



## SERVICES AGREEMENT FOR KIVUTO CLOUD

This Service Agreement for KIVUTO CLOUD (the “**Agreement**”) effective as of the Effective Date, is entered and between **Kivuto Solutions Inc.** (“**Kivuto**”), an Ontario corporation with its principal place of business at 126 York St., Suite 200, Ottawa, ON, Canada K1N 5T5 and the customer identified on the Sales Order (the “**Customer**”).

By executing the Sales Order, the Customer unconditionally consents to be bound by and become a party to this Agreement. Customer’s use of the Platform shall also constitute its consent to the terms of this Agreement.

In the event of a conflict between the terms and conditions of this Agreement and: (A) terms and conditions in the Sales Order, and/or (B) revised terms and conditions to this Agreement after the initial execution of this Agreement, or (C) any related document (to which Kivuto and the Customer are parties) stating precedence over this Agreement, then the terms and conditions in (A) and/or (B) or (C), as applicable, shall prevail over this Agreement with respect to such conflict.

### 1. DEFINITIONS

1.1 **Authorized End User:** means individuals who are authorized by Customer to use the Platform, including but not limited to students, prospective students, faculty, staff, and agents of Customer.

1.2 **Digital Asset(s):** means digital resources such as software, digital files, eText and digital content, access code, Open Education Resource (“**OER**”), guides, manuals, or partial components of any of the foregoing and/or any other digital content that Customer has obtained rights to and that can be distributed by Kivuto and accessed through the Platform by Authorized End Users.

1.3 **Digital Asset Owner:** This refers to the publisher, distributor or any other entity that has the rights to the Digital Asset(s) and that has the authority to negotiate the terms of acquisition and distribution for that Digital Asset.

1.4 **Digital Content:** means digital content created by Authorized End Users through the use of Digital Asset(s) on the Platform, where functionalities exist for Authorized End Users to upload or post comments, ideas, articles, information, data, text, software, music, sound, photographs, graphics, videos, messages, and other materials or submissions.

1.5 **Digital Resource Portal (“DRP”):** is a portal or website that the Authorized End User can login to in order to access the resources and Digital Assets available to the Authorized End User through the Platform. In the DRP, the Authorized End User can obtain the resource for consumption or use. The portal is Customer-branded to display the available Digital Assets the Customer has procured and declared to distribute on the Platform as well as other digital resources to which the Authorized End User has access.

1.6 **Digital Rights Management (“DRM”):** means the set of rules that govern the usage and accessibility rights that an Authorized End User has to a specific Digital Asset. These digital rights are determined between the publisher or distributor of the Digital Asset and the Customer at time of purchase.

1.7 **Documentation:** means the then-current operating manuals, release notes and any other materials, including updates thereto, in any form or medium made available by Kivuto to the Authorized End Users of the Platform, regarding the proper installation and use of the Platform.

1.8 **Effective Date:** means the effective date set forth in the Sales Order or, if no effective date is specified, the date of Customer signature on the Sales Order.

1.9 **Fees:** means the monies charged for access to the Platform and the acquisition/distribution of Digital Assets; Fees are as set forth in the Sales Order.



- 1.10 **Open Education Resource Content:** means digital resources such as courses, course materials, modules, textbooks, streaming videos, tests, software, and any other tools or materials that reside in the public domain or have been released under an intellectual property license that permits their free use and repurposing by others.
- 1.11 **Platform:** means a set of programs containing application code developed by Kivuto that allows for or includes, without limitation: distribution, tracking, e-commerce, student verification, license management, admin portal/interface, Authorized End User interface, e-store DRP user interface, Texidium eReader (browser and apps), the PAL eText Adopt System, payment systems, customer asset library, and includes integrations to other software and updates thereof including integrations to Publisher Cloud Portals, the technology facilitating electronic license management, integrations into the schools single sign on and learning management system and that allows the Customer to: i) manage the provisioning and de-provisioning of Authorized End Users in the portals from the centralized Platform ii) manage portal DRM; iii) centralize the Digital Assets in the DRP and iv) apply additional benefits of the Platform such as cost recovery and mass customized distribution to their Authorized End Users as further described herein.
- 1.12 **Portal:** means any portal used, owned or controlled by a Digital Asset Owner that provides Authorized End Users access to the cloud-based software services and/or SaaS services, of that Digital Asset Owner.
- 1.13 **Redeemed:** means that a Digital Asset has been acquired or a Redemption Code has been provisioned and applied to an Authorized End User providing rights to access the associated Digital Asset(s). Redemption shall be considered to have occurred immediately after being provisioned to an Authorized End User.
- 1.14 **Redemption Codes:** means a unique code that may be used to acquire a Digital Asset or access to a resource.
- 1.15 **Sales Order:** means the ordering documents which incorporate the terms of this Agreement.
- 1.16 **Support Services:** means the services for the support and maintenance of the Platform as set forth in Exhibit "A" to this Agreement.
- 1.17 **Services:** means the distribution and management of Digital Assets through the Platform, and the provision of access to the Portal, during the Initial Term of this Agreement, and any Renewal Term thereof, all as set forth in section 2.1.
- 1.18 **Texidium eReader:** means the eReader, and the associated applications, developed by Kivuto that allows, among other things, access to and consumption of materials in PDF and EPUB formats, and has features that include, but are not limited to, text-to-speech, note-making and note sharing, search, etc.
- 1.19 **Transaction:** means any distribution or return of a Digital Asset (paid or OER) to or from an Authorized End User or provisioning and de-provisioning of an Authorized End User into or from a Portal.
- 1.20 **Webstore:** means a blank, Customer-branded webstore to which a Digital Asset(s) is added once same has been ingested into the Platform.

