

COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** made and entered this 31st day of July, 2015, by and among the **CITY OF HARRISONBURG, VIRGINIA** (the "Locality") a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), **AXONAI, INC.** (the "Company"), a Delaware corporation authorized to transact business in the Commonwealth, and the **INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF HARRISONBURG, VIRGINIA** (the "Authority"), a political subdivision of the Commonwealth.

WITNESSETH:

WHEREAS, the Locality has been awarded a grant of and expects to receive \$75,000 from the Commonwealth's Development Opportunity Fund (a "COF Grant") through the Virginia Economic Development Partnership Authority ("VEDP") for the purpose of inducing the Company to expand, equip, and operate its cybersecurity technology facility in the Locality (the "Facility"), thereby making a significant Capital Investment, and creating and Maintaining a significant number of New Jobs, as such capitalized terms are hereinafter defined;

WHEREAS, the Locality is willing to provide the funds to the Authority with the expectation that the Authority will provide the funds to or for the use of the Company, provided that the Company promises to meet certain criteria relating to Capital Investment and New Jobs;

WHEREAS, the Locality, the Authority and the Company desire to set forth their understanding and agreement as to the payout of the COF Grant, the use of the COF Grant proceeds, the obligations of the Company regarding Capital Investment and New Job creation and Maintenance, and the repayment by the Company of all or part of the COF Grant under certain circumstances;

WHEREAS, the expansion, equipping, and operation of the Facility will entail a capital expenditure by or on behalf of the Company of approximately \$1,500,000, which will be invested in furniture, fixtures, machinery, and equipment;

WHEREAS, the expansion, equipping, and operation of the Facility will further entail the creation and Maintenance of 29 New Jobs at the Facility; and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment and New Jobs constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the COF Grant:

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the

receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows.

Section 1. Definitions.

For the purposes of this Agreement, the following terms shall have the following definitions:

“Capital Investment” means a capital expenditure by or on behalf of the Company in taxable real property, taxable tangible personal property, or both, at the Facility. The Capital Investment must be in addition to the capital improvements at the Facility as of June 1, 2015. The purchase or lease of furniture, fixtures, machinery and equipment, including under an operating lease, and expected building up-fit and tenant improvements by or on behalf of the Company will qualify as Capital Investment.

“Maintain” means that the New Jobs will continue without interruption from the date of creation through the Performance Date. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to (i) temporary reductions in the Company’s employment levels (so long as there is active recruitment for open positions), (ii) strikes, and (iii) other temporary work stoppages.

“New Job” means new permanent full-time employment of an indefinite duration at the Facility for which the standard fringe benefits are provided by the Company for the employee, and for which the Company pays an average annual wage of at least \$82,778. Each New Job must require a minimum of either (i) 35 hours of an employee’s time per week for the entire normal year of the Company’s operations, which “normal year” must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs. The New Jobs must be in addition to the Company’s one (1) full-time jobs in the Locality as of June 1, 2015.

“Performance Date” means October 1, 2018. If the Locality, in consultation with the Authority and VEDP, deems that good faith and reasonable efforts have been made and are being made by the Company to achieve the Targets, the Locality may agree to extend the Performance Date by up to 15 months. If the Performance Date is extended, the Locality shall send written notice of the extension to the Authority, the Company and VEDP and the date to which the Performance Date has been extended shall be the “Performance Date” for the purposes of this Agreement.

“Targets” means the Company’s obligations to make Capital Investments at the Facility of at least \$1,500,000 and to create and Maintain at least 29 New Jobs at the Facility, all as of the Performance Date.

“Virginia Code” means the Code of Virginia of 1950, as amended.

Section 2. Targets; Statutory Criteria.

The Company will expand, equip, and operate the Facility in the Locality, make a Capital Investment of at least \$1,500,000, and create and Maintain at least 29 New Jobs at the Facility, all as of the Performance Date.

The Locality and the Authority hereby strongly encourage the Company to ensure that at least 30% of the New Jobs are offered to “Residents” of the Commonwealth, as defined in Virginia Code Section 58.1-302. In pertinent part, that definition includes natural persons domiciled in Virginia or natural persons who, for an aggregate of more than 183 days of the year, maintained a place of abode within the Commonwealth, whether domiciled in the Commonwealth or not.

The average annual wage of the New Jobs of at least \$82,778 is more than the prevailing average annual wage in the Locality of \$34,670. The Locality is a high-unemployment locality, with an unemployment rate for 2014, which is the last year for which such data is available, of 6.1% as compared to the 2014 statewide unemployment rate of 5.2%. The Locality is a high-poverty locality, with a poverty rate for 2013, which is the last year for which such data is available, of 29.3% as compared to the 2013 statewide poverty rate of 11.7%.

