**Post-Incubation Agreement**

**by and between**

**Kantara Initiative Inc.**

**and**

 **ID Pro, Inc.**

In May 2016, Kantara Initiative, Inc., (“Kantara”) EIN 81-1226244, with its principal place of business located at 401 Edgewater Place, Suite 600, Wakefield, MA 01880, USA, undertook a project to incubate a new professional association of digital identity professionals.  ID Pro, Inc. (“IDPro”), EIN 82-1887365, was subsequently incorporated on June 16, 2017, with its principal place of business located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ . The Purpose of this Agreement, entered into this \_\_\_ day of \_\_\_\_\_\_, 2017, is to establish the ongoing relationship between Kantara and IDPro (collectively, the “Parties”), ensure repayment for capital advanced by Kantara to IDPro and for certain incubation services provided by Kantara to IDPro, and to create a framework for ongoing mutual support to enhance the industries the Parties serve.

Whereas Kantara has provided startup assistance to IDPro to launch its operations independent of Kantara, including but not limited to advancing operating capital and management advisory services (hereafter, the “Costs”). The Parties resolve to ensure repayment of the Costs and to establish an ongoing relationship where the Parties mutually agree to support the success of each other's mission and membership.

**1. Repatriation of IDPro into Kantara Upon Dissolution**

Should IDPro’s Board of Directors affirmatively vote to dissolve IDPro, IDPro and its Board may seek to transfer its assets to Kantara as a consequence of the dissolution of the organization, provided that all pre-dissolution liabilities of IDPro are satisfied in accordance with any applicable laws and regulations, and such transfer of any remaining assets to Kantara would not otherwise contravene any applicable laws or regulations (hereafter, the “Repatriation”). Furthermore, in Kantara’s sole discretion, after the Repatriation, Kantara may seek to re-open the Archived IDPro Discussion Group, carry on IDPro- related activities inside Kantara, and allow the IDPro Discussion Group to utilize Kantara’s support services.

**2. Membership Information Sharing to Establish Growth and Ongoing Support**

Within 30 days of the date first set forth above, and at a time that is mutually agreeable to the Parties, Kantara shall email the IDPro Discussion Group participants pointing them to IDPro <https://idpro.org/> for the purpose of soliciting their, membership in IDPro. The Parties agree to use commercially reasonable efforts to devise a marketing and membership campaign to provide IDPro members with knowledge and information about Kantara, and Kantara members knowledge and information about IDPro. IDPro shall promote in a newsletter, or other general communication to members as deemed appropriate by IDPro leadership, at least quarterly, Kantara Working Groups and encourage IDPro member participation within Kantara’s development process.

**3. Discussion Group Shutdown**

Kantara agrees to close the IDPro Discussion Group on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Kantara shall continue to host the related materials as per its internal policies, for no less than a period of 3 years from the date first set forth above. The Parties agree that Kantara may move its materials to a password protected archive site upon mutual agreement.

**4. Kantara Board Sub-Committee**

The sub-committee of the Kantara Board of Directors created for the purpose of incubating IDPro shall remain active and functioning with minimal additional resources, to primarily serve as a line of communication using the GTM and calendar, until the Costs are repaid in full. Kantara agrees to bear all expense associated with the continued operations of the sub-committee.

**5. Agreement to Enhance the Industry and Avoid Operational Confusion**

The Parties agree to use commercially reasonable best efforts to avoid conflicting approaches in technical work. The Parties will work together where appropriate and possible to ensure that their respective missions are mutually achieved.

**6. Repayment of the Costs**

The Parties agree that the repayment model set forth in **Exhibit A** represents full and complete repayment of all Costs by IDPro. Kantara specifically agrees that there are no other Costs, or any other liability owed to it by IDPro, as of the date first set forth above in this Agreement.

**7. Kantara Intellectual Property Used by IDPro**

Certain intellectual property owned by Kantara is listed in **Exhibit B** of this Agreement (the “IP”). Kantara hereby grants IDPro the rights to certain uses of the IP under a revocable, worldwide, non-exclusive, limited license (the “License”). The License may be revoked by Kantara in its sole discretion. The terms of the License and use of the IP thereunder may only be modified by written agreement signed by the Parties.

