

**Axiad IDS, Inc.**  
**Software Subscription Agreement**

This Software Subscription Agreement ("Agreement") permits the customer identified in the Order Document ("Customer") to purchase a subscription to the Software (as defined below) provided by Axiad IDS, Inc. ("Axiad") as set forth in the applicable schedule, order form, statement of work, and/or other ordering document executed by the parties (each an "Order Document"). This Agreement (i) sets forth the terms and conditions under which the Software and any related services and Products (as defined below) will be procured and used; (ii) shall govern Customer's initial purchase as well as any future purchases made by Customer which reference this Agreement; and (iii) includes and governs any and all Order Documents executed by the parties. By executing the Order Document, Customer is accepting and agreeing to this Agreement and the terms of such Order Document which, upon execution by Customer, is incorporated into and subject to this Agreement. Each Order Document 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 Document. The initial term for the subscription to the Software commences on the date specified in the Order Document or, if no initial term effective date is specified, the date Customer executes the Order Document. Customer and Axiad may be referred to individually as a "party" and collectively as the "parties".

**TERMS AND CONDITIONS**

1. **Other Definitions.** The following terms shall have the respective meanings indicated below for the purpose of this Agreement:

1.1 "Authorized User" and "End User" mean and refer to any employee and/or contractor of Customer who has been authorized and designated by Customer to utilize the Product for Customer's benefit solely for Customer's internal business operations and not for further resale, use, or transfer.

1.2 "Product" means the Software and related User Documentation as described in an applicable Order Document (and related offerings provided by Axiad in connection herewith, such as browser extensions) ("Product Description"). Each Product shall be deemed to include any Updates to such Product as are supplied by Axiad and accepted by Customer.

1.3 "Software" means Axiad's proprietary computer programs or computer programs provided by Axiad, in object code form only.

1.4 "Updates" means any modifications and enhancements to the Software which are designed by Axiad to correct or improve the Software's performance and which are generally provided free of charge to Axiad's customers. Updates are designated by a change in the version number digits to the right of the decimal point. An Update is not a new Product for purposes of this Agreement.

1.5 "User Documentation" means the documentation for the Software which Axiad distributes or makes available to customers in the usual course of its business.

2. **Subscription and Intellectual Property Ownership.**

2.1 **Subscription Grant.** Subject to Customer's timely payment of all fees owed to Axiad and Customer's and its Authorized Users' use of the Product in compliance of the terms and conditions of this Agreement, Axiad hereby grants to Customer a non-exclusive, non-transferable (except as set forth in Section 12.7 below), and non-sublicensable right and subscription to: (i) install the Software only on the identified number of Customer's network servers to support the corresponding number of Authorized Users identified in the applicable Order Document, and (ii) use the Product solely for Customer's internal business operations during the applicable subscription term. Customer's use of the Product will not be by more than the number of Authorized Users specifically set forth in the Order Document. For clarity, Customer will not have any right to use or access the Software source code. Customer's purchase of any Product 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.

2.2 **Intellectual Property Ownership.** Axiad and/or its licensors own all title and proprietary rights including without restriction all intellectual property rights, in and to the Software and all copies thereof, all of which contain valuable trade secrets of Axiad and/or its licensors. The subscription right described herein is NOT a sale of the Software or any copy of it or any source code applicable to it, nor is it a waiver of the rights of Axiad under U.S. copyright laws or any other federal, state, or other applicable laws. The subscription granted in this Agreement and any Order Document does not include the right to sublicense the Software and is personal to Customer and its Authorized Users and, except as otherwise set forth in this Agreement, may not be assigned or otherwise transferred by Customer or any Authorized User without Axiad's prior written consent. Customer acknowledges that the Software in source code form remains a confidential trade secret of Axiad and/or its licensors. Licensee may not reverse engineer, decipher, decompile, modify or disassemble the Software or otherwise attempt to derive the source code of the Software (except as authorized by law), incorporate the Software in whole or in part in any other software or product, or develop derivative works of the Software or allow others to do so, or to attempt to do any of the foregoing, without the express prior written consent of Axiad.

2.3 **Restriction on Copying.** Customer may not copy the Software or permit any Authorized User or other third party to copy the Software, except for backup or archival purposes.

