

Court File No. CV-23-00693569-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

and

KIVUTO SOLUTIONS INC.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND  
INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE  
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

**APPLICATION RECORD**

January 27, 2023

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B E T W E E N:

(Court Seal)

THE TORONTO-DOMINION BANK

Applicant

and

KIVUTO SOLUTIONS INC.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND  
INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE  
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

**NOTICE OF APPLICATION**

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim  
made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing before a judge presiding over the  
Commercial List:

- In writing
- In person
- By telephone conference
- By video conference

on Tuesday, February 7, 2023, at 10:30 am, or as soon after that time as the application  
can be heard, at the following location:

The Trial Coordinator reports that it will, several days in advance of the hearing of this motion,  
determine Video Conference Coordinates and post same to the CaseLines file associated with  
this matter.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the  
application or to be served with any documents in the application, you or an Ontario lawyer

acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date January 26, 2023

Issued by \_\_\_\_\_  
Local Registrar

Address of court office: Superior Court of Justice  
330 University Avenue, 9th Floor  
Toronto ON M5G 1R7

TO: **KIVUTO SOLUTIONS INC.**

495 Richmond Road  
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Ottawa ON K2A 4B2

**Mark McKenzie**, Chief Executive Officer  
mmckenzie@kivuto.com

Respondent Debtor

AND TO: **FASKEN MARTINEAU DUMOULIN LLP**

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AND TO: **BDO CANADA LIMITED**

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**Matthew Marchand**

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Proposed Receiver



AND TO: **CHAITONS LLP**  
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Lawyers for BDC Capital Inc.

AND TO: **BDC CAPITAL INC.**  
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**Roger Wilson**  
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Tel: 416.973.0035

Creditor

AND TO: **LEGADO CAPITAL PARTNERS LP, BY ITS GENERAL PARTNER,  
LEGADO CAPITAL PARTNERS GP INC.**  
199 Bay Street  
Commerce Court West, Suite 5300  
Toronto ON M5L 1B9

**Mark McKenzie**  
mmckenzie@kivuto.com

AND TO: **DEPARTMENT OF JUSTICE**  
**Ontario Regional Office**  
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**Diane Winters**  
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AND TO: **MINISTER OF FINANCE**  
**Insolvency Unit**  
33 King Street West, 6<sup>th</sup> Floor  
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**Insolvency Unit**  
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AND TO: **BLAKE, CASSELS & GRAYDON LLP**  
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Lawyers for the Proposed Purchaser,  
Valsoft Corporation Inc. and Aspire Ontario Inc.

## APPLICATION

### THE APPLICANT MAKES APPLICATION FOR:

1. An order, if necessary, abridging the time for service and filing of this notice of application and the application record, and dispensing with further service thereof.
2. An order appointing BDO Canada Limited ("**BDO**") as receiver (in such capacity, the "**Receiver**") of all the assets, undertakings and property of Kivuto Solutions Inc. ("**Kivuto**", or the "**Debtor**"), substantially in the form attached hereto as Appendix "A" (the "**Appointment Order**").
3. If the proposed Appointment Order is granted, a separate order, substantially in the form attached hereto as Appendix "B" (the "**Approval and Vesting Order**"):
  - (a) approving a sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between Kivuto and Valsoft Corporation Inc. and Aspire Ontario Inc. (collectively, the "**Buyers**" or the "**Purchasers**") and authorizing and directing the Receiver to complete the Transaction;
  - (b) upon execution and delivery of a certificate by the Receiver containing confirmation of the closing of the Transaction, vesting in the Purchasers all rights, title and interest in the Purchased Assets (as defined in the Purchase Agreement);  
and

- (c) sealing the confidential supplementary report (and the confidential appendices thereto) (the "**Confidential Report**") to the pre-filing report of the Receiver (the "**Report**"), both to be filed, for the specified period of time contained in the Approval and Vesting Order or until further order of the Court; and
4. An order for the payment of the costs of this proceeding, plus all applicable taxes.
5. Such further and other Relief as to this Honourable Court may seem just.

**THE GROUNDS FOR THE APPLICATION ARE:**

6. Kivuto is a federal corporation and has as its registered head office and principal place of business 495 Richmond Road, Suite 100, Ottawa. Kivuto is wholly owned by Legado Capital Partners LP ("**Legado LP**"). The general partner of Legado LP is Legado Capital Partners GP Inc ("**Legado GP**"). Kivuto was amalgamated on March 1, 2018 by way of amalgamation of three prior corporations, 10633011 Canada Inc., 10600598 Canada Inc. and Kivuto Solutions Inc. The directorship of Kivuto is located in various locations across North America, including in Toronto. The registered head offices of Legado LP and Legado GP are in Toronto.

7. Kivuto is in the business of providing software management and distribution services with a customer base focus on academic institutions.

8. The applicant, The Toronto-Dominion Bank ("**TD**"), is a secured lender to Kivuto, owed approximately USD\$15,000,000.00. While TD is not the only creditor with an interest in these proceedings, it is in all material respects the creditor in first position. The only other secured creditor of Kivuto appears to be BDC Capital Inc. ("**BDC Capital**").

9. Following a continuing default by Kivuto on its obligations under its credit facilities and security arrangements with TD, the applicant secured creditor demanded repayment of the debt owed to it more than six weeks prior to the issuance of this notice of application. No payment has been made by Kivuto to satisfy TD's demand for principal repayment, nor is any expected.

10. As at December 31, 2022, Kivuto's unaudited balance sheet showed total assets of approximately \$7,000,000, total liabilities of approximately \$40,000,000 and retained earnings deficit of approximately \$74,000,000. Kivuto is insolvent.

11. Kivuto does not owe to any governmental agency any meaningful amounts in source deductions or taxes, including HST. Kivuto has approximately fifty employees. Payment of all necessary wages, and related ordinary course amounts are up to date.

12. Kivuto has, with the acquiescence of the applicant secured creditor, operated at a loss while seeking a buyer over the last seven months through an extensive sale and investment solicitation process (the "**SISP**"), as detailed in the Report and Confidential Report. Kivuto has been unable to secure a buyer or any sufficient equity injection into the business outside of an insolvency engaged proceeding.

13. Kivuto has been discussing a sale with a potential purchaser of its assets and has reached an agreement. The proposed purchaser is prepared to pay an amount for the assets that is commercially reasonable in the circumstances but will still leave the applicant secured creditor with a significant shortfall. The Sale Agreement is conditional upon the appointment of BDO as Receiver and the granting of an approval and vesting order transferring and vesting the Purchased Assets (as defined in the Sale Agreement) to the Purchasers free and clear of all encumbrances. The proposed Receiver is recommending to this Court that the Sale Agreement

as noted above be accepted and approved and that the Receiver be authorized to complete the transaction contemplated within the Sale Agreement (the "**Transaction**") with the Purchasers.

14. It is just and convenient to appoint a receiver in the circumstances and BDO has consented to act as the Receiver. TD is entitled to appoint a receiver pursuant to its security and the receivership is necessary to implement the Transaction and it is in the interests of all stakeholders that the Transaction be completed as soon as possible, including the minimum 65% of employees who are to be offered employment as contemplated in the Sale Agreement. BDO is a licensed trustee, as defined in the BIA, with extensive experience in Canadian insolvency proceedings, including receiverships. BDO was previously retained by the Company to act as its financial advisor in connection with the SISP previously run in an effort to generate a sale inside or outside of an insolvency proceeding.

15. If appointed, the Receiver will be empowered, pursuant to the terms of the proposed Appointment Order, to borrow funds for the purposes of, among other things, financing the professional costs and disbursements of the receivership and the costs associated with the Transaction. TD has agreed to a charge in favour of the Receiver, if appointed, and its counsel, as security for payment of their fees and disbursements. This charge will rank ahead of TD's security interest in the assets of the Debtor or the proceeds thereof.

16. The Confidential Report of BDO and its appendices contain sensitive information about the Company, the SISP and the unredacted Sale Agreement. If this information were disclosed and the Transaction were not to close, such disclosure might impair any subsequent attempts at realization on the Company's assets.

17. Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.
18. Rules 1.04, 2.03, 3.02, 16, 17.02(a), 38 and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.
19. Such further and other grounds as the lawyers may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION:**

20. The affidavit of Andrea Jamnisek, and the exhibits thereto.
21. The Report of BDO Canada Limited, to be filed.
22. The Confidential Report of BDO Canada Limited, to be filed.
23. The consent of BDO Canada Limited to act as Receiver.
24. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

*(Date of issue)*

**FOGLER, RUBINOFF LLP**

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Lawyers for the Applicant

APPENDIX "A"

Court File No.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

THE HONOURABLE ) TUESDAY, THE 7<sup>TH</sup>  
)  
JUSTICE MCEWEN ) DAY OF FEBRUARY, 2023

B E T W E E N:

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APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND  
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COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

**ORDER**  
**(appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing BDO Canada Limited ("BDO") as receiver and manager (in such capacity, the "Receiver") without security, of all of the assets, undertakings and properties of Kivuto Solutions Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario by videoconference.



ON READING the Affidavit of Andrea Jamnisek (sworn/affirmed) \*\*Press F11 to insert (date)\*\* and the Exhibits thereto, the pre-receivership report of BDO, dated DATE (the "Report") and the confidential supplementary report of BDO, dated DATE (the "Confidential Report") and on hearing the submissions of counsel for the applicant, the Debtor, the Purchasers and the Receiver, no one appearing for \*\*Press F11 to insert (name)\*\* although duly served as appears from the Affidavit of Service of \*\*Press F11 to insert (name)\*\* (sworn/affirmed) \*\*Press F11 to insert (date)\*\* and on reading the Consent of BDO to act as the Receiver,

### **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the application is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

### **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, BDO is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

### **RECEIVER'S POWERS**

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, repudiate or disclaim any contracts or agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform, modify and/or terminate any contracts or agreements to which the Debtor is a party;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;

- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$100,000; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* shall not be required.

- (m) in particular, to complete, with such reasonable and appropriate changes as may be necessary, an agreement of purchase and sale for the assets and undertaking of the Debtor, as Vendor, and Valsoft Corporation Inc. and Aspire Ontario Inc., as purchasers, dated January 17, 2023 and as described in the Pre-Receivership Report, filed;
- (n) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (o) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (p) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

- (q) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (r) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (s) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (t) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “Persons” and each being a “Person”) shall forthwith advise the Receiver of the existence of any Property in such Person’s possession or control, shall grant

immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate

access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days' notice to such landlord and any such secured creditors.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

### **NO EXERCISE OF RIGHTS OR REMEDIES**

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

### **NO INTERFERENCE WITH THE RECEIVER**

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

### **CONTINUATION OF SERVICES**

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current



telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the “Post Receivership Accounts”) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

### **EMPLOYEES**

14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor’s behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## **PIPEDA**

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “Sale”). Each prospective Purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The Purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “Possession”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario*

*Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the “Environmental Legislation”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER’S LIABILITY**

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER’S ACCOUNTS**

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “Receiver's Charge”) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver’s Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory

or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a Judge of the Commercial List of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “Receiver’s Borrowings Charge”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or

otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

### **SERVICE AND NOTICE**

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further

orders that a Case Website shall be established in accordance with the Protocol with the following URL: <https://www.bdo.ca/en-ca/extranets/Kivuto/>.

26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **GENERAL**

27. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

29. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this

Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. THIS COURT ORDERS that the applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the applicant's security or, if not so provided by the applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

32. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

33. THIS COURT ORDERS that this Order is effective from the date it is made and is enforceable without any need for entry or filing.

**SCHEDULE “A”**

**RECEIVER CERTIFICATE**

CERTIFICATE NO. \*\*Press F11 to insert (number)\*\*

AMOUNT \$ \*\*Press F11 to insert (amount)\*\*

1. THIS IS TO CERTIFY that BDO Canada Limited, the receiver and manager (the “Receiver”) of the assets, undertakings and properties Kivuto Solutions Inc. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the “Property”) appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) dated the 7<sup>th</sup> day of February 2023 (the “Order”) made in an application having Court file number \*\*Press F11 to insert (court file number)\*\*-CL- \*\*Press F11 to insert (court file number)\*\*\*, has received as such Receiver from the holder of this certificate (the “Lender”) the principal sum of \$\*\*Press F11 to insert (amount)\*\*\*, being part of the total principal sum of \$\*\*Press F11 to insert (amount)\*\* which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \*\*Press F11 to insert (day)\*\* day of each month] after the date hereof at a notional rate per annum equal to the rate of \*\*Press F11 to insert (rate)\*\* per cent above the prime commercial lending rate of Bank of \*\*Press F11 to insert (bank)\*\* from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the



Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

1. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
2. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
3. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
4. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_, day of February, 2023.

BDO Canada Limited, solely in its capacity as  
Receiver of the Property, and not in its personal or  
corporate capacity

Per: \_\_\_\_\_

Name: \*\*Press F11 to insert (name)\*\*

Title: \*\*Press F11 to insert (title)\*\*

THE TORONTO-DOMINION BANK  
Applicant

-and-

KIVUTO SOLUTIONS INC.  
Respondent

Court File No.

**ONTARIO**  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

**FOGLER, RUBINOFF LLP**

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Lawyers for the Applicant,  
The Toronto-Dominion Bank

APPENDIX "B"

Court File No. [●]

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE ) TUESDAY, THE 7<sup>TH</sup>  
JUSTICE MCEWEN ) DAY OF FEBRUARY, 2023

B E T W E E N:

**THE TORONTO-DOMINION BANK**

Applicant

- and -

**KIVUTO SOLUTIONS INC.**

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended

**APPROVAL AND VESTING ORDER**

THIS MOTION, made by BDO Canada Limited in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets of Kivuto Solutions Inc. (the “**Debtor**”) for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Debtor, as vendor, and Valsoft Corporation Inc. and Aspire Ontario Inc., as purchasers (collectively, the “**Purchasers**”) dated January 17, 2023 and appended to the pre-receivership report of the Receiver dated [DATE] (the “**Report**”) as a confidential supplementary report of the Receiver dated [DATE]

(the “**Confidential Report**”), and vesting in the Purchasers the Debtor’s right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario by videoconference.

ON READING the Notice of Application, the Affidavit of Andrea Jamnisek, the Report and the Confidential Report and on hearing the submissions of counsel for the Receiver, the Applicant, the Purchasers, the Debtor, and such other counsel who were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME] sworn [DATE] filed:

### **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

### **CAPITALIZED TERMS**

2. THIS COURT ORDERS that capitalized terms not defined herein shall have the meanings set out in the Sale Agreement.

### **SALE APPROVAL**

3. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Debtor, which was assigned to and adopted by the Receiver, is hereby authorized and approved, with such minor amendments as the Debtor or Receiver may deem necessary. The Debtor and Receiver are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchasers.

4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchasers substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchasers, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Appointment Order of the Honourable Justice McEwen dated February 7, 2023; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule B) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

7. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchasers all human resources and payroll information in the Debtor's records pertaining to the Debtor's past and current employees, including personal information of those employees contemplated as the "Offered Employees" at section 8.1 the Sale Agreement. The Purchasers shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

8. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchasers pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or

provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

### **SEALING ORDER**

9. THIS COURT ORDERS that the Confidential Report and its confidential appendices therein and the exhibits therein, including the unredacted Sale Agreement referred to in the Report of the Receiver, shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and the sealed envelope shall not be opened until no earlier one day after successful closing as evidenced by the filing of the Receiver's Certificate as referred to above or further order of this Honourable Court.

### **AID AND RECOGNITION**

10. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

---

**Schedule A – Form of Receiver’s Certificate**

Court File No. [●]

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

B E T W E E N:

**THE TORONTO-DOMINION BANK**

Applicant

- and -

**KIVUTO SOLUTIONS INC.**

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice McEwen of the Ontario Superior Court of Justice (the “**Court**”) dated February 7, 2023, BDO Canada Limited was appointed as the receiver and manager (the “**Receiver**”) of the undertaking, property and assets of Kivuto Solutions Inc. (the “**Debtor**”).

B. Pursuant to an Order of the Court dated February 7, 2023, the Court approved the agreement of purchase and sale made as of January 17, 2023 (the “**Sale Agreement**”) between the Debtor, as vendor, and Valsoft Corporation Inc. and Aspire Ontario Inc., as purchasers (collectively, the “**Purchasers**”) and provided for the vesting in the Purchasers of the Debtor’s



right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchasers of a certificate confirming (i) the payment by the Purchasers of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section 5 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchasers; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchasers have paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section 5 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchasers; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**BDO Canada Limited, in its capacity as  
Receiver of the undertaking, property and  
assets of Kivuto Solutions Inc., and not in its  
personal or corporate capacity**

Per: \_\_\_\_\_

Name:

Title:

**Schedule B – Permitted Encumbrances, Easements and Restrictive Covenants**

**(unaffected by the Vesting Order)**

NIL

THE TORONTO-DOMINION BANK  
Applicant

-and-

KIVUTO SOLUTIONS INC.  
Respondent

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**APPROVAL AND VESTING ORDER**

**FOGLER, RUBINOFF LLP**

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The Toronto-Dominion Bank

THE TORONTO-DOMINION BANK  
Applicant

-and- KIVUTO SOLUTIONS INC.  
Respondent

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**NOTICE OF APPLICATION**

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Court File No. CV-23-00693569-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

and

KIVUTO SOLUTIONS INC.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

**AFFIDAVIT**

I, Andrea Jamnisek, of the City of Toronto, in the Province of Ontario, Director, Financial Restructuring Group of The Toronto-Dominion Bank, MAKE OATH AND SAY:

1. I am a Director of the Financial Restructuring Group of The Toronto-Dominion Bank (hereinafter, "**TD**"), the applicant creditor in this proceeding. I have been involved with this matter on behalf of TD for approximately three years. As such, I have knowledge of the matters contained in this affidavit and where I have reviewed information given to me by others, I have indicated the sources of that information and I believe the information to be true.

**KIVUTO**

2. Kivuto Solutions Inc. ("**Kivuto**", or the "**Company**") is a federal corporation, incorporated on March 1, 2018 by way of amalgamation of 3 prior corporations: Kivuto Solutions

Inc., 10633011 Canada Inc. and 10600598 Canada Inc. Kivuto is thus the successor in interest by amalgamation of 10600598 Canada Inc. and 10633011 Canada Inc. The Company's listed directors are Ram Krishna Raju, Wayne Sim, Todd Smithline, Mark McKenzie, Mark Brodtkin, John Terrence Woods and Rene Lajous. The Company's registered head office and principal place of business is at 495 Richmond Road, Suite 100, Ottawa ON, where it is a tenant. The landlord under the lease is Dov (495 Richmond) Limited. Attached hereto and marked as Exhibit "A" is a copy of the Company's corporate profile report.

3. It is my understanding that Kivuto is wholly owned by Legado Capital Partners LP ("**Legado LP**"). Legado LP is also a guarantor of the Company's obligations to TD. The general partner of Legado LP is Legado Capital Partners GP Inc. ("**Legado GP**"). A copy of Legado LP's profile report is attached hereto and marked as Exhibit "B". A copy of Legado GP's corporate profile report is attached hereto and marked as Exhibit "C".

4. Kivuto is primarily in the business of providing software management and distribution services with a customer base focus on academic institutions. Kivuto's platform permits such institutions to manage licenses for students, faculty and staff to securely access software, eBooks and other digital resources.

5. Kivuto's primary assets are its software, intellectual property, customer base, goodwill, and other intangible assets. Kivuto's secondary assets include its equipment, furniture, cash and other tangible assets.

6. I have reviewed the internal financial statement of Kivuto for the period ending December 31, 2022. Against the above-described assets, Kivuto has recorded approximately \$40,275,000 in liabilities.

7. It is my understanding that Kivuto currently has approximately fifty (50) employees. Kivuto's staff are not unionized. To date, all wages and vacation that are payable in the ordinary course have been paid as well as all source deductions remitted. Kivuto reports GST payable of approximately \$2,200. Kivuto does sponsor a group registered retirement plan for the benefit of eligible employees and reports an outstanding liability of approximately \$1,800. It is yet to be confirmed if this is a prescribed pension plan, however, TD is in any case aware of the potential priorities in law in that regard.

### **THE LOANS AND SECURITY**

8. By way of a credit agreement dated March 1, 2018 and as amended in subsequent agreements dated June 30, 2018 (first amendment), January 31, 2019 (second amendment), November 5, 2019 (third amendment), August 18, 2020 (fourth amendment), December 24, 2021 (fifth amendment), January 31, 2022 (sixth amendment) and November 23, 2022 (seventh amendment), TD agreed to make available to Kivuto several credit facilities (the "**Loans**"). Attached hereto and marked as Exhibits "D", "E", "F", "G", "H", "I", "J" and "K", respectively, are copies of the credit agreement, the first amendment, the second amendment, the third amendment, the fourth amendment, the fifth amendment, the sixth amendment and the seventh amendment, as offered by TD and accepted by Kivuto, together comprising the Loans.

9. The Loans were comprised of three (3) distinct facilities:

- (a) an uncommitted demand operating loan facility to finance the day-to-day working capital requirements of Kivuto arising in the ordinary course of its operation as well as for other general business purposes, limited to no more than CAD\$2,000,000 (the "**Operating Facility**");

- (b) a committed, non-revolving credit facility in the maximum amount of CAD\$24,000,000, for the original acquisition of shares at the time of amalgamation (the "**Term Facility**"); and
- (c) a VISA card facility, limited to CAD\$100,000, to provide senior management with business VISA cards (the "**VISA Facility**").

10. In exchange for the Loans and in accordance with the credit facilities extended to Kivuto, TD was granted various security obligations by Kivuto and Legado LP, including:

- (a) a general security agreement dated March 1, 2018, creating security interest in all present and after acquired property of Kivuto, a copy of which is attached hereto and marked as Exhibit "L";
- (b) a general security agreement dated March 1, 2018, creating a security interest in all present and after acquired property of 10600598 Canada Inc., a copy of which is attached hereto and marked as Exhibit "M";
- (c) an assignment of all insurance dated March 1, 2018, a copy of which is attached hereto and marked as Exhibit "N";
- (d) a collateral assignment of acquisition agreement dated March 1, 2018, a copy of which is attached hereto and marked as Exhibit "O";
- (e) an acknowledgment and confirmation agreement dated March 1, 2018, a copy of which is attached hereto and marked as Exhibit "P";



- (f) a priorities and standstill agreement as between TD, BDC Capital Inc. ("**BDC Capital**") and 10600598 Canada Inc., dated March 1, 2018, as amended August 17, 2020, a copy of which is attached hereto and marked as Exhibit "Q";
- (g) a guarantee from Kivuto dated March 1, 2018, a copy of which is attached hereto and marked as Exhibit "R";
- (h) a limited recourse guarantee from Legado LP dated March 1, 2018, a copy of which is attached hereto and marked as Exhibit "S"; and
- (i) a securities pledge agreement from Legado LP with respect to the shares of Kivuto, dated March 1, 2018, a copy of which is attached hereto and marked as Exhibit "T".

11. TD registered its security interest in Kivuto's property under the Personal Property Security Register, pursuant to the provisions of the *Personal Property Security Act*. Attached hereto and marked as Exhibit "U" is a copy of PPSA search results for Kivuto (as well as those of 10600598 Canada Inc. and 10633011 Canada Inc., the other pre-amalgamation entities), with currency dates of January 18, 2023.

12. Pursuant to the credit facilities, the Loans were advanced or made available to Kivuto as follows:

- (a) on account of the Term Facility, USD\$18,723,669.84 (the equivalent of CAD\$24,000,000) was advanced on March 1, 2018 (the "Term Facility");
- (b) the Operating Facility was made available as of March 1, 2018 and was closed as of July 29, 2022; and

(c) the VISA facility was made available as of March 1, 2018 (the "VISA Facility").

13. As of January 25, 2023, the principal owing under the Term Facility was USD\$14,367,421.36 with accrued and unpaid interest in the amount of USD\$391,069.41, with a per diem of USD\$4,231.50.

14. As of January 25, 2023, the VISA Facility has been closed. There are no known amounts owing under the facility. However, it is not known at the time of swearing this affidavit if any recent charges may have been applied. TD will monitor the facility in that regard.

#### **DEFAULT BY KIVUTO**

15. As discussed above, the Loans were originally extended to Kivuto in March, 2018. Unfortunately, shortly thereafter, Kivuto was notified by a significant customer of its intention to terminate a legacy product program supplying a specific product to students through Kivuto's platform. The loss of this legacy program resulted in significantly lower revenues in 2019 and beyond that were not offset by growth in revenue from new products. Significant losses and asset impairment followed. Notwithstanding internal rounds of equity financing from shareholders in late 2020 in the amount of approximately \$7,600,000, Kivuto's position did not fundamentally improve. As a result of, amongst other things, its lack of compliance with its financial covenants, TD delivered to the Company notices of continuing default dated April 8, 2022, April 27, 2022, June 6, 2022, July 4, 2022, July 27, 2022, September 2, 2022, September 21, 2022 and October 25, 2022, copies of which are attached hereto and marked as Exhibit "V".

16. In or around June 2022, Kivuto began, with the full knowledge and assent of TD and BDC Capital, to make arrangements to conduct a sale and investment solicitation process (the "SISP"),

with the assistance of Origin Merchant Partners as its sales agent and with BDO Canada Limited ("**BDO**") as its financial advisor.

17. As set out in detail in the Pre-Receivership Report, the SISP as crafted and run was robust. Notwithstanding the thorough canvassing of the market and the receipt of certain initial bids, the SISP was unable to produce a firm agreement to purchase the business and the proposed Transaction (defined below) was only arrived at as the result of a secondary and expeditious canvassing of the market for buyers in late 2022.

#### **DEMAND BY TD**

18. In light of the totality of Kivuto's defaults and its lasting apparent inability to cure such defaults, TD determined to demand repayment of the outstanding Loans on December 12, 2022. Attached hereto and marked as Exhibit "W" is a copy of the demand letter and notice of intention to enforce security pursuant to section 244 of the *Bankruptcy and Insolvency Act*.

Since delivery of the demand and notice under section 244 of the *Bankruptcy and Insolvency Act*, Kivuto has failed to repay the debt obligations owing under the Loans as demanded and there is no prospect that Kivuto could repay its total debt to TD at any time in the foreseeable future.

#### **CREDITORS OF KIVUTO**

##### Secured Creditors

*BDC Capital Inc.*

19. TD is not the only secured creditor of Kivuto. Concurrently with arranging the Loans and security arrangements with TD described above, Kivuto and its predecessor entities also arranged

subordinated secured financing from BDC Capital – a wholly-owned subsidiary of Business Development Bank of Canada, a Crown corporation and development bank wholly owned by the Government of Canada. In accordance with the terms of the priorities and standstill agreement entered into by TD, BDC Capital and 10600598 Canada Inc. (as predecessor to Kivuto), BDC Capital agreed to postpone and subordinate its security in all respects to any and all security held by TD in respect of the Loans. Also, in accordance with the terms of the priorities and standstill agreement, on or about November 18, 2022, TD delivered to BDC Capital a Blockage Notice setting out the particulars of an event of default under the loan agreement, a copy of which is attached hereto and marked as Exhibit "X". According to the Company's unaudited trial balance sheet for December 31, 2022, which I have reviewed, Kivuto's principal debt owing to BDC Capital is \$11,000,000 and Kivuto also owes accrued interest on such debt in the amount of \$5,822,399.16.

#### Unsecured Creditors

##### *Trade Creditors and Customers*

20. Kivuto advises that it has unsecured trade payables and accrued liabilities owing of approximately \$1,280,000 as well as deferred revenues of \$1,480,000 as at December 31, 2022. The proposed Transaction (defined below), however, contemplates the assumption by the purchasers of certain Assumed Liabilities, which includes substantially all of the unsecured trade payables and accrued liabilities as set out in the Sale Agreement, on the date of closing.

*RRRF*

21. The Company advises that it entered into a regional relief and recovery fund contribution agreement ("**RRRF**") with the Federal Economic Development Agency for Southern Ontario and as at December 31, 2022, there is a reported balance owing of approximately \$340,000, however, the Company received \$500,000 from the RRRF and no repayments have been made. The proposed Transaction (defined below) does not contemplate the assumption of this liability by the purchasers.

*Foreign Sales Tax*

22. The Company reports sales tax payable of approximately \$39,800 owing to the State of New York, the European Union, Australia and Singapore. These are not liabilities that are proposed to be assumed by the purchasers.

23. It has also come to the attention of TD that there may be certain contingent liabilities for uncollected sales taxes in several states of the United States, which might depend upon the results of "economic nexus" or "economic presence" tests pursuant to U.S. tax law. Depending on the results of such tests, the Company estimates the total potential sales tax liability in this regard across the various states to be approximately USD\$1,700,000. TD is not aware of any assessments from U.S. taxing authorities crystallizing any such contingent liabilities and in any event is not aware of any basis upon which such contingent liabilities would, upon crystallization, rank ahead of secured creditors.

## RECEIVERSHIP

24. TD has a clear priority security interest over the assets of Kivuto. TD's security position is significantly deteriorated and there is no prospect for rebound. As discussed above, Kivuto has recognized its problematic financial plight for some time and has been extensively engaged in attempting to sell itself or otherwise attract capital investment for many months. Most recently, Kivuto has engaged in discussion with Valsoft Corporation Inc. and Aspire Ontario Inc. (collectively, "**Valsoft**") and Valsoft has agreed to purchase substantially all of Kivuto's assets out of receivership. Negotiations have been ongoing between the parties with TD's knowledge and general acceptance.

25. Following its demand in December 2022, TD chose not to move to immediately enforce its security but instead monitor the discussions between Kivuto and ValSoft and wait to determine the outcome of those negotiations. As discussed above, BDO was engaged in the prior efforts of Kivuto to sell itself or otherwise attract new capital investment and also the more recent discussions between Kivuto and Valsoft.

26. Now, as a result of the discussions between Kivuto and Valsoft, an agreement of purchase and sale has been entered into by the parties as of January 17, 2023, conditional upon the transaction proceeding by way of the appointment of a receiver and in conjunction with the provisions of a vesting order (the "**Sale Agreement**"). The full details of the Sale Agreement are contained in the confidential portion of the Pre-Receivership Report of BDO, as filed.

27. The details of the Sale Agreement are known to me. In the view of TD, the transaction contemplated therein (the "**Transaction**") is the best that can be expected in the circumstances and should be completed as soon as possible. I am aware of no facts to suggest that any further

marketing process by a receiver (or anyone) can reasonably be expected to result in any better realization on the assets. On the contrary, I believe that due to its ongoing operational losses Kivuto's position can only be expected to worsen with time and the attractiveness of any sale of Kivuto's assets to any subsequent buyer, out of receivership or otherwise, will only diminish. Moreover, I understand that the Transaction will involve the assumption of certain liabilities by the proposed purchasers, including offers of continuing employment to at least 65% of Kivuto employees on substantially the same terms and conditions as they are currently employed.

28. TD recognizes that under the Transaction it will suffer a significant shortfall on its debt but the financial situation of Kivuto is unfortunately poor and worsening.

29. The Sale Agreement is conditional on the Transaction proceeding by way of receivership and with an appropriate vesting order. BDO is a Licensed Insolvency Trustee and is qualified to act under section 243(4) of the *Bankruptcy and Insolvency Act*. BDO has consented to act as receiver. Kivuto supports the receivership.

30. TD has agreed to a charge in favour of the receiver, if appointed, and its counsel, as security for payment of their respective fees and disbursements, in each case at their standard rate and charges, which shall form a first charge in priority to the claims of TD as secured creditor. If appointed, the Receiver will also be empowered to borrow funds to finance the costs of the receivership and the costs associated with the Transaction.

31. This affidavit is made in support of an order appointing BDO as receiver of the assets and undertaking of Kivuto, approving of the asset purchase agreement and authorizing completion of the contemplated sale to Valsoft.

**SWORN by** Andrea Jamnisek, of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on January 27, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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Commissioner for Taking Affidavits  
*(or as may be)*

**ROBERT TIMOTHY DUNCAN**

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**ANDREA JAMNISEK**



This is Exhibit "A" referred to in the Affidavit of Andrea Jamnisek sworn January 27, 2023.

A handwritten signature in black ink, consisting of a stylized 'L' followed by a 'J' and a long horizontal line extending to the right.

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*Commissioner for Taking Affidavits (or as may be)*



[Canada.ca](#) → [Innovation, Science and Economic Development Canada](#) → [Corporations Canada](#)

→ [Search for a Federal Corporation](#)

## Federal Corporation Information - 1065951-7

**⚠** Beware of scams and other suspicious activities. See [Corporations Canada's alerts](#).

### **i** Note

This information is available to the public in accordance with legislation (see [Public disclosure of corporate information](#)).

[Order copies of corporate documents](#)

### **Corporation Number**

1065951-7

### **Business Number (BN)**

891756769RC0004

### **Corporate Name**

KIVUTO SOLUTIONS INC.

### **Status**

Active

### **Governing Legislation**

*Canada Business Corporations Act - 2018-03-01*

[Order a Corporate Profile](#) [[View PDF Sample](#)] [[View HTML Sample](#)].

## Registered Office Address

495 Richmond Rd  
Suite 100

Ottawa ON K2A 4B2  
Canada

54

**i Note**

Active CBCA corporations are required to update this information within 15 days of any change. A corporation key is required. If you are not authorized to update this information, you can either contact the corporation or contact Corporations Canada. We will inform the corporation of its reporting obligations.

**Directors****Minimum** 1**Maximum** 10

Ram Krishna Raju  
345 Third Avenue  
Ottawa ON K1S 2K4  
Canada

Wayne Sim  
99 Spruce Place  
Calgary AB T3C 3X7  
Canada

Todd Smithline  
495 Richmond Road  
Suite 100  
Ottawa ON K2A 4B1  
Canada

Mark McKenzie  
126 York Street  
Suite 200  
Ottawa ON K1N 5T5  
Canada

Mark Brodtkin  
40 King Street West  
13th Floor  
Toronto ON M5H 1H1  
Canada

John Terrence Woods  
6853 Ravine Circle  
Worthington OH 43085  
United States

55

Rene Lajous  
300 Crescent Court  
Suite 1175  
Dallas TX 75201  
United States

### **i Note**

Active CBCA corporations are required to update director information (names, addresses, etc.) within 15 days of any change. A corporation key is required. If you are not authorized to update this information, you can either contact the corporation or contact Corporations Canada. We will inform the corporation of its reporting obligations.

## Annual Filings

### **Anniversary Date (MM-DD)**

03-01

### **Date of Last Annual Meeting**

2019-09-24

### **Annual Filing Period (MM-DD)**

03-01 to 04-30

### **Type of Corporation**

Non-distributing corporation with 50 or fewer shareholders

### **Status of Annual Filings**

2023 - Not due

2022 - Filed

2021 - Filed

# Corporate History

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## Corporate Name History

2018-03-01 to Present

KIVUTO SOLUTIONS INC.

## Certificates and Filings

### Certificate of Amalgamation

2018-03-01

Corporations amalgamated:

- 10633011 10633011 CANADA INC.
- 10600598 10600598 Canada Inc.
- 8389063 KIVUTO SOLUTIONS INC.

[Order copies of corporate documents](#)[Start New Search](#)[Return to Search Results](#)

### Date Modified:

2022-11-22



Ministry of Public and  
Business Service Delivery

## Profile Report

KIVUTO SOLUTIONS INC. as of January 18, 2023

Act	Corporations Information Act
Type	Extra-Provincial Federal Corporation with Share
Name	KIVUTO SOLUTIONS INC.
Ontario Corporation Number (OCN)	1991646
Governing Jurisdiction	Canada - Federal
Incorporation/Amalgamation Date	March 01, 2018
Registered or Head Office Address	126 York Street, 200, Ottawa, Ontario, Canada, K1N 5T5
Status	Refer to Governing Jurisdiction
Date Commenced in Ontario	March 01, 2018
Principal Place of Business	126 York Street, 200, Ottawa, Ontario, Canada, K1N 5T5

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

**Chief Officer or Manager**

There are no chief officer or managers on file for this corporation.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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Corporate Name History  
Refer to Governing Jurisdiction

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*V. Quintanilla W.*

Director/Registrar

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Amalgamating Corporations  
Corporation Name  
Ontario Corporation Number

KIVUTO SOLUTIONS INC.  
1895006

Corporation Name  
Ontario Corporation Number

10600598 CANADA INC.  
3170709

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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**Active Business Names**

This corporation does not have any active business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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**Expired or Cancelled Business Names**

This corporation does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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Document List

Filing Name	Effective Date
CIA - Initial Return PAF: CARLOS JOSE MEZA-RIOS - DIRECTOR	March 21, 2018

All "PAF" (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is not shown against a document, the information has not been recorded in the Ontario Business Registry.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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This is Exhibit "B" referred to in the Affidavit of Andrea Jamnisek sworn January 27, 2023.

A handwritten signature in black ink, consisting of a stylized 'L' followed by a 'J' and a long horizontal line extending to the right.

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*Commissioner for Taking Affidavits (or as may be)*



# Profile Report

LEGADO CAPITAL PARTNERS LP as of January 18, 2023

Act	Limited Partnerships Act
Type	Ontario Limited Partnership
Firm Name	LEGADO CAPITAL PARTNERS LP
Business Identification Number (BIN)	280076167
Declaration Status	Active
Declaration Date	January 19, 2018
Expiry Date	January 17, 2028
Principal Place of Business	199 Bay St Commerce Court West, 5300, Toronto, Ontario, Canada, M5L 1B9
Activity (NAICS Code)	[Not Provided] - [Not Provided]

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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**General Partners**

**Number of General Partners** 1

**Partners**

**Partner 1**

<b>Name</b>	LEGADO CAPITAL PARTNERS GP INC.
<b>Ontario Corporation Number (OCN)</b>	2616332
<b>Entity Type</b>	Ontario Business Corporation
<b>Registered or Head Office Address</b>	199 Bay Street, 5300, Toronto, Ontario, Canada, M5L 1B9

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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**Firm Name History**

<b>Name</b>	LEGADO CAPITAL PARTNERS LP
<b>Effective Date</b>	February 16, 2018

<b>Previous Name</b>	LEGADO CAPITAL LP
<b>Effective Date</b>	January 19, 2018

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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**Active Business Names**

This entity does not have any active business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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**Expired or Cancelled Business Names**

This entity does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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Document List

Filing Name	Effective Date
LPA - File a Declaration of an Ontario Limited Partnership	February 16, 2018
LPA - File a Declaration of an Ontario Limited Partnership	January 19, 2018

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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This is Exhibit "C" referred to in the Affidavit of Andrea Jamnisek sworn January 27, 2023.

A handwritten signature in black ink, consisting of a stylized 'L' followed by a 'J' and a long horizontal line extending to the right.

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*Commissioner for Taking Affidavits (or as may be)*



## Profile Report

LEGADO CAPITAL PARTNERS GP INC. as of January 18, 2023

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	LEGADO CAPITAL PARTNERS GP INC.
Ontario Corporation Number (OCN)	2616332
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	January 19, 2018
Registered or Head Office Address	199 Bay Street, Commerce Court West 5300, Toronto, Ontario, Canada, M5L 1B9

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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Active Director(s)  
Minimum Number of Directors 1  
Maximum Number of Directors 10

Name MARK BRODKIN  
Address for Service 40 King Street West, 13th Floor, Toronto, Ontario, Canada,  
M5H 1H1  
Resident Canadian Yes  
Date Began October 02, 2018

Name RENE LAJOUS  
Address for Service 300 Crescent Court, 1175, Dallas, Texas, United States,  
75201  
Resident Canadian No  
Date Began March 01, 2018

Name CARLOS JOSE MEZA-RIOS  
Address for Service 359 Cougar Ridge Drive S.W., Calgary, Alberta, Canada, T3H  
4Z7  
Resident Canadian Yes  
Date Began January 19, 2018

Name RAM KRISHNA RAJU  
Address for Service 345 Third Avenue, Ottawa, Ontario, Canada, K1S 2K4  
Resident Canadian Yes  
Date Began March 01, 2018

Name WAYNE SIM  
Address for Service 99 Spruce Place, Calgary, Alberta, Canada, T3C 3X7  
Resident Canadian Yes  
Date Began March 01, 2018

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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Name MARTIN STEBER  
Address for Service 745 Boylston Street, 407, Boston, Massachusetts, United States, 07116  
Resident Canadian No  
Date Began March 01, 2018

Name JOHN TERRENCE WOODS  
Address for Service 6853 Ravine Circle, Worthington, Ohio, United States, 43085  
Resident Canadian No  
Date Began May 15, 2019

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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**Active Officer(s)**

**Name** JEFFERY DAVID BLACKLOCK  
**Position** Vice-President  
**Address for Service** 2 Citadel Estates Heights N.W., Calgary, Alberta, Canada,  
T3G 5E4  
**Date Began** January 19, 2018

**Name** CARLOS JOSE MEZA-RIOS  
**Position** Vice-President  
**Address for Service** 359 Cougar Ridge Drive S.W., Calgary, Alberta, Canada, T3H  
4Z7  
**Date Began** January 19, 2018

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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**Corporate Name History**

**Name** LEGADO CAPITAL PARTNERS GP INC.  
**Effective Date** February 16, 2018

**Previous Name** LEGADO CAPITAL GP INC.  
**Effective Date** January 19, 2018

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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**Active Business Names**

This corporation does not have any active business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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**Expired or Cancelled Business Names**

This corporation does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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Document List

Filing Name	Effective Date
Annual Return - 2019 PAF: CARLOS JOSE MEZA-RIOS - DIRECTOR	July 05, 2020
Annual Return - 2018 PAF: CARLOS JOSE MEZA-RIOS - DIRECTOR	November 17, 2019
CIA - Notice of Change PAF: JENNIFER WATT - OTHER	August 14, 2019
Annual Return - 2018 PAF: JENNIFER WATT - OTHER	April 24, 2019
CIA - Notice of Change PAF: JENNIFER WATT - OTHER	October 03, 2018
CIA - Notice of Change PAF: JENNIFER WATT - OTHER	July 26, 2018
BCA - Articles of Amendment	February 16, 2018
CIA - Initial Return PAF: JENNIFER WATT - OTHER	January 19, 2018
BCA - Articles of Incorporation	January 19, 2018

All "PAF" (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is not shown against a document, the information has not been recorded in the Ontario Business Registry.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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This is Exhibit "D" referred to in the Affidavit of Andrea Jamnisek sworn January 27, 2023.

A handwritten signature in black ink, consisting of a stylized 'L' followed by a 'J' and a long horizontal line extending to the right.

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*Commissioner for Taking Affidavits (or as may be)*

**CREDIT AGREEMENT**

March 1, 2018

B E T W E E N:

**10600598 CANADA INC.**

as Borrower

- and -

**THE TORONTO-DOMINION BANK**

as Lender

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**CREDIT AGREEMENT**

**THIS AGREEMENT** made as of **March 1, 2018**

BETWEEN:

**10600598 CANADA INC.**

as Borrower

- and -

**THE TORONTO-DOMINION BANK**

as Lender

**BACKGROUND:**

**WHEREAS**, the Borrower has requested, and the Lender has agreed to establish, the Credit Facilities described in this Agreement in favour of the Borrower on and subject to the terms and conditions set forth herein;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE 1**  
**INTERPRETATION**

**1.1 General Definitions**

Unless the context otherwise requires, in this Agreement:

- (a) "**Advance**" means any amount of money or credit advanced or to be advanced (as the context requires) by the Lender to the Borrower pursuant to this Agreement, whether by way of cash advance, acceptance of Drafts or issue of a Standby Instrument, or any portion thereof (as the context requires);
- (b) "**Affiliate**" shall be construed in the same manner it is used in the *Business Corporations Act* (Ontario);
- (c) "**Agreement**" means this credit agreement;
- (d) "**Amalco**" means the corporation resulting from the Amalgamation;
- (e) "**Amalgamation**" means the amalgamation of Newco, Targetco and Subco to occur immediately following Closing.

- (f) **"Applicable Law"** means any international treaty, any domestic or foreign constitution or any federal, provincial, territorial, state, municipal or local statute, law, ordinance, code, rule, regulation or order (including any consent decree or administrative order), applicable to, or any directive, guideline, policy or Authorization of any Governmental Body having jurisdiction with respect to, any specified Person, property, transaction or event or any of such Person's Business Assets;
- (g) **"Applicable Margin"** as of any date means, for each of the Operating Facility and the Term Facility, the percentage rate per annum determined by reference to the Senior Funded Debt/EBITDA Ratio most recently certified by the Borrower to the Lender pursuant to Subsection 13.1(f) hereof:

Senior Funded Debt/ EBITDA Ratio	Operating Facility/Term Facility	
	Stamping Fee/LIBOR/Standby Instrument Fee (as applicable)	Canadian Prime Rate/US Base Rate
< 2.00:1	+ 225 Basis Points	+115 Basis Points
>2.00:1 to <2.50:1	+250 Basis Points	+140 Basis Points
>2.50:1 to <3.00:1	+275 Basis Points	+165 Basis Points
>3.00:1 to < 3.85:1	+300 Basis Points	+190 Basis Points

A change in the Applicable Margin for a Canadian Prime Rate Loan, a US Base Rate Loan or a LIBOR Loan, whichever is applicable, shall take effect within ten (10) Business Days following the date on which the Compliance Certificate required to establish the Applicable Margin is due from the Borrower and if not received within no later than ten (10) days from the date it was due, the Applicable Margin shall be deemed to be the highest Applicable Margin until such Compliance Certificate is received by the Lender. A change in the Applicable Margin for BA's shall take effect for BA's not yet issued following the delivery of the Compliance Certificate required to establish the Applicable Margin and if not received within no later than ten (10) days from the date it was due, the Applicable Margin for BA's not yet issued shall be deemed to be the highest Applicable Margin for BA's until such Compliance Certificate is received by the Lender. A change in the Applicable Margin for any Credit Facility, as applicable, shall take effect upon the occurrence and continuance of an Event of Default and shall be deemed to be the highest Applicable Margin until such time as such Event of Default is cured or waived;

- (h) **"Auditors"** means the firm of Deloitte LLP;
- (i) **"Authorization"** means any authorization, approval, consent, exemption, licence, permit, franchise or no-action letter from any Governmental Body having jurisdiction with respect to any specified Person, property, transaction or event, or with respect to any of such Person's Business Affairs;

- (j) "**Availability Period**" means in respect of the Term Facility, the period from and including the date hereof to the Term Loan Maturity Date;
- (k) "**Acquisition Transaction**" means the acquisition by Newco of the Purchased Shares pursuant to the terms and conditions of the Purchase Agreement;
- (l) "**Award**" means any final judgement, decree, injunction, award or order of any Governmental Body or arbitrator which is binding upon any specified Person or any of its Business Assets;
- (m) "**BA Discount Rate**" means the CDOR BA Rate;
- (n) "**BDC**" means BDC Capital Inc., a wholly-owned subsidiary of Business Development Bank;
- (o) "**BDC Debt**" means the sum of Cdn.\$11,000,000, plus interest;
- (p) "**BDC Loan Agreement**" means that certain loan offer letter dated as of February 9, 2018 made between BDC and the Borrower in respect of the BDC Debt;
- (q) "**Banker's Acceptance**" means a Draft issued by the Borrower and accepted by the Lender pursuant to this Agreement and any reference to "**BA**" herein shall have the same meaning;
- (r) "**Banker's Acceptance Proceeds**" means the Net Banker's Acceptance Proceeds derived from the sale of a specified Banker's Acceptance minus the Stamping Fee;
- (s) "**Borrower**" means (i) prior to the Amalgamation, Newco; and (ii) following the Amalgamation, Amalco;
- (t) "**Borrowing**" means a Conversion, Drawdown or Rollover, as the context requires;
- (u) "**Borrower's Accounts**" means, the current accounts of the Borrower maintained at such office of the Lender as designated by the Lender;
- (v) "**Borrowing Date**" means a Conversion Date, Drawdown Date or Rollover Date, as the context requires;
- (w) "**Borrowing Request**" means a notice requesting a Conversion, Drawdown or Rollover, as the context requires, in the form of or to substantially similar effect as, Schedule A "**Borrowing Request**" attached hereto;
- (x) "**Business Affairs**" means the Business Assets, affairs, liabilities, financial condition, prospects and results of operations of the business of a specified Person;

- (y) "**Business Assets**" means the business, operations, undertaking, property and assets, including all real property, machinery, fixtures, equipment, inventory, accounts receivable, intangibles and goodwill, of the business of a specified Person;
- (z) "**Business Day**" means a day other than a Saturday or Sunday on which banks are generally open for commercial lending and foreign exchange business in Toronto, Canada, and (i) in respect of any Loan denominated in U.S. Dollars, a New York Banking Day and (ii) in respect of any Libor Loan, a London Banking Day;
- (aa) "**Canadian Dollars**" and the symbol "**Cdn.\$**" each means the lawful currency of Canada;
- (bb) "**Canadian Prime Rate**" means the greater of: (i) the rate determined by the Lender (rounded to two decimal places) to be the rate of interest which the Lender establishes from time to time as the reference rate of interest for determination of the interest rates it will charge for loans in Canadian Dollars to its Canadian commercial customers in Canada and which it refers to as its prime rate (or equivalent or analogous to such rate); and (ii) CDOR plus 100 basis points;
- (cc) "**Canadian Prime Rate Loan**" means an Advance made by way of loan in Canadian Dollars on which interest is calculated with reference to the Canadian Prime Rate;
- (dd) "**Capital Expenditures**" for any accounting period of the Borrower means (without duplication) any expenditure (whether payable in cash or other property or accrued as a liability) that, in conformity with GAAP, would be required to be classified as a capital expenditure. For certainty, Capital Expenditures includes expenditures for equipment which is purchased concurrently with the trade-in of existing equipment owned by the Borrower, to the extent of the net purchase price of the purchased equipment after giving effect to any trade-in. Capital Expenditures, however, excludes expenditures made in connection with the replacement or restoration of buildings, fixtures or equipment to the extent reimbursed or financed from insurance or expropriation proceeds;
- (ee) "**Capital Stock**" means common shares, preferred shares or other equivalent equity interests (howsoever designated) of capital stock of a body corporate, equity preferred or common interests in a limited liability company, limited or general partnership interests or any other equivalent ownership interest;
- (ff) "**Cash Equivalent Investments**" means (i) obligations of, or fully guaranteed by, the government of the United States of America or Canada, (ii) commercial paper rated A-1 or better by S&P or DBRS or P-1 or better by Moody's or DBRS, (iii) demand deposit accounts maintained in the ordinary course of business, and (iv) certificates of deposit issued by and time deposits with commercial banks (whether domestic or OECD) having capital and surplus in excess of \$1,000,000,000; provided in each case that the same provides for payment of both

principal and interest (and not principal alone or interest alone) and is not subject to any contingency regarding the payment of principal or interest (and for certainty, the mere passage of time is not a contingency);

- (gg) "**Cash Management Facility**" means cash management facilities extended by the Lender from time to time in connection with this Agreement;
- (hh) "**Cdn LP Holdco**" means Legado Capital Partners LP;
- (ii) "**CDOR**" means, on any day, the annual rate of interest which is the average of the "BA 1 month" rates applicable to Canadian Dollar bankers' acceptances identified as such on the Reuters Screen CDOR Page at approximately 10:00 a.m. on such day (as adjusted by the Lender after 10:00 a.m. to reflect any error in any posted rate or in the posted average annual rate). If the rate does not appear on the Reuters Screen CDOR Page as contemplated above, then the CDOR on any day shall be calculated as the arithmetic average of the 1 month discount rates applicable to Canadian Dollar bankers' acceptances quoted by any two Schedule I Lender chosen by the Lender in its discretion, as of 10:00 a.m. on the day, or if the day is not a Business Day, then on the immediately preceding Business Day;
- (jj) "**CDOR BA Rate**" means the annual rate of interest determined by the Lender to be equivalent to the average of the discount rates (rounded to two decimal places) applicable to banker's acceptances denominated in Canadian Dollars with a term comparable to the relevant BA quoted on the Reuters Money Market CDOR page as of 10:00 a.m. on the day of determination (or on the preceding day, if such day is not a Business Day). If the Lender is unable to determine such an average rate, the CDOR BA Rate will be the rate (rounded to two decimal places) quoted by the Lender;
- (kk) "**Certificate**" means from any Person, a written certificate of the Person signed by a Senior Officer unless otherwise specified;
- (ll) "**Change in Law**" means the adoption or effectiveness of any law, rule, regulation, judicial ruling, judgment or treaty; (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application by any Governmental Body of any law, rule, regulation or treaty; or (c) the making or issuance by any Governmental Body of any request, rule, guideline or directive, whether or not having the force of law; *provided that*, notwithstanding anything herein to the contrary, all requests, rules, guidelines or directives concerning capital adequacy promulgated by the Office of the Superintendent of Financing Institutions, the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or any other Canadian or foreign regulatory authorities shall, in each case, be deemed to be a "Change in Law," regardless of the date enacted, adopted or issued.