Section 3. Disbursement of COF Grant.

By no later than October 1, 2015, the Locality will request the disbursement to it of the COF Grant. If not so requested by the Locality by October 1, 2015, this Agreement will terminate. The Locality and the Company will be entitled to reapply for a COF Grant thereafter, based upon the terms, conditions and availability of funds at that time.

The COF Grant in the amount of \$75,000 will be paid to the Locality, upon its request. Within 30 days of its receipt of the COF Grant proceeds, the Locality will disburse the COF Grant proceeds to the Authority. Within 30 days of its receipt of the COF Grant proceeds, the Authority will disburse the COF Grant proceeds to the Company as an inducement to the Company to achieve the Targets at the Facility. The Company will use the COF Grant proceeds for training, as permitted by Section 2.2-115(D) of the Virginia Code.

Section 4. Break-Even Point; State and Local Incentives.

(a) *State-Level Incentives:* VEDP has estimated that the Commonwealth will reach its “break-even point” by the Performance Date. The break-even point compares new revenues realized as a result of the Capital Investment and New Jobs at the Facility with the Commonwealth’s expenditures on incentives, including but not limited to the COF Grant. With regard to the Facility, the Commonwealth expects to provide incentives in the following amounts:

<u>Category of Incentive:</u>	<u>Total Amount</u>
COF Grant	\$75,000

Virginia Jobs Investment Program ("VJIP") (Estimated)

29,000

The proceeds of the COF Grant shall be used for the purposes described in Section 3. The VJIP grant proceeds shall be used by the Company to pay or reimburse itself for recruitment, hiring and training costs.

(b) *Locality-Level Incentives:* The Locality expects to provide the following incentives, as matching grants or otherwise, for the Facility:

<u>Category of Incentive:</u>	<u>Total Amount</u>
Local Grant (Estimated)	\$50,000
Business and Professional License Fee Waiver ("BPOL Fee Waiver") (Estimated)	25,000

If, by the Performance Date, the proceeds of the Local Grant or the value of the BPOL Fee Waiver disbursed or committed to be disbursed by the Locality to the Company total less than the \$75,000 COF Grant local match requirement, the Locality, subject to appropriation, will make an additional grant to the Company of the difference at the Performance Date, so long as the Company has met its Targets.

The proceeds of the Local Grant shall be used by the Company to pay or reimburse itself for recruitment, hiring and training costs. The proceeds of the BPOL Fee Waiver shall represent savings to the Company.

Section 5. Repayment Obligation.

(a) *If Statutory Minimum Eligibility Requirements are Not Met:* Section 2.2-115 of the Virginia Code requires that the Company make a Capital Investment of at least \$1,500,000 in the Facility and create and Maintain at least 15 New Jobs at the Facility in order to be eligible for the COF Grant. Failure by the Company to meet either of these statutory minimum eligibility requirements by the Performance Date shall constitute a breach of this Agreement and the entire COF Grant must be repaid by the Company to the Authority.

(b) *If Statutory Minimum Eligibility Requirements are Met:* The provisions of this subsection (b) shall become applicable only if the Company has met the statutory minimum eligibility requirements set forth in subsection (a). For purposes of repayment, the COF Grant is to be allocated as \$37,500 (50%) for the Company's Capital Investment Target and \$37,500 (50%) for its New Jobs Target. If the Company has achieved the Capital Investment Target, which is the statutory minimum Capital Investment of \$1,500,000, and has met at least 90% of the New Jobs Target at the Performance Date, then and thereafter the Company is no longer obligated to repay any portion the COF Grant. If the Company has achieved the Capital Investment Target, but has not met at least 90% of the New Jobs Target at the Performance Date, the Company shall repay to the Authority that part of the COF Grant that is proportional to the shortfall in the New Jobs Target. For example, if at the Performance Date, the Company has achieved its Capital Investment Target, but only 22 New Jobs have been created and Maintained

(reflecting achievement of 75% of the New Jobs Target), the Company shall repay to the Authority 25% of the moneys allocated to the New Jobs Target (\$9,375). As noted in subsection (a), if the Company fails to achieve 100% of its Capital Investment Target, the entire COF Grant must be repaid.