2.4 **Feedback.** Customer has no obligation to provide Axiad with any ideas, comments, suggestions, enhancement requests, feedback, recommendations, corrections, proposals, and/or other information related to any Product (collectively, referred to as "Feedback"). However, if Customer and/or any Authorized User submits any Feedback to Axiad, all such Feedback will become Axiad's sole and exclusive property. Customer hereby irrevocably assigns and transfers to Axiad, without charge, any and all of Customer's and its Authorized Users' right, title, and interest in and to all Feedback including all intellectual property rights therein. Customer agrees and acknowledges that it will not receive any fees, credits, consideration, or remuneration for any Feedback or any of the rights granted in this Section. Axiad's receipt of any Feedback is not an admission of its novelty, priority, or originality, and it does not impair Axiad's rights in and to any existing or future intellectual property rights.

### 3. **Restrictions.**

3.1 **Use Restrictions.** Customer will not (and will not allow any Authorized User or third party to): (a) modify, adapt, or create derivative works of any part of the Product and/or User Documentation; (b) rent, lease, loan, resell, transfer, sublicense, distribute, disclose, make accessible, or otherwise provide or make available the Product and/or User Documentation to any third party; (c) decompile, disassemble, decipher, modify, or reverse engineer any part of the Product, or determine or attempt to determine any source code, algorithms, methods or techniques embodied in the Product (but this restriction will not apply to the extent prohibited by applicable law; provided, however, if Customer intends to do so, it will promptly notify Axiad reasonably in advance in writing and Axiad may terminate this Agreement on notice to Customer); (d) incorporate the Software in whole or in part in any other software or product, or develop any derivative work of the Software; (e) provide to any third party the results of any benchmark tests or other evaluation of the Product; (f) attempt to disable or circumvent any license key or other technological mechanisms or measures intended to prevent, limit, or control use or copying of, or access to, the Product; or (g) remove or obscure any copyright, trademark, patent or other proprietary notices, legends or symbols on or in the Product or User Documentation. Customer shall be and remain responsible for the acts, errors, omissions, and negligence of any Authorized User's use of the Product and/or User Documentation.

3.2 **Audit Rights.** Axiad, upon at least ten (10) business days prior written notice to Customer and not more than once in any twelve (12) month period, shall have the right, at its expense, to perform or engage a third-party auditor to audit Customer's books and records related to Customer's obligations hereunder and to ensure compliance with the terms of this Agreement and any Order Document. Customer will grant Axiad and/or its designated third-party auditor reasonable access to Customer's personnel, records, computer networks, and facilities for purpose of conducting the audit, and Axiad or such auditor will comply with the reasonable security procedures established by Customer. All such audits shall be conducted during Customer's normal business hours. All records shall be treated as Customer Confidential Information. Any shortfall in payments owed hereunder uncovered by such audit shall promptly be paid by Customer to Axiad on demand. In addition, if any such audit reveals an underpayment of payments owed by Customer of five percent (5%) or more for any audit period, then Customer shall promptly reimburse Axiad for the reasonable costs of the audit.

### 4. **Confidentiality.**

4.1 **Obligations.** Each party (as "Recipient") expressly undertakes to retain in confidence all confidential information transmitted or made available to it hereunder by the other party (as "Discloser"), and agrees to make no use of such confidential information except as necessary to use and/or provide the Product and User Documentation under the terms of this Agreement. Confidential information is all information that the Discloser identifies as confidential or is of a nature, or is disclosed in such a manner, that the Recipient should reasonably understand the information to be confidential. The Product and User Documentation as well as any non-public pricing information are Axiad's confidential information. Recipient agrees that during and after the term of this Agreement, it will not use or disclose to any third party any confidential information without the prior written consent of Discloser. Discloser hereby consents to the disclosure of its confidential information to certain employees of Recipient who agree to keep Discloser's confidential information in confidence, in order to allow Recipient to perform under this Agreement and to obtain the benefits hereof.

