Axiad Conductor Terms Of Use

These Terms of Use (hereinafter referred to as "Agreement") are effective on the date that the customer listed in the Order Form (as defined below) ("Customer") signs the Order Form which incorporates by reference the Agreement ("Effective Date") and governs the Services (as defined below) to be provided by Axiad IDS, Inc. ("Axiad"), its suppliers, resellers, distributors, service providers, and/or licensors to Customer. By executing an Order Form, Customer is accepting and agreeing to this Agreement and the terms of such Order Form which, upon execution by Customer, is incorporated into and subject to this Agreement. Each Order Form executed by Customer shall be effective as of the effective date specified therein or, if no effective date is specified, the date Customer executes the Order Form. The initial term for the Services commences on the date specified in the Order Form or, if no initial term effective date is specified, the date Customer executes the Order Form. Customer and Axiad may be referred to individually as a "party" and collectively as the "parties".

1. DEFINITIONS

1.1 "Affiliate" of a party means any other entity that, directly or indirectly, controls, is controlled by, or is under common control with, such party. "Control", for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity or the power to direct or cause the direction of the management and policies of such entity.

1.2 "Confidential Information" means any non-public information a party discloses or makes accessible to the other party pursuant to this Agreement. Confidential Information of Customer includes, without limitation, Customer Account Information (as defined in this Agreement) and Customer Data, and Confidential Information of Axiad includes, without limitation, the Services and related documentation, technology, and pricing.

1.3 "Customer Data" has the meaning specified in Section 5.1.

1.4 "Consulting Services" means implementation, customization, training, and/or other services provided by Axiad to Customer other than Axiad's standard Services, as such other services are described in a Schedule executed by the parties.

1.5 "Documentation" means the documentation Axiad makes available to Customer as part of the Services, including URLs for websites, technical information, policies or terms contained in or linked to by webpages or applications associated with the Services, as updated by Axiad from time to time in Axiad's discretion.

1.6 "Hardware" means the hardware products used in connection with the Services, such as readers, access cards, printers, consumables and devices, which are identified in the applicable Order Form.

1.7 "Order Form" means an ordering document executed by Customer and Axiad or a Related Party indicating the type, usage parameters, fees and other details regarding the Services being ordered and any related Consulting Services to be provided by Axiad or a Related Party in accordance with this Agreement.

1.8 "Related Party" means an Axiad reseller or an Axiad Affiliate, as specified in the applicable Order Form.

1.9 "Schedule" means an attachment that expressly incorporates this Agreement by reference and is executed by Axiad or the Related Party and the Customer (e.g., Statements of Work). For clarity, each Schedule is incorporated into and becomes part of this Agreement upon the execution of such Schedule by Axiad and Customer.

1.10 "Services" means Axiad-hosted services for issuing and managing identity credentials, which services are identified in the applicable Order Form.

1.11 "Service Levels" has the meaning as set forth in Exhibit A.

1.12 "Third Party Service" means a service developed or licensed by a third party and hosted by Axiad as part of the Services, which service is identified in the applicable Order Form.

1.13 "Users" means natural persons who are authorized by Customer to use the Services, and who have been supplied user identifications by Customer (or by Axiad at Customer's request). Users may include Customer employees, consultants, contractors, and/or agents who are authorized by Customer to access and/or use the Services during the Term, provided that any consultants, contractors, and agents have agreed in writing to comply with the terms of this Agreement including all confidentiality obligations.

1.14 "User Portal" means the Axiad Conductor web page that is accessed by Users to add, view or manage their identity credentials.

1.15 "Operator Portal" means the Axiad Conductor web page that is available to designated Customer IT administrators or operators to perform management related tasks such as issuing identity credentials to Users, troubleshooting, and/or reviewing audit logs.

1.16 "Enrollment Service" means Axiad Conductor Application Programming Interfaces ("APIs") that are available for requesting and retrieving public key infrastructure ("PKI") credentials.

