



SERVICES AGREEMENT FOR KIVUTO CLOUD

Version Date: July, 2020

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

By executing the Sales Order, the Institution unconditionally consents to be bound by and become a party to this Agreement. Institution’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 KS and the Institution 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 **Asset(s) or Content (“Asset” or “Content”):** means digital resources such as software, digital files, eText, access code, Open Education Resource (OER), guides, manuals or partial components of any of the foregoing and/or any other digital content that Institution has obtained rights to and that can be distributed by KS and accessed through the Platform by Users.

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

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

1.4 **Digital Resource Portal (“DRP”):** is a portal or website that the Authorized End User can login to in order to access the resources and 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 Institution-branded to display the available Assets the institution has procured and declared to distribute on the Platform as well as other digital resources the End-User has access to.

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

1.6 **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 Users of the Platform, regarding the proper installation and use of the Platform.

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

1.8 **Kivuto Cloud Platform (“Kivuto Cloud” or “Platform”):** means a programming code developed by Kivuto that allows for or includes, without limitation: distribution, tracking, e-commerce, student verification, license management, admin portal/interface, 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 Institution to: i) manage the provisioning and de-provisioning of Users in the portals from the centralized Platform ii) manage portal DRM; iii) centralize the Assets in the DRP and iv) apply additional benefits of the Platform such as cost recovery and mass customized distribution to their Users as further described herein.

1.9 **Open Education Resource Content (“OER 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.

1.10 **Publisher Cloud Portal:** means any portal used, owned or controlled by an Asset Owner that provides Users access to the cloud-based software services and/or SaaS services, of that Asset Owner.

1.11 **Redeemed:** means that a digital Asset has been acquired or a Redemption Code has been provisioned and applied to a User providing rights to access the associated Asset(s). Redemption shall be considered to have occurred immediately after being provisioned to a User.

1.12 **Redemption Codes:** means a unique code that may be used to acquire an Asset or access to a resource.

1.13 **Sales Order:** means the ordering documents which incorporate the terms of this Agreement.

1.14 **Support Services:** means the services for the support and maintenance of the Platform as set forth in Exhibit "B" to this Agreement.

1.15 **Texidium eReader:** means the cloud-based eReader, and the associated applications, developed by KS 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.

1.16 **Transaction:** means any distribution or return of an Asset (paid or OER) to or from a User or provisioning and de-provisioning of a user into or from a Publisher Cloud Portal.

1.17 **Transaction Fees:** Fees charged in addition to the platform fee on a per transaction basis for e-commerce transactions.

2. LICENSE TERMS

2.1 **Grant of Rights.** Subject to the terms and conditions of this Agreement, including without limitation payment of the Fees, KS hereby grants to Institution a worldwide, non-exclusive and non-transferable license to use the Platform, and to access and manage the Assets and Publisher Cloud 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 Institution Authorized End Users and solely for the Institution's own lawful business purposes in accordance with the terms and conditions of the Agreement. Unless otherwise indicated in the Sales Order there is no limit on the number of Users that can use the Platform under this Agreement.

Unless agreed to in writing by KS, Institution 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.

KS reserves all rights not expressly granted to the Institution 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 trade secret of KS, 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 the earlier of (a) when it is made available by KS for electronic download, or (b) when KS delivers the Platform on physical media, or (c) when access is granted to cloud interfaces of the Platform. Notwithstanding such acceptance, Institution 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, Institution 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.

2.4 **Further Restrictions.** Except as expressly permitted under applicable law, Institution 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 Institution becomes aware of unauthorized access to, or the misuse of, the Platform, it shall immediately notify KS of the same.

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

Enrollment status at the Institution 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 Institution's system administrator will be responsible to update the system as required.

2.7 Content Management by Institution. Institution and institution administrators are responsible for managing their own Assets and their respective licenses, including but not limited to the proper setup of DRM, pricing, data, properties and expirations. KS through its Platform will enable the Institution to electronically and securely distribute and manage Content; however, Kivuto is not responsible to monitor, enforce or ensure compliance with the terms of any license acquired by the Institution.

3. CONTENT

3.1 Content. The Platform can be used to distribute any software and other digital resources that the Institution has rights to.

If the Institution desires to use a Content that is not already available through the Platform or from a source Kivuto does not already interact with, the Institution shall be responsible for identifying the resource and delivering it to KS 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. . KS will assist the Institution in this process to a reasonable extent.