(c) *Determination of Inability to Comply:* If the Locality or VEDP shall determine at any time prior to the Performance Date (a "Determination Date") that the Company is unable or unwilling to meet and Maintain its Targets by and through the Performance Date, and if the Locality, the Authority or VEDP shall have promptly notified the Company of such determination, the Company must repay the entire COF Grant to the Authority. Such a determination will be based on such circumstances as a filing by or on behalf of the Company under Chapter 7 of the U.S. Bankruptcy Code, the liquidation of the Company, an abandonment of the Facility by the Company or other similar significant event that demonstrates the Company will be unable or is unwilling to satisfy the Targets for the COF Grant.

(d) *Repayment Dates:* ***Such repayment shall be due from the Company to the Authority within ninety days of the Performance Date or the Determination Date, as applicable.*** Any moneys repaid by the Company to the Authority hereunder shall be repaid by the Authority to the Locality and shall be repaid by the Locality promptly to VEDP for redeposit into the Commonwealth's Development Opportunity Fund. The Locality and the Authority shall use their best efforts to recover such funds, including legal action for breach of this Agreement. Neither the Locality nor the Authority shall have any responsibility for the repayment of any sums hereunder unless said sums have been received by the Authority from the Company.

Section 6. Company Reporting.

The Company shall provide, at the Company's expense, detailed verification reasonably satisfactory to the Locality, the Authority and VEDP of the Company's progress on the Targets. Such progress reports will be provided annually, starting at January 1, 2017, and covering the period through the prior October 1. Further, the Company shall provide such progress reports at such other times as the Locality, the Authority or VEDP may reasonably require.

With each such progress report, the Company shall report to VEDP the amount paid by the Company in the prior calendar year in Virginia corporate income tax or, as applicable, shall provide to VEDP a copy of its Virginia income tax form filed with respect to its status as a pass-through entity. VEDP has represented to the Company that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Virginia Freedom of Information Act and that such information will be used by VEDP solely in calculating aggregate return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives.

The Company hereby authorizes the Locality, including the Locality's Commissioner of the Revenue, to release to VEDP the Company's real estate tax, business personal property tax and machinery and tools tax information. Such information shall be marked and considered confidential and proprietary and shall be used by VEDP solely for verifying satisfaction of the

Capital Investment Target. If the Locality should require additional documentation or consents from the Company to access such information, the Company shall promptly provide, at the Company's expense, such additional documentation or consents as the Locality, the Authority or VEDP may request.

If requested by VEDP, the Company shall provide to VEDP copies of the Company's quarterly filings with the Virginia Employment Commission covering the period from June 1, 2015 through the Performance Date.

Section 7. Notices.

Formal notices and communications between the Parties shall be given either by (i) personal service, (ii) delivery by a reputable document delivery service that provides a receipt showing date and time of delivery, (iii) mailing utilizing a certified or first class mail postage prepaid service of the United States Postal Service that provides a receipt showing date and time of delivery, or (iv) delivery by facsimile or electronic mail (email) with transmittal confirmation and confirmation of delivery, addressed as noted below. Notices and communications personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices and communications mailed shall be deemed effective on the second business day following deposit in the United States mail. Notices and communications delivered by facsimile or email shall be deemed effective the next business day, not less than 24 hours, following the date of transmittal and confirmation of delivery to the intended recipient. Such written notices and communications shall be addressed to:

if to the Company, to:

AXON Ghost Sentinel
2322 Blue Stone Hills Drive
Suite 20
Harrisonburg, VA 22801
Email: michael.markulec@axonai.com
Attention: Michael Markulec

with a copy to:

AXON Ghost Sentinel
2322 Blue Stone Hills Drive
Suite 20
Harrisonburg, VA 22801
Email: sven.brueckner@axonai.com
Attention: Sven Brueckner

if to the Locality, to:

City of Harrisonburg, Virginia
345 South Main Street
P. O. Box 20031
Harrisonburg, Virginia 22802
Facsimile: 540-432-7778
Email: Kurt.Hodgen@harrisonburgva.gov
Attention: City Manager

with a copy to:

City of Harrisonburg, Virginia

Facsimile: _____
Email: _____
Attention: City Attorney

if to the Authority, to:

Industrial Development Authority of the

with a copy to:

Industrial Development Authority of the

City of Harrisonburg, Virginia
345 South Main Street
P. O. Box 20031
Harrisonburg, Virginia 22802
Facsimile: _____
Email: _____
Attention: Chair

City of Harrisonburg, Virginia
345 South Main Street
P. O. Box 20031
Harrisonburg, Virginia 22802
Facsimile: _____
Email: _____
Attention: Secretary

if to VEDP, to:

with a copy to:

Virginia Economic Development Partnership
901 East Byrd Street, 19th Floor
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Facsimile: 804.545.5611
Email: mbriley@yesvirginia.org
Attention: President and CEO

Virginia Economic Development Partnership
901 East Byrd Street, 19th Floor
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Facsimile: 804.545.5611
Email: smcninch@yesvirginia.org
Attention: General Counsel

Section 8. Miscellaneous.