2. PROVISION AND USE OF SERVICES

2.1 Axiad Responsibilities. This Agreement establishes the terms under which Customer may receive, access, and/or use the cloud-based Services purchased either directly from Axiad or from a Related Party. Customer may elect to purchase the Services through an authorized Related Party. If Customer purchases the Services through a Related Party, then (i) the Services will be made available to Customer pursuant to an Order Form executed by and between Customer and the Related Party but this Agreement shall apply to and govern Customer's and its Users' use of the Services; and (ii) Customer's obligation for payment to, and its relationship with, any Related Party is between Customer and such Related Party, and Customer must direct any claims for refunds and/or credits owed hereunder to such Related Party. By ordering, activating, using, or paying for any Services, Customer agrees to be bound by this Agreement. Axiad reserves the right, with or without notice, to amend or modify this Agreement, and Customer agrees to be bound by any amendment or modification as long as any such amendment or modification does not materially and adversely affect Customer's use of the Services purchased by Customer. Modifications and/or amendments to this Agreement shall be effective at the time they are posted on the Axiad website at axiad-cloud-terms-of-use.

2.1.1   Axiad will use reasonable efforts to make the Services available in accordance with the metrics set forth on Exhibit A (the "Service Levels"), the security practices set forth on Exhibit B (the "Information Security"), and otherwise in accordance with this Agreement.

2.1.2   Axiad will operate and maintain Axiad software and other infrastructure owned and/or leased by Axiad and used to provide the Services ("Axiad Infrastructure"), including the implementation of updates and upgrades to Axiad Infrastructure. Unless otherwise specified in the Order Form or Schedule, Axiad will make available to Customer as necessary for it to receive the Services the most up-to-date version of Axiad Infrastructure that Axiad makes generally commercially available.

2.1.1   If Axiad and Customer agree on the provision of any Consulting Services in connection with the Services, such Consulting Services shall be set forth in a separate Schedule executed by the parties. Axiad will provide such Consulting Services in accordance with such Schedule.

2.2   Right to Use Services. Subject to the terms and conditions of this Agreement, Axiad grants Customer the right to access and use Axiad Infrastructure as necessary to use the Services in accordance with the terms of this Agreement and as set forth in the applicable Order Form (e.g., number of Users, applicable Hardware) and in accordance with the applicable Documentation.

2.3   Updates; Future Features and Functionality**.** Axiad reserves the right to modify any feature and/or functionality of the Services from time to time in its sole discretion. Axiad will determine in its sole discretion whether any new feature and/or functionality require additional fees. Axiad, in its sole discretion, may decide to add new features and/or functionality to the Services and make them generally available at no cost to customers. Access to certain new features and/or functionality may require Customer's acceptance of additional terms and conditions. Axiad may or may not provide notice of changes to the Services. Customer's purchase of any Services is not contingent or dependent on the delivery of any future feature, functionality, or other services or products regardless of any communications about Axiad's plans, including any information on Axiad's website or in any presentation, proposal, press release, or public statement.

2.4   Customer Responsibilities.   Customer agrees to do the following in connection with its and all of its Users' use of the Services: (i) comply with all applicable laws, rules and regulations, including those regarding data privacy and export control; (ii) use reasonable security precautions for providing access to the Services and associated data by its Users to whom Customer provides access including passwords, private keys, service accounts and other sensitive data; (iii) cooperate with Axiad's reasonable investigation of Services outages and/or problems, security problems, and any suspected breach of this Agreement; (iv) give Axiad true, accurate, current, and complete information ("Account Information") when establishing Customer's account associated with the Services; (v) promptly keep Customer's billing contact and other Account Information up to date; (vi) be responsible for any use of the Services by Customer and any User to whom Customer has given access to the Services as well as any person who Customer directly or indirectly allows access to Customer's account or the Services; (vii) immediately notify Axiad in writing of any known or suspected unauthorized use of Customer's account, the Services, or any other breach of security; (viii) not store or transmit via the Services any content (including Customer Data) that infringes, misappropriates, or otherwise violates the rights of any third party; (ix)not use the Services where failure or fault of the Services could lead to death or bodily injury of any person or to any property or environmental damage; and (x) not disclose or provide access to the Services, the Documentation, and/or any other information provided or made accessible by Axiad to Customer hereunder to any third party except as expressly permitted herein.

