THIS TOOLBOX USE AGREEMENT ("AGREEMENT") GOVERNS YOUR INSTALLATION AND USE OF THE PROFESSIONAL VERSION OF THE SOFTWARE PROGRAM KNOWN AS THE PSO RESEARCH TOOLBOX AND ALL PSO RESEARCH TOOLBOX ADD-INS DISTRIBUTED WITH IT BY PERMISSION OF THEIR AUTHORS. INSTALLATION AND USE OF THE DEMO VERSION AND ANY ADD-INS FREELY AVAILABLE AT MATHWORKS.COM ARE GOVERNED INSTEAD BY THEIR ACCOMPANYING BSD LICENSES.

THE PSO RESEARCH TOOLBOX AND ALL PSO RESEARCH TOOLBOX ADD-INS COLLECTIVELY CONSTITUTE THE PSO RESEARCH TOOLBOX COMMUNITY-BASED DEVELOPMENT PROJECT. FOR PURPOSES OF THIS AGREEMENT, "PSO RESEARCH TOOLBOX" REFERS TO THE CONTENT OF THE DISTRIBUTED MATLAB FILES EXCLUDING (I) THE CONTENT OF "CAUCHYRND.M" AND "CAUCHYINV.M" SINCE THOSE TWO FILES WERE WRITTEN AND COPYRIGHTED BY PEDER AXENSTEN AND (II) ANY CONTRIBUTIONS TO BE MADE BY OTHER AUTHORS IN THE FUTURE, WHICH WILL BE REFERRED TO AS "PSO RESEARCH TOOLBOX ADD-INS." THE PSO RESEARCH TOOLBOX IS THE INTELLECTUAL PROPERTY OF GEORGE EVERS AND MAY ONLY BE INSTALLED OR USED BY THOSE WHO AGREE TO THE TERMS OF THIS AGREEMENT. PSO RESEARCH TOOLBOX ADD-INS WILL BE THE INTELLECTUAL PROPERTY OF THEIR AUTHORS AND MAY BE USED ONLY BE THOSE WHO AGREE TO ACKNOWLEDGE AND RESPECT THE INTELLECTUAL OWNERSHIP OF THOSE AUTHORS.

FOR PURPOSES OF THIS AGREEMENT, "INSTALL" MEANS TO COPY, DECOMPRESS, OR OTHERWISE PLACE THE PSO RESEARCH TOOLBOX ONTO A COMPUTER OR A STORAGE DEVICE ACCESSIBLE BY A COMPUTER. FOR PURPOSES OF THIS AGREEMENT, "UNINSTALL" MEANS (I) TO PERMANENTLY DELETE THE PSO RESEARCH TOOLBOX IN ALL COMPRESSED AND UNCOMPRESSED FORMATS (A) FROM ALL LOCATIONS TO WHICH IS HAS BEEN INSTALLED AND (B) FROM ALL LOCATIONS TO WHICH ANY OPERATING SYSTEM, BROWSER, OR OTHER SOFTWARE MAY HAVE TEMPORARILY OR PERMANENTLY PLACED THE PSO RESEARCH TOOLBOX, (II) TO PERMANENTLY DELETE ALL EMAILS, COPIES OF EMAILS, AND DRAFTS OF EMAILS CONTAINING THE PSO RESEARCH TOOLBOX, (III) TO PERMANENTLY REFRAIN FROM RESTORING, RECOVERING, OR RECREATING THE DELETED INFORMATION, AND (IV) TO REFRAIN FROM USING THE PSO RESEARCH TOOLBOX UNLESS AND UNTIL THE TERMS OF THIS AGREEMENT HAVE BEEN ACCEPTED.

PLEASE READ THIS AGREEMENT CAREFULLY IN ORDER TO UNDERSTAND IT FULLY. YOU MAY NOT INSTALL OR USE THE PSO RESEARCH TOOLBOX UNLESS YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU LATER DECIDE THAT YOU DISAGREE WITH THE TERMS OF THIS AGREEMENT, YOU MUST UNINSTALL THE PSO RESEARCH TOOLBOX AND DISCONTINUE USAGE.