As appropriate, Kantara requires attribution by IDPro when using the IP. For example,the following legend must be utilized by IDPro for all Kantara publications used by IDPro under the License,

“Terms of Use: This work is licensed under a Creative Commons Attribution Share-Alike 3.0 license (hyperlinked). It is attributed to the Kantara members and non-member participants of the Kantara Initiative, Inc. digital Identity Professionals Discussion Group (hyperlinked), and the original version can be found here (hyperlinked)”.

In the event Kantara revokes the License, IDPro agrees to cease any and all uses of the IP, and where necessary, remove all links and other uses of the IP from Internet websites, blogs, and social media. IDPro further agrees that printed materials incorporating the IP must not be used after the License is revoked. The Parties agree that Kantara may revoke the License for IDPro’s failure to pay Kantara as provided in **Exhibit A** of this Agreement. Kantara’s decision or omission to revoke the License for IDPro’s failure to pay under **Exhibit A** shall not be deemed a waiver of either Party’s rights and obligations under the License.

Materials mentioned in **Exhibit B** excluding emails in the IDPro Discussion Group email Iistserv, Documents in the IDPro Discussion Group wiki not already specified above, and the Kantara ID Pro Discussion Group Body of Knowledge, shall become IDPro’s property in perpetuity upon execution of this agreement.

**8. Brand Relationship**

IDPro will continue to use the “Incubated by Kantara” tagline until such time as the Costs have been fully repaid by IDPro pursuant to **Exhibit A**. However, IDPro agrees to use the “Incubated by Kantara” tagline for a period of twelve (12) months beginning on the date first set forth above. IDPro further agrees to acknowledge Kantara as the organization that incubated IDPro in all publicly available written materials, verbal announcements, visual materials, and in connection with any conferences in which IDPro participates during the foregoing twelve-month period.

Acknowledgement is made on any work items or support that continues to be undertaken at Kantara following separation (an expected example is the Body of Knowledge), verbally, visually and in writing for as long as that work is active at Kantara.

**9. Kantara Membership In IDPro**

IDPro agrees to grant Kantara “Founding Membership” status at IDPro in perpetuity. Kantara will receive a Champion level, or the otherwise highest level of corporate membership, with IDPro on a compensation-free basis for a period of three (3) years from the date first set forth above. IDPro agrees to grant Kantara an Affiliate-level membership, or the otherwise basic level of corporate membership, after the foregoing three-year period. Kantara may choose to purchase a higher level of perpetual membership and IDPro may grant such level of membership in its sole discretion. The Parties agree such membership will include all of the benefits accruing at such level and will additionally include the right to purchase individual memberships; with respect to Champion-level, one seat on the Nominating Committee; and with respect to both the Champion and Affiliate-levels, the opportunity to publish co-curated articles in the IDPro member newsletter.

The Parties further agree that the benefits Kantara receives via its corporate membership in IDPro as described above will be consistent with IDPro’s Membership Agreement, Bylaws, and other corporate governance documents. IDPro reserves its right to amend its Membership Agreement, Bylaws, and other corporate governance documents from time to time and in the sole discretion of IDPro’s Board of Directors.

**10. Kantara Board Position**

The Parties agree that the Kantara representative elected to the IDPro Board on August \_\_\_\_, 2017 will serve on the IDPro Board for a two (2) year term ending on August \_\_\_\_, 2019. Kantara agrees that its representative will abide by IDPro’s Membership Agreement, Bylaws, Board Member Agreement, and other applicable corporate policies. For the avoidance of doubt, the Parties agree the two-year term of service will run without regard to any term periods or limits as set forth in IDPro’s Bylaws, and the Kantara representative may not stand for election to the IDPro Board of Directors at the end of the two-year period.

***Additional General Terms***

**11. Assignment or Subcontracting; Successors**: The Parties may not assign or otherwise subcontract the performance of services under this Agreement without mutual written consent of both Parties. This Agreement is binding on each Party's successors.

**12. Confidentiality:** The Parties acknowledges that during the course of performance under this Agreement each will become aware of information pertaining to the activities of the other including, but not limited to, technology, technology roadmap(s), IT processes and capabilities, databases, member information, engineering committee participant information, financial and operational structure(s) (“Information”). Both Parties consider this Information to be confidential, and which, if disclosed by one Party to and /or used by a competitor or others, would be harmful to the other Party. The Parties therefore agree that during the term of this Agreement and for a one (1) year period after the termination of this Agreement, regardless of the reason or cause for that termination, the Parties shall not disclose Information to any third party. The Parties acknowledge that it may be impractical and extremely difficult to accurately determine damages in the event of a breach of the provisions of this paragraph, and they therefore agree that in the event of such a breach or threatened breach, the aggrieved Party shall be entitled, in addition to other remedies available at law, to have the provisions of this paragraph enforced by temporary, preliminary and permanent injunctive relief without the posting of a bond or other security.