Each distribution and return through the Platform will count as a Transaction on the Platform including the provisioning of a User into a Publisher Cloud Portal. Prior to distribution Content will need to be ingested into the KS system, however all Content will remain the property of the Institution. In the case of cloud management KS will require

an integration built into the portal being managed as there may be portals currently without integrations. Additionally, Content will only be distributed to the Institution's Authorized End Users as declared by the Institution.

KS takes no responsibility for any Content created, accessible or delivered on or through the Platform. Kivuto does not manage, monitor or exercise any editorial control over such Content. Institution is solely responsible for (i) any Content published or made available through the Platform by the Institution and its Users; ii) compliance with all terms and conditions with third parties with respect to such Content including but not limited to payment of royalties or fees, confidentiality obligations and intellectual property and (ii) compliance with all laws applicable to the publication and distribution of such Content.

Customer shall not use the Platform to transmit, distribute or store material that is inappropriate as reasonably determined by KS, or material that is illegal, defamatory, libelous, indecent, obscene, pornographic, or inconsistent with the generally accepted practices. Institution shall ensure that its and its Users' use of Platform and all content 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 content distribution, encryption or export or any rights of any third party.

Institution shall defend, indemnify and hold harmless KS, 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 that Content infringes a patent or copyright or any other claims associated with Customer's business operations, contractual obligations with third parties or Content that gave rise to the claim, except to the degree that KS' acts or omissions contributed to the damages.

3.2 Open Education Resource Content. The Institution has the right to distribute as many OER as it desires. Each distribution will count as a Transaction on the Platform. If the Institution desires to use an OER that is not already available through the Platform the Institution shall be responsible for identifying the OER and delivering it to KS 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. KS will assist the Institution in this process to a reasonable extent.

3.3 **New Assets/Updates.**

KS will make best efforts to ingest all Content in a timely fashion and prepare the Assets for distribution. Updates to Content will be ingested by KS when made available to KS by the Content Owner or distributor and these updates will be distributed appropriately.

3.4 **Accessing the Digital Content.** The Asset(s) and access to Publisher Cloud 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 User's device(s), provided to Authorized Users by KS.

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

4.1 **Support.** KS shall provide the maintenance and support services in accordance with Exhibit "B" attached hereto.

4.2 **Institution Support Contact.** Within thirty (30) days of the Effective Date, Institution shall designate an initial contact for all KS product support issues ("Institution Support Contact"). The Institution Support Contact shall make reasonable efforts to resolve any support questions from Institution and students prior to contacting KS for support.

4.3 **KS Product Releases.** KS shall provide bug fixes, deficiency corrections and minor functionality updates to the Platform.

4.4 **E-mail and Phone Support.** KS shall provide the support detailed on Exhibit B to this Agreement. The Parties agree that Exhibit "B" may be amended from time to time to accommodate changes in the Platform and the parties' respective capabilities by an amendment in writing signed by both parties.

4.5 **Deficiency Investigation and Corrections.** KS agrees to investigate deficiency (ies), which are reported by Institution or a User and to complete the corrective action, if any, which KS deems reasonable and appropriate, including but not limited to temporary fixes, patches and corrective releases. KS shall have no obligation to correct deficiencies that result from: (i) malfunctions or hardware or third-party software not provided or recommended to Institution by KS; (ii) misuse of the Platform by Institution; (iii) unauthorized modifications or changes made to the Platform; or (iv) use of the Platform with third party software or hardware that is not designated, authorized, or provided by KS 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 "B" or the Sales Order. In case of a discrepancy between Exhibit "B" and the Sales Order, the term set forth in the Sales Order shall prevail.

4.7 **Institution's Duties.** When reasonably requested by KS, Institution shall provide KS with sufficient documentation, information, assistance, support and test time on Institution's computer system, to duplicate a deficiency, determine that the deficiency is with the Platform, and certify that the problem has been corrected. KS shall use its best efforts to remedy any deficiency in a manner and at times that minimize interference with Institution's normal business operations. Institution shall use all reasonable efforts to perform problem definition activities and any remedial or corrective actions as described in the Platform user manuals and other system Documentation provided to Institution by KS, prior to seeking assistance from KS.

4.8 **Service Level Agreement.** KS shall provide the support and uptime required by the Parties as outlined in the SLA, attached hereto and incorporated herein as Exhibit "C".

4.9 **Training.** KS shall provide a base level of training for Institution 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 video's will be provided for use by staff as well as Authorized End Users.

4.10 **Other Services:** If after the execution of a Sales Order the Institution desires to obtain other services from Kivuto, such as custom integration into other school software systems, integration into other Publisher Cloud Portals not currently facilitated, billing or invoicing, collection of payments by purchasers, payment of credit card fees in connection with the sales of Assets, etc. not included as part of the agreed upon Scope of Work(the "Other Services") Institution shall communicate to KS the type and extent of the Other Services desired and KS shall develop and provide Institution a statement of Work ("SOW") describing such Other Services for Institution's review and approval.