## 2. LICENSE TERMS

2.1 **Grant of Rights.** Subject to the terms and conditions of this Agreement, including without limitation payment of the applicable Fees, Kivuto hereby grants to Customer a worldwide (subject to export controls), limited, revocable, non-exclusive and non-transferable subscription-based license to use the Platform, and to access and manage the Digital Assets and Portals through the Platform during the Initial Term (as described in subsection 6.1) and any Renewal Term (as set forth in the Sales Order) thereof. The Platform shall be used only by Customer's Authorized End Users and solely for the Customer's own lawful business purposes in accordance with the terms and conditions of this Agreement and the applicable Sales Order. Unless otherwise indicated in the Sales Order there is no limit on the number of Authorized End Users that can use the Platform under this Agreement.

Unless agreed to in writing by Kivuto, Customer shall not permit anyone other than the Authorized End Users to use the Platform or grant a sublicense for the use of the Platform.

Commercial details including but not limited to quantity of usage, integrations and training, will be outlined in the Sales Order.



Kivuto reserves all rights not expressly granted to the Customer in a written document signed by both parties. All ownership, intellectual property, and other rights and interests in the Platform remain solely with Kivuto, its affiliates or its licensors. The source code of the Platform is a trade secret of Kivuto, its affiliates or its licensors, and is their confidential information.

**2.2 Platform Installation and Acceptance.** The Platform is deemed to be delivered and accepted upon: (a) the deployment by Kivuto of Customer's Webstore, and (b) the creation of an administrative account(s). Notwithstanding such acceptance, Customer retains all rights and remedies set forth in Section 7 herein.

**2.3 General Restrictions.** Except as provided in this Agreement or any Sales Order, Customer will not and will not permit any other party to: (a) assign, transfer, give, distribute, reproduce, transmit, sell, lease, license, sublicense, publicly display or perform, redistribute or encumber the Platform by any means, to any party; (b) rent, loan or permit other individuals or entities to create Internet "links" to the Platform or "frame" or "mirror" the Platform on any other server or wireless or Internet-based device, or in any other way allow third parties to access, use, and/or exploit the Platform; (c) use the Platform, in whole or in part, to create a competitive offering; (d) use the Platform in a manner inconsistent with this Agreement.

Customer's license as specified in this Agreement will be automatically revoked if Customer violates the intellectual property rights of Kivuto or any third party in respect of the Platform or the Digital Asset(s).

**2.4 Further Restrictions.** Except as expressly permitted under applicable law, Customer will not modify, adapt, translate, reverse engineer, decompile, disassemble, decrypt, port, emulate the functionality, reverse compile, reverse assemble, or otherwise reduce or attempt to discover any source code or underlying structures, ideas, or algorithms of the Platform or any confidential information or trade secret.

If Customer becomes aware of unauthorized access to, or the misuse of, the Platform, it shall: (a) provide Kivuto with assistance related to such unauthorized use as Kivuto may reasonably request, and (b) if Customer chooses, instruct Kivuto to block access to Customer's Webstore and immediately notify Kivuto of the same.

**2.5 Improvements.** Customer is prohibited from creating any change, translation, adaptation, arrangement, addition, modification, extension, upgrade, update, improvement, (including patentable improvements), new version, or other derivative work based on, incorporating, or using, the Platform.

**2.6 Authorized End User Management.** Customer will manage the Authorized End User's enrollment status and the rights to access appropriate Digital Assets including any changes and updates for enrolments, opt-in/opt outs, class add/drops, changes in Digital Assets for a given class or user group and all other changes pertaining to Authorized End Users, Digital Assets, Authorized End User groups and access. Depending on the integration level, much of this information will be collected by the system or from the Authorized End User through their interactions with the system and will be made available to the Customer's administrators to the extent possible to assist in Authorized End User updates and in some cases may be fully automated.

Enrollment status at the Customer will determine access to the Platform and will be the primary definition of Authorized End user. In the case of manual uploads or changes (course add/drops, opt-in/opt-out) the Customer's system administrator will be responsible to update the system as required.

**2.7 Digital Asset Management by Customer.** Customer and Customer administrators are responsible for managing their own Digital Assets and their respective licenses, including but not limited to the proper setup of DRM, pricing, data, properties and expirations. Kivuto, through its Platform, will enable the Customer to electronically and securely distribute and manage Digital Assets, however, Kivuto is not responsible for monitoring, enforcing or ensuring compliance with the terms of any license acquired by the Customer.

### **3. DIGITAL ASSET(S)**

**3.1 Digital Asset(s).** (a) The Platform can be used to distribute any software and other digital resources to which the Customer has rights.

(b) If the Customer wishes to use a Digital Asset(s) that is not already available through the Platform or from a source with which Kivuto does not already interact, the Customer shall be responsible for identifying the resource and delivering it to Kivuto in the proper format and free of any viruses, Trojan horses, trap doors, worms, or any other malicious computer programming



routines that might destroy, modify, alter, or cause the destruction, modification or alteration, in whole or in part, of the Platform. Kivuto will assist the Customer in this process to a reasonable extent, as determined by Kivuto.

(c) Each distribution and return through the Platform will count as a Transaction on the Platform including the provisioning of an Authorized End User into a Portal. Prior to distribution, Digital Assets must be ingested into the Kivuto system, however all Digital Assets will remain the property of the Customer. In the case of cloud management, Kivuto will require an integration built into the Portal being managed as there may be portals currently without integrations. Additionally, Digital Assets will only be distributed to the Customer's Authorized End Users.

(d) Kivuto takes no responsibility for any Digital Asset or Digital Content created, accessible or delivered on or through the Platform. Kivuto does not manage, monitor or exercise any editorial control over such Digital Assets or Digital Content. Customer is solely responsible for (i) any Digital Assets published or made available through the Platform; ii) compliance with all terms and conditions with third parties with respect to such Digital Assets including but not limited to payment of royalties or fees, confidentiality obligations and intellectual property; and (iii) compliance with all laws applicable to the publication and distribution of such Digital Assets. For the sake of clarity, the parties acknowledge that: (a) Authorized End Users are subject to Kivuto's Term of Use, which must be accepted by Authorized End Users prior to their use of the Platform, and (b) the Terms of Use set forth the terms and conditions of use of the Platform, including restrictions regarding Digital Content.