(a) *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement among the parties hereto as to the COF Grant and may not be amended or modified, except in writing, signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Company may not assign its rights and obligations under this Agreement without the prior written consent of the Locality, the Authority and VEDP.

(b) *Governing Law; Venue:* This Agreement is made, and is intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the City of Richmond, and such litigation shall be brought only in such court.

(c) *Counterparts:* This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

(d) *Severability:* If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

(e) *Attorney's Fees:* Attorney's fees shall be paid by the party incurring such fees.

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IN WITNESS WHEREOF, the parties hereto have executed this Performance Agreement as of the date first written above.

CITY OF HARRISONBURG,
VIRGINIA

By Kurt D. Hodges
Name: Kurt D. Hodges
Title: City Manager
Date: 9/14/15

INDUSTRIAL DEVELOPMENT
AUTHORITY OF THE CITY OF
HARRISONBURG, VIRGINIA

By John D. Broadus
Name: John D. Broadus
Title: Chairman
Date: 9/11/15

AXONAI, INC.

By Michael Markulec
Name: Michael Markulec
Title: President & CEO
Date: July 31, 2015

**RESOLUTION OF THE INDUSTRIAL DEVELOPMENT AUTHORITY
OF THE CITY OF HARRISONBURG, VIRGINIA**

WHEREAS, the Industrial Development Authority of the City of Harrisonburg, Virginia (the "Authority") was created by the City Council (the "Council") of the City of Harrisonburg, Virginia (the "City"), to exercise all such powers as granted under the Industrial Development and Revenue Bond Act, as set forth in Chapter 49 of the Title 15.2 of the Code of Virginia, 1950, as amended (the "Act"); and

WHEREAS, pursuant to the Act, the Authority, among other things, is directed and empowered to accept contributions, grants and other financial assistance from the City in order to make grants for the furtherance of economic development; and

WHEREAS, the City has requested that the Authority to approve a Commonwealth's Development Opportunity Fund Performance Agreement dated July 31, 2015, between the City, Authority and Axonal, Inc. ("the Agreement"); and

WHEREAS, the Agreement provides that the Authority will receive certain funds from the City in order for the Authority to make a grant to Axonal, Inc.; and

WHEREAS, the Authority now desires to (i) evidence its approval of the Agreement, and, further, (ii) to authorize a grant to Axonal, Inc and authorize payment thereof to Axonal Inc, in accordance with the Agreement and this resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF HARRISONBURG, VIRGINIA, as follows:

1. The Authority approves the Agreement and authorizes the Chairman , Vice Chairman or Secretary or the Authority to execute the Agreement.

2. Upon notification from the City Manager that the City has received, approved and transferred funds in the amount of \$125,000.00 to the Authority, to enable the Authority to make the grant described herein and in the Agreement, the Authority, shall make such grant to Axonal, Inc., in accordance with instructions provided by the City Manager.

3. The Authority hereby authorizes all such further actions as may be consistent with or in furtherance of the Agreement approved in this Resolution. Further, the Authority hereby authorizes and directs the Chairman, Vice-Chairman, and Secretary,

any one or more of whom may act, to take all such further actions and to execute and deliver all such legal documentation, if any, as may be advised by legal counsel to the Authority, all in furtherance of the purposes and the intent described in this Resolution.

4. All other acts of the Authority that are in conformity with the purposes and intent of this Resolution and in furtherance of the Agreement are hereby authorized, approved and ratified to the fullest extent permitted under the Act.

5. This Resolution shall be effective immediately.

INDUSTRIAL DEVELOPMENT AUTHORITY
OF THE CITY OF HARRISONBURG, VIRGINIA


Chair

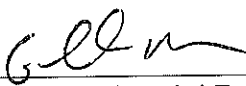
CERTIFICATE OF VOTES

The following is a record of the roll-call vote by the Industrial Development Authority of the City of Harrisonburg, Virginia (the "Authority"), on the foregoing resolution, approved at the public meeting of the Authority, duly held on August 10th, 2015, at which public hearing and meeting at least a quorum of the Authority was present:

	AYE	NAY	ABSTAIN	ABSENT
John (Jack) Broaddus, Chair	✓			
R. Bradley Chewning, Vice-Chair	✓			
Eileen Shifflett	✓			
James B. Acker	✓			
Roger Baker	✓			

Dated: 10th day of September, 2015

[SEAL]



Secretary, Industrial Development Authority of
City of Harrisonburg, Virginia