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

5. **FEES AND PAYMENT**

5.1 **Fees.** Institution agrees to pay Kivuto the Fees as set forth in the Sales Order.

5.2 **Payment Terms.** The payment terms are as set forth in the Sales Order.

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 renew as set forth in the Sales Order.

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.

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 (a) the parties have expressly agreed will survive any such expiration or termination. Without limitation of the foregoing, Sections 3, 7, 8, 10, and 11 shall survive termination or expiration of this Agreement. Upon the termination, cancellation, or expiration of this Agreement each party shall return or destroy, at the option of the disclosing party all Confidential Information received under this Agreement by the receiving party.

Either party may terminate this Agreement for convenience upon 90 days' prior written notice to the other party. Upon the termination of this Agreement or any Sales Order Form for convenience, then: (a) if Institution terminates, Institution shall pay to KS any discounted amounts for the then current term and Institution's further payment obligations shall be relieved and KS shall pay to Institution a pro-ratable refund of any prepaid fees paid to KS and covering the remainder of the Initial Term or any Renewal Term from the date of termination, if any, and (b) if KS terminates, any discounts already received by Institution shall be unrecoverable by KS.

7. INTELLECTUAL PROPERTY RIGHTS

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

7.2 Institution or, if applicable, Institution's licensors, own all rights in and to the Content. Except as otherwise provided in this Agreement, KS does not have and shall not acquire pursuant to this Agreement any right, title or interest in or to the Content or Institution's trade names, trademarks, service marks, copyrights, trade secrets, patents or any other of Institution's intellectual or proprietary rights.

When KS ingests the Assets into the Platform and If KS creates a digital version of the Content, Institution or the applicable publisher shall retain ownership of the digital content contained therein. KS shall only use such digital version of the Content for the purpose of performing its obligations under this Agreement to provide Institution and its Users with access to the Content through the Platform. KS shall not distribute or provide access to any Content to any third party.

8. CONFIDENTIALITY

8.1 **Definition.** "Confidential Information" shall mean all information and materials furnished by either party which: (a) if in written format is marked as confidential, or (b) if disclosed verbally is noted as confidential at time of disclosure, or (c) in the absence of either (a) or (b) is information which a reasonable party would deem to be non-public information and confidential. 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 Institution 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 ; (iii) was independently developed by the receiving party without breach of any obligation owed to the disclosing party (however KS may not independently collect information from Users via requests, offers, or advertisements associated with the Platform); or (iv) is received from a third party without breach of any obligation owed 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, attorneys, management consultants and insurers that absolutely need it and who agree to and are bound to maintain the information in confidence.

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.

8.4 Remedies. If the receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the disclosing party in breach of the provisions of this Section, the disclosing party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate. 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 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. Further, KS represents and warrants that it shall not take any action, which restricts User's access and use of the Content, in a manner inconsistent with this Agreement for any User that is in compliance with the terms of this Agreement.

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

9.3 Content: Institution represents and warrants to KS that (a) Institution is the owner or has all rights in the Content necessary and appropriate to provide Kivuto such Content for distribution pursuant to this Agreement; (b) the Content 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 Content does not and shall not violate any applicable laws or regulations, including without limitation any export controls; and (d) that the Content 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 ONLY 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. INSTITUTION 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. INSTITUTION 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.** EXCEPT FOR THEIR RESPECTIVE OBLIGATIONS UNDER SECTIONS 3 AND 11 AND BREACH OF THE CONFIDENTIALITY PROVISIONS IN SECTION 8, NEITHER PARTY SHALL HAVE LIABILITY TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUES, DATA AND/OR USE) EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

10.2 **Limitation on Direct Damages** EXCEPT WITH RESPECT TO CLAIMS ARISING PURSUANT TO SECTION 11 HEREIN, KIVUTO'S TOTAL LIABILITY AND INSTITUTION'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, ARISING OUT OF THE PLATFORM OR SUPPORT SERVICES PROVIDED HEREUNDER SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY KIVUTO'S SOLE NEGLIGENCE IN AN AMOUNT NOT TO EXCEED THE FEES PAID BY INSTITUTION TO KS 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.** KS shall defend and indemnify Institution, 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 KS's breach of any obligation of this Agreement or 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 arise solely as a result of Institution's use of the Platform in accordance with the Documentation, and provided the alleged infringement was not caused by: (a) Institution's failure to incorporate a KS '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 Institution by KS or approved by KS in writing; or (c) unlicensed activities of the Institution.