- (mm) "**Closing**" means the completion of the Acquisition Transaction and the concurrent disbursement by the Lender under the Term Facility;
- (nn) "**Closing Date**" means the date of this Agreement;
- (oo) "**Companies**" means the Borrower and all of its Subsidiaries from time to time;
- (pp) "**Compliance Certificate**" in respect of an accounting period of the Borrower means a Certificate of any one of the President or Secretary-Treasurer of the Borrower, substantially in the form attached as Schedule B "**Form of Compliance Certificate**", setting out, among other things, a statement as at the end of such fiscal period of the calculations of the financial tests set out in Section 13.3 hereof;
- (qq) "**Confirmation Agreement**" means a confirmation agreement in the form of Schedule C "**Form of Confirmation Agreement**" to be executed and delivered by a Guarantor in accordance with Article 11 hereof;
- (rr) "**Contaminant**" means any "**contaminant**" within the meaning assigned to such term in any applicable Environmental Law;
- (ss) "**Control**", "**Controls**" and "**Controlled**" when used with respect to a Person, the holding, directly or indirectly, (other than by way of security only) by another Person of securities or economic interests in the first Person or the right to vote or direct the voting of securities of such Person (i) with respect to control of a corporation, to which, in the aggregate, are attached more than 50% of the votes that may be cast to elect directors of the corporation, provided that the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the corporation, and (ii) with respect to control of a Person other than a corporation, which, in the aggregate, represent the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, and whether through the ownership or control of voting securities, partnership interests, voting rights, contract or otherwise, without the cooperation of others;
- (tt) "**Conversion**" means a conversion of a Loan or a Banker's Acceptance pursuant to Section 5.1 hereof;
- (uu) "**Conversion Date**" means any day on which a Conversion takes place;
- (vv) "**Core Business**" means the business of the Borrower, consisting of delivery of turnkey digital distribution and management solutions for software and e-textbooks for use by administration, faculty and student body of universities, colleges and schools worldwide;
- (ww) "**Credit Facilities**" means the Operating Facility, the Term Facility, the Visa Facility, the Derivative Facility and the Cash Management Facility, and "**Credit Facility**" means any one of them;



- (xx) "**Cure Notice**" has the meaning given to it in Subsection 13.4(a) hereof;
- (yy) "**Cured Quarter**" has the meaning set forth in Section 13.4(b) hereof;
- (zz) "**Debt**" of any Person at any time means liabilities of such Person which, in accordance with GAAP, would be classified upon the consolidated balance sheet of such Person, prepared as at such time, as indebtedness for borrowed money, such as bank indebtedness, long-term debt, capital lease obligations, Standby Instruments and indebtedness to Affiliates, together with any outstanding guarantees;
- (aaa) "**Default**" means any default, breach, failure, event, state or condition which, unless remedied or waived, with the lapse of time, giving of notice, or any combination thereof or otherwise, would constitute an Event of Default;
- (bbb) "**Derivative**" means any transaction referred to in clause (a) or (b) of the definition of "Specified Transaction" contained in Section 14 of the ISDA Master Agreement;
- (ccc) "**Derivative Exposure**" for any Person at any time means the amount, if any, which would be payable by such Person to its counterparty pursuant to Subsection 6(e) of the ISDA Master Agreement governing such Derivatives in respect of all Derivatives entered into between such Person and such counterparty if an Early Termination Date (as defined in Section 14 of the ISDA Master Agreement) were to occur at such time and such Derivatives were governed by an ISDA Master Agreement;
- (ddd) "**Derivative Facility**" has the meaning set forth in Section 7.1 hereof;
- (eee) "**Distributions**" means any type of payment to a Related Person by way of dividend payment, capital repurchase, fee payment or otherwise other than salaries paid in the ordinary course of business of the Borrower;
- (fff) "**Draft**" means a depository bill within the meaning of the *Depository Bills and Notes Act* (Canada), drawn by the Borrower and accepted by the Lender, bearing such distinguishing letters and numbers and being in such form as the Lender may require;
- (ggg) "**Drawdown**" means an Advance which is not derived from a Conversion or Rollover;
- (hhh) "**Drawdown Date**" means any day on which a Drawdown is made;
- (iii) "**EBITDA**" of the Borrower for any accounting period means an amount equal to Net Income before: (a) Interest Expense, (b) Income Taxes, (c) depreciation and amortization, plus (d) non-cash expenses, less (e) non-cash income and non-recurring income, plus (f) the following non-recurring expenses, which, unless otherwise specified, shall roll off to \$0 by the end of the 2018 Fiscal Year: (i)

transaction fees and expenses up to \$1,400,000; (ii) expenses incurred in connection with Texidium in the amount of \$66,000 on a trailing twelve month basis for the period ending December 31, 2017, reducing in the amount of \$22,000 each Fiscal Quarter thereafter to \$0 on a trailing twelve month basis ending September 30, 2018; (iii) Ram Raju's salary in the amount of \$518,000 on a trailing twelve month basis for the period ending December 31, 2017, reducing in the amount of \$130,000 each Fiscal Quarter thereafter to \$0 on a trailing twelve month basis ending December 31, 2018; (iv) Ram Raju and employees' bonus in an aggregate amount up to \$769,000; (v) bad debts expense in an amount up to \$194,000; (vi) severance expense in an amount up to \$80,000 and (vi) donation expense in an amount up to \$90,000 and cost savings approved by the Lender (which shall include, for greater certainty, a hosting fee in the amount of \$458,000 on a trailing twelve month basis for the period ending December 31, 2017 reducing in the amount of \$115,000 each Fiscal Quarter thereafter to \$0 on a trailing twelve month basis ending December 31, 2018, less (g) management compensation to the Principals in the amount of \$400,000 for the trailing twelve month period ending December 31, 2017, reducing in the amount of \$100,000 each Fiscal Quarter thereafter to \$0 on a trailing twelve month basis ending December 31, 2018, to the extent not already deducted from the calculation of Net Income;

- (jjj) "**Electronic Borrowing Request**" has the defined meaning assigned in Subsection 6.2(e)(i) hereof.
- (kkk) "**Environmental Law**" means any Applicable Law relating to the environment or occupational health or safety in respect of any of the Borrower or Guarantors;
- (lll) "**Equity Cure Securities**" has the meaning set forth in Section 13.4(b) hereof;
- (mmm) "**Equity/Subordinated Debt Cure Right**" has the meaning set forth in Section 13.4 hereof;
- (nnn) "**Equivalent Amount**" on any date means the amount in a specified currency which would result from the conversion of a specified amount in another currency at the Spot Rate;
- (ooo) "**Event of Default**" means any of the events described in Section 14.1 hereof;
- (ppp) "**Excluded Taxes**" means, with respect to the Lender, (i) Lender's Own Taxes, (ii) any Canadian federal withholding taxes imposed as a result of the Lender (A) not dealing at arm's length (within the meaning of the *Income Tax Act* (Canada)) with the Borrower or a Guarantor, (B) being a "specified shareholder" (within the meaning of Subsection 18(5) of the *Income Tax Act* (Canada)) of the Borrower or a Guarantor (or the corporate partner or member of a Guarantor that is a partnership), or (C) not dealing at arm's length with such "specified shareholder" of the Borrower or a Guarantor (or the corporate partner or member of a Guarantor that is a partnership);

- (qqq) "**Federal Funds Rate**" means the rate of interest determined by the Lender to be equal to the weighted average (rounded to two decimal places) of the rates on overnight federal funds transactions with members of the United States Federal Reserve System arranged by federal funds brokers, as published for such day (or, if such day is not a New York Banking Day, for the preceding such day) by the Federal Reserve Bank of New York, or if such rate is not so published for any day which is a New York Banking Day, the average (rounded to two decimal places) of the quotations at approximately 10:00 a.m. (New York City time) on such day on such transactions received by the Lender from three federal funds brokers of recognized standing selected by the Lender;
- (rrr) "**Fee**" has the meaning set forth in Section 8.3 hereof;
- (sss) "**Financial Covenant Cure Amount**" has the meaning set forth in Section 13.4(b) hereof;
- (ttt) "**Financial Covenant Default**" has the meaning set forth in Section 13.4 hereof;
- (uuu) "**Financial Projections**" means a forecasted statement of earnings, cash flow statement, balance sheet, statement of retained earnings and Capital Expenditures prepared in respect of future quarterly accounting periods and based on certain estimates and assumptions;
- (vvv) "**Fiscal Quarter**" means one of the Borrower's four (approximately three-month) accounting periods, ending at the end of each of March, June, September and December;
- (www) "**Fiscal Year**" means the 12 month accounting period of the Borrower, ending on December 31st of each calendar year;
- (xxx) "**Fixed Charge Cost**" for any accounting period means the sum of (i) interest paid on all Debt, plus (ii) all scheduled principal payments on the Term Facility, plus (iii) all scheduled principal payments on all capital leases. For greater certainty, scheduled principal payments on the Term Facility for any accounting period means (x) during the first year of the Availability Period, principal payments based on 7.5% of the total amount of the Term Facility; and (y) thereafter, actual principal payments made in such accounting period;
- (yyy) "**Fixed Charge Coverage Ratio**" for any accounting period means (i) EBITDA of the Borrower for such accounting period, less cash Taxes expense for such accounting period, less Permitted Distributions for such accounting period and less unfinanced Capital Expenditures for such accounting period, divided by (ii) the Fixed Charge Cost for such accounting period;
- (zzz) "**GAAP**" shall mean generally accepted accounting principles in Canada as in effect from time to time, and, following any change in respect of accounting standards to be adopted by Canadian private companies, such accounting standards approved by the Canadian Accounting Standards Board in effect from

time to time as may be selected by the Borrower including, without limitation, accounting standards for private enterprises or international financial reporting standards, in each case consistently applied provided that the Borrower shall, when required to adopt new accounting standards, adopt accounting standards for private enterprises unless the Lender otherwise consents in writing;

- (aaaa) "**Governmental Body**" means any international tribunal, agency, body, commission or other authority, any government, executive, parliament, legislature or local authority, or any governmental body, ministry, department or agency or regulatory authority, court, tribunal, commission or board of or within Canada or any foreign jurisdiction, or any political subdivision of any thereof or any authority having jurisdiction over any specified Person or any of its Business Assets;
- (bbbb) "**Guarantors**" means collectively, Cdn. LP Holdco and any other Person who enters into, executes and delivers one or more guarantees in favour of the Lender in respect of the Loan Obligations, and "**Guarantor**" means any one of them.
- (cccc) "**Hazardous Materials**" means any pollutant or Contaminant, including any hazardous, dangerous or toxic chemical, material or other substance within the meaning of any Environmental Law;
- (dddd) "**Immaterial**" means any act, event, state or condition, or any combination thereof, which would not, and could not reasonably be expected to, (i) prejudice, restrict or render unenforceable or ineffective, in a material adverse way, the rights intended or purported to be granted under or pursuant to the Loan Documents or (ii) have a Material Adverse Effect;
- (eeee) "**Income Taxes**" means Taxes based on or measured by income or profit of any nature or kind, including Canadian federal and provincial income taxes and income taxes of any applicable foreign jurisdiction;
- (ffff) "**Indebtedness**" of any Person at any time means obligations of such Person to pay (in whole or in part) any of the following amounts (without duplication) at such time:
  - (i) Debt;
  - (ii) indebtedness, actual or contingent, arising under or in respect of any sale of promissory notes, sale of accounts, factoring, securitization or discounting arrangement to the extent recourse to such Person may be made to recover such indebtedness;
  - (iii) the principal amount of, and premiums (if any) and capitalized interest (if any) payable in respect of, indebtedness for the deferred purchase price of property or services;

- (iv) the principal amount of, and premiums (if any) and capitalized interest (if any) payable in respect of, indebtedness payable under or in respect of any Lien upon any property acquired (whether given or assumed);
- (v) the market value of all Derivatives in respect of which the market value is negative from such Person's perspective (that is, the Person is "out of the money") less, the credit balances held by the Lender up to the maximum amount of the negative market value of such Derivatives entered into with the Lender (in which the resulting number cannot, for the purposes of this definition, be negative);
- (vi) the capital portion of any other transaction that is not Debt having the commercial effect of borrowing; or
- (vii) any amount payable under any direct or indirect guarantee of any amount of the nature described in any of clauses (i) to (vi) above determined on a consolidated basis.

For certainty, trade payables which are payable on customary or usual trade terms and accrued vacation liabilities for any current fiscal period, are not Indebtedness;

(gggg) "**Intellectual Property Rights**" means any rights under any contract or Applicable Law, including the *Patent Act* (Canada), *Copyright Act* (Canada) and *Trade-Mark Act* (Canada), or any similar United States of America legislation or law, which provides a right in either (i) ideas, formulae, algorithms, concepts, inventions or know-how generally, including trade secret law, or (ii) the expression or use of such ideas, formulae, algorithms, concepts, inventions or know-how;

(hhhh) "**Intercreditor Agreement**" dated as of the Closing Date among, inter alia, the Lender, BDC, the Borrower and the Guarantors, as such agreement may be amended, restated, supplemented or replaced from time to time;

(iiii) "**Interest Expense**" for any accounting period of the Borrower means total interest expense of the Borrower, excluding: (i) Lender's fees, and (ii) pre-netting against interest earned;

(jjjj) "**Interest Payment Date**" means:

- (i) with respect to each Canadian Prime Rate Loan and U.S. Base Rate Loan in any calendar month, the first Business Day of the immediately following calendar month;
- (ii) with respect to each Libor Loan, the last day of each Interest Period applicable to it;

(kkkk) "**Interest Period**" for any Libor Loan means the period of one, two or three months, as selected by the Borrower, as applicable, in a Borrowing Request,

commencing on each Borrowing Date of such Libor Loan, provided that any Interest Period which would otherwise end on a day which is not a Business Day shall be extended to the Business Day next following;

- (llll) "**Investment**" means any loan, advance (other than commission, travel and similar advances to officers and employees made in the ordinary course of business), extension of credit (other than accounts receivable arising in the ordinary course of business) or contribution of capital to any other Person or any acquisition of Capital Stock, notes, debentures or other securities of any other Person or any structured notes or Derivatives.
- (mmmm) "**ISDA Master Agreement**" means the ISDA 2002 Master Agreement (Multicurrency-Cross-border) published by the International Swaps and Derivatives Association, Inc., without regard to its schedule;
- (nnnn) "**Kivuto Ireland**" means Kivuto Solutions Limited, a corporation existing in the Republic of Ireland;
- (oooo) "**Kivuto US**" means Kivuto Solutions LLC, a limited liability corporation existing in the state of Delaware;
- (pppp) "**Lender's Counsel**" means Fogler, Rubinoff, LLP;
- (qqqq) "**Lender's Own Taxes**" means Taxes now or hereafter imposed on the Lender by a Governmental Body of a jurisdiction in which the Lender is subject to taxation because the Lender is incorporated and/or has a permanent establishment or a fixed place of business therein and/or is resident or engaged in a trade or business therein or is deemed not to be acting at arm's length with any other Lender;
- (rrrr) "**Letter of Guarantee**" means a letter of guarantee, including any replacements, renewals and amendments;
- (ssss) "**LIBOR**" for each Interest Period of each Libor Loan means the rate determined by the Lender to be the average of the rates of interest (rounded to the closest multiple of one-sixteenth percent (0.0625%)) for deposits in U.S. Dollars for a period similar to the Interest Period for such Libor Loan and in an amount similar to the amount of such Libor Loan, which appears on the Page 3750 of the Dow Jones Telerate Service (or any similar such reference service selected by the Required Lender) as of 11:00 a.m. (London time) on the second London Banking Day prior to the first day of such Interest Period. If the Lender is unable to determine such an average rate, LIBOR will be determined by the Lender with reference to the rate of interest (rounded to the closest multiple of one-sixteenth percent (0.0625%)) at which the Lender is offering U.S. Dollar deposits for a period similar to the Interest Period for such Libor Loan and in an amount similar to the amount of such Libor Loan, to prime banks in the London interbank market;

- (tttt) "**Libor Loan**" means an Advance made by way of loan in United States Dollars on which interest is calculated with reference to LIBOR;
- (uuuu) "**Lien**" means (i) any mortgage, pledge, charge, lien, assignment as security, hypothecation, security interest, conditional sale agreement, title retention or other similar interest in property intended to secure the payment or performance of an obligation, including any agreement to grant any such rights or interests to secure the payment or performance of any obligation; and (ii) any execution, seizure, attachment, garnishment or other encumbrance binding on property;
- (vvvv) "**Limited Partnership Agreement**" means the amended and restated limited partnership agreement made in respect of the Cdn LP Holdco dated as of the date hereof;
- (wwww) "**Litigation**" means any litigation, legal action, lawsuit or other proceeding (whether civil, administrative, quasi-criminal or criminal) by or before any Governmental Body or arbitrator where the specified Person or any of its Business Assets would be bound by any Award emanating therefrom;
- (xxxx) "**Loan**" means a Canadian Prime Rate Loan, Libor Loan or U.S. Base Rate Loan, as the context requires;
- (yyyy) "**Loan Documents**" means, collectively, this Agreement, the Security, each ISDA Master Agreement between the Borrower and the Lender, credit card facility agreements, cash management agreements and each other security agreement, charge, agreement, document or instrument delivered to or for the benefit of the Lender pursuant to or otherwise in connection therewith;
- (zzzz) "**Loan Obligations**" means the Indebtedness and other obligations of the Borrower owing to the Lender incurred under or pursuant to this Agreement or any other Loan Document, and any item or part of any thereof, specifically including Outstanding Amounts and all accrued and unpaid interest thereon, and all obligations arising under or in connection with Derivatives, the VISA Facility or the Cash Management Facility, together with all fees, expenses and other amounts payable pursuant to this Agreement and the Loan Documents;
- (aaaa) "**Loan Transfer Agreement**" means a loan transfer agreement substantially in the form of Schedule D - "**Form of Loan Transfer Agreement**" attached hereto;
- (bbbb) "**London Banking Day**" means a day on which dealings in U.S. Dollar deposits may be transacted in the London interbank market;
- (cccc) "**Material Adverse Change**" means any change, event, occurrence or change in the state of facts that has or could reasonably be expected to have a Material Adverse Effect;
- (dddd) "**Material Adverse Effect**" means an effect which (i) impairs, in a material adverse way, the ability of the Borrower and the Guarantors to perform

any material obligations under the Loan Documents, (ii) prejudices, restricts or renders unenforceable or ineffective, in a material adverse way, the rights intended or purported to be granted under or pursuant to the Loan Documents to or for the benefit of the Lender, (iii) results in a material adverse change in the Business Affairs of the Borrower and the Companies, on a consolidated basis, (iv) results in a material loss, diminution or destruction of the Core Business or any substantial part of the Business Assets (in value) of the Borrower and the Companies, on a consolidated basis, which is not substantially compensated for by insurance or expropriation proceeds;

(eeee) "**Material Agreements**" means the agreements made between the Borrower and another Person which if termination would, or would reasonably be expected to result, or would have a reasonable likelihood of resulting in, a Material Adverse Change, specifically including the Limited Partnership Agreement and those agreements as are listed on Schedule 12.1(q) hereto;

(ffff) "**Moody's**" means Moody's Investors Services;

(gggg) "**Net Asset Disposal Proceeds**" means with respect to any asset disposal, the sum of cash or Cash Equivalent Investments received from such asset disposal, net of (i) all costs and expenses incurred in effecting such disposal, including legal expenses and commissions payable to any Person that is not a Related Person, (ii) all Taxes payable in connection with such asset disposal, and (iii) all payments made on any Indebtedness which is secured by such asset pursuant to a Permitted Lien upon or with respect to such asset or which must, by the terms of such Lien, in order to obtain the necessary consent to such asset disposal, or by Applicable Law, be repaid out of the proceeds from such asset disposal. Notwithstanding the foregoing, if any asset disposal is made to a Related Person or if not made at arm's length, Net Asset Disposal Proceeds shall be the greater of (A) the fair market value of such asset disposed (net of disposal costs as determined above) as certified by the Borrower's chief financial officer, or (B) the amount determined in the preceding sentence of this definition;

(hhhh) "**Net Banker's Acceptance Proceeds**" means the cash proceeds realized on the issuance and sale of a Banker's Acceptance pursuant to Section 4.4(a) of this Agreement, before deduction of the Stamping Fee;

(iiii) "**Net Income**" means for any accounting period of the Borrower on a consolidated basis for such period determined in accordance with GAAP;

(jjjj) "**New York Banking Day**" means a day on which banks generally are open for the conduct of commercial lending and foreign exchange business in New York City;

(kkkk) "**Newco**" means 10600598 Canada Inc.;

(llll) "**Operating Facility**" has the meaning set forth in Section 2.1 hereof;



- (mmmmm) "**Outstanding Amount**" when used in relation to any outstanding Advance at any time means (i) its aggregate face amount if it is an issue of Bankers' Acceptances, (ii) its outstanding principal balance if it is a Canadian Prime Rate Loan, (iii) the maximum amount remaining available to be drawn upon under it if it is a Standby Instrument denominated in Canadian Dollars or the Equivalent Amount in Canadian Dollars if it is a Standby Instrument denominated in US Dollars, and (iv) the Equivalent Amount in Canadian Dollars of its outstanding principal balance if it is a Libor Loan or U.S. Base Rate Loan;
- (nnnnn) "**Pension and Benefit Laws**" means the *Pension Benefits Act* (Ontario), and any other law having jurisdiction over or affecting any Pension Plan.
- (ooooo) "**Pension Plan**" means each pension plan required to be registered under applicable Canadian federal or provincial Pension and Benefit Laws that is maintained by the Borrower, any of its Subsidiaries or any Guarantor for the benefit of their respective employees or former employees, but does not include the Canada Pension Plan or the Quebec Pension Plan as maintained by the Government of Canada or the Province of Quebec, respectively.
- (ppppp) "**Permitted Distributions**" means Distributions in each Fiscal Year, provided that after the payment of such Distribution (A) the Senior Funded Debt to EBITDA Ratio for such Fiscal Year is less than 2.50:1, both immediately before and immediately after such Distribution, and (B) no Event of Default exists either immediately before or immediately after such Distribution.
- (qqqqq) "**Permitted Indebtedness**" means (i) BDC Debt which has been subordinated in accordance with the Intercreditor Agreement; (ii) Indebtedness incurred under this Agreement; (iii) PMSI's and capital leases not exceeding \$1,000,000 in aggregate; (iv) unsecured credit card debt in connection with any credit cards issued by other financial institutions up to an aggregate sum of \$200,000; and (v) any intercompany debt between the Borrower and a Company or between Companies from time to time.
- (rrrrr) "**Permitted Liens**" means liens granted in favour of the Lender and:
- (i) liens in respect of vacation pay, worker's compensation, unemployment insurance, source deductions, unremitted sales or goods and services taxes or similar statutory obligations, but only if the obligations secured by such liens are not overdue or, if overdue, the validity or amount of which is being contested in good faith by appropriate proceedings and in respect of which adequate steps have been taken in the opinion of the Lender, acting reasonably, (which may include cash being paid to or pledged with the relevant Governmental Body) to prevent penalties, interest and enforcement proceedings and adequate reserves in accordance with GAAP have been taken;

- (ii) liens for assessments or governmental charges or levies (including, without limitation, realty taxes) not at the time overdue or, if overdue, the validity or amount of which is being contested in good faith by appropriate proceedings and in respect of which adequate steps have been taken in the opinion of the Lender, acting reasonably, (which may include cash being paid to or pledged with the relevant Governmental Body) to prevent penalties, interest and enforcement proceedings and adequate reserves in accordance with GAAP have been taken;
- (iii) construction, mechanics, carriers, warehousemen's, storage, repairers and materialmen's liens but only if the obligations secured by such liens are not overdue or, if overdue, the validity or amount of which is being contested in good faith by appropriate proceedings so long as all enforcement proceedings are stayed;
- (iv) encumbrances, including easements, encroachments, rights of way, servitudes, subdivision, development, engineering and/or site plan agreements, restrictive covenants or other similar rights in land granted to or reserved by other Persons, rights of way for sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real properties, which encumbrances, easements, encroachments, rights of way, servitudes, subdivision, development, engineering and/or site plan agreements, restrictive covenants, other similar rights and restrictions do not, in the opinion of the Lender acting reasonably, in the aggregate materially detract from the value of those properties or materially impair their use in the operation of the Core Business;
- (v) the right reserved to or vested in any Governmental Body by the terms of any lease, licence, franchise, grant or permit acquired by any of the Borrower or the Guarantors or by any statutory provision, to terminate any such lease, licence, franchise, grant or permit, or to require annual or other periodic payments as a condition of the continuance thereof;
- (vi) security given by the Borrower or the Guarantors to a public utility or Governmental Body when required by such utility or Governmental Body in connection with the operations of the Borrower or the Guarantors in the ordinary course of their business;
- (vii) the reservations, limitations, provisos and conditions, if any, expressed in any original grants from the Crown;
- (viii) defects or irregularities in title which are Immaterial or are of a minor nature which, in the opinion of the Lender, acting reasonably, will not in the aggregate materially impair the value or the use of the property affected thereby for the purposes for which it is held or which the Lender is willing to accept, acting reasonably, as not being materially and

adversely prejudicial to the interests of the Lender or which the Lender shall have otherwise consented to in writing;

- (ix) all applicable governmental orders, laws, bylaws and regulations which have been complied with in all material respects provided that any contraventions thereof do not, in the opinion of the Lender, acting reasonably, materially adversely affect the intended use of the property affected thereby;
- (x) liens arising from court or arbitral proceedings, provided that the claims secured thereby are being contested in good faith by the Borrower or the Guarantors, execution thereon has been stayed and continues to be stayed and such liens do not, in the aggregate, materially detract from the value of Borrower's or the Guarantors' property or materially impair the use thereof in the Core Business;
- (xi) good faith deposits made in the ordinary course of business to secure the performance of bids, tenders, contracts (other than contracts of Indebtedness), leases, surety, customs, performance bonds (relating to obligations that do not constitute Indebtedness) and other similar obligations;
- (xii) deposits to secure public or statutory obligations or in connection with any matter giving rise to a lien described in (vi) above;
- (xiii) deposits of cash securities in connection with any appeal, review or contestation of any security or lien, or any matter giving rise to any security or lien, described in (x) above;
- (xiv) the reversionary interests of landlords under leases of real property that are not capital leases with the Borrower or any of the Guarantors as tenant;
- (xv) the tenancy rights of tenants under leases of real property with any of the Borrower or the Guarantors as landlord;
- (xvi) the interests (including security interests in the property leased) of lessors under operating leases of personal property;
- (xvii) liens securing BDC Debt;
- (xviii) PMSI's and liens securing capital leases;
- (xix) the limitations, qualifications and reservations contained in the *Land Titles Act*;
- (xx) such other Liens as may be approved by the Lender from time to time; and

(xxi) the Liens described in Schedule 1.1 attached hereto entitled "**Permitted Liens**";

provided that the use of the term "**Permitted Liens**" to describe the foregoing Liens shall mean that such Liens are permitted to exist (whether in priority to or subsequent in priority to the Security, as determined by Applicable Law) and for greater certainty such Liens shall not be entitled to priority over the Security by virtue of being described in this Agreement as "**Permitted Liens**";

(sssss) "**Person**" means an individual, corporation, estate, partnership, trust, joint venture, other legal entity, unincorporated association or Governmental Body;

(ttttt) "**PMSI**" means a lien created or perfected to secure Debt incurred to finance the purchase of property provided that (i) such lien attaches only to the property purchased, and (ii) the amount of Debt secured by such lien does not exceed the purchase price of such property;

(uuuuu) "**Principals**" means Carlos Meza-Rios and Jeff Blacklock;

(vvvvv) "**Purchase Agreement**" means the share purchase agreement between Targetco, Newco and the vendors party thereto dated February 26, 2018;

(wwwww) "**Purchased Shares**" means all of the issued and outstanding shares in the capital of Targetco;

(xxxxx) "**Registration**" means any notice to, or filing, recording or registration with, any Governmental Body having jurisdiction with respect to any specified Person, transaction or event, or any of such Person's Business Affairs;

(yyyyy) "**Regulation D**" means Regulation D of the Board of Governors of the U.S. Federal Reserve System as from time to time in effect and any successor thereto or other regulation or official interpretation of said Board of Governors relating to reserve requirements applicable to member banks of the U.S. Federal Reserve System;

(zzzzz) "**Related Person**" means any Person (i) which, directly or indirectly, Controls, is Controlled by or is under common Control with, any of the Borrower or the Guarantors, (ii) which beneficially owns or Controls more than 10% of the Voting Capital Stock, on a fully diluted basis, of any of the Borrower or the Guarantors, (iii) of which more than 10% of the Voting Capital Stock, on a fully diluted basis, is beneficially owned or Controlled by any of the Borrower or the Guarantors or (iv) which is a Senior Officer or director of any Person referred to in any of clauses (i), (ii) and (iii) of this definition;

(aaaaa) "**Repayment/Cancellation Notice**" means a notice in the form of or to substantially similar effect as Schedule E - "**Form of Repayment/Cancellation Notice**" given to the Lender by the Borrower pursuant to any relevant provision of this Agreement;

- (bbbbbb) "**Required Contribution Date**" has the meaning set forth in Section 13.4(b) hereof;
- (ccccc) "**Rollover**" means the continuation of an outstanding Libor Loan for another Interest Period or an issue of a Bankers' Acceptance on the maturity of an outstanding Bankers' Acceptance;
- (dddddd) "**Rollover Date**" means a Business Day on which a Rollover of all or a portion of a Libor Loan or a Banker's Acceptance is made;
- (eeeeee) "**Sales Taxes**" means sales, transfer, turnover or value added taxes of any nature or kind, including Canadian goods and services taxes and state and provincial sales taxes;
- (ffffff) "**Security**" means the security agreements and guarantees described in Article 11 hereof and all other documents and agreements delivered by the Borrower, the Guarantors and other Persons to the Lender from time to time as security for the payment and performance of the Loan Obligations, and the security interests, assignments and Liens constituted by the foregoing;
- (gggggg) "**Senior Funded Debt**" means all Indebtedness of the Borrower from time to time, excluding BDC Debt;
- (hhhhh) "**Senior Funded Debt/EBITDA Ratio**" means, in respect of any Fiscal Quarter, the ratio of Senior Funded Debt at the end of such Fiscal Quarter to EBITDA in the fiscal period comprised of such Fiscal Quarter and the immediately preceding three Fiscal Quarters.
- (iiiiii) "**Senior Officer**" of any Person means the President or the Secretary-Treasurer of such Person, or any other officer of such Person who performs the function normally expected of an individual holding any of the aforesaid offices;
- (jjjjj) "**Solvent**" means, when used with respect to a Person, that (a) the fair saleable value of the assets of such Person is in excess of the total amount of the present value of its liabilities and (b) such Person is able to pay its debts or obligations in the ordinary course as they mature. "**Solvency**" shall have a correlative meaning;
- (kkkkkk) "**Spot Rate**" as at any date with respect to the conversion of an amount in one currency (the "**original currency**") to another currency (the "**other currency**") means the Bank of Canada noon rate of exchange on the immediately preceding date for the purchase of such original currency with such other currency;
- (lllll) "**Stamping Fee**" means the stamping fee payable at the time of acceptance of each Banker's Acceptance, calculated and payable in the manner provided for in Section 4.5 hereof;

- (mmmmmm) "**Standby Instrument**" means a Letter of Guarantee or Standby Letter of Credit, as the context requires;
- (nnnnnn) "**Standby Instrument Fee**" means the fee payable in connection with the issuance of a Standby Instrument pursuant to Section 6.4;
- (oooooo) "**Standby Letter of Credit**" means a standby letter of credit, including any replacements, renewals and amendments thereof;
- (pppppp) "**Subco**" means 10633011 Canada Inc.;
- (qqqqqq) "**Subordinated Indebtedness**" means indebtedness of the Borrower to any Person which the Lender has consented to in writing and in respect of which the holder thereof has entered into a subordination and postponement agreement in favour of the Lender in form and substance satisfactory to the Lender;
- (rrrrrr) "**Subrogated Debt**" means any Subordinated Indebtedness in respect of which the subordination and postponement agreement includes a provision whereby such indebtedness (and any security held in respect thereof) is assigned in favour of the Lender as security for the Loan Obligations;
- (ssssss) "**Subsidiary**" means a body corporate which is a subsidiary of another body corporate within the meaning of that term in the *Business Corporations Act* (Ontario), as amended from time to time;
- (tttttt) "**Substantial Portion**" means, with respect to the assets of the Borrower and Companies, on a consolidated basis, assets which (i) represent more than 10% of the consolidated assets of the Borrower and the Companies as at the beginning of the twelve-month period ending with the month in which such determination is made, or (ii) are responsible for more than 10% of the consolidated net sales or consolidated net income of the Borrower and the Companies as at the beginning of the twelve-month period ending with the month in which such determination is made;
- (uuuuuu) "**Targetco**" means Kivuto Solutions Inc.;
- (vvvvvv) "**Taxes**" means all taxes of any kind or nature whatsoever including federal large corporation taxes, provincial capital taxes, realty taxes, business taxes, property transfer taxes, Income Taxes, Sales Taxes, levies, stamp taxes, duties, and all fees, deductions, and withholdings imposed, levied, collected, withheld or assessed as of the date hereof or at any time in the future, by any Governmental Body of or within Canada, or any other applicable jurisdiction whatsoever having power to tax, together with penalties, fines, additions to tax and interest thereon;
- (wwwwww) "**Term Facility**" has the meaning given to it in Section 3.1 hereof;

- (xxxxxxx) **"Term Loan Maturity Date"** means the date which is five (5) years from the date of this Agreement;
- (yyyyyyy) **"Testing Date"** has the meaning given to it in Subsection 13.4(a) hereof;
- (zzzzzzz) **"Transferee"** has the meaning given to it in Subsection 15.10(d) hereof;
- (aaaaaaa) **"Type"** means, with respect to any Advance, other than a Standby Instrument, its nature as a Canadian Prime Rate Loan, Libor Loan, U.S. Base Rate Loan or a Bankers' Acceptance;
- (bbbbbbb) **"United States Dollars", "U.S. Dollars"** and the symbol **"US\$"** each means the lawful currency of the United States of America;
- (ccccccc) **"U.S. Base Rate"** means the greater of (i) the rate determined by the Lender to be the rate of interest which the Lender (rounded to two decimal places) establishes from time to time as the reference rate of interest for determination of the interest rates it will charge for loans made in U.S. Dollars in Canada to its Canadian commercial customers and which it refers to as its base rate (or equivalent or analogous to such rate); and (ii) the Federal Funds Rate plus 100 basis points;
- (ddddddd) **"U.S. Base Rate Loan"** means an Advance made by way of loan in United States Dollars on which interest is calculated with reference to the U.S. Base Rate;
- (eeeeeee) **"VISA Facility"** has the meaning given to it in Section 2.6 hereof;
- (ffffff) **"Voting Capital Stock"** means Capital Stock of a Person which carries voting rights or the right to Control such Person under any circumstances, provided that Capital Stock which carries the right to vote or Control such Person conditionally upon the happening of an event shall not be considered Voting Capital Stock until the occurrence of such event and then only during the continuance of such event;
- (ggggggg) **"Waste"** means wastes as are designated as such under any Environmental Law;
- (hhhhhhh) **"Withholding Tax"** means any Tax that is required by Applicable Law to be deducted from any payment made pursuant to this Agreement, other than any Lender's Own Taxes;
- (iiiiiii) **"\$"** means Cdn.\$ or US\$, as the context requires.

## 1.2 Additional References

To the extent the context so admits, any reference in this Agreement to:

- (a) "**arm's length**" shall be construed in the same manner it is used in the *Income Tax Act* (Canada);
- (b) "**dispose**" shall be construed as lease, sell, transfer or otherwise dispose of any property, whether in a single transaction or in a series of related transactions (other than the payment of money), and "**disposed**" and "**disposal**" shall be construed in like manner;
- (c) "**fair market value**" shall be construed as the highest price, expressed in terms of money and moneys' worth, available in an open and unrestricted market between informed and prudent parties, each acting at arm's length, where neither party is under any compulsion to act;
- (d) "**guarantee**" shall be construed as any guarantee, indemnity, letter of comfort or other similar financial assurance made in respect of any Indebtedness or financial condition of another, including (i) any purchase or repurchase agreement, (ii) any obligation to supply funds or invest in such other, or (iii) any keep-well, take-or-pay, through-put or other arrangement having the effect of assuring or holding harmless another against loss, or maintaining another's solvency or financial viability; but excluding endorsements on notes, bills and cheques presented to financial institutions for collection or deposit in the ordinary course of business, and "**guaranteed**" and "**guarantees**" shall be construed in like manner;
- (e) "**include**", "**includes**" and "**including**" shall be construed to be followed by the statement "without limitation" and none of such terms shall be construed to limit any word or statement which it follows to the specific or similar items or matters immediately following it;
- (f) "**losses and expenses**" shall be construed as losses, costs, expenses, damages, penalties, causes of action, actions, judgements, suits, proceedings, claims, claims over, demands and liabilities, including any applicable court costs and legal fees and disbursements on a solicitor and client scale, and "loss and expense" shall be construed in like manner;
- (g) "**obligations**" shall be construed as indebtedness, obligations, responsibilities, duties and liabilities (actual or contingent, direct or indirect, matured or not, now existing or arising hereafter), whether arising by contract or statute, at law, in equity or otherwise, and "obliged", "obligation" and "obligated" shall be construed in like manner;
- (h) "**rate of exchange**" shall be construed so as to include any premiums or costs payable in connection with any currency conversion being effected;
- (i) "**rights**" shall be construed as rights, powers, authorities, discretions, privileges, immunities and remedies (actual or contingent, direct or indirect, matured or not, now existing or arising hereafter), whether arising by contract or statute, at law, in equity or otherwise, and "right" shall be construed in like manner; and



- (j) "successor" of a body corporate shall be construed so as to include (i) any amalgamated or other corporation of which such body corporate or any of its successors is one of the amalgamating or merging corporations, (ii) any corporation resulting from any court approved arrangement of which such body corporate or any of its successors is party, (iii) any corporation resulting from the continuance of such body corporate or any successor of it under the laws of another jurisdiction of incorporation and (iv) any successor (determined as aforesaid or in any similar or comparable procedure under the laws of any other jurisdiction) of any corporation referred to in clause (i), (ii) or (iii).

### **1.3 References to Agreements**

Each reference in this Agreement to any agreement (including this Agreement and any other defined term that is an agreement) shall be construed so as to include such agreement (including any attached schedules) and each amendment, supplement, amendment and restatement, novation and other modification made to it at or before the time in question.

### **1.4 Reference to Statutes**

Each reference in this Agreement to any code, statute, regulation, official interpretation, directive or other legislative enactment of any Canadian, American or other foreign jurisdiction (including any political subdivision thereof) shall be construed so as to include such code, statute, regulation, official interpretation, directive or enactment and each amendment, re-enactment, reissuance or replacement thereof made at or before the time in question.

### **1.5 Headings, etc.**

The division of this Agreement into Articles, Sections and Subsections and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Article, Section, Subsection, paragraph, subparagraph, clause or other portion of this Agreement.

### **1.6 Number and Gender**

In this Agreement, words in the singular (including defined terms) include the plural and vice versa (the necessary changes being made to fit the context) and words in one gender include all genders.

### **1.7 Accounting Principles**

All accounting terms used in this Agreement shall be construed in accordance with GAAP, applied on a basis consistent in all material respects with the financial statements delivered by the Borrower to the Lender on or before the Closing Date. All accounting determinations for purposes of determining compliance with the financial covenants contained in subsection 13.3 shall be made in accordance with GAAP as in effect on the Closing Date and applied on a basis consistent in all material respects with the audited financial statements delivered to the Lender by the Borrower on or before the Closing Date. The financial statements

required to be delivered hereunder from and after the Closing Date, and all financial records, shall be maintained in accordance with GAAP. If GAAP shall change from the basis used in preparing the audited financial statements delivered to the Lender by the Borrower on or before the Closing Date, the certificates required to be delivered pursuant to subsection 13.1(f) demonstrating compliance with the covenants contained herein shall include, upon the request of the Lender, calculations setting forth the adjustments necessary to demonstrate how the Borrower are in compliance with the financial covenants based upon GAAP as in effect on the Closing Date.

## 1.8 Schedules

The following are the Schedules and Exhibits to this Agreement:

Schedule A	Form of Borrowing Request
Schedule B	Form of Compliance Certificate
Schedule C	Form of Confirmation Agreement
Schedule D	Form of Loan Transfer Agreement
Schedule E	Form of Repayment/Cancellation Notice
Schedule 1.1	Permitted Liens
Schedule 9.1(d)	Payment Schedule
Schedule 12.1(g)	Description of Material Litigation
Schedule 12.1(o)	List of Real Property
Schedule 12.1(q)	Description of Material Contracts
Schedule 12.1(r)	Description of Intellectual Property
Schedule 12.1(s)	List of Subsidiaries/Detailed Corporate Chart
Schedule 12.1(u)	Environmental Disclosure Schedule
Schedule 12.1 (x)	Funds Flow

## **ARTICLE 2**

### **THE OPERATING FACILITY**

#### 2.1 Grant of Facility

The Lender hereby establishes an uncommitted demand operating loan facility in favour of the Borrower to finance the day-to-day working capital requirements of the Borrower arising in the ordinary course of its operation as well as for other general business purposes (the "**Operating Facility**").

## **2.2 Facility Limit**

In no event shall the aggregate Advances under the Operating Facility exceed Cdn.\$2,000,000 or its Equivalent Amount in U.S. Dollars.

For the purposes of calculating aggregate Advances, Standby Instruments shall mean the sum of all issued and outstanding Letters of Credit, and all issued and outstanding Letters of Guarantee.

## **2.3 Availability**

The Borrower may borrow, repay and reborrow Advances under the Operating Facility on a revolving basis by way of Canadian Prime Rate Loans and U.S. Base Rate Loans, which shall be made available by way of overdraft on the Borrower's Accounts or by business credit service from the Borrower's Accounts each in the principal amount of no less than \$5,000 or a multiple thereof or by way of Libor Loans, Standby Instruments, or Banker's Acceptances, as hereinafter described. Notwithstanding the foregoing, this Operating Facility is made available to the Borrower at the Lender's discretion and is not automatically available to the Borrower upon satisfaction of the terms and conditions of this Agreement.

## **2.4 Drawdown Requests(Libor Loans, Banker's Acceptances and Standby Instruments)**

The Borrower must deliver a Borrowing Request or Electronic Borrowing Request, as applicable, to the Lender to obtain a Drawdown under the Operating Facility at the times and stipulating the information specified below:

- (a) for a Libor Loan, before 10:00 a.m. (Toronto time) on the third Business Day before the proposed Drawdown Date specifying the principal amount (which must be no less than US\$500,000 or a whole number multiple of US\$100,000 in excess thereof) and the proposed Interest Period;
- (b) for an issue of Banker's Acceptances, as required in accordance with Article 4; and
- (c) for an issue of a Standby instrument, as described in Article 6.

## **2.5 Drawdown**

The proceeds of each Drawdown by way of Loan shall be advanced by bank transfer to the credit of the Borrower's Accounts. Bankers' Acceptances will be issued in accordance with Article 4 Standby Instruments shall be issued in accordance with Article 6.

## **2.6 VISA Facility**

The Lender agrees to enter into credit card facility agreements with the Borrower, limited to Cdn.\$100,000 in order to provide senior management of each of them with business VISA cards (the "**VISA Facility**"). The indebtedness of the Borrower under the VISA Facility shall comprise part of the Loan Obligations for all purposes hereunder and shall be secured by the

Security on a *pari passu* basis with all other Loan Obligations. Notwithstanding anything to the contrary contained in any credit card facility agreements, the indebtedness owing by the Borrower thereunder shall become immediately due and payable upon acceleration of the Loan Obligations pursuant to Section 14.2 hereof.

### **2.7 Cash Management Facility**

The Lender establishes a Cash Management Facility which the Borrower hereby authorizes the Lender to utilize on its behalf, to satisfy any obligations and liabilities of the Borrower to the Lender in connection with any cash management services by the Lender to the Borrower.

## **ARTICLE 3** **THE TERM FACILITY**

### **3.1 Grant of Facility**

The Lender hereby establishes a committed, non-revolving credit facility in favour of the Borrower in the maximum amount of Cdn.\$24,000,000 Term Facility (the "**Term Facility**") to be used to assist the Borrower in acquiring the Purchased Shares.

### **3.2 Availability**

The Borrower may borrow the one time single Advance under the Term Facility on the Closing Date by way of Canadian Prime Rate Loans, U.S. Base Rate Loans, Libor Loans or by way of Banker's Acceptances, as hereinafter described.

### **3.3 Drawdown Requests (Libor Loans/Banker's Acceptances)**

The Borrower must deliver a Borrowing Request to the Lender to obtain a Drawdown under the Term Facility at the times and stipulating the information specified below:

- (a) for a Libor Loan, before 10:00 a.m. (Toronto time) on the third Business Day before the Closing Date specifying the principal amount (which must be no less than US\$500,000 or a whole number multiple of US\$100,000 in excess thereof) and the proposed Interest Period (which must commence within the Availability Period);
- (b) for an issue of Banker's Acceptances, as required in accordance with Article 4; and

### **3.4 Drawdown**

Bankers' Acceptances will be issued in accordance with Article 4.

**ARTICLE 4**  
**BANKERS' ACCEPTANCES**

**4.1 Notice and Term**

The Borrower shall give the Lender, before 10:00 a.m. (Toronto time) on the Business Day before any proposed Borrowing Date, instructions that it wishes to have Drafts accepted under this Agreement and stating the aggregate face amount and the term applicable to such Drafts. The term of such Drafts must be a period (subject to market availability) of one, two or three months (expiring on or before the end of the Availability Period, as applicable) or such other terms as may be acceptable to the Lender in its sole discretion. Notwithstanding the instructions of the applicable Borrower, the Lender shall have the discretion to restrict the term on maturity dates of Bankers' Acceptances.

**4.2 Face Amount of Drafts**

The aggregate face amount of an issue of Drafts to be accepted on any particular Borrowing Date shall be Cdn.\$1,000,000 or a whole number multiple of Cdn.\$100,000 in excess thereof. The face amount of each Banker's Acceptance shall be a whole number multiple of Cdn.\$100,000.

**4.3 Power of Attorney**

In order to facilitate issues of Bankers' Acceptances pursuant to this Agreement, the Borrower authorizes the Lender, and for this purpose appoints the Lender its lawful attorney, to complete, sign and endorse Drafts issued in accordance with Section 4.2 on its behalf in handwritten or by facsimile or mechanical signature or otherwise and, once so completed, signed and endorsed, and following acceptance of them as a Banker's Acceptance under this Agreement, then purchase, discount or negotiate such Bankers' Acceptances in accordance with the provisions of this Article 4. Drafts so completed, signed, endorsed and negotiated on behalf of the Borrower by the Lender shall bind the Borrower as fully and effectively as if so performed by an authorized officer of the Borrower.

**4.4 Discount and Sale of Bankers' Acceptances**

- (a) The Lender shall purchase each Bankers' Acceptance for its own account on the Borrowing Date of such Banker's Acceptance at a purchase price equal to the face amount of such Bankers' Acceptance less an amount equal to the face amount of such Bankers' Acceptance multiplied by the BA Discount Rate multiplied by a fraction, the numerator of which is the number of days to elapse from and including the date of acceptance of such Bankers' Acceptance up to but excluding the maturity date, and the denominator of which is 365.
- (b) The Lender shall pay the Bankers' Acceptance Proceeds of its Rateable Share of each issue of Bankers' Acceptances to the credit of the Borrower's Accounts on the Borrowing Date in exchange for delivery of such Bankers' Acceptances.

- (c) The Lender may at any time and from time to time purchase, hold, sell, rediscount or otherwise dispose of any Banker's Acceptance and no such dealing shall prejudice or impair the Borrower's obligations under Section 4.6.

#### **4.5 Stamping Fee**

The stamping fee is payable by the Borrower to the Lender on the issuance of each Banker's Acceptance in favour of the Borrower and shall be equal to the face amount of such Bankers' Acceptance multiplied by the Applicable Margin for the applicable Credit Facility multiplied by a fraction, the numerator of which is the number of days to elapse from and including the date of acceptance of such Bankers' Acceptance up to but excluding the maturity date, and the denominator of which is 365. The Lender shall be entitled to deduct from the Net Banker's Acceptance Proceeds to be remitted to the Lender pursuant to Subsection 4.4(a) the stamping fee payable to it as determined in accordance with this Section 4.5.

#### **4.6 Payment of Bankers' Acceptances**

The Borrower shall pay to the Lender for the account of the Lender the full face amount of each Banker's Acceptance accepted by the Lender for its account on the maturity date of such Banker's Acceptance. If a Banker's Acceptance matures and the Borrower has not made such payment, the Borrower shall be deemed to have provided for payment of the full face amount of the Banker's Acceptance by Conversion of such Banker's Acceptance into a Canadian Prime Rate Loan under the applicable Credit Facility in a principal amount equal to the full face amount of the Banker's Acceptance on its maturity date.

#### **4.7 Waivers**

The Borrower shall not claim from the Lender any days of grace for the payment at maturity of any Drafts presented and accepted by the Lender pursuant to this Agreement. In addition, the Borrower waives demand, presentment for payment, protest, noting of protest, dishonour, notice of dishonour and any other notice or defence to payment which might otherwise exist if for any reason a Banker's Acceptance is held by the Lender in its own right at the maturity thereof.

