOT APPLY TO YOU TO THE EXTENT PROHIBITED BY LAW.

## **17. DATA COLLECTION AND USE PRACTICES**

A. The following describes the manner in which data is collected, used and disclosed by Axway's third party platform infrastructure provider ("Provider") in the operation of the Platform. Subscriber acknowledges that these practices will apply equally to the Platform and said provider's provision of the Platform.

B. The Information Provider Collects:

1. **User-Provided Information:** A visitor to the AppDirect Platform will submit what is generally called “personally identifiable” information or “PII” (such as name, email address, postal mailing address, home/mobile telephone number, payment account information (such as credit card information), demographic information) when using the Platform, such as registering for an account, creating user submissions, or interacting with other users of the Platform (e.g. posting feedback).
2. **“Cookie” Information:** When a user uses the Platform, the Platform may send one or more cookies – small text files containing a string of alphanumeric characters – to the user’s computer. The Platform may use both session cookies and persistent cookies.
3. **Automatically Collected Information:** When a user uses the Platform or opens an HTML email generated using the Platform, the Platform may automatically record certain information from the user’s web browser by using different types of technology, including standard log files, and “clear gifs”. This automatically collected information may include Internet Protocol address (“IP Address”), another device address or ID, web browser, device type, the web pages or sites that the user visited just before the Platform, the pages viewed on the Platform, and the dates and times visited.
4. **How the Platform Responds to “Do Not Track” Signals:** The Platform does not respond to web browser “do not track” signals or other mechanisms. If, in the future, creates a program or protocol to respond to such web browser “do not track” signals, it will reasonably inform Subscribers of the details of that protocol.
5. **Information from Other Sources:** The Platform may obtain information, including PII, from third parties and sources other than the Platform.
6. **For users in the EU:** The following definition also applies to the details users provide to, and may be collected by the Platform that is “Personal Information”. For this purpose, “Personal Information” means information that is (i) transferred from the EU to the United States; (ii) recorded in any form; (iii) about or pertains to a specific individual; and (iv) can be linked to that individual.

## C. The Way the Platform Uses Information

1) The Platform uses the information users provide or that it collects to operate, maintain, enhance, and provide all of the features and services found on the Platform.

2) The operator of the Platform may:

- use user email addresses to contact them for administrative purposes, for customer service purposes, or regarding user submissions that such users have posted to the AppDirect Platform.
- use the information that users provide or that is collected to understand and analyze the usage trends and preferences of users, to improve the way the Platform works and looks, and to create new features and functionality.
- use “automatically collected” information and “cookies” information to:  
(a) personalize the services on the Platform, such as remembering user information so that the user will not have to re-enter it during the current or following visits to the Platform; (b) monitor and analyze the effectiveness of the Platform; (c) monitor aggregate site usage metrics such as total number of visitors and pages viewed; and (d) track user entries, submissions, and status in any promotions or other activities.
- use user email addresses or other personally identifiable information to send (a) messages about the Platform, and (b) messages on behalf of other users, such as through “refer-a-friend” features of the Platform. Users have the ability to optout of receiving any such communications, through links provided in the messages or by updating account preferences on the Platform.

D. When the Operator of the Platform Discloses Information. The operator of the Platform discloses end user’s PII in a variety of circumstances in connection with the operation of the Platform:

1. The Platform discloses the information end users provide or that it collects to Developers of Products to which the end users subscribe using the Platform.

2. Any PII that end users voluntarily choose to include in an area on the Platform that is accessible to another user will be available to other users who have access to that content.
3. The operator of the Platform may disclose automatically collected and other aggregate non-PII with interested third parties, to assist such parties in understanding the usage, viewing, and demographic patterns for certain programs, content, services, and/or functionality on the Platform.
4. To the extent the operator of the Platform uses third party payment processing services in connection with offering the Platform, a user's PII will be disclosed to such providers in connection with processing their payments of fees and transactions they initiate on the Platform.
5. The operator of the Platform reserves the right to disclose user information that it believes, in good faith, is appropriate or necessary to take precautions against liability; to protect and others from fraudulent, abusive, predatory, or unlawful uses or activity; to investigate and defend against any third party claims or allegations; to assist government enforcement agencies; or to protect the security or integrity of the Platform.

#### E. Choices:

Users of the Platform may decline to share certain PII on the Platform, in which case the Platform may not be able to provide to such users some or all of the features and functionality found on the Platform. Users may update, correct, or delete their profile information and preferences at any time by accessing their account preferences page through the Platform. Such changes are reflected promptly in active user databases, however, may retain all information end users submit for a variety of purposes, including backups and archiving, prevention of fraud and abuse, and analytics. For users in the EU, the Platform offers the opportunity to choose (opt-out) whether your personal information is (a) to be disclosed to a non-agent third party, or (b) to



be used for a purpose other than the purpose for which it was originally collected or subsequently authorized by you.