4.2 **Exceptions.** Recipient shall not be liable for disclosure or use of any confidential information which (i) was in the public domain at the time it was disclosed or falls within the public domain, except through the fault of the Recipient; (ii) was known to the Recipient at the time of disclosure, which knowledge the Recipient shall have the burden of establishing by clear and convincing evidence; (iii) was disclosed after written approval of Discloser; (iv) becomes known to the Recipient from a source lawfully in possession other than Discloser without breach of this Agreement by the Recipient; or (v) was independently developed by the Recipient without the benefit of confidential information received from Discloser, which independent development the Recipient shall have the burden of establishing by clear and convincing evidence.

5. **Delivery and Acceptance.** Axiad shall deliver or make the Product accessible within three (3) business days of the Effective Date. Customer shall have five (5) days (the "Acceptance Period") to examine the Software to confirm that it functions substantially in conformance with the User Documentation. If no written rejection is received by Axiad within the Acceptance Period, the Product shall be deemed accepted by Customer. Should the delivery of the Product and User Documentation be rejected by Customer, Axiad will use reasonable efforts to correct the applicable issue(s) and re-deliver. The re-delivered Product will be subject to the same acceptance procedures and period as above. If Customer issues a second rejection as set out above, Customer may (i) allow Axiad further opportunities to correct the issue (same as above) or (ii) as Customer's sole and exclusive remedy, terminate the Agreement on written notice delivered to Axiad within ten (10) days from the rejection date and, upon such termination, will receive a refund of the fees for the Product already paid by Customer to Axiad, if any.

### 6. **Updates and Support.**

6.1 **Updates.** Axiad agrees to provide to Customer any Updates that become generally available during the then-current subscription term; provided, however, that Axiad is not obligated to revise or update any Product subject to this Agreement. If, during the term of this Agreement, Axiad shall release an Update which incorporates error corrections and enhancements, then Axiad shall offer and make available to Customer such Updates. Such Updates do not include modifications, enhancements, or other software. While Customer shall have the right to request Axiad to make Updates, Customer acknowledges that Axiad is under no obligation to make Updates to the Product(s).

6.2 **Support.** Axiad shall provide Customer with technical support and maintenance during the subscription term on a 24 hours a day, 7 days a week basis according to Axiad's then-current support handbook at: <https://www.axiad.com/support> as may be amended from time to time in Axiad's discretion. Customer agrees that all contact with Axiad regarding warranty and support services shall be handled through a designated Customer administrator who shall direct warranty and support requests through Axiad's support department.

7. **Fees.** 7.1 Customer shall pay all fees as well as any fee increase as set forth in this Agreement and/or the applicable Order Document. Unless otherwise specified in an Order Document, all fees for the Product ordered by Customer shall be paid in U.S. dollars directly within thirty (30) days of the invoice date. Customer shall provide accurate, current, and complete information regarding Customer's legal business name, address, email address, and phone number, and maintain and promptly notify Axiad if this information should change. 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 Product ordered by Customer in any Order Document and the associated number of Authorized Users and not actual usage of the Product. Except as otherwise set forth in this Agreement, all payment obligations are non-cancelable, fees paid are non-refundable nor subject to set-off, and the Product and quantities ordered cannot be decreased during the subscription term then in effect. Customer shall be responsible for all taxes associated with the Product ordered other than taxes based on Axiad's income. To the extent applicable, Customer shall provide an exemption certificate acceptable to Axiad and the applicable authority as necessary.

7.2 During the subscription term then in effect for any Product ordered by Customer, additional Authorized Users may be added subject to Customer paying all applicable fees for any such additional Authorized Users. The subscription term for any such additional Authorized Users will be co-terminus with the subscription term then in effect. To add any additional Authorized Users, Customer will promptly execute a new Order Document or an amendment to an existing Order Document and promptly pay any applicable additional fees, which shall be prorated for the then-remaining subscription term.

## 8. **Term and Termination.**

8.1 **Term.** This Agreement shall become effective upon the Effective Date and shall terminate as set forth below. Each Order Document will contain the initial subscription term. Thereafter, each Order Document 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 currently in effect (such written notice to Axiad must be sent to SalesOperations@axiad.com). The fees for any renewal terms may be increased by Axiad upon notice at least sixty (60) days prior to the end of the then-current term but, in the absence of such notice to Customer and unless otherwise stated in the Order Document, 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 changes in or to the Product, number of End Users, and/or any other fee-based item set forth in the Order Document.