#### **4.8 Notice of Maturing Bankers' Acceptances**

The Borrower shall give the Lender, before 10:00 a.m. (Toronto time) on the Business Day before the maturity of any Bankers' Acceptances, a Repayment/Cancellation Notice or a Borrowing Request for a Conversion or Rollover in respect of such Bankers' Acceptances in order to permit the Lender to organize its internal funding requirements to fund the payment of the face amount of such Bankers' Acceptances to the respective holders thereof upon or following maturity. If the Borrower fails to give any such notice to the Lender, any Canadian Prime Rate Loan resulting from the application of Section 4.6 shall bear interest for a period from and including the date such Canadian Prime Rate Loan is made at a rate per annum equal to the rate otherwise payable pursuant to Subsection 8.1(a).

**ARTICLE 5**  
**CONVERSIONS AND ROLLOVERS**

**5.1 Conversions**

Subject to the last sentence of this Section 5.1, the Borrower may request the Lender to convert:

- (a) at any time, a Canadian Prime Rate Loan or a U.S. Base Rate Loan or a portion thereof into a different Type of Advance by way of Canadian Prime Rate Loan, Libor Loan, U.S. Base Rate Loan or Bankers' Acceptances;
- (b) on the last day of an applicable Interest Period, a Libor Loan or a portion thereof into a different Type of Advance by way of Canadian Prime Rate Loan, Libor Loan, U.S. Base Rate Loan or Bankers' Acceptances; or
- (c) on its maturity date, an issue of Bankers' Acceptances into a Loan,

upon delivering a Borrowing Request to the Lender specifying both the amount of the Advance to be converted and the amount and Type of the requested resulting Advance. The relevant provisions of this Agreement applicable to a Drawdown and availability of the Type of Advance which will result from the Conversion (as well as any portion of the Advance which is not being converted) must be satisfied to effect any such requested Conversion (including the applicable notice provisions contained in Section 2.4). If the Borrower has requested a Conversion of an Advance to a Type of Advance denominated in a different currency, the Borrower shall repay the Advance (or relevant portion) being converted and, subject to the foregoing provisions of this Section 5.1 the Lender shall make the Type of Advance requested on the Conversion to the Borrower on the Conversion Date.

**5.2 Rollovers**

- (a) At or before 10:00 a.m. (Toronto time) three Business Days prior to the expiry of each Interest Period, unless the Borrower has delivered a Borrowing Request to convert the relevant Libor Loan into another Type of Advance in accordance with Section 5.1 or a Repayment/Cancellation Notice, the Borrower shall deliver a Rollover Request for a Rollover to the Lender selecting the next Interest Period applicable to the relevant Libor Loan, which new Interest Period shall commence on the expiry of the current Interest Period. If the Borrower fails to deliver any such requests or notice to the Lender, then the relevant Libor Loan shall be converted into a U.S. Base Rate Loan, in each case in an amount equal to the principal amount of such applicable Libor Loan on the expiry of the current Interest Period.
- (b) At or before 10:00 a.m. (Toronto time) three Business Days prior to the maturity of a Bankers' Acceptance, unless the Borrower has delivered to the Lender a Borrowing Request for a Conversion in accordance with Section 5.1 or a

Repayment/Cancellation Notice, the Borrower shall deliver a Borrowing Request for a Rollover to the Lender. If the Borrower requests such a Rollover, the Borrower shall repay the Bankers' Acceptances being rolled over, and the Lender will accept the Drafts requested on the Rollover, on the Rollover Date. The provisions of Section 4.8 shall apply if the Borrower fails to deliver any such requests or notice.

**ARTICLE 6**  
**STANDBY INSTRUMENTS**

**6.1 Issuance**

- (a) The Lender agrees, on the terms and conditions of this Agreement to issue Standby Instruments under the Operating Facility.
- (b) Standby Instruments may be denominated in Canadian Dollars or US Dollars.
- (c) No Standby Instrument will be issued (i) if the aggregate Outstanding Amount of all Advances under the Operating Facility would, after the issuance of the Standby Instrument in question, exceed the Facility Limit stipulated by Section 2.2, or (iii) having a term more than one year from the date of its issuance.

**6.2 Procedure for Issue**

- (a) The issuance of a Standby Instrument shall be made by way of an electronic transfer request in form and substance satisfactory to Lender (each, an "**Electronic Borrowing Request**") requesting a Standby Instrument given by the Borrower to the Lender not later than 11:00 a.m. (Toronto time) on the third Business Day prior to the requested date. The Electronic Borrowing Request requesting a Standby Instrument shall be irrevocable and binding on the Borrower and shall specify (i) the issue date, (ii) the type of Standby Instrument, (iii) the amount of the Standby Instrument, (iv) the expiration date and (v) the name and address of the beneficiary thereunder.
- (b) Not later than 11:00 a.m. (Toronto time) on the issue date of a Standby Instrument the Lender shall issue a Standby Instrument completed in accordance with the Electronic Borrowing Request in the appropriate form. After execution and delivery by the Borrower of a Standby Instrument agreement in the form required by the Lender, the Lender shall deliver the Standby Instrument to or to the order of the Borrower.
- (c) Prior to the issue of a Standby Instrument the Borrower shall provide a precise description of the documents and the text of any certificates to be presented by the beneficiary thereunder which, if presented by such beneficiary, would require the Lender, to make payment under the Standby Instrument. Lender may reasonably require changes in any such document or certificate.



- (d) The Lender shall at all times be entitled, and is irrevocably and unconditionally authorized by the Borrower, to make payment under the Standby Instruments for which a request or demand has been made in the required form without reference to the Borrower and any investigation or enquiry, need not concern themselves or itself with the propriety or validity of any claim made or purported to be made under the terms of such Standby Instrument (except as to compliance with the payment conditions of such Standby Instrument) and shall be entitled to assume that any Person expressed in such Standby Instrument as being entitled to make demand or receive payment thereunder is so entitled. Accordingly, so long as a request or demand has been made as aforementioned it shall not be a defence to any demand made of the Borrower hereunder, nor shall the Borrower or its obligations hereunder be impaired by the fact (if it be the case) that the Lender was or might have been justified in refusing payment, in whole or in part, of the amounts so claimed.
  
- (e) The obligation of the Borrower with respect to Standby Instruments shall be unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including, without limitation, the following circumstances:
  - (i) any lack of validity or enforceability of any Loan Document or the Standby Instruments;
  - (ii) any amendment or waiver of or any consent to or actual departure from this Agreement;
  - (iii) the existence of any claim, set-off, defence or other right which the Borrower may have at any time against any beneficiary or any transferee of a Standby Instrument (or any Persons for which any such beneficiary or any such transferee may be acting), the Lender or any other Person or entity, whether in connection with this Agreement, the transactions contemplated herein or in any other agreements or any unrelated transactions;
  - (iv) any statement or any other document presented under a Standby Instrument proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect except for non-compliance with the payment conditions of such Standby Instrument; or
  - (v) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

It is understood and agreed that the Lender shall not have any liability for, and that the Borrower assumes all responsibility for: (i) the genuineness of any signature; (ii) the form, validity, genuineness, falsification and legal effect of any draft, certification or other document required by a Standby Instrument or the authority of the Person signing the same; (iii) the failure of any

instrument to bear any reference or adequate reference to a Standby Instrument or the failure of any Persons to note the amount of any instrument on the reverse of a Standby Instrument or to surrender a Standby Instrument; (iv) the existence, form or sufficiency or breach or default under any agreement or instruments of any nature whatsoever; (v) any delay in giving or failure to give any notice, demand or protest; and (vi) any error, omission, delay in or non-delivery of any notice or other communication, however sent. The determination as to whether the required documents are presented prior to the expiration of a Standby Instrument and whether such other documents are in proper and sufficient form for compliance with a Standby Instrument shall be made by the Lender in its sole discretion, which determination shall be conclusive and binding upon the Borrower absent manifest error. It is agreed that the Lender may honour, as complying with the terms of a Standby Instrument and this Agreement, any documents otherwise in order and signed or issued by the beneficiary thereof. Any action, inaction or omission on the part of the Lender, under or in connection with the Standby Instruments or any related instruments or documents, if in good faith and in conformity with such laws, regulations or commercial or banking customs as the Lender, may reasonably deem to be applicable, shall be binding upon the Borrower, and shall not affect, impair or prevent the vesting of such Issuing Bank, Lender such rights or powers hereunder or the Borrower's obligation to make full reimbursement of amounts drawn under the Standby Instrument.

### **6.3 Reimbursements of Amounts Drawn**

At or before 11:00 a.m. (Toronto time) on the date specified by a beneficiary as a drawing date under a Standby Instrument, the Borrower shall pay to the Lender, an amount in same day funds equal to the amount to be drawn by the beneficiary in the currency in which the Standby Instrument is payable.

If the Borrower fails to pay to the Lender the amount drawn under any Standby Instrument, the unpaid amount due and payable shall be converted automatically as of such date and without the necessity for the Borrower to give any Borrowing Request to a Canadian Prime Rate Loan or US Base Rate Loan, whichever is applicable.

### **6.4 Standby Instrument Fees**

- (a) The Borrower shall pay to the Lender in respect of each Standby Instrument a monthly, quarterly or annual fee in arrears determined as the product obtained by multiplying (i) the stated amount of such Standby Instrument by (ii) the Applicable Margin per annum and by (iii) a fraction, the numerator of which is the number of days in such quarter that such Standby Instrument is outstanding and the denominator of which is 365. Such fee shall be calculated from the date of issuance and in respect of every renewal thereafter and shall be payable quarterly, in arrears, from and after the date of issuance, on the first Business Day following the end of each Fiscal Quarter in the currency in which the Standby Instrument is payable and shall be non-refundable.
- (b) The Borrower shall pay to the Lender upon the issuance, deemed issuance, amendment, transfer or drawing of each Standby Instrument issued by the Lender's standard and prevailing documentary and administrative charges for

issuing, amending, transferring or drawing under Standby Instruments of similar amount, term and risk.

## 6.5 Repayments in Respect of Standby Instruments

- (a) If any Standby Instrument is outstanding on the date the Operating Facility is terminated and demand for repayment is made, or in any circumstances where the Borrower is required to repay the Operating Facility or a portion of the Operating Facility represented by a Standby Instrument, then the Borrower shall pay to the Lender an amount equal to the Lender's contingent liability in respect of such outstanding Standby Instrument. In the event that such Standby Instrument is the subject matter of any order, judgment, injunction or other determination (a "**Judicial Order**") restricting payment under such Standby Instrument, or extending the Lender's liability under such Standby Instrument beyond its stated expiration date, in addition to payment of an amount equal to the Lender's contingent liability thereunder, the Borrower shall also pay all fees which would be required to be paid in respect of such Standby Instrument from the date upon which such Standby Instrument would otherwise have expired to the date of payment in accordance with the provisions of Section 6.4(a). Any amount paid by the Borrower to the Lender pursuant to the preceding provisions shall vest absolutely and unconditionally in the Lender, and the Borrower shall be deemed to represent and warrant in favour of the Lender in respect of any amount so paid that it has the right to make such payment and that no other Person has any interest in the amount transferred.
- (b) The Lender shall, with respect to any Standby Instrument, upon the earlier of:
- (i) the date on which any final and non-appealable order, judgment or other determination has been rendered or issued either terminating the applicable Judicial Order or permanently enjoining the Lender from paying under such Standby Instrument; and
  - (ii) the earlier of (i) the date on which either (x) the original counterpart of the Standby Instrument is returned to the Lender for cancellation, or (y) the Lender is released by the beneficiary thereunder from any further obligations, and (ii) the expiry (to the extent permitted by any Applicable Law) of the Standby Instrument

pay to the Borrower an amount equal to the difference between (i) the amount paid to the Lender pursuant to Section 6.5(a) (other than amounts paid in respect of fees) and (ii) the amounts paid by the Lender under the Standby Instrument.

## 6.6 Indemnity

The Borrower hereby undertakes to indemnify and hold harmless the Lender from and against all liabilities and costs (including, without limitation, any costs incurred in funding any amount which falls due from the Lender under any Standby Instrument hereunder) to the extent

that such liabilities or costs are not satisfied or compensated by the payment of interest on sums due pursuant to this Agreement in connection with any Standby Instrument except where such liabilities or costs result from the gross negligence or wilful misconduct of the Lender.

**ARTICLE 7**  
**DERIVATIVE FACILITIES**

**7.1 Derivative Facilities**

The Lender (or an Affiliate of the Lender) may enter into Derivatives with the Borrower for hedging its currency exposure, and such Derivatives are (a) currency futures or forward foreign exchange futures with a term not exceeding one (1) year; and (b) foreign exchange spot transactions or for settlement of forward foreign exchange contracts up to a notional principal amount not exceeding US\$4,000,000 per day.

Each such Derivative shall be in form and substance acceptable to the Lender in its discretion. Derivatives may not be entered into for speculative purposes. The Security shall secure all obligations of the Borrower under or in respect of each Derivative on a *pari passu* basis with all other Loan Obligations.

**7.2 ISDA Master Agreement**

Each Derivative referred to in Section 7.1, the Borrower agrees to execute and deliver to the Lender all such agreements as it may reasonably require (for greater certainty, specifically including an ISDA Master Agreement). Each Derivative between the Borrower and the Lender shall include the Lender's standard early termination events and shall also stipulate that the termination of all or any of the Credit Facilities shall constitute an Early Termination Event (as defined in the ISDA Master Agreement) and the Affected Party (as defined in the ISDA Master Agreement) shall be the counter-party to the Lender in such contract. The Lender shall have the right to choose the payment measure and the payment method (as such terms are understood in the ISDA Master Agreement) in respect of such Early Termination.

**ARTICLE 8**  
**INTEREST CALCULATIONS, FEES, AND CHANGES IN CIRCUMSTANCES**

**8.1 Interest**

- (a) **Canadian Prime Rate Loans.** The Borrower shall pay the Lender interest on the outstanding principal amount of each Canadian Prime Rate Loan borrowed by it under the Operating Facility and the Term Facility, as applicable, at a rate equal to the Canadian Prime Rate plus the Applicable Margin.
- (b) **U.S. Base Rate Loans.** the Borrower shall pay the Lender interest on the outstanding principal amount of each U.S. Base Rate Loan borrowed by it under the Operating Facility and the Term Facility, as applicable, at a rate equal to the U.S. Base Rate plus the Applicable Margin.

- (c) **Libor Loans.** The Borrower shall pay the Lender interest on the outstanding principal amount of each Libor Loan borrowed by it under the Operating Facility and the Term Facility, as applicable, at a rate equal to LIBOR plus the Applicable Margin.

## 8.2 Fees in Respect of Bankers' Acceptances

The Borrower shall pay to the Lender a Stamping Fee on the relevant Borrowing Date with respect to each Draft issued by the Borrower and accepted by the Lender calculated and payable at the time and in the manner specified in Section 4.5.

## 8.3 Fee

The Borrower shall pay an upfront fee (the "Fee") of Cdn.\$65,000 upon the execution of this Agreement.

## 8.4 Interest Calculations and Payments

- (a) Interest payable on each Canadian Prime Rate Loan and each U.S. Base Rate Loan shall be (i) calculated upon the daily outstanding balance of such Loan from (and including) the date it is advanced until (but excluding) the date it is repaid in full, (ii) paid in the same currency in which such Loan is denominated and (iii) payable in arrears on each Interest Payment Date based upon the actual number of days elapsed in the relevant period of calculation. Interest payable on each such Loan shall be payable both before and after demand, default and judgement at the applicable rate set out in Section 8.1 with interest on overdue interest at the same rate.
- (b) Interest payable on each LIBOR Loan shall be, (i) calculated daily and payable in arrears, and without duplication, (ii) in the case of an Interest Period longer than 3 months, on the date falling three months from the beginning of such Interest Period and on the date falling three months thereafter, and so on from time to time during such Interest Period; (ii) on the last day of such Interest Period; and (iv) on the day on which such Loan becomes due and payable in full pursuant to the provisions hereof. Interest payable on each LIBOR Loan shall be payable both before and after demand, default and judgement at the applicable rate set out in Section 8.1 with interest on overdue interest at the same rate.
- (c) The rates of interest per annum payable on or in respect of Canadian Prime Rate Loans and U.S. Base Rate Loans and the fees payable in respect of Standby Instruments are expressed on the basis of a 365 day year, as applicable. The rates of interest per annum payable on or in respect of Bankers' Acceptances are expressed on the basis of a 365 day year. The rates of interest per annum payable on or in respect of Libor Loans are expressed on the basis of a 360 day year.
- (d) For the purposes of the *Interest Act* (Canada), the yearly rate of interest to which the rate of interest per annum payable on or in respect of any Banker's Acceptance is equivalent is such rate multiplied by a fraction the numerator of which is the

actual number of days in the relevant year of calculation and the denominator of which is 365. The yearly rate of interest to which the rate of interest per annum payable on or in respect of any Libor Loan is equivalent is such rate multiplied by a fraction the numerator of which is the actual number of days in the relevant year of calculation and the denominator of which is 360.

- (e) The principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement.
- (f) The rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.
- (g) Changes in the Canadian Prime Rate or U.S. Base Rate will cause an immediate adjustment of interest payable on or in respect of Canadian Prime Rate Loans or U.S. Base Rate Loans, respectively, outstanding from time to time, without the necessity of any notice to the Borrower.

## **8.5 Increased Costs**

If any Change in Law:

- (a) subjects the Lender to, or causes the withdrawal or termination of a previously available exemption with respect to, any Taxes (other than Excluded Taxes) or changes the basis of taxation of payments due to the Lender or increases any Taxes payable by the Lender on or in respect of payments of principal, interest, fees or other amounts payable by the Borrower to the Lender under this Agreement or any other Loan Document (other than Excluded Taxes);
- (b) imposes, modifies or deems applicable any reserve, liquidity, cash, margin, special deposit, deposit insurance or assessment, or any other regulatory or similar requirement against assets held by, or deposits with or for the account of, or loans or commitments by, or any other acquisition of funds for loans by, the Lender, or any unutilized portion of the Credit Facilities, or any obligation of the Lender under any Loan Document;
- (c) imposes on any Lender any Taxes on reserves or deemed reserves in respect of the undrawn portion of the Credit Facilities;
- (d) requires the Lender to maintain any capital adequacy or additional capital requirement (including a requirement which affects the Lender's allocation of capital resources to its obligations) in respect of the Credit Facilities, any Advance, any Derivative, this Agreement or the Lender's obligations hereunder or imposes any other condition or requirement with respect to the maintenance by the Lender of a contingent liability with respect to the Credit Facilities, any Advance or any Derivative; or

- (e) imposes on the Lender any other prejudicial condition or requirement with respect to this Agreement, any other Loan Document, the Credit Facilities or any Derivative,

and the Lender determines (which determination shall be conclusive and bind the Borrower) that such occurrence has the effect of:

- (i) increasing the cost to the Lender of agreeing to make or making, maintaining or funding the Credit Facilities, any Advance, any Derivative or any portion of any thereof;
- (ii) reducing the net income received by the Lender in respect of this Agreement, the Credit Facilities, any Advance, any Derivative or any portion of any thereof;
- (iii) directly or indirectly reducing the effective return the Lender under any Loan Document on its overall capital as a result of the Lender entering into such Loan Document or as a result of any of the transactions or obligations contemplated by such Loan Document; or
- (iv) causing the Lender to make any payment or to forego any interest, fees or other return on or calculated by reference to any sum received or receivable by the Lender under any Loan Document,

then the Lender will promptly notify the Borrower of such determination and, upon demand from time to time being made to the Borrower by the Lender accompanied in each case by a certificate of the Lender documenting the relevant calculations of the compensation being claimed by the Lender, the Borrower shall forthwith pay to the Lender such additional amounts as are set out in each such certificate in order to fully compensate the Lender for such additional cost, reduction, payment, foregone interest or other return.

## **8.6 Libor Loans - Market Disruption**

If at any time prior to the commencement of a proposed Interest Period the Lender determines (which determination shall be conclusive and bind the Borrower) that:

- (a) by reason of circumstances affecting the London interbank market, or any bank participants therein, adequate and fair means do not exist for ascertaining the rate of interest with respect to a Libor Loan during the proposed Interest Period;
- (b) deposits in U.S. Dollars are not being offered to the Lender in the London interbank market in the ordinary course of business;
- (c) the making or continuing of the Libor Loan by the Lender during the proposed Interest Period has been made impracticable by the occurrence of any change in national or international financial, political or economic conditions or currency exchange rates or exchange control, or an event which materially and adversely affects the London interbank market; or

- (d) the LIBOR for the proposed Interest Period does not accurately reflect the effective cost to the Lender of funding the Libor Loan for the proposed Interest Period,

then the Lender may give notice of such determination to the Borrower. Thereafter, and until the Lender notifies the Borrower otherwise, the Borrower shall not have the right to require the Lender to make any Libor Loan available in the manner requested. In the case of any Libor Loan, the Lender shall, subject to Section 8.7, instead make an advance in U.S. Dollars which shall bear interest payable in the same manner as any U.S. Base Rate Loan under the relevant Credit Facility.

### **8.7 Illegality**

If at any time the Lender determines (which determination shall be conclusive and bind the Borrower) that any Change in Law has made it unlawful or impossible for the Lender to make, fund or maintain a Loan or Banker's Acceptance or any Standby Instrument, or to give effect to its obligations in respect of such Loan, Banker's Acceptance or Standby Instrument (an "**Affected Advance**"), the Lender will promptly notify the Borrower. Upon giving such notice the obligation of the Lender to make or continue any Affected Advance shall be suspended for so long as such condition exists. Thereafter, and until the Lender notifies the Borrower otherwise, the Borrower shall not have the right to require the Lender to make such Affected Advance available in the manner requested. Rather, in the case of Advances to be made available to the Borrower, except as otherwise provided in the next sentence, such Advance shall be made available by way of an advance in the same currency which shall bear interest payable in the same manner as any Canadian Prime Rate Loan (if it is denominated in Canadian Dollars) or U.S. Base Rate Loan (if it is denominated in U.S. Dollars) under the Credit Facilities from the expiry of the applicable Interest Period or term of Bankers' Acceptances. If the Affected Advance is a Canadian Prime Rate Loan or a U.S. Base Rate Loan, the Borrower shall forthwith prepay the Lender's Affected Advance and the Lender shall not be required to make such Affected Advance available in any manner. If however, the Affected Advance is a Standby Instrument, the Borrower shall forthwith pay to the Lender the Outstanding Amount of such Standby Instrument, to be held as cash collateral by the Lender to secure the payment and performance of the Borrower's obligations in respect of such Standby Instrument.

### **8.8 Withholding Taxes Generally**

- (a) Each payment under each Loan Document shall be made without any deduction or withholding for or on account of any Withholding Tax unless such deduction or withholding is required by any Applicable Law. If the Borrower is required to deduct or withhold Withholding Tax from any such payment to any lender (the "Lender"), then the Borrower will:
  - (i) promptly notify the Lender of such requirement;
  - (ii) pay to the relevant Governmental Body the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by the Borrower to the Lender



under this Subsection 8.8(a) contemporaneously with the making of the payment in respect of which such Withholding Tax was withheld;

- (iii) promptly forward to the Lender an official receipt (or a certified copy), or other documentation reasonably acceptable to the Lender, evidencing such payment to such Governmental Body; and
  - (iv) pay to the Lender such additional amount as is necessary to ensure that the net amount actually received by the Lender (free and clear of Tax other than Excluded Taxes, whether assessed against the Borrower or the Lender) will equal the full amount the Lender would have received had no such Withholding Tax (excluding Excluded Taxes) been exigible.
- (b) If the Lender is entitled to claim a refund or able to apply for or otherwise take advantage of any tax credit, tax deduction or similar benefit by reason of any withholding or deduction made by the Borrower in respect of a payment made by it hereunder, which payment shall have been increased pursuant to Subsection 8.8(a), then the Lender will use commercially reasonable efforts (to the extent it has the administrative controls in place to enable it to do so) to obtain such refund, credit, deduction or benefit and upon receipt thereof will pay to the Borrower such amount (if any) (not exceeding the increased amount paid by the Borrower) as equals the net after tax value to the Lender of such part of such refund, credit, deduction or benefit as is allocable to such withholding or deduction having regard to all its dealings giving rise to similar credits, deductions or benefits in relation to the same tax period and to the cost of obtaining the same, provided that nothing herein shall (i) interfere with the right of the Lender to arrange its tax affairs in whatever manner it deems fit and in particular the Lender shall not be under any obligation to claim relief from its corporate profits or similar tax liability in respect to any such deduction or withholding in priority to any other relief, claims, credits or deductions available to it and (ii) the Lender shall not be obligated to disclose to the Borrower any information regarding its tax affairs or tax computations.
- (c) If the Lender is entitled to an exemption from or reduction of Withholding Tax under Applicable Law of any jurisdiction that may impose Taxes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Loan Document shall, at the request of the Borrower, deliver to the Borrower, at the time or times prescribed by Applicable Law or reasonably requested by the Borrower, such properly completed and executed documentation prescribed by Applicable Law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, the Lender, if requested by the Borrower, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower as will enable the Borrower to determine whether or not the Lender is subject to withholding or information reporting requirements (or rate of applicable withholding).

## 8.9 Circumstances Making Bankers' Acceptances Unavailable

If, by reason of circumstances affecting the money market generally, there is no market for Bankers' Acceptances, the Lender shall promptly notify the Borrower of the suspension of the Borrower's right to request a Bankers' Acceptance and of the termination of any suspension and (i) the right of the Borrower to request a Bankers' Acceptance shall be suspended until the circumstances causing a suspension no longer exist, and (ii) any Borrowing Request requesting a Bankers' Acceptance which is outstanding shall be deemed to be a Borrowing Request requesting a Canadian Prime Rate Loan.

## ARTICLE 9 REPAYMENT AND PREPAYMENT

### 9.1 Repayment of the Credit Facilities

- (a) **Voluntary Repayment of Operating Facility.** The Borrower may borrow, repay and re-borrow Advances under the Operating Facility on a revolving basis as set out in Section 2.3.
- (b) **Mandatory Repayment of Operating Facility.** The Borrower shall repay the Outstanding Amount of Advances drawn down by it under the Operating Facility, together with, without limitation, interest in accordance with the terms hereof and all costs to the Lender of unwinding any BAs or Standby Instruments on demand.
- (c) **Voluntary Prepayment of Term Facility.** Upon prior written notice to Lender, the Borrower may at any time prior to the Term Facility Maturity Date, repay or prepay the Advance under the Term Facility in whole or in part without penalty or premium provided all breakage costs, if any, are fully paid, other than as expressly provided below in Section 9.1(f). Amounts borrowed under the Term Facility which are repaid or prepaid may not be reborrowed.
- (d) **Mandatory Repayment of Term Facility.** Commencing on June 30, 2018, the Borrower shall make quarterly principal payments on the Term Facility, the amount of each such payment to be calculated as follows and as further detailed in Schedule 9.1(d) attached hereto:

Principal payments during the first year of the Availability Period	7.5% per annum of the original amount of the Term Facility
Principal payments during the second and third year of the Availability Period	10% per annum of the original amount of the Term Facility
Principal payments during the fourth year of the Availability Period	12.5% per annum of the original amount of the Term Facility
Principal payments during the fifth year of the Availability Period	15% per annum of the original amount of the Term Facility, with 45% bullet repayment due on the Term Facility

	Maturity Date
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For greater certainty, the Borrower agrees and understands that the Term Facility shall have a term of five years and must be repaid in full on the Term Facility Maturity Date.

- (e) **Mandatory Repayment of Term Facility in an amount equal to Financial Covenant Cure Amount.** In addition to all other repayments required pursuant to this Section 9.1, where the Borrower elects to cure a Financial Covenant Default in accordance with the provisions of Section 13.4 hereof, the Borrower shall make a repayment under the Term Facility in an amount equal to the proceeds of a Financial Covenant Cure Amount upon receipt by the Borrower thereof.
  
- (f) **Mandatory Repayment of Term Facility pursuant to Section 6.12(c) of the Limited Partnership Agreement.** If the Lender exercises its remedies under Section 14.2 hereof at any time prior to the 12 month anniversary of the Closing Date as a result of the Cdn LP Holdco being required to sell all of its assets or arrange for the sale of all of its Units to a third party pursuant to Section 6.12(c) of the Limited Partnership Agreement, the Borrower will pay the Lender a premium in an amount equal to three (3%) percent of the outstanding Loan Obligations.

**9.2 Excesses by Reason of Foreign Currency Fluctuations**

If and each time the Lender determines, (which determination shall be conclusive and bind the Borrower, absent manifest error) that the Outstanding Amount of all Advances under the Operating Facility exceeds 103% of the Facility Limit or exceeds 103% of the aggregate commitment under the Term Facility by reason of fluctuations in exchange rates, the Lender may request the Borrower to repay the excess. Within five Business Days of the receipt of any such request, the Borrower shall repay to the Lender such Advances outstanding under such Credit Facility as may be required to ensure that such excess is eliminated.

**9.3 Capital Asset Disposition Reductions**

The Credit Facilities shall be repaid from the Net Asset Disposal Proceeds received by the Borrower or any Guarantor in any calendar year in connection with the disposal, to any Person, of capital assets, out of the ordinary course of business in excess of \$250,000 (each, an "**Asset Disposal**") within 30 days of the occurrence of any such Asset Disposal. Such repayment shall be applied firstly to the Term Facility and then to the Operating Facility. The Borrower shall promptly notify the Agent and the Lenders of full particulars pertaining to any Asset Disposal contemplated by this Section 9.3 and of any required repayment under this Section 9.3 and shall make any required payment on the third Business Day following receipt of the applicable Net Asset Disposal Proceeds.

#### **9.4 Insurance Proceeds**

If the Borrower or any Guarantor receives a payment of net insurance proceeds in excess of \$250,000, under or in connection with an insurance policy in connection with the loss, damage or destruction of any property (excluding for the avoidance of doubt any payments in respect of business interruption insurance), then, so long as there exists no Default or Event of Default, on the date which is ninety (90) days after receipt of such payment the Borrower shall make a repayment in an amount equal to the portion of such net insurance proceeds that has not been or is not reasonably expected to be applied within such 90 day period to the repair or replacement of such property to obtain similar assets used in the business. Such repayment shall be applied firstly to the Term Facility and then to the Operating Facility.

#### **9.5 Netting of Payments**

If on any date amounts would be payable under this Agreement in the same currency by the Borrower to the Lender and by the Lender to the Borrower, then, on such date, each such party's obligations to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by the Borrower to the Lender exceeds the aggregate amount that would otherwise have been payable by the Lender to the Borrower or vice versa, such obligations shall be replaced by an obligation upon the Person by whom the larger aggregate amount would have been payable to pay to the other the excess of the larger aggregate amount over the smaller aggregate amount.

#### **9.6 Place of Payment of Principal, Interest and Fees**

Each payment of principal, interest, fees and other amounts owing by the Borrower under or otherwise in respect of any Loan Document shall be made by the Borrower to the Lender at the location described in Section 15.8 in immediately available, freely transferable, cleared funds for value on the due date (or if such due date is not a Business Day on the Business Day next following).

### **ARTICLE 10** **CONDITIONS PRECEDENT**

#### **10.1 Conditions Precedent**

This Agreement shall not be effective and the Lender shall have no obligation to make any Advance until the following conditions have been satisfied, in each case to the satisfaction of the Lender, in form and substance satisfactory to the Lender:

- (a) the Lender shall have completed its due diligence in respect of Targetco and its Subsidiaries, the management structure of the Companies following the Amalgamation, including the terms of all Material Agreements and insurance policies, and shall be satisfied that there are no known infringement claims or liabilities relating to the Intellectual Property Rights of Targetco and the Companies;

- (b) the Lender shall have received all "know your client", anti-money laundering or similar identification information requested by the Lender;
- (c) the Lender shall have received a detailed ownership chart reflecting the corporate structure of each of the Borrower and Guarantors;
- (d) the Lender shall have received from the Borrower a completed environmental questionnaire in the Lender's standard form;
- (e) the Lender shall have received evidence that Newco has received cash proceeds of an equity injection in the amount of Cdn.\$33,000,000;
- (f) the Lender shall have received a true and complete copy of the BDC Loan Agreement and the Intercreditor Agreement and the funding of the BDC Debt shall occur immediately before or contemporaneously with the funding hereunder on the Closing Date;
- (g) each of the terms and conditions for the benefit of the Borrower in respect of the Acquisition Transaction as set forth in the Purchase Agreement shall have been satisfied or waived (subject to acceptance of such waiver by the Lender, acting reasonably);
- (h) the Lender shall have received and be satisfied with executed copies of the Purchase Agreement and all schedules thereto, all disclosure letters referred to therein, and all copies of consents from Microsoft Corporation and Adobe Systems Incorporated in respect of the Acquisition Transaction and the change of control of the Targetco; and all agreements contemplated to be entered into pursuant thereto, including employment, consulting, non-competition and confidentiality, and any shareholders' agreement among the shareholders of Newco and limited partnership agreements among the unitholders of Cdn LP Holdco;
- (i) the Borrower shall undertake to deliver to the Lender within 30 days of Closing executed copies of management retention/employment agreements containing non-competition and confidentiality agreements between Targetco and each of Ryan Peatt, Louis Fateux and Abeer Saba;
- (j) the Lender shall have received a Certificate of:
  - (i) *Pre-Acquisition*. Newco as to incumbency of its officers and attaching true copies of (i) the articles of the Newco including all amendments thereto, (ii) each unanimous shareholder agreement pertaining to the Newco, if any, (iii) the by-laws of the Newco; and (iv) a certified copy of the authorizing resolution of the directors or shareholders of the Newco authorizing the execution, delivery and performance by it of each Loan Document to which it is a party and the consummation of the transactions contemplated thereby;

- (ii) *Post-Acquisition.* Targetco as to incumbency of its officers and attaching true copies of (i) the articles of the Targetco including all amendments thereto, (ii) each unanimous shareholder agreement pertaining to the Targetco, if any, (iii) the by-laws of the Targetco; and (iv) a certified copy of the authorizing resolution of the directors or shareholders of the Targetco authorizing the execution, delivery and performance by it of each Loan Document to which it is a party and the consummation of the transactions contemplated thereby;
- (iii) *Post-Amalgamation.* Amalco as to incumbency of its officers and attaching true copies of (i) the articles of the Amalco including all amendments thereto, (ii) each unanimous shareholder agreement pertaining to the Amalco, if any, (iii) the by-laws of the Amalco; and (iv) a certified copy of the authorizing resolution of the directors or shareholders of the Amalco authorizing the execution, delivery and performance by it of each Loan Document to which it is a party and the consummation of the transactions contemplated thereby;
- (k) the Lender shall have received a Certificate of each of the Guarantors as to incumbency of its signing officers and attaching certified copies of the authorizing resolutions of its board of directors or shareholders authorizing the execution, delivery and performance by it of each Loan Document to which it is a party and the consummation of the transactions contemplated thereby;
- (l) the Lender shall have received a certificate of status, compliance or good standing or similar certificate with respect to each of the Borrower and each of the Guarantors for its jurisdiction of incorporation or formation;
- (m) all Loan Documents required to be provided at the time of the first Advance shall have been executed and delivered, and all registrations or filings necessary or desirable in connection therewith shall have been made;
- (n) the Lender shall have received an undertaking from Targetco to file with the Canadian Intellectual Property Office, all documentation required to amend the name of the registered owner of the word mark "KIVUTO" (Canadian trademark registration No. TMA872,973) from "Kivuto Inc." to Targetco, and if this is not possible, to file a new trademark application to register the word mark "KIVUTO" with Targetco as the owner/registrant;
- (o) the Lender shall have received copies of the certificates of insurance in respect of the insurance policies required to be maintained by the Borrower and each of the Guarantors under Subsection 13.1(i);
- (p) all legal opinions required by the Lender in connection with this Agreement and the Loan Documents shall have been executed and delivered;

- (q) the Lender shall have received a copy of the most recent company prepared consolidated financial statements of Targetco, together with a Compliance Certificate evidencing Senior Funded Debt/EBITDA Ratio of < 3.60:1;
- (r) the Lender shall have received payment in full of the Fee; and
- (s) the Lender shall have received such other agreements, documents and instruments contemplated by this Agreement as the Lender acting reasonably may, in its judgement, require to comply with or implement the provisions of this Agreement.

## **10.2 Conditions to all Borrowings**

The Lender shall not be obliged to make or allow any future Borrowing under the Credit Facilities unless:

- (a) each of the representations and warranties of the Borrower contained in Section 12.1 (as modified by Section 12.1(o)) is true and correct in all material respects as of the date such Borrowing is requested and as of the proposed Borrowing Date as though made on and as of each such date;
- (b) no Default or Event of Default has occurred that is continuing on the date such Borrowing is requested or on the proposed Borrowing Date, nor would any Default or Event of Default result after giving effect to the requested Borrowing;
- (c) the Borrower, and where required, the Guarantors have executed and delivered the Loan Documents to the Lender;
- (d) unless otherwise waived, each of the terms and conditions applicable to such Borrowing contained in this Agreement shall have been fully complied with; and
- (e) the Borrower has executed and delivered to the Lender a Borrowing Request, or an Electronic Borrowing Request, as applicable, together with all required attachments thereto.

## **10.3 Intentionally Deleted**

## **10.4 Waiver**

The conditions set forth in Sections 10.1 and 10.2 are inserted for the sole benefit of the Lender and may be waived by the Lender, in whole or in part, (with or without terms or conditions) in respect of any requested Borrowing without prejudicing the right of the Lender at any time to assert such conditions in respect of any subsequent Borrowing.

**ARTICLE 11**  
**SECURITY**

**11.1 Guarantee and Security**

The Borrower shall execute and deliver, and cause to be executed and delivered to the Lender the following security as general and continuing security for the payment and performance of all of the Loan Obligations of the Borrower to the Lender:

- (a) a general security agreement, together with any other documents required to create a security interest in and over all of the present and future assets of the Newco;
- (b) a general security agreement, together with any other documents required to create a security interest in and over all of the present and future assets of the Targetco;
- (c) an intellectual property security agreement from the Targetco;
- (d) acknowledgement and confirmation from the Borrower following Amalgamation of Security to which it is party;
- (e) an assignment of all insurance, including product liability, liability and property insurance, maintained by the Borrower in respect of their business and assets and required hereunder;
- (f) a collateral assignment of the Purchase Agreement;
- (g) a limited recourse guarantee of the Loan Obligations by Cdn LP Holdco;
- (h) a pledge of all of the issued and outstanding shares in the capital of the Borrower by Cdn LP Holdco;
- (i) the Intercreditor Agreement;
- (j) such other security as may reasonably be required by the Lender from time to time in connection with assets acquired by the Borrower or in order to preserve and protect the interest of the Lender in the assets and property of the Borrower from time to time.

**11.2 Intentionally Deleted**

**11.3 New Guarantors**

If at any time the Borrower or any Guarantor existing as of the date hereof acquires or establishes a wholly-owned Subsidiary and such corporation is engaged in the Core Business or owns all of the issued and outstanding shares of a corporation engaged in the Core Business, the Borrower shall immediately cause that Subsidiary to adopt this Agreement by executing a



Confirmation Agreement, so as to be bound by all of the terms applicable to guarantors as if it had executed this Agreement as a guarantor and deliver a guarantee which shall become part of the security.

Each new Guarantor shall execute and deliver to the Lender the following:

- (a) a guarantee; and
- (b) a general security agreement securing the obligations of such Guarantor under the guarantee together with any other documents required to secure such obligations over all real and personal property of such Guarantor;

as continuing collateral security for the performance by such Guarantor of its obligations under its guarantee.

#### **11.4 Registration**

All Security granted by the Borrower or any Guarantor to the Lender shall constitute a valid lien on all of the assets and undertaking of the Borrower or Guarantor, as applicable, intended to be charged thereunder, which lien shall rank prior and senior to all other liens on such assets and undertaking of the Borrower and each such Guarantor, except for applicable Permitted Liens, other liens which, by law, have priority over the security required by the Lender or as otherwise expressly agreed by the Lender in writing.

#### **11.5 After Acquired Property and Further Assurances**

The Borrower and each Guarantor shall from time to time execute and deliver all such further deeds or other instruments of conveyance, assignment, transfer, mortgage, pledge or charge as may reasonably be required by the Lender from time to time in connection with all assets acquired by the Borrower and any Guarantor after the date hereof and intended to be subject to the security interests required hereby including any insurance thereon.

### **ARTICLE 12** **REPRESENTATIONS AND WARRANTIES**

#### **12.1 Borrower Representations and Warranties**

To induce the Lender to make the Credit Facilities available to the Borrower, the Borrower hereby represents and warrants to and in favour of the Lender as follows:

- (a) **Existence and Good Standing.** The Borrower and each Guarantor is a corporation or limited partnership incorporated or formed, organized and existing under the laws of its jurisdiction of incorporation or formation and has the legal capacity and right to own its Business Assets and to carry on its business as presently carried on and as contemplated hereunder to be carried on in each jurisdiction in which its Business Assets are located or it carries on business.

- (b) **Authority.** The Borrower and each Guarantor has the legal capacity and right to enter into the Loan Documents to which it is a party and do all acts and things and execute and deliver all agreements, documents and instruments as are required thereunder to be done, observed or performed by it in accordance with the terms and conditions thereof.
- (c) **Due Authorization.** The Borrower and each Guarantor has taken all necessary action to authorize the execution and delivery of each Loan Document to which it is a party, the performance of its obligations thereunder and the consummation of the transactions contemplated thereby.
- (d) **Due Execution.** The Borrower and each Guarantor has duly executed and delivered each Loan Document to which it is a party.
- (e) **Validity of Loan Documents – Non-Conflict.** None of the corporate authorization, execution, delivery or performance of the Loan Documents, nor the consummation of any of the transactions contemplated thereby conflicts with, contravenes or gives rise to any default under (A) any of the articles (or equivalent or analogous formation documents) or by-laws or resolutions of the directors, shareholders or partners of the Borrower or any Guarantor, (B) the provisions of any material indenture, instrument, agreement or undertaking to which the Borrower or any Guarantor is a party or by which the Borrower or any Guarantor or any of its respective Business Assets are or may become bound or (C) any Applicable Law.
- (f) **Enforceability.** Each Loan Document to which the Borrower and each Guarantor is a party constitutes a valid and legally binding obligation enforceable against it in accordance with its terms, subject only to bankruptcy, insolvency, reorganization, arrangement or other statutes or judicial decisions affecting the enforcement of creditors' rights in general and to general principles of equity under which specific performance and injunctive relief may be refused by a court in its discretion.
- (g) **Absence of Litigation.** There is no existing, pending or to its knowledge threatened Litigation against the Borrower or any of the Guarantors. To the knowledge of the Borrower, no event has occurred, and no state or condition exists, which could give rise to any such Litigation and there is no Award outstanding against it or any of the Guarantors which could have a Material Adverse Effect.
- (h) **Financial Statements.** The consolidated financial report and financial statements of the Borrower delivered to the Lender pursuant to Subsection 13.1(f) have been prepared in accordance with GAAP (subject to year-end audit adjustments, where applicable) and fairly and accurately presents, in all material respects, the financial information and the financial condition and results of operations of the Companies contained therein as at their respective preparation dates.

- (i) **Accuracy of Information.** No information furnished in writing by the Borrower or the Guarantors to the Lender in connection with any of the Loan Documents contains any material misstatement of fact or omits to state a material fact necessary to make the statements contained therein not misleading in light of the circumstances in which they were made and as of the date made.
- (j) **No Material Adverse Change.** Since the date of the most recent financial statements of the Borrower furnished to the Lender, there has been no change in any of its Business Affairs which would have a Material Adverse Effect.
- (k) **Compliance with Laws.** To the knowledge of the Borrower, the Borrower and each Guarantor is in compliance in all material respects with all Applicable Laws, non-compliance with which could give rise to a Material Adverse Change.
- (l) **All Authorizations Obtained and Registrations Made.** All material Authorizations and Registrations necessary to permit the Borrower and each Guarantor to own its Business Assets and carry on its business have been obtained or effected and are in full force and effect. The Borrower and each Guarantor is in compliance with the requirements of all such material Authorizations and Registrations and there is no Award outstanding or Litigation existing, pending or to the knowledge of the Borrower threatened, which could result in the revocation, cancellation, suspension or any adverse modification of any of such material Authorizations and Registrations.
- (m) **Pension.**
  - (i) All Pension Plans are registered under, and in compliance in all material respects with, all requirements of Pension and Benefit Laws.
  - (ii) No Pension Plan is a defined benefit pension plan.
  - (iii) There are no actions, claims or proceedings pending or threatened against any Pension Plan or the assets of any such plan which could be reasonably expected to have a Material Adverse Effect.
- (n) **No Default or Event of Default.** No Default or Event of Default has occurred which has not been either remedied (or otherwise ceased to be continuing) or expressly waived by the Lender in writing.
- (o) **Real Property.**
  - (i) The Borrower and each Guarantor has a subsisting freehold or leasehold interest in, or good and marketable title to, in each case free of all Liens, other than Permitted Liens, all of the real property leased or owned by it which are reflected in the latest financial statements of the Borrower and that Guarantor provided to the Lender, except for real property interests disposed of in the ordinary course of business before the date of this Agreement or in compliance with the provisions of this Agreement.

- (ii) Schedule 12.1(o) contains a true, complete and accurate list of all real property owned or leased by the Borrower and each Guarantor, indicates whether such property is owned or leased, is a property where the Borrower or that Guarantor, as applicable, carries on business and is where the Business Assets of the Borrower and that Guarantor, as applicable, are located.
- (iii) There are no actual or, to the knowledge of the Borrower, threatened or alleged defaults with respect to any leases of real property under which the Borrower or any Guarantor is a lessee which could have a Material Adverse Effect except as disclosed in writing to the Lender.
- (p) **Personal Property.** The Borrower and each Guarantor is the sole legal and beneficial owner of, free and clear of all Liens, other than Permitted Liens, all personal property reflected as an asset in the latest financial statements of the Borrower and that Guarantor provided to the Lender, except for personal property disposed in the ordinary course of business before the date of this Agreement or in compliance with the provisions of this Agreement.
- (q) **Material Agreements.** A true and complete list of all Material Agreements (other than the Limited Partnership Agreement), including a description of the nature of each Material Agreement are set out in Schedule 12.1(q). All Material Agreements are in full force and effect and, to the knowledge of the Borrower, each party thereto has duly observed and performed all of its material covenants and obligations under each of the Material Agreements and there has not been any material default under or breach of any Material Agreement by the other parties thereto which could have a Material Adverse Effect.
- (r) **Intellectual Property.**
  - (i) **Identification:**

Schedule 12.1(r):

    - (A) contains a complete list of all material patents, subdivided into the categories (1) developed and owned by the Borrower, (2) otherwise owned by the Borrower, (3) licensed for use by the Borrower and (4) licensed by the Borrower to third parties;
    - (B) contains a complete list of all material trademarks subdivided into the categories (1) registered, owned and used by the Borrower, (2) registered, owned but not currently used by the Borrower, (3) unregistered, owned and used by the Borrower, (4) licensed for use by the Borrower and (5) licensed by the Borrower for use by third parties;
  - (ii) **Ownership:**

- (A) except with respect to those rights in patents and trademarks owned by third parties granted to the Borrower pursuant to a license as disclosed in Schedule 12.1(q), the Borrower is the sole legal and beneficial owner of the patents and trademarks set out in Schedule 12.1(q), free and clear of all Liens whatsoever, except for Permitted Liens;
- (B) the material patent and trade mark registrations and any material copyright registrations identified in Schedule 12.1(q) are to the knowledge of the Borrower valid and subsisting, and to the knowledge of the Borrower are in good standing, all required filings with any relevant governmental intellectual property office have been made and all required filing fees have been paid;
- (iii) **Licenses:** all licenses of Intellectual Property Rights used by any of the Companies in carrying on the Core Business (which have been granted to any such Companies or are in full force and effect and to the Borrower's knowledge, each Company has duly observed and performed all of its material covenants and obligations under each of such licenses and there has not been any material default under or breach of any such licenses by the other parties thereto which could have a Material Adverse Effect.
- (s) **Subsidiaries.** None of the Borrower or any Guarantor has any Subsidiaries carrying on the Core Business other than those listed in Schedule 12.1(s). Targetco is engaged, and immediately following Amalgamation, the Borrower shall be engaged in the Core Business. The authorized and issued Capital Stock of each such Subsidiary, and the owners, beneficially and of record, of such issued Capital Stock, are listed in Schedule 12.1(s). Schedule 12.1(s) sets forth a detailed corporate chart in respect of the Borrower, the Guarantors and each Subsidiary. No Person has any option or right to acquire any Capital Stock in any such Subsidiary of the Borrower or Guarantors. Kivuto US does not to carry on any business or own any Property.
- (t) **Taxes.** The Borrower and each Guarantor has:
  - (i) delivered or caused to be delivered all Income Tax, Sales Tax and other returns for Taxes which are now due to the appropriate Governmental Body;
  - (ii) paid and discharged all Taxes payable by it when due;
  - (iii) made provision for appropriate amounts in respect of any Taxes likely to be exigible in accordance with GAAP;
  - (iv) withheld and collected all Taxes required to be withheld and collected by it and remitted such Taxes to the appropriate Governmental Body; and

- (v) paid and discharged all obligations incidental to any statutory lien or deemed trust imposed upon it by Applicable Law which, if unpaid, might become a Lien on any of its Business Assets,

and no assessment or appeal is, to the Borrower's knowledge, being asserted or processed with respect to such returns, Taxes or obligations.

- (u) **General Environmental Representations and Warranties.** With respect to environmental matters the Borrower and each Guarantor's facilities have at all times while owned, leased, managed, controlled or operated by the Borrower or a Guarantor, as applicable, been owned, leased, managed, controlled or operated by the Borrower or such Guarantor in substantial compliance with all Environmental Laws.
- (v) **Employee Relations.** There are no strikes or work stoppages pending or, to the knowledge of the Borrower, threatened between the Borrower or any Company and any of its employees (including unions representing employees), other than employee grievances arising in the ordinary course of business which would not reasonably be likely to result in work stoppages, and other than those disclosed in writing to the Lender.
- (w) **Financing of the Purchase Transaction.** Attached hereto as Schedule 12.1 (x) is a summary of the sources and application of funds relating to the Purchase Transaction. Immediately following the completion of the Purchase Transaction and the Amalgamation, the Borrower will be Solvent.
- (x) **Representations and Warranties.** The Borrower is not aware that any representation and warranty made by the Vendor in the Purchase Transaction is incorrect or incomplete in any material respect.

## 12.2 Repetition of Representations and Warranties

The representations and warranties made in Section 12.1 shall be deemed to be repeated by each Borrower on each Borrowing Date by reference to the facts and circumstances then existing, it being understood that (a) to the extent such representations and warranties relate to a specifically identified earlier date they shall be true and correct as of such earlier date, (b) to the extent such representations and warranties relate to any Schedule to this Agreement, they shall be true and correct with respect to such Schedule as of the date of this Agreement until such Schedule has been replaced pursuant to Subsection 13.1(f)(viii) and thereafter they shall be true and correct with respect to such replacement as of each date such Schedule has been replaced and (c) the representation and warranty made in Subsection 12.1(t) shall be modified to the extent required to reflect any claims, Taxes or obligations in existence at the time which are excepted in Subsection 13.1(j) and promptly disclosed to the Lender.