2.5   Suspension and Changes to the Services. Axiad may suspend provision of the Services if: (i) Axiad reasonably believes that the Services are being used by Customer or any User in violation of this Agreement or any law; (ii) Customer does not cooperate with Axiad's investigation of any suspected violation of this Agreement or any investigation by a government authority; (iii) Axiad reasonably believes that suspension of the Services is necessary to protect Axiad's Services, network, and/or property, Axiad's other customers, or others in general; (iv) a payment for the Services is overdue by more than thirty (30) days; or (v) suspension is required by law. Axiad will use reasonable efforts to give Customer advance notice of a suspension under this Section 2.5.

3.   FEES AND PAYMENTS

3.1   Invoicing and Payment. Customer shall pay all fees as well as any fee increase specified in this Agreement and/or the applicable Order Form (the "Fees") to Axiad or the Related Party specified in the Order Form. Unless otherwise specified on the applicable Order Form, Customer shall pay all Fees within thirty (30) days after the date of the invoice for such Fees. Past due invoices are subject to interest on any outstanding balance of the lesser of 1.5% per month or the maximum amount permitted by law. All Fees are based on the Services ordered by Customer in any Order Form and not actual usage of the Services. All payment obligations are non-cancelable, Fees paid are non-refundable nor subject to set-off, and Services and quantities ordered cannot be decreased during the term then in effect.

3.2   Taxes. The Fees do not include any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added use or withholding taxes (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with its and its Users use of Services, excluding taxes based solely on Axiad's or the applicable Related Party's net income. If Axiad or the applicable Related Party has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section 3.2, the appropriate amount shall be invoiced to and paid by Customer in accordance with Section 3.1, unless Customer promptly provides Axiad or the applicable Related Party with a valid tax exemption certificate authorized by the appropriate taxing authority.

4.   WARRANTY

4.1   Service Warranty. Axiad warrants that it will use reasonable efforts to perform the Services in accordance with this Agreement and otherwise in a good and workmanlike manner, and that Axiad will implement reasonable measures to detect and mitigate the effects of any viruses and other malicious code discovered on the Axiad systems that provide the Services. Axiad shall not be responsible for any breach of any the foregoing warranties resulting from Customer's or any of its User's unauthorized use, abuse, or misuse of any Services, breach of this Agreement or applicable Order Form, or failure to use any Services as described in this Agreement, including failure to use any Services in accordance with the applicable Services description and operational requirements. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Axiad or by third party providers, or because of other causes beyond Axiad's reasonable control. For clarity, Axiad does not provide any warranty or other services with respect to the Hardware, and Customer is responsible for obtaining and enforcing any warranty or service obligations with respect to the Hardware.

4.2   Ultrahazardous Activities. Customer acknowledges and agrees that the Services and any third party software are not designed, manufactured, or intended for use in any environment in which the failure of any Services and/or third party software could lead to death, personal injury, and/or physical or environmental damage, which uses and environments may include, but are not limited to, the design or operation of nuclear facilities, aircraft navigation, or communication systems, air traffic control, direct life support machines, or weapons systems, or the on-line control of equipment in any hazardous environment requiring fail-safe performance. Customer represents and warrants that Customer will not use any Services and/or any third party software for any such purposes.

4.3   Disclaimer. EXCEPT AS SPECIFIED IN SECTION 4.1, AXIAD MAKES NO WARRANTIES OR REPRESENTATIONS REGARDING THE SERVICES OR OTHERWISE UNDER THIS AGREEMENT. AXIAD HEREBY DISCLAIMS ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE (INCLUDING NON-INFRINGEMENT), AND ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, AND/OR USAGE OF TRADE, TO THE MAXIMUM EXTENT PERMITTED BY LAW. EXCEPT FOR THE ACT, ERROR, NEGLIGENCE, OR OMISSION OF ANY USER, EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD PARTY. AXIAD DOES NOT WARRANT THAT ANY SERVICES WILL BE ERROR FREE OR UNINTERRUPTED AND AXIAD SHALL NOT BE RESPONSIBLE FOR ANY LIMITATIONS, DISRUPTIONS, DELAYS, AND/OR OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND/OR ANY ELECTRONIC COMMUNICATION. Notwithstanding anything herein to the contrary, Axiad and its suppliers make no representations or warranties with respect to any Consulting Services and/or any third party software, deliverable, product, and/or service.