KS's obligations in the this section are conditioned upon: (a) Institution notifying KS in writing within 10 days of Institutions becoming aware of a Claim; (b) Institution not making an admission against KS's interests unless made pursuant to a judicial request or order; (c) Institution not agreeing to any settlement of any Claim without the prior written consent of KS; (d) Institution, at the request of KS, providing all reasonable assistance to KS in connection with the defense, litigation, and settlement by KS of the Claim; and (e) KS having sole control over the selection and retainer of legal counsel, and over the litigation or the settlement of each Claim. KS will indemnify Institution 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.

If the Platform becomes the subject of a Claim, KS will, in its absolute discretion, either (a) procure for Institution the right to make continued use thereof (b) replace or modify any component of the Platform so that it becomes non-infringing (c) refund the unamortized portion of the Sales Order Fees received by KS and attributable to the infringing portion of the Software, based on a three (3) year straight line amortization.

KS's entire liability and Institution's sole and exclusive remedy with respect to any claims are limited to the remedies set out in this Section.

12. DATA PROTECTION

12.1 KS's collection, use and disclosure of Customer's personal information, Content or any other data Institution provides to KS will be governed by KS's Privacy Policy, which can be found at www.kivuto.com, and by KS' Information Security and Data Processing Policy attached hereto and incorporated herein as Exhibit "D".

12.2 To the extent that KS processes personal data on behalf of Institution in performing the services, KS 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. KS 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 Institution has contracted. Once KS 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.

12.3 KS's Data Processing Policy for Kivuto Cloud describes the parties' respective roles for the processing and control of personal data that Institution provides to KS as part of the Kivuto Cloud service. KS will act as a data processor and will act on Institution's instruction concerning the treatment of its personal data as specified in this Agreement, the Data Processing Policy and the applicable Sales Order. Institution agrees to provide any notices and obtain any consents related to its use of the services and KS's provision of the services, including those related to the collection, use, processing, transfer and disclosure of personal data.

13. ADEQUATE INSURANCE

13.1 During the term of the Agreement KS will obtain and/or maintain, at its sole cost and expense, insurance coverage that meets the following requirements: (i) the insurance shall insure KS against legal liability related to the services performed under the Agreement, including worker's compensation coverage, commercial general liability and cyber liability; (ii) the insurance shall be in amounts that are required by operation of law and reasonable and customary in the industry; and (iii) issued by financially sound and reputable insurers.

14. GENERAL

14.1 **Force Majeure.** Any delay or failure of KS or Institution 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 KS or Institution.

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 KS 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 delivered by facsimile, effective on the same day provided fax confirmation received; iii) if by mail the earlier of actual receipt or five (5) business days from the date deposited in the mail; iv) if delivered by email, effective on the same day as the receipt of delivery confirmation is received.

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 KS and Institution 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.

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 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 KS and Institution 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, such dispute shall be resolved by negotiation and discussion with a senior officer of each Party as a first method of conflict resolution. If not resolved within ten (10) days of the commencement of the said negotiations, such dispute shall be referred to mediation. Selection of a mediator is to be agreed by both Parties. If mediation is unsuccessful, the Parties agree to have the matter determined by one arbitrator agreed upon and appointed jointly by the Parties hereto, and if no agreement is reached between the Parties hereto, then the appropriate judicial authority in Ontario shall appoint the arbitrator. The Arbitration Act (Ontario) and any amendments shall govern the constitution and proceedings of any such arbitration thereto. All costs and expenses of such proceedings shall be borne by the parties equally; however, each party shall be solely responsible for its legal costs and for the costs of its witnesses or experts. During the period of any mediation or arbitration hereunder, no default shall be deemed to have occurred in the performance of any covenant, obligation or agreement under this Agreement, which is the subject matter of such mediation or arbitration. The Parties further agree that the Arbitrator's determination of a dispute will be final and binding and there will be no appeal of that determination on any ground.

Signature: _____

Date: _____

Kivuto Signature:

Kivuto Solutions Inc

126 York Street, Ottawa, Ontario

Name: Jeff Blacklock

Title: President & COO

Signature: _____

Date: _____

Customer Signature:

School Name: _____

Address: _____

Name: _____

Title: _____



EXHIBIT A
COMPANY SERVICES, SYSTEMS INTEGRATION & RESPONSIBILITIES

KS SERVICE DESCRIPTION:

KS enables Institution to make Asset(s) available to Institution's Authorized End Users via the Platform. The Platform consists of any combination of the Technology engine that facilitates electronic license management including the Publisher Asset Library ("PAL"), Digital Resource Portal ("DRP"), integration into the school's student Information system, Shibboleth integration, LMS integration, payment systems, User interfaces, and integrations to software publishers and into cloud software portals. The institution has procured and declared to distribute on the platform as well as other digital resources and the End-User has access to and it integrates into the Institution's authentication system allowing students to access a personalized shopping experience. The portal can serve as the Institution's one stop shop for any required Asset distribution and management, thanks to support of the user verification, c-commerce, secure distribution, reporting, account management, and more in a cloud-based environment.