## 12.3 Nature of Representations and Warranties

The representations and warranties made in Section 12.1 or deemed repeated in Section 12.1(o) shall survive the execution and delivery of this Agreement and the making of each

Borrowing notwithstanding any investigations or examinations which may be made by the Lender or Lender's Counsel, and the Lender shall be deemed to have relied on such representations and warranties in the making of each Borrowing.

**ARTICLE 13**  
**COVENANTS OF THE BORROWER**

**13.1 Affirmative Covenants**

So long as any Loan Obligations remain payable or the Borrower may be or become entitled to any Drawdown, Borrowing, or Advance under any Credit Facility, the Borrower covenants and agrees with the Lender that it will, and (where the context so admits) it will ensure that each Guarantor, as applicable, will duly perform and comply with each of the following affirmative covenants:

- (a) **Punctual Payment.** Duly and punctually pay each sum payable by it under each Loan Document to which it is a party at the time and place and in the manner provided for in such Loan Document.
- (b) **Conduct of Business.** Maintain in good standing and full force and effect its legal existence in its present jurisdiction of incorporation, or in each jurisdiction into which it continues in accordance with Subsection 13.2(i), and the material Authorizations, Registrations, legal capacity, rights and qualifications necessary to carry on the Business Affairs as presently carried on by each of them and own its Business Assets in each jurisdiction in which it carries on business or owns any Business Assets.
- (c) **Compliance with Applicable Laws.** Comply in all material respects with Applicable Laws.
- (d) **Compliance with Material Agreements.** Comply in all material respects with all Material Agreements.
- (e) **Financial Records.** Maintain complete records and books of account in accordance with GAAP.
- (f) **Financial Statements and Other Information.** Deliver or cause to be delivered to the Lender:
  - (i) within 120 days after the end of each Fiscal Year, the consolidated annual financial statements of the Borrower audited by its Auditors together with a Compliance Certificate for such Fiscal Year;
  - (ii) within 45 days after the end of each Fiscal Quarter, internally company prepared consolidated unaudited Fiscal Quarter financial statements of the Borrower prepared in accordance with GAAP, together with a Compliance Certificate for such Fiscal Quarter;

- (iii) within 120 days after the end of each Fiscal Year, the consolidated Financial Projections of the Borrower for the upcoming Fiscal Year, consisting in each case of management assumptions, a balance sheet and statements of income and retained earnings (or deficit) and of changes in cash position, together with calculations demonstrating compliance with all financial covenants herein;
- (iv) within 120 days after the end of each Fiscal Year, the unaudited annual financial statements of Kivuto Ireland;
- (v) within 120 days after the end of each Fiscal Year, up to date aged accounts receivable and aged accounts payable;
- (vi) within 120 days after the end of each Fiscal Year, a listing of current supply and licensing management contracts noting publisher name, contract value and contract expiry date;
- (vii) from time to time, such additional information regarding any of its Business Affairs as the Lender may reasonably request, including without limitation:
  - (A) within 30 days of Closing, executed copies of management retention/employment agreements containing non-competition and confidentiality agreements between Targetco and each of Ryan Peatt, Louis Fateux and Abeer Saba;
- (viii) within 120 days after the end of each Fiscal Year such revised Schedules to this Agreement as may be necessary to reflect any material changes occurring during such prior Fiscal Year in the information contained in such Schedules so that no representation or warranty contained in this Agreement is false or incorrect in any material respect. Thereafter, each reference in this Agreement to any such Schedule shall be deemed to refer to such revised Schedule;
- (ix) promptly upon receipt by the Cdn LP Holdco, a copy of the report contemplated by Section 6.12(b)(iii)(B) of the Limited Partnership Agreement;
- (g) **Rights of Inspection.** From time to time upon reasonable prior notice (which in any event shall not be less than five (5) Business Days prior notice) and during normal business hours, permit any authorized officer or other representative of the Lender (provided that if such other representative is a third party, it has signed a confidentiality agreement respecting such records and books of account with the Borrower) to examine and make copies of any abstracts from the records and books of account of the Borrower and any Guarantor and to discuss any of the Business Affairs of the Borrower or Guarantor with any of its directors, Senior Officers and with any of its Auditors or other consultants. The Borrower shall promptly reimburse the Lender for all reasonable and documented out-of-pocket



expenses (including travel, accommodation and communications expenses) incurred in conducting each inspection during the continuance of an Event of Default only. The Borrower shall promptly provide the Lender with such information concerning any Guarantor upon reasonable request from time to time.

- (h) **Notice.** Provide prompt notice to the Lender of: (i) the occurrence of an Event of Default (for greater certainty, whether or not such Event of Default is continuing); (ii) the incorrectness of any representation or warranty contained herein in any material respect; (iii) any Material Adverse Change; (iv) the commencement of any litigation which is material in relation to the Companies taken as a whole; (v) any notice of default, termination or suspension received by any Company in respect of Indebtedness exceeding \$500,000 or in respect of any Material Agreement; or (vi) the occurrence of a breach under Section 6.12(b) of the Limited Partnership Agreement or the receipt by the Cdn LP Holdco of notice from Roynat Capital Inc. that the report contemplated by Section 6.12(b)(iii)(B) of the Limited Partnership Agreement is not satisfactory.
- (i) **Maintenance of Properties.** Maintain in a reasonable operating state of repair, working order and condition (reasonable wear and tear, damage by fire, lightning, tempest, acts of God and the Queen's enemies and damage resulting from perils covered by insurance maintained by the Borrower or any Guarantor excepted) its Business Assets (whether owned or held under lease) and from time to time make or cause to be made all needed and appropriate commercially reasonable repairs and replacements thereto.
- (j) **Maintenance of Insurance.** Insure, or cause to be insured at all times, all of the properties and assets of the Borrower, and each Guarantor with financially sound and reputable insurance companies covering such properties and assets in an amount of at least their full insurable value and against public liability, in such amounts and against such risks as are usually insured against by companies carrying on a similar business or holding similar assets and the Borrower shall furnish to the Lender upon written request, full information as to the insurance carried. None of the Borrower nor the Guarantors will do or omit to be done anything which could breach or invalidate any such insurance and the Borrower will punctually pay all premiums and other amounts necessary for maintaining such insurance as the same become due. The Borrower shall obtain and, upon written request, provide the Lender with certified copies of the policies effecting the insurance required by this paragraph.
- (k) **Payment of Taxes and Claims.**
  - (i) Pay and discharge all lawful claims for labour, material and supplies, unless being contested in good faith;
  - (ii) deliver or cause to be delivered all Income Tax, Sales Tax and other Tax returns when they are due to the appropriate Governmental Body;

- (iii) punctually pay and discharge all Taxes payable by it when due;
- (iv) withhold and collect all Taxes required to be withheld and collected by it and remit such Taxes to the appropriate Governmental Body before they are past due in the manner required by Applicable Law; and
- (v) pay and discharge all obligations incidental to any trust imposed upon it by statute which, if unpaid, might become a Lien on any of its Business Assets,

except that no such claim, Taxes (other than Taxes required to be withheld and remitted pursuant to the *Income Tax Act* (Canada), the *Excise Tax Act* (Canada) or any similar provincial legislation) or obligations need be paid, collected or remitted if (i) it is being actively and diligently contested in good faith by appropriate proceedings, (ii) reserves considered adequate by it and its Auditors shall have been set aside therefore on its books, and (iii) if a Lien has arisen on any of its Business Assets as a result, all enforcement proceedings for payment, collection or remittance have been stayed and appropriate security has been given, if required, to prevent the commencement or continuation of such enforcement proceedings.

- (l) **Arm's Length Arrangements.** Only enter into an agreement, transaction or other arrangement with a Related Person if such agreement, transaction or arrangement is made on commercially reasonable terms at fair market value and consistent with commercial relations between Persons that deal at arm's length, unless otherwise consented to by the Lender.
- (m) **Comply with Environmental Laws.** To manage and operate the Borrower, the Guarantor and each Company's businesses and facilities in compliance with all Environmental Laws.
- (n) **Environmental Compliance Orders.** Promptly notify the Lender and make available for inspection and review on a confidential basis by representatives of the Lender copies of all material written orders, control orders, directions, action requests, claims or notices issued by any Governmental Body to the Borrower or any Guarantor, as applicable (i) relating to the environmental condition of the Borrower or any Guarantor or (ii) relating to non-compliance with any Environmental Law, to proceed diligently to resolve any such claims or notices relating to compliance with Environmental Law where the failure to resolve the same would (A) have a Material Adverse Effect, or (B) materially diminish the value of such Person's facilities.
- (o) **Environmental Requests.** Promptly notify the Lender of, and if requested by the Lender:
  - (i) obtain, at the Borrower's expense, and provide an environmental audit or inspection report in respect of the Borrower's or any Guarantor facilities;

- (ii) provide copies of each environmental report prepared by or on behalf of the Borrower or any Guarantor in respect of its facilities which is filed with any Governmental Body, other than those that are Immaterial; and
  - (iii) make available for inspection and review on a confidential basis by authorized officers and representatives of the Lender each environmental report and environmental audit concerning the Borrower or Guarantor's facilities prepared by or on behalf of it in accordance with any request of any Governmental Body relating to environmental matters, promptly upon filing thereof.
- (p) **Environmental Indemnity.** Forthwith on demand fully indemnify, defend and save the Lender and their respective directors, officers, employees, agents, solicitors, accountants and other representatives (each, an "**Indemnified Party**") harmless from and against any and all losses and expenses (including interest and, to the extent permitted by Applicable Law, penalties, fines and monetary sanctions) which an Indemnified Party suffers or incurs as a result of or otherwise in respect of any environmental claim or environmental liability of any kind which arises out of the execution, delivery or performance of, or the enforcement or exercise of any right under, any Loan Document, including any claim in nuisance, negligence, strict liability or other cause of action arising out of a discharge of a contaminant into the natural environment and/or, any fines or orders of any kind that may be levied or made pursuant to an Environmental Law, in each case relating to or otherwise arising out of any of the Business Assets of the Borrower or any Guarantor. The Lender shall be constituted as the agent and bare trustee of each Indemnified Party (other than itself) and shall hold and enforce each such Indemnified Party's rights under this paragraph for such party's benefit. The foregoing indemnity shall not apply in respect of losses and expenses arising as a result of the gross negligence or wilful misconduct of an Indemnified Party or any Person acting for or on behalf of any Indemnified Party.
- (q) **Cancellation of Material Agreements.** The Borrower shall notify the Lender immediately of the cancellation of any Material Agreement.
- (r) **Republic of Ireland Subsidiary.** The Borrower shall notify the Lender in the event that annual turnover of Kivuto Ireland exceeds €500,000, and in such event, Kivuto Ireland shall become a Guarantor hereunder and shall provide security in accordance with Section 11.2 and 11.4 hereof and shall arrange for the delivery of a legal opinion of local counsel for Kivuto Ireland, addressed to the Lender and the Lender's Counsel, in respect of the laws of such jurisdiction as the Lender may reasonably require.
- (s) **Inactive Subsidiary.** The Borrower shall notify the Lender in the event that Kivuto US commences operations or acquires, owns or holds Intellectual Property Rights or any other Property, and in any such event, Kivuto US shall become a Guarantor hereunder and shall provide security in accordance with Section 11.2 and 11.4 hereof and shall arrange for the delivery of a legal opinion of local

counsel for Kivuto US, addressed to the Lender and the Lender's Counsel, in respect of the laws of such jurisdiction as the Lender may reasonably require.

### 13.2 Negative Covenants

So long as any Loan Obligations remain payable or the Borrower is entitled to obtain any Drawdown, Borrowing or Advance under any Credit Facility, the Borrower covenants and agrees with the Lender that it will, and (where the context so permits) it will ensure that each Guarantor, as applicable, will, duly perform and comply with each of the following negative covenants:

- (a) **Limitation on Indebtedness.** Not create, assume, incur, otherwise become liable upon or permit to exist any Indebtedness, other than Permitted Indebtedness or Indebtedness secured by any Permitted Lien described in clause (xx) or (xxi) of the definition of "Permitted Liens".
- (b) **Financial Assistance.** Not provide financial assistance by way of a guarantee or otherwise in support of a liability of any Person without the prior written consent of the Lender, other than ordinary course trade receivables from Kivuto Ireland up to a maximum of €250,000.
- (c) **Sale of Assets.** Not dispose of any of its Business Assets, except for (i) sales of inventory in the ordinary course of the Core Business, (ii) dispositions of obsolete, redundant, damaged or otherwise unusable goods, machinery and equipment, fixtures, leaseholds and other asset sales relating to the closing of stores in the ordinary course of business, and (iii) dispositions of defaulted accounts in order to realize on them in a commercially reasonable manner.
- (d) **Negative Pledge.** Not create, incur, assume or otherwise become liable upon or permit to exist any Lien on, against or with respect to any part of its Business Assets, except for Permitted Liens.
- (e) **No Merger, Amalgamation, etc.** Other than the Amalgamation, not enter into any merger, amalgamation, arrangement, consolidation, liquidation, winding-up, dissolution, re-organization or similar transaction, or make any change in the Borrower's capital structure, permit any disposition of any interest in the Borrower or allow a change in Control of Cdn Holdco LP, other than mergers or amalgamations with the Borrower and/or a Guarantor, provided such mergers or amalgamations do not create an entity which is not bound by this Agreement, without the prior written consent of the Lender, which consent shall not be unreasonably withheld.
- (f) **Nature of Business.** Not to materially change the nature of the Core Business or cease to carry on the Core Business or any substantial part thereof.
- (g) **Redemptions and Distributions; Dividends.** Not declare, set apart for payment or pay any dividends or other distributions to shareholders on any of its Capital Stock or redeem, retract, purchase for cancellation or retire or otherwise acquire for value in any manner any of its Capital Stock or otherwise reduce its capital in

any manner, except for Permitted Distributions, provided that immediately before and immediately after each such Permitted Distribution no Default or Event of Default has occurred and is continuing.

- (h) **Derivatives.** Not enter into any Derivative unless:
  - (i) such Derivative is a rate swap, interest rate option, forward rate transaction, forward foreign exchange transaction, cross currency rate swap transaction or any combination thereof;
  - (ii) such Derivative is designed to protect the Borrower against fluctuations in currency exchange rates or, interest rates; and
  - (iii) such Derivative has been entered into by the Borrower *bona fide* and in good faith in the ordinary course of its business for the purpose of carrying on the same and not for speculative purposes;
- (i) **No Continuance.** Not continue under the laws of any other jurisdiction.
- (j) **Fiscal Year.** Not change the Fiscal Year of the Borrower or any Guarantor.
- (k) **Guarantors.** Not dispose of any of its Business Assets except on commercially reasonable terms at fair market value in a manner consistent with commercial relations between Persons that deal at arm's length, other than to the Borrower or a Guarantor.
- (l) **Securitizations.** Not dispose of any account, note receivable or accounts receivable, with or without recourse, except (i) as permitted by paragraph (c) or (ii) if such disposal arises from a dealing in the ordinary course of business with the account debtor which owes the relevant obligation.
- (m) **Investments.** Not make any Investments other than (i) an Investment in a Guarantor or (ii) with the prior consent of the Lender.

### 13.3 Financial Covenants

So long as any Loan Obligations remain payable or the Borrower is entitled to any Drawdown, the Borrower covenants and agrees with the Lender that it will ensure that each of the following financial tests is complied with at all times, as applicable:

- (a) **Fixed Charge Coverage Ratio.** Tested at the end of each Fiscal Quarter commencing on the Fiscal Quarter ending March 31, 2018, on a rolling twelve month basis, in arrears, maintain a minimum Fixed Charge Coverage Ratio of 1.15:1, stepping up to 1.20:1 as at March 31, 2019; and
- (b) **Senior Funded Debt/EBITDA Ratio.** Tested at the end of each Fiscal Quarter, commencing on the Fiscal Quarter ending March 31, 2018, on a rolling twelve month basis, in arrears, not permit the ratio of Senior Funded Debt to EBITDA to

exceed 3.85:1, stepping down to 3.50:1 as at March 31, 2019, stepping down to 3.00:1 as at March 31, 2020 and stepping down to 2.50:1 as at March 31, 2021.

### 13.4 Equity Cure

If the Borrower fails to comply or anticipates it will fail to comply with a financial covenant contained in Section 13.3 (a "**Financial Covenant Default**"), the Borrower shall have the right to cure or remedy such Event of Default on the following terms and conditions (the "**Equity/Subordinated Debt Cure Right**"):

- (a) If the Borrower wishes to cure or remedy a Financial Covenant Default, the Borrower shall deliver to the Lender irrevocable written notice of its intention to do so (a "**Cure Notice**"), (i) in respect of an anticipated Financial Covenant Default, no later than fifteen (15) Business Days prior to the date that the Borrower is required to deliver a Compliance Certificate in respect of that Fiscal Quarter period (the "**Testing Date**"), or (ii) in respect of a Financial Covenant Default which has occurred, no later than forty-five days after the end of the Testing Date. Any such Cure Notice shall set forth the calculation of the applicable "Financial Covenant Cure Amount" (as hereinafter defined).
- (b) If the Borrower delivers a Cure Notice, (i) there shall be purchased Capital Stock of or cash capital contributions made to the Borrower (which shall not contain any mandatory payment of cash dividends or mandatory redemption provisions requiring cash redemptions for cash consideration), (ii) one or more shareholders of the Borrower shall extend to the Borrower cash proceeds constituting an advance of Subrogated Debt or, or (iii) a combination of clauses (i) and (ii) above ("**Equity Cure Securities**"), in any case, in an aggregate amount needed to cure the applicable Financial Covenant Default by no later than ten (10) Business Days after receipt by the Borrower of the Cure Notice (the "**Required Contribution Date**"); provided that for the purposes of calculating the Financial Covenant Cure Amount (as hereinafter defined) the proceeds of Equity Cure Securities shall not: (x) exceed the amount necessary to cure the applicable Financial Covenant Default; or (y) exceed an amount equal to 15% of EBITDA.

The "**Financial Covenant Cure Amount**" shall equal an amount which, if added to and considered to constitute EBITDA for the Fiscal Quarter just ended and to which the Testing Date relates (the "**Cured Quarter**"), would result in the Borrower being in compliance with such covenant as of such Testing Date, but shall be disregarded for all other purposes under this Agreement, included for the purposes of calculating Debt and for the purposes of determining pricing, or other baskets with respect to covenants contained in this Agreement or any other Loan Document.

- (c) For greater certainty, the EBITDA for the Cured Quarter shall continue to be deemed to have been increased by the then applicable Financial Covenant Cure Amount for the purposes of determining EBITDA for any subsequent consecutive twelve month period which includes the Cured Quarter.

- (d) The Borrower shall have the right to exercise the Equity/Subordinated Debt Cure Right not more than (i) two (2) times during the term of this Agreement and (ii) one (1) time during any period of twelve (12) consecutive months unless, solely with respect to this clause (ii), the Lender otherwise consents.
- (e) From the effective date of delivery of a Cure Notice until the earlier to occur of the Required Contribution Date and the date on which the Lender is notified that the required contribution will not be made, the Lender shall not impose default interest, accelerate the Loan Obligations, terminate any commitment to make any Advance or exercise any right or remedy based on any Financial Covenant Default against any Company or any of the property or assets of any of them. Upon timely receipt by the Borrower in cash of the Financial Covenant Cure Amount, and the mandatory repayment of the Term Facility as required in accordance with Section 9.1(e), the Financial Covenant Default shall be deemed to have been waived or remedied with the same effect as though there had been no failure to comply with a financial covenant.
- (f) For certainty, if any Event of Default other than a Financial Covenant Default has occurred and is continuing, the Lender may exercise any or all of its rights and remedies hereunder, under the Loan Documents and under Applicable Law and take any or all such other actions and steps as they may deem appropriate, each in its sole and absolute discretion, notwithstanding the Borrower's election to exercise the Equity/Subordinated Debt Cure Right, the delivery of any Cure Notice or the payment of any Financial Covenant Cure Amount (which does result in the waiver of such Event of Default) under or pursuant to this Section 13.4.

## **ARTICLE 14**

### **EVENTS OF DEFAULT**

#### **14.1 Events of Default**

The occurrence of any one or more of the following events (each such event being herein referred to as an "**Event of Default**") shall constitute a default under this Agreement:

- (a) **Non-Payment of Principal.** A Borrower fails to pay any principal when due (including when demanded).
- (b) **Non-Payment of Other Amounts.** the Borrower fails to pay any interest or other amount (other than principal hereunder) due hereunder within two (2) Business Days after the date such interest or other amount (other than principal) is due;
- (c) **Misrepresentation.** Any representation or warranty made or deemed made by the Borrower or any of the Guarantors in any Loan Document and in connection with the delivery of any of the Loan Documents is found to have been false or misleading in any material respect, and, except where such misrepresentation was made wilfully or grossly negligently (in which case there shall be no cure period)

the Borrower or that Guarantor fails to remedy such default within ten (10) days of the occurrence of such event;

- (d) **Financial Tests.** The Borrower is not in compliance with any financial test contained in Section 13.3.
- (e) **Breach of Other Covenants.** The Borrower or any Guarantor fails to perform or comply with any provision or obligation contained in any Loan Document to which it is a party (other than those referred to in paragraphs (a), (b), (c) and (d) above) and such failure continues unremedied for a period of 15 Business Days after the earlier of (1) the Borrower or that Guarantor knows or learns of such failure; and (2) receipt by the Borrower from the Lender of notice of such failure.
- (f) **Cross-Default.** The Borrower defaults under any one or more agreements, documents or instruments relating to Indebtedness in excess of \$500,000, or there shall have occurred a breach of Section 6.12(b) of the Limited Partnership Agreement, and, if applicable, any grace period has elapsed without such default being cured.
- (g) **Unsatisfied Judgements.** Any one or more Awards for the payment of money in an aggregate amount exceeding Cdn.\$250,000 (or the Equivalent Amount in foreign currency) are rendered against the Borrower or any Guarantor and such Awards shall remain unsatisfied or unstayed for more than 30 Business Days after the Borrower or that Guarantor becomes aware of same.
- (h) **Enforcement of Liens.** Any one or more Persons entitled to any Liens on any property of the Borrower or any Guarantor having an aggregate value exceeding Cdn.\$250,000 take possession of such property or any one or more seizures, executions, garnishments, sequestrations, distresses, attachments or other equivalent processes are issued or levied against any property of the Borrower or any Guarantor having an aggregate value exceeding Cdn.\$250,000.
- (i) **Insolvency.** The Borrower or any Guarantor does not generally pay its debts as they become due or admits its inability to pay its debts generally or makes a general assignment for the benefit of creditors or commits an act of bankruptcy (within the meaning of the *Bankruptcy and Insolvency Act* (Canada)) or any proceedings are instituted by or against the Borrower or any Guarantor seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding-up, reorganization, compromise, arrangement, adjustment, protection, relief or composition of it or of its debts under any Applicable Law relating to bankruptcy, insolvency or reorganization or relief of debtors or other similar matters or seeking the appointment of a receiver, manager, receiver and manager, trustee, custodian or other similar official for it or for any substantial part of its Business Assets or the Borrower or any Guarantor takes corporate action to authorize any of the actions set forth above in this paragraph (except to the extent same does not have a Material Adverse Effect or, in respect of proceedings, such proceedings are being contested by the Borrower or that Guarantor in good faith by appropriate



proceedings and enforcement remains stayed, none of the relief sought is granted (either on an interim or permanent basis) and such proceedings are dismissed within 20 Business Days of their commencement).

- (j) **Cessation of Business.** The Borrower or any Guarantor ceases or suspends or threatens to cease or suspend all or a substantial part of the Core Business (and for this purpose, the relocation or transfer of Business Assets of shifting from one Core Business location to another or temporary suspension of business due to force majeure, labour dispute or business expenditures (e.g. tooling changeovers) shall not constitute a cessation or suspension of business) and such suspension or cessation would have a Material Adverse Effect.
- (k) **Loan Documents.** Any Loan Document or any material provision thereof is or is declared by any court of competent jurisdiction to be unenforceable, or any Company or Guarantor terminates or purports to terminate its liability under any Loan Document or disputes the validity or enforceability of such Loan Document;
- (l) **Material Adverse Change.** Any Material Adverse Change occurs and, if appropriate action can be taken so that the adverse effects of such Material Adverse Change become Immaterial, such appropriate action is not taken within ten Business Days after the earlier of (i) the date the Lender notifies the Borrower of such Material Adverse Change or (ii) the date such matter comes to the attention of any Senior Officer of the Borrower.
- (m) **Change of Control.** If there is (i) a direct or indirect change in effective Control of Cdn LP Holdco, (ii) any redemption, direct or indirect assignment, transfer, conveyance or disposition by Roynat Capital Inc. of its Capital Stock in Cdn LP Holdco which occurs pursuant to the provisions of Section 6.12(c) of the Limited Partnership Agreement, or (iii) any direct or indirect assignment, transfer, conveyance or disposition by the Principals, individually or in aggregate, in a single or series of transactions, of any of Capital Stock in Cdn LP Holdco, except with the prior written consent of the Lender.
- (n) **Employment.** If either Principal ceases to be an employee of the Borrower.
- (o) **Condemnation.** Any court, government or governmental agency shall condemn, seize, expropriate or otherwise appropriate, or take custody or control of, all or any portion of the property of the Borrower or any Guarantor which, when taken together with all other property of the Borrower or that Guarantor so condemned, seized, expropriated, appropriated, or taken custody or control of, during the twelve-month period ending with the month in which any such action occurs, constitutes a Substantial Portion.

**Notwithstanding the occurrence or non-occurrence of a breach of a covenant, a default or an Event of Default, the Lender retains the right to demand payment and take the enforcement action set out in Section 14.2 with respect to the Operating Facility at any time.**

## 14.2 Termination and Acceleration

Upon demand for repayment by the Lender or upon the occurrence and during the continuance of an Event of Default, the Lender may do any one or more of the following:

- (a) declare the whole or any item or part of the unutilized portion (if any) of the Credit Facilities to be terminated, cancelled or reduced, whereupon the Lender (to the extent applicable) shall not be required to make any further Advance hereunder in respect of such portion of the Credit Facilities terminated or reduced;
- (b) accelerate the maturity of all or any item or part of the payment obligations of the Borrower hereunder and declare them to be immediately due and payable, whereupon they shall be so accelerated and become so due and payable;
- (c) suspend any rights of the Borrower under any Loan Document, whereupon such rights shall be so suspended;
- (d) demand payment under any Security;
- (e) demand that the Borrower prepay its respective obligations under Section 4.6 in respect of outstanding Bankers' Acceptances and pay its Derivative Exposure, if any, to the Lender, whereupon the Borrower shall be obliged to prepay to the Lender the face amount of all outstanding Bankers' Acceptances issued for its account and pay to the Lender such Derivative Exposure under all Derivatives entered into by it with the Lender;
- (f) demand that the Borrower pay the Outstanding Amount of each Standby Instrument issued for its account to the Lender, whereupon the Borrower shall be obliged to pay such amounts to the Lender as cash collateral to secure the payment and performance of the Borrower's obligations under Article 6 in respect of outstanding Standby Instruments issued for its account until those Standby Instruments expire or are drawn upon, whereupon the amounts so credited will be applied by the Lender to pay such obligations in respect of such drawings; and
- (g) take any other action, commence any other suit, action or proceeding or exercise such other rights as may be permitted by Applicable Law (whether or not provided for in any Loan Document) at such times and in such manner as the Lender may consider expedient,

all without any additional notice, demand, presentment for payment, protest, noting of protest, dishonour, notice of dishonour or any other action being required.

## 14.3 Waiver

The Lender may waive any Default or Event of Default. No waiver, however, shall be deemed to extend to a subsequent Default or Event of Default, whether or not the same as or similar to the Default or Event of Default waived, and no act or omission by the Lender shall

extend to, or be taken in any manner whatsoever to affect, any subsequent Default or Event of Default or the rights of the Lender arising therefrom. Any such waiver must be in writing and signed by the Lender to be effective. No failure on the part of the Lender to exercise, and no delay by the Lender on behalf of the Lender in exercising, any rights under any Loan Document shall operate as a waiver of such rights. No single or partial exercise of any such rights shall preclude any other or further exercise of such rights or the exercise of any other rights.

## **ARTICLE 15** **GENERAL**

### **15.1 Costs and Expenses**

The Borrower shall on demand pay to the Lender on a full indemnity basis, the amount of all reasonable and documented out-of-pocket fees, costs and expenses incurred and disbursements made by the Lender (including the reasonable fees and documented and out-of-pocket expenses of the Lender's Counsel on a solicitor and client scale and those of accountants, experts and consultants retained by the Lender) in connection with each of (a) the preparation, negotiation, settlement, execution, delivery and entry into effect of each Loan Document, (b) the syndication of the Credit Facilities and post-closing costs, (c) each waiver, consent, amendment or supplement to, or restatement or novation of, each Loan Document, (d) any restructuring of the Credit Facilities and Derivatives, and (e) the interpretation, defence, establishment, preservation, protection or enforcement of rights of the Lender under each Loan Document. In addition, if an Event of Default occurs, the Borrower shall on demand pay to the Lender the amount of all losses and expenses incurred by the Lender in connection with, (f) any restructuring of the Credit Facilities and Derivatives or (g) the enforcement of the Lender' rights under any Loan Document.

### **15.2 Indemnification**

- (a) The Borrower agrees to indemnify and hold harmless the Lender and its Affiliates and the directors, officers, employees, partners, agents, trustees, administrators, managers, advisors and representatives of it and its Affiliates. (each, an "**Indemnified Party**") from and against, any and all claims, damages, losses, liabilities and related expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnified Party, incurred by any Indemnified Party or asserted against any Indemnified Party by any Person arising out of, in connection with, or by reason of:
  - (i) the execution or delivery of any Loan Document or any agreement or instrument contemplated in any Loan Document, the performance by the parties thereto of their respective obligations under any Loan Document or the consummation of the transactions contemplated by the Loan Documents;
  - (ii) any Advance or the actual or proposed use of the proceeds therefrom;
  - (iii) any actual or prospective claim, investigation, litigation or proceeding relating to any of the foregoing, whether based on contract, tort or any

other theory, whether brought by a third party or by the Borrower or any Company or Guarantor, and regardless of whether any Indemnified Party is a party thereto;

*provided that*, such indemnity shall not be available to any Indemnified Party to the extent that such claims, damages, losses, liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnified Party.

- (b) The Borrower and each Guarantor agrees, to the fullest extent permitted by applicable law, not to assert, and hereby waives, any claim against any Indemnified Party, on any theory of liability, for special, indirect, consequential or punitive damages (including, without limitation, any loss of profits or anticipated savings), as opposed to actual or direct damages, resulting from this Agreement or any other Loan Document or arising out of such Indemnified Party's activities in connection herewith or therewith (whether before or after the Closing Date).
- (c) All amounts due under this Section 15.2 shall be payable promptly after demand therefor with documented particulars thereof set forth in a certificate of the Lender delivered to the Borrower describing the amount or amounts owing to the Indemnified Party, including reasonable detail of the basis of calculation of the amount or amounts.

### **15.3 Application of Payments**

Any payments received in respect of the obligations of the Borrower under any Loan Document from time to time or any insurance monies received may, notwithstanding any appropriation by the Borrower, unless otherwise allocated among the obligations herein, be appropriated to such parts of the obligations of the Borrower under any Loan Document and in such order as the Lender sees fit, and the Lender shall have the right to change any appropriation at any time. Any such insurance moneys may, at the option of the Lender, be used to repair or replace property of the Borrower or be appropriated to the obligations of the Borrower under any Loan Document.

### **15.4 Set-Off, Combination of Accounts and Crossclaims**

The obligations of the Borrower under each Loan Document will, except as otherwise set forth herein, be paid by the Borrower without regard to any equities between the Borrower and the Lender or any right of set-off, combination of accounts or cross-claim. Any indebtedness owing by the Lender to the Borrower, direct or indirect, extended or renewed, actual or contingent, matured or not, may be set off or applied against, or combined with, the obligations of the Borrower under any Loan Document by the Lender at any time, either before or after maturity, without demand upon or notice to anyone.

### 15.5 Rights in Addition

The rights conferred by each Loan Document are in addition to, and not in substitution for, any other rights the Lender may have under that Loan Document or any other Loan Document, at law, in equity or by or under Applicable Law or any agreement. The Lender may proceed by way of any action, suit or other proceeding at law or in equity and no right of the Lender shall be exclusive of or dependent on any other. The Lender may exercise any of its rights separately or in combination and at any time.

### 15.6 Certificate Evidence

A certificate prepared by the Lender and provided to the Borrower setting forth (a) any interest rate or any amount payable under this Agreement, other than the amount of compensation or loss and expense payable under Section 8.1 or 15.2, shall be prima facie evidence thereof, absent manifest error, or (b) the amount of compensation or loss and expense payable under Section 8.1 or 15.2, shall be conclusive and bind the Borrower, absent manifest error.

### 15.7 Evidence of Indebtedness

The Lender shall open and maintain on its books accounts evidencing all Borrowings and all amounts owing by the Borrower to the Lender hereunder. The Lender shall enter in the accounts details of all amounts from time to time owing, paid or repaid by the Borrower hereunder. The information entered in the accounts shall constitute, in the absence of manifest error, prima facie evidence of the existence and quantum of the obligations of the Borrower to the Lender hereunder. The Borrower shall, on reasonable notice to the Lender, be entitled to obtain from the Lender copies of extracts of all entries made in such accounts.

### 15.8 Notices

**Notices Generally.** All notices and other communications provided for herein shall be in writing and shall be delivered by facsimile or by hand or overnight courier service, mailed by certified or registered mail to the addresses specified below. Notices sent by facsimile or by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received.

- (a) To the Borrower, Guarantors, as applicable:

126 York St. Suite 200  
Ottawa, Ontario, K1N 5T5

Attention: Carlos Meza  
Telephone: +1 (613) 526-3005  
Email: [carlos@legadocapital.ca](mailto:carlos@legadocapital.ca)

with a copy to:

Stikeman Elliott LLP

5300 Commerce Court West  
199 Bay Street  
Toronto ON M5L 1B9

Attention: Mario Nigro  
Telephone: (416) 869-6810  
Facsimile: (416) 947-0866

(b) To the Lender:

TD Commercial Banking  
North York CBC  
1470 Don Mills Road, 3rd Floor  
Toronto, Ontario M3B 2X9

Attention: Elaine El Zeghayar  
Fax: (416) 445 6874

with a copy to:

Fogler Rubinoff LLP  
77 King Street West  
Suite 3000, TD Centre  
Toronto, Ontario M5K 1G8

Attention: Karen Rosen  
Fax: (416) 941-8852

or to such other address as such party may from time to time notify the others in accordance with this Section 15.8. Notwithstanding the foregoing, the Lender may in its discretion act upon verbal Notice from any Person reasonably believed by the Lender to be a Person authorized by the Borrower to give instructions under or in connection with this Agreement including any request for a Borrowing. The Lender shall not be responsible for any error or omission in such instructions or in the performance thereof except in the case of gross negligence or wilful misconduct by the Lender.

### **15.9 Judgement Currency**

If, for the purposes of obtaining or enforcing judgement in any court in any jurisdiction, it becomes necessary to convert into the currency of the jurisdiction giving such judgement (the "**Judgement Currency**") an amount due hereunder in any other currency (the "**Original Currency**"), then the date on which the rate of exchange for conversion is selected by that court is referred to herein as the "Conversion Date". If there is a change in the rate of exchange between the Judgement Currency and the Original Currency between the Conversion Date and the actual receipt by the Lender of the amount due to it hereunder or under such judgement, the Borrower shall, notwithstanding such judgement, pay all such additional amounts as may be necessary to ensure that the amount received by the Lender in the Judgement Currency, when

converted at the rate of exchange prevailing on the date of receipt, will produce the amount due in the Original Currency. The Borrower's liability hereunder constitutes a separate and independent liability which shall not merge with any judgement or any partial payment or enforcement of payment of sums due under this Agreement.

#### 15.10 Successors and Assigns

- (a) **Benefit & Burden.** The Loan Documents shall enure to the benefit of and be binding on the parties hereto, their respective successors and permitted assigns. Any reference in any such Loan Document to any party shall (to the extent the context so admits) be construed accordingly.
- (b) **Borrower.** The Borrower may not assign any part of any of its rights or obligations under any Loan Document without the prior written consent of the Lender.
- (c) **Participation.** The Lender may, at any time, without the consent of the Borrower, sell participations to one or more banks or other entities (each, a "Participant") in all or a portion of the Lender's rights and obligations under this Agreement (including all or a portion of its commitment under the Credit Facilities and the Loans owing to it); *provided that* (i) the Lender's obligations under this Agreement shall remain unchanged; (ii) the Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; and (iii) the Borrower shall continue to deal solely and directly with the Lender in connection with the Lender's rights and obligations under this Agreement.]
- (d) **Assignments.** The Lender may, with the prior written consent of the Borrower (which consent shall not be unreasonably withheld or delayed), provided that such consent of the Borrower shall not be required if an Event of Default has occurred and is continuing, assign the Credit Facilities or any part thereof to any other Person (a "Transferee") pursuant to a Loan Transfer Agreement (or in such other form to similar effect as the Lender may approve). Each Loan Transfer Agreement must be delivered to all of the parties to this Agreement at least five Business Days before it takes effect. Each party hereto hereby agrees that any such Transferee under any such Loan Transfer Agreement shall be entitled to rights identical to the rights assigned to such Transferee as if such Transferee were named in this Agreement as an original party in substitution for the Lender and the Lender shall be released in relation to the portion of the Credit Facilities so assigned.

#### 15.11 Disclosure.

The Borrower agrees that the Lender may provide any Transferee or Participant or any bona fide prospective Transferee or Participant pursuant to this Section 15.11 with any information concerning the financial condition of the Borrower provided such party agrees in writing with the Lender for the benefit of the Borrower to be bound by a like duty of confidentiality to that contained in this subsection.

The Lender acknowledges the confidential nature of the financial, operational and other information and data provided and to be provided by the Borrower pursuant hereto (the "Information") and agrees to use all reasonable efforts to prevent the disclosure thereof; provided that:

- (a) the Lender may disclose all or any part of the Information if, in their reasonable opinion, such disclosure is required in connection with any actual or threatened judicial, administrative or governmental proceedings including proceedings initiated under or in respect of this Agreement;
- (b) the Lender shall incur no liability in respect of any Information required to be disclosed by any Applicable Laws, or by applicable order, policy or directive having the force of law, to the extent of such requirement;
- (c) the Lender may provide counsel and their other agents and professional advisors with any Information; provided that such persons shall be under a like duty of confidentiality to that contained in this subsection;
- (d) the Lender shall incur no liability in respect of any Information: (i) which is or becomes readily available to the public (other than by a breach hereof) or which has been made readily available to the public by the Borrower, (ii) which the Lender can show was, prior to receipt thereof from either Borrower, lawfully in the Lender's possession and not then subject to any obligation on its part to either Borrower to maintain confidentiality, or (iii) which the Lender or the relevant Lender received from a third party who was not, to the knowledge of the Lender after reasonable inquiry, under a duty of confidentiality to the Borrower at the time the information was so received;
- (e) the Lender may disclose the Information to other financial institutions in connection with an assignment or participation as contemplated in Section 15.10 hereof by the Lender of any Credit Facility where such financial institution agrees to be under a like duty of confidentiality to that contained in this subsection; and
- (f) the Lender may disclose all or any part of the Information so as to enable the Lender to initiate any lawsuit against the Borrower or to defend any lawsuit commenced by the Borrower, the issues of which touch on the Information, but only to the extent such disclosure is necessary to the initiation or defence of such lawsuit.

Upon the written request by the Borrower or its representative, provided the Loan Obligations have been fully repaid and the Credit Facilities cancelled, the Lender shall promptly return to the Borrower all materials and documents, including originals, without retaining copies thereof, in the hands of the Lender and its representatives, which have been furnished by the Borrower or its directors, officers, employees or representatives and also return or destroy any notes, summaries, reports or analyses prepared from the Information, whether in paper or electronic form, other than internal notes, summaries, reports or analyses prepared by the Lender in connection with the Credit Facilities and Borrower for its own use and purpose.



### **15.12 Time of the Essence**

Time is of the essence of each provision of each Loan Document.

### **15.13 Governing Law**

This Agreement shall be governed by, and interpreted in accordance with, the laws in force in the Province of Ontario and the federal laws of Canada applicable therein. Such choice of law shall, however, be without prejudice to or in limitation of any other rights available to the Lender under the laws of any jurisdiction where or any of the Guarantors or their property may be located.

### **15.14 Jurisdiction**

With respect to any claim arising out of this Agreement, any other Loan Document or any other agreement relating to any Loan Document:

- (a) for the exclusive benefit of the Lender, the Borrower irrevocably submits to the non-exclusive jurisdiction of the courts of competent jurisdiction of the Province of Ontario, Canada located at Toronto; and
- (b) the Borrower irrevocably waives:
  - (i) any objection which it may have at any time to the laying of venue of any such suit, action or proceeding arising out of or relating to this Agreement, any other Loan Document or any other agreement relating to any Loan Document brought in any such court;
  - (ii) any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum; and
  - (iii) the right to object, with respect to such suit, action or proceeding brought in any such court, that such court does not have jurisdiction over it.

Nothing in this Agreement will be deemed to preclude the Lender or the Borrower from bringing any suit, action or proceeding in respect of any Loan Document or any agreement relating to any Loan Document in any other jurisdiction.

### **15.15 Service of Process**

The Borrower irrevocably consents to the service of process out of the courts described in Section 15.13 by personal service on the Borrower.

### **15.16 Invalidity**

If any provision of any Loan Document is determined to be invalid or unenforceable by a court of competent jurisdiction from which no further appeal lies or is taken, that provision shall

be deemed to be severed therefrom, and the remaining provisions of such Loan Document shall not be affected thereby and shall remain valid and enforceable.

#### **15.17 Amendment**

Each Loan Document to which the Borrower is a party may only be amended, supplemented, otherwise modified, restated or novated by a written agreement signed by the Borrower and the Lender.

#### **15.18 Entire Agreement**

There are no representations, warranties, conditions, other agreements or acknowledgements, whether direct or collateral, express or implied, that form part of or affect this Agreement or any other Loan Document other than as expressed herein or in such other Loan Document.

#### **15.19 This Agreement to Govern**

If there is any inconsistency between the provisions of this Agreement and the provisions of any other Loan Document, the provisions hereof shall govern and apply to the extent of the inconsistency. Notwithstanding the foregoing, this Section shall not apply to limit, restrict, prejudice or otherwise affect or impair in any way the rights of the Lender under the terms of any guarantee after the guarantee has become enforceable.

#### **15.20 Counterparts**

This Agreement may be executed in any number of counterparts each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

#### **15.21 Canadian Anti-Money Laundering Legislation**


Each of the Borrower and Guarantors acknowledges that, pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and other applicable anti-money laundering, anti-terrorist financing, government sanction and "know your client" laws (collectively, including any guidelines or orders thereunder, "**AML Legislation**"), the Lender may be required to obtain, verify and record information regarding the Borrower and Guarantors and their respective directors, authorized signing officers, direct or indirect shareholders or other Persons in control of the Borrower and Guarantors, and the transactions contemplated hereby. Each Borrower and Guarantor shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by the Lender, in order to comply with any applicable AML Legislation, whether now or hereafter in existence.

**THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK**

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

**THE TORONTO-DOMINION BANK**

By:   
Name: Scott Stirling c/s  
Title: Manager Commercial Credit

By:   
Name: Elaine El-Zeghayar  
Title: Relationship Manager  
*We have authority to bind the Bank*

**10600598 CANADA INC.**

By: \_\_\_\_\_  
Name: Carlos Jose Meza-Rios c/s  
Title: Vice President  
*I have authority to bind the Corporation*


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

**THE TORONTO-DOMINION BANK**

By: \_\_\_\_\_  
Name: Scott Stirling c/s  
Title: Manager Commercial Credit

By: \_\_\_\_\_  
Name: Elaine El-Zeghayar  
Title: Relationship Manager  
*We have authority to bind the Bank*

**.10600598 CANADA INC.**

By:  \_\_\_\_\_  
Name: Carlos Jose Meza-Rios c/s  
Title: Vice President  
*I have authority to bind the Corporation*

**Schedule "A"**  
**FORM OF BORROWING REQUEST**

**TO:** The Toronto-Dominion Bank (the "Lender")

**RE:** Credit Agreement made as of March \_\_, 2018 between 10600598 Canada Inc., as borrower (the "Borrower") and the Lender (as amended, supplemented, restated, replaced or otherwise modified from time to time, the "Credit Agreement"). All capitalized terms used in this Borrowing Request but not otherwise defined shall have the respective meanings attributed to them in the Credit Agreement.

---

We refer to the Credit Facilities constituted by the Credit Agreement and we hereby give you notice as follows:

1. The Borrower hereby requests under the Operating Facility:
  - (a) Date of Requested Advance  
\_\_\_\_\_ (being a Business Day)
  - (b) Aggregate amount of Advance  
Cdn./US\$ \_\_\_\_\_
  - (c) Type and Amount of Advance

**LIBOR LOAN**

Amount (U.S.\$) (min.\$500,000; integral multiple of \$100,000)	Term in Months (1, 2 or 3 months)	Converted From (if applicable)

**BANKERS' ACCEPTANCES**

Aggregate Face Amount (Cdn.\$) (min. \$1,000,000; integral multiple of \$100,000)	Term in Months (1, 2 or 3 months)	Converted From (if applicable)

**STANDBY INSTRUMENT**

Face Amount (US\$)	Maturity Date	Name & Address of Beneficiary	Type and Purpose

2. The Borrower hereby requests under the Term Facility:

(a) Date of Requested Advance

\_\_\_\_\_ (being a Business Day)

(b) Aggregate amount of Advance

Cdn.\$ \_\_\_\_\_

(c) Type and Amount of Advance

**BANKERS' ACCEPTANCES**

Aggregate Face Amount (Cdn.\$) (min. \$1,000,000; integral multiple of \$100,000)	Term in Months (1, 2 or 3 months)	Converted From (if applicable)

We confirm that we have read the provisions of the Credit Agreement which are relevant to the furnishing of this Borrowing Request. After due and careful investigation and with respect thereto, we confirm that we have complied with all conditions precedent to Borrowing and we certify that the representations and warranties of the Borrower specified in Section 12.1 of the Credit Agreement are true and correct in all material respects as at the date hereof, as though made on and as of the date hereof, except those identified in the attached Certificate of the Chief Financial Officer of the Borrower. Such Certificate sets forth the basis on which the representations and warranties identified in such Certificate are not true and correct in all material respects as of the date hereof and states that their failure to be true and correct in all material respects on the date hereof would not, alone or in the aggregate, be expected to have a Material Adverse Effect.

To the best of the knowledge, belief and information of the undersigned, and after due inquiry, the undersigned certify that no Event of Default has occurred and is continuing or will occur as a result of the proposed Borrowing.

The amount for the outstanding Standby Instruments are attached as Annex "A".

The Borrower intends to use the proceeds of the Drawdown for the following purpose(s):

**DATED** this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.



Per: \_\_\_\_\_

Name: ▶ c/s

Title: ▶

Per: \_\_\_\_\_

Name: ▶ c/s

Title: ▶

*We have authority to bind the Corporation*

**Annex A**  
**Outstanding Instruments**

1. The outstanding ISDA Master Agreement of the Borrower is:

<b>Date of Agreement</b>	<b>Bank</b>	<b>Type of Derivative</b>	<b>Nominal Amount</b>	<b>Mark to Market</b>	<b>Date of Maturity</b>

2. The outstanding Standby Instruments of the Borrower is:

<b>Date of Standby Instrument</b>	<b>Beneficiary</b>	<b>Amount</b>	<b>Date of Maturity</b>



**Schedule B**  
**FORM OF COMPLIANCE CERTIFICATE**

**TO: THE TORONTO-DOMINION BANK, (the "Lender")**

Reference is made to the Credit Agreement dated March \_\_, 2018, between 10600598 Canada Inc., as borrower (the "**Borrower**") and the Lender (as amended, supplemented, restated, replaced or otherwise modified from time to time, the "**Credit Agreement**"). All capitalized terms used in this Compliance Certificate shall have the respective meanings attributed to them in the Credit Agreement. This [**annual/quarterly**] Compliance Certificate is delivered pursuant to Section 13.1(f) of the Credit Agreement for the Fiscal [**Year/Quarter**] ending \_\_\_\_\_ (the "**Period**").

I, \_\_\_\_\_, the [**insert any one of the President or Secretary-Treasurer**] of the Borrower, in such capacity and not personally, hereby certify that:

2. I am the duly appointed [**insert any one of the President or Secretary-Treasurer**] of the Borrower and as such I am providing this certificate for and on behalf of the Borrower pursuant to the Credit Agreement.
3. I am familiar with and have examined the provisions of the Credit Agreement including, without limitation, the provisions of Article 12 and Article 13 thereof.
4. To the best of my knowledge, information and belief, and after due inquiry:
  - (a) the representations and warranties of the Borrower contained in the Loan Documents are true and correct in all material respects as of the date hereof with the same force and effect as if such representations and warranties had been made on and as of the date hereof;
  - (b) each of the Borrower and Guarantors have fulfilled and complied with in all material respects all covenants contained in the Loan Documents to be performed or caused to be performed by it at or prior to the date hereof;
  - (c) there have been no changes to the corporate structure set out on Schedule 12.1(s) to the Credit Agreement;
  - (d) the Borrower and each of the Guarantors have paid all realty taxes due and payable by them during the Period; no Event of Default has occurred and is continuing as at the date hereof; and
5. Without limiting the generality of Paragraph 4 above, the Borrower and Guarantors were, at the end of the Period and as of the date of this Compliance Certificate, in compliance, in all material respects, with all applicable Environmental Laws.
6. We include herewith the following:
  - (a) If annual:

- (i) The Borrower's audited consolidated annual financial statements with auditors' report(s).
- (b) If quarterly:
- (i) The Borrower's unaudited Fiscal Quarter period consolidated financial statements.
7. The amounts and financial ratios referred to in Section 13.3 of the Credit Agreement for the Period or as of the end of the Period were as follows (detailed calculations are attached hereto as Annex A):

Financial Ratio	Actual Amount	Required Amount or Limit
1. Fixed Charge Coverage Ratio	_____ : 1.0	
2. Senior Funded Debt / EBITDA Ratio	_____ : 1.0	

8. Based on the Senior Funded Debt/EBITDA Ratio certified herein (and calculated in accordance with the terms of the Credit Agreement and the grid set out below), the Applicable Margin shall be as follows:

\_\_\_\_\_ Canadian Prime Rate Loan

\_\_\_\_\_ US Base Rate Loan

\_\_\_\_\_ LIBOR Loan

such Applicable Margin to take effect in accordance with the terms of the Credit Agreement.