**13. Ownership:** The Parties retain exclusive ownership rights to all of their respective Information and other property to which the other Party obtains access, whether created before or after the date first set forth above. Except as otherwise described or expressly granted in this Agreement, the Parties agree that this Agreement does not transfer any property rights to either Party or create any property rights in favor of either Party.

**14. Conflict of Interest:** The Parties agree to disclose all significant relationships to one another to allow the Parties to assess potential conflicts of interest for a period of three (3) years after the date first set forth above. In the event that either Party believes a conflict exists, the Parties agree to work to resolve the conflict amicably, including the conflicted party recusing itself from specific discussions or relationships to avoid the concern of a conflict.

**15. Procedure to Cure:** In the event either Party breaches a material provision of this Agreement, including, without limitation, becoming subject to a voluntary or involuntary bankruptcy or insolvency proceeding, or actually being insolvent as defined by U.S. Generally Accepted Accounting Principles as of the end of any fiscal year, the other Party may notify the Party in breach of the claimed breach. The Party receiving such a breach notice has seven (7) days from receipt to cure the claimed breach if it involves failure to pay or to submit a required report on time. Otherwise, the Party receiving the breach notice has 30 days from receipt to cure the claimed breach. During the applicable cure period and upon timely cure, this Agreement will continue in force. If the claimed breach is not cured within the required period, the claiming Party may invoke Dispute Resolution provisions.

**16. Dispute Resolution:** Except as otherwise provided in this Agreement, either Party may invoke these Dispute Resolution provisions. Exercise of the Dispute Resolution provisions in this paragraph 16 by either Party does not constitute a waiver of rights to litigation or to otherwise seek a judicial remedy. When ordinary discussions between the primary staff of the Parties fail to resolve a dispute, the chief executive of each Party will meet face-to-face and negotiate in good faith to resolve the dispute. Should these discussions fail to provide mutually agreeable results, the Parties’ Chairmen of their respective Boards shall be included for further discussions in an attempt to achieve mutually agreeable results. In the event the discussions including the Chairmen are not successful within thirty (30) days from the date discussions commenced, either Party may submit the dispute to non-binding arbitration. Such arbitration procedures must be mutually agreed upon and designed to facilitate a final arbitration decision within ninety (90) days at a total out-of-pocket cost to each Party of no greater than $25,000. The Parties agree that the arbitration venue will be located in Boston, MA. The Parties further agree (i) this Agreement will remain in force without interruption of performance pending arbitration; (ii) each Party will pay its own costs of dispute resolution, including attorney fees; and neither Party will disclose the nature of any dispute or arbitration to any third party unless required to do so under applicable law. In the event the foregoing arbitration procedures fail to produce mutually agreeable results, the Parties agree that only then may one Party litigate or seek a judicial remedy against the other Party.

**17. Force Majeure:** Despite anything else in this Agreement, neither Party will be liable for delayed performance or inability to perform due to: acts of God or the public enemy, war, riot, embargo, sabotage, flood, or accident; any similar or different circumstance beyond a Party's reasonable control, including without limitation unavoidable fire, explosion, transportation delay, or labor trouble; unavoidable shortage or failure of supply of raw materials or finished merchandise; or compliance with any order, direction or request of a court, governmental department or agency.

**18. Liability and Indemnification:** Each Party is liable for its own negligent or intentional acts and omissions, breach of warranty or misrepresentation, as well as those of its affiliates, officers, directors, employees and other agents, arising out of or related to this Agreement. Neither Party may be liable to the other for indirect, consequential, or punitive damages, or lost profits. At such time as IDPro provides materials derived from Kantara IP, the license under which IDPro provides said materials will state that the consumer of those materials holds IDPro, its partners, and members without fault.

IDPro agrees to defend Kantara, its members, employees, agents, officers and directors, guests, affiliates, attorneys and other representatives from causes of action, claims, demands, liabilities, losses, damages, fines, taxes, penalties, awards, settlement costs, judgments, interest, attorney fees, court costs and all other costs, expenses, and charges incurred by reason of a third-party claim against Kantara directly or indirectly attributable or related to, resulting or arising from, or in connection with, IDPro’s and its agents’ negligent or intentional acts or omissions, breach of warranty, and/or misrepresentation.