(e) Customer shall not use the Platform to transmit, distribute or store material that is inappropriate as reasonably determined by Kivuto, or material that is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, indecent, offensive, vulgar, obscene, libelous, invasive of another's privacy, hateful, discriminatory, or racially, ethnically or otherwise objectionable. Customer shall ensure that its and its use of the Platform and all Digital Assets transmitted, distributed or stored on the Platform do not violate any applicable domestic or foreign laws or regulations including but not limited to laws relating to digital content distribution, encryption or export or any rights of any third party. If Customer becomes aware of any Digital Content that is illegal, defamatory, libelous, indecent, obscene, pornographic or inconsistent with generally accepted practices, Customer shall notify Kivuto as soon as reasonably practicable.

(f) Customer shall defend, indemnify and hold harmless Kivuto, its parent, subsidiaries and affiliates, and their respective officers, directors, employees and agents from and against any and all third-party claims, actions, proceedings, damages and expenses (including reasonable attorneys' fees) arising out of or related to any third party claim: (i) that Digital Asset(s) infringes a patent or copyright, (ii) arising from Kivuto's blocking access to Customer's Webstore, as instructed by Customer pursuant to subsection 2.4 of this Agreement; or (iii) associated with Customer's business operations, contractual obligations with third parties or Digital Asset(s) that gave rise to the claim, except to the degree that Kivuto's acts or omissions contributed to the damages.

**3.2 Open Education Resource Content.** The Customer has the right to distribute as many OERs as it desires. Each distribution will count as a Transaction on the Platform. If the Customer desires to use an OER that is not already available through the Platform, the Customer shall be responsible for identifying the OER and delivering it to Kivuto in the proper format and free of any viruses, Trojan horses, trap doors, worms or any other malicious computer programming routines that might destroy, modify, alter, or cause the destruction, modification or alteration, in whole or in part, of the Platform. Kivuto will assist the Customer in this process to a reasonable extent, as determined by Kivuto.

**3.3 New Digital Assets/Updates.** Kivuto will make best efforts to ingest all Digital Assets in a timely fashion and prepare the Digital Assets for distribution. Updates to Digital Assets will be ingested by Kivuto when made available to Kivuto by the Digital Asset Owner or distributor and these updates will be distributed appropriately.

**3.4 Accessing the Digital Assets.** The Digital Asset(s) and access to Portals shall be provided to Authorized End Users through (i) the Platform via the DRP and will be accessible by Authorized End Users once downloaded on Authorized End Users' computer or through cloud access as appropriate, or (ii) by downloading the Texidium eReader application(s) to an Authorized End User's device(s), provided to Authorized End Users by Kivuto. Kivuto is WCAG AA compliant.

#### **4. SUPPORT, MAINTENANCE AND OTHER SERVICES**



- 4.1 **Support.** Kivuto shall provide the support and maintenance services in accordance with Exhibit “A” attached hereto.
- 4.2 **Customer Support Contact.** Within thirty (30) days of the Effective Date, Customer shall designate an initial contact for all Kivuto product support issues (“**Customer Support Contact**”).
- 4.3 **Kivuto Product Releases.** Kivuto shall provide bug fixes, deficiency corrections and minor functionality updates to the Platform on a regular basis.
- 4.4 **E-mail and Telephone Support.** Kivuto shall provide the support detailed on Exhibit “A” to this Agreement. The Parties agree that Exhibit “A” may be amended from time to time by Kivuto to accommodate changes in the Platform and the parties’ respective capabilities; Kivuto shall notify Customer of any material changes
- 4.5 **Deficiency Investigation and Corrections.** Kivuto agrees to investigate deficiencies reported by Customer or an Authorized End User and to complete the corrective action, if any, which Kivuto deems reasonable and appropriate, including but not limited to temporary fixes, patches and corrective releases. Kivuto shall have no obligation to correct deficiencies that result from: (i) malfunctions or hardware or third-party software not provided or recommended to Customer by Kivuto; (ii) misuse of the Platform by Customer; (iii) unauthorized modifications or changes made by Customer to the Platform; or (iv) use of the Platform with third party software or hardware that is not designated, authorized, or provided by Kivuto for use with the Platform.
- 4.6 **Term of Support.** Support shall be provided during the Initial Term and for each Renewal Term in accordance with Exhibit “A”. In case of a discrepancy between Exhibit “A” and the Sales Order, the term set forth in the Sales Order shall prevail.
- 4.7 **Customer’s Duties.** When reasonably requested by Kivuto, Customer shall provide Kivuto with sufficient documentation, information, assistance, support and test time on Customer’s computer system, to allow Kivuto to duplicate a deficiency, determine that the deficiency is with the Platform, and certify that the problem has been corrected. Kivuto shall use its best efforts to remedy any deficiency in a manner and at times that minimize interference with Customer’s normal business operations.
- 4.8 **Service Level Agreement.** Kivuto shall provide the support and uptime required by the Parties as outlined in the Service Level Agreement, attached hereto and incorporated herein as Exhibit “B”.
- 4.9 **Training.** Kivuto shall provide a base level of training for Customer administrators at the time of initial setup that will include training for administrative purposes as well as training for use of the reader and DRP. Additionally, Documentation and links to training videos will be provided for use by administrators as well as Authorized End Users.
- 4.10 **Other Services:** If after the execution of a Sales Order the Customer wishes to obtain other services from Kivuto, such as custom integration into other software systems, integration into other Portals not currently facilitated, billing or invoicing, collection of payments by purchasers, payment of credit card fees in connection with the sales of Digital Assets, etc. not included as part of the agreed upon Scope of Work (the “**Other Services**”), then: (a) Customer shall communicate to Kivuto the type and extent of the Other Services desired, (b) Kivuto shall develop and provide to Customer a Statement of Work (“**SOW**”) describing such Other Services for Customer’s review and approval, and (c) if and as required, amend the Sales Order and/or this Agreement.