5.   CUSTOMER DATA AND IP OWNERSHIP

5.1   Customer Data. Customer shall own all right, title and interest in and to any and all data and content that Customer submits and/or stores via the Services, including any Account Information (collectively, "Customer Data"). Axiad shall implement security procedures to protect Customer Data from unauthorized disclosure. Customer hereby grants Axiad a non-exclusive license to use the Customer Data to perform the Services. Customer shall not submit as Customer Data any personal or other information that is not necessary for the receipt of the Services (e.g., protected health information, bank account information, personally identifiable information) and Axiad shall not have any obligation, responsibility, or liability with respect to any such information that is submitted via the Services or otherwise provided to Axiad.

5.2   Axiad IP. Axiad shall own and retain all right, title and interest in and to the Services, the Documentation, and any related software or systems used to provide the Services (including the Axiad Infrastructure), any work product generated as a result of any Consulting Services, and all proprietary rights in all of the foregoing (collectively, "Axiad IP"). Axiad hereby grants Customer a non-exclusive license to use Axiad IP during the term of this Agreement solely as necessary to receive the Services.

5.3 Customer Data Retention.
   ➢ Axiad will retain all Customer Data for a maximum of up to two (2) years while this Agreement is in effect.
   ➢ If requested by Customer while this Agreement is in effect, Customer Data will be available to the Customer forty-five (45) days from when Customer submits a written request, during the lifetime of this Agreement.
   ➢ Axiad's retention of Customer Data is purely for Axiad's use and should not be relied upon to meet any compliance and/or other needs that Customer may have.
   ➢ Customer is responsible for generating, retaining, and managing its data in accordance with applicable law as well as its internal security and compliance processes, policies, requirements, and procedures as well as any other needs (e.g., any audit conducted by any third party).
   ➢ Upon expiration or termination of this Agreement, all Customer Data stored in the Services will be deleted.

6.   CONFIDENTIALITY

6.1 Any Confidential Information of the disclosing party is and shall remain the exclusive property of such party or, as the case may be, third parties who have entrusted the processing of such information to the disclosing party.

6.2 Protection. The receiving party will use the same degree of care that it uses to protect the confidentiality of its own Confidential information but not less than reasonable care to: (i) avoid using any confidential information of the disclosing party for any purpose outside the scope of this Agreement or any Order Form; (ii) except as otherwise authorized by the disclosing party in writing, limit access to confidential information of the disclosing party to those of its and any of its Affiliate's employees, officers, consultants, and contractors (collectively, "Representatives'') who need access for purposes of providing or using the Services in accordance with this Agreement, and who have signed confidentiality agreements with the receiving party containing protections, or have ethical duties to the receiving party, not materially less protective of the disclosing party's Confidential Information than those set forth in this Agreement, and (iii) protect the disclosing party's trade secrets in perpetuity. Each party shall be and remain fully liable and responsible for any of its Representative's unauthorized disclosure, access to, and/or use of the other party's confidential information. Each party may confidentially disclose the terms of this Agreement (including any Order Form) to any actual or potential financing source or acquirer subject to having in place a written confidentiality agreement containing protections not materially less protective of the disclosing party's confidential information than those set forth in this Agreement. Notwithstanding the foregoing, Axiad may disclose the terms of this Agreement and any applicable Order Form to a subcontractor and/or reseller of the Services to the extent necessary to perform or satisfy Axiad's obligations to Customer under this Agreement and/or any Order Form, under terms of confidentiality materially as protective as set forth in this Agreement. Axiad shall not be liable nor responsible for any breach of Section 6 resulting from (i) Customer's violation of this Agreement or (ii) any hack or intrusion by a third party (except any Axiad's subcontractor) into Customer's network or systems unless caused directly by Axiad's gross negligence or willful misconduct.

6.3 The receiving party shall not have any confidentiality obligation with respect to any Confidential Information of the disclosing party that: (i) is or becomes generally known to the public without breach of any obligation owed to the disclosing party; (iii) was known to the receiving party prior to its disclosure by the disclosing party without breach of any obligation owed to the disclosing party; (iii) is received from a third party without breach of any obligation owed to the disclosing party; or (iv) was independently developed by the receiving party without access to or reliance on the disclosing party's Confidential Information.

6.4 If the receiving party is required by law or court order to disclose any Confidential Information of the disclosing party, it shall, to the extent legally permissible, promptly notify the disclosing party in writing in order to allow the disclosing party to contest any such required disclosure, limit the content and scope of the disclosure, or obtain an order to protect the Confidential Information. The parties agree to cooperate with each other for such purpose.