THIS AGREEMENT MAY BE MODIFIED FROM TIME TO TIME BY GEORGE EVERS, IN HIS SOLE DISCRETION. UPON ANY SUCH MODIFICATION, THE MODIFIED AGREEMENT MAY BE POSTED AT THE WEB SITE LOCATED AT HTTP://WWW.GEORGEEVERS.ORG FOR YOUR REVIEW. UPON ANY MODIFICATION TO THE AGREEMENT, YOUR CONTINUED USE OF THE PSO RESEARCH TOOLBOX WILL BE GOVERNED BY THE MODIFIED AGREEMENT AND WILL BE DEEMED TO BE AN ACCEPTANCE OF THE MODIFIED AGREEMENT, WHICH FOR ALL PURPOSES SET FORTH HEREIN SHALL BE DEEMED THE AGREEMENT. IF, FOR ANY REASON, YOU DO NOT AGREE TO BE BOUND BY ANY OF THE MODIFICATIONS, YOU MAY NOT CONTINUE TO USE THE PSO RESEARCH TOOLBOX. THE PSO RESEARCH TOOLBOX MAY ALSO BE MODIFIED, UPDATED, ENHANCED OR UPGRADED FROM TIME TO TIME AT GEORGE EVERS'S DISCRETION. FOR PURPOSES OF THIS AGREEMENT, ANY SUCH MODIFIED, UPDATED, ENHANCED OR UPGRADED PSO RESEARCH TOOLBOX SHALL ALSO BE REFERRED TO AS THE PSO RESEARCH TOOLBOX.

If you have any questions or comments regarding this Agreement or The PSO Research Toolbox, please email your questions to george@georgeevers.org.

#### 1. Authorized Users.

The PSO Research Toolbox may only be installed or used by (a) the owner of the computer where the PSO Research Toolbox is installed (the "Authorized Computer"), and (b) any persons or entities authorized by the owner of the Authorized Computer to use the Authorized Computer and to install the PSO Research Toolbox in accordance with the terms of this Agreement, provided that the individuals or entities referred to in (a) and (b) above have read this Agreement and agree to abide by it (y) before any such installation and (z) at all times while using the PSO Research Toolbox (collectively, the "Authorized Users," and each an "Authorized User"). Any references to the pronouns "you" and "your" anywhere in this Agreement are intended to refer to any one or to all Authorized Users of the PSO Research Toolbox.

### 2. Ownership; Limited License Grant.

Each new <u>file</u> contributed to the PSO Research Toolbox Community-based Development Project should contain a header atop the file showing the copyright of the contributing author or authors, the date of creation, and long-term contact information if the file conveys a new idea or approach and does not simply result from modifications to code belonging to any other person, organization, or entity. Each new <u>section of code</u> contributed within a file belonging to the PSO Research Toolbox or to a PSO Research Toolbox Add-in should be offset above and below with carriage returns and contain a section header stating "this paragraph copyright" followed by the name or names of the contributing author or authors, the date of creation, and long-term contact information if the new code conveys a new idea or approach and does not simply result from modifications to code belonging to any other person, organization, or entity. New code contributed either as a new file or as a new section of code within an existing file shall be referred to as a PSO Research Toolbox Add-in and shall be deemed the intellectual property of its author or authors.

Authors of PSO Research Toolbox Add-ins are individually responsible for the originality of their contributions. By contributing a PSO Research Toolbox Add-in, the author or authors assert intellectual ownership of the code contributed. Intellectual property theft is vehemently discouraged since all authors deserve credit for their hard work. Feel free to safely contribute your ideas to the PSO community via the PSO Research Toolbox Community-based Development Project for the advancement of PSO, its research, and its accomplishments.

As between you and George Evers, the following are and shall remain the sole property of George Evers: (a) all right, title and interest in and to the PSO Research Toolbox excluding PSO Research Toolbox Add-ins whose authors shall retain all right, title, and interest in them, (b) any intellectual property rights (including, without limitation, any copyrights, patents, trademarks, trade secrets and other rights) in and to the PSO Research Toolbox, and (c) any intellectual property rights (including, without limitation, any copyrights, patents, trademarks, trade secrets and other rights) in and to content or services provided by George Evers. In exchange for your acceptance of all terms of this Agreement, George Evers agrees to grant and hereby grants to you a limited, nonexclusive, nontransferable, royalty-free license to install the PSO Research Toolbox subject to the terms and conditions of this Agreement. You may not assign, sublicense or otherwise convey or transfer the rights granted to you under this Agreement to any other person, organization, or entity. Any rights not expressly granted to you hereunder are reserved by George Evers. The limited right granted to you to install and use the PSO Research Toolbox is a limited license and does not constitute the sale of a software program. You are expressly prohibited from doing the following with or to the PSO Research Toolbox: (g) reverse engineering or disassembling it, (h) tampering or interfering with its functionality, delivery or operation while using or installing it, (i) selling, renting, transferring, reselling, or distributing it, (i) exporting or re-exporting it into any country prohibited by the United States Export Administration Act or any regulations promulgated thereunder, (k) renaming any file distributed with or as part of it, (1) deleting any file distributed with or as part of it except when deleting all distributed files together, (m) bypassing or circumventing the requirement that the terms of this Agreement be agreed to as a condition for using it, (n) deleting, bypassing, circumventing, rearranging, commenting out, or in any way rendering non-functional any code within any file other than "Open Files.m" or "Open All Files.m," (o) deleting, modifying, or rearranging any comment or comments distributed as part of it, (p) duplicating, reproducing, copying, or modifying it or otherwise creating derivative works from it and either (1) claiming the resulting program as the intellectual property of any person, organization, or entity other than George Evers or (2) calling the resulting program by any name other than PSO Research Toolbox, or (q) modifying it except by writing new code that provides new functionality. You may add new functionality to the PSO Research Toolbox provided that in doing so (v) you do not violate any intellectual property right of any person, organization, or entity, (w) you do not break any law of the United States or Texas, (x) you do not break any law of the country, state, or province in which you legally reside, (y) you do not perform any activity expressly prohibited from being done with or to the PSO Research Toolbox, and (z) you agree to all terms of this Agreement.

