



IAM-Advantage License Agreement

DATE

[Date]

PARTIES

1. UberEther Inc., a company incorporated in the Commonwealth of Virginia having its registered office at 23465 Rock Haven Way, Ste 150, Sterling, VA 20166 (the "**Provider**"); and
2. *[[INDIVIDUAL NAME]* of *[address]* OR *[[COMPANY NAME]*, a company incorporated in *[location]* having its registered office at *[address]* OR *[[PARTNERSHIP NAME]*, a partnership established under the laws of *[location]* having its principal place of business at *[address]* (the "**Customer**").

AGREEMENT

1. Definitions

1.1 In this Agreement[, except to the extent expressly provided otherwise]:

"**Acceptance Criteria**" means:

- (a) Hosted Services conforming in all respects with the Hosted Services Specification; and
- (b) the Hosted Services being free from Hosted Services Defects;

"**Acceptance Period**" means a period of 10 Business Days following establishment of the network connectivity to the tenant's account, or such other period or periods as the parties may agree in writing;

"**Acceptance Tests**" means a set of tests designed to establish whether the Hosted Services meet the Acceptance Criteria, providing that the exact form of the tests shall be determined and documented by the Provider acting reasonably, and communicated to the Customer in advance of the first Acceptance Period

"**Access Credentials**" means the usernames, passwords and other credentials enabling access to the Hosted Services, including both access credentials for the User Interface and access credentials for the API;

"**Affiliate**" means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

"**Agreement**" means this agreement including any Schedules, and any amendments to this Agreement from time to time;

"**Business Day**" means any weekday other than a bank or public holiday in the state of Virginia;

"**Business Hours**" means the hours of 09:00 to 17:00 EST on a Business Day;

"**Change**" means any change to the scope of the Services OR any change to this Agreement

"**Charges**" means the following amounts:



- (a) the amounts specified in Section 4 of Schedule 1 (Hosted Services particulars)];
- (b) such amounts as may be agreed in writing by the parties from time to time

"Confidential Information" means the Provider Confidential Information and the Customer Confidential Information;

"Control" means the legal power to control (directly or indirectly) the management of an entity (and **"Controlled"** should be construed accordingly);

"Customer Confidential Information" means:

- (a) any information disclosed by or on behalf of the Customer to the Provider during the Term OR at any time before the termination of this Agreement (whether disclosed in writing, orally or otherwise) that at the time of disclosure:
 - (i) was marked as "confidential"; or
 - (ii) should have been reasonably understood by the Provider to be confidential; and
- (b) [the Customer Data];

"Customer Data" means all data, works and materials: uploaded to or stored on the Platform by the Customer; transmitted by the Platform at the instigation of the Customer; supplied by the Customer to the Provider for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Hosted Services by the Customer (but excluding analytics data relating to the use of the Platform and server log files);

"Customer Personal Data" means any Personal Data that is processed by the Provider on behalf of the Customer in relation to this Agreement, but excluding usernames, passwords, authenticators, EDIPI, Social Security Number, Employee ID with respect to which the Provider is a data controller;

"Documentation" means the documentation for the Hosted Services produced by the Provider and delivered or made available by the Provider to the Customer;

"Effective Date" means [the date of execution of this Agreement];

"Expenses" means the travel, accommodation and subsistence expenses that are reasonably necessary for, and incurred by the Provider exclusively in connection with, the performance of the Provider's obligations under this Agreement;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, epidemics, pandemics, explosions, fires, floods, riots, terrorist attacks and wars);



"Hosted Services" means *UberEther IAM Advantage Platform*, as specified in the Hosted Services Specification, which will be made available by the Provider to the Customer as a service via the internet in accordance with this Agreement;

"Hosted Services Defect" means a defect, error or bug in the Platform having a material adverse effect on the appearance, operation, functionality or performance of the Hosted Services, but excluding any defect, error or bug caused by or arising as a result of:

- (a) any act or omission of the Customer or any person authorized by the Customer to use the Platform or Hosted Services;
- (b) any use of the Platform or Hosted Services contrary to the Documentation, whether by the Customer or by any person authorized by the Customer;
- (c) a failure of the Customer to perform or observe any of its obligations in this Agreement; and/or
- (d) an incompatibility between the Platform or Hosted Services and any other system, network, application, program, hardware or software not specified as compatible in the Hosted Services Specification;