Senior Funded Debt/ EBITDA Ratio	Operating Facility/Term Facility	
	Stamping Fee/LIBOR/Standby Instrument Fee (as applicable)	Canadian Prime Rate/US Base Rate
< 2.00:1	+ 225 Basis Points	+115 Basis Points
>2.00:1 to <2.50:1	+250 Basis Points	+140 Basis Points
>2.50:1 to <3.00:1	+275 Basis Points	+165 Basis Points
>3.00:1 to < 3.85:1	+300 Basis Points	+190 Basis Points

9. The representations and warranties referred to in Article 12 of the Credit Agreement are true and correct in all material respects as though made on this \_\_\_\_\_ date;
10. The following representations and warranties are not true and correct in all material respects but their failure to be true and correct would not, alone or in aggregate, be reasonably expected to have a Material Adverse Effect;
11. The attached financial information is true and correct in all material respects; and
12. The financial statements delivered pursuant to Subsection 13.1(f) have been prepared in accordance with GAAP in effect on the date of such financial statements and the information contained therein is true and correct in all material respects, subject only to year-end audit adjustments, and presents fairly and consistently the results of operations and changes in the financial position of the Borrower and the Guarantors as of the date thereof.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Name:

**Annex A**  
**DETAILED CALCULATIONS**

**Senior Funded Debt/EBITDA Ratio**

Operating borrowings	
L/Cs, L/Gs issued	
TD Term Loan	
Capital Leases & PMSIs	
Other	
Contingent Guarantees	
Negative M2M re: Derivatives	
Credit balances	
<b>SENIOR DEBT</b>	
Net Income	
Plus:	
Interest Expense	
Income Taxes	
Depreciation and Amortization	
<b>EBITDA</b>	
Plus:	
Non-cash Expenses	
Non-recurring Expenses (transaction fees, Ram Raju's compensation)	
Hosting cost savings	
Less:	
Non-cash Income	
Non-recurring Income	
Principals' compensation	
<b>EBITDA (per Covenant)</b>	
<b>SFD/EBITDA</b>	

**Notes:**

The following non-recurring expenses to roll off to \$0 by the end of the 2018 Fiscal Year unless otherwise specified below:

- i) Transaction fees of up to \$ 1.4MM
- ii) Texidium expenses in the amount of \$66M TTM (Dec 31/17) reducing by \$22M per quarter thereafter to \$0 TTM (Sep 30/18)
- iii) Ram Raju's salary \$518M TTM (December 31/17) reducing by \$130M per quarter thereafter to \$0 TTM (Dec 31/18)
- iv) Ram Raju and employees bonuses in an aggregate amount up to \$769M TTM (Sep 30/17) and thereafter \$ 0K

v) bad debts expense in an amount up to \$194,000

vi) severance expense in an amount up to \$80,000

vi) donation expense in an amount up to \$90,000

Cost saving re: Hosting Fee in the amount of \$458M TTM (Dec 31/17) reducing \$115M per quarter thereafter to \$0 TTM (Dec 31/18).

Aggregate management compensation for Principals in the amount of \$400M TTM (December 31/17) reducing \$100M per quarter thereafter to \$0 TTM (Dec 31/18).

### Fixed Coverage Ratio

Net Income	
Plus:	
Interest Expense	
Income Taxes	
Depreciation and Amortization	
<b>EBITDA</b>	
Plus:	
Non-cash Expenses	
Non-recurring Expenses (transaction fees, Ram Raju's Compensation)	
Hosting cost savings	
Less:	
Non-cash Income	
Non-recurring Income	
Principals' compensation	
<b>EBITDA (per Covenant)</b>	
Less:	
Cash Taxes	
Unfinanced Capital Expenditure	
Permitted Distributions	
<b>Numerator</b>	
Schedule Principals Payments	
Cash Interest	
Capital Lease Obligations	
<b>Denominator</b>	
<b>FCC Ratio</b>	

Derivatives outstanding under the ISDA Master Agreements dated \_\_\_\_\_

<b>Date of Agreement</b>	<b>Bank</b>	<b>Type of Derivative</b>	<b>Nominal Amount</b>	<b>Mark to Market</b>	<b>Date of Maturity</b>

The outstanding Standby Instruments of the Borrower under the Operating Facility.

<b>Date of Standby Instrument</b>	<b>Beneficiary</b>	<b>Amount</b>	<b>Date of Maturity</b>

**Schedule "C"**  
**Form of Confirmation Agreement**

The undersigned hereby acknowledges and consents to the provisions of the Credit Agreement dated as of March \_\_, 2018 between 10600598 Canada Inc. as Borrower and The Toronto-Dominion Bank as Lender and hereby confirms any covenant, agreement, representation, warranty or other provision in any way relating to it and confirms the continuing nature thereof, and covenants and agrees to abide by all covenants and agreements expressed to be made by it therein or made by the Borrower to cause any action or thing to be done by it or otherwise on its behalf or relating to it.

IN WITNESS WHEREOF the undersigned has executed this Confirmation as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

**[INSERT GUARANTOR]**

By: \_\_\_\_\_  
 Name: ► c/s  
 Title: ►

By: \_\_\_\_\_  
 Name: ► c/s  
 Title: ►

**Schedule "D"**  
**Form of Loan Transfer Agreement**

**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**AMONG:**



(hereinafter called the "**Transferor**")

-and-



(hereinafter called the "**Transferee**")

-and-

10600598 Canada Inc.

**(hereinafter called the "Borrower")]**

**BACKGROUND**

10600598 Canada Inc., as Borrower and The Toronto-Dominion Bank, as Lender, entered into a credit agreement dated as of March \_\_, 2018 (as amended, supplemented, amended and restated, novated and otherwise modified and in effect from time to time, (the "**Credit Agreement**"). Terms defined in Sections 1.1 and 1.2 of the Credit Agreement and not otherwise defined herein are used with the same respective defined meanings in this loan transfer agreement.

The Transferor is the Lender under the Credit Agreement with a commitment under the Credit Facilities (the "**Transferor's Commitment**")

The Transferor has agreed to transfer to the Transferee Cdn. \$ \_\_\_\_\_ of the Transferor's Commitment (the "**Loan Transfer Amount**").

**WITNESSETH THAT** in consideration of the mutual covenants herein contained and other valuable consideration now paid by each party hereto, the one to the other, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**1. Transfer**

As of and from the fifth (5th) Business Day following the date this Agreement is executed by all of the parties hereto and upon the Lender's receipt of the loan transfer amount pursuant to the provisions of Section 15.10(d) of the Credit Agreement (herein called the "**Effective Date**") and subject to the terms and conditions herein contained:



- (a) the Transferor hereby transfers to the Transferee the Loan Transfer Amount;
- (b) except as otherwise provided in Section 2 of this loan transfer agreement, the Transferor hereby transfers all of the Transferor's other rights under the Credit Agreement and other Loan Documents but only insofar as such rights relate to the Loan Transfer Amount (the "**Transferred Rights**");
- (c) the Transferee hereby assumes obligations identical to the obligations of the Transferor under the Credit Agreement arising on or after the Effective Date in relation to the Loan Transfer Amount (the "**Transferred Obligations**") and agrees to perform and be responsible for such obligations as if the Transferee were named in the Credit Agreement as an original party in substitution for the Transferor or its predecessor in title, as applicable, in respect of the Transferred Obligations;
- (d) the Lender acknowledges and agrees that, except as otherwise provided in Section 2 of this loan transfer agreement, the Transferee is entitled to the Transferred Rights existing on or arising after the Effective Date; and
- (e) the Transferor hereby releases and forever discharges the Lender of and from any and all losses and expenses and obligations arising under, by reason of, or in connection with the Transferred Rights or the Transferred Obligations.

## 2. **Transitional Provisions**

Subject to the terms and conditions contained herein:

- (a) any payments due and payable by the Borrower on or before the Effective Date in respect of the Transferred Amount, shall upon receipt by the Transferor; and
- (b) any payments due and payable by the Borrower after the Effective Date, but payable in respect of the Transferor's share in any Libor Loan, Canadian Prime Loan or US Base Rate Loan, shall upon receipt by the Transferee.

For greater certainty, where there are Bankers' Acceptances outstanding on the Effective Date ("**Outstanding BAs**"), such Outstanding BAs shall remain the liability and obligation of the Transferee and the Transferee shall be entitled to all of the rights, titles and benefits arising out of the Credit Agreement and the other Loan Documents with respect to such Outstanding BAs (including reimbursement rights), and the Transferee's share of the Advances under the applicable Credit Facility as at the Effective Date is subject to the maturity of the Outstanding BAs on their respective Maturity Dates and the outstanding Advances will increase in proportion to its share of the Outstanding BAs as such Outstanding BAs mature.

## 3. **Consent of the Borrower**

The Borrower hereby consents to the transfer of the Transferred Rights to the Transferee and assumption of the Transferred Obligations by the Transferee as and from the Effective Date.

The Borrower hereby agrees that as and from the Effective Date, the Transferor shall have no further liability or obligation to the Borrower in respect of the Transferred Obligations.

#### 4. Interpretation

This agreement shall be governed by, and interpreted in accordance with, the laws of the Province of Ontario and the laws of Canada applicable therein and shall be construed as supplemental to and form part of the Credit Agreement.

**IN WITNESS WHEREOF** the parties hereto have executed this agreement as of the day and year first above written.

**[INSERT TRANSFEROR]**

By: \_\_\_\_\_  
 Name: ▶ c/s  
 Title: ▶

By: \_\_\_\_\_  
 Name: ▶ c/s  
 Title: ▶

**[INSERT TRANSFEREE]**

By: \_\_\_\_\_  
 Name: ▶ c/s  
 Title: ▶

By: \_\_\_\_\_  
 Name: ▶ c/s  
 Title: ▶

**10600598 CANADA INC.**

By: \_\_\_\_\_  
Name: ▶ c/s  
Title: ▶

By: \_\_\_\_\_  
Name: ▶ c/s  
Title: ▶

**Schedule "E"  
Repayment/Cancellation Notice**

**Form of Repayment/Cancellation Notice**

**TO: THE TORONTO-DOMINION BANK, (the "Lender")**

Reference is made to the Credit Agreement dated March \_\_\_, 2018 between 10600598 Canada Inc., as Borrower and the Lender (as amended, supplemented, restated, replaced or otherwise modified from time to time, the "Credit Agreement"). All capitalized terms used in this Repayment/Cancellation Notice which are not defined shall the respective meanings attributed to them in the Credit Agreement.

**[Notice is hereby given in accordance with Section \_\_\_ of the Credit Agreement that the undersigned wishes to cancel the \_\_\_\_\_ by the amount of Cdn. \$1.]**

Notice is hereby given in accordance with Article 8 of the Credit Agreement that the undersigned commits to repay the \_\_\_\_\_ under the \_\_\_\_\_ Credit Facility in the amount of Cdn./US\$ \_\_\_\_\_ on \_\_\_\_\_, \_\_\_\_\_.

**DATED** as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**10600598 CANADA INC.**

Per: \_\_\_\_\_

Name: ►

Title: ►

---

<sup>1</sup> Specify type of Borrowing

**SCHEDULE 1.1**  
**PERMITTED LIENS**

**Nil.**

**SCHEDULE 9.1(d)**  
**Payment Schedule**

<b>Instalment Date</b>	<b>Amount of Payment (USD)</b>
30-Jun-18	\$ 351,069.37
30-Sep-18	\$ 351,069.37
31-Dec-18	\$ 351,069.37
31-Mar-19	\$ 351,069.37
30-Jun-19	\$ 468,092.50
30-Sep-19	\$ 468,092.50
31-Dec-19	\$ 468,092.50
31-Mar-20	\$ 468,092.50
30-Jun-20	\$ 468,092.50
30-Sep-20	\$ 468,092.50
31-Dec-20	\$ 468,092.50
31-Mar-21	\$ 468,092.50
30-Jun-21	\$ 585,115.62
30-Sep-21	\$ 585,115.62
31-Dec-21	\$ 585,115.62
31-Mar-22	\$ 585,115.62
30-Jun-22	\$ 702,138.74
30-Sep-22	\$ 702,138.74
31-Dec-22	\$ 702,138.74
31-Mar-23	\$ 702,138.74
Term Facility Maturity Date	\$ 8,425,664.93

**SCHEDULE 12.1(g)**  
**DESCRIPTION OF MATERIAL LITIGATION**

Nil.

**SCHEDULE 12.1(o)**

**LIST OF REAL PROPERTY**

Leased Properties: Suite 204 and Annex, Suite 302, Suite 303, Suite 128-2, and Storage Space – 126 York Street, Ottawa.



**SCHEDULE 12.1(q)****DESCRIPTION OF MATERIAL CONTRACTS**

1. Partner Agreement between Kivuto Solutions, Inc. and Adobe Systems Incorporated and Adobe Systems Software Ireland Limited, executed March 23, 2016 for a one year terms with an automatic renewal each year.
2. Retail Agreement between e-academy Inc. and Adobe Systems Incorporated, executed on November 31, 2008 for a one year term, with an automatic renewal each year.
3. Statement of Work for Deliverables and Services between Kivuto Solutions, Inc. and IBM Canada Limited, executed June 8, May 6, 2016 for a term until May 31, 2019 or until work is completed.
4. Base Agreement establishing a multinational procurement relationship for Statements of Work between Kivuto Solutions, Inc. and IBM Canada Limited, executed June 8, 2016 for a term until either party terminates the agreement.
5. Enabled Solution Agreement for Programs between Kivuto Solutions, Inc. and IBM Canada Limited, executed November 29, 2016 for an undefined term.
6. Master Supplier Service Agreement for purchase orders, statements of work, or other written agreements between Kivuto Solutions, Inc. and Microsoft Corporation, executed December 7, 2015 for a term until December 7, 2020.
7. Amendment to the Reseller Agreement for back-up media between Kivuto Solutions, Inc. and Microsoft Corporation, executed March 15, 2013 for an undefined term.
8. Direct Reseller Addendum for license to resell and distribute between Kivuto Solutions, Inc. and Microsoft Corporation, executed December 29, 2012 for a term until December 1, 2015.
9. Amendment to Statements of Work between Kivuto Solutions, Inc. and Microsoft Corporation, executed July 1, 2017 for a term until June 30, 2018.
10. Cloud Alliance Agreement between Kivuto Solutions, Inc. and Microsoft Corporation, executed July 29, 2016 until January 29, 2018.
11. Direct Reseller Addendum regarding a license for re-sale and distribution on between Kivuto Solutions Inc. and Microsoft Corporation, effective December 2, 2015 for a term until December 2, 2016.
12. Service Agreement between Kivuto Solutions, Inc. and Microsoft Operations Pte Ltd., executed July 26, 2010 for a term until February 1, 2013. Agreement amended to expire February 1, 2019.

13. MSDN Academic Alliance Hosting ESD Solution Agreement between e-academy, Inc. and Microsoft Corporation, dated July 1, 2006 until June 30, 2007 unless extended by written agreement of the parties (amendments extending the agreement until June 30, 2019).
14. Statement of Work regarding software downloads for DreamSpark.com and downloads via ELMS webstores for DreamSpark Standard and DreamSpark Premium customers, between Kivuto Solutions Inc. and Microsoft, effective July 1, 2015 and expiring June 30, 2016.
15. Statement of Work regarding MSDN Academic Alliance Hosting ESD Solution Agreement, between Kivuto Solutions Inc. and Microsoft, effective June 29, 2017 and expiring June 30, 2019.
16. Microsoft Operations Vendor Services Agreement between e-academy Inc. and Microsoft Corporation, dated March 1, 2010 for a term until February 1, 2013. Agreement extended until February 1, 2019.
17. Service Agreement between e-academy and Microsoft Corporation, executed March 1 2010 for a term until February 1, 2013, Agreement amended to expire February 1, 2019.
18. Amendment to the MSDN Academic Alliance Hosting ESD Solution Agreement to provide back-up media between Kivuto Solutions, Inc. and Microsoft Corporation, executed July 1, 2007 for a term until June 29, 2017. Agreement amended to expire June 30, 2019.
19. Service Agreement for the replication of media between Kivuto Solutions, Inc. and Microsoft Operations Puerto Rico LLC, executed March 11, 2015 for a term until March 11, 2018.
20. Direct Reseller Addendum to a license to resell and distribute agreement between Kivuto Solutions, Inc. and Microsoft Corporation, executed December 29, 2012 for a term until December 1, 2015.
21. Distribution Agreement between e-academy Inc. and VMWare, Inc., executed March 13, 2009 for a term until March 13, 2010, with a counterparty right to renew for 5 additional one-year terms.
22. Amendment to the Software Distribution Solution Agreement between e-academy Inc. and VMWare Corporation, executed October 1, 2011 for a term until January 1, 2012.
23. Statement of Work between e-academy Inc. and VMWare, executed November 17, 2011 for a term until January 1, 2012.
24. Amended and restated Distribution Agreement among SPSS Inc. and e-academy Inc. dated October 9, 2009.
25. Microsoft Operations Vendor Services Agreement among Microsoft Ireland Operations Limited and e-academy, Inc effective February 1, 2010.

26. IBM Business Partner Agreement 4916020186 Embedded Solution Agreement Purchase Commitment Transaction Document: 02, among IBM Canada Ltd. and Kivuto Solutions Inc. executed November 28, 2017 pursuant to base agreement dated November 29, 2016.

27. Lease Agreement among Kivuto Solutions Inc. and 126 York Street LTD. dated April 17, 2014.

## SCHEDULE 12.1(r)

### DESCRIPTION OF INTELLECTUAL PROPERTY

#### A. Trademarks

##### Registered Trademarks

<u>Country</u>	<u>Trademark</u>	<u>Application No./ Registration No.</u>	<u>Filing Date/ Registration Date</u>	<u>Name of Owner</u>
Canada	KIVUTO	1589562 TMA872973	2014-03-10	Kivuto Inc.
Canada	ONTHEHUB	1431526 TMA794971	2011-04-06	Kivuto Solutions Inc.
United States	KIVUTO	4860206	2015-11-24	Kivuto Solutions Inc.
United States	ONTHEHUB	4635355	2014-11-11	Kivuto Solutions Inc.

##### Pending Trademark Applications

<u>Country</u>	<u>Trademark</u>	<u>Application No./ Registration No.</u>	<u>Filing Date/ Registration Date</u>	<u>Name of Owner</u>
Canada	TEXIDIUM	1846908	2017-07-12	Kivuto Solutions Inc.
United States	TEXIDIUM	87544654 (foreign application number 1846908)	2017-07-26	Kivuto Solutions Inc.

**B. Patents**

NIL.

**C. Copyright**

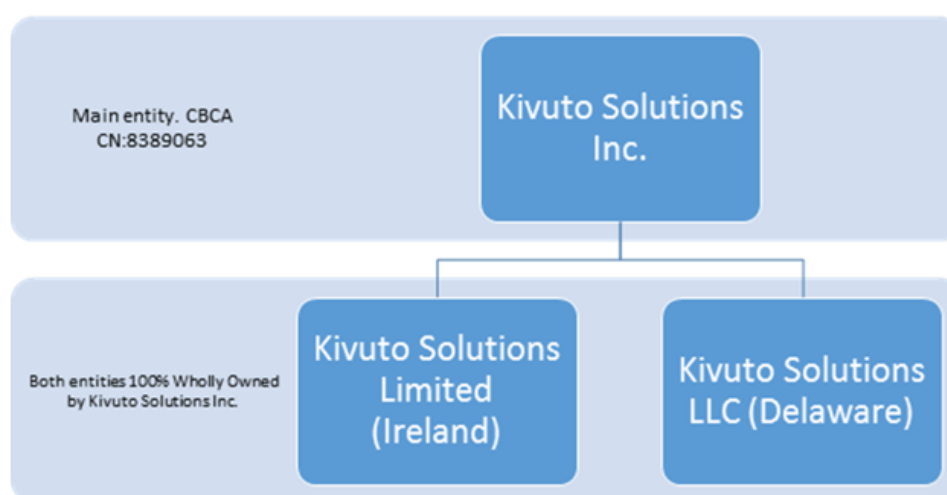
NIL.

## SCHEDULE 12.1(s)

### LIST OF SUBSIDIARIES/DETAILED CORPORATE CHART

Kivuto Solutions Limited

Kivuto Solutions LLC



Legado Capital Partners L.P.

- Class A and Class B Units:

Limited Partner Name	Address	Capital Contribution	Number of Class A Units held	Number of Class B Units Held	Number of Common Units Held	Residency
Jeffery Blacklock	126 York St. Suite 200, Ottawa, ON, K1N 5T5	\$ 1.00	-	-	2,825,274	Canada
Carlos Meza	126 York St. Suite 200, Ottawa, ON, K1N 5T5	\$ 1.00	-	-	2,825,274	Canada
Roynat Capital Inc.	40 King St W, 13 <sup>th</sup> Floor, Toronto, ON M5H 4A9	\$ 10,000,000.00	5,000,000	5,000,000	-	Canada

Limited Partner Name	Address	Capital Contribution	Number of Class A Units held	Number of Class B Units Held	Number of Common Units Held	Residency
McIntosh Properties Ltd.	201-1980 Cooper Road, Kelowna, BC V1Y 8K5	\$ 1,500,000.00	750,000	750,000	-	Canada
Bruce Leboff	11 Browside Ave., Toronto ON Canada M5P 2T9	\$ 400,000.00	200,000	200,000	-	Canada
Lianne Leboff	11 Browside Ave., Toronto ON Canada M5P 2T9	\$ 434,900.00	217,450	217,450	-	Canada
Distructive Ventures Inc.	1213 Prospect Ave SW, Calgary AB T2T 0X4	\$ 284,900.00	142,450	142,450	-	Canada
Mario Nigro Professional Corp.	5300 Commerce Court West, 199 Bay Street, Toronto, Canada M5L 1B9	\$ 184,900.00	92,450	92,450	-	Canada
REV Holdings Ltd.	377 Glencaire Ave, Toronto, ON M5N 1V2	\$ 350,000.00	175,000	175,000	-	Canada
The Ram Raju (2010) Family Trust No. 1 (Ram Raju, Trustee)	c/o Ram Raju, 345 Third Avenue, Ottawa, ON, K1S 2K4	\$ 6,000,000.00	3,000,000	3,000,000	-	Canada
Louis Fauteux	33 Wintergreen Drive, Ottawa, ON, K2S 1E5	\$ 120,000.00	60,000	60,000	-	Canada
Ryan Peatt	1260 Potter Drive, Manotick, ON, K1M 1C9	\$ 25,000.00	12,500	12,500	-	Canada
Elson McDougald	PO Box 837, Drumheller, AB, Canada T0J 00Y0	\$ 84,900.00	42,450	42,450	-	Canada
Relay Investments II, LP	745 Boylston Street, Suite 407, Boston, MA 02116 USA	\$ 2,012,800.00	1,006,400	1,006,400	-	USA
TCG Canada, L.P.	25 Highland Park Village, Ste 100-862, Dallas, TX 75205	\$ 2,000,000.00	1,000,000	1,000,000	-	USA
Operand II Fund, LP	234 James Street, Barrington, IL 60010	\$ 1,934,900.00	967,450	967,450	-	USA

Limited Partner Name	Address	Capital Contribution	Number of Class A Units held	Number of Class B Units Held	Number of Common Units Held	Residency
Aspect Acquisition Partners I, L.P	3959 Maple Avenue, Suite 150, Dallas, TX 75219 USA	\$ 2,000,000.00	1,000,000	1,000,000	-	USA
Iron Creek Holdings LLC	1209 Orange St., Wilmington DE 19801 USA	\$ 1,875,000.00	937,500	937,500	-	USA
Wilson Revocable Trust (Peter D. Wilson, Trustee)	503 Park Way, Piedmont, CA 94611	\$ 384,900.00	192,450	192,450	-	USA
Argo Holdings Fund I, LLC	c/o Argo Management Group, LLC, 227 Northgate, Suite 3, Lake Forest, IL 60045	\$ 650,298.00	325,149	325,149	-	USA
Progeny Plus, LLC	222 S. Pennsylvania Ave., Suite 200, Winter Park, FL 32789	\$ 251,230.00	125,615	125,615	-	USA
Ticonderoga KI III, L.P.	25 Braintree Hill Office Park, Suite 200, Braintree, MA 02184	\$ 629,168.00	314,584	314,584	-	USA
Ticonderoga JW, L.P.	25 Braintree Hill Office Park, Suite 200, Braintree, MA 02184	\$ 125,832.00	62,916	62,916	-	USA
Archipelago Ventures, LLC	745 Boylston Street, #407, Boston, MA 02116 USA	\$ 400,000.00	200,000	200,000	-	USA
Endurance Search Partners, LLC	900 US 9N Fifth Floor, Woodbridge, NJ 07095	\$ 937,450.00	468,725	468,725	-	USA
Lawrence J. Dunn III	260 Holcombe Way, Lambertville, NJ 08530	\$ 310,712.00	155,356	155,356	-	USA
Search Fund Partners 7, LP	885 Oak Grove Ave, Ste. 102, Menlo Park, CA 94025	\$ 1,006,400.00	503,200	503,200	-	USA



**SCHEDULE 12.1(u)**  
**ENVIRONMENTAL DISCLOSURE SCHEDULE**

Nil.

This is Exhibit "E" referred to in the Affidavit of Andrea Jamnisek sworn January 27, 2023.

A handwritten signature in black ink, consisting of a stylized 'L' followed by a 'J' and a long horizontal line extending to the right.

---

*Commissioner for Taking Affidavits (or as may be)*

**THIS FIRST AMENDING AGREEMENT** is dated the 30<sup>th</sup> day of June, 2018.

among

**KIVUTO SOLUTIONS INC.,**  
successor in interest by amalgamation of 10600598 Canada Inc. and Kivuto Solutions Inc.  
(the "**Borrower**")

and

**THE TORONTO-DOMINION BANK**  
(the "**Lender**")

**WHEREAS** the Borrower and the Lender are party to a Credit Agreement dated as of March 1, 2018, (as may be amended, supplemented, replaced, restated or otherwise modified from time to time, together, the "**Credit Agreement**");

**AND WHEREAS** the Borrower and the Lender wish to amend the Credit Agreement to provide for certain amendments to the definition of EBITDA and to the Fixed Charge Coverage Ratio and to the Senior Funded Debt/EBITDA Ratio;

**NOW THEREFORE THIS AMENDING AGREEMENT WITNESSES THAT** in consideration of the covenants and agreements contained herein and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree to amend the Credit Agreement as provided herein:

**Section 1     General**

In this First Amending Agreement (this "**Amending Agreement**") (including the recitals) unless otherwise defined or the context otherwise requires, all capitalized terms shall have the respective meanings specified in the Credit Agreement.

**Section 2     To be Read with Credit Agreement**

This Amending Agreement is an amendment to the Credit Agreement. Unless the context of this Amending Agreement otherwise requires, the Credit Agreement and the applicable provisions of this Amending Agreement shall be read together and shall have effect as if the provisions of the Credit Agreement and the applicable provisions of this Amending Agreement were contained in one agreement. The term "**Agreement**" when used in the Credit Agreement means the Credit Agreement and the schedules thereto, as amended by this Amending Agreement and as may be further amended, revised, replaced, supplemented or restated from time to time.

**Section 3     Headings**

The division of this Amending Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Amending Agreement. The terms "**this Amending Agreement**", "**hereof**", "**hereunder**" and similar expressions refer to this Amending Agreement and not to any particular Section or other portion hereof and include any agreement supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Sections are to Sections of this Amending Agreement.

**Section 4     Number**

Words importing the singular number only shall include the plural and *vice versa*, words importing the masculine gender shall include the feminine and neuter genders and *vice versa*.

**Section 5     Amendments**

Subject to satisfaction of the conditions precedent set forth in Section 7 hereof, the Credit Agreement is hereby amended with retroactive effect as of March 1, 2018 as follows:

- (a) The definition of "**EBITDA**" contained in Section 1.1 is hereby deleted in its entirety and replaced with the following:

**"EBITDA"** of the Borrower for any accounting period means an amount equal to Net Income before: (a) Interest Expense, (b) Income Taxes, (c) depreciation and amortization, plus (d) non-cash expenses, less (e) non-cash income and non-recurring income, plus (f) the following non-recurring expenses: (i) vendors' transaction fees incurred in connection with the Acquisition Transaction of \$437,000 for the Fiscal Quarters ending March 31, 2018, June 30, 2018, September 30, 2018 and December 31, 2018, reducing to \$0 for the Fiscal Quarter ending March 31, 2019; (ii) transaction fees and expenses of up to \$261,000 for the Fiscal Quarter Ending March 31, 2018, increasing to \$1,400,000 for the Fiscal Quarters ending June 30, 2018, September 30, 2018 and December 31, 2018, reducing to \$1,300,000 for the Fiscal Quarter ending March 31, 2019 and reducing to \$0 for the Fiscal Quarter ending June 30, 2019; (iii) vendors' professional fees incurred in connection with the Acquisition Transaction of \$210,000 for the Fiscal Quarters ending March 31, 2018, June 30, 2018, September 30, 2018, reducing to \$110,000 for the Fiscal Quarter ending December 31, 2018, reducing to \$0 for the Fiscal Quarter ending March 31, 2019; (iv) expenses incurred in connection with Texidium in the amount of \$66,000 on a trailing twelve month basis for the Fiscal Quarter ending December 31, 2017, reducing to \$50,000 for the Fiscal Quarter ending March 31, 2018, reducing to \$33,000 for the Fiscal Quarter ending June 30, 2018, reducing to \$17,000 for the Fiscal Quarter ending September 30, 2018 and reducing to \$0 for the Fiscal Quarter ending December 31, 2018; (v) Ram Raju's salary in the amount of \$518,000 on a trailing twelve month basis for the Fiscal Quarter ending December 31, 2017, reducing to the amount of \$501,000 for the Fiscal Quarter ending March

31, 2018, reducing to \$440,000 for the Fiscal Quarter ending June 30, 2018, reducing to \$337,000 for the Fiscal Quarter ending September 30, 2018, reducing to \$239,000 for the Fiscal Quarter ending December 31, 2018, reducing to \$128,000 for the Fiscal Quarter ending March 31, 2019 and reducing to \$0 for the Fiscal Quarter ending June 30, 2019; (vi) Ram Raju and employees' bonus in an aggregate amount up to \$822,000 for the Fiscal Quarters ending March 31, 2018, June 30, 2018 and September 30, 2018, reducing to \$53,000 for the Fiscal Quarter ending December 31, 2018 and reducing to \$0 for the Fiscal Quarter ending March 31, 2019; (vii) bad debts expense in an amount up to \$194,000 for the Fiscal Quarters ending March 31, 2018, June 30, 2018 and September 30, 2018 and reducing to \$0 for the Fiscal Quarter ending December, 31, 2018; (viii) severance expense in an amount up to \$141,000 for the Fiscal Quarter ending March 31, 2018, reducing to \$108,000 for the Fiscal Quarter ending June 30, 2018, reducing to \$73,000 for the Fiscal Quarter ending September 30, 2018, reducing to \$38,000 for the Fiscal Quarter ending December 31, 2018 and reducing to \$0 for the Fiscal Quarter ending March 31, 2019; (ix) donation expense in an amount up to \$90,000 reducing to \$85,000 for the Fiscal Quarter ending March 31, 2018, reducing to \$67,000 for the Fiscal Quarter ending June 30, 2018, reducing to \$51,000 for the Fiscal Quarter ending September 30, 2018, reducing to \$11,000 for the Fiscal Quarter ending December 31, 2018 and reducing to \$0 for the Fiscal Quarter ending March 31, 2019; (x) salary expense for Rick White (terminated February 28, 2018) in the amount of \$323,000 for the Fiscal Quarter ending March 31, 2018, increasing to \$361,000 for the Fiscal Quarter ending June 30, 2018, reducing to \$300,000 for the Fiscal Quarter ending September 30, 2018, reducing to \$164,000 for the Fiscal Quarter ending December 31, 2018, reducing to \$100,000 for the Fiscal Quarter ending March 31, 2019 and reducing to \$0 for the Fiscal Quarter ending June 30, 2019; (xi) Principals' relocation expenses in the amount of \$50,000 for Fiscal Quarters ending June 30, 2018, September 30, 2018, December 31, 2018, March 31, 2019 and reducing to \$0 for the Fiscal Quarter ending June 30, 2019; (xii) cost savings in connection with a hosting fee in the amount of \$458,000 on a trailing twelve month basis for the Fiscal Quarter ending December 31, 2017 reducing to \$270,000 for the Fiscal Quarter ending March 31, 2018 and reducing to \$0 for the Fiscal Quarter ending June 30, 2018, less (g) management compensation to the Principals in the amount of \$400,000 for the trailing twelve month Fiscal Quarter ending December 31, 2017, \$400,000 for the Fiscal Quarter ending March 31, 2018, reducing to \$300,000 for the Fiscal Quarter ending June 30, 2018, reducing to \$200,000 for the Fiscal Quarter ending September 30, 2018, reducing to \$100,000 for the Fiscal Quarter ending December 31, 2018 and reducing to \$0 for the Fiscal Quarter ending March 31, 2019; to the extent not already deducted from the calculation of Net Income;"

- (b) Section 13.3(a) is hereby deleted in its entirety and replaced with the following:

**"Fixed Charge Coverage Ratio.** Tested at the end of each Fiscal Quarter in arrears, commencing on the Fiscal Quarter ending March 31, 2018, maintain a minimum Fixed Charge Coverage Ratio of 1.15:1, stepping down to 1.10:1 as at

June 30, 2018, stepping up to 1.15:1, and stepping up to 1.20:1 as at March 31, 2019 and thereafter on a rolling twelve month basis; and"

- (c) Schedule B – Form of Compliance Certificate attached to the Credit Agreement is hereby deleted in its entirety and replaced with the replacement schedule attached hereto as Schedule A.

**Section 6 Representations and Warranties**

In order to induce the Lender to enter into this Amending Agreement, each of the Borrower and the Guarantors, jointly and severally, represents and warrants to the Lender as follows, which representations and warranties shall survive the execution and delivery hereof:

- (d) the representations and warranties set forth in Section 9 of the Credit Agreement and in the Loan Documents are true and correct as though made on and as of the date hereof except to the extent of changes therein expressly permitted or contemplated by the Credit Agreement or the Loan Documents;
- (e) all necessary corporate action has been taken to authorize the execution, delivery and performance of this Amending Agreement by the Borrower and the Borrower has duly executed and delivered this Amending Agreement;
- (f) this Amending Agreement is a legal, valid and binding obligation of the Borrower enforceable against it by the Lender in accordance with its terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally and by principles of equity); and
- (g) as of the date hereof and after giving effect to this Amending Agreement, no Event of Default exists.

**Section 7 Conditions Precedent to this Amendment**

The amendments contained herein shall not be effective unless and until each of the following conditions precedent has been either satisfied to the satisfaction of or waived by the Lender in its sole discretion:

- (a) BDC shall have provided its written consent to this Amending Agreement; and
- (b) the Amendment Fee shall have been satisfied in full.


**Section 8 Amendment Fee**

The Borrower shall pay to the Lender an amendment fee of Two Thousand Four Hundred Dollars (\$2,400) (the "**Amendment Fee**") which shall be due and payable in full on the date hereof.

IN WITNESS WHEREOF the parties hereto have executed this Amending Agreement as of the day and year first above written.

Lender:

**THE TORONTO-DOMINION BANK**

By:   
Name: Scott Stirling  
Title: MCC

By:   
Name: Nazanin Hakkar  
Title: Analyst

Borrower:

**KIVUTO SOLUTIONS INC.**

By:   
Name: CARLOS MEZA  
Title: CEO

**Section 9 Loan Document**

The Borrower hereby acknowledges that this Amending Agreement constitutes a Loan Document under the terms of the Credit Agreement.

**Section 10 Continuance of Credit Agreement and Loan Documents**

The Credit Agreement and Loan Documents, as changed, replaced, amended or modified by this Amending Agreement, shall be and continue in full force and effect and are hereby confirmed and the rights and obligations of all parties thereunder shall not be affected or prejudiced in any manner except as specifically provided for herein.

The Borrower acknowledges, confirms and agrees that, notwithstanding this Amending Agreement, (i) all Security granted by it continue in full force and effect, enforceable in accordance with its terms, and secures payment and performance by it of its Loan Obligations, and (ii) the Security is hereby ratified and confirmed.

**Section 11 No Waiver**

The Borrower acknowledges and confirms that except as expressly set out in this Amending Agreement, none of the terms contained in this Amending Agreement shall operate or be construed as a waiver of any of the provisions of the Loan Documents or any Event of Default existing on or prior to the date hereof including, without limitation, any Events of Default disclosed by the Borrower to the Lender.

**Section 12 Counterparts**

This Amending Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which counterparts together shall constitute but one agreement. Counterparts may be executed in original or facsimile form or similar method of electronic transmission.

**Section 13 Governing Law**

This Amending Agreement shall be construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

*[Signature pages follow]*



SCHEDULE "A"

Replacement Schedule

"Schedule B"

Form of Compliance Certificate

This is Exhibit "F" referred to in the Affidavit of Andrea Jamnisek sworn January 27, 2023.

A handwritten signature in black ink, consisting of a stylized 'L' followed by a 'J' and a long horizontal line extending to the right.

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*Commissioner for Taking Affidavits (or as may be)*

**THIS SECOND AMENDING AGREEMENT** is dated the 31 day of January, 2019.

among

**KIVUTO SOLUTIONS INC.,**  
successor in interest by amalgamation of 10600598 Canada Inc. and Kivuto Solutions Inc.  
(the "**Borrower**")

and

**THE TORONTO-DOMINION BANK**  
(the "**Lender**")

**WHEREAS** the Borrower and the Lender are party to a Credit Agreement dated as of March 1, 2018, as amended by a first amending agreement dated as of June 30, 2018 (as may be amended, supplemented, replaced, restated or otherwise modified from time to time, together, the "**Credit Agreement**");

**AND WHEREAS** the Borrower and the Lender wish to further amend the Credit Agreement to provide for certain amendments to the definition of EBITDA and to the Fixed Charge Coverage Ratio and to the Senior Funded Debt/EBITDA Ratio;

**NOW THEREFORE THIS AMENDING AGREEMENT WITNESSES THAT** in consideration of the covenants and agreements contained herein and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree to amend the Credit Agreement as provided herein:

**Section 1     General**

In this Second Amending Agreement (this "**Amending Agreement**") (including the recitals) unless otherwise defined or the context otherwise requires, all capitalized terms shall have the respective meanings specified in the Credit Agreement.

**Section 2     To be Read with Credit Agreement**

This Amending Agreement is an amendment to the Credit Agreement. Unless the context of this Amending Agreement otherwise requires, the Credit Agreement and the applicable provisions of this Amending Agreement shall be read together and shall have effect as if the provisions of the Credit Agreement and the applicable provisions of this Amending Agreement were contained in one agreement. The term "**Agreement**" when used in the Credit Agreement means the Credit Agreement and the schedules thereto, as amended by this Amending Agreement and as may be further amended, revised, replaced, supplemented or restated from time to time.

**Section 3     Headings**

The division of this Amending Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Amending Agreement. The terms "**this Amending Agreement**", "**hereof**", "**hereunder**" and similar expressions refer to this Amending Agreement and not to any particular Section or other portion hereof and include any agreement supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Sections are to Sections of this Amending Agreement.

**Section 4     Number**

Words importing the singular number only shall include the plural and *vice versa*, words importing the masculine gender shall include the feminine and neuter genders and *vice versa*.

**Section 5     Amendments**

Subject to satisfaction of the conditions precedent set forth in Section 7 hereof, the Credit Agreement is hereby amended with retroactive effect as of March 1, 2018 as follows:

- (a) The definition of "EBITDA" contained in Section 1.1 is hereby deleted in its entirety and replaced with the following:

"**EBITDA**" of the Borrower for any accounting period means an amount equal to Net Income before: (a) Interest Expense, (b) Income Taxes, (c) depreciation and amortization, plus (d) non-cash expenses, less (e) non-cash income and non-recurring income, plus (f) the following non-recurring expenses:

- (i) vendors' transaction fees incurred in connection with the Acquisition Transaction of \$437,000 for the Fiscal Quarters ending March 31, 2018, June 30, 2018, September 30, 2018 and December 31, 2018, reducing to \$0 for the Fiscal Quarter ending March 31, 2019;

- (ii) transaction fees and expenses of up to \$261,000 for the Fiscal Quarter Ending March 31, 2018, increasing to \$1,400,000 for the Fiscal Quarters ending June 30, 2018, September 30, 2018 and December 31, 2018, reducing to \$1,300,000 for the Fiscal Quarter ending March 31, 2019 and reducing to \$0 for the Fiscal Quarter ending June 30, 2019;

- (iii) vendors' professional fees incurred in connection with the Acquisition Transaction of \$210,000 for the Fiscal Quarters ending March 31, 2018, June 30, 2018, September 30, 2018, reducing to \$110,000 for the Fiscal Quarter ending December 31, 2018, reducing to \$0 for the Fiscal Quarter ending March 31, 2019;

- (iv) expenses incurred in connection with Texidium in the amount of \$66,000 on a trailing twelve month basis for the Fiscal Quarter ending December 31, 2017, reducing to \$50,000 for the Fiscal Quarter ending March 31, 2018, reducing to \$33,000 for the Fiscal Quarter ending June 30, 2018, reducing to \$17,000 for the Fiscal Quarter ending September 30, 2018 and reducing to \$0 for the Fiscal Quarter ending December 31, 2018;

(v) Ram Raju's salary in the amount of \$518,000 on a trailing twelve month basis for the Fiscal Quarter ending December 31, 2017, reducing to the amount of \$501,000 for the Fiscal Quarter ending March 31, 2018, reducing to \$440,000 for the Fiscal Quarter ending June 30, 2018, reducing to \$337,000 for the Fiscal Quarter ending September 30, 2018, reducing to \$239,000 for the Fiscal Quarter ending December 31, 2018, reducing to \$128,000 for the Fiscal Quarter ending March 31, 2019 and reducing to \$0 for the Fiscal Quarter ending June 30, 2019;

(vi) Ram Raju and employees' bonus in an aggregate amount up to \$822,000 for the Fiscal Quarters ending March 31, 2018, June 30, 2018 and September 30, 2018, reducing to \$53,000 for the Fiscal Quarter ending December 31, 2018 and reducing to \$0 for the Fiscal Quarter ending March 31, 2019;

(vii) bad debts expense in an amount up to \$194,000 for the Fiscal Quarters ending March 31, 2018, June 30, 2018 and September 30, 2018 and reducing to \$0 for the Fiscal Quarter ending December, 31, 2018;

(viii) severance expense in an amount of up to \$141,000 for the Fiscal Quarter ending March 31, 2018, reducing to \$108,000 for the Fiscal Quarter ending June 30, 2018, increasing to \$956,000 for the Fiscal Quarter ending September 30, 2018, reducing to \$921,000 for the Fiscal Quarter ending December 31, 2018, reducing to \$885,000 for Fiscal Quarter ending March 31, 2019 and reducing to \$0 for the Fiscal Quarter ending June 30, 2019;

(ix) donation expense in an amount up to \$90,000 reducing to \$85,000 for the Fiscal Quarter ending March 31, 2018, reducing to \$67,000 for the Fiscal Quarter ending June 30, 2018, reducing to \$51,000 for the Fiscal Quarter ending September 30, 2018, reducing to \$11,000 for the Fiscal Quarter ending December 31, 2018 and reducing to \$0 for the Fiscal Quarter ending March 31, 2019;

(x) salary expense for Rick White (terminated February 28, 2018) in the amount of \$323,000 for the Fiscal Quarter ending March 31, 2018, increasing to \$361,000 for the Fiscal Quarter ending June 30, 2018, reducing to \$300,000 for the Fiscal Quarter ending September 30, 2018, reducing to \$164,000 for the Fiscal Quarter ending December 31, 2018, reducing to \$100,000 for the Fiscal Quarter ending March 31, 2019 and reducing to \$0 for the Fiscal Quarter ending June 30, 2019; (xi) Principals' relocation expenses in the amount of \$50,000 for Fiscal Quarters ending June 30, 2018, September 30, 2018, December 31, 2018, March 31, 2019 and reducing to \$0 for the Fiscal Quarter ending June 30, 2019;

(xii) cost savings in connection with a hosting fee in the amount of \$458,000 on a trailing twelve month basis for the Fiscal Quarter ending December 31, 2017 reducing to \$270,000 for the Fiscal Quarter ending March 31, 2018 and reducing to \$0 for the Fiscal Quarter ending June 30, 2018,

less (g) management compensation to the Principals in the amount of \$400,000 for the trailing twelve month Fiscal Quarter ending December 31, 2017, \$400,000 for the Fiscal Quarter ending March 31, 2018, reducing to \$300,000 for the Fiscal Quarter ending June 30, 2018, reducing to \$200,000 for the Fiscal Quarter ending September 30, 2018, reducing to \$100,000 for the Fiscal Quarter ending December 31, 2018 and reducing to \$0 for the Fiscal Quarter ending March 31, 2019; to the extent not already deducted from the calculation of Net Income;"

- (b) Schedule B – Form of Compliance Certificate attached to the Credit Agreement is hereby deleted in its entirety and replaced with the replacement schedule attached hereto as Schedule A.

**Section 6 Representations and Warranties**

In order to induce the Lender to enter into this Amending Agreement, each of the Borrower and the Guarantors, jointly and severally, represents and warrants to the Lender as follows, which representations and warranties shall survive the execution and delivery hereof:

- (c) the representations and warranties set forth in Section 9 of the Credit Agreement and in the Loan Documents are true and correct as though made on and as of the date hereof except to the extent of changes therein expressly permitted or contemplated by the Credit Agreement or the Loan Documents;
- (d) all necessary corporate action has been taken to authorize the execution, delivery and performance of this Amending Agreement by the Borrower and the Borrower has duly executed and delivered this Amending Agreement;
- (e) this Amending Agreement is a legal, valid and binding obligation of the Borrower enforceable against it by the Lender in accordance with its terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally and by principles of equity); and
- (f) as of the date hereof and after giving effect to this Amending Agreement, no Event of Default exists.

**Section 7 Conditions Precedent to this Amendment**

The amendments contained herein shall not be effective unless and until each of the following conditions precedent has been either satisfied to the satisfaction of or waived by the Lender in its sole discretion:

- (a) BDC shall have provided its written consent to this Amending Agreement.

**Section 8 Loan Document**

The Borrower hereby acknowledges that this Amending Agreement constitutes a Loan Document under the terms of the Credit Agreement.

**Section 9 Continuance of Credit Agreement and Loan Documents**

The Credit Agreement and Loan Documents, as changed, replaced, amended or modified by this Amending Agreement, shall be and continue in full force and effect and are hereby confirmed and the rights and obligations of all parties thereunder shall not be affected or prejudiced in any manner except as specifically provided for herein.

The Borrower acknowledges, confirms and agrees that, notwithstanding this Amending Agreement, (i) all Security granted by it continue in full force and effect, enforceable in accordance with its terms, and secures payment and performance by it of its Loan Obligations, and (ii) the Security is hereby ratified and confirmed.

**Section 10 No Waiver**

The Borrower acknowledges and confirms that except as expressly set out in this Amending Agreement, none of the terms contained in this Amending Agreement shall operate or be construed as a waiver of any of the provisions of the Loan Documents or any Event of Default existing on or prior to the date hereof including, without limitation, any Events of Default disclosed by the Borrower to the Lender.

**Section 11 Counterparts**

This Amending Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which counterparts together shall constitute but one agreement. Counterparts may be executed in original or facsimile form or similar method of electronic transmission.

**Section 12 Governing Law**


This Amending Agreement shall be construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.


*[Signature pages follow]*

**IN WITNESS WHEREOF** the parties hereto have executed this Amending Agreement as of the day and year first above written.

Lender:


**THE TORONTO-DOMINION BANK**

By:   
Name: Nazam Halkate  
Title: Relationship Manager

By:   
Name: Gerald Martineau  
Title: Manager Commercial Services

Borrower:

**KIVUTO SOLUTIONS INC.**

By:   
Name: CARLOS MEZA  
Title: CEO



SCHEDULE "A"

Replacement Schedule

"Schedule B

Form of Compliance Certificate

This is Exhibit "G" referred to in the Affidavit of Andrea Jamnisek sworn January 27, 2023.

A handwritten signature in black ink, consisting of a stylized 'L' followed by a 'J' and a long horizontal line extending to the right.

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*Commissioner for Taking Affidavits (or as may be)*

THIS THIRD AMENDING AGREEMENT is dated as of the 5<sup>th</sup> day of Nov, 2019.

among

**KIVUTO SOLUTIONS INC.,**  
successor in interest by amalgamation of 10600598 Canada Inc. and Kivuto Solutions Inc.  
(the "**Borrower**")

and

**THE TORONTO-DOMINION BANK**  
(the "**Lender**")

**WHEREAS** the Borrower and the Lender are party to a Credit Agreement dated as of March 1, 2018, as amended by a first amending agreement dated as of June 30, 2018 and a second amendment dated as of January 31, 2019 (as may be further amended, supplemented, replaced, restated or otherwise modified from time to time, together, the "**Credit Agreement**");

**AND WHEREAS** the Borrower and the Lender wish to further amend the Credit Agreement;

**NOW THEREFORE THIS AMENDING AGREEMENT WITNESSES THAT** in consideration of the covenants and agreements contained herein and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree to amend the Credit Agreement as provided herein:

**Section 1     General**

In this Third Amending Agreement (this "**Amending Agreement**") (including the recitals) unless otherwise defined or the context otherwise requires, all capitalized terms shall have the respective meanings specified in the Credit Agreement.

**Section 2     To be Read with Credit Agreement**

This Amending Agreement is an amendment to the Credit Agreement. Unless the context of this Amending Agreement otherwise requires, the Credit Agreement and the applicable provisions of this Amending Agreement shall be read together and shall have effect as if the provisions of the Credit Agreement and the applicable provisions of this Amending Agreement were contained in one agreement. The term "**Agreement**" when used in the Credit Agreement means the Credit Agreement and the schedules thereto, as amended by this Amending Agreement and as may be further amended, revised, replaced, supplemented or restated from time to time.

### Section 3 Headings

The division of this Amending Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Amending Agreement. The terms "**this Amending Agreement**", "**hereof**", "**hereunder**" and similar expressions refer to this Amending Agreement and not to any particular Section or other portion hereof and include any agreement supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Sections are to Sections of this Amending Agreement.

### Section 4 Number

Words importing the singular number only shall include the plural and *vice versa*, words importing the masculine gender shall include the feminine and neuter genders and *vice versa*.