Kivuto shall have no obligation to provide Other Services to Customer unless and until an SOW has been executed by the Customer. Each SOW shall commence upon its execution and shall continue until all tasks described therein are completed.

## 5. FEES AND PAYMENT

- 5.1 **Fees.** Customer agrees to pay Kivuto the applicable Fees as set forth in the Sales Order.
- 5.2 **Payment Terms.** The payment terms are as set forth in the Sales Order.
- 5.3 **Fee Increases.** Kivuto shall have the right to increase applicable Fees on an annual basis, in an amount not to exceed 8% in any given year.



## 6. TERM AND TERMINATION

6.1 **Term.** The initial term of each Sales Order shall commence on the start date agreed to on the applicable Sales Order form and continue thereafter for the number of years set forth therein (the “**Initial Term**”). After the Initial Term, the Sales Order will automatically renew for additional one-year periods on each anniversary date of the Initial Term (“**Renewal Term**”), unless one party provides written notice to the other party at least 90 days prior to such anniversary date of its intent to terminate this Agreement.

6.2 **Termination.** This Agreement and all Sales Orders executed hereunder may be terminated by either party for breach of a material provision of this Agreement, provided that the non-breaching Party provides written notice identifying such breach and the breaching Party fails to cure such material breach within sixty (60) days of its receipt of that notice.

In addition, either party may terminate this Agreement and any Sales Order immediately upon notice that the other party has made an assignment for the benefit of creditors, becomes subject to a bankruptcy proceeding, is subject to the appointment of a receiver, ceases to do business in the normal course for a period of thirty (30) consecutive days, dissolves, or admits in writing its inability to pay its debts as they become due.

Upon the termination of this Agreement or any Sales Order form by Customer for a non-cured breach of a material provision: (i) Customer shall pay to Kivuto any discounted amounts for the then-current term, (ii) Customer’s further payment obligations shall be relieved, and (iii) Kivuto shall pay to Customer a pro-ratable refund of any prepaid fees paid to Kivuto and covering the remainder of the Initial Term or any Renewal Term from the date of termination, if any.

The expiration or termination of this Agreement for any reason will not release either party from any liabilities or obligations set forth herein or therein which the parties have expressly agreed will survive any such expiration or termination. Without limitation of the foregoing, Sections 3, 5, 7, 8, 9, 10, 11 and 14 shall survive termination or expiration of this Agreement.

Upon the termination, cancellation, or expiration of this Agreement: (a) each party shall return or destroy, at the option of the disclosing party, all Confidential Information received under this Agreement by the receiving party, as set forth in Section 8, and (b) Kivuto shall block access to the Platform such that no person, including Authorized End Users, will be able to access the Digital Assets through the Platform.

## 7. INTELLECTUAL PROPERTY RIGHTS

7.1 Kivuto, or if applicable, Kivuto’s licensors, own all rights in and to Platform. Except as otherwise expressly provided in this Agreement, Customer does not have and shall not acquire pursuant to this Agreement any right, title or interest in or to Kivuto’s or Kivuto’s licensors’ trade names, trademarks, service marks, copyrights, trade secrets, patents or any other of Kivuto’s or Kivuto’s licensors’ intellectual or proprietary rights.

7.2 Customer or, if applicable, Customer’s licensors, owns all rights in and to the Digital Asset(s). Except as otherwise provided in this Agreement, Kivuto does not have and shall not acquire pursuant to this Agreement any right, title or interest in or to the Digital Asset(s) or Customer’s or Customer’s licensors’ trade names, trademarks, service marks, copyrights, trade secrets, patents or any other of Customer’s or Customer’s licensors’ intellectual or proprietary rights.

When Kivuto ingests the Digital Assets into the Platform and if Kivuto creates a digital version of the Digital Assets, Customer or the applicable publisher shall retain ownership of the digital content contained therein. Kivuto shall only use such digital version of the Digital Asset(s) for the purpose of performing its obligations under this Agreement to provide Customer and its Authorized End Users with access to the Digital Asset(s) through the Platform. Kivuto shall not distribute or provide access to any Digital Asset(s) to any third party.

7.3 If Customer provides comments, suggestions, or recommendations to Kivuto with respect to the Platform or the Services provided under this Agreement (collectively, the “**Feedback**”), Customer hereby grants to Kivuto a worldwide, royalty free, irrevocable, perpetual license to use and otherwise incorporate any Feedback in connection with the Platform and such Services.

## 8. CONFIDENTIALITY





8.1 **Definition. "Confidential Information"** shall mean all information and materials about the disclosing party furnished by the disclosing party. Confidential Information shall include, but not be limited to the Platform, source code of the Platform, Documentation, and the existence and contents of this Agreement, whether such is transmitted in writing, orally, visually, (e.g. video terminal display) or on magnetic media, and shall include all proprietary information, customer and prospect lists, trade secrets, or proposed trade names, know-how, ideas, concepts, designs, drawings, flow charts, diagrams and other intellectual property relating to the subject matter of this Agreement. Results of any tests or usages carried out by Customer with the Platform shall also be considered Confidential Information.

8.2 **Exclusions:** Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the disclosing party; (ii) was known to the receiving party prior to its disclosure by the disclosing party without breach of any obligation owed to the disclosing party and receiving party provides evidence of such prior knowledge ; (iii) was independently developed by the receiving party without breach of any obligation owed to the disclosing party and receiving party provides evidence of such independent development ; or (iv) is received from a third party without breach of any obligation owed by third party to the disclosing party.