7.   LIMITATION OF LIABILITY

IN NO EVENT WILL AXIAD'S AGGREGATE LIABILITY FOR DAMAGES UNDER THIS AGREEMENT EXCEED IN THE AGGREGATE THE AMOUNT CUSTOMER ACTUALLY PAID TO AXIAD UNDER THIS AGREEMENT FOR THE SERVICES THAT GAVE RISE TO THE CLAIM DURING THE TWELVE (12) MONTHS PRECEDING THE INITIAL CLAIM FOR DAMAGES HEREUNDER. NEITHER PARTY WILL HAVE ANY OBLIGATION OR LIABILITY TO THE OTHER (WHETHER ARISING IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE) FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL, RELIANCE, COVER, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OR LIABILITIES OF ANY KIND AND HOWEVER CAUSED (INCLUDING, WITHOUT LIMITATION, ANY LOSS OF ANY BUSINESS, REVENUE, ANTICIPATED SAVINGS, AND/OR PROFITS, USE AND/OR LOSS OR CORRUPTION OF ANY DATA AND/OR COST OF DATA RECONSTRUCTION, OR PROCUREMENT OF SUBSTITUTE OR REPLACEMENT GOODS, SERVICES, AND/OR EQUIPMENT), EVEN IF SUCH PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LIABILITIES, ARISING FROM OR RELATED TO THIS AGREEMENT INCLUDING ANY ORDER FORM. THE FOREGOING LIMITATION OF LIABILITY IS CUMULATIVE FOR ALL CLAIMS IN ANY MATTER RELATED TO THIS AGREEMENT AND ALL ORDER FORMS AND IS NOT ON A PER INCIDENT BASIS.

8. TERM AND TERMINATION

Axiad, Inc. □ 101 Metro Drive, Suite 560□ San Jose, CA 95110

8.1 Term of Agreement. The term of this Agreement shall commence on the Effective Date and shall continue for the term specified in the signed Order Form (with respect to the Services described in such Order Form). The term of this Agreement commences on the Effective Date and remains in effect until (i) otherwise terminated in accordance with the terms and conditions of this Agreement or (ii) all Order Forms have expired or been terminated. Each Order Form will contain the initial subscription term. Thereafter, each Order Form will automatically renew for consecutive periods of equal length to the initial subscription term (each, a "renewal term") unless either party provides the other party with written notice of non-renewal at least sixty (60) days prior to the expiration of the initial term or renewal term then in effect (such written notice to Axiad must be sent to SalesOperations@axiad.com). The fees for any renewal term may be increased by Axiad upon written notice at least sixty (60) days prior to the end of the then-current initial term or renewal term then in effect but, in the absence of such written notice to Customer and unless otherwise stated in the applicable Order Form, fees will automatically increase by seven percent (7%) per year. The Fees to be charged during any renewal term shall also be adjusted to reflect any change in or to the Services, number of Users, and/or any other fee-based item set forth in the Order Form.

8.2 Termination for Convenience. If Customer terminates this Agreement for convenience, Customer shall pay to Axiad all amounts then due or that would be due for the unexpired portion of any term set forth in any Order Form within thirty (30) days after such termination. For clarity, Axiad will have no obligation to refund any fees to Customer in connection with any such termination.

8.3 Termination for Breach. Either party may terminate this Agreement upon written notice to the other party if the other party materially breaches this Agreement and does not remedy such material breach within thirty (30) days after its receipt of a written notice from the non-breaching party describing such breach.

8.4 Effect of Termination. (a) If this Agreement terminates for any reason, Customer shall discontinue its use of the Services, including relinquishing the use of any software or Documentation provided or made accessible to Customer by Axiad in connection with the Services, and all licenses and other rights granted by Axiad to Customer hereunder shall terminate. Axiad will have no obligation to provide any transition services or access to any data except as stated in Section 8.5.