Definitions:

PAL: This web-based repository of publisher metadata information. PAL is used by the Institution to input End-User and Asset information into the Kivuto Cloud as well as provide visibility to the publishers for required assets, Kivuto for Asset/End-User issues, and other interconnectivity challenges.

Admin Portal: A portal that can be used by administrators to manage Authorized End Users, classes, assets, pricing, for display and access in the DRP.

KS Services:

Specifically, the KS Services provided to Users are described below:

- Institution Websites and/or integrated portal through which Authorized End Users can access Assets to be distributed and consumed under this Agreement.
 - Creation, hosting and maintenance of DRP or integrated portal.
- Distributed Download Architecture
 - A highly scalable distributed software download architecture. User downloads are served from KS download servers.
- Hosting Services
 - Hosting of all Institution DRP Websites or integrated portal.
 - Daily backups of all Institution transactional data.
 - See Exhibit "C" for SLA details.
- Customer Support
 - As described in Exhibit "B" herein.
- Reporting

- On-line, anytime access provided to designated representatives of Institution or Publishers the Institution has contracts with to standard, mutually agreed reports.
- Institution will have access to reports regarding its Institution.
- Publisher will have access to reports regarding its Assets.
- Consolidated reporting on a mutually agreed basis to Institution of usage information subject to stated User privacy policies.
- Redemption volume data broken down by Publisher and product
- And other reports as mutually agreed between the parties from time to time
- E-commerce: Kivuto will act as the credit card merchant with respect to paid transactions conducted on Kivuto Cloud.

INSTITUTION RESPONSIBILITIES

- Asset Adoption Data

Prior to each academic session, Institution must provide an Asset list that includes:

- All assets and resources it has obtained distribution rights to and intends to distribute for the coming semester. Changes (additions and subtractions) to this list from the previous semester must be highlighted.
- Any commercial terms associated with these distribution rights including but not limited to; price paid by the institution to the vendor per asset and in aggregate in case of volume licensing, Quantity of assets to be made available to the Institution if a limit is defined, model of distribution for that asset), duration of license to Institution and the Authorized End User, return policies, etc.

- Enrollment, Asset, Course & Commercial Data

Institution is responsible to enter:

- Class enrollment data
- Mapping Assets, Courses & Authorized End Users to each other correctly.
- Entering commercial and usage terms associated with Assets and Authorized End User
- Authorized End User data
- Updating this information as it changes

Student/instructor identifiers must match the usernames provided by the user authentication option chosen.

Training will be provided by Kivuto to system administrators upon initial deployment. Post deployment training can also be procured from Kivuto on an as needed basis.

- Integrations

Institution is responsible to provide resources to facilitate integration of a link from the learning management system to the DRP.

- Awareness Generation

Institution shall make reasonable efforts to promote the use of the Platform/DRP to its community and is responsible for awareness generation ensuring that every syllabus contains a section that notifies the student that assets are available to the student with the link to the DRP.

User Authentication

For DRP deployments, Institution will choose a User authentication mechanism to implement authentication through at least one (1) of the following methods in consultation with KS:

- Lightweight Active Directory Access Portal (LDAP) or Active Directory (AD)
 - Shibboleth (for federated single sign on)
 - Learning Tools Interoperability (LTI)
 - Valid e-mail domain(s) provided to KS for user verification via upload by administrators
 - List of e-mail addresses, usernames, unique identifiers, or user identification numbers in a format that meets KS requirements uploaded by the Institution Administrators.
 - Other methods approved by KS
- Taxes

Institution will advise Kivuto of any applicable sales tax that need to be collected on the sale of products provided by the Institution through the Platform



**EXHIBIT B
SUPPORT AND MAINTENANCE SERVICES**

SUPPORT OVERVIEW

- 1st Level support to Institution Staff and Users
- Multilingual Support
 - English & French
- On-line Help Centre <https://kivuto.com/contact/support/>
- Incident Management