#### **18. CONTRACTING PARTY; GOVERNING LAW; LOCATION FOR RESOLVING DISPUTES.**

You are contracting with Axway Inc. with an address at **16220 N. Scottsdale Road, Suite 500, Scottsdale, AZ 85254, USA**. The laws of the State of **Arizona, U.S.A.** govern the interpretation of these Terms and apply to claims for breach of these Terms, regardless of conflict of laws principles. The parties specifically exclude from application to these Terms the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act. You and we irrevocably consent to the exclusive jurisdiction and venue of the state or federal courts for Arizona, USA, for all disputes arising out of or relating to these Terms. Axway may assign this contract to another entity at any time with or without notice to you.

#### **19. NOTICES.**

We may send you, in electronic form, information about the Platform, additional information, and information the law requires us to provide. We may provide required information to you by email at the address you specified when you signed up for the Platform or by access to a website that we identify. Notices emailed to you will be deemed given and received when the email is sent. If you don't consent to receive notices electronically, you must stop using the Platform. You may provide legal notices to us via US Certified Mail return receipt requested or recognized national overnight courier, to the following address: Axway, Attn: Legal Department, **16220 N. Scottsdale Road, Suite 500, Scottsdale, AZ 85254, USA**. Any such notice, in either case, must specifically reference that it is a notice given under these Terms.

## 20. FEES & PAYMENTS.

### A. Fees

The fees applicable for the Platform or any software or services obtained via the Platform ("**Fees**") are available on the Platform at the time of purchase or the Site or a relevant quote or order form you have accepted. The price stated for the Platform excludes all taxes and charges, unless stated otherwise.

You're responsible for any taxes and for all other charges incidental to using the Platform (for example, data charges and currency exchange settlements).

You will pay the Fees in the currency Axway quoted for your account. Axway reserves the right to change the quoted currency at any time.

We'll notify you in advance, either through the Platform or to the email address you have most recently provided to us, if we change the price of the Platform.

If there's a specific length and price for your Platform offer already in effect, that price will remain in force for that time. After the offer period ends, your use of the Platform will be charged at the then-current price. If your Platform is on a period basis (for example, monthly) with no specific length, we'll notify you of any price change at least 30 days in advance. If you don't agree to these changes, you must cancel and stop using the Platform no later than thirty (30) days prior to the conclusion of your current payment term, whether monthly, yearly, or otherwise. If you cancel, your Platform ends at the end of your current Platform period or payment period. If you fail to cancel in accordance with these Terms, we will automatically renew the Platform at the then-current price and for the same subscription period and will charge your credit card on file with us commencing on the first day of the renewal of the subscription period.

### B. Payment

You must be authorized to use the credit card that you enter when you create a billing account. You authorize us to charge you for the Platform using your credit card and for any paid feature of the Platform that you choose to sign up for or use while these Terms are in force. We may bill: (a) in advance; (b) at the time of purchase; (c) shortly after purchase; or (d) on a recurring basis for subscription Platform. Also, we may charge you up to the amount you've approved, and we'll notify you in advance of the difference for recurring subscription Platform. We may bill you simultaneously for more than one of your prior billing periods. We may automatically renew your Platform and charge you for any renewal term. All paid accounts are due the date the invoice is posted on your account. Except as specifically set forth in this section, all Fees are prepaid for the period selected (monthly, yearly or otherwise) and are non-refundable. This includes accounts that are renewed.

You must keep all information in your billing account current. You can access and modify your billing account information using the Site. You may change your payment method at any time. If you tell us to stop using your payment method and we no longer receive payment from you for the Subscription, we may cancel your Subscription. Your notice to us will not affect charges we submit to your billing account before we reasonably could act on your request.

Except as prohibited by law, we may assess a late charge if you do not pay on time. You must pay these late charges when we bill you for them. The late charge will be the lesser of 1 percent of the unpaid amount each month or the maximum rate permitted by law. We may use a third party to collect past due amounts. You must pay for all reasonable costs we incur to collect any past due amounts, including reasonable attorneys' fees and other legal fees and costs. We may suspend or cancel your access to the Platform if you fail to pay in full on time.

## 21. **SUBSCRIPTION PERIOD.**

You may elect one of various subscription plans and billing options, as applicable to your subscription plan and available on the Site during the ordering process. Depending on the type of subscription you choose, the following will apply:

A. A monthly subscription plan (“Monthly Subscription Plan”). The subscription period for the Monthly Subscription Plan will be one month and will automatically renew unless you cancel your Monthly Subscription Plan in accordance with these Terms at least thirty (30) days prior to the renewal date. You will be billed monthly for the Monthly Subscription Plan on or about the same day each month until such time that you cancel your Monthly Subscription Plan.