Kantara agrees to defend IDPro, its members, employees, agents, officers and directors, guests, affiliates, attorneys and other representatives from causes of action, claims, demands, liabilities, losses, damages, fines, taxes, penalties, awards, settlement costs, judgments, interest, attorney fees, court costs and all other costs, expenses, and charges incurred by reason of a third-party claim against IDPro directly or indirectly attributable or related to, resulting or arising from, or in connection with, Kantara’s and its agents’ negligent or intentional acts or omissions, breach of warranty, and/or misrepresentation.

**19. Entire Agreement; Severability:** This Agreement constitutes the entire agreement between the Parties, supersedes all prior agreements or proposals, written or oral, relating to the subject matter hereof, and does not depend for implementation or interpretation upon any other agreement. If any provision is determined by a court or an arbitrator to be illegal, invalid, or unenforceable, the rest of this Agreement will remain in full force and, in place of each illegal, invalid, or unenforceable provision, the Parties or an arbitrator will promptly add a provision as similar to the illegal, invalid, or unenforceable provision as is legal, valid, and enforceable.

**20. Consents; Waiver:** Whenever this Agreement requires a Party's consent, that consent will not be unreasonably withheld, restricted, limited, or delayed. No provision will be waived and no breach consented to, unless the waiver or consent is written and signed by the Party claimed to have waived or consented. Any consent to or waiver of a breach will not constitute a consent to or waiver of any different or subsequent breach.

**21. Notices:**  Notices by either Party to the other will be written and sent by overnight delivery requested at the address below or such other address as a Party designates by this same procedure. Electronic delivery through email and similar means shall be considered acceptable means of providing Notice.

To Kantara: 401 Edgewater Place, Suite 600, Wakefield, MA 01880, USA

 To IDPro: 401 Edgewater Place, Suite 600, Wakefield, MA 01880, USA

**22. Governing Law:**  This Agreement will be construed and enforced under laws of the Commonwealth of Massachusetts without regard to conflict of laws rules. The Parties agrees to submit to the jurisdiction of any court in Suffolk County, Commonwealth of Massachusetts, USA.

**23. Advice of Counsel:** No representative, or counsel for one Party has acted, shall act, or shall be deemed to act as legal counsel or representative for the other Party with respect to this Agreement. Each Party represents that they have sought and obtained any legal advice deemed necessary prior to entering into this Agreement. Each Party has had the opportunity to fully negotiate the terms and conditions set forth herein. Therefore, the terms of this Agreement shall be construed and interpreted without any presumption, inference, or rule requiring construction or interpretation against the Party causing this Agreement to be drafted.

**Exhibit A**

**Costs Repayment Schedule and Terms**

**Total Costs for repayment by IDPro:** $100.109.96.

**Costs repayment schedule and terms:** Kantara will invoice IDPro monthly, per the schedule set forth below, commencing 30 days from the date first set forth above in the Agreement. No payment shall be made by IDPro without receipt of an invoice from Kantara. Payments are due within 30 days from the invoice date.

Kantara reserves the right to impose 6% interest, compounded annually, on any outstanding balances more than 60 days in arrears.

Payment terms may be amended with Kantara’s written consent.

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|  |  |  |  |  |  |  |  |  |  |
| Oct 2017 | Nov 2017 | Dec 2017 | Jan 2018 | Feb 2018 | Mar 2018 | Apr 2018 | May 2018 | June 2018 | July 2018 |
| $10K | $10K | $10K | $10K | $10K | $10K | $10K | $10K | $10K | $10.110K |

**Exhibit B**

**Kantara Intellectual Property Used By IDPro**

The Kantara Body of Knowledge is of significant value to Kantara and is licensed to IDPro under the terms specified herein.

Furthermore the following items of Intellectual Property arising from the IDPro Discussion Group and IDPro’s activities during its period of incubation inside Kantara are provided under the license described in paragraph 7 of this Agreement. The Kantara licensed Intellectual Property includes:

* The Mission and Values statements
* Membership services plan
* Code of Conduct
* Presentation materials
* Emails in the Id Pro Discussion Group email Listserv
* Documents in the IDPro Discussion Group Wiki not already specified above
* The Kantara IDPro Discussion Group Body of Knowledge

The Kantara Body of Knowledge remains Kantara’s copyright in perpetuity and may only license its contents under the terms herein.