"Hosted Services Specification" means the specification for the Platform and Hosted Services set out in Section 2 of Schedule 1 (Hosted Services particulars) and in the Documentation;

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Maintenance Services" means the general maintenance of the Hosted Services, and the application of Updates and Upgrades;

"Minimum Term" means, in respect of this Agreement, the period of 36 months beginning on the Effective Date;

"Personal Data" means personal data under any of the Data Protection Laws;

"Provider Confidential Information" means:

- (a) any information disclosed by or on behalf of the Provider to the Customer during the Term (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked or described as "confidential" or should have been understood by the Customer (acting reasonably) to be confidential; and
- (b) the financial terms of this Agreement;

"Provider Representatives" means the person or persons identified as such in Section 5 of Schedule 1 (Hosted Services particulars), and any additional or replacement persons that may be appointed by the Provider giving to the Customer written notice of the appointment;



"**Schedule**" means any schedule attached to the main body of this Agreement;

"**Services**" means any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under this Agreement;

"**Onboarding Services**" means the configuration, implementation and integration of the Hosted Services in accordance with Section 1 of Schedule 1 (Hosted Services particulars);

"**Support Services**" means support in relation to the use of, and the identification and resolution of errors in, the Hosted Services, but shall not include the provision of training services;

"**Update**" means a hotfix, patch or minor version update to any Platform software;

"**Upgrade**" means a major version upgrade of any Platform software; and

2. Term

- 2.1 This Agreement shall come into force upon the Effective Date.
- 2.2 This Agreement shall continue in force indefinitely, subject to termination in accordance with Clause 15 or any other provision of this Agreement.

3. Onboarding Services

- 3.1 The Provider shall use all reasonable endeavors to ensure that the Onboarding Services are provided in accordance with the timetable set out in Schedule 1 (Hosted Services particulars).

4. Hosted Services

- 4.1 The Provider shall ensure that the Customer, upon the completion of the Onboarding Services, receives the Access Credentials necessary to enable the Customer to access and use the Hosted Services.
- 4.2 The Provider hereby grants to the Customer a worldwide, non-exclusive license to use the Hosted Services for the internal business purposes of the Customer in accordance with the Documentation during the Term.
- 4.3 The license granted by the Provider to the Customer under Clause 4.2 is subject to the following limitations:
 - (a) the Hosted Services may only be used by the officers, employees, agents, customers, citizens, and subcontractors of either the Customer or an Affiliate of the Customer;
- 4.4 Except to the extent expressly permitted in this Agreement or required by law on a non-excludable basis, the license granted by the Provider to the Customer under Clause 4.2 is subject to the following prohibitions:
 - (a) the Customer must not sub-license its right to access and use the Hosted Services;
 - (b) the Customer must not permit any unauthorized person or application to access or use the Hosted Services;



- (c) the Customer must not make any alteration to the Platform, except as permitted by the Documentation; and
- (d) the Customer must not conduct or request that any other person conduct any load testing or penetration testing on the Platform or Hosted Services without the prior written consent of the Provider.

4.5 The parties acknowledge and agree that Schedule 2 (Availability SLA) shall govern the availability of the Hosted Services.

5. Customer Data

- 5.1 The Customer hereby grants to the Provider a non-exclusive license to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under this Agreement. The Customer also grants to the Provider the right to sub-license these rights to its hosting, connectivity and telecommunications service providers, subject to any express restrictions elsewhere in this Agreement.
- 5.2 The Customer warrants to the Provider that the Customer Data when used by the Provider in accordance with this Agreement will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.
- 5.3 The Provider shall create a back-up copy of the Customer Data at least daily, shall ensure that each such copy is sufficient to enable the Provider to restore the Hosted Services to the state they were in at the time the back-up was taken, and shall retain and securely store each such copy for a minimum period of 30 days.
- 5.4 Within the period of 3 Business Days following receipt of a written request from the Customer, the Provider shall use all reasonable endeavors to restore to the Platform the Customer Data stored in any back-up copy created and stored by the Provider in accordance with Clause 11.3. The Customer acknowledges that this process will overwrite the Customer Data stored on the Platform prior to the restoration.