(b) If Customer terminates this Agreement or any Order Form prior to the expiration of the subscription term then in effect due to Axiad's uncured material breach, Customer shall be entitled to a pro-rata refund from Axiad or the reseller, as applicable, of all pre-paid Fees for the Services paid for by Customer but not provided by Axiad beyond the effective date of termination. If, prior to the expiration of subscription term then in effect for any Order Form, (i) Customer terminates this Agreement and/or any Order Form and such termination is not due to Axiad's uncured material breach; or (ii) Axiad terminates this Agreement and/or any Order Form due to Customer's uncured material breach (collectively, an "Early Termination") and Customer has not already paid in advance the full amount of all Fees due for the entire subscription term then in effect under the Order Form(s) being terminated, Customer shall promptly pay to Axiad or the reseller, as applicable, an early termination charge equal to all Fees, including all applicable taxes, set forth in each Order Form being terminated which would otherwise be due through the end of the entire subscription term then in effect under such Order Form(s) (the "Early Termination Fee"). The parties agree that the precise damages resulting from an Early Termination are difficult to ascertain and the Early Termination Fee is a reasonable estimate of anticipated actual direct damages and not a penalty. Customer agrees and acknowledges that the Early Termination Fee shall apply even if Customer terminates this Agreement and/or any Order Form prior to commencement of Axiad's provision of and/or Customer's access to or use of any Service. The Early Termination Fee shall be due and payable to Axiad or the reseller, as applicable, within fifteen (15) business days of the effective date of termination and any applicable prepaid Fees will be applied towards the amount of the Early Termination Fee to be paid by Customer.

(c) Sections 1, 3, 4.3, and 5 through 9 shall survive the expiration or termination of this Agreement for any reason.

8.5 Transition Assistance. Upon Customer's written request, Axiad and Customer shall enter a Schedule describing Consulting Services necessary to assist Customer in retrieving Customer Data and other Customer Confidential Information in connection with any termination or expiration of this Agreement.

9. GENERAL

9.1 Jurisdiction. This Agreement is governed by the laws of the State of California, exclusive of any choice of law principle that would require the application of the law of a different jurisdiction. The parties agree that (i) the provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement, and (ii) the Uniform Computer Information Transactions Act shall not apply to this Agreement, even if any performance under this Agreement would implicate the laws of a jurisdiction which has adopted such Act. The parties irrevocably consent to the exclusive jurisdiction and venue of the state courts in Santa Clara County, California or U.S. District Court for the Northern District of California and the parties each agree not to bring any action in any other venue. Customer waives all objections to this venue and agrees not to dispute personal jurisdiction or venue in these courts, provided that either party may bring a claim for preliminary injunctive or other preliminary relief in any jurisdiction to enforce its rights under this Agreement. Each party agrees that it will not bring a claim under this Agreement more than two years after the time that the claim accrued.

9.2 Assignment. Customer may not assign this Agreement without Axiad's prior written consent, and any attempted assignment in violation of the foregoing shall be null and void. Axiad may assign this Agreement to an Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.

9.3 Severability. If any provision in this Agreement is held invalid or unenforceable by a body of competent jurisdiction, such provision will be construed, limited or, if necessary, severed to the extent necessary to eliminate such invalidity or unenforceability. The remaining provisions of this Agreement will remain in full force and effect.

9.4 No Waiver. A party's failure to exercise or delay in exercising any of its rights and/or remedies under this Agreement will not constitute a waiver, forfeiture, or modification of such rights. A party's waiver of any right and/or remedy under this Agreement will not constitute a waiver of any other right under this Agreement or of the same right and/or remedy on another occasion. Any waiver of any right and/or remedy under this Agreement must be in writing and signed by both parties.

9.5 Force Majeure. Neither party shall be liable to the other party for any delay or failure to perform hereunder (excluding payment obligations) due to circumstances beyond such party's reasonable control including, without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, epidemics, pandemics, quarantines, civil commotion, strikes or other labor problems (excluding those involving such party's employees or contractors), service disruptions involving hardware, software, or power systems not within such party's possession or beyond its reasonable control, and denial of service attacks. For the avoidance of doubt, a force majeure event does not include economic hardship. If any Services and/or Consulting Services are not being provided due to a force majeure event, Axiad will (i) provide prompt written notice (notice by email is acceptable) with reasonable detail describing circumstances; and (ii) use commercially reasonable efforts to resume performance of its obligations hereunder.

9.6 Relationship of the Parties. The parties' relationship is that of independent contractors. This Agreement does not create any partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties. Neither of the parties is the agent for the other, and neither party has the right to bind the other in any agreement with a third party.