8.3 **Use and disclosure restrictions.** The receiving party shall not disclose or use any Confidential Information of the disclosing party for any purpose outside the scope of this Agreement, except with the disclosing party's prior written permission. Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either party exercise less than reasonable care in protecting such Confidential Information. The parties may disclose Confidential Information, as well as the existence of this Agreement or any of the terms hereof (financial or otherwise) only to parties, accountants, advisors, management consultants and insurers that absolutely need it and who agree to and are bound to maintain the information in confidence.

The receiving party shall: (a) be entitled to keep such copies or portions thereof of the Confidential Information as required to comply with applicable laws and, in Kivuto's case, in order to provide the Services under this Agreement, and (b) shall treat any such retained Confidential Information as confidential and in accordance with the terms of this Section 8. Additionally, Customer acknowledges that Kivuto backs up all data received from Customer on a regular basis.

If the receiving party is compelled by law to disclose Confidential Information of the disclosing party, it shall provide the disclosing party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at disclosing party's cost, if the disclosing party wishes to contest the disclosure.

Upon termination of this Agreement, the receiving party must, at the disclosing party's option, either return or destroy the Confidential Information.

8.4 **Remedies.** The parties acknowledge that any use of the disclosing party's Confidential Information in a manner inconsistent with the provisions of this Agreement may cause the disclosing party irreparable and immediate damage for which remedies other than injunctive relief may be inadequate. The parties agree that, in addition to any other remedy to which the disclosing party may be entitled hereunder, at law or equity, the non-faulty party shall be entitled to seek an injunction or injunctions (without the posting of any bond and without proof of actual damages) to restrain such use.

## 9. REPRESENTATION AND WARRANTIES; DISCLAIMER

9.1 **Authority.** Each party to this Agreement represents it has all necessary authority to enter into this Agreement.

9.2 **Platform.** Kivuto represents and warrants that Kivuto has all rights necessary to grant the licenses and rights to Customer made under this Agreement and that the Platform will operate in a manner consistent with the Documentation provided with each of the releases.

9.3 **Digital Asset(s):** Customer represents and warrants to Kivuto that (a) Customer is the owner or has all rights in the Digital Asset(s) necessary and appropriate to provide Kivuto such Digital Asset(s) for distribution pursuant to this Agreement; (b) the Digital Asset(s) does not and shall not infringe any copyright, trademark, trade secret, patent or other intellectual property or proprietary right, or violate any right of privacy, publicity or other right of any person; (c) the Digital Asset(s) does not and shall not violate any applicable laws or regulations, including without limitation any export controls; and (d) the Digital Asset(s) does



not and shall not contain any viruses, Trojan horses, trap doors, worms or any other malicious computer programming routines that might damage a computer system.

9.4 **Disclaimer:** EXCEPT AS SET FORTH HEREIN, THE PLATFORM IS BEING DEPLOYED TO YOU “AS IS” AND KIVUTO AND ITS SUPPLIERS MAKE NO WARRANTY AS TO ITS USE, RELIABILITY OR PERFORMANCE. KIVUTO DOES NOT AND CANNOT WARRANT THE PERFORMANCE OR RESULTS YOU MAY OBTAIN BY USING THE PLATFORM. KIVUTO MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO NON-INFRINGEMENT OF THIRD PARTIES’ RIGHTS, TITLE, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE. GIVEN THE NATURE AND VOLUME OF MALICIOUS AND UNWARRANTED ELECTRONIC CONTENT, KIVUTO DOES NOT WARRANT THAT THE PLATFORM OR ANY SERVICES THEREOF WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE, OR WILL DETECT SECURITY THREATS OR MALICIOUS CODE OR THAT ANY INFORMATION OR OTHER MATERIAL ACCESSIBLE OR PROVIDED THROUGH THE PLATFORM IS ACCURATE, COMPLETE OR FREE OF VIRUSES, MALICIOUS CODE, INTRUSIONS, SECURITY BREACHES OR OTHER HARMFUL CONTENTS OR COMPONENTS. CUSTOMER ASSUMES ALL RISK ASSOCIATED WITH THE QUALITY, PERFORMANCE, INSTALLATION AND USE OF THE PLATFORM INCLUDING, BUT NOT LIMITED TO, THE RISKS OF PROGRAM ERRORS, DAMAGE TO EQUIPMENT, LOSS OF DATA OR SOFTWARE PROGRAMS, OR UNAVAILABILITY OR INTERRUPTION OF OPERATIONS. CUSTOMER IS SOLELY RESPONSIBLE FOR DETERMINING THE APPROPRIATENESS OF USE THE PLATFORM AND ASSUMES ALL RISKS ASSOCIATED WITH ITS USE.

## 10. LIMITATION OF LIABILITY

10.1 **No Indirect Damages.** NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SUPPORT SERVICES (INCLUDING BUT NOT LIMITED TO, LOST PROFITS, ANTICIPATED OR LOST REVENUE, LOSS OF DATA, LOSS OF USE OF ANY INFORMATION SYSTEM, FAILURE TO REALIZE EXPECTED SAVINGS OR ANY OTHER COMMERCIAL OR ECONOMIC LOSS OR ANY THIRD PARTY CLAIM) , WHETHER ARISING IN NEGLIGENCE, TORT, FUNDAMENTAL BREACH, STATUTE, EQUITY, CONTRACT, COMMON LAW, OR ANY OTHER CAUSE OF ACTION OR LEGAL THEORY, HOWEVER CAUSED, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES.