6. No assignment of Intellectual Property Rights

- 6.1 Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Customer, or from the Customer to the Provider.

7. Charges

- 7.1 The Customer shall pay the Charges to the Provider in accordance with this Agreement.
- 7.2 If the Charges are based in whole or part upon the time spent by the Provider performing the Services, the Provider must obtain the Customer's written consent before performing Services that result in any estimate of time-based Charges given to the Customer being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the Customer agrees otherwise in writing, the Customer shall not be liable to pay to the Provider any Charges in respect of Services performed in breach of this Clause 7.2.



- 7.3 All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to the Provider.
- 7.4 The Provider may elect to vary any element of the Charges by giving to the Customer not less than 30 days' written notice of the variation expiring on any anniversary of the date of execution of this Agreement, providing that no such variation shall constitute a percentage increase in that exceeds 5% over the percentage increase, since the date of the most recent variation of the relevant element of the Charges under this Clause 18.4 (or, if no such variation has occurred, since the date of execution of this Agreement).

8. Expenses

- 8.1 The Customer shall reimburse the Provider in respect of any Expenses, providing that the Provider must obtain the prior written authorization of the Customer before incurring any Expenses.
- 8.2 The Provider must collect and collate evidence of all Expenses and must retain such evidence during the Term and for a period of 90 days following the end of the Term.
- 8.3 Within 10 Business Days following receipt of a written request from the Customer to do so, the Provider must supply to the Customer such copies of the evidence for the Expenses in the possession or control of the Provider as the Customer may specify in that written request.

9. Payments

- 9.1 The Provider shall issue invoices for the Charges to the Customer on or after the invoicing dates set out in Schedule 1 (Hosted Services particulars).
- 9.2 The Customer must pay the Charges to the Provider within the period of 30 days following the issue of an invoice in accordance with this Clause 21.
- 9.3 The Customer must pay the Charges by debit card, credit card, direct debit, bank transfer or cheque (using such payment details as are notified by the Provider to the Customer from time to time).
- 9.4 If the Customer does not pay any amount properly due to the Provider under this Agreement, the Provider may:
- (a) charge the Customer interest on the overdue amount at the rate of 8% per annum above the Bank of America base rate (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or
 - (b) claim interest and statutory compensation from the Fair Debt Collection Practices Act, and that its contractual rights under this Clause 21.4 constitute a substantial remedy within the meaning of that Act.

10. Confidentiality obligations

- 10.1 The Provider must:
- (a) keep the Customer Confidential Information strictly confidential;



- (b) not disclose the Customer Confidential Information to any person without the Customer's prior written consent, and then only under conditions of confidentiality approved in writing by the Customer;
- (c) use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Provider uses to protect the Provider's own confidential information of a similar nature, being at least a reasonable degree of care;
- (d) act in good faith at all times in relation to the Customer Confidential Information.

10.2 The Customer must:

- (a) keep the Provider Confidential Information strictly confidential;
- (b) not disclose the Provider Confidential Information to any person without the Provider's prior written consent, and then only under conditions of confidentiality approved in writing by the Provider;
- (c) use the same degree of care to protect the confidentiality of the Provider Confidential Information as the Customer uses to protect the Customer's own confidential information of a similar nature, being at least a reasonable degree of care;
- (d) act in good faith at all times in relation to the Provider Confidential Information.

10.3 Notwithstanding Clauses 10.1 and 10.2, a party's Confidential Information may be disclosed by the other party to that other party's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Confidential Information that is disclosed for the performance of their work with respect to this Agreement and who are bound by a written agreement or professional obligation to protect the confidentiality of the Confidential Information that is disclosed.

10.4 No obligations are imposed by this Clause 10 with respect to a party's Confidential Information if that Confidential Information:

- (a) is known to the other party before disclosure under this Agreement and is not subject to any other obligation of confidentiality;
- (b) is or becomes publicly known through no act or default of the other party; or
- (c) [is obtained by the other party from a third party in circumstances where the other party has no reason to believe that there has been a breach of an obligation of confidentiality].