#### 3. Other Content or Services.

Through your use of the PSO Research Toolbox, you may receive content or services provided through, or in connection with, the PSO Research Toolbox, by individuals or entities other than

George Evers, including, without limitation, data, links, articles, graphic or video messages, text, software, music, sound, graphics or other materials or services (collectively, the "Other Content or Services"). You understand and agree that you will not obtain, as a result of your use of the PSO Research Toolbox, any right, title or interest in or to such Other Content or Services delivered via the PSO Research Toolbox or in any intellectual property rights (including, without limitation, any copyrights, patents, trademarks, trade secrets or other rights) in and to such Other Content or Services. You understand and agree that such Other Content or Services shall be the responsibility of the entity that originated, provided, delivered, offered, sold, supplied, promoted, sponsored or advertised such Other Content or Service, and shall not be the responsibility of George Evers. You understand and agree that by using the PSO Research Toolbox you may be exposed to such Other Content or Services that may be offensive, indecent, objectionable, defamatory, libelous, false, misleading, inaccurate, infringing of other parties' proprietary rights or in violation of law. You agree that you must evaluate and bear all risks associated with the viewing or use of any such Other Content or Services, including any reliance on the accuracy or completeness of such Other Content or Services. George Evers hereby expressly disclaims any liability for any such Other Content or Services, including, but not limited to, for any errors or omissions in any such Other Content or Services, or for loss or damage or injury of any kind incurred as a result of the use of any such Other Content or Services posted, transmitted, advertised or otherwise made available to you through or in connection with the PSO Research Toolbox.

## 4. Privacy.

The information that George Evers collects from you in connection with your installation or use of the PSO Research Toolbox will be collected, stored, used and shared by George Evers in accordance with his Privacy Policy, available at the website located at <a href="http://www.georgeevers.org/">http://www.georgeevers.org/</a>. The Privacy Policy, as may be modified from time to time in George Evers's sole discretion, is expressly incorporated herein by this reference and made part of this Agreement.

**5.** Modifications to the PSO Research Toolbox or to GeorgeEvers.org; Termination. Updates to the PSO Research Toolbox may be delivered to users. Subject to the other provisions of this Section 5, George Evers shall have the right at any time to disable, enable, modify, or discontinue, temporarily or permanently, georgeevers.org and/or the PSO Research Toolbox (or any part thereof), with or without notice, obligation or liability to you or to any third party.

#### 6. SUPPORT.

GEORGE EVERS HAS NO OBLIGATION TO PROVIDE YOU WITH SUPPORT, MAINTENANCE, UPGRADES, MODIFICATIONS, OR NEW RELEASES WITH RESPECT TO THE PSO RESEARCH TOOLBOX.

7. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY.
BY INSTALLING OR USING THE PSO RESEARCH TOOLBOX, YOU HEREBY AND FOREVER WAIVE ANY AND ALL CLAIMS YOU HAVE NOW OR MAY HAVE IN THE FUTURE AGAINST GEORGE EVERS RELATING TO YOUR INSTALLATION OR USE OF THE PSO RESEARCH TOOLBOX. YOU HEREBY WAIVE ANY CLAIM THAT THE FOREGOING LIMITATION OF LIABILITY DEPRIVES YOU OF AN ADEQUATE