10.2 **Limitation on Direct Damages** EXCEPT WITH RESPECT TO CLAIMS ARISING PURSUANT TO SECTIONS 3.1(f), 8, 9.3(a)(b)(c) AND 11.1 HEREIN, THE PARTIES’ TOTAL LIABILITY AND THEIR SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM AGAINST THE OTHER OF ANY TYPE WHATSOEVER, ARISING OUT OF THE PLATFORM OR SUPPORT SERVICES PROVIDED HEREUNDER SHALL BE LIMITED TO ACTUAL, PROVEN DIRECT DAMAGES CAUSED BY THE OTHER PARTY’S NEGLIGENCE IN AN AMOUNT NOT TO EXCEED THE FEES PAID OR PAYABLE BY CUSTOMER TO KIVUTO UNDER THIS AGREEMENT FOR THE TWELVE (12) MONTH PERIOD PRIOR TO THE CLAIM. WITH RESPECT TO CLAIMS ARISING PURSUANT TO SECTION 11.1(A), KIVUTO’S TOTAL LIABILITY AND CUSTOMER’S SOLE AND EXCLUSIVE REMEDY SHALL BE LIMITED TO AN AMOUNT NOT TO EXCEED TWICE THE AMOUNT OF FEES PAID OR PAYABLE BY CUSTOMER TO KIVUTO UNDER THIS AGREEMENT FOR THE TWELVE (12) MONTH PERIOD PRIOR TO THE CLAIM.

THE PARTIES WOULD NOT HAVE ENTERED INTO THIS AGREEMENT WITHOUT THIS SECTION.

## 11. INDEMNITY

11.1 **Kivuto Indemnity.** Kivuto shall defend and indemnify Customer, its parent, subsidiaries and affiliates, and their respective officers, directors, employees and agents from and against any and all third-party claims, actions, proceedings, damages and expenses (including reasonable attorneys’ fees) ( the “**Claims**”) arising from: (A) a breach by Kivuto of its obligations in Sections 12.1 and 12.2 of this Agreement provided that the damages were not caused by: (a) Customer’s reckless conduct or its failure to comply with applicable laws; or (b) Customer’s breach of its obligations in Section 12.3; and (B) any Claims that the Platform or any Services provided under this Agreement infringes any copyright, patent, trademark or other intellectual property rights of a third party to the extent that such Claim arises solely as a result of Customer’s use of the Platform in accordance with the Documentation, and provided the alleged infringement was not caused by: (a) Customer’s failure to incorporate a Kivuto software update or upgrade that would have avoided the alleged infringement; (b) the combination or use of the Platform with software, hardware, firmware, data, or technology not licensed to the Customer by Kivuto or approved by Kivuto in writing; or (c) unlicensed activities of the Customer.

Kivuto’s obligations in respect of Section 11.1(B) are conditioned upon: (a) Customer notifying Kivuto in writing within 10 days of Customers becoming aware of a Claim; (b) Customer not making an admission against Kivuto’s interests unless made pursuant





to a judicial request or order; (c) Customer not agreeing to any settlement of any Claim without the prior written consent of Kivuto; (d) Customer, at the request of Kivuto, providing all reasonable assistance to Kivuto in connection with the defense, litigation, and settlement by Kivuto of the Claim; and (e) Kivuto having sole control over the selection and retainer of legal counsel, and over the litigation or the settlement of each Claim.

If the Platform becomes the subject of a Claim, Kivuto will, in its absolute discretion, either (a) procure for Customer the right to make continued use thereof (b) replace or modify any component of the Platform so that it becomes non-infringing (c) refund to Customer any pre-paid amounts pro-rata for the remaining contracted period.

Kivuto will indemnify Customer from any judgment finally awarded, for which all avenues of appeal have been exhausted, or any final settlement in connection with any claims, provided all the conditions of this section are satisfied. This Section shall survive any expiration or termination of this Agreement. Kivuto's entire liability and Customer's sole and exclusive remedy with respect to any Claims described in this Section are limited to the remedies set out in this Section.

## **12. DATA PROTECTION**

12.1 Kivuto's collection, use and disclosure of Customer's personal information or any other data Customer provides to Kivuto will be governed by Kivuto's Privacy Policy, which can be found at <https://kivuto.com/privacy-policy-index/privacy-policy-en-us/> and by Kivuto's Data Protection Agreement ("DPA"), which can be found at <https://kivuto.com/terms/dpa/>. The DPA forms part of this Agreement.

12.2 To the extent that Kivuto processes personal data on behalf of Customer in performing the Services, Kivuto shall process such personal data only for the purpose of the Services and take reasonably appropriate technical and organizational measures to protect such personal data against unauthorized or unlawful processing; such measures include but are not limited to secure servers, encryption of data in transit and data at rest, access on a "need to know" basis only, intrusion detection technologies, and secure destruction and deletion of data. Additional information can be located at <https://kivuto.com/company/security/>.

Kivuto is responsible for (a) gathering and storing in its systems as/until required such personal data, and (b) in certain circumstances where applicable, securely transferring such personal data to the third party with which Customer has contracted. Once Kivuto has securely transferred Authorized End Users' personal data to this third party, this third party becomes responsible for storing and handling such personal data in its own systems, and for handling, retaining and destroying it in accordance with its own policies and procedures.

Kivuto is not responsible for any Customer data which is delayed, lost, altered, intercepted or stored during the transmission of any data across networks not owned and/or operated by Kivuto, including but not limited to, the internet and Customer's local network.

12.3 Kivuto's DPA describes the parties' respective roles in the processing and control of personal data that Customer provides to Kivuto as part of the Services described in this Agreement. Kivuto will act as a data processor and will act on Customer's instruction concerning the treatment of its personal data as specified in this Agreement and the DPA. Customer shall be responsible for providing any notices and obtaining any consents related to its use of the Services and Kivuto's provision of such Services, including those related to the collection, use, processing, transfer and disclosure of personal data.

12.4 Where there has been a personal data breach and the breach is likely to result in misappropriation or accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, personal data transmitted, stored or otherwise processed on the Platform that compromises the security, confidentiality or integrity of such personal data, Kivuto will promptly investigate and report the breach to the Customer without undue delay. The communication will describe the nature of the personal data breach as well as recommendations for the data subject concerned to mitigate potential adverse effects. Such communications will be made as soon as reasonably feasible and in close cooperation with the Supervisory Authority, respecting guidance provided by it or by other relevant authorities such as law-enforcement authorities. The terms "personal data" "processed", "data subject" and "Supervisory Authority" have the meaning ascribed to them in the General Data Protection Regulation 2016/679, as may be amended from time to time.