8.2 **Termination.** Either party may terminate this Agreement if the other party materially breaches this Agreement and fails to cure such breach within thirty (30) days from receipt of written notice from the non-breaching party. The written notice of termination must provide sufficient detail regarding the breach and expressly state the intent to terminate if not cured. In addition, a party may terminate this Agreement including any Order Document on written notice if the other party (i) becomes insolvent, (ii) voluntarily files a petition in bankruptcy or has such a petition involuntarily filed against it (which petition is not discharged within thirty (30) days after filing) or (iii) is placed in a receivership or reorganization proceeding or is placed in a trusteeship involving an insolvency. Either party may also terminate this Agreement for convenience on written notice only if there are no Order Documents in effect.

8.3 **Effect of Termination.** If this Agreement and/or any Order Document is terminated by Customer pursuant to Section 8.2 for Axiad's uncured material breach or terminated by Axiad for convenience, Axiad will promptly refund all fees paid in advance for the terminated portion of the subscription term then in effect. In the event of any other termination of this Agreement and/or any Order Document, all fees that would otherwise have been due for the entire initial subscription term or any renewal term then in effect shall become immediately due and payable by Customer to Axiad. Upon the effective date of termination of this Agreement, the subscription granted hereunder shall terminate and Customer shall immediately discontinue use of the Software and User Documentation. Customer shall deliver to Axiad or destroy all Software and related materials in its possession or control, together with all copies thereof, and shall confirm in writing as to such return or destruction within thirty (30) days of termination.

## 9. **Warranties and Warranty Disclaimer.**

9.1 Each of the parties represents and warrants to the other that (i) it has the authority to enter into, and perform its obligations under, this Agreement; and (ii) it is under no obligation, contractual or otherwise, which might interfere with its full and complete performance of this Agreement.

9.2 Axiad represents and warrants that, for a period of ninety (90) days from Customer's receipt of the Software from Axiad (the "Warranty Period"), the Software will perform substantially in accordance with the then-current User Documentation, provided that the Software is properly used by Customer and its Authorized Users in accordance with such documentation and this Agreement. This warranty shall not apply to the Software if it has been modified by Customer or any third party. Axiad's sole obligation and Customer's sole and exclusive remedy during the Warranty Period shall be to correct errors in accordance with Axiad's standard practices and procedures. Axiad's sole and exclusive liability and Customer's sole and exclusive remedy under this limited warranty shall be for Axiad to make commercially reasonable efforts to make the Software perform substantially in accordance with the User Documentation. The above remedies are available only if Customer promptly notifies Axiad in writing within the Warranty Period. This limited warranty is void and inapplicable if failure of the Software to operate in accordance with the User Documentation is due to any accident, abuse, or misuse by Customer or any Authorized User.

9.3 EXCEPT AS SET OUT IN THIS SECTION 9, THE PRODUCT AND ALL SERVICES ARE PROVIDED "AS IS" TO THE MAXIMUM EXTENT PERMITTED BY LAW. THE WARRANTIES STATED ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, OR QUALITY OF SERVICE. NO WARRANTIES SHALL ARISE UNDER THIS AGREEMENT FROM COURSE OF DEALING OR USAGE OF TRADE. AXIAD DOES NOT WARRANT THAT THE SOFTWARE OR DOCUMENTATION IS FREE OF THIRD PARTY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR THE SELECTION OF THE SOFTWARE TO ACHIEVE CUSTOMER'S AND ITS AUTHORIZED USERS' INTENDED RESULTS, AND FOR THE OPERATION AND USE OF THE SOFTWARE. Without limiting the foregoing, Customer is responsible for the supervision, management, and control of the use of the Software and any output of the Software including, without limitation, the proper installation and establishment of adequate backup and archival processes to prevent any adverse consequences in the event of a software malfunction. Axiad does not warrant that the Software or Customer's and/or any Authorized User's use of the Software will be uninterrupted or error-free. The entire risk as to the quality and performance of the Software and any related products and services and any content provided thereby remains with Customer.

9.4 All Axiad warranties are solely for the benefit of Customer and for no other entity or third party. Axiad shall not be responsible for any breach of any warranty resulting from Customer's or any Authorized User's unauthorized use, abuse, or misuse of any Product, breach of this Agreement or applicable Order Document, or failure to use any Product as described in the User Documentation.