HOURS OF OPERATION & COMPANY CONTACT INFORMATION

- a. Hours of Operation of Platform: twenty-four (24) hours a day, seven (7) days a week and three hundred and sixty five (365) days a year (“**24 x 7 x 365**”).
- b. Hours of Operation for Customer Support: Mon-Fri from 6:00 a.m. Eastern Time to 6:00 p.m. Pacific Time.
- c. Contact can be made through a variety of methods including:
 - i. By filling out our [contact us form https://kivuto.com/contact/support/](https://kivuto.com/contact/support/)
 - ii. Calling Customer Support phone line at:
 1. 1-877-335-1186 FREE (toll free) OR
 2. 1-613-518-6567
 - iii. Calling Corporate Phone Number: 613-526-3005
- d. For emergency purposes, KS will maintain an escalation process as below:
 - a. Emergency E-mail Address: TAC@kivuto.com and ETAC@kivuto.com

INCIDENT MANAGEMENT

KS shall coordinate all incident isolation, testing and repair work for KS systems and services. Severity levels will be determined and communicated to Institution by KS. During the incident isolation and troubleshooting process, KS shall communicate incident resolution progress with Institution and escalate its problem resolution efforts based upon the times specified in the table below. KS shall proactively inform Institution when an issue or condition arises that may cause potential system anomalies and be a potential source for the creation of trouble tickets. KS 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 Institution, with a detailed description of impact on Users; and (d) estimated repair time.

Also, in the event of a Critical Impact incident (as defined in chart below), KS shall notify Institution 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 Users of the status of the KS service and, if possible, when the KS service are likely to be fully restored.

a. Severity Level and Incident Handling Notification Procedures

Trouble Severity Code	Description	Contact Method	Restoral Expectations	Status Update Intervals; Update Objectives	Initial Response Time
Critical Impact	"Critical Impact" means an error in the KS service provided that in any way prevents User or customer transactions from occurring.	E-mail: ETAC@kivuto.com	Three (3) hour	(Update information through to resolution)	One (1) hour

Trouble Severity Code	Description	Contact Method	Restoral Expectations	Status Update Intervals; Update Objectives	Initial Response Time
	<i>Example: Users receiving “bad http status” errors when attempting to connect to the KS Services.</i>				
<i>High Impact</i>	<p>"High Impact" means an error in the services provided that: (i) constitutes a major failure for an important service feature which causes significant inconvenience to Users, system or product malfunction due to deficiency or non-usability, or produces results materially different from those described in the Agreement but which does not rise to the level of Critical Impact.</p> <p><u>Examples:</u> Users receiving “compile error” message when attempting to read title description.</p>	E-mail: TAC@kivuto.com	One (1) business day	(communication via e-mail from KS to confirm)	Twelve (12) hours
<i>Medium/ Low / No Impact</i>	<p>"Medium Impact" or "Low Impact" mean errors in the services provided that inconvenience operational and administrative support or User experience but do not prevent the overall operation of the services provided.</p>	E-mail: TAC@kivuto.com	One (1) week	(communication via e-mail from KS to confirm)	Two (2) business days
<i>No Impact</i>	<p>"No Impact" refers generally to errors or omissions in services that are isolated in scope and represent no degradation to the overall service provided. This includes requests for modification to existing services or features, additional feature requests or general inquiries.</p>	E-mail: TAC@kivuto.com	One (1) week	(communication via e-mail from KS to confirm)	Two (2) business days



EXHIBIT C SERVICE LEVEL AGREEMENT

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

1 SERVICE COMMITMENT

- 1.1 KS will use commercially reasonable efforts to insure the client 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 KS 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 – “**Urgent or Emergency Maintenance**” means performing maintenance on the software or hardware components providing a KS Service to repair errors that are immediately affecting Customer’s use of the service. During Urgent or Emergency Maintenance, some of the KS Services may be unavailable. KS may undertake Urgent or Emergency Maintenance at any time necessary and will make all best efforts to contact and coordinate the timing with the Customer, and shall provide notice to Customer as far in advance as is commercially practicable under the circumstances.
 - 1.2.2 The Service Commitment does not apply, nor shall any unavailability be treated as downtime that (i) is caused by factors outside of our reasonable control or contracted services, (ii) result from any actions or inactions of you or any third party, administrative users, employees, contractors or agents using our back end systems; (iii) result 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 our direct control); (iv) are a result of errors introduced by invalid metadata, or source files that do not meet the current published specifications; (v) arising from our suspension and termination of your right to use a KS Service; or (vi) is caused by a breach of the Agreement by you.