10.5 The restrictions in this Clause 10 do not apply to the extent that any Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of either party on any recognized stock exchange.

10.6 Upon the termination of this Agreement, each party must immediately cease to use the other party's Confidential Information.



11. Warranties

11.1 The Provider warrants to the Customer that:

- (a) Hosted Services will conform in all material respects with the Hosted Services Specification;
- (b) the Hosted Services will be free from Hosted Services Defects;
- (c) the Hosted Services will be free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs; and
- (d) the Hosted Services will incorporate security features reflecting the requirements of the United States Federal Government under FedRAMP High and Department of Defense Impact Level V Controls.

11.2 The Provider warrants to the Customer that the Hosted Services, when used by the Customer in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.

11.3 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

12. Indemnities

12.1 The Provider shall indemnify and shall keep indemnified the Customer against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Customer and arising directly or indirectly as a result of any breach by the Provider of this Agreement.

12.2 The Customer shall indemnify and shall keep indemnified the Provider against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Provider and arising directly or indirectly as a result of any breach by the Customer of this Agreement.

13. Limitations and exclusions of liability

13.1 The limitations and exclusions of liability set out in this Clause 13 and elsewhere in this Agreement govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.

13.2 The Provider shall not be liable to the Customer in respect of any losses arising out of a Force Majeure Event.

13.3 The Provider shall not be liable to the Customer in respect of any loss of profits or anticipated savings.

13.4 The Provider shall not be liable to the Customer in respect of any loss of revenue or income.



- 13.5 The Provider shall not be liable to the Customer in respect of any loss of use or production.
- 13.6 The Provider shall not be liable to the Customer in respect of any loss of business, contracts or opportunities.
- 13.7 The Provider shall not be liable to the Customer in respect of any loss or corruption of any data, database or software; providing that this Clause 13.7 shall not protect the Provider unless the Provider has fully complied with its obligations under Clause 5.3 and Clause 5.4.
- 13.8 The Provider shall not be liable to the Customer in respect of any special, indirect or consequential loss or damage.
- 13.9 The aggregate liability of the Provider to the Customer under this Agreement in respect of any event or series of related events shall not exceed the greater of:
 - (a) *\$1,000,000*; and
 - (b) the total amount paid and payable by the Customer to the Provider under this Agreement in the 12 months period preceding the commencement of the event or events.

14. Force Majeure Event

- 14.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under this Agreement, that obligation will be suspended for the duration of the Force Majeure Event.
- 14.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this Agreement, must:
 - (a) promptly notify the other; and
 - (b) inform the other of the period for which it is estimated that such failure or delay will continue.
- 14.3 A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

15. Termination

- 15.1 The Provider may terminate this Agreement by giving to the Customer not less than 180 days' written notice of termination. The Customer may terminate this Agreement by giving to the Provider not less than 180 days' written notice of termination, expiring at the end the Minimum Term.
- 15.2 The Provider may terminate this Agreement immediately by giving written notice to the Customer if:
 - (a) any amount due to be paid by the Customer to the Provider under this Agreement is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and
 - (b) the Provider has given to the Customer at least 30 days' written notice, following the failure to pay, of its intention to terminate this Agreement in accordance with this Clause 30.4.



15.3 The rights of termination set out in this Agreement shall not exclude any rights of termination available at law.

16. Entire agreement

16.1 The main body of this Agreement and the Schedules shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements, and understandings between the parties in respect of that subject matter.

16.2 Neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into this Agreement.

17. Law and jurisdiction

17.1 This Agreement shall be governed by and construed in accordance with laws of the Commonwealth of Virginia.

17.2 Any disputes relating to this Agreement shall be subject to the exclusive jurisdiction of the courts of Fairfax, Virginia.

EXECUTION

The parties have indicated their acceptance of this Agreement by executing it below.

SIGNED BY *[[individual name]* on [.....], the Provider] OR *[[individual name]* on [.....], duly authorized for and on behalf of the Provider]:

.....

SIGNED BY *[[individual name]* on [.....], the Customer] OR *[[individual name]* on [.....], duly authorized for and on behalf of the Customer]:

.....