REMEDY. YOUR SOLE REMEDY FOR DISSATISFACTION WITH THE PSO RESEARCH. TOOLBOX IS TO STOP USING THE PSO RESEARCH TOOLBOX. YOU SPECIFICALLY AGREE THAT GEORGE EVERS SHALL NOT BE LIABLE FOR LOSSES OR LIABILITIES ARISING IN CONNECTION WITH YOUR INSTALLATION OR USE OF THE PSO RESEARCH TOOLBOX, INCLUDING, BUT NOT LIMITED TO, LOSS OR LIABILITY RESULTING OR ARISING FROM OR IN CONNECTION WITH: (A) SOFTWARE CONFLICTS RELATED TO THE PSO RESEARCH TOOLBOX; (B) DATA NON-DELIVERY, DATA MIS-DELIVERY OR UNAUTHORIZED ACCESS TO TRANSMISSIONS OF DATA; (C) YOUR INFRINGEMENT OF A THIRD PARTY'S RIGHT; (D) DEFECTS OR VIRUSES IN, OR DISTRIBUTED WITH, THE PSO RESEARCH TOOLBOX; OR (E) YOUR OWN USE OR MISUSE OF YOUR PERSONAL COMPUTER OR THE SOFTWARE APPLICATIONS CONTAINED ON YOUR PERSONAL COMPUTER. WITHOUT LIMITING THE FOREGOING, GEORGE EVERS SHALL NOT BE LIABLE TO YOU FOR ANY ACTUAL, DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OR LOST OR IMPUTED PROFITS OR ROYALTIES ARISING OUT OF OR RELATING IN ANY WAY TO THE PSO RESEARCH TOOLBOX OR THIS AGREEMENT, IRRESPECTIVE OF WHETHER GEORGE EVERS WAS ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE. THE PSO RESEARCH TOOLBOX IS PROVIDED "AS IS" AND "AS AVAILABLE" WITH NO TECHNICAL SUPPORT OR REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, BY STATUTE OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, TITLE, AND NON-INFRINGEMENT AND ANY WARRANTIES THAT MAY ARISE OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

George Evers neither makes nor implies any guarantee concerning the accuracy of data produced by the PSO Research Toolbox. No guarantee is either made or implied concerning the accuracy of data produced by any PSO Research Toolbox Add-in.

George Evers will not be held responsible or liable for the performance of the PSO Research Toolbox. George Evers will not be held responsible or liable for any adverse effect of any kind that might be attributed by any user to the PSO Research Toolbox. George Evers will not be held responsible or liable for the accuracy or precision of data, graphs, figures, or any other output produced by the PSO Research Toolbox. No author of any PSO Research Toolbox Addin shall be held responsible or liable for the performance of any PSO Research Toolbox Addin. No author of any PSO Research Toolbox Addin shall be held responsible or liable for any adverse effect of any kind that might be attributed by any user to a PSO Research Toolbox Addin. No author of any PSO Research Toolbox Addin shall be held responsible or liable for the accuracy or precision of data, graphs, figures, or any other output produced by any PSO Research Toolbox Addin.

George Evers will not be held liable for any act of intellectual property theft performed by the author of any PSO Research Toolbox Add-in.

#### 8. Indemnification.

You hereby agree to release, indemnify, defend and hold harmless George Evers, from and against any and all losses, liabilities, claims (including claims without legal merit or brought in bad faith), demands, damages, costs or expenses, causes of action, suits, proceedings, judgments, awards, executions and liens, including reasonable attorneys' fees and costs (whether brought by third parties or otherwise) relating to or arising from your use or installation of the PSO Research Toolbox or your breach of this Agreement. George Evers reserves the right, at his own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you hereunder, and in such event, you shall have no further obligation to provide indemnification for such matter.

# 9. Professional Acknowledgement.

You hereby agree to professionally reference or acknowledge George Evers or his website <a href="http://www.georgeevers.org/">http://www.georgeevers.org/</a> in all journal articles, conference papers, technical papers, white papers, presentations, and other documents benefitting from (a) the PSO Research Toolbox, (b) any content of website <a href="http://www.georgeevers.org/">http://www.georgeevers.org/</a>, (c) email correspondence with George Evers, or (d) any publication by George Evers. You also hereby agree to professionally reference or acknowledge in all journal articles, conference papers, technical papers, white papers, presentations, and other documents the author of any PSO Research Toolbox Addin beneficial to the publication.

#### 10. General Provisions.

This Agreement shall be governed exclusively by, and construed in accordance with United States federal laws and the laws of the State of Texas, without reference to any conflict of laws principles. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is hereby expressly excluded. The exclusive forum for any disputes arising out of or relating to this Agreement shall be an appropriate federal or state court in Texas and the parties hereby expressly waive all venue, jurisdiction and choice of law challenges or defenses. If any part of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, including, but not limited to. any of the warranty disclaimers or liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of the Agreement shall continue in full force and effect. If no enforceable provision can be substituted for any such invalid or unenforceable provision, then that provision shall be deemed severable from the Agreement and shall not affect the validity and enforceability of any remaining provisions in this Agreement. This Agreement will be binding upon and will inure to the benefit of George Evers and his successors and assigns.

BY AGREEING TO THE TERMS OF THIS AGREEMENT, YOU ACKNOWLEDGE THAT (1) YOU HAVE READ AND REVIEWED THIS AGREEMENT IN ITS ENTIRETY, (2) YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT, AND (3) YOUR OBLIGATIONS UNDER THIS AGREEMENT ARE BINDING AND ENFORCEABLE.