2 SERVICE MEASUREMENT

- 2.1 Monitoring - KS will provide twenty-four (24) hour a day seven (7) day a week 365 days a year internal and external monitoring of the services to ensure this service level and support is maintained. In the event of an issue, these internal and external monitoring systems will automatically email and page the project managers and technical resources when any system errors are identified.
- 2.2 Issues relating to any downtime or downtime period can be addressed by contacting the KS help desk, available for all customer support requests on a twenty-four (24) hour a day seven (7) day a week 365 days a year basis. A case will be opened upon receipt of request or identification of issue, the relevant project and IT contacts will be notified, and they will contact Customer to provide the status of the issue.

3 REMEDIES

In the event of a failure to meet the Monthly Uptime Percentage KS 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 KS fails to meet the Monthly Uptime Percentage for two (2) consecutive months, KS 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 KS 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.



EXHIBIT D INFORMATION SECURITY AND DATA PROCESSING POLICY

1. INFORMATION SECURITY

Senior management at Kivuto understands the information security needs and expectations of its interested parties both within the organization and from external parties including, amongst others, clients, suppliers, regulatory and governmental departments. Ks has recognized that the disciplines of confidentiality, integrity and availability of information in information security management are integral parts of its management function and view these as their primary responsibility and fundamental to best business practice.

To this end, Kivuto has produced this information security policy aligned to the requirements of ISO/IEC 27001:2013 to ensure that KS:

- Complies with all applicable laws and regulations, and contractual obligations
- Implements information security objectives that take into account information security requirements following the results of applicable risk assessments
- Communicates these objectives and performance against them to all interested parties
- Adopts an information security management system comprising a security manual and procedures which provide direction and guidance on information security matters relating to employees, customers, suppliers and other interested parties who come into contact with its work
- Works closely with customers, business partners and suppliers in seeking to establish appropriate information security standards
- Adopts a forward-thinking approach to future business decisions, including the continual review of risk evaluation criteria which may impact information security
- Instructs all members of staff about the needs and responsibilities of information security management, and their role in ensuring they comply with security policies
- Constantly strives to meet and where possible exceed its customer's expectations
- Implements continual improvement initiatives, including risk assessment and risk treatment strategies, while making best use of its management resources to better meet information security requirements

Responsibility for upholding this policy is truly company-wide under the authority of the Kivuto's president who encourages the personal commitment of all staff to address information security as part of their skills.

2. DATA PROCESSING

2.1 Scope

This policy sets out the basis on which we will process any Personal Data we collect directly from Customer, or that is provided to us by Customer as part of Kivuto's provision of services. Kivuto and any person or organisation that Processes Personal Data on our behalf and on our instructions are obliged to comply with this policy when Processing Personal Data on our behalf.

2.2 Definitions

"Applicable Data Protection Law" means the General Data Protection Regulation 2016/679 ("GDPR") and/or any other data privacy or data protection law or regulation in Canada and the United States that applies to the Processing of Personal Data under the Agreement.

"Data Subject", "Process/Processing", "Personal Data", "Supervisory Authorities", "Controller", "Processor" and other capitalized terms used and not defined herein have the meaning set forth in the GDPR.

2.3 Principles

Anyone Processing Personal Data must comply with principles of good practice. These provide that Personal Data must be:

- (a) Processed fairly, lawfully and in a transparent manner in relation to individuals.
- (b) Collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes.
- (c) Adequate, relevant and limited to what is necessary in relation to the purpose for which they are processed.
- (d) Accurate and where necessary, kept up to date. Where Personal Data is inaccurate with regards to the purpose for which it is processed, every reasonable step must be taken to either erase or rectified it without delay.
- (e) Not kept longer than necessary for the purpose for which the Personal Data is processed.
- (f) Processed in line with Data Subjects' rights.
- (g) Processed in a manner that ensures appropriate security of the Data Subject, including protection against unauthorised Processing and accidental loss, destruction or damage.
- (h) Not transferred to people or organisations situated in countries without adequate protection without putting in place appropriate safeguards.

2.4 Processing

Customer is the sole Controller of Personal Data provided to Kivuto under the Agreement and shall be responsible for compliance with all the obligations as a Controller under Applicable Data Protection Law, in particular for justification of any transmission of Personal Data to Kivuto, including but not limited to obtaining any required consents and/or authorizations.

Kivuto is the Processor with regard to the Personal Data provided by Customer to KS under the Agreement and shall be responsible for compliance with its obligations under this policy and for compliance with its obligations as a Processor under Applicable Data Protection Law.

Kivuto and any persons acting under the authority of KS will Process Personal Data solely for the purpose of (i) providing the services in accordance with the Agreement and this policy, (ii) complying with Customer's written instructions, and/or (iii) complying with KS's regulatory obligations.