### Section 5 Amendments

Subject to satisfaction of the conditions precedent set forth in Section 7 hereof, the Credit Agreement is hereby amended as follows:

- (a) The definition of "**EBITDA**" contained in Section 1.1 is hereby deleted in its entirety and replaced with the following:

"**EBITDA**" of the Borrower for any accounting period means an amount equal to Net Income before: (a) Interest Expense, (b) Income Taxes, (c) depreciation and amortization, plus (d) non-cash expenses, less (e) non-cash income and non-recurring income, plus (f) the following non-recurring expenses:

(i) transaction fees and expenses of up to \$69,000 for Fiscal Quarters Ending June 30, 2019, September 30, 2019 and December 31, 2019, reducing to \$37,000 for Fiscal Quarter ending March 31, 2020 and reducing to \$0 for Fiscal Quarter ending June 30, 2020; and

(ii) severance expense in an amount of up to \$556,000 for Fiscal Quarter ending June 30, 2019, reducing to \$112,000 for Fiscal Quarter ending September 30, 2019, increasing to \$171,000 for Fiscal Quarters ending December 31, 2019 and March 31, 2020, reducing to \$42,000 for Fiscal Quarter ending June 30, 2020 and reducing to \$0 for Fiscal Quarter ending September 30, 2020;

less (g) management compensation to the Principals to the extent not already deducted from the calculation of Net Income;"

- (b) Section 13.3(b) is hereby deleted in its entirety and replaced with the following:

"Senior Funded Debt/EBITDA Ratio. Tested at the end of each Fiscal Quarter, on a rolling twelve month basis, in arrears, not permit the ratio of Senior Funded Debt to EBITDA to exceed 3.50:1 as at March 31, 2019, stepping up to 3.85:1 as at June 30, 2019, stepping up to 4.10:1 as at September 30, 2019, stepping up to 4.35:1 as at December 31, 2019, stepping down to 4.25:1 as at March 31, 2020, stepping down to 3.50:1 as at June 30, 2020 and September 30, 2020, stepping

down to 3.00:1 as at December 31, 2020 and stepping down to 2.50:1 as at March 31, 2021.”:

- (c) Schedule B – Form of Compliance Certificate attached to the Credit Agreement is hereby deleted in its entirety and replaced with the replacement schedule attached hereto as Schedule A.

#### **Section 6 Representations and Warranties**

In order to induce the Lender to enter into this Amending Agreement, each of the Borrower and the Guarantors, jointly and severally, represents and warrants to the Lender as follows, which representations and warranties shall survive the execution and delivery hereof:

- (d) the representations and warranties set forth in Section 9 of the Credit Agreement and in the Loan Documents are true and correct as though made on and as of the date hereof except to the extent of changes therein expressly permitted or contemplated by the Credit Agreement or the Loan Documents;
- (e) all necessary corporate action has been taken to authorize the execution, delivery and performance of this Amending Agreement by the Borrower and the Borrower has duly executed and delivered this Amending Agreement;
- (f) this Amending Agreement is a legal, valid and binding obligation of the Borrower enforceable against it by the Lender in accordance with its terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally and by principles of equity); and
- (g) as of the date hereof and after giving effect to this Amending Agreement, no Event of Default exists.

#### **Section 7 Conditions Precedent to this Amendment**

The amendments contained herein shall not be effective unless and until each of the following conditions precedent has been either satisfied to the satisfaction of or waived by the Lender in its sole discretion:

- (a) BDC shall have provided its written consent to this Amending Agreement.

#### **Section 8 Loan Document**

The Borrower hereby acknowledges that this Amending Agreement constitutes a Loan Document under the terms of the Credit Agreement.

#### **Section 9 Continuance of Credit Agreement and Loan Documents**

The Credit Agreement and Loan Documents, as changed, replaced, amended or modified by this Amending Agreement, shall be and continue in full force and effect and are hereby

confirmed and the rights and obligations of all parties thereunder shall not be affected or prejudiced in any manner except as specifically provided for herein.

The Borrower acknowledges, confirms and agrees that, notwithstanding this Amending Agreement, (i) all Security granted by it continue in full force and effect, enforceable in accordance with its terms, and secures payment and performance by it of its Loan Obligations, and (ii) the Security is hereby ratified and confirmed.

**Section 10 No Waiver**

The Borrower acknowledges and confirms that except as expressly set out in this Amending Agreement, none of the terms contained in this Amending Agreement shall operate or be construed as a waiver of any of the provisions of the Loan Documents or any Event of Default existing on or prior to the date hereof including, without limitation, any Events of Default disclosed by the Borrower to the Lender.

**Section 11 Counterparts**

This Amending Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which counterparts together shall constitute but one agreement. Counterparts may be executed in original or facsimile form or similar method of electronic transmission.

**Section 12 Governing Law**

This Amending Agreement shall be construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

*[Signature pages follow]*

IN WITNESS WHEREOF the parties hereto have executed this Amending Agreement as of the day and year first above written.

Lender:

**THE TORONTO-DOMINION BANK**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

Borrower:

**KIVUTO SOLUTIONS INC.**

By:   
Name: CARLOS VERA  
Title: CEO

SCHEDULE "A"

Replacement Schedule

"Schedule B"

Form of Compliance Certificate



This is Exhibit "H" referred to in the Affidavit of Andrea Jamnisek sworn January 27, 2023.

A handwritten signature in black ink, consisting of a stylized 'L' followed by a 'J' and a long horizontal line extending to the right.

---

*Commissioner for Taking Affidavits (or as may be)*

**THIS FOURTH AMENDING AGREEMENT** is dated as of the 18<sup>th</sup> day of August, 2020.

among

**KIVUTO SOLUTIONS INC.,**  
successor in interest by amalgamation of 10600598 Canada Inc. and Kivuto Solutions Inc.  
(the "**Borrower**")

and

**THE TORONTO-DOMINION BANK**  
(the "**Lender**")

**WHEREAS** the Borrower and the Lender are party to a Credit Agreement dated as of March 1, 2018, as amended by a first amending agreement dated as of June 30, 2018, a second amending agreement dated as of January 31, 2019 and a third amending agreement dated as of November 5, 2019 (as may be further amended, supplemented, replaced, restated or otherwise modified from time to time, together, the "**Credit Agreement**");

**AND WHEREAS**, the Borrower is aware that for the Fiscal Quarters ending September 30, 2019, December 31, 2019, March 31, 2020 and June 30, 2020 (the "**Default Period**") it has failed to observe the Fixed Charge Coverage Ratio and the Senior Funded Debt/EBITDA Ratio in accordance with the Credit Agreement (the "**Specified Defaults**");

**AND WHEREAS**, the Borrower has requested that the Lender waive the Specified Default and further amend the Credit Agreement;

**NOW THEREFORE THIS AMENDING AGREEMENT WITNESSES THAT** in consideration of the covenants and agreements contained herein and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree to amend the Credit Agreement as provided herein:

#### **Section 1     General**

In this Fourth Amending Agreement (this "**Amending Agreement**") (including the recitals) unless otherwise defined or the context otherwise requires, all capitalized terms shall have the respective meanings specified in the Credit Agreement.

#### **Section 2     To be Read with Credit Agreement**

This Amending Agreement is an amendment to the Credit Agreement. Unless the context of this Amending Agreement otherwise requires, the Credit Agreement and the applicable provisions of this Amending Agreement shall be read together and shall have effect as if the provisions of the Credit Agreement and the applicable provisions of this Amending Agreement were contained in one agreement. The term "**Agreement**" when used in the Credit

Agreement means the Credit Agreement and the schedules thereto, as amended by this Amending Agreement and as may be further amended, revised, replaced, supplemented or restated from time to time.

### **Section 3     Headings**

The division of this Amending Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Amending Agreement. The terms "**this Amending Agreement**", "**hereof**", "**hereunder**" and similar expressions refer to this Amending Agreement and not to any particular Section or other portion hereof and include any agreement supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Sections are to Sections of this Amending Agreement.

### **Section 4     Number**

Words importing the singular number only shall include the plural and *vice versa*, words importing the masculine gender shall include the feminine and neuter genders and *vice versa*.

### **Section 5     Amendments**

Subject to satisfaction of the conditions precedent set forth in Section 7 hereof, the Credit Agreement is hereby amended as follows:

- (a) The definitions of "**Applicable Margin**", "**BA Discount Rate**", "**Banker's Acceptance**", "**Banker's Acceptance Proceeds**", "**CDOR**", "**CDOR BA Rate**", "**Equity Cure Securities**", "**Fixed Charge Cost**", "**Fixed Charge Coverage Ratio**", "**Interest Period**", "**LIBOR**", "**Libor Loan**", "**Net Banker's Acceptance Proceeds**", "**Permitted Distributions**", "**Rollover**", "**Rollover Date**", "**Senior Funded Debt**", "**Senior Funded Debt/EBITDA Ratio**", "**Stamping Fee**", "**Letter of Guarantee**", "**Standby Instrument**", "**Standby Instrument Fee**" and "**Standby Letter of Credit**" contained in Section 1.1 are hereby deleted in their entirety.
- (b) The definition of "**Conversion**" contained in Section 1.1 is hereby deleted in its entirety and replaced with the following:

"**Conversion**" means a conversion of a Loan pursuant to Section 5.1 hereof;
- (c) The definition of "**Loan**" contained in Section 1.1 is hereby deleted in its entirety and replaced with the following:

"**Loan**" means a Canadian Prime Rate Loan or U.S. Base Rate Loan, as the context requires;"
- (d) The definition of "**EBITDA**" contained in Section 1.1 is hereby deleted in its entirety and replaced with the following:

"**EBITDA**" of the Borrower for any accounting period means an amount equal to Net Income before: (a) Interest Expense, (b) Income Taxes, (c) Depreciation Expense, plus (d) non-cash expenses, less (e) non-cash income and non-recurring income, plus (f) non-recurring expenses limited to reasonable costs, fees and expenses payable to third parties in connection with the transactions described herein, unless otherwise approved by the Lender;"

- (e) The definition of "**Interest Payment Date**" contained in Section 1.1 is hereby deleted in its entirety and replaced with the following:

"**Interest Payment Date**" means, with respect to each Canadian Prime Rate Loan and U.S. Base Rate Loan in any calendar month, the last Business Day of such month;"

- (f) The definition of "**Limited Partnership Agreement**" contained in Section 1.1 is hereby deleted in its entirety and replaced with the following:

"**Limited Partnership Agreement**" means the amended and restated limited partnership agreement made in respect of the Cdn LP Holdco dated as of August 17, 2020;"

- (g) The definition of "**Net Income**" contained in Section 1.1 is hereby deleted in its entirety and replaced with the following:

"**Net Income**" means for any period, the net income of the Borrower, on a consolidated basis, for such period, all as determined in accordance with GAAP;"

- (h) The definition of "**Outstanding Amount**" contained in Section 1.1 is hereby deleted in its entirety and replaced with the following:

"**Outstanding Amount**" when used in relation to any outstanding Advance at any time means (i) its outstanding principal balance if it is a Canadian Prime Rate Loan, and (ii) the Equivalent Amount in Canadian Dollars of its outstanding principal balance if it is a U.S. Base Rate Loan;"

- (i) The definition of "**Permitted Indebtedness**" contained in Section 1.1 is hereby deleted in its entirety and replaced with the following:

"**Permitted Indebtedness**" means (i) BDC Debt which has been subordinated in accordance with the Intercreditor Agreement; (ii) Indebtedness incurred under this Agreement; (iii) PMSI's and capital leases not exceeding \$500,000 in aggregate; (iv) unsecured credit card debt in connection with any credit cards issued by other financial institutions up to an aggregate sum of \$250,000; (v) any intercompany debt between the Borrower and a Company or between Companies from time to time which is unsecured and fully subordinated and postponed; and (vi) any unsecured Indebtedness incurred pursuant to governmental emergency credit solution programs in respect of COVID-19, including the Canada Emergency Business Account;"

- (j) The definition of "**Term Loan Maturity Date**" contained in Section 1.1 is hereby deleted in its entirety and replaced with the following:

"**Term Facility Maturity Date**" means August 17, 2021, unless reset pursuant to Section 3.3 hereof;"

- (k) The following new definitions are added to Section 1.1 in alphabetical order:

"**Commitment Letter**" means the commitment letter dated as of August 17, 2020 issued by Legado Capital Partners LP in favour of the Borrower providing for a committed minimum equity investment in the Borrower in an aggregate principal amount of no less than \$7,500,000 to be made in two tranches of equal amount by way of acquisition of Capital Stock of or cash capital contributions made to the Borrower;

"**Depreciation Expenses**" means, for any period with respect to any Person, depreciation and amortization for such period not involving any outlay of cash, determined, without duplication, on a consolidated basis in accordance with GAAP;

"**Enterprise Value**" means the enterprise value (that is, the combined value of debt and equity) of the Borrower implied by the applicable Liquidity Event.

"**Equity Contribution**" means the equity transactions contemplated pursuant to the terms and conditions of the Commitment Letter;

"**Excess Cash Flow**" means, for any period, on a consolidated basis, Net Income of the Borrower:

- (i) increased by the sum of:

- (A) Depreciation Expense,
- (B) unrealized foreign exchange losses;

to the extent that any such amounts were deducted in the calculation of Net Income for such period;

- (ii) decreased by the sum of:

- (A) annual scheduled principal repayments under the Term Facility;
- (B) unfinanced Capital Expenditures;
- (C) unrealized foreign exchange gains; and
- (D) government funding or subsidies (including wage subsidies);

to the extent that any such amounts were included in the calculation of Net Income for such period."

**"Fourth Amendment Date"** means August 17, 2020, being the date of the Fourth Amendment to the Credit Agreement;

**"Liquidity Event"** means a transaction or a series of related transactions whereby a majority of the voting shares of the Borrower are sold to persons other than current shareholders of the Borrower, or the Borrower shall sell or exclusively license (outside the ordinary course of business), or otherwise dispose of, whether accomplished in a single transaction or in a series of related transactions, all or substantially all of its property or business or amalgamate or merge into or consolidate with any other corporation (other than a wholly-owned subsidiary) or other entity or person, or effect any other corporate reorganization which results in the sale of the business of the Borrower, in which the shareholders of the Borrower immediately prior to such sale, consolidation, amalgamation, arrangement, merger or reorganization, own less than fifty percent (50%) of the voting power of the surviving entity immediately after such sale, consolidation, merger or reorganization, or effect any other transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Borrower is disposed of; provided, however, that (i) an issuance of securities of the Borrower for purposes of raising capital other than pursuant to an initial public offering and (ii) a distribution of securities to indirect shareholders of the Borrower (e.g., upon a liquidation of the Borrower's direct shareholder) shall not be a "Liquidity Event";

**"Liquidity Event Fee"** has the meaning given to it in Section 13.5 hereof;

**"Special Preferred Units"** means has the meaning given to it in the Limited Partnership Agreement;

**"Special Repayment"** has the meaning given to it in Subsection 9.1 (h) hereof;

**"Specified Period"** means the period beginning on the date which is twelve months following the Fourth Amendment Date and ending on the date which is twelve months following the repayment in full of the Loan Obligations;

**"Tranche 1"** means the first tranche of the Equity Contribution in the amount of no less than \$3,750,000 and equal to 50% of total principal sum of the Equity Contribution to be fully advanced or contributed to the Borrower on the Fourth Amendment Date;

**"Tranche 2"** has the meaning given to it in Subsection 13.1(t) hereof;"

- (l) The following new Section 1.9 is hereby added to the Credit Agreement:

**"1.9 Currency**

All amounts referred to in this Credit Agreement are in Canadian Dollars unless otherwise noted."

- (m) Section 2.2 is hereby deleted in its entirety and replaced with the following:

"In no event shall the aggregate Advances under the Operating Facility exceed Cdn.\$500,000 or its Equivalent Amount in U.S. Dollars."

- (n) Section 2.3 is hereby deleted in its entirety and replaced with the following:

"The Borrower may borrow, repay and reborrow Advances under the Operating Facility on a revolving basis by way of Canadian Prime Rate Loans and U.S. Base Rate Loans, which shall be made available by way of overdraft on the Borrower's Accounts. Notwithstanding the foregoing, this Operating Facility is made available to the Borrower at the Lender's discretion and is not automatically available to the Borrower upon satisfaction of the terms and conditions of this Agreement."

- (o) Section 2.4 is hereby deleted in its entirety and replaced with the following:

"[INTENTIONALLY DELETED]"

- (p) Section 2.5 is hereby deleted in its entirety and replaced with the following:

"The proceeds of each Drawdown by way of Loan shall be advanced by bank transfer to the credit of the Borrower's Accounts."

- (q) Section 2.6 is hereby deleted in its entirety and replaced with the following:

"The Lender agrees to enter into credit card facility agreements with the Borrower, limited to Cdn.\$22,500 in order to provide senior management with business VISA cards (the "**VISA Facility**"). The indebtedness of the Borrower under the VISA Facility shall comprise part of the Loan Obligations for all purposes hereunder and shall be secured by the Security on a *pari passu* basis with all other Loan Obligations. Notwithstanding anything to the contrary contained in any credit card facility agreements, the indebtedness owing by the Borrower thereunder shall become immediately due and payable upon acceleration of the Loan Obligations pursuant to Section 14.2 hereof. ":

- (r) Section 3.2 is hereby deleted in its entirety and replaced with the following:

"The Term Facility was fully advanced on the Closing Date. As of the Fourth Amendment Date, the Outstanding Amount under the Term Facility is US\$15,915,115."

- (s) Sections 3.3 and 3.4 are hereby deleted in their entirety and replaced with the following:

### "3.3 Reset of Term Facility Maturity Date

The Term Facility Maturity Date shall be reset to a date which is 12 months from the date of the Borrower's receipt of the proceeds of Tranche 2 (the "**Reset Date**"), provided that at such time the Lender is satisfied that there exists no Default or Event of Default."

- (t) Article 4 (and all of the provisions thereof) are hereby deleted in its entirety and replaced with the following:

"Article 4 - [INTENTIONALLY DELETED]"

- (u) Section 5.1 is hereby deleted in its entirety and replaced with the following:

#### "5.1 Conversions

Subject to the last sentence of this Section 5.1, the Borrower may request the Lender to convert at any time, a Canadian Prime Rate Loan or a U.S. Base Rate Loan or a portion thereof into a different Type of Advance by way of Canadian Prime Rate Loan, or U.S. Base Rate Loan; upon delivering a Borrowing Request to the Lender specifying both the amount of the Advance to be converted and the amount and Type of the requested resulting Advance. The relevant provisions of this Agreement applicable to a Drawdown and availability of the Type of Advance which will result from the Conversion (as well as any portion of the Advance which is not being converted) must be satisfied to effect any such requested Conversion. If the Borrower has requested a Conversion of an Advance to a Type of Advance denominated in a different currency, the Borrower shall repay the Advance (or relevant portion) being converted and, subject to the foregoing provisions of this Section 5.1 the Lender shall make the Type of Advance requested on the Conversion to the Borrower on the Conversion Date."

- (v) Section 5.2 is hereby deleted in its entirety and replaced with the following:

" [INTENTIONALLY DELETED]"

- (w) Article 6 (and all of the provisions thereof) are hereby deleted in their entirety and replaced with the following:

"Article 6 – INTENTIONALLY DELETED"

- (x) Section 7.1 is hereby deleted in its entirety and replaced with the following:

"The Lender (or an Affiliate of the Lender) may enter into Derivatives with the Borrower for hedging its currency exposure, and such Derivatives are (a) currency futures or forward foreign exchange futures with a term not exceeding one (1) year; and (b) foreign exchange spot transactions or for settlement of forward foreign exchange contracts up to a notional principal amount not exceeding US\$1,000,000 per day.



Each such Derivative shall be in form and substance acceptable to the Lender in its discretion. Derivatives may not be entered into for speculative purposes. The Security shall secure all obligations of the Borrower under or in respect of each Derivative on a *pari passu* basis with all other Loan Obligations."

- (y) Section 8.1 is hereby deleted in its entirety and replaced with the following:

**"8.1 Interest**

- (a) **Canadian Prime Rate Loans.** The Borrower shall pay the Lender interest on the outstanding principal amount of each Canadian Prime Rate Loan borrowed by it under the Operating Facility and the Term Facility, as applicable, at a rate equal to the Canadian Prime Rate plus 3.25%.

- (b) **U.S. Base Rate Loans.** the Borrower shall pay the Lender interest on the outstanding principal amount of each U.S. Base Rate Loan borrowed by it under the Operating Facility and the Term Facility, as applicable, at a rate equal to the U.S. Base Rate plus 3.25%."

- (z) Section 8.2 is hereby deleted in its entirety and replaced with the following"

"8.2 [INTENTIONALLY DELETED];"

- (aa) Subsection (b) of Section 8.4 is hereby deleted in its entirety and replaced with the following:

"(b) [INTENTIONALLY DELETED];"

- (bb) Subsection (c) of Section 8.4 is hereby deleted in its entirety and replaced with the following:

"(c) The rates of interest per annum payable on or in respect of Canadian Prime Rate Loans and U.S. Base Rate Loans are expressed on the basis of a 365 day year, as applicable."

- (cc) Subsection (d) of Section 8.4 is hereby deleted in its entirety and replaced with the following:

"(d) [INTENTIONALLY DELETED];"

- (dd) Section 8.6 is hereby deleted in its entirety and replaced with the following:

"8.6 [INTENTIONALLY DELETED];"

- (ee) Section 8.7 is hereby deleted in its entirety and replaced with the following:

"Section 8.7 **Illegality**

If at any time the Lender determines (which determination shall be conclusive and bind the Borrower) that any Change in Law has made it unlawful or impossible for the Lender to make, fund or maintain a Loan or to give effect to its obligations in respect of such Loan, (an "**Affected Advance**"), the Lender will promptly notify the Borrower. Upon giving such notice the obligation of the Lender to make or continue any Affected Advance shall be suspended for so long as such condition exists. Thereafter, and until the Lender notifies the Borrower otherwise, the Borrower shall not have the right to require the Lender to make such Affected Advance available in the manner requested. Rather, if the Affected Advance is a Canadian Prime Rate Loan or a U.S. Base Rate Loan, the Borrower shall forthwith prepay the Lender's Affected Advance and the Lender shall not be required to make such Affected Advance available in any manner."

(ff) Section 8.9 is hereby deleted in its entirety.

(gg) Subsection 9.1(b) is hereby amended by deleting therefrom the following:

" and all costs to the Lender of unwinding any BAs or Standby Instruments on demand."

(hh) Subsection 9.1(d) is hereby deleted in its entirety and replaced with the following:

"(d) **Mandatory Repayment of Term Facility.** Calculated in annual percentages of the Outstanding Amount under the Term Facility after application of the Special Repayment required to have been made in full by December 31, 2020, the Borrower shall make quarterly principal payments on the Term Facility, based on an amortization period of 7 years, the amount of each such payment to be calculated as follows:

Year 1	2.5% per annum
Year 2	5.0% per annum
Year 3	7.5% per annum
Year 4	15% per annum
Year 5	15% per annum
Year 6	15% per annum
Year 7	40% per annum

For greater certainty, the Borrower agrees and understands that the Term Facility must be repaid in full on the Term Facility Maturity Date."

(ii) The following new subsections (g) and (h) are hereby added to Section 9.1:

"(g) **Mandatory Cash Sweep Repayment.** On the earlier of (i) the date which is 30 days after receipt of the consolidated management prepared financial statements for the Fiscal Quarter ending December 31 in each year; and (ii) the

date that is 30 days from the date such financial reporting is due pursuant to Subsection 13.1(f) hereof for the Fiscal Quarter ending December 31 in each year, the Borrower will determine Excess Cash Flow and in addition to all other repayments required pursuant to this Section 9.1, the Borrower shall make a repayment under the Term Facility in an amount equal to 65% of Excess Cash Flow, to be adjusted in the Lender's sole discretion if results of Fiscal Year end audited consolidated annual financial statements deviate materially."

(h) **Mandatory Special Repayment.** In addition to all other repayments required pursuant to this Section 9.1, concurrent with the Borrower's receipt of each of Tranche 1 and Tranche 2 the Borrower shall make repayments from the proceeds thereof as determined by reference to the actual Equity Contribution received (which for clarity shall be in an aggregate amount of not less than \$7,500,000) based on the percentages prescribed below which shall be applied to permanently reduce the Term Facility (the "**Special Repayment**"):

Equity Contribution	Differential	% Paydown	Incremental \$ Paydown	Cumulative \$ Paydown	Special Repayment under Tranche 1	Special Repayment under Tranche 2
\$7,500,000	0	15%	\$1,125,000	\$1,125,000	\$562,500	\$562,500
\$8,000,000	\$500,000	35%	\$175,000	\$1,300,000	\$650,000	\$650,000
\$8,500,000	\$500,000	55%	\$275,000	\$1,575,000	\$787,500	\$787,500
\$9,000,000	\$500,000	60%	\$300,000	\$1,875,000	\$937,500	\$937,500
\$9,500,000	\$500,000	65%	\$325,000	\$2,200,000	\$1,100,000	\$1,100,000
\$10,000,000	\$500,000	70%	\$350,000	\$2,550,000	\$1,275,000	\$1,275,000

(jj) The reference in Section 9.3 and Section 9.4 to "\$250,000" is deleted and replaced in each case with "\$100,000".

(kk) The following paragraphs (x), (xi) and (xii) are hereby added to the end of Subsection 13.1(f):

"(x) within 35 days of each month end for a period of 6 months commencing on July 31, 2020 and ending on December 31, 2020 and thereafter within 25 days of each month end, monthly management-prepared consolidated financial statements (prepared for the month on a rolling monthly basis), together with a Compliance Certificate;

(xi) within 35 days of each month end for a period of 6 months commencing on July 31, 2020 and ending on December 31, 2020 and thereafter within 25 days of each month end, a monthly analysis of the variance to the Financial Projections together with management commentary;

(xi) by no later than August 15, 2020, internally company prepared consolidated unaudited Fiscal Quarter financial statements of the Borrower prepared in accordance with GAAP, together with a Compliance Certificate for the Fiscal Quarter ending June 30, 2020;"

(ll) The following is hereby added to Section 13.1 as new subsection (t):

"(t) **Tranche 2 of Equity Contribution.** A second tranche of the Equity Contribution in the amount of no less than \$3,750,000 and equal to 50% of total principal sum of the Equity Contribution shall be completed on terms and conditions satisfactory to the Lender and shall be fully funded to the Borrower by no later than December 31, 2020 ("**Tranche 2**"). The Borrower shall provide the Lender with at least 30 days prior written notice of the date scheduled for the closing and funding of Tranche 2."

(mm) Subsection 13.2(g) is hereby deleted in its entirety and replaced with the following:

"**Redemptions and Distributions; Dividends.** Not declare, set apart for payment or pay any dividends or other distributions to shareholders on any of its Capital Stock or redeem, retract, purchase for cancellation or retire or otherwise acquire for value in any manner any of its Capital Stock or otherwise reduce its capital in any manner."

(nn) Subsection 13.2(m) is hereby deleted in its entirety and replaced with the following:

"**Investments.** Not make any Investments without the prior written consent of the Lender."

(oo) Paragraphs (a) and (b) of Section 13.3 are hereby deleted in their entirety and are replaced with the following:

"**EBITDA Variance-to-Financial Projections.**

(a) Maintain a negative variance of Financial Projections to monthly EBITDA of no more than \$200,000, tested on a monthly basis.

(b) Maintain a negative variance of Financial Projections to EBITDA of no more than \$500,000, to be tested monthly on a building basis for the period from August 31, 2020 to July 31, 2021, and thereafter to be tested on a trailing twelve month basis.

For the purpose of calculating the variance of Financial Projections to EBITDA, to the extent that wage subsidies or any other Covid-19 government related funding are received by the Borrower, and any one-time or deferred transaction fees are incurred by the Borrower, both of which have otherwise not been modeled into the Financial Projections reviewed by the Lender, such receipts and expenditures will be deducted or added back to EBITDA, accordingly."

- (pp) The reference to "\$500,000" in Subsection 14.1(f) is hereby deleted and replaced with "\$250,000";
- (qq) The references to "\$250,000" in Subsections (g) and (h) of Section 14.1 are hereby deleted and replaced with "\$100,000";
- (rr) The following new subsection (p) is hereby added to Section 14.1 as follows:
  - "(p) **Breach of Specified Covenant.** The Borrower fails to perform or observe the covenant contained in Section 13.1(t)."
- (ss) Subsection 13.4(a) is hereby deleted in its entirety and replaced with the following:
  - "(a) If the Borrower wishes to cure or remedy a Financial Covenant Default, the Borrower shall deliver to the Lender irrevocable written notice of its intention to do so (a "**Cure Notice**") no later than thirty-five (35) days after the end of the month as of which Financial Covenant Default occurred."
- (tt) Subsection 13.4(b) is hereby deleted in its entirety and replaced with the following:
  - "If the Borrower delivers a Cure Notice, (i) there shall be purchased Capital Stock of or cash capital contributions made to the Borrower (which shall not contain any mandatory payment of cash dividends or mandatory redemption provisions requiring cash redemptions for cash consideration), (ii) use cash on hand of the Borrower, (iii) one or more shareholders of the Borrower shall extend to the Borrower cash proceeds constituting an advance of Subrogated Debt or, (iv) a combination of clauses (i), (ii) and (iii) above (the "**Equity Cure Amount**") by no later than ten (10) Business Days after receipt by the Lender of the Cure Notice (the "**Required Contribution Date**"), provided that the Equity Cure Amount shall not exceed the Financial Covenant Cure Amount.
  - The "**Financial Covenant Cure Amount**" shall equal an amount which, if added to EBITDA for the month just ended ("**Cured Period**") would result in the Borrower being in compliance with the applicable Financial Covenant. For greater certainty, the Financial Covenant Cure Amount shall be disregarded for all other purposes under this Agreement, included for the purposes of calculating Debt and for the purposes of determining pricing, or other baskets with respect to covenants contained in this Agreement or any other Loan Document."
- (uu) The references to "Cured Quarter" in Subsection 13.4(c) are hereby deleted and replaced with "Cured Period"
- (vv) The following new Section 13.5 is hereby added to the Credit Agreement:
  - "13.5 **Liquidity Event Fee.**
  - (a) Subject to paragraph (b), (c), (d) and (e) of this Section 13.5, if the Borrower consummates a Liquidity Event during the Specified Period, the

Borrower will pay an additional fee to the Lender (the "**Liquidity Event Fee**") calculated as follows, in connection with the completion of the Liquidity Event:

- (i) 1% of Enterprise Value up to \$50,000,000 in Enterprise Value; plus
- (ii) 4% of Enterprise Value above \$50,000,000 in Enterprise Value, up to \$80,000,000 in Enterprise Value; plus
- (iv) 6% of Enterprise Value above \$80,000,000 in Enterprise Value.

(b) If a Liquidity Event does not occur by the date which is five (5) years following the Fourth Amendment Date, each of the foregoing percentages will increase by 1% on each anniversary of the Fourth Amendment Date, beginning on the fifth anniversary of the Fourth Amendment Date, to a maximum 5% increase. For example, if a Liquidity Event occurs on or after the fifth anniversary of the Fourth Amendment Date, but before the sixth anniversary of the Fourth Amendment Date, the Liquidity Event Fee would be 2% of Enterprise Value up to \$50,000,000 in Enterprise Value; plus 5% of Enterprise Value above \$50,000,000 in Enterprise Value, up to \$80,000,000 in Enterprise Value; plus 7% of Enterprise Value above \$80,000,000 in Enterprise Value. If a Liquidity Event occurs on or after the ninth anniversary of the Fourth Amendment Date, the Liquidity Event Fee would be 6% of Enterprise Value up to \$50,000,000 in Enterprise Value; plus 9% of Enterprise Value above \$50,000,000 in Enterprise Value, up to \$80,000,000 in Enterprise Value; plus 11% of Enterprise Value above \$80,000,000 in Enterprise Value.

(c) No Liquidity Event Fee will be payable if the Loan Obligations are repaid within 12 months following the Fourth Amendment Date (even if a Liquidity Event occurs within the Specified Period thereafter).

(d) No Liquidity Event Fee will be payable unless there are sufficient proceeds available to the Borrower (or Cdn LP Holdco as applicable) to fully pay the following amounts from the proceeds of the Liquidity Event in addition to payment of the Liquidity Event Fee:

- (i) the Loan Obligations (including all transaction expenses, fees, and other amounts owing in connection with the Loan Obligations);
- (ii) the BDC Debt and all other Indebtedness of the Borrower required to be repaid in order to close the Liquidity Event (excluding the bonus on sale payable to BDC);
- (iii) the transaction expenses of the Borrower, Cdn LP Holdco or the general partner of Cdn LP Holdco associated with the Liquidity Event (excluding, for greater certainty, the Liquidity Event Fee and the bonus on

sale payable to BDC), provided that the Lender is satisfied, acting reasonably, with the nature of such expenses; and

(iv) an amount equal to the aggregate unreturned Equity Contribution (up to \$10,000,000), plus, to the extent not previously paid, an amount equal to the general partner of Cdn LP Holdco's entitlement to a distribution of \$500.00 per fiscal year of Cdn LP Holdco, which amounts will be distributed to (or retained by, as applicable) Cdn LP Holdco for further distribution to the partners of Cdn LP Holdco.

If there are sufficient proceeds available to the Borrower (or Cdn LP Holdco as applicable) to fully pay the amounts set forth in (i) through (iv) above from the proceeds of the Liquidity Event, but not to pay the Liquidity Event Fee in full, the Liquidity Event Fee will be reduced to the extent needed to permit the Borrower (or Cdn LP Holdco as applicable) to fully pay the amounts set forth in (i) through (iv) above before any payment of the Liquidity Event Fee.

(e) Notwithstanding anything else in this Agreement or the Loan Documents:

(i) if a Liquidity Event is structured as a sale or license of the assets of the Borrower or any of its subsidiaries, the Borrower and its subsidiaries shall be permitted to distribute to Cdn LP Holdco an amount equal to the aggregate unreturned Equity Contribution (up to \$10,000,000), plus, to the extent not previously paid, an amount equal to the general partner of Cdn LP Holdco's entitlement to a distribution of \$500.00 per fiscal year of Cdn LP Holdco; and

(ii) in the event that the Lender assigns all or any portion of the Loan Obligations pursuant to Sections 15.10(c) or (d) of the Credit Agreement to a Participant or Transferee who is a non-resident of Canada (for purposes of the *Income Tax Act* (Canada)), Section 8.8(a)(iv) shall not apply to such non-resident Participant or Transferee's entitlement to the Liquidity Event Fee or portion thereof and as such no gross up on account of Withholding Tax will apply to such Liquidity Event Fee or portion thereof."

(ww) Schedules "A", "B", 12.1(q), 12.1(r) and 12.1(s) attached to the Credit Agreement are hereby deleted in their entirety and replaced with the replacement schedules attached hereto as Schedule "A". Schedule 9.1(d) attached to the Credit Agreement is hereby deleted in its entirety.

## **Section 6     Representations and Warranties**

In order to induce the Lender to enter into this Amending Agreement, each of the Borrower and the Guarantors, jointly and severally, represents and warrants to the Lender as follows, which representations and warranties shall survive the execution and delivery hereof:

- (a) the representations and warranties set forth in Section 9 of the Credit Agreement and in the Loan Documents are true and correct as though made on and as of the date hereof except to the extent of changes therein expressly permitted or contemplated by the Credit Agreement or the Loan Documents;
- (b) all necessary corporate action has been taken to authorize the execution, delivery and performance of this Amending Agreement by the Borrower and the Borrower has duly executed and delivered this Amending Agreement;
- (c) this Amending Agreement is a legal, valid and binding obligation of the Borrower enforceable against it by the Lender in accordance with its terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally and by principles of equity); and
- (d) as of the date hereof and after giving effect to this Amending Agreement, no Event of Default exists.

#### **Section 7 Conditions Precedent to this Amendment**

The amendments contained herein shall not be effective unless and until each of the following conditions precedent has been either satisfied to the satisfaction of or waived by the Lender in its sole discretion (the date on which such conditions precedent are satisfied or waived is hereinafter referred to as the "**Effective Date**"):

- (a) the Lender shall have received all "know your client", anti-money laundering or similar identification information requested by the Lender;
- (b) this Amendment and the acknowledgement and confirmation thereof, duly executed and delivered by the Borrower, the Lender and the Guarantor;
- (c) the Lender shall have received and be satisfied with the Borrower's internally prepared consolidated financial statements for the 5 months ended May 31, 2020 together with a Compliance Certificate in respect of such period;
- (d) the Lender shall have received consolidated multi-year Financial Projections of the Borrower to December 31, 2024, including year-to-date results up to May 31, 2020, in form and substance satisfactory to the Lender;
- (e) the Lender shall have received and be satisfied with the Commitment Letter from Legado Capital Partners LP in respect of the Equity Contribution;
- (f) evidence that the first tranche of the Equity Contribution in an amount not less than \$3,750,000 shall have been completed and advanced to the Borrower on terms satisfactory to the Lender;
- (g) a minimum of \$580,340.67 of the proceeds of the first tranche of the Equity Contribution shall have been applied to permanently reduce the Term Facility;



- (h) BDC shall have provided its written consent to this Amending Agreement;
- (i) the Lender shall have received a copy of the duly executed and delivered amendment to the BDC Loan Agreement in form and substance satisfactory to the Lender;
- (j) a duly executed and delivered copy of the Limited Partnership Agreement;
- (k) Amendment Fee has been paid in full; and
- (l) the Lender shall have received all such certificates of the Borrower, documents, legal opinions in respect of the Borrower, and information that it reasonably requests.

### **Section 8 Amendment Fee**

In consideration of the amendments to the Credit Agreement contained in this Agreement, the Borrower hereby agrees to pay to the Lender an amendment fee of \$55,000 (the "**Amendment Fee**"). The Amendment Fee shall be fully earned as of the date hereof, and shall be paid to the Lender in full on the Effective Date.

### **Section 9 Loan Document**

The Borrower hereby acknowledges that this Amending Agreement constitutes a Loan Document under the terms of the Credit Agreement.

### **Section 10 Continuance of Credit Agreement and Loan Documents**

The Credit Agreement and Loan Documents, as changed, replaced, amended or modified by this Amending Agreement, shall be and continue in full force and effect and are hereby confirmed and the rights and obligations of all parties thereunder shall not be affected or prejudiced in any manner except as specifically provided for herein.

The Borrower acknowledges, confirms and agrees that, notwithstanding this Amending Agreement, (i) all Security granted by it continue in full force and effect, enforceable in accordance with its terms, and secures payment and performance by it of its Loan Obligations, and (ii) the Security is hereby ratified and confirmed.

### **Section 11 Waiver**

The Specified Defaults are hereby irrevocably acknowledged by the parties hereto, and are hereby waived by the Lender solely with respect to the Default Period with effect on the Effective Date subject to compliance with the conditions precedent set forth in Section 7 above.

The Waiver set forth herein shall be limited precisely as written and relates solely to the Specified Defaults in the manner and to the extent described above. The Borrower understands and agrees that for all periods except for the Default Period and for all times thereafter, the

Borrower shall be in compliance with the terms and conditions of the Credit Agreement (as amended by this Amending Agreement) and nothing herein shall impair the Lender's right to demand strict performance of the Financial Covenants (as amended by this Amending Agreement) or limit the Lender's right to demand strict performance of all other covenants set forth in the Credit Agreement (as amended by this Amending Agreement) or the Lender's right to demand payment and take the enforcement action set forth under section 14.2 of the Credit Agreement with respect to the Operating Facility at any time.

**Section 12 No Waiver**

The Borrower acknowledges and confirms that except as expressly set out in this Amending Agreement, none of the terms contained in this Amending Agreement shall operate or be construed as a waiver of any of the provisions of the Loan Documents or any Event of Default existing on or prior to the date hereof including, without limitation, any Events of Default disclosed by the Borrower to the Lender.

**Section 13 Counterparts**

This Amending Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which counterparts together shall constitute but one agreement. Counterparts may be executed in original or facsimile form or similar method of electronic transmission.

**Section 14 Governing Law**

This Amending Agreement shall be construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

*[Signature pages follow]*

**IN WITNESS WHEREOF** the parties hereto have executed this Amending Agreement as of the day and year first above written.

Lender:


**THE TORONTO-DOMINION BANK**

By:   
Name: Andrea Jamnisek  
Title: Director, Financial Restructuring Group

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Borrower:

**KIVUTO SOLUTIONS INC.**

By:   
Name: Carlos Jose Meza-Rios  
Title: Chief Executive Officer

The undersigned party hereby (a) consents to the transactions and amendments contemplated by the foregoing Fourth Amending Agreement made between The-Toronto-Dominion Bank and Kivuto Solutions Inc. (the "**Amendment**") and (b) acknowledges and agrees that the guarantee and grant of security interests made by it contained in the Security to which it is party are, and shall remain, in full force and effect after giving effect to the Amendment.

Guarantor:

Legado Capital Partners LP, by its general partner,  
Legado Capital Partners GP Inc.

DocuSigned by:  
By:   
Name: Carlos Jose Meza-Rios  
Title: Vice-President

SCHEDULE "A"  
Replacement Schedules

**Schedule "A"**  
**FORM OF BORROWING REQUEST**

**TO: The Toronto-Dominion Bank (the "Lender")**

**RE: Credit Agreement dated March 1, 2018, between Kivuto Solutions Inc., successor in interest by amalgamation of 10600598 Canada Inc., as borrower (the "Borrower") and the Lender, as amended by a first amending agreement dated as of June 30, 2018, a second amending agreement dated as of January 31, 2019, a third amending agreement dated as of November 5, 2019 and a fourth amending agreement dated as of August \_\_, 2020 (as amended, supplemented, restated, replaced or otherwise modified from time to time, the "Credit Agreement"). All capitalized terms used in this Borrowing Request but not otherwise defined shall have the respective meanings attributed to them in the Credit Agreement.**

---

We refer to the Credit Facilities constituted by the Credit Agreement and we hereby give you notice as follows:

1. The Borrower hereby requests under the Operating Facility:
  - (a) Date of Requested Advance  
 \_\_\_\_\_ (being a Business Day)
  - (b) Aggregate amount of Advance  
 Cdn./US\$ \_\_\_\_\_

We confirm that we have read the provisions of the Credit Agreement which are relevant to the furnishing of this Borrowing Request. After due and careful investigation and with respect thereto, we confirm that we have complied with all conditions precedent to Borrowing and we certify that the representations and warranties of the Borrower specified in Article 12 of the Credit Agreement are true and correct in all material respects as at the date hereof, as though made on and as of the date hereof, except those identified in the attached Certificate of the Chief Financial Officer of the Borrower. Such Certificate sets forth the basis on which the representations and warranties identified in such Certificate are not true and correct in all material respects as of the date hereof and states that their failure to be true and correct in all material respects on the date hereof would not, alone or in the aggregate, be expected to have a Material Adverse Effect.

To the best of the knowledge, belief and information of the undersigned, and after due inquiry, the undersigned certify that no Event of Default has occurred and is continuing or will occur as a result of the proposed Borrowing.

The details of the outstanding ISDA Master Agreement(s) are described on Annex "A" attached hereto.

The Borrower intends to use the proceeds of the Drawdown for the following purpose(s):

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**KIVUTO SOLUTIONS INC.**

Per: \_\_\_\_\_  
Name: ▶ c/s  
Title: ▶

Per: \_\_\_\_\_  
Name: ▶ c/s  
Title: ▶

*We have authority to bind the Corporation*

**Annex A**  
**Outstanding Instruments**

The outstanding ISDA Master Agreement of the Borrower is:

<b>Date of Agreement</b>	<b>Bank</b>	<b>Type of Derivative</b>	<b>Nominal Amount</b>	<b>Mark to Market</b>	<b>Date of Maturity</b>

## COMPLIANCE CERTIFICATE

**TO: THE TORONTO-DOMINION BANK, (the "Lender")**

Reference is made to the Credit Agreement dated March 1, 2018, between Kivuto Solutions Inc., successor in interest by amalgamation of 10600598 Canada Inc., as borrower (the "**Borrower**") and the Lender, as amended by a first amending agreement dated as of June 30, 2018, a second amending agreement dated as of January 31, 2019, a third amending agreement dated as of November 5, 2019 and a fourth amending agreement dated as of August \_\_, 2020 (as amended, supplemented, restated, replaced or otherwise modified from time to time, the "**Credit Agreement**"). All capitalized terms used in this Compliance Certificate shall have the respective meanings attributed to them in the Credit Agreement. This Compliance Certificate is delivered pursuant to Section **Error! Reference source not found.** of the Credit Agreement for the month/Fiscal Quarter ending \_\_\_\_\_ (the "**Period**").

I, \_\_\_\_\_, the [insert any one of the President or Secretary-Treasurer] of the Borrower, in such capacity and not personally, hereby certify that:

1. I am the duly appointed [insert any one of the President or Secretary-Treasurer] of the Borrower and as such I am providing this certificate for and on behalf of the Borrower pursuant to the Credit Agreement.
2. I am familiar with and have examined the provisions of the Credit Agreement including, without limitation, the provisions of **Error! Reference source not found.** and **Error! Reference source not found.** thereof.
3. To the best of my knowledge, information and belief, and after due inquiry:
  - (a) the representations and warranties of the Borrower contained in the Loan Documents are true and correct in all material respects as of the date hereof with the same force and effect as if such representations and warranties had been made on and as of the date hereof;
  - (b) each of the Borrower and Guarantors have fulfilled and complied with in all material respects all covenants contained in the Loan Documents to be performed or caused to be performed by it at or prior to the date hereof;
  - (c) there have been no changes to the corporate structure set out on Schedule 12.1(s) to the Credit Agreement;
  - (d) the Borrower and each of the Guarantors have paid all realty taxes due and payable by them during the Period; no Event of Default has occurred and is continuing as at the date hereof; and
4. Without limiting the generality of Paragraph 4 above, the Borrower and Guarantors were, at the end of the Period and as of the date of this Compliance Certificate, in compliance, in all material respects, with all applicable Environmental Laws.



5. We include herewith the following:
- (a) If annual:
    - (i) The Borrower's audited consolidated annual financial statements with auditors' report(s).
  - (b) If quarterly:
    - (i) The Borrower's unaudited Fiscal Quarter period consolidated financial statements.
  - (c) If monthly:
    - (i) The Borrower's monthly management-prepared consolidated financial statements.
6. The amounts referred to in Section **Error! Reference source not found.** of the Credit Agreement as of the end of the Period were as follows (detailed calculations are attached hereto as Annex A):

Period	Financial Projections	EBITDA	Actual Variance	Required Limit
Monthly				\$200,000
Monthly on a building basis for the period from August 31, 2020 to July 31, 2021, thereafter on a trailing twelve month period				\$500,000

7. The representations and warranties referred to in **Error! Reference source not found.** of the Credit Agreement are true and correct in all material respects as though made on this \_\_\_\_\_ date;
8. The following representations and warranties are not true and correct in all material respects but their failure to be true and correct would not, alone or in aggregate, be reasonably expected to have a Material Adverse Effect;
9. The attached financial information is true and correct in all material respects; and

10. The financial statements delivered pursuant to Subsection 13.1(f) have been prepared in accordance with GAAP in effect on the date of such financial statements and the information contained therein is true and correct in all material respects, subject only to year-end audit adjustments, and presents fairly and consistently the results of operations and changes in the financial position of the Borrower and the Guarantors as of the date thereof.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Name:

**Annex A - Detailed Calculations**

<b>[MONTH]</b>	<b>PLAN</b>	<b>ACTUAL</b>
<b>Net Income</b>		
Plus:		
Income Taxes		
Interest Expense		
Depreciation Expense		
Total Non-cash Expenses (as calculated in Table 1 below)	-	-
Total Non-recurring expenses[1] (as calculated in Table 2 below)	-	-
Less:		
Total Non-cash Income (as calculated in Table 3 below)	-	-
Total Non-recurring Income (as calculated in Table 4 below)	-	-
<b>EBITDA (per Covenant)</b>	-	-
<b>VARIANCE</b>		-

<b>Table 1 - Detailed Non-Cash expenses</b>	<b>PLAN</b>	<b>ACTUAL</b>
<b>Total Non-cash Expenses</b>	-	-

<b>Table 2 - Detailed Non-recurring expenses</b>	<b>PLAN</b>	<b>ACTUAL</b>
<b>Total Non-recurring Expenses</b>	-	-

<b>Table 3 - Detailed Non-cash Income</b>	<b>PLAN</b>	<b>ACTUAL</b>
<b>Total Non-cash Income</b>	-	-

<b>Table 4 - Detailed Non-recurring Income</b>	<b>PLAN</b>	<b>ACTUAL</b>
<b>Total Non-recurring Income</b>	-	-

[1] limited to reasonable costs, fees and expenses payable to third parties in connection with the transaction contemplated herein, unless otherwise approved by the Lender

**SCHEDULE 12.1(q)****DESCRIPTION OF MATERIAL CONTRACTS**

1. Partner Agreement between Kivuto Solutions, Inc. and Adobe Systems Incorporated and Adobe Systems Software Ireland Limited, executed March 23, 2016 for a one year terms with an automatic renewal each year.
2. Retail Agreement between e-academy Inc. and Adobe Systems Incorporated, executed on November 31, 2008 for a one year term, with an automatic renewal each year.
3. Enabled Solution Agreement for Programs between Kivuto Solutions, Inc. and IBM Canada Limited, executed November 29, 2016 for an undefined term.
4. Master Supplier Service Agreement for purchase orders, statements of work, or other written agreements between Kivuto Solutions, Inc. and Microsoft Corporation, executed December 7, 2015 for a term until December 7, 2020.
5. Direct Reseller Addendum for license to resell and distribute between Kivuto Solutions, Inc. and Microsoft Corporation, executed December 29, 2012, with an automatic renewal each year.
6. Direct Reseller Addendum regarding a license for re-sale and distribution on between Kivuto Solutions Inc. and Microsoft Corporation, effective December 2, 2015 for a term until December 2, 2016, with an automatic renewal each year.
7. Microsoft Operations Vendor Services Agreement between e-academy Inc. and Microsoft Corporation, dated March 1, 2010 for a term until February 1, 2013. Agreement extended until June 30, 2021.
8. Microsoft Operations Vendor Services Agreement among Microsoft Ireland Operations Limited and e-academy, Inc effective February 1, 2010.
9. Amendment #2 to Statements of Work (“SOW”) Student Option Academic Program – EMEA, LATAM, NA and APOC ContractPro# 1040481 among Microsoft Corporation, Microsoft Ireland Operations Limited and Kivuto Solutions Inc. executed June 26, 2020 and expiring June 30, 2021.
10. IBM Business Partner Agreement 4916020186 Embedded Solution Agreement Purchase Commitment Transaction Document: 02, among IBM Canada Ltd. and Kivuto Solutions Inc. executed November 28, 2017 pursuant to base agreement dated November 29, 2016.
11. IBM Business Partner Agreement 4916020186 Embedded Solution Agreement Purchase Commitment Transaction Document: 05, among IBM Canada Ltd. and Kivuto Solutions Inc. executed June 26, 2020, expires June 26, 2022, pursuant to base agreement dated November 29, 2016.

12. Lease Agreement among Kivuto Solutions Inc. and 126 York Street LTD. dated April 17, 2014.

13. Amending Lease Agreement among Kivuto Solutions Inc. and 126 York Street LTD. dated January 29, 2020, expiring February 28, 2025.

**SCHEDULE 12.1(r)****DESCRIPTION OF INTELLECTUAL PROPERTY****A. Trademarks**Registered Trademarks

<u>Country</u>	<u>Trademark</u>	<u>Application No./ Registration No.</u>	<u>Filing Date/ Registration Date</u>	<u>Name of Owner</u>
Canada	KIVUTO	1589562 TMA872973	2014-03-10	Kivuto Inc.
Canada	ONTHEHUB	1431526 TMA794971	2011-04-06	Kivuto Solutions Inc.
Canada	TEXIDIUM	1846908 TMA1017489	2019-03-18	Kivuto Solutions Inc.
United States	KIVUTO	4860206	2015-11-24	Kivuto Solutions Inc.
United States	ONTHEHUB	4635355	2014-11-11	Kivuto Solutions Inc.
United States	TEXIDIUM	6072102	2020-06-09	Kivuto Solutions Inc.