## **13. ADEQUATE INSURANCE**



13.1 During the term of the Agreement Kivuto will obtain and/or maintain, at its sole cost and expense, insurance coverage that meets the following requirements: (i) the insurance shall insure Kivuto against legal liability related to the Services performed under the Agreement, including commercial general liability and cyber liability; and (ii) issued by financially sound and reputable insurers.

#### 14. GENERAL

14.1 **Force Majeure.** Any delay or failure of Kivuto or Customer to perform its obligations under this Agreement (excluding obligations to make payment of money due) shall be excused if and to the extent that such delay or failure is caused by an event beyond the reasonable control of the non-performing party, including without limitation, any act of God, actions by any government authority, fires, floods, natural disasters, riots, wars, failure of or interruptions in telecommunications or data transmission systems not caused by Kivuto or Customer.

14.2 **Assignment.** Neither Party may assign or otherwise transfer this Agreement or any of its rights and obligations hereunder or any portion thereof without prior written approval of the other, which will not be unreasonably withheld; provided, however, that Kivuto may assign or otherwise transfer this Agreement or any of its rights or obligations hereunder, or any portion thereof, to its parent, subsidiaries, affiliates or successors. This Agreement and the rights and obligations created hereunder shall be binding upon and inure to the benefit of the parties hereto and the respective successors and permitted assignees of the Parties hereof and nothing in this Agreement expressed or implied, is intended or should be construed to confer upon a third party, any right, remedy or claim under this Agreement.

14.3 **Notices.** All notices, requests, demands and other communications under this Agreement shall be in writing and shall be sent to the addresses listed on the Sales Order. Notices shall be effective upon receipt and shall be deemed to be received as follows: i) if delivered by nationally recognized overnight courier, effective the business day following the date of shipment; ii) if by mail the earlier of actual receipt or five (5) business days from the date deposited in the mail; iii) if delivered by email, effective on the first business day after delivery.

14.4 **Relationship of Parties.** The Parties and their respective employees and representatives are independent contractors. Nothing contained in the Agreement shall be deemed to create any partnership, agency, joint venture or fiduciary relationship between Kivuto and Customer for any purpose.

14.5 **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other legal person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement. The foregoing sentence notwithstanding, data subjects shall be entitled to exercise their rights as set forth in the General Data Protection Regulations (EU) 2016/679 as may be amended from time to time.

14.6 **Governing Law and Venue.** This Agreement and each of the documents contemplated by or delivered under or in connection with this Agreement are governed by and are to be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The Parties agree that all disputes under this Agreement shall be subject to the exclusive jurisdiction of the courts of Ontario, Canada. The Parties further agree that dispute resolution mechanisms and proceedings, where possible, are to take place in the City of Ottawa.

14.7 **Entire Agreement.** This Agreement including the related Sales Order, all schedules, exhibits and attachments constitute the entire agreement between the Parties with respect to the subject matter hereof and merges all prior and contemporaneous communications as to such subject matter. This Agreement may not be modified except by a written agreement dated subsequent to the Effective Date and signed on behalf of Kivuto and Customer by their respective duly authorized representatives. No waiver of any breach of any provision of this Agreement constitutes a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver is effective unless made in writing and signed by an authorized representative of the waiving party.

14.8 **Severability.** If any term or provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid or otherwise unenforceable, such term or provision will not affect the Agreement's other terms and shall: (1) be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable without materially altering the intentions of the Parties; or (2) be stricken and the remainder of this Agreement will remain in full force and effect.



14.9 **Publicity.** Neither Party will issue any press release concerning its relationship with the other, without the other Party's prior written consent (not to be unreasonably withheld).

14.10 **Dispute Resolution.** In the event of any dispute between the Parties hereto arising out of the interpretation, observance or performance of any covenant, condition or other provision of this Agreement, the Parties shall attempt to resolve such dispute by negotiation and discussion with a senior officer of each Party as a first method of conflict resolution. If such dispute is not resolved within thirty (30) business days of the commencement of said negotiations, the Parties shall have the right to seek legal action through the courts of as set forth in Section 14.6 of this Agreement.



## EXHIBIT A

### SUPPORT AND MAINTENANCE SERVICES

#### SUPPORT OVERVIEW

- ✓ 1<sup>st</sup> Level support to Customer staff and Authorized End Users
- ✓ Multilingual Support
  - Email support provided in English, French, Spanish, German, Japanese, and Portuguese
- ✓ On-line Help Centre: <https://kivuto.com/contact/support/>
- ✓ Incident management: <https://kivuto.com/contact/support/>

#### HOURS OF OPERATION & COMPANY CONTACT INFORMATION

1. Hours of Operation of Platform: twenty-four (24) hours per day, seven (7) days per week and three hundred and sixty-five (365) days per year (“24 x 7 x 365”).
2. Hours of Operation for Customer Support: Mon-Fri from 6:00 a.m. Eastern Time to 6:00 p.m. Pacific Time.
3. Contact can be made by filling out our contact us form [https://kivuto.com/contact/support/contact us](https://kivuto.com/contact/support/contact-us)
4. For emergency purposes, Kivuto will maintain an escalation process as described below.

**Emergency E-mail Address: [ETAC@kivuto.com](mailto:ETAC@kivuto.com)**

#### INCIDENT MANAGEMENT

Kivuto shall coordinate all incident isolation, testing and repair work for Kivuto systems and services. Severity levels will be determined and communicated to Customer by Kivuto. During the incident isolation and troubleshooting process, Kivuto shall communicate incident resolution progress with Customer and escalate its problem resolution efforts based upon the times specified in the table below. Kivuto shall provide status updates as described below, which updates will include the following information: (a) incident start time; (b) current repair status; (c) description of the aspect(s) of the services that are affected or unavailable to Customer, with a detailed description of impact on Authorized End Users; and (d) estimated repair time.