9.7 Notices. The parties may exchange routine operational communications regarding the Services via an electronic means designated by Axiad. Notices regarding any breach of this Agreement, indemnification, or other non-routine legal matter matters shall be sent by a nationally recognized overnight courier to the address for the recipient party specified at the beginning of this Agreement (or other address provided by such party in writing). All notices must be given in the English language.

9.8 <u>Entire Agreement; Interpretation; Order of Precedence</u>. This Agreement including each exhibit and Order Form is the entire agreement between Customer and Axiad regarding Customer's use of Services and supersedes all prior and contemporaneous agreements, understandings, proposals, marketing materials, and representations, whether written, visual, or verbal, concerning its subject matter and the Services and there are no representations, understandings, or agreements that are not fully expressed in this Agreement and any Order Form. Except as otherwise provided in this Agreement, no provision of this Agreement or any Order Form may be amended, modified, superseded, or terminated, or any term or condition waived, unless the parties (or, with respect to an Order Form and, if applicable, the Related Party) agree in writing, signed by a duly authorized representative of each party (or, with respect to an Order Form and, if applicable, the Related Party). The parties agree that any term or condition stated in any Customer purchase order or any other Customer ordering documentation is inapplicable and void. This Agreement including each Order Form will be construed and interpreted fairly, in accordance with the plain meaning of its terms, and there will be no presumption or inference against the party drafting this Agreement or any Order Form in construing or interpreting any of the provisions. Headings contained in this Agreement are inserted for convenience of reference only and shall not in any way define or affect the meaning or interpretation of any provision of this Agreement. Terms for which meanings are defined in this Agreement shall apply equally to the singular and plural forms of the terms defined. In the event of any conflict or inconsistency between or among the documents, the following order of precedence shall be: (a) the applicable Order Form; (b) this Agreement; (c) the applicable exhibit; and (d) the Documentation.

9.9 <u>Counterparts; Electronic Signatures</u>. Any Order Form may be executed and delivered in any number of counterparts by facsimile, emailed PDF, or electronic signature, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

Exhibit A: Service Level Agreement (SLA)

Refer to [Axiad Conductor services SLA document](#) for details regarding the Axiad-hosted cloud services SLA.

Data Hosting

The Services are performed and delivered from the following locations:

- Amazon Web Service US East Data Centers – North Virginia;

Customer's backup copies may be hosted on the following sites:

- Amazon Web Service US East Data Centers – North Virginia; and
- any other AWS region in the US.

Security Policy

> Axiad shall have a documented security policy that is updated regularly and communicated to the appropriate persons. Axiad shall establish and implement security measures, operational procedures and computer system operation procedures consistent with such policy designed to protect information during its use, processing, storage, distribution and destruction.

Customer's information shall be securitized according to industry standard practices for information security such as ISO/IEC 27002-2013. Each of these domains shall be managed by a person in charge identified by Axiad whose duties shall be documented and communicated. The persons identified by Axiad shall be responsible for ensuring that the applicable security and compliance rules are followed in providing the Services for each of the following areas:

- Security policy;
- Organization of information security;
- Human resources security;
- Asset management;
- Cryptography;
- Physical and environmental security;
- Operation security;
- Telecommunications security;
- Acquisition, development and maintenance of information systems;
- Axiad management;
- Management of information security-related incidents;
- Business continuity management.

Information Security

Axiad Security Officer

Axiad shall designate in writing a person in charge of compliance with the security and compliance rules applicable to the Services. Axiad shall also ensure that information security duties are clearly communicated to staff using Customer's information, whether for the protection of particular information or to carry out activities or security procedures. Such person shall also act as the resource person for Customer with respect to security matters. Axiad's designated person as of the Effective Date is:

Jerome Becquart
Email: security_officer@axiad.com
Tel: +1 408 886-0847

Background Checks

Axiad conducts background checks on its employees with access to Customer Confidential Information and Customer Data.

Asset Management

Axiad shall be responsible for maintaining an inventory of its media which contains information of Customer, including computer equipment (e.g., data base servers, storage media, work stations) and paper documents. All such media shall be clearly identified and recorded.