**B. Patents**

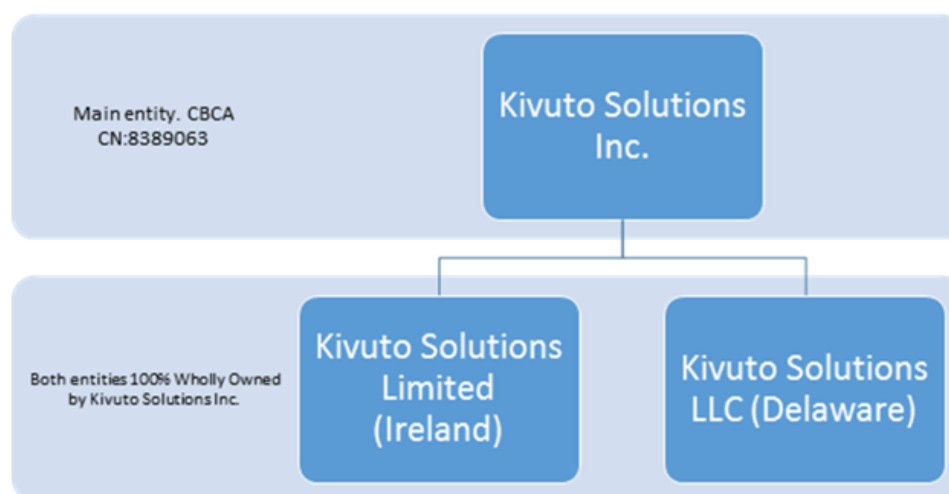
NIL.

**C. Copyright**

NIL.

## SCHEDULE 12.1(s)

### LIST OF SUBSIDIARIES/DETAILED CORPORATE CHART



Legado Capital Partners L.P.

Limited Partner Name	Number of Common Units Held	Number of Class A Units Held	Number of Class B Units Held	Number of Special Purpose Units Held (First Tranche)	Residency
Carlos Meza	2,825,274	-	-	-	Canada
Jeff Blacklock	2,825,274	-	-	-	Canada
Bruce Leboff	-	200,000	200,000	37,500	Canada
Disruptive Ventures Inc.	-	142,450	142,450	-	Canada
Lianne Leboff	-	217,450	217,450	37,500	Canada
Mario Nigro Professional Corporation	-	92,450	92,450	25,000	Canada
McIntosh Properties	-	750,000	750,000	165,913	Canada
REV Holdings	-	175,000	175,000	50,000	Canada
RoyNat Capital	-	5,000,000	5,000,000	1,500,000	Canada
R&L Investments (Ram Raju)	-	3,000,000	3,000,000	500,000	Canada
Ryan Peatt	-	12,500	12,500	-	Canada
Luis Fauteux	-	60,000	60,000	-	Canada
Archipelago Ventures	-	200,000	200,000	60,000	USA
Argo Holdings	-	325,149	325,149	-	USA
Aspect Acquisition Partners	-	1,000,000	1,000,000	221,210	USA
Endurance Search Partners	-	468,750	468,750	203,695	USA
Iron Creek Holdings	-	937,500	937,500	250,000	USA
Lawrence J. Dunn III	-	155,356	155,356	66,700	USA
Operand II Fund	-	967,450	967,450	-	USA
Progeny Plus	-	125,615	125,615	25,135	USA
Relay Investments II LP	-	713,739	713,739	142,816	USA
Relay Investments II-A LP	-	292,661	292,661	58,561	USA
Search Fund Partners 7 LP	-	503,200	503,200	85,000	USA
TCG Canada LP	-	1,000,000	1,000,000	221,217	USA
Ticonderoga, JW	-	62,916	62,916	16,786	USA
Ticonderoga KI III	-	-	-	83,930	USA
TKI Partners, IV	-	314,584	314,584	-	USA
Wilson Revocable Trust	-	192,450	192,450	50,000	USA
Elson McDougald	-	42,450	42,450	-	Canada



This is Exhibit "I" referred to in the Affidavit of Andrea Jamnisek sworn January 27, 2023.

A handwritten signature in black ink, consisting of a stylized 'L' followed by a 'J' and a long horizontal line extending to the right.

---

*Commissioner for Taking Affidavits (or as may be)*

**THIS FIFTH AMENDING AGREEMENT** is dated as of the 24<sup>th</sup> day of December, 2021.

among

**KIVUTO SOLUTIONS INC.,**  
successor in interest by amalgamation of 10600598 Canada Inc. and Kivuto Solutions Inc.  
(the "**Borrower**")

and

**THE TORONTO-DOMINION BANK**  
(the "**Lender**")

**WHEREAS** the Borrower and the Lender are party to a Credit Agreement dated as of March 1, 2018, as amended by a first amending agreement dated as of June 30, 2018, a second amending agreement dated as of January 31, 2019, a third amending agreement dated as of November 5, 2019 and a fourth amendment dated as of August 18, 2020 (as may be further amended, supplemented, replaced, restated or otherwise modified from time to time, together, the "**Credit Agreement**");

**AND WHEREAS**, effective as of September 8, 2020, the Principals, Jeffrey Blacklock and Carlos Jose Meza-Rios, ceased to be employees of the Borrower, constituting an Event of Default under Section 14.1 (n) of the Credit Agreement (the "**Specified Default**");

**AND WHEREAS**, Kivuto US hired Mark McKenzie as its chief executive officer as of February 15, 2021 to, among other things, provide chief executive services to the Borrower;

**AND WHEREAS**, the Borrower has requested that the Lender waive the Specified Default and make certain amendments to the Credit Agreement;

**NOW THEREFORE THIS AMENDING AGREEMENT WITNESSES THAT** in consideration of the covenants and agreements contained herein and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree to amend the Credit Agreement as provided herein:

**Section 1**     **General**

In this Fifth Amending Agreement (this "**Amending Agreement**") (including the recitals) unless otherwise defined or the context otherwise requires, all capitalized terms shall have the respective meanings specified in the Credit Agreement.

**Section 2**     **To be Read with Credit Agreement**

This Amending Agreement is an amendment to the Credit Agreement. Unless the context of this Amending Agreement otherwise requires, the Credit Agreement and the

applicable provisions of this Amending Agreement shall be read together and shall have effect as if the provisions of the Credit Agreement and the applicable provisions of this Amending Agreement were contained in one agreement. The term "**Agreement**" when used in the Credit Agreement means the Credit Agreement and the schedules thereto, as amended by this Amending Agreement and as may be further amended, revised, replaced, supplemented or restated from time to time.

### **Section 3     Headings**

The division of this Amending Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Amending Agreement. The terms "**this Amending Agreement**", "**hereof**", "**hereunder**" and similar expressions refer to this Amending Agreement and not to any particular Section or other portion hereof and include any agreement supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Sections are to Sections of this Amending Agreement.

### **Section 4     Number**

Words importing the singular number only shall include the plural and *vice versa*, words importing the masculine gender shall include the feminine and neuter genders and *vice versa*.

### **Section 5     Waiver**

The Specified Default is hereby irrevocably acknowledged by the parties hereto, and is hereby waived by the Lender with effect on the Effective Date.

The Waiver set forth herein shall be limited precisely as written and relates solely to the Specified Default in the manner and to the extent described above. The Borrower understands and agrees that for all times the Borrower shall be in compliance with the terms and conditions of the Credit Agreement (as amended by this Amending Agreement) and nothing herein shall impair the Lender's right to demand strict performance of all covenants set forth in the Credit Agreement (as amended by this Amending Agreement) or the Lender's right to demand payment and take the enforcement action set forth under Section 14.2 of the Credit Agreement with respect to the Operating Facility at any time.

### **Section 6     Amendments**

Subject to satisfaction of the conditions precedent set forth in Section 8 hereof, the Credit Agreement is hereby amended as follows:

- (a) The following new definition is added to Section 1.1 in alphabetical order:  

**"US Account"** has the meaning given to it in Subsection 13.2(n) hereof;
- (b) The definition of "**Kivuto Ireland**" contained in Section 1.1 is hereby deleted in its entirety.

- (c) The definition of "**Limited Partnership Agreement**" contained in Section 1.1 is hereby deleted in its entirety and replaced with the following:

"**Limited Partnership Agreement**" means the amended and restated limited partnership agreement made in respect of the Cdn LP Holdco dated as of August 17, 2020, as amended by an amending agreement dated as of January 21, 2021;"

- (d) The definition of "**Principals**" contained in Section 1.1 is hereby deleted in its entirety.

- (e) The definition of "**Term Loan Maturity Date**" contained in Section 1.1 is hereby deleted in its entirety and replaced with the following:

"**Term Loan Maturity Date**" means December 31, 2022;"

- (f) Subsection 9.1(d) is hereby deleted in its entirety and replaced with the following:

"(d) **Mandatory Repayment of Term Facility.** Calculated in annual percentages of the Outstanding Amount under the Term Facility (after application of the Special Repayment made on December 31, 2020) the Borrower shall make quarterly principal payments on the Term Facility, based on an amortization period of 7 years, the amount of each such payment to be calculated as follows:

Year 1	2.5% per annum
Year 2	2.5% per annum
Year 3	7.5% per annum
Year 4	15% per annum
Year 5	15% per annum
Year 6	15% per annum
Year 7	42.5% per annum

For greater certainty, the Borrower agrees and understands that the Term Facility must be repaid in full on the Term Facility Maturity Date."

- (g) The last sentence of Subsection 12.1(s) is hereby deleted in its entirety and replaced with the following:

"Kivuto US does not carry on any business or own any Business Assets or property other than under the employment agreement made between Kivuto US and Mark McKenzie dated as of February 15, 2021 and other than deposits held in the US Account of less than US\$500,000."

- (h) Subsection 13.1(f)(iii) is hereby deleted in its entirety and replaced with the following:

- "(iii) no later than 60 days prior to the Term Facility Maturity Date (which for clarity is December 31, 2022), the consolidated Financial Projections of the Borrower for the upcoming Fiscal Year, consisting in each case of management assumptions, a balance sheet and statements of income and retained earnings (or deficit) and of changes in cash position, together with calculations demonstrating compliance with all financial covenants herein;"
- (i) Subsection 13.1(f)(iv) is hereby deleted in its entirety and replaced with the following:
  - "(iv) Intentionally Deleted;"
- (j) Subsection 13.1(f)(vi) is hereby deleted in its entirety and replaced with the following:
  - "(vi) no later than 60 days prior to the Term Facility Maturity Date (which for clarity is December 31, 2022), a current listing of supply and licensing management contracts noting publisher name, contract value and contract expiry date and a current listing of customer contracts noting customer name, contract value (monthly recurring revenue/annual recurring revenue) and contract expiry date;"
- (k) Subsection 13.1(r) is hereby deleted in its entirety and replaced with the following:
  - "(r) Intentionally Deleted;"
- (l) Subsection 13.1(t) is hereby deleted in its entirety.
- (m) Subsection 13.1(s) is hereby deleted in its entirety and replaced with the following:
  - "(s) Inactive Subsidiary. The Borrower shall notify the Lender in the event that Kivuto US commences operations or acquires, owns or holds Intellectual Property Rights or deposits in excess of US\$500,000 or any other Business Assets or property, and in any such event, Kivuto US shall become a Guarantor hereunder and shall provide security in accordance with Section 11.2 and 11.4 hereof and shall arrange for the delivery of a legal opinion of local counsel for Kivuto US, addressed to the Lender and the Lender's Counsel, in respect of the laws of such jurisdiction as the Lender may reasonably require. It is acknowledged and agreed that the entering into of the employment agreement made between Kivuto US and Mark McKenzie dated as of February 15, 2021 and consummation of the employment relationship established thereby does not constitute the commencement of operations that for the purposes of this Subsection (s)."
- (n) Subsection 13.2(b) is hereby deleted in its entirety and replaced with the following:

"(b) **Financial Assistance.** Not provide financial assistance by way of a guarantee or otherwise in support of a liability of any Person without the prior written consent of the Lender."

- (o) The following Subsection (n) is hereby added to Section 13.2:

"(n) **US Deposits.** Other than a deposit account maintained by Kivuto US at Bank of Montreal (the "**US Account**"), Kivuto US shall not maintain or open any bank accounts. Deposits in the US Account shall not exceed US\$500,000 at any time."

- (p) Paragraphs (a) and (b) of Section 13.3 are hereby deleted in their entirety and are replaced with the following:

**"EBITDA Variance-to-Financial Projections.**

Maintain a negative variance of Financial Projections to EBITDA of no more than \$400,000, to be tested on a trailing twelve month basis.

For the purpose of calculating the variance of Financial Projections to EBITDA, to the extent that wage subsidies or any other Covid-19 government related funding are received by the Borrower, and any one-time or deferred transaction fees are incurred by the Borrower, both of which have otherwise not been modeled into the Financial Projections reviewed by the Lender, such receipts and expenditures will be deducted or added back to EBITDA, accordingly."

- (q) Subsection 14.1 (m) is hereby deleted in its entirety and replaced with the following:

"(m) **Change of Control.** If there is (i) a direct or indirect change in effective Control of Cdn LP Holdco, or (ii) any redemption, direct or indirect assignment, transfer, conveyance or disposition by Roynat Capital Inc. of its Capital Stock in Cdn LP Holdco which occurs in connection with the provisions of Section 6.12(c) of the Limited Partnership Agreement."

- (r) Subsection 14.1(n) is hereby deleted in its entirety and replaced with the following:

"(n) Intentionally Deleted."

- (s) Subsection 14.1(p) is hereby deleted in its entirety.

- (t) Schedule B attached to the Credit Agreement is hereby deleted in its entirety and replaced with the replacement Schedule B which is attached hereto as Schedule "A";

- (u) Schedule 12.1(s) attached to the Credit Agreement is hereby deleted in its entirety and replaced with the replacement schedule attached hereto as Schedule "B".

**Section 7 Representations and Warranties**

In order to induce the Lender to enter into this Amending Agreement, each of the Borrower and the Guarantors, jointly and severally, represents and warrants to the Lender as follows, which representations and warranties shall survive the execution and delivery hereof:

- (a) the representations and warranties set forth in Section 12 of the Credit Agreement and in the Loan Documents are true and correct as though made on and as of the date hereof except to the extent of changes therein expressly permitted or contemplated by the Credit Agreement or the Loan Documents;
- (b) all necessary corporate action has been taken to authorize the execution, delivery and performance of this Amending Agreement by the Borrower and the Borrower has duly executed and delivered this Amending Agreement;
- (c) this Amending Agreement is a legal, valid and binding obligation of the Borrower enforceable against it by the Lender in accordance with its terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally and by principles of equity); and
- (d) as of the date hereof and after giving effect to this Amending Agreement, no Event of Default exists.

**Section 8 Conditions Precedent to this Amendment**

The amendments contained herein shall not be effective unless and until each of the following conditions precedent has been either satisfied to the satisfaction of or waived by the Lender in its sole discretion (the date on which such conditions precedent are satisfied or waived is hereinafter referred to as the "**Effective Date**"):

- (a) this Amendment and the acknowledgement and confirmation thereof, duly executed and delivered by the Borrower, the Lender and the Guarantor;
- (b) BDC shall have provided its written consent to this Amending Agreement;
- (c) the Lender shall have received a copy of the duly executed and delivered amendment to the BDC Loan Agreement in form and substance satisfactory to the Lender;
- (d) a duly executed and delivered copy of the Limited Partnership Agreement;
- (e) the Lender shall have received a Certificate of the Borrower as to incumbency, certifying no other changes to the corporate matters addressed in the Certificate of the Borrower dated August 18, 2020 and attaching a current authorizing resolution of its board of directors authorizing the execution, delivery and performance by it of this Amending Agreement and the consummation of the transactions contemplated hereby;

- (f) the Lender shall have received a legal opinion from the Borrower's counsel in form and substance satisfactory to the Lender and its counsel; and
- (g) the Lender shall have received the sum of Thirty Thousand Dollars (\$30,000) representing a non-refundable renewal fee due and payable to the Lender upon the execution of this Second Amendment.

**Section 9 Loan Document**

The Borrower hereby acknowledges that this Amending Agreement constitutes a Loan Document under the terms of the Credit Agreement.

**Section 10 Continuance of Credit Agreement and Loan Documents**

The Credit Agreement and Loan Documents, as amended or modified by this Amending Agreement, shall be and continue in full force and effect and are hereby confirmed and the rights and obligations of all parties thereunder shall not be affected or prejudiced in any manner except as specifically provided for herein.

The Borrower acknowledges, confirms and agrees that, notwithstanding this Amending Agreement, (i) there being no novation or merger of the Credit Agreement as amended pursuant to this Amending Agreement or of any Security, Loan Documents or Loan Obligations; (ii) all Security granted by it continue in full force and effect, enforceable in accordance with its terms, and secures payment and performance by it of its Loan Obligations, and (iii) the Security is hereby ratified and confirmed.

**Section 11 Post-Closing**

On or before the date which is 60 days from the Effective Date the Lender shall have received all "know your client", anti-money laundering or similar identification documentation and information requested by the Lender, the results of which shall be satisfactory to the Lender.

**Section 12 No Waiver**

The Borrower acknowledges and confirms that except as expressly set out in this Amending Agreement, none of the terms contained in this Amending Agreement shall operate or be construed as a waiver of any of the provisions of the Loan Documents or any Event of Default existing on or prior to the date hereof including, without limitation, any Events of Default disclosed by the Borrower to the Lender.

**Section 13 Counterparts**

This Amending Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which counterparts together shall constitute but one agreement. Counterparts may be executed in original or facsimile form or similar method of electronic transmission.



**Section 14 Governing Law**

This Amending Agreement shall be construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

*[Signature pages follow]*

**IN WITNESS WHEREOF** the parties hereto have executed this Amending Agreement as of the day and year first above written.

Lender:

**THE TORONTO-DOMINION BANK**

By: \_\_\_\_\_   
Name: Andrea Jamnisek  
Title: Director, Financial Restructuring Group

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Borrower:

**KIVUTO SOLUTIONS INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

The undersigned party hereby (a) consents to the transactions and amendments contemplated by the foregoing Fifth Amending Agreement made between The-Toronto-Dominion Bank and Kivuto Solutions Inc. (the "**Amendment**") and (b) acknowledges and agrees that the guarantee and grant of security interests made by it contained in the Security to which it is party are, and shall remain, in full force and effect after giving effect to the Amendment.

Guarantor:

Legado Capital Partners LP, by its general partner,  
Legado Capital Partners GP Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**IN WITNESS WHEREOF** the parties hereto have executed this Amending Agreement as of the day and year first above written.

Lender:

**THE TORONTO-DOMINION BANK**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

Borrower:

**KIVUTO SOLUTIONS INC.**

DocuSigned by:

*Sarah Foottit*

2D10CDC059D44E5...

By: \_\_\_\_\_  
Name: Sarah Foottit  
Title: CFO

The undersigned party hereby (a) consents to the transactions and amendments contemplated by the foregoing Fifth Amending Agreement made between The-Toronto-Dominion Bank and Kivuto Solutions Inc. (the "**Amendment**") and (b) acknowledges and agrees that the guarantee and grant of security interests made by it contained in the Security to which it is party are, and shall remain, in full force and effect after giving effect to the Amendment.

Guarantor:

Legado Capital Partners LP, by its general partner,  
Legado Capital Partners GP Inc.

DocuSigned by:

*Mark McKenzie*

126304F705D34B9...

By: \_\_\_\_\_  
Name: Mark McKenzie  
Title: CEO

## SCHEDULE "A"

## REPLACEMENT SCHEDULE "B"

## FORM OF COMPLIANCE CERTIFICATE

**TO: THE TORONTO-DOMINION BANK, (the "Lender")**

Reference is made to the Credit Agreement dated March 1, 2018, between Kivuto Solutions Inc., successor in interest by amalgamation of 10600598 Canada Inc., as borrower (the "**Borrower**") and the Lender, as amended by a first amending agreement dated as of June 30, 2018, a second amending agreement dated as of January 31, 2019, a third amending agreement dated as of November 5, 2019, a fourth amending agreement dated as of August 18, 2020 and a fifth amending agreement dated as of \_\_\_\_\_, 2021 (as amended, supplemented, restated, replaced or otherwise modified from time to time, the "**Credit Agreement**"). All capitalized terms used in this Compliance Certificate shall have the respective meanings attributed to them in the Credit Agreement. This Compliance Certificate is delivered pursuant to Section **Error! Reference source not found.** of the Credit Agreement for the month/Fiscal Quarter ending \_\_\_\_\_ (the "**Period**").

I, \_\_\_\_\_, the [insert any one of the President or Secretary-Treasurer] of the Borrower, in such capacity and not personally, hereby certify that:

1. I am the duly appointed [insert any one of the President or Secretary-Treasurer] of the Borrower and as such I am providing this certificate for and on behalf of the Borrower pursuant to the Credit Agreement.
2. I am familiar with and have examined the provisions of the Credit Agreement including, without limitation, the provisions of Article 12 and Article 13 hereof.
3. To the best of my knowledge, information and belief, and after due inquiry:
  - (a) the representations and warranties of the Borrower contained in the Loan Documents are true and correct in all material respects as of the date hereof with the same force and effect as if such representations and warranties had been made on and as of the date hereof;
  - (b) each of the Borrower and Guarantors have fulfilled and complied with in all material respects all covenants contained in the Loan Documents to be performed or caused to be performed by it at or prior to the date hereof;
  - (c) there have been no changes to the corporate structure set out on Schedule 12.1(s) to the Credit Agreement;
  - (d) Kivuto US has not commenced operations and does not carry on any business or own any Intellectual Property, Business Assets or any other property, other than account deposits in the US Account, which deposits are less than US\$500,000;

- (e) the Borrower and each of the Guarantors have paid all realty taxes due and payable by them during the Period; no Event of Default has occurred and is continuing as at the date hereof; and
4. Without limiting the generality of Paragraph 3 above, the Borrower and Guarantors were, at the end of the Period and as of the date of this Compliance Certificate, in compliance, in all material respects, with all applicable Environmental Laws.
5. We include herewith the following:
- (a) If annual:
- (i) The Borrower's audited consolidated annual financial statements with auditors' report(s).
- (b) If quarterly:
- (i) The Borrower's unaudited Fiscal Quarter period consolidated financial statements.
- (c) If monthly:
- (i) The Borrower's monthly management-prepared consolidated financial statements.
6. The amounts referred to in Section 13.3 of the Credit Agreement as of the end of the Period were as follows (detailed calculations are attached hereto as Annex A):

<b>Period</b>	<b>Financial Projections</b>	<b>EBITDA</b>	<b>Actual Variance</b>	<b>Required Limit</b>
On a trailing twelve month period				\$400,000

7. The representations and warranties referred to in Article 12 of the Credit Agreement are true and correct in all material respects as though made on this \_\_\_\_\_ date;
8. The following representations and warranties are not true and correct in all material respects but their failure to be true and correct would not, alone or in aggregate, be reasonably expected to have a Material Adverse Effect;
9. The attached financial information is true and correct in all material respects; and
10. The financial statements delivered pursuant to Subsection 13.1(f) have been prepared in accordance with GAAP in effect on the date of such financial statements and the information contained therein is true and correct in all material respects, subject only to

year-end audit adjustments, and presents fairly and consistently the results of operations and changes in the financial position of the Borrower and the Guarantors as of the date thereof.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Name:

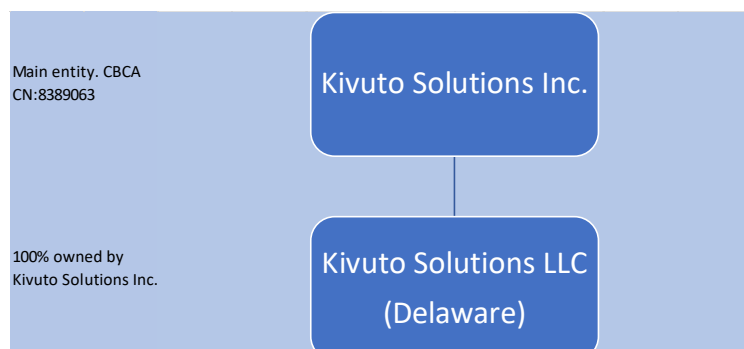
SCHEDULE "B"

Replacement Schedule 12.1(s)

## SCHEDULE 12.1(s)

### LIST OF SUBSIDIARIES/DETAILED CORPORATE CHART

#### Kivuto Solutions LLC



#### Legado Capital Partners L.P.

Limited Partner Name	Number of Common Units Held	Number of Class A Units Held	Number of Class B Units Held	Number of Class C Units Held	Number of Special Purpose Units Held (First Tranche)	Number of Special Purpose Units Held (Second Tranche)	Residency
Carlos Meza	929,986	-	-	-	-	-	Canada
Jeff Blacklock	929,986	-	-	-	-	-	Canada
Bruce Leboff	-	200,000	200,000	-	75,000	75,051	Canada
Disruptive Ventures Inc.	-	142,450	142,450	-	-	-	Canada
Lianne Leboff	-	217,450	217,450	-	-	-	Canada
Mario Nigro Professional Corporation	-	92,450	92,450	-	25,000	25,017	Canada
McIntosh Properties	-	750,000	750,000	-	165,913	166,026	Canada
REV Holdings	-	175,000	175,000	-	50,000	50,034	Canada
RoyNat Capital	-	5,000,000	5,000,000	-	1,500,000	1,501,033	Canada
R&L Raju Investments Inc.	-	3,000,000	3,000,000	-	500,000	500,344	Canada
Ryan Peatt	-	12,500	12,500	-	-	-	Canada
Luis Fauteux	-	60,000	60,000	-	-	-	Canada
Archipelago Ventures	-	200,000	200,000	-	60,000	60,041	USA
Argo Holdings	-	325,149	325,149	-	-	-	USA
Aspect Acquisition Partners	-	1,000,000	1,000,000	-	221,217	221,369	USA
Endurance Search Partners	-	468,750	468,750	-	203,700	203,840	USA
Iron Creek Holdings	-	937,500	937,500	-	250,000	250,172	USA
Lawrence J. Dunn III	-	155,356	155,356	-	66,700	66,745	USA
Operand II Fund	-	967,450	967,450	-	-	-	USA
Progeny Plus	-	125,615	125,615	-	25,135	25,152	USA
Relay Investments II LP	-	713,739	713,739	-	142,816	142,914	USA
Relay Investments II-A LP	-	292,661	292,661	-	58,561	58,601	USA
Search Fund Partners 7 LP	-	503,200	503,200	-	85,000	85,058	USA
TCG Canada LP	-	1,000,000	1,000,000	-	221,217	221,369	USA
Ticonderoga, JW	-	62,916	62,916	-	16,786	16,796	USA
Ticonderoga KI III	-	314,584	314,584	-	-	-	USA
TKI Partners, IV	-	-	-	-	83,930	83,986	USA
Wilson Revocable Trust	-	192,450	192,450	-	50,000	50,034	USA
Elson McDougald	-	42,450	42,450	-	-	-	Canada
Mark McKenzie	-	-	-	36	-	-	USA



This is Exhibit "J" referred to in the Affidavit of Andrea Jamnisek sworn January 27, 2023.

A handwritten signature in black ink, consisting of a stylized 'L' followed by a 'J' and a long horizontal line extending to the right.

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*Commissioner for Taking Affidavits (or as may be)*

**THIS SIXTH AMENDING AGREEMENT** is dated as of the 31<sup>st</sup> day of January, 2022.

among

**KIVUTO SOLUTIONS INC.,**  
successor in interest by amalgamation of 10600598 Canada Inc. and Kivuto Solutions Inc.  
(the "**Borrower**")

and

**THE TORONTO-DOMINION BANK**  
(the "**Lender**")

**WHEREAS** the Borrower and the Lender are party to a Credit Agreement dated as of March 1, 2018, as amended by a first amending agreement dated as of June 30, 2018, a second amending agreement dated as of January 31, 2019, a third amending agreement dated as of November 5, 2019, a fourth amendment dated as of August 18, 2020 and a fifth amending agreement dated as of December 24, 2021 (as may be further amended, supplemented, replaced, restated or otherwise modified from time to time, together, the "**Credit Agreement**");

**AND WHEREAS**, the Borrower and the Lender have agreed to further amend the Credit Agreement as hereinafter set forth;

**NOW THEREFORE THIS AMENDING AGREEMENT WITNESSES THAT** in consideration of the covenants and agreements contained herein and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree to amend the Credit Agreement as provided herein:

**Section 1     General**

In this Sixth Amending Agreement (this "**Amending Agreement**") (including the recitals) unless otherwise defined or the context otherwise requires, all capitalized terms shall have the respective meanings specified in the Credit Agreement.

**Section 2     To be Read with Credit Agreement**

This Amending Agreement is an amendment to the Credit Agreement. Unless the context of this Amending Agreement otherwise requires, the Credit Agreement and the applicable provisions of this Amending Agreement shall be read together and shall have effect as if the provisions of the Credit Agreement and the applicable provisions of this Amending Agreement were contained in one agreement. The term "**Agreement**" when used in the Credit Agreement means the Credit Agreement and the schedules thereto, as amended by this Amending Agreement and as may be further amended, revised, replaced, supplemented or restated from time to time.

**Section 3**     **Headings**

The division of this Amending Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Amending Agreement. The terms "**this Amending Agreement**", "**hereof**", "**hereunder**" and similar expressions refer to this Amending Agreement and not to any particular Section or other portion hereof and include any agreement supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Sections are to Sections of this Amending Agreement.

**Section 4**     **Number**

Words importing the singular number only shall include the plural and *vice versa*, words importing the masculine gender shall include the feminine and neuter genders and *vice versa*.

**Section 5**     **Amendments**

Subject to satisfaction of the conditions precedent set forth in Section 7 hereof, the Credit Agreement is hereby amended with effect as of January 1, 2022 as follows:

- (a) The definition of "**Term Loan Maturity Date**" contained in Section 1.1 is hereby deleted in its entirety and replaced with the following:

"**Term Loan Maturity Date**" means January 1, 2023;"

- (b) Section 8.1 is hereby deleted in its entirety and replaced with the following:

**"8.1 Interest**

(a) **Canadian Prime Rate Loans.** The Borrower shall pay the Lender interest on the outstanding principal amount of each Canadian Prime Rate Loan borrowed by it under the Operating Facility and the Term Facility, as applicable, at a rate equal to the Canadian Prime Rate plus 2.75%.

(b) **U.S. Base Rate Loans.** The Borrower shall pay the Lender interest on the outstanding principal amount of each U.S. Base Rate Loan borrowed by it under the Operating Facility and the Term Facility, as applicable, at a rate equal to the U.S. Base Rate plus 2.75%."

**Section 6**     **Representations and Warranties**

In order to induce the Lender to enter into this Amending Agreement, each of the Borrower and the Guarantors, jointly and severally, represents and warrants to the Lender as follows, which representations and warranties shall survive the execution and delivery hereof:

- (a) the representations and warranties set forth in Section 12 of the Credit Agreement and in the Loan Documents are true and correct as though made on and as of the

- 3 -

date hereof except to the extent of changes therein expressly permitted or contemplated by the Credit Agreement or the Loan Documents;

- (b) all necessary corporate action has been taken to authorize the execution, delivery and performance of this Amending Agreement by the Borrower and the Borrower has duly executed and delivered this Amending Agreement;
- (c) this Amending Agreement is a legal, valid and binding obligation of the Borrower enforceable against it by the Lender in accordance with its terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally and by principles of equity); and
- (d) as of the date hereof and after giving effect to this Amending Agreement, no Event of Default exists.

#### **Section 7 Conditions Precedent to this Amendment**

The amendments contained herein shall not be effective unless and until each of the following conditions precedent has been either satisfied to the satisfaction of or waived by the Lender in its sole discretion:

- (a) this Amendment and the acknowledgement and confirmation thereof, duly executed and delivered by the Borrower, the Lender and the Guarantor;
- (b) the Lender shall have received a copy of the duly executed and delivered amendment to the BDC Loan Agreement in form and substance satisfactory to the Lender;

#### **Section 8 Loan Document**

The Borrower hereby acknowledges that this Amending Agreement constitutes a Loan Document under the terms of the Credit Agreement.

#### **Section 9 Continuance of Credit Agreement and Loan Documents**

The Credit Agreement and Loan Documents, as amended or modified by this Amending Agreement, shall be and continue in full force and effect and are hereby confirmed and the rights and obligations of all parties thereunder shall not be affected or prejudiced in any manner except as specifically provided for herein.

The Borrower acknowledges, confirms and agrees that, notwithstanding this Amending Agreement, (i) there being no novation or merger of the Credit Agreement as amended pursuant to this Amending Agreement or of any Security, Loan Documents or Loan Obligations; (ii) all Security granted by it continue in full force and effect, enforceable in accordance with its terms, and secures payment and performance by it of its Loan Obligations, and (iii) the Security is hereby ratified and confirmed.

**Section 10 No Waiver**

The Borrower acknowledges and confirms that except as expressly set out in this Amending Agreement, none of the terms contained in this Amending Agreement shall operate or be construed as a waiver of any of the provisions of the Loan Documents or any Event of Default existing on or prior to the date hereof including, without limitation, any Events of Default disclosed by the Borrower to the Lender.

**Section 11 Counterparts**

This Amending Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which counterparts together shall constitute but one agreement. Counterparts may be executed in original or facsimile form or similar method of electronic transmission.

**Section 12 Governing Law**

This Amending Agreement shall be construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

*[Signature pages follow]*

**IN WITNESS WHEREOF** the parties hereto have executed this Amending Agreement as of the day and year first above written.

Lender:


**THE TORONTO-DOMINION BANK**

By:   
Name: Andrea Jamnisek  
Title: Director, Financial Restructuring Group

By: \_\_\_\_\_  
Name:  
Title:

Borrower:

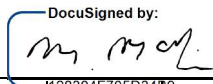
**KIVUTO SOLUTIONS INC.**

By:   
Name: Sarah Foottit  
Title: CFO

The undersigned party hereby (a) consents to the transactions and amendments contemplated by the foregoing Sixth Amending Agreement made between The-Toronto-Dominion Bank and Kivuto Solutions Inc. (the "**Amendment**") and (b) acknowledges and agrees that the guarantee and grant of security interests made by it contained in the Security to which it is party are, and shall remain, in full force and effect after giving effect to the Amendment.

Guarantor:

Legado Capital Partners LP, by its general partner,  
Legado Capital Partners GP Inc.

By:   
Name: Mark McKenzie  
Title: CEO



This is Exhibit "K" referred to in the Affidavit of Andrea Jamnisek sworn January 27, 2023.

A handwritten signature in black ink, consisting of a stylized 'L' followed by a 'J' and a long horizontal line extending to the right.

---

*Commissioner for Taking Affidavits (or as may be)*



**THIS SEVENTH AMENDING AGREEMENT** is dated as of the 23 day of November, 2022.

among

**KIVUTO SOLUTIONS INC.**,  
successor in interest by amalgamation of 10600598 Canada Inc. and Kivuto Solutions Inc.  
(the "**Borrower**")

and

**THE TORONTO-DOMINION BANK**  
(the "**Lender**")

**WHEREAS** the Borrower and the Lender are party to a Credit Agreement dated as of March 1, 2018, as amended by a first amending agreement dated as of June 30, 2018, a second amending agreement dated as of January 31, 2019, a third amending agreement dated as of November 5, 2019, a fourth amendment dated as of August 18, 2020, a fifth amending agreement dated as of December 24, 2021 and a sixth amending agreement dated as of January 31, 2022 (as may be further amended, supplemented, replaced, restated or otherwise modified from time to time, together, the "**Credit Agreement**");

**AND WHEREAS**, the Borrower and the Lender have agreed to further amend the Credit Agreement as hereinafter set forth;

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the covenants and agreements contained herein and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree to amend the Credit Agreement as provided herein:

**Section 1     General**

In this Seventh Amending Agreement (this "**Agreement**") (including the recitals) unless otherwise defined or the context otherwise requires, all capitalized terms shall have the respective meanings specified in the Credit Agreement.

**Section 2     To be Read with Credit Agreement**

This Agreement is an amendment to the Credit Agreement. Unless the context of this Agreement otherwise requires, the Credit Agreement and the applicable provisions of this Agreement shall be read together and shall have effect as if the provisions of the Credit Agreement and the applicable provisions of this Agreement were contained in one agreement. The term "**Agreement**" when used in the Credit Agreement means the Credit Agreement and the schedules thereto, as amended by this Agreement and as may be further amended, revised, replaced, supplemented or restated from time to time.

### **Section 3     Headings**

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "**this Agreement**", "**hereof**", "**hereunder**" and similar expressions refer to this Agreement and not to any particular section or other portion hereof and include any agreement supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Sections are to Sections of this Agreement.

### **Section 4     Number**

Words importing the singular number only shall include the plural and *vice versa*, and words importing the masculine gender shall include the feminine and neuter genders and *vice versa*.

### **Section 5     Amendments**

Subject to satisfaction of the conditions precedent set forth in Section 7 hereof, the Credit Agreement is hereby amended with effect as of July 1, 2022 as follows:

- (a) The following new definitions are hereby added to Section 1.1 in alphabetical order:

"**Key Employees**" means, collectively, Mark McKenzie, CEO, Sarah Footit, CFO, Costa Constantakis, VP Sales & Marketing, Shane Aulenback, VP Engineering & Project Management, Carly Virtue, Don Lord, Martina Koelzer, David Law, Florian Landsberger, Yolanda Matos, Mark Tsang, Ken Tsang and Jack Taing;"

"**Liquidity**" means unrestricted cash and cash equivalents held in the Borrower's accounts with the Lender;

"**SISP Process**" means the sale and investment solicitation process being led by Origin Merchant Partners for sale of all of the issued and outstanding shares of the Borrower or all or substantially all of its assets;"

- (b) The definitions of "**Canadian Prime Rate**", "**Canadian Prime Rate Loan**", "**Derivative Exposure**", "**Derivative Facility**" and "**Operating Loan**" contained in Section 1.1 are hereby deleted in their entirety.

- (c) Paragraph (v) of the definition of "**Indebtedness**" is hereby deleted in its entirety and replaced with "intentionally deleted".

- (d) The definition of "**Interest Payment Date**" contained in Section 1.1 is hereby deleted in its entirety and replaced with the following:

"**Interest Payment Date**" means, with respect to each U.S. Base Rate Loan in any calendar month, the last Business Day of such month;"

- (e) The definition of "**Loan**" contained in Section 1.1 is hereby deleted in its entirety and replaced with the following:

"**Loan**" means a U.S. Base Rate Loan;"

- (f) The words "and all obligations arising under or in connection with Derivatives," in the 5<sup>th</sup> line of the definition of "**Loan Obligations**" are hereby deleted.

- (g) The definition of "**Outstanding Amount**" contained in Section 1.1 is hereby deleted in its entirety and replaced with the following:

"**Outstanding Amount**" when used in relation to any outstanding Advance at any time means the Equivalent Amount in Canadian Dollars of the outstanding principal balance under any U.S. Base Rate Loan;"

- (h) The definition of "**Term Loan Maturity Date**" contained in Section 1.1 is hereby deleted in its entirety and replaced with the following:

"**Term Loan Maturity Date**" means January 31, 2023;"

- (i) Section 2.1 is hereby deleted in its entirety and replaced with the following:

"**2.1 Intentionally Deleted**".

- (j) Section 2.2 is hereby deleted in its entirety and replaced with the following:

"**2.2 Intentionally Deleted**".

- (k) Section 2.3 is hereby deleted in its entirety and replaced with the following:

"**2.3 Intentionally Deleted**".

- (l) Section 2.5 is hereby deleted in its entirety and replaced with the following:

"**2.5 Intentionally Deleted**".

- (m) Section 3.2 is hereby deleted in its entirety and replaced with the following:

"The Term Facility was fully advanced on the Closing Date. As of the Seventh Amendment Date, the Outstanding Amount under the Term Facility is US\$14,461,327."

- (n) Article 5 is hereby deleted in its entirety and replaced with the following:

"**Article 5 - Intentionally Deleted**"

- (o) Section 7.1 is hereby deleted in its entirety and replaced with the following:

"The Borrower may enter into foreign exchange spot transactions up to a notional principal amount not exceeding US\$500,000 per day."

- (p) Section 7.2 is hereby deleted in its entirety.

- (q) Section 8.1 is hereby deleted in its entirety and replaced with the following:

**"8.1 Interest**

**U.S. Base Rate Loans.** the Borrower shall pay the Lender interest on the outstanding principal amount of each U.S. Base Rate Loan borrowed by it under the Term Facility at a rate equal to the U.S. Base Rate plus 2.75%."

- (r) Section 8.4 (a) is hereby deleted in its entirety and replaced with the following:

"(a) Monthly interest due and payable hereunder shall be paid in kind and capitalized on a compounding basis and added to the Outstanding Amount until the date on which the Outstanding Amount is repaid in full. Interest shall continue to be capitalized in the manner aforesaid both before and after demand, default and judgement at the applicable rate set out in Section 8.1. "

- (s) Section 8.4 (c) is hereby deleted in its entirety and replaced with the following:

"(c) The rates of interest per annum payable on or in respect of U.S. Base Rate Loans are expressed on the basis of a 365 day year."

- (t) Section 8.4 (g) is hereby deleted in its entirety and replaced with the following:

"(g) Changes in the U.S. Base Rate will cause an immediate adjustment of interest payable on or in respect of U.S. Base Rate Loans outstanding from time to time, without the necessity of any notice to the Borrower."

- (u) Reference to the words "is a Canadian Prime Rate Loan" in Section 8.7 is hereby deleted.

- (v) Subsection 9.1 (a) is hereby deleted in its entirety and replaced with the following:

(a) Intentionally Deleted.

- (w) Subsection 9.1 (b) is hereby deleted in its entirety and replaced with the following:

“(b) Intentionally Deleted.”

- (x) Subsection 9.1(d) is hereby deleted in its entirety and replaced with the following:

"(d) **Mandatory Repayment of Term Facility.** From July 1, 2022, quarterly principal payments on the Term Facility are deferred and the Borrower covenants

and agrees that the Outstanding Amount under the Term Facility shall be repaid in full on the Term Facility Maturity Date or upon demand by the Lender, whichever occurs first."

- (y) The last sentence of Subsection 12.1(s) is hereby deleted in its entirety and replaced with the following:

"Kivuto US does not carry on any business or own any Business Assets or property other than under the employment agreement made between Kivuto US and Mark McKenzie dated as of February 15, 2021 and other than deposits held in the US Account of less than US\$250,000. The Borrower shall use its best efforts to transfer or cause to be transferred to its deposit account with the Lender any amounts in excess of US\$250,000 by no later than 5:00 pm EST on Friday of each week until such time as all of the Loan Obligations have been satisfied and paid in full."

- (z) The following new paragraph (xiii) is added Section 13.1(f):

"(xiii) within 10 business days after the end of each month, monthly cash flow reports consisting of high level cash flow and profit and loss variances with material items highlighted, together with narrative explaining variances (with a focus on material variances), to be reported on a bi-weekly basis in the event that the Borrower's cash on hand on deposit with the Lender is less than \$1,500,000 at any time; "

- (aa) The following new Subsections 13.1 (t) and (u) are hereby added to Section 13.1:

"(t) **Access.** The Borrower shall provide the Lender with unfettered reasonable access to its advisors, including, but not limited to, Origin Merchant Partners and BDO Canada Limited, and the Lender shall be entitled to receive copies of any and all documents, letters, and agreements prepared in connection with the SISP Process. The Borrower shall provide, and shall cause its advisors to provide, the Lender with regular updates regarding SISP Process at such intervals as the Lender reasonably requests.

(u) **SISP Process Milestones.** The Borrower shall work together with Origin Merchant Partners to adhere to and meet, to the Lenders satisfaction, each of the following milestones established in connection with the SISP Process, which milestones shall not be extended or amended without the prior written consent of the Lender, acting reasonably, and the Borrower shall promptly provide, or cause to be provided, the Lender with copies of all letters of intent, bid documents, and accompanying documentation when received by Origin Merchant Partners or the Borrower, as well as draft sale documents, all to be in form and substance satisfactory to the Lender:

- On or before December 23, 2022, Sign Definitive Sale Documents with Gary Jonas Computing Ltd. or a nominee thereof in connection with the SISP Process; and

- On or before January 31, 2023, Closing of Sale and Satisfaction of Conditions Precedent to Closing.

On or immediately prior to the closing of the sale contemplated above the Borrower shall cause Kivuto US to repatriate all cash balances and repay all amounts owing to the Borrower into the Borrower's deposit account with the Lender to be used to repay amounts owing, if any, to the Lender."

- (bb) Subsection 13.2(h) is hereby deleted in its entirety and replaced with the following:

"(h) **Derivatives.** Not enter in any Derivatives."

- (cc) The following new paragraph (o) is hereby added to Section 13.2:

"(o) **Key Employees.** Not make any amendment to any of the terms of the key employee compensation plan or other employment or compensation arrangements or the key employee retention plan letters (copies of which are attached hereto as Schedule 13.2(o)), with any of the Key Employees;" Paragraphs (a) and (b) of Section 13.3 are hereby deleted in their entirety and are replaced with the following:

"(a) **Liquidity Variance.** Maintain a negative Liquidity variance-to-budget of not greater than 15%, to be tested on a monthly basis, adjusting to bi-weekly as prescribed in paragraph 13.1(f)(xiii);"

- (dd) Paragraph (e) of Section 14.1 is hereby deleted in its entirety and replaced with the following:

"(e) **Breach of Other Covenants.** The Borrower or any Guarantor fails to perform or comply with any provision or obligation contained in any Loan Document to which it is a party (other than those provisions or obligations referred to in paragraphs (a), (b), (c) and (d) above) and such failure continues unremedied for a period of two (2) Business Days after the earlier of (1) the Borrower or that Guarantor knows or learns of such failure; and (2) receipt by the Borrower from the Lender of notice of such failure."

- (ee) The following new paragraph (p) is hereby added to Section 14.1:

"(p) **SISP Process Milestones.** The Borrower fails to achieve any of the milestones as set forth in Section 13.1(u) within two Business Days of the prescribed dates;"

- (ff) Paragraph (e) of Section 14.2 is hereby deleted in its entirety and replaced with the following:

"(e) Intentionally Deleted;"

- (gg) Paragraph (f) of Section 14.2 is hereby deleted in its entirety and replaced with the following:

- "(f) Intentionally Deleted;"
- (hh) The references to "and Derivatives" in Section 15.1 are hereby deleted.
  - (ii) Schedule B – Form of Compliance Certificate attached to the Credit Agreement is hereby deleted in its entirety and replaced with the replacement Schedule B which is attached hereto as Schedule "A";
  - (jj) Schedule 13.2(o) entitled "Key Employee Retention Plan Letters" attached hereto as Schedule "B" is hereby added to the Credit Agreement.

**Section 6 Representations and Warranties**

In order to induce the Lender to enter into this Agreement, each of the Borrower and the Guarantors, jointly and severally, represents and warrants to the Lender as follows, which representations and warranties shall survive the execution and delivery hereof:

- (a) other than as disclosed on Schedule "D" attached hereto in respect of Subsections 12.1(k) and (t), the representations and warranties set forth in Section 12 of the Credit Agreement and in the Loan Documents are true and correct as though made on and as of the date hereof except to the extent of changes therein expressly permitted or contemplated by the Credit Agreement or the Loan Documents;
- (b) all necessary corporate action has been taken to authorize the execution, delivery and performance of this Agreement by the Borrower and the Borrower has duly executed and delivered this Agreement;
- (c) other than the Existing Defaults, no Default or Event of Default has occurred and is continuing, or will result from this Agreement; and
- (d) this Agreement is a legal, valid and binding obligation of the Borrower enforceable against it by the Lender in accordance with its terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally and by principles of equity).

**Section 7 Conditions Precedent to this Agreement**

The amendments contained herein shall not be effective unless and until each of the following conditions precedent has been either satisfied to the satisfaction of the Lender or waived by the Lender in its sole discretion:

- (a) this Amendment and the acknowledgement and confirmation thereof, has been duly executed and delivered by the Borrower, the Lender and the Guarantors;
- (b) the Lender has received copies of the duly executed and delivered compensation agreements from each of the Key Employees;

- (c) BDC has consented to the amendments contemplated in this Agreement and the Lender shall have received a copy of the duly executed and delivered amendment to the BDC Loan Agreement providing for, among other things, the deferral and capitalization of all monthly interest payments from February 15, 2022 onward, in form and substance satisfactory to the Lender;
- (d) all fees, disbursements and other charges of legal counsel of the Lender shall be paid; and
- (e) the Lender has received all such certificates of the Borrower, certifying, among other things, incumbency, constating documents, Limited Partnership Agreement, and directors' resolution approving this Agreement, documents, legal opinions in respect of the Borrower, and information that it reasonably requests.

**Section 8      Amendment Fee**

In consideration of the amendments to the Credit Agreement contained in this Agreement, the Borrower hereby agrees to pay to the Lender an amendment fee of \$30,000 (the "**Amendment Fee**"). The Amendment Fee shall be fully earned as of the date hereof, and shall be paid to the Lender in full on the Term Facility Maturity Date or the date the Loan Obligations are otherwise fully satisfied and paid.

**Section 9      Loan Document**

The Borrower hereby acknowledges that this Agreement constitutes a Loan Document under the terms of the Credit Agreement.

**Section 10     Continuance of Credit Agreement and Loan Documents**

The Credit Agreement and Loan Documents, as amended or modified by this Agreement, shall be and continue in full force and effect and are hereby confirmed and the rights and obligations of all parties thereunder shall not be affected or prejudiced in any manner except as specifically provided for herein.

The Borrower and each Guarantor hereby acknowledges, confirms and agrees that, notwithstanding this Agreement, (i) there has been no novation or merger of the Credit Agreement as amended pursuant to this Agreement or of any Security, Loan Documents or Loan Obligations; (ii) all Security granted by it continues in full force and effect, is enforceable in accordance with its terms, and guarantees and secures payment and performance by it of its Loan Obligations, and (iii) the Security is hereby ratified and confirmed, (iv) they are estopped from asserting or causing to be asserted on its behalf, any rights of defense, dispute, counterclaim, set-off, deduction or other rights, claims, demands, challenges, objections or appeals of any kind whatsoever existing as of the date of this Agreement, whether in respect of its obligations thereunder or the enforceability of same.



## **Section 11    No Waiver**

The Borrower has advised the Lender of potential liability for uncollected Sales Taxes in up to sixteen (16) states of the United States in which it may have established an "Economic Nexus" based on a new economic presence test established by the U.S. Supreme Court in *South Dakota v. Wayfair, Inc.*, resulting in states enacting Economic Nexus provisions, as more particularly described on Schedule "D" attached hereto. As a result of the foregoing, the Borrower is possibly in breach of Subsection 12.1(k) – Compliance with Laws; 12.1(t) – Taxes, and Subsection 13.1(k) (hereinafter referred to collectively as "**Tax Defaults**").

The Borrower is in default under the Credit Agreement by virtue of the defaults described in those certain default letters attached hereto at Schedule "C" (collectively, together with the Tax Defaults, the "**Existing Defaults**").

As a result of the Existing Defaults, the Lender has the right to accelerate the maturity and demand immediate payment of the Loan Obligations.