SCHEDULE 1 (HOSTED SERVICES PARTICULARS)

- 1. End User:**
- 2. Specification of Hosted Services**
- 3. Financial Provisions**
- 4. Representatives**
- 5. Contractual notices**



SCHEDULE 2 (AVAILABILITY SLA)

1. Introduction to availability SLA

- 1.1 This Schedule 2 sets out the Provider's availability commitments relating to the Hosted Services.
- 1.2 In this Schedule 2, "uptime" means the percentage of time during a given period when the Hosted Services are available at the gateway between public internet and the network of the hosting services provider for the Hosted Services.

2. Availability

- 2.1 The Provider shall use all reasonable endeavors to ensure that the uptime for the Hosted Services is at least 99.9% during each calendar month.
- 2.2 The Provider shall be responsible for measuring uptime, and shall do so using any reasonable methodology.
- 2.3 The Provider shall report uptime measurements to the Customer in writing, in respect of each calendar month, within 10 Business Days following the end of the relevant calendar month.



SCHEDULE 3 (MAINTENANCE SLA)

1. Introduction

1.1 This Schedule 3 sets out the service levels applicable to the Maintenance Services.

2. Scheduled Maintenance Services

2.1 The Provider shall where practicable give to the Customer at least 3 Business Days' prior written notice of scheduled Maintenance Services that are likely to affect the availability of the Hosted Services or are likely to have a material negative impact upon the Hosted Services, without prejudice to the Provider's other notice obligations under this Schedule 3.

2.2 The Provider shall provide all scheduled Maintenance Services outside Business Hours.



SCHEDULE 4 (SUPPORT SLA)

1. Introduction

1.1 This Schedule 4 sets out the service levels applicable to the Support Services.

2. Helpdesk

2.1 The Provider shall make available to the Customer a helpdesk.

2.2 The Customer may use the helpdesk for the purposes of requesting and, where applicable, receiving the Support Services; and the Customer must not use the helpdesk for any other purpose.

2.3 The Provider shall ensure that the helpdesk is accessible by telephone, email and using the Provider's web-based ticketing system.

2.4 The Provider shall ensure that the helpdesk is operational and adequately staffed during the Term. In addition, the Provider shall provide a special telephone number for the Customer to report critical issues outside of Business Hours.

2.5 The Customer shall ensure that all requests for Support Services that it may make from time to time shall be made through the helpdesk.

3. Response and resolution

3.1 Issues raised through the Support Services shall be categorized as follows:

- (a) critical: the Hosted Services are inoperable, or a core function of the Hosted Services is unavailable;
- (b) serious: a core function of the Hosted Services is significantly impaired;
- (c) moderate: a core function of the Hosted Services is impaired, where the impairment does not constitute a serious issue; or a non-core function of the Hosted Services is significantly impaired; and
- (d) minor: any impairment of the Hosted Services not falling into the above categories; and any cosmetic issue affecting the Hosted Services.

3.2 The Provider shall determine, acting reasonably, into which severity category an issue falls.

3.3 The Provider shall use all reasonable endeavors to respond to requests for Support Services promptly, and in any case in accordance with the following time periods:

- (a) critical: 1 Business Hour;
- (b) serious: 4 Business Hours;
- (c) moderate: 1 Business Day; and
- (d) minor: 5 Business Days.

3.4 The Provider shall ensure that its response to a request for Support Services shall include the following information (to the extent such information is relevant to the request): an acknowledgement of receipt of the request, where practicable an initial diagnosis in relation to any reported error, and an anticipated timetable for action in relation to the request.



3.5 The Provider shall use all reasonable endeavors to resolve issues raised through the Support Services promptly, and in any case in accordance with the following time periods:

- (a) critical: 4 Business Hours;
- (b) serious: 12 Business Hours;
- (c) moderate: 5 Business Days; and
- (d) minor: 20 Business Days.

4. Provision of Support Services

4.1 The Support Services shall be provided remotely, save to the extent that the parties agree otherwise in writing.

5. Limitations on Support Services

5.1 The Provider shall have no obligation to provide Support Services in respect of any issue caused by:

- (a) the improper use of the Hosted Services by the Customer; or
- (b) any alteration to the Hosted Services made without the prior consent of the Provider.