Axiad shall conduct a physical inventory of information media on a regular basis (at least twice a year). Axiad shall also have a procedure allowing discrepancies to be identified and, where applicable, explained. Customer shall be informed of any discrepancy as quickly as possible. Inventory reports shall be submitted to Customer for review, assessment and approval.

Any discrepancy attributable to the loss or theft of equipment shall be treated as a security incident.

Access Control

Axiad shall limit physical and logical access to its systems and sites used in connection with the providing of Services to those of its employees and subcontractors who need access to perform the Services by setting up and implementing an access management procedure and authentication measures in accordance with standard industry practice.

Axiad shall manage access by ensuring the reporting of access, using the need-to-know and least privilege principles and taking appropriate action in a timely manner upon any change to the duties of any of its employees or subcontractors. Mechanisms shall be set up to ensure the separation of incompatible duties. When duties cannot be separated, compensatory controls shall be implemented (e.g., regular review of activity logs).

Physical and Environmental Events

Axiad Conductor is hosted on AWS that is SOC 1, 2 and 3 compliant.

Telecommunications and Exploitation Management

Logging and Monitoring

Axiad shall log security events on the systems used to provide the Services, including activities related to accessing and protecting the logs.

Axiad shall set up and implement procedures for monitoring logs, computer systems, its sites and all pertinent Axiad resources which it operates in connection with Customer's information, in order to detect and report anomalies, including the breach of information security measures, and allow for rapid intervention.

Reported incidents shall be managed according to Axiad Information Security Incident Management Procedure.

Vulnerabilities management

Axiad shall set up and implement a vulnerabilities management procedure which shall include, among other things: procedures to detect and report on vulnerabilities, the diagnosis and treatment of vulnerabilities according to their level of severity, documentation and the communication and follow-up of corrective action. The procedures shall cover the Axiad servers, work stations, telecommunications equipment, operating systems, software platforms (including data bases, source code management systems and web servers) as well as the applications for which the manufacturer's development code is present used by Axiad in providing services.

In the event of vulnerability classified as critical, Axiad shall notify Customer and implement all reasonable measures designed to remedy the breaches and correct the vulnerability as quickly as possible.

Security Patches

Axiad shall keep the Axiad servers, workstations, telecommunication equipment, operating systems, software platforms (including databases) as well as the applications used for which the manufacturers' development code is present up to date, including the security patches in accordance with the recommendations of the relevant manufacturers.

The corrections or new versions shall be tested, approved and deployed in accordance with a change management procedure. Prompt action shall be taken for security patches of urgent/critical severity. High-severity security patches shall be installed within 7 days of being issued in order to reduce the risk of attack unless Customer agrees otherwise. Other patches shall be evaluated, tested and applied during the maintenance window determined for each system.

Malware detection and removal

Axiad shall set up and implement prevention, detection and recovery measures designed to protect against malware. In addition, Axiad shall install software to detect malware on Axiad computer equipment (e.g., servers, computers) used for the collection, use, storage, transmission or destruction of Customer's information. Axiad shall also regularly update the available malware signatures. This procedure shall be communicated upon request to Customer.

Information Transmission

to the extent Axiad is required to transmit Customer information as part of the Services, Axiad shall implement procedures designed to protect all data transmissions to and from external networks (e.g., networks outside the agreed-on architecture, networks of subcontractors, Customer's network or the network of Customer's suppliers, etc.) against interception, copy, modification, re-routing or destruction.

Furthermore, the flow of data to and from external networks along with the envisioned security measures must be documented and approved by Customer prior to implementation.

Vulnerability and Intrusion Tests

All externally facing IP addresses including the production, development and test environments shall be scanned daily with a vulnerability management tool by Axiad.

"Candidate build" images shall also be scanned weekly as part of QA qualification.

All applications interfaces are tested for vulnerabilities quarterly, either by Axiad or by the upstream technology providers.

Unless discovered or reported vulnerabilities require a more urgent schedule, all Axiad environments are patched on a rolling 7-day cycle planned with customers.

Penetration testing by a third party is performed internally and externally every year on the Axiad environment, or after significant changes to the technical environment.

Breaches

Axiad shall notify Customer of any data-security breaches of which Axiad becomes aware that involve Customer information. Axiad shall promptly investigate any such breach and use all reasonable efforts to mitigate the effects of such a breach and to implement measures to prevent such breaches from occurring in the future.