In order to perform the services under the Agreement Kivuto collects and processes a range of information about the Institution and User that may include personal information such as name, home address, home telephone or mobile number, email address, passwords and billing information.

2.5 Personal Data Transfers

Personal Data held in KS's Platform will be hosted in Canada or in any data center region specified in the Agreement. Kivuto will not migrate the Platform environment to a different data center region without Customer's prior written authorization.

Without prejudice to the above, KS may access and Process Personal Data on a global basis as necessary to perform Kivuto Cloud and Support Services, including for IT security purposes, maintenance and performance of the Platform and related infrastructure and technical support.

To the extent such global Processing involves a transfer of Personal Data to countries that are not considered to provide an adequate level of data protection as established by GDPR, Kivuto will implement appropriate measures to secure the data transfers in accordance with Applicable Data Protection Laws. Such measures may include use of the EU Model Clauses or the Privacy Shield Framework.

For Kivuto Cloud services, Institution hereby authorizes KS to transfer User data from the Platform to the Publisher Cloud Portal in order for that User to obtain access to the portal services. KS will be responsible only for secure transfer of that data to the Publisher Cloud Portal; however once the data is transferred to the Publisher Cloud Portal, the Asset Owner of such portal service will be responsible for proper security, processing of data and any activities related to data handling compliance, including but not limited to, location of data storage, GDPR compliance, PCI compliance, Publisher Cloud Portal hosting location, etc. KS will not be responsible for any of these activities once the data is transferred to Publisher Cloud Portal.

Under this instruction, KS will only transfer the necessary amount of data to the Publisher Cloud Portal as required to allow the User to obtain access to the Publisher Cloud Portal Services and will only transfer User Data to Publisher Cloud Portals expressly authorized by the Institution.

2.6 Technical and organizational measures

Kivuto has implemented procedures designed to ensure that Customer Personal Data is processed only as instructed by the Customer, throughout the entire chain of processing activities by Kivuto and its sub-processors. Additionally, the services provided by KS undergo security assessments which include infrastructure vulnerability assessments and application security assessments.

Kivuto takes the security of Personal Data seriously. Kivuto has internal policies and controls in place to try to ensure that Personal Data is not lost, accidentally destroyed, misused or disclosed, and is not accessed except by its employees in the performance of their duties.

Where Kivuto engages third parties to process Personal Data on its behalf, they do so on the basis of written instructions, are under a duty of confidentiality and are obliged to implement appropriate technical and organizational measures to ensure the security of data. KS remains responsible at all times for the performance of KS third party sub-processors' obligations in compliance with the terms of this policy and Applicable Data Protection Law.

Kivuto adopts a number of security controls, which include:

- Unique user identifiers to allow Institution to assign unique credentials for their users and assign and manage associated permissions and entitlements;
- Controls to ensure initial passwords must be reset on first use;
- Controls to limit password re-use;
- Password length and complexity requirements;
- Single Sign-On technologies to directly control the authentication and credential complexity, expiration, account lockout, IP white/black listing etc.;
- User access log entries will be maintained, containing date, time, User ID, URL executed or identity ID operated on, operation performed (accessed, created, edited, deleted, etc.);
- If there is suspicion of inappropriate access to the Platform, KS can provide Institution log entry records to assist in forensic analysis. This service will be provided to Customers on a time and materials basis;
- User access logs will be stored in a secure centralized host to prevent tampering;
- Kivuto will follow current security best practices involving cryptography and compliance requirements, and adjust current use of cyphers and protocols accordingly.

2.7 Subject Access Requests

Under GDPR, Data Subjects have a number of rights to access, rectify, erase, and restrict processing of Personal Data. These rights include the right to: access and obtain a copy of Personal Data on request; require KS to change incorrect or incomplete data and require KS to delete or stop processing Personal Data.

KS will reasonably and promptly assist Customer in responding Data Subject requests in relation to Personal Data held in KS's Platform in accordance with GDPR and other relevant data handling regulations. If KS directly receives any requests from Data Subjects that have identified Institution as the Data Controller, KS will promptly pass on such requests to Institution without responding to the Data Subject. If the Data Subject does not identify Institution as the Data Controller, KS will instruct the Data Subject to contact the relevant Data Controller.

2.8 Reporting Breaches

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, KS will promptly investigate and report the breach to the Institution 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.

2.9 Return and Deletion of Personal Data upon Termination of Agreement

Unless otherwise required by Applicable Data Protection Law, for audit purposes, KS will retain copies of Personal Data for a minimum of 7 years, unless directed to remove as per GDPR rules.