9.5 Third Party Software Component License Terms. The Software may include third party software pursuant to the terms and conditions of any associated license agreements. Any installation or other use of such software is conditional upon consent to the terms and conditions of each applicable governing license agreement. AXIAD IS NOT THE MANUFACTURER OR OWNER OF THE THIRD PARTY SOFTWARE AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MAKES NO WARRANTY WITH RESPECT TO THE THIRD PARTY SOFTWARE, WHICH THIRD PARTY SOFTWARE IS PROVIDED TO CUSTOMER AND ITS AUTHORIZED USERS "AS IS".

10. Limitations on Liability. EXCEPT WITH RESPECT TO (A) A AXIAD'S INDEMNIFICATION OBLIGATIONS; (B) CUSTOMER'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT AND ALL ORDER DOCUMENTS; (C) CUSTOMER'S BREACH OF SECTION 3; AND (D) A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL (1) EITHER PARTY OR ITS SUPPLIERS, AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, AND/OR CONTRACTORS HAVE ANY LIABILITY TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, COVER, RELIANCE, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY KIND, HOWEVER CAUSED, AND/OR FOR 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, OR EQUIPMENT, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR UNDER ANY OTHER THEORY OF LIABILITY, ARISING OUT OF, OR IN ANY WAY RELATED TO THIS AGREEMENT, ANY ORDER DOCUMENT, AND/OR THE PROVISION OR LACK OF PROVISION OF ANY PRODUCT, EVEN IF SUCH PARTY HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF ANY SUCH LOSS AND/OR DAMAGE; AND (2) EITHER PARTY'S ENTIRE AND MAXIMUM LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT AND ANY ORDER DOCUMENT, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED IN THE AGGREGATE THE TOTAL FEES ACTUALLY PAID BY CUSTOMER TO AXIAD DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE BREACH OR EVENT GIVING RISE TO THE CLAIM FOR DAMAGES. THE FOREGOING LIMITATION OF LIABILITY IS CUMULATIVE FOR ALL CLAIMS IN ANY MATTER RELATED TO THIS AGREEMENT AND ALL ORDER DOCUMENTS AND IS NOT ON A PER INCIDENT BASIS.

11. Indemnification. Axiad will, at its expense, indemnify and defend (or at Axiad's option, settle) any claim, suit or action brought against Customer to the extent that it is based upon a third party claim that the Software, as provided by Axiad to Customer hereunder, infringes or misappropriates the intellectual property rights of any third party, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are awarded against Customer. In the event that the use of the Software is, or in Axiad's sole opinion is likely to become, subject to such a third party claim, Axiad, at its option and expense, may (i) replace the applicable Software with functionally equivalent non-infringing technology, (ii) obtain a license for Customer's continued use of the applicable Software, or (iii) upon written notice to Customer, terminate the subscription to the Software and provide a pro-rata refund of the Software subscription fees that have been paid in advance by Customer for the terminated portion of the subscription term for the applicable Software. The foregoing indemnification obligation of Axiad will not apply: (a) if the Software is modified by Customer or any third party; (b) if the Software is combined with other non-Axiad product, application, and/or process, but solely to the extent the alleged infringement is caused by such combination; or (c) to any unauthorized use or misuse of the Software. Axiad's indemnity obligations are contingent on: (i) Customer providing Axiad with prompt written notice any such actual or threatened claim; (ii) Customer allowing Axiad to solely control all defense and settlement activities (but Axiad will not settle a claim without the indemnified party's consent unless it contains a release of liability for Customer), and (iii) Customer reasonably cooperating, at Axiad's expense, in defense and

settlement of such claim. Axiad will not be liable for any settlement it does not approve in writing. The foregoing indemnity shall be Axiad's sole responsibility and Customer's sole and exclusive remedy with respect to any claim of infringement of third party intellectual property rights.

## 12. **General.**

12.1 **Notices.** Any notice or written communication required or permitted to be given by a party hereunder must be in writing and made by hand delivery, or overnight or express delivery at the address specified in the Order Document or by electronic e-mail with confirmation of receipt, or at such other addresses as the party may specify in writing. Any such notice, written communication or e-mail message will be considered to have been received on the date of hand delivery or e-mail with confirmation of receipt or the next business day after sent by overnight or express delivery service.