Also, in the event of a Critical Impact incident (as defined in chart below), Kivuto shall notify Customer and, at its own expense, post and maintain a “site down,” “feature down,” or similar online status notice in a manner reasonably intended to inform all Authorized End Users of the status of the Kivuto service and, if possible, when the Kivuto service is likely to be fully restored.



### Severity Levels and Incident Notification

Problem Severity	Problem Description	Contact	Initial Response Time	Status Updates
<b>Critical Impact</b>	<p>Critical Impact means an error in the Service that prevents the Customer and its Authorized End Users from accessing or using the Platform.</p> <p>Example: Authorized End Users receive “incorrect HTTP status” errors when attempting to connect to the Platform.</p>	Email: <a href="mailto:ETAC@kivuto.com">ETAC@kivuto.com</a>	Two (2) hours	Kivuto will update information until final resolution
<b>High Impact</b>	<p>High Impact means an error in the Services which: (i) constitutes a major failure in a major feature of the Service which causes significant inconvenience to Authorized End Users; or (ii) product malfunction due to deficiency or lack of usability, or which produces results materially different from those described in the agreement, but which does not reach the level of Critical Impact.</p> <p>Example: Authorized End Users receive a “compilation error” message when trying to read a title description.</p>	Email: <a href="mailto:ETAC@kivuto.com">ETAC@kivuto.com</a>	Twelve (12) hours	Regular email communication from Kivuto to confirm status
<b>Medium or Low impact</b>	<p>Medium or Low impact means errors in the Services provided that cause inconvenience to the operational and administrative support of the Authorized End User’s experience, but do not impede the overall functioning of the Services provided.</p>	Email: <a href="mailto:TAC@kivuto.com">TAC@kivuto.com</a>	Two (2) business days	Regular email communication from Kivuto to confirm status



## EXHIBIT B

### SERVICE LEVEL AGREEMENT

This Kivuto Service Level Agreement (this “SLA”) is a policy governing the use of the Support Services for the Platform between Kivuto (“Kivuto”, “us” or “we”) and Customer (“Customer”, or “you”).

#### 1. SERVICE COMMITMENT

1.1 Kivuto will use commercially reasonable efforts to ensure the Customer-facing services will be available with a monthly uptime percentage of at least 99.5% (the “**Monthly Uptime Percentage**”) during any monthly period (the “**Service Commitment**”). In the event Kivuto does not meet the Service Commitment, remedies may be made available as per Section 3 below.

#### 1.2 Exclusions

1.2.1 Urgent or Emergency Maintenance means maintenance performed on the software or hardware components providing a Kivuto Service to repair errors that are immediately affecting Customer’s use of the service. During Urgent or Emergency Maintenance, some of the Kivuto Services may be unavailable. Kivuto may undertake Urgent or Emergency Maintenance at any time necessary and will make all best efforts to contact and coordinate the timing with Customer and shall provide notice to Customer as far in advance as is commercially practicable under the circumstances.

1.2.2 Scheduled Maintenance Activities will not be considered downtime. Kivuto will make all best efforts to contact and coordinate the timing of scheduled maintenance activities with the Customer and shall provide notice to the Customer as far in advance as is possible should a service interruption be required.

1.2.3 The service Commitment does not apply, nor shall any unavailability be treated as downtime that (i) is caused by factors outside of Kivuto’s reasonable control or contracted services; (ii) results from any actions or inactions of Customer or any third party, administrative users, employees, contractors or agents using our back-end systems; (iii) results from the failure or malfunction of Customer equipment, software or other technology and/or third-party equipment, software or other technology (other than third party equipment within Kivuto’s direct control); (iv) is a result of errors introduced by invalid metadata, or source files that do not meet the current published specifications; (v) arise from our suspension and/or termination of Customer’s right to use a Kivuto Service; or (vi) is caused by a breach of the Agreement by Customer.

#### 2. SERVICE MEASUREMENT

2.1 Monitoring – Kivuto will provide twenty-four (24) hours per day, seven (7) days per week, three hundred and sixty-five (365) days per year internal and external monitoring of the Kivuto Services to ensure this service level and support is maintained. In the event of an issue, these internal and external monitoring systems will automatically contact the necessary support staff and technical resources when any system errors are identified.

2.2 Issues relating to any down time or a down time period can be addressed by contact Kivuto’s Technical Assistance Center (TAC) which is available for all customer support requests twenty-four (24) hours per day, seven (7) days per week, three hundred and sixty-five (365) days per year. A case will be opened upon receipt of the request or identification of the issue and a Kivuto representative will contract the Customer to provide status of the issue.

#### 3. REMEDIES

In the event of a failure to meet the Monthly Uptime Percentage, Kivuto will investigate, address, and correct any system problems that caused any failure and report the results of the investigation and any corrective action taken to Customer. If Kivuto fails to meet the Monthly Uptime Percentage for two (2) consecutive months, Kivuto will, in addition to investigating any failures and taking corrective action, for a period of four (4) weeks following the second monthly failure, monitor and, upon request, report system uptime and performance to Customer on a weekly basis. If Kivuto fails to meet the Monthly Uptime Percentage for three (3) consecutive months, customer may immediately terminate the Agreement.





#### **4. TECHNOLOGY CHANGES**

As services and technologies change, certain provisions in this SLA may change to reflect the improvements and/or changes. No change will decrease the Monthly Uptime Percentage requirement for the duration of the Agreement.

#### **5. ENTIRETY**

Each Party acknowledges that it has read this SLA, understands it, and agrees to be bound by its terms, and further agrees that this is the complete and exclusive statement of the SLA between the parties with respect to the subject matter herein. Subject to Section 4, this SLA may not be modified or altered except by the written agreement of both parties. In the event of a conflict between the SLA and the Agreement, the terms of the Agreement shall apply.