B. An annual subscription plan (“Annual Subscription Plan”). The subscription period for the Annual Subscription Plan will be one year and will automatically renew each year on the anniversary of your Annual Subscription Plan unless you cancel your Annual Subscription Plan in accordance with these Terms at least thirty (30) days prior to your renewal date. You will be billed annually for the Annual Subscription Plan on or about the same day each year until such time that you cancel your Annual Subscription Plan. For the avoidance of doubt, please note, you will not be permitted to cancel, reduce the number of seats, or downgrade the Axway Appcelerator Platform you have selected until the anniversary of your Annual Subscription Plan. There will be no refunds for Annual Subscription Plan payments. **Please be certain you are committing to a one (1) year period if you select the Annual Subscription Plan. If you are not certain, we recommend choosing the Monthly Subscription Plan.**

C. Any other plan which may be offered at the time of purchasing software or services available on the Platform. If you select the Monthly Subscription Plan, you can switch to the Annual Subscription Plan at any time. If you select the Annual Subscription Plan, you may not change to the Monthly Subscription Plan until the end of the one-year term of your Annual Subscription Plan.

## **22. MISCELLANEOUS.**

### **A. Severability; Entire Agreement**

These Terms apply to the maximum extent permitted by relevant law. If a court holds that we cannot enforce a part of these Terms as written, you and we will replace those terms with similar terms to the extent enforceable under the relevant law, but the rest of these Terms will remain in effect. This is the entire contract between you and us regarding the Platform. It supersedes any prior contract or oral or written statements regarding your use of the Platform.

### **B. Assignment and transfer**

We may assign, transfer, or otherwise dispose our rights and obligations under this contract, in whole or in part, at any time without notice. You may not assign this contract or transfer any rights to use the Platform.

### **C. Independent Contractors; No third-party beneficiaries**

Axway and you are not legal partners or agents; instead, our relationship is that of independent contractors. This contract is solely for your and our benefit. It is not for the benefit of any other person, except for permitted successors.

### **D. Claims must be filed within one year.**

You must bring any claim related to these Terms or the Platform within one year of the date you could first bring the claim, unless applicable law requires a longer time to file claims. If it isn't filed in time, the claim is permanently barred.

#### **E. Waiver**

The failure of either party to insist upon or enforce strict performance of any of the provisions of these Terms or to exercise any rights or remedies under these Terms will not be construed as a waiver or relinquishment to any extent of such party's right to assert or rely upon any such provision, right or remedy in that or any other instance; rather, the same will remain in full force and effect.

#### **F. Government**

Use If you are a U.S. government entity, or you use any part of the Platform or software or services licensed thereunder, you acknowledge that any Software and user guides that are provided are "Commercial Items" as defined at 48 C.F.R. 2.101, and are being provided as commercial computer software subject to the restricted rights described in 48 C.F.R. 2.101 and 12.212.

### **23. COPYRIGHT COMPLAINTS AND REMOVAL POLICY.**

Axway does not tolerate content that appears to infringe any copyright or other intellectual property rights or otherwise violates these Terms and will respond to notices of alleged copyright infringement that comply with the law and are properly provided to us. We reserve the right to delete or disable Content alleged to violate these Terms and to terminate repeat infringers. Our designated agent for notice of alleged copyright infringement is:

Attn: DMCA Copyright Agent Axway, Inc.

16220 N. Scottsdale Road, Suite 500, Scottsdale, AZ 85254, USA;  
legal@axway.com

Federal law requires your DMCA Notice to include the following information:

- Identification of the copyrighted work that you claim has been infringed;
- Identification of the material, including URL, that you claim is infringing,
- with enough detail so that we may locate it;
- Your address, telephone number, and e-mail address;
- A statement declaring under penalty of perjury that (a) you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; (b) the above information in your notice is accurate, and (c) you are the owner of the copyright interest involved or you are authorized to act on behalf of that owner; and
- Your physical or electronic signature.

#### **24. INTELLECTUAL PROPERTY NOTICES.**

All contents of the Site and Platform including but not limited to design, text, software, technical drawings, configurations, graphics, other files, and their selection and arrangement are: Copyright © Axway, and/or the proprietary property of its suppliers, affiliates, or licensors. All Rights Reserved.

Axway, Appcelerator and the Appcelerator and Axway logos are without limitation, either trademarks, service marks or registered trademarks of Axway, Inc., and may not be copied, imitated, or used, in whole or in part, without Axway's prior written permission or that of our suppliers or licensors. Other product and company names may be trade or service marks of their respective owners.

Axway may have patents, patent applications, trademarks, copyrights, or other intellectual property rights covering subject matter that is part of the Platform. Unless we have granted you licenses to our intellectual property in

these Terms, our providing you with the Platform does not give you any license to our intellectual property. Any rights not expressly granted herein are reserved.

## **25. MARKETING.**

You agree that Axway may use your pre-approved name and logos for marketing and promotional materials. You grant Axway the right to link to your website. You agree to use reasonable efforts to arrange for appropriate personnel to be available to serve as references for the Platform and Axway in the event of an inquiry from any member of the press, any industry analysts or any potential customer. You agree to reasonably cooperate with Axway to prepare a case study/reference testimonial about the Platform.