12.2 **Export Regulations.** Software and technical data are subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and are subject to export or import regulations in other countries. Customer shall not directly or indirectly permit any Authorized User to export the Software to or use any Product in any U.S. embargoed country or in violation of any U.S. export law or regulation.

12.3 **Waiver or Delay.** No failure or delay by either party to exercise any right or remedy under this Agreement will constitute a waiver of that right or remedy or any other right or remedy. Any waiver of any right, remedy, or obligation under this Agreement or any Order Document must be in writing and signed by a duly authorized representative of each party. A waiver on one occasion shall not be construed as a waiver of any right, remedy, or obligation on any future occasion. Except as otherwise expressly stated in this Agreement, the remedies provided in this Agreement are in addition to, and not exclusive of, any other rights and remedies of a party at law or in equity.

12.4 **Force Majeure.** Except for Customer's payment obligations, neither party shall be liable for any delay or failure in performance due to circumstances beyond such party's reasonable control including, without limitation, acts of God, acts or orders of government, flood, fire, earthquake, epidemic, pandemic, civil unrest, acts of terror, civil commotion, strikes or other labor problems (excluding those involving such party's employees or contractors), denial of service attacks, any disruption involving hardware, software, or power systems not within such party's possession or beyond its reasonable control, and internet and third party network outages or delays.

12.5 **Survival of Obligations.** The following provisions will survive expiration or termination of this Agreement for any reason: Sections 1, 2, 3, 4, 7, and 8 through 12 as well as all outstanding payment obligations.

12.6 **Governing Law.** This Agreement shall be governed by the laws of the State of California and the United States without regard to conflicts of laws principles, and without regard to the United Nations Convention on the International Sale of Goods. Except for claims for injunctive or equitable relief or claims regarding intellectual property rights (which may be brought in any court of competent jurisdiction), any dispute arising under this Agreement shall be finally settled in accordance with the rules of the Judicial Arbitration and Mediation Service ("JAMS") in accordance with such rules. To the extent the JAMS streamlined rules are available, they shall apply. The arbitration shall take place in Santa Clara, California, in the English language, and the arbitral decision may be enforced in any court of competent jurisdiction. To the extent a claim cannot legally be arbitrated (as determined by an arbitrator), the parties irrevocably consent to the exclusive jurisdiction and venue of the state courts in Santa Clara County or U.S. District Court for the Northern District of California.

12.7 **Assignment.** Neither party will assign or transfer this Agreement without the other party's written consent; provided that either party may assign this Agreement and any Order Document, without the other party's consent to its affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets provided that the assignee agrees in writing to be bound by this Agreement and all Order Documents.

12.8 **Relationship of the Parties.** The relationship between the parties shall at all times be that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties. Neither party shall have authority to contract for or bind the other party in any manner whatsoever. This Agreement confers no rights upon either party except those expressly granted herein.

12.9 **Injunctive Relief.** It is expressly agreed that a material breach of this Agreement could cause irreparable harm to Axiad and that a remedy at law might be inadequate. Therefore, in addition to any and all rights and remedies available at law, Axiad will be entitled to seek an injunction or other equitable remedies in all legal proceedings in the event of any threatened or actual violation of any term of this Agreement.

12.10 **Entire Agreement.** This Agreement and any Order Document executed by the parties is the complete, entire, final and exclusive statement of the terms and conditions of the agreement between the parties. This Agreement supersedes, and the terms of this Agreement govern, any prior or collateral agreements between the parties with respect to the subject matter hereof. 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 Product(s) purchased by Customer. Modifications and/or amendments to this Agreement shall be effective at the time they are posted on the Axiad website at <https://www.axiad.com/Axiad-Software-Subscription-Agreement>. Except as set forth in this Section, this Agreement and any Order Document may not be modified except in a writing executed by duly authorized representatives of the parties. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise

remain in effect. The terms and conditions of this Agreement shall prevail notwithstanding any variance with the terms and conditions of any purchase order or other instrument submitted by Customer. Any Order Document 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.