In accordance with the provisions of the Credit Agreement and the Loan Documents, the Borrower and Guarantors have received timely and proper notice of the Existing Defaults and the opportunity to cure (if any), in accordance with the Loan Documents, or applicable law, and hereby waive any rights to receive further notice thereof. All applicable cure periods relating to the Existing Defaults have lapsed or are hereby explicitly waived.

Neither this Agreement, nor any actions taken in accordance with this Agreement or the Loan Documents, shall be construed as a waiver of or consent to the Existing Defaults or any other existing or future defaults under the Loan Documents, as to which the Lender's rights shall remain reserved.

The Borrower acknowledges and confirms that except as expressly set out in this Agreement, none of the terms contained in this Agreement shall operate or be construed as a waiver of any of the provisions of the Loan Documents or any Event of Default existing on or prior to the date hereof including, without limitation, any Events of Default disclosed or not disclosed by the Borrower to the Lender.

## **Section 12    Counterparts and Electronic Signature.**

This Agreement may be executed in one or more counterparts (and by different parties hereto in different counterparts), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by fax or other electronic transmission of an executed counterpart of a signature page to this Agreement shall be effective as delivery of an original executed counterpart of this Agreement. The words "execution," "execute," "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement shall be deemed to include electronic signatures, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, as in provided Parts 2 and 3 of the Personal Information Protection and Electronic Documents Act (Canada), the Electronic Commerce Act, 2000 (Ontario) or any other similar laws

based on the Uniform Electronic Commerce Act of the Uniform Law Conference of Canada. The Agent may, in its discretion, require that any such documents and signatures executed electronically or delivered by fax or other electronic transmission be confirmed by a manually-signed original thereof; provided that the failure to request or deliver the same shall not limit the effectiveness of any document or signature executed electronically or delivered by fax or other electronic transmission.

**Section 13    Governing Law**

This Agreement shall be construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

*[Signature pages follow]*

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the day and year first above written.

Lender:

**THE TORONTO-DOMINION BANK**

By:   
Name: Michael Vos  
Title: Vice President Financial Restructuring Group

By:   
Name: Andrea Jamnisek  
Title: Director, Financial Restructuring Group

Borrower:

**KIVUTO SOLUTIONS INC.**

By: \_\_\_\_\_  
Name:  
Title:

The undersigned party hereby (a) consents to the transactions and amendments contemplated by the foregoing Seventh

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the day and year first above written.

Lender:

**THE TORONTO-DOMINION BANK**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

Borrower:

**KIVUTO SOLUTIONS INC.**

By: \_\_\_\_\_  
Name: Sarah Foottit  
Title: Chief Financial Officer



The undersigned party hereby (a) consents to the transactions and amendments contemplated by the foregoing Seventh

Amending Agreement made between The-Toronto-Dominion Bank and Kivuto Solutions Inc. (the "**Amendment**") and (b) acknowledges and agrees that the guarantee and grant of security interests made by it contained in the Security to which it is party are, and shall remain, in full force and effect after giving effect to the Amendment.

Guarantor:

Legado Capital Partners LP, by its general partner,  
Legado Capital Partners GP Inc.

By: \_\_\_\_\_

DocuSigned by:  
*Mark McKenzie*  
EC780E835E8E42E

Name: Mark McKenzie

Title: Chief Executive Officer

**SCHEDULE "A"****REPLACEMENT SCHEDULE "B"****FORM OF COMPLIANCE CERTIFICATE****TO: THE TORONTO-DOMINION BANK (the "Lender")**

Reference is made to the Credit Agreement dated March 1, 2018, between Kivuto Solutions Inc., successor in interest by amalgamation of 10600598 Canada Inc., as borrower (the "**Borrower**") and the Lender, as amended by a first amending agreement dated as of June 30, 2018, a second amending agreement dated as of January 31, 2019, a third amending agreement dated as of November 5, 2019, a fourth amendment dated as of August 18, 2020, a fifth amending agreement dated as of December 24, 2021, a sixth amending agreement dated as of January 31, 2022 and a seventh amendment dated as of November \_\_, 2022 (as amended, supplemented, restated, replaced or otherwise modified from time to time, the "**Credit Agreement**"). All capitalized terms used in this Compliance Certificate shall have the respective meanings attributed to them in the Credit Agreement.

This Compliance Certificate is delivered pursuant to Section 13.1(f) of the Credit Agreement for the month/week ending \_\_\_\_\_ (the "**Period**").

I, \_\_\_\_\_, the [**insert any one of the President or Secretary-Treasurer**] of the Borrower, in such capacity and not personally, hereby certify that:

1. I am the duly appointed [**insert any one of the President or Secretary-Treasurer**] of the Borrower and as such I am providing this certificate for and on behalf of the Borrower pursuant to the Credit Agreement.
2. I am familiar with and have examined the provisions of the Credit Agreement including, without limitation, the provisions of Article 12 and Article 13 hereof.
3. To the best of my knowledge, information and belief, and after due inquiry:
  - (a) the representations and warranties of the Borrower contained in the Loan Documents are true and correct in all material respects as of the date hereof with the same force and effect as if such representations and warranties had been made on and as of the date hereof;
  - (b) the Borrower and Guarantors have fulfilled and complied with in all material respects all covenants contained in the Loan Documents to be performed or caused to be performed by them at or prior to the date hereof;
  - (c) there have been no changes to the corporate structure set out on Schedule 12.1(s) to the Credit Agreement;
  - (d) Kivuto US has not commenced operations and does not carry on any business or own any Intellectual Property, Business Assets or any other property, other than

account deposits in the US Account, which deposits are less than US\$250,000 and has transferred amounts in excess of US\$250,000, if any, to the Borrower's deposit account with the Lender as required pursuant to Section 12.1(s) of the Credit Agreement;

- (e) the Borrower and Guarantors have paid all realty taxes due and payable by them during the Period; and
  - (f) other than the Existing Defaults (as defined in the seventh amendment to the Credit Agreement), no Event of Default has occurred and is continuing as at the date hereof.
4. Without limiting the generality of Paragraph 3 above, the Borrower and Guarantors were, at the end of the Period and as of the date of this Compliance Certificate, in compliance, in all material respects, with all applicable Environmental Laws.
5. We include herewith the following:
- (a) If annual:
    - (i) The Borrower's audited consolidated annual financial statements with auditors' report(s).
  - (b) If quarterly:
    - (i) The Borrower's unaudited Fiscal Quarter period consolidated financial statements.
  - (c) If monthly:
    - (i) The Borrower's monthly management-prepared consolidated financial statements.
    - (ii) The Borrower's cash flow statements consisting of high level cash flow and profit and loss variances with material items highlighted, together with narrative explaining variances (with a focus on material variances),
  - (d) If bi-weekly:
    - (i) The Borrower's cash flow statements consisting of high level cash flow and profit and loss variances with material items highlighted, together with narrative explaining variances (with a focus on material variances).
6. The amounts referred to in Section 13.3 of the Credit Agreement as of the end of the Period were as follows:

Period	Liquidity per Cash Flow Statement Projections	Actual Liquidity	Variance %	Permitted Negative Variance
				15%

7. Except as previously disclosed pursuant to the seventh amendment to the Credit Agreement dated November \_\_, 2022, the representations and warranties referred to in Article 12 of the Credit Agreement are true and correct in all material respects as though made on this \_\_\_\_\_ date;
8. The following representations and warranties are not true and correct in all material respects but their failure to be true and correct would not, alone or in aggregate, be reasonably expected to have a Material Adverse Effect: \_\_\_\_\_;
9. The attached financial information is true and correct in all material respects; and
10. The financial statements delivered pursuant to Subsection 13.1(f) have been prepared in accordance with GAAP in effect on the date of such financial statements and the information contained therein is true and correct in all material respects, subject only to year-end audit adjustments, and presents fairly and consistently the results of operations and changes in the financial position of the Borrower and the Guarantors as of the date thereof.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Name: \_\_\_\_\_



**SCHEDULE "B"**

**SCHEDULE 13.2(O)**

**KEY EMPLOYEE RETENTION PLAN LETTERS**

See attached



**STRICTLY PRIVATE AND CONFIDENTIAL**

By Email - [econstantakis@kivuto.com](mailto:econstantakis@kivuto.com)

August 12, 2022

Attention: Costa Constantakis  
 495 Richmond Road  
 Suite 100  
 Ottawa ON K2A 4B2

Dear Mr. Constantakis:

**RE: Incentive Payments**

As Kivuto Solutions Inc. (the "**Company**") enters this challenging period of its operations, the Company would like to assure you that your contributions continue to be valued. We truly appreciate your continued hard work and importance to the Company as VP Sales & Marketing, particularly at this time. As you know, the Company has retained Origin Merchant Partners to act as its financial advisor in connection with a sale and investment solicitation process to identify parties that are interested in acquiring or making an investment in the Company (a "**Transaction**"). It is possible that completion of a Transaction resulting from that process will require commencement by the Company, or by the Company's lender, The Toronto-Dominion Bank ("**TD**"), of an insolvency proceeding.

In consideration of your ongoing loyalty to the Company, the Company is offering you the following incentive in addition to your regular salary: (a) a \$41,250 retention bonus which shall be deemed earned by you if you remain employed by the Company on the earlier of: (i) the closing of a Transaction, and (ii) October 31, 2022, which retention bonus shall be payable in cash immediately upon the earlier of: (i) closing of any Transaction, and (ii) December 31, 2022; and (b) a transaction bonus calculated as a percentage of the net Transaction proceeds (after deduction of all costs, fees and expenses payable by the Company and in connection with such Transaction, including the fees and expenses of a receiver or other court officer and its legal counsel, and excluding any applicable sales taxes) (the "**Net Proceeds**") of a Transaction in excess of \$8 million, in accordance with Table 1 in Schedule "A" attached hereto. The transaction bonus shall only be payable on the cash portion of the Net Proceeds received, including the principal amount of any indebtedness of the Company assumed or paid by the purchaser, and including any cash received from earnouts or holdbacks (the "**Net Cash Proceeds**"), but shall not be paid on any equity portion of the purchase price. Notwithstanding anything to the contrary herein, in the event that the Net Cash Proceeds received at closing of a Transaction is less than \$8 million, the transaction bonus payable on any such portion of the Net Cash Proceeds received below \$8 million shall be calculated and payable in accordance with Table 2. For greater certainty, any Net Cash Proceeds received in excess of \$8 million shall be calculated and payable in accordance with Table 1. Any transaction bonus payable in accordance with Schedule A shall be deemed earned by you upon receipt of Net Cash Proceeds and shall be

paid to you in cash. The retention bonus and transaction bonus payments are inclusive of applicable vacation pay.

As security for the obligations of the Company to make the bonus payments set out herein, in the event the Company voluntarily commences insolvency proceedings with the consent of TD or in the event that TD commences insolvency proceedings, the Company will request that the supervising court approve the bonuses contemplated herein and establish a charge upon the property of the Company.

In order to receive the incentive bonuses described above, (a) you must not have disclosed these arrangements to any person other than your personal representatives and legal advisors (other than any disclosure required by law), and (b) at the time such payments are earned, you cannot have (i) resigned, (ii) been terminated with cause, or (iii) have failed to perform your duties and responsibilities diligently, faithfully and honestly.

The incentive payments are to be paid in place of, and not in addition to, any success fee, bonus or other payment to which you may be entitled under your compensation arrangements with the Company that relate, in any way, to the completion of a restructuring or other transaction involving the Company, its balance sheet or its property. Upon receipt of the incentive payments in accordance with the terms hereof, you agree to the compromise and release of any and all claims that you may have against the Company, its officers, directors, employees, agents and representatives in respect of all such success fees, bonuses or other payments.

You agree that, conditional upon and following the payment of the retention bonus and transaction bonus, the Company may terminate your employment without cause by providing you with only your minimum entitlements under the *Employment Standards Act, 2000* (the "ESA"). No other notice (including common law notice), pay in lieu of notice, benefit continuation (including without limitation participation in any other incentive compensation, group health and dental and retirement savings plans) or severance entitlements will apply. For absolute clarity, in no event will you be entitled to receive less notice, pay in lieu of notice, severance pay, benefit coverage, or any other entitlement than is required by the ESA and this Agreement. This paragraph shall apply regardless of any changes to the terms and conditions of your employment subsequent to your signing of this Agreement including, but not limited to, promotions and transfers, unless you and the Company expressly agree otherwise in writing.

This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

This Agreement may be executed in original or pdf file copy or by other electronic means in one or more counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument.

This Agreement constitutes the entire agreement between the parties hereto and supersedes any prior agreements, undertakings, declarations, representations and understandings, both written and verbal, in respect of the subject matter hereof.

Yours truly,

KIVUTO SOLUTIONS INC.

By: *M. McKenzie*  
Name: **MARK MCKENZIE**  
Title: **C.E.O.**

The foregoing is accepted and agreed to this 15<sup>th</sup> day of August, 2022:

COSTA CONSTANTAKIS

By: *Costa Constantakis*  
Title: VP Sales & Marketing

Each of the Company's senior secured lenders hereby accept and agree to the terms and conditions set forth above and in the attached Schedule and agree to permit the payment of the bonus amounts set out herein:

THE TORONTO-DOMINION BANK

By: *Michael Vos*  
Name: **Michael Vos**  
Title: **Vice President Financial Restructuring Group**

BDC CAPITAL INC.

By: \_\_\_\_\_  
Name:  
Title:

## SCHEDULE "A"

### Summary Retention Bonus & Transaction Bonus

Retention Bonus	\$ 275,000				
<b>Transaction Bonus</b>					
<b>Table 1 - Total Cumulative Net Cash Proceeds Received</b>					
From	Tier 1	Tier 2	Tier 3	Tier 4	Tier 5
Up to	\$ 8,000,000	\$ 10,000,000	\$ 20,000,000	\$ 22,500,000	no limit
Transaction Bonus Rate (%) applied to incremental Net Cash Proceeds in each tier) - Group Level	5.25%	5.25%	8.00%	10.00%	15.00%

#### Notes:

- (1) Tier 1 Transaction Bonus only payable if Net Cash Proceeds received exceeds \$8 million, except as described in note 3(c) and Table 2 below.  
 (2) Individual Level transaction bonus rate is a percentage of the Group Level transaction bonus rate and not in addition to the Group Level transaction bonus rate.

Max Transaction Bonus (\$) Achievable in Each Tier	\$ 420,000	\$ 105,000	\$ 800,000	\$ 250,000	\$250,000 +
Cumulative Transaction Bonus Assuming Tier Max Reached		\$ 525,000	\$ 1,325,000	\$ 1,575,000	\$1,575,000 +

#### Notes re: Earnouts & Holdbacks and Table 2 below:

- (3) Notwithstanding it was made clear in Note 7 in the finalized bonus model shared with management on Jun. 17 22 (and prior models) that this transaction bonus assumed the sale was all cash at closing, the Lenders are willing:  
 (a) To permit the payment of Transaction Bonuses on earnouts and holdbacks; however, these will only be earned and paid if/once the cash associated with the earnouts/holdbacks is received by the lenders;  
 (b) As cash proceeds from earnouts/holdbacks are received, incremental fees and costs incurred to each payment receipt date shall be deducted in calculating the Net Cash Proceeds of each payment to determine the incremental amount of the Transaction Bonus payable on such earnouts/holdbacks; and  
 (c) On an exception basis and notwithstanding the previously established minimum floor for the Transaction of \$8 million, coupled with the lenders' requirement for all cash at closing (see Note 3 preamble above), in the event the Net Cash Proceeds received at closing from a sale transaction (i.e. excluding future earnouts and holdbacks) is less than \$8 million, management will be entitled to a portion of the 5.25% Transaction Bonus in accordance with the percentages outlined in Table 2.  
 (4) For absolute clarity, the entitlement to a portion of the 5.25% Transaction Bonus in accordance with the percentages outlined in Table 2 shall be available on a "graduating" basis. As total Net Cash Proceeds received as the result of earnouts/holdbacks accumulates, management will "graduate" from Tier A to Tier B to Tier C, and so on, with the result being that management will become entitled to 100% of the 5.25% Transaction Bonus if and when Net Cash Proceeds received reaches \$8 million.

<b>Table 2 - Total Net Cash Proceeds Received at Close</b>					
From	Tier A	Tier B	Tier C	Tier D	Tier E
Up to	\$ 5,000,000	\$ 5,750,000	\$ 6,500,000	\$ 7,250,000	\$ 7,999,999
Payable Portion (Percentage of the 5.25% Transaction Bonus on Net Cash Proceeds at Close)	0.00%	50.00%	60.00%	70.00%	90.00%

#### Illustration:

Net Cash Proceeds Received	\$ 5,500,000	\$ 6,000,000	\$ 5,750,000	\$ 7,500,000	\$ 8,000,000
Transaction Bonus Rate (%)	5.25%	5.25%	5.25%	5.25%	5.25%
Payable Portion of 5.25% Transaction Bonus, based on applicable Tier Level (%)	50.00%	60.00%	70.00%	90.00%	100.00%
Group Level Transaction Bonus Payable (\$) :	\$ 144,375	\$ 189,000	\$ 148,063	\$ 354,375	\$ 420,000

### Costa Constantakis, VP Sales & Marketing

Retention Bonus	\$ 41,250				
<b>Transaction Bonus</b>					
<b>Total Cumulative Net Cash Transaction Proceeds Received</b>					
From	Tier 1	Tier 2	Tier 3	Tier 4	Tier 5
Up to	\$ 8,000,000	\$ 10,000,000	\$ 20,000,000	\$ 22,500,000	no limit
Transaction Bonus Rate (%) applied to incremental Net Cash Proceeds in each tier) - Group Level	5.25%	5.25%	8.00%	10.00%	15.00%
Transaction Bonus Rate (%) of Group Level rate) - Individual Level	15.00%	15.00%	15.00%	15.00%	15.00%

#### Notes:

- (1) Tier 1 Transaction Bonus only payable if transaction Net Cash Proceeds received exceeds \$8 million.  
 (2) Individual Level transaction bonus rate is a percentage of the Group Level transaction bonus rate and not in addition to the Group Level transaction bonus rate.

**STRICTLY PRIVATE AND CONFIDENTIAL**

**By Email - mmckenzie@kivuto.com**

August 12, 2022

Attention: Mark McKenzie  
495 Richmond Road  
Suite 100  
Ottawa ON K2A 4B2

Dear Mr. McKenzie;

**RE: Incentive Payments**

As Kivuto Solutions Inc. (the “**Company**”) enters this challenging period of its operations, the Company would like to assure you that your contributions continue to be valued. We truly appreciate your continued hard work and importance to the Company as CEO, particularly at this time. As you know, the Company has retained Origin Merchant Partners to act as its financial advisor in connection with a sale and investment solicitation process to identify parties that are interested in acquiring or making an investment in the Company (a “**Transaction**”). It is possible that completion of a Transaction resulting from that process will require commencement by the Company, or by the Company's lender, The Toronto-Dominion Bank (“**TD**”), of an insolvency proceeding.

In consideration of your ongoing loyalty to the Company, the Company is offering you the following incentive in addition to your regular salary: (a) a \$151,250 retention bonus which shall be deemed earned by you if you remain employed by the Company on the earlier of: (i) the closing of a Transaction, and (ii) October 31, 2022, which retention bonus shall be payable in cash immediately upon the earlier of: (i) closing of any Transaction, and (ii) December 31, 2022; and (b) a transaction bonus calculated as a percentage of the net Transaction proceeds (after deduction of all costs, fees and expenses payable by the Company and in connection with such Transaction, including the fees and expenses of a receiver or other court officer and its legal counsel, and excluding any applicable sales taxes) (the “**Net Proceeds**”) of a Transaction in excess of \$8 million, in accordance with Table 1 in Schedule “A” attached hereto. The transaction bonus shall only be payable on the cash portion of the Net Proceeds received, including the principal amount of any indebtedness of the Company assumed or paid by the purchaser, and including any cash received from earnouts or holdbacks (the “**Net Cash Proceeds**”), but shall not be paid on any equity portion of the purchase price. Notwithstanding anything to the contrary herein, in the event that the Net Cash Proceeds received at closing of a Transaction is less than \$8 million, the transaction bonus payable on any such portion of the Net Cash Proceeds received below \$8 million shall be calculated and payable in accordance with Table 2. For greater certainty, any Net Cash Proceeds received in excess of \$8 million shall be calculated and payable in accordance with Table 1. Any transaction bonus payable in accordance with Schedule A shall be deemed earned by you upon receipt of Net Cash Proceeds and shall be

paid to you in cash. The retention bonus and transaction bonus payments are inclusive of applicable vacation pay.

As security for the obligations of the Company to make the bonus payments set out herein, in the event the Company voluntarily commences insolvency proceedings with the consent of TD or in the event that TD commences insolvency proceedings, the Company will request that the supervising court approve the bonuses contemplated herein and establish a charge upon the property of the Company.

In order to receive the incentive bonuses described above, (a) you must not have disclosed these arrangements to any person other than your personal representatives and legal advisors (other than any disclosure required by law), and (b) at the time such payments are earned, you cannot have (i) resigned, (ii) been terminated with cause, or (iii) have failed to perform your duties and responsibilities diligently, faithfully and honestly.

The incentive payments are to be paid in place of, and not in addition to, any success fee, bonus or other payment to which you may be entitled under your compensation arrangements with the Company that relate, in any way, to the completion of a restructuring or other transaction involving the Company, its balance sheet or its property. Upon receipt of the incentive payments in accordance with the terms hereof, you agree to the compromise and release of any and all claims that you may have against the Company, its officers, directors, employees, agents and representatives in respect of all such success fees, bonuses or other payments.

You agree that, conditional upon and following the payment of the retention bonus and transaction bonus, the Company may terminate your employment without cause by providing you with only your minimum entitlements under the *Employment Standards Act, 2000* (the "ESA"). No other notice (including common law notice), pay in lieu of notice, benefit continuation (including without limitation participation in any other incentive compensation, group health and dental and retirement savings plans) or severance entitlements will apply. For absolute clarity, in no event will you be entitled to receive less notice, pay in lieu of notice, severance pay, benefit coverage, or any other entitlement than is required by the ESA and this Agreement. This paragraph shall apply regardless of any changes to the terms and conditions of your employment subsequent to your signing of this Agreement including, but not limited to, promotions and transfers, unless you and the Company expressly agree otherwise in writing.

This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

This Agreement may be executed in original or pdf file copy or by other electronic means in one or more counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument.

This Agreement constitutes the entire agreement between the parties hereto and supersedes any prior agreements, undertakings, declarations, representations and understandings, both written and verbal, in respect of the subject matter hereof.


Yours truly,

**KIVUTO SOLUTIONS INC.**

By:   
Name: Sarah Footitt  
Title: CFO

The foregoing is accepted and agreed to this 18<sup>th</sup> day of August, 2022:

**MARK MCKENZIE**

By:   
Title: CEO

**Each of the Company's senior secured lenders hereby accept and agree to the terms and conditions set forth above and in the attached Schedule and agree to permit the payment of the bonus amounts set out herein:**

**THE TORONTO-DOMINION BANK**

By:   
Name: Michael Vos  
Title: Vice President Financial Restructuring Group

**BDC CAPITAL INC.**

By: \_\_\_\_\_  
Name:  
Title:



## SCHEDULE "A"

**Summary Retention Bonus & Transaction Bonus**

Retention Bonus \$ 275,000

**Transaction Bonus**

Table 1 - Total Cumulative Net Cash Proceeds Received	Tier 1	Tier 2	Tier 3	Tier 4	Tier 5
From	\$ -	\$ 8,000,001	\$ 10,000,001	\$ 20,000,001	\$ 22,500,001
Up to	\$ 8,000,000	\$ 10,000,000	\$ 20,000,000	\$ 22,500,000	no limit
Transaction Bonus Rate (% applied to incremental Net Cash Proceeds in each tier) - Group Level	5.25%	5.25%	8.00%	10.00%	15.00%

**Notes:**

- [1] Tier 1 Transaction Bonus only payable if Net Cash Proceeds received exceeds \$8 million, except as described in note 3(c) and Table 2 below.
- [2] 'Individual Level' transaction bonus rate is a percentage of the 'Group Level' transaction bonus rate and not in addition to the 'Group Level' transaction bonus rate.

Max Transaction Bonus (\$) Achievable in Each Tier	\$ 420,000	\$ 105,000	\$ 800,000	\$ 250,000	\$250,000 +
Cumulative Transaction Bonus Assuming Tier Max Reached		\$ 525,000	\$ 1,325,000	\$ 1,575,000	\$1,575,000 +

**Notes re: Earnouts, Holdbacks and Table 2 below**

- [3] Notwithstanding it was made clear in note 17 in the finalized bonus model shared with management (d. Jun. 17, 22 (and prior models) that this transaction bonus assumed the sale was all cash at closing, the Lenders are willing:
  - (a) To permit the payment of Transaction Bonuses on earnouts and holdbacks, however, these will only be earned and paid if/once the cash associated with the earnouts/holdbacks is received by the lenders;
  - (b) As cash proceeds from earnouts/holdbacks are received, incremental fees and costs incurred to each payment receipt date shall be deducted in calculating the Net Cash Proceeds of each payment to determine the incremental amount of the Transaction Bonus payable on such earnouts/holdbacks; and,
  - (c) On an exception basis and notwithstanding the previously established minimum floor for the Transaction of \$8 million, coupled with the lenders' requirement for all cash at closing (see Note 3 preamble above), in the event the Net Cash Proceeds received at closing from a sale transaction (i.e. excluding future earnouts and holdbacks) is less than \$8 million, management will be entitled to a portion of the 5.25% Transaction Bonus in accordance with the percentages outlined in Table 2.
- [4] For absolute clarity, the entitlement to a portion of the 5.25% Transaction Bonus in accordance with the percentages outlined in Table 2 shall be available on a 'graduating' basis. As total Net Cash Proceeds received as the result of earnouts/holdbacks accumulates, management will 'graduate' from Tier A to Tier B to Tier C (and so on) with the result being that management will become entitled to 100% of the 5.25% Transaction Bonus if and when Net Cash Proceeds received reaches \$8 million.

Table 2 - Total Net Cash Proceeds Received at Close	Tier A	Tier B	Tier C	Tier D	Tier E
From	\$ -	\$ 5,000,001	\$ 5,750,001	\$ 6,500,001	\$ 7,250,001
Up to	\$ 5,000,000	\$ 5,750,000	\$ 6,500,000	\$ 7,250,000	\$ 7,999,999
Payable Portion/Percentage of the 5.25% Transaction Bonus on Net Cash Proceeds at Close	0.00%	50.00%	60.00%	70.00%	90.00%

**Illustrations**

Net Cash Proceeds Received	\$ 5,500,000	\$ 6,000,000	\$ 6,750,000	\$ 7,500,000	\$ 8,000,000
Transaction Bonus Rate (%)	5.25%	5.25%	5.25%	5.25%	5.25%
Payable Portion of 5.25% Transaction Bonus, based on applicable Tier Level (%)	50.00%	60.00%	70.00%	90.00%	100.00%
Group Level Transaction Bonus Payable (\$)	\$ 144,375	\$ 189,000	\$ 248,063	\$ 354,375	\$ 420,000

**Mark McKenzie, CEO**

Retention Bonus \$ 151,250

**Transaction Bonus**

Total Cumulative Net Cash Transaction Proceeds Received	Tier 1	Tier 2	Tier 3	Tier 4	Tier 5
From	\$ -	\$ 8,000,001	\$ 10,000,001	\$ 20,000,001	\$ 22,500,001
Up to	\$ 8,000,000	\$ 10,000,000	\$ 20,000,000	\$ 22,500,000	no limit
Transaction Bonus Rate (% applied to incremental Net Cash Proceeds in each tier) - Group Level	5.25%	5.25%	8.00%	10.00%	15.00%
Transaction Bonus Rate (% of Group Level rate) - Individual Level	55.00%	55.00%	55.00%	55.00%	55.00%

**Notes:**

- [1] Tier 1 Transaction Bonus only payable if transaction Net Cash Proceeds received exceeds \$8 million.
- [2] 'Individual Level' transaction bonus rate is a percentage of the 'Group Level' transaction bonus rate and not in addition to the 'Group Level' transaction bonus rate.



**STRICTLY PRIVATE AND CONFIDENTIAL**

**By Email - sfoottit@kivuto.com**

August 12, 2022

Attention: Sarah Foottit  
495 Richmond Road  
Suite 100  
Ottawa ON K2A 4B2

Dear Ms. Foottit,

**RE: Incentive Payments**

As Kivuto Solutions Inc. (the “**Company**”) enters this challenging period of its operations, the Company would like to assure you that your contributions continue to be valued. We truly appreciate your continued hard work and importance to the Company as CFO, particularly at this time. As you know, the Company has retained Origin Merchant Partners to act as its financial advisor in connection with a sale and investment solicitation process to identify parties that are interested in acquiring or making an investment in the Company (a “**Transaction**”). It is possible that completion of a Transaction resulting from that process will require commencement by the Company, or by the Company's lender, The Toronto-Dominion Bank (“**TD**”), of an insolvency proceeding.

In consideration of your ongoing loyalty to the Company, the Company is offering you the following incentive in addition to your regular salary: (a) a \$68,750 retention bonus which shall be deemed earned by you if you remain employed by the Company on the earlier of: (i) the closing of a Transaction, and (ii) October 31, 2022, which retention bonus shall be payable in cash immediately upon the earlier of: (i) closing of any Transaction, and (ii) December 31, 2022; and (b) a transaction bonus calculated as a percentage of the net Transaction proceeds (after deduction of all costs, fees and expenses payable by the Company and in connection with such Transaction, including the fees and expenses of a receiver or other court officer and its legal counsel, and excluding any applicable sales taxes) (the “**Net Proceeds**”) of a Transaction in excess of \$8 million, in accordance with Table 1 in Schedule “A” attached hereto. The transaction bonus shall only be payable on the cash portion of the Net Proceeds received, including the principal amount of any indebtedness of the Company assumed or paid by the purchaser, and including any cash received from earnouts or holdbacks (the “**Net Cash Proceeds**”), but shall not be paid on any equity portion of the purchase price. Notwithstanding anything to the contrary herein, in the event that the Net Cash Proceeds received at closing of a Transaction is less than \$8 million, the transaction bonus payable on any such portion of the Net Cash Proceeds received below \$8 million shall be calculated and payable in accordance with Table 2. For greater certainty, any Net Cash Proceeds received in excess of \$8 million shall be calculated and payable in accordance with Table 1. Any transaction bonus payable in accordance with Schedule A shall be deemed earned by you upon receipt of Net Cash Proceeds and shall be

paid to you in cash. The retention bonus and transaction bonus payments are inclusive of applicable vacation pay.

As security for the obligations of the Company to make the bonus payments set out herein, in the event the Company voluntarily commences insolvency proceedings with the consent of TD or in the event that TD commences insolvency proceedings, the Company will request that the supervising court approve the bonuses contemplated herein and establish a charge upon the property of the Company.

In order to receive the incentive bonuses described above, (a) you must not have disclosed these arrangements to any person other than your personal representatives and legal advisors (other than any disclosure required by law), and (b) at the time such payments are earned, you cannot have (i) resigned, (ii) been terminated with cause, or (iii) have failed to perform your duties and responsibilities diligently, faithfully and honestly.

The incentive payments are to be paid in place of, and not in addition to, any success fee, bonus or other payment to which you may be entitled under your compensation arrangements with the Company that relate, in any way, to the completion of a restructuring or other transaction involving the Company, its balance sheet or its property. Upon receipt of the incentive payments in accordance with the terms hereof, you agree to the compromise and release of any and all claims that you may have against the Company, its officers, directors, employees, agents and representatives in respect of all such success fees, bonuses or other payments.

You agree that, conditional upon and following the payment of the retention bonus and transaction bonus, the Company may terminate your employment without cause by providing you with only your minimum entitlements under the *Employment Standards Act, 2000* (the "ESA"). No other notice (including common law notice), pay in lieu of notice, benefit continuation (including without limitation participation in any other incentive compensation, group health and dental and retirement savings plans) or severance entitlements will apply. For absolute clarity, in no event will you be entitled to receive less notice, pay in lieu of notice, severance pay, benefit coverage, or any other entitlement than is required by the ESA and this Agreement. This paragraph shall apply regardless of any changes to the terms and conditions of your employment subsequent to your signing of this Agreement including, but not limited to, promotions and transfers, unless you and the Company expressly agree otherwise in writing.

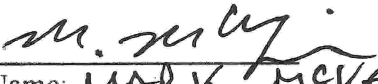
This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

This Agreement may be executed in original or pdf file copy or by other electronic means in one or more counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument.

This Agreement constitutes the entire agreement between the parties hereto and supersedes any prior agreements, undertakings, declarations, representations and understandings, both written and verbal, in respect of the subject matter hereof.

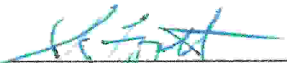
Yours truly,

**KIVUTO SOLUTIONS INC.**

By:   
Name: **MARK MCKENZIE**  
Title: **C.E.O.**

The foregoing is accepted and agreed to this 22 day of August, 2022:

**SARAH FOOTTIT**

By:   
Title: **CFO**

**Each of the Company's senior secured lenders hereby accept and agree to the terms and conditions set forth above and in the attached Schedule and agree to permit the payment of the bonus amounts set out herein:**

**THE TORONTO-DOMINION BANK**

By:   
Name: **Michael Vos**  
Title: **Vice President Financial Restructuring Group**

**BDC CAPITAL INC.**

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE "A"**

Summary Retention Bonus & Transaction Bonus

Retention Bonus \$ 275,000

Transaction Bonus

Table 1 - Total Cumulative Net Cash Proceeds Received

	Tier 1	Tier 2	Tier 3	Tier 4	Tier 5
From	\$ -	\$ 8,000,000	\$ 10,000,000	\$ 20,000,000	\$ 22,500,000
Up to	\$ 8,000,000	\$ 10,000,000	\$ 20,000,000	\$ 22,500,000	no limit
Transaction Bonus Rate (i) applied to incremental Net Cash Proceeds in each tier - Group Level	5.25%	5.25%	8.00%	10.00%	15.00%

Notes:

- [1] Tier 1 Transaction Bonus only payable if Net Cash Proceeds received exceeds \$8 million, except as described in note 3 (c) and Table 2 below.
- [2] Individual Level transaction bonus rate is a percentage of the Group Level transaction bonus rate and not in addition to the Group Level transaction bonus rate.

Max Transaction Bonus (\$) Achievable in Each Tier	Tier 1	Tier 2	Tier 3	Tier 4	Tier 5
Cumulative Transaction Bonus Assuming Tier Max Reached	\$ 420,000	\$ 105,000	\$ 800,000	\$ 250,000	\$ 250,000 +
		\$ 525,000	\$ 1,325,000	\$ 1,575,000	\$ 1,575,000 +

Notes re: Earnouts & Holdbacks and Table 2 below:

- [3] Notwithstanding it was made clear in note 17 in the finalized bonus model shared with management (i.e. Jun. 17, 22) (and prior models) that this transaction bonus assumed the sale was all cash at closing, the Lenders are willing:
  - (a) To permit the payment of Transaction Bonuses on earnouts and holdbacks, however, these will only be earned and paid if/once the cash associated with the earnouts/holdbacks received by the lenders;
  - (b) As cash proceeds from earnouts/holdbacks are received, incremental fees and costs incurred to each payment receipt date shall be deducted in calculating the Net Cash Proceeds of each payment to determine the incremental amount of the Transaction Bonus payable on such earnouts/holdbacks; and,
  - (c) On an exception basis and notwithstanding the previously established minimum floor for the Transaction of \$8 million, coupled with the lenders' requirement for all cash at closing (see Note 3 preamble above), in the event the Net Cash Proceeds received at closing from a sale transaction (i.e. excluding future earnouts and holdbacks) is less than \$8 million, management will be entitled to a portion of the 5.25% Transaction Bonus in accordance with the percentages outlined in Table 2.
- [4] For absolute clarity, the entitlement to a portion of the 5.25% Transaction Bonus in accordance with the percentages outlined in Table 2 shall be available on a 'graduating' basis. As total Net Cash Proceeds received as the result of earnouts/holdbacks accumulates, management will 'graduate' from Tier A to Tier B to Tier C and so on with the result being that management will become entitled to 100% of the 5.25% Transaction Bonus if and when Net Cash Proceeds received reaches \$8 million.

Table 2 - Total Net Cash Proceeds Received at Close

	Tier A	Tier B	Tier C	Tier D	Tier E
From	\$ -	\$ 5,000,000	\$ 6,750,000	\$ 6,500,000	\$ 7,250,000
Up to	\$ 5,000,000	\$ 5,750,000	\$ 6,500,000	\$ 7,250,000	\$ 7,999,999
Payable Portion - Percentage of the 5.25% Transaction Bonus on Net Cash Proceeds at Close	0.00%	50.00%	60.00%	70.00%	90.00%

Illustrations

	Tier A	Tier B	Tier C	Tier D	Tier E
Net Cash Proceeds Received	\$ 5,500,000	\$ 6,000,000	\$ 6,750,000	\$ 7,500,000	\$ 8,000,000
Transaction Bonus Rate (i)	5.25%	5.25%	5.25%	5.25%	5.25%
Payable Portion of 5.25% Transaction Bonus, based on applicable Tier Level (ii)	50.00%	60.00%	70.00%	90.00%	100.00%
Group Level Transaction Bonus Payable (\$) (i) x (ii)	\$ 144,375	\$ 189,000	\$ 248,063	\$ 354,375	\$ 420,000

Sarah Foottit, CFO

Retention Bonus \$ 68,750

Transaction Bonus

Total Cumulative Net Cash Transaction Proceeds Received

	Tier 1	Tier 2	Tier 3	Tier 4	Tier 5
From	\$ -	\$ 3,000,000	\$ 10,000,000	\$ 20,000,000	\$ 22,500,000
Up to	\$ 3,000,000	\$ 10,000,000	\$ 20,000,000	\$ 22,500,000	no limit
Transaction Bonus Rate (i) applied to incremental Net Cash Proceeds in each Tier - Group Level	5.25%	5.25%	8.00%	10.00%	15.00%
Transaction Bonus Rate (ii) of Group Level rate (i) - Individual Level	25.00%	25.00%	25.00%	25.00%	25.00%

Notes:

- [1] Tier 1 Transaction Bonus only payable if transaction Net Cash Proceeds received exceeds \$8 million.
- [2] Individual Level transaction bonus rate is a percentage of the Group Level transaction bonus rate and not in addition to the Group Level transaction bonus rate.



**STRICTLY PRIVATE AND CONFIDENTIAL**

**By Email - saulenback@kivuto.com**

August 12, 2022

Attention: Shane Aulenback  
495 Richmond Road  
Suite 100  
Ottawa ON K2A 4B2

Dear Mr. Aulenback;

**RE: Incentive Payments**

As Kivuto Solutions Inc. (the “Company”) enters this challenging period of its operations, the Company would like to assure you that your contributions continue to be valued. We truly appreciate your continued hard work and importance to the Company as VP Engineering & Product Management, particularly at this time. As you know, the Company has retained Origin Merchant Partners to act as its financial advisor in connection with a sale and investment solicitation process to identify parties that are interested in acquiring or making an investment in the Company (a “Transaction”). It is possible that completion of a Transaction resulting from that process will require commencement by the Company, or by the Company's lender, The Toronto-Dominion Bank (“TD”), of an insolvency proceeding.

In consideration of your ongoing loyalty to the Company, the Company is offering you the following incentive in addition to your regular salary: (a) a \$13,750 retention bonus which shall be deemed earned by you if you remain employed by the Company on the earlier of: (i) the closing of a Transaction, and (ii) October 31, 2022, which retention bonus shall be payable in cash immediately upon the earlier of: (i) closing of any Transaction, and (ii) December 31, 2022; and (b) a transaction bonus calculated as a percentage of the net Transaction proceeds (after deduction of all costs, fees and expenses payable by the Company and in connection with such Transaction, including the fees and expenses of a receiver or other court officer and its legal counsel, and excluding any applicable sales taxes) (the “Net Proceeds”) of a Transaction in excess of \$8 million, in accordance with Table 1 in Schedule “A” attached hereto. The transaction bonus shall only be payable on the cash portion of the Net Proceeds received, including the principal amount of any indebtedness of the Company assumed or paid by the purchaser, and including any cash received from earnouts or holdbacks (the “Net Cash Proceeds”), but shall not be paid on any equity portion of the purchase price. Notwithstanding anything to the contrary herein, in the event that the Net Cash Proceeds received at closing of a Transaction is less than \$8 million, the transaction bonus payable on any such portion of the Net Cash Proceeds received below \$8 million shall be calculated and payable in accordance with Table 2. For greater certainty, any Net Cash Proceeds received in excess of \$8 million shall be calculated and payable in accordance with Table 1. Any transaction bonus payable in accordance with Schedule A shall be deemed earned by you upon receipt of Net Cash Proceeds and shall be

paid to you in cash. The retention bonus and transaction bonus payments are inclusive of applicable vacation pay.

As security for the obligations of the Company to make the bonus payments set out herein, in the event the Company voluntarily commences insolvency proceedings with the consent of TD or in the event that TD commences insolvency proceedings, the Company will request that the supervising court approve the bonuses contemplated herein and establish a charge upon the property of the Company.

In order to receive the incentive bonuses described above, (a) you must not have disclosed these arrangements to any person other than your personal representatives and legal advisors (other than any disclosure required by law), and (b) at the time such payments are earned, you cannot have (i) resigned, (ii) been terminated with cause, or (iii) have failed to perform your duties and responsibilities diligently, faithfully and honestly.

The incentive payments are to be paid in place of, and not in addition to, any success fee, bonus or other payment to which you may be entitled under your compensation arrangements with the Company that relate, in any way, to the completion of a restructuring or other transaction involving the Company, its balance sheet or its property. Upon receipt of the incentive payments in accordance with the terms hereof, you agree to the compromise and release of any and all claims that you may have against the Company, its officers, directors, employees, agents and representatives in respect of all such success fees, bonuses or other payments.

You agree that, conditional upon and following the payment of the retention bonus and transaction bonus, the Company may terminate your employment without cause by providing you with only your minimum entitlements under the *Employment Standards Act, 2000* (the "ESA"). No other notice (including common law notice), pay in lieu of notice, benefit continuation (including without limitation participation in any other incentive compensation, group health and dental and retirement savings plans) or severance entitlements will apply. For absolute clarity, in no event will you be entitled to receive less notice, pay in lieu of notice, severance pay, benefit coverage, or any other entitlement than is required by the ESA and this Agreement. This paragraph shall apply regardless of any changes to the terms and conditions of your employment subsequent to your signing of this Agreement including, but not limited to, promotions and transfers, unless you and the Company expressly agree otherwise in writing.

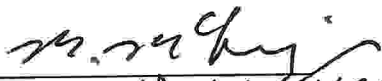
This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

This Agreement may be executed in original or pdf file copy or by other electronic means in one or more counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument.

This Agreement constitutes the entire agreement between the parties hereto and supersedes any prior agreements, undertakings, declarations, representations and understandings, both written and verbal, in respect of the subject matter hereof.

Yours truly,

**KIVUTO SOLUTIONS INC.**

By:   
Name: MARK MCKENZIE  
Title: C.E.O.

The foregoing is accepted and agreed to this 29 day of August, 2022:

**SHANE AULENBACK**

By: 

Title: VP Engineering & Product Management

**Each of the Company's senior secured lenders hereby accept and agree to the terms and conditions set forth above and in the attached Schedule and agree to permit the payment of the bonus amounts set out herein:**

**THE TORONTO-DOMINION BANK**

By:   
Name: Michael Vos  
Title: Vice President Financial Restructuring Group

**BDC CAPITAL INC.**

By: \_\_\_\_\_  
Name:  
Title:



**SCHEDULE "A"**

**Summary Retention Bonus & Transaction Bonus**

Retention Bonus \$ 275,000

**Transaction Bonus**

**Table 1 - Total Cumulative Net Cash Proceeds Received**

	Tier 1	Tier 2	Tier 3	Tier 4	Tier 5
From	\$ -	\$ 8,000,000	\$ 10,000,000	\$ 20,000,000	\$ 22,500,000
Up to	\$ 8,000,000	\$ 10,000,000	\$ 20,000,000	\$ 22,500,000	no limit
Transaction Bonus Rate (% applied to incremental Net Cash Proceeds in each tier) - Group Level	5.25%	5.25%	6.00%	10.00%	15.00%

**Notes:**

- [1] Tier 1 Transaction Bonus only payable if Net Cash Proceeds received exceeds \$8 million, except as described in note 3(c) and Table 2 below.
- [2] 'Individual Level' transaction bonus rate is a percentage of the 'Group Level' transaction bonus rate and not in addition to the 'Group Level' transaction bonus rate.

Max Transaction Bonus (\$) Achievable in Each Tier	\$ 420,000	\$ 105,000	\$ 600,000	\$ 250,000	\$ 250,000 -
Cumulative Transaction Bonus Assuming Tier Max Reached		\$ 525,000	\$ 1,325,000	\$ 1,575,000	\$ 1,575,000 +

**Notes re: Earnouts & Holdbacks and Table 2 below:**

- [3] Notwithstanding it was made clear in note 17) in the finalized bonus model shared with management dd. Jun.17.22 (and prior models) that this transaction bonus assumed the sale was all cash at closing, the Lenders are willing:
  - (a) To permit the payment of Transaction Bonuses on earnouts and holdbacks, however, these will only be earned and paid if/once the cash associated with the earnouts/holdbacks is received by the lenders;
  - (b) As cash proceeds from earnouts/holdbacks are received, incremental fees and costs incurred to each payment receipt date shall be deducted in calculating the Net Cash Proceeds of each payment to determine the incremental amount of the Transaction Bonus payable on such earnouts/holdbacks; and,
  - (c) On an exception basis and notwithstanding the previously established minimum floor for the Transaction of \$8 million, coupled with the lenders' requirement for all cash at closing (see Note 3 preamble above), in the event the Net Cash Proceeds received at closing from a sale transaction (i.e. excluding future earnouts and holdbacks) is less than \$8 million, management will be entitled to a portion of the 5.25% Transaction Bonus in accordance with the percentages outlined in Table 2.
- [4] For absolute clarity, the entitlement to a portion of the 5.25% Transaction Bonus in accordance with the percentages outlined in Table 2 shall be available on a "graduating" basis. As total Net Cash Proceeds received as the result of earnouts/holdbacks accumulates, management will "graduate" from Tier A to Tier B to Tier C (and so on) with the result being that management will become entitled to 100% of the 5.25% Transaction Bonus if and when Net Cash Proceeds received reaches \$8 million.

**Table 2 - Total Net Cash Proceeds Received at Close**

	Tier A	Tier B	Tier C	Tier D	Tier E
From	\$ -	\$ 5,000,000	\$ 5,750,000	\$ 6,500,000	\$ 7,250,000
Up to	\$ 5,000,000	\$ 5,750,000	\$ 6,500,000	\$ 7,250,000	\$ 7,999,999
Payable Portion/Percentage of the 5.25% Transaction Bonus on Net Cash Proceeds at Close	0.00%	50.00%	60.00%	70.00%	90.00%

**Illustrations**

Net Cash Proceeds Received	\$ 5,500,000	\$ 6,000,000	\$ 6,750,000	\$ 7,500,000	\$ 8,000,000
Transaction Bonus Rate (%)	5.25%	5.25%	5.25%	5.25%	5.25%
Payable Portion of 5.25% Transaction Bonus, based on applicable Tier Level (%)	50.00%	60.00%	70.00%	90.00%	100.00%
Group Level Transaction Bonus Payable (\$)	\$ 144,375	\$ 189,000	\$ 248,063	\$ 354,375	\$ 420,000

**Shane Aulenback, VP Engineering & Product Management**

Retention Bonus \$ 13,750

**Transaction Bonus**

**Total Cumulative Net Cash Transaction Proceeds Received**

	*Tier 1	Tier 2	Tier 3	Tier 4	Tier 5
From	\$ -	\$ 8,000,000	\$ 10,000,000	\$ 20,000,000	\$ 22,500,000
Up to	\$ 8,000,000	\$ 10,000,000	\$ 20,000,000	\$ 22,500,000	no limit
Transaction Bonus Rate (% applied to incremental Net Cash Proceeds in each tier) - Group Level	5.25%	5.25%	8.00%	10.00%	15.00%
Transaction Bonus Rate (% of Group Level rate) - Individual Level	5.00%	5.00%	5.00%	5.00%	5.00%

**Notes:**

- [1] Tier 1 Transaction Bonus only payable if transaction Net Cash Proceeds received exceeds \$8 million.
- [2] 'Individual Level' transaction bonus rate is a percentage of the 'Group Level' transaction bonus rate and not in addition to the 'Group Level' transaction bonus rate.

**STRICTLY PRIVATE AND CONFIDENTIAL****By Email**

August 2, 2022

Attention: Carly Virtue  
495 Richmond Road  
Suite 100  
Ottawa ON K2A 4B2

Dear Ms. Virtue;

**RE: Retention Bonus**

As Kivuto Solutions Inc. (the “**Company**”) enters this challenging period of its operations, the Company would like to assure you that your contributions continue to be valued. We truly appreciate your continued hard work and importance to the Company as Senior Director, Finance, particularly at this time. As you know, the Company has retained Origin Merchant Partners to act as its financial advisor in connection with a sale and investment solicitation process to identify parties that are interested in acquiring or making an investment in the Company (a “**Transaction**”). It is possible that completion of a Transaction resulting from that process will require commencement by the Company, or by the Company's lender, The Toronto-Dominion Bank, of an insolvency proceeding.

In consideration of your ongoing loyalty to the Company, the Company is offering you a \$25,000 cash retention bonus in addition to your regular salary which shall be payable to you in cash upon the earlier of: (a) the execution by the Company of an agreement of purchase and sale in respect of a Transaction (or such other agreement as may be required to implement a Transaction), or (ii) the commencement by the Company, or by the Company's lender, The Toronto-Dominion Bank, of an insolvency proceeding. The retention bonus payment is inclusive of applicable vacation pay.

In order to receive the retention bonus described above, (a) you must not have disclosed these arrangements to any person other than your personal representatives and legal advisors (other than any disclosure required by law), and (b) at the time such payments are earned, you cannot have (i) resigned, (ii) been terminated with cause, or (iii) have failed to perform your duties and responsibilities diligently, faithfully and honestly.



This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

This Agreement may be executed in original or pdf file copy or by other electronic means in one or more counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument.

This Agreement constitutes the entire agreement between the parties hereto and supersedes any prior agreements, undertakings, declarations, representations and understandings, both written and verbal, in respect of the subject matter hereof.

Yours truly,

**KIVUTO SOLUTIONS INC.**

DocuSigned by:  
*Sarah Foottit*  
By: 2D10CDC059D44E5...

Name: Sarah Foottit

Title: CFO

The foregoing is accepted and agreed to this 3 day of August, 2022:

**Carly Virtue**

DocuSigned by:  
*Carly Virtue*  
By: 6047C06C11C03104

Title: Senior Director, Finance

**STRICTLY PRIVATE AND CONFIDENTIAL****By Email**

August 2, 2022

Attention: Don Lord  
495 Richmond Road  
Suite 100  
Ottawa ON K2A 4B2

Dear Mr. Lord;

**RE: Retention Bonus**

As Kivuto Solutions Inc. (the “**Company**”) enters this challenging period of its operations, the Company would like to assure you that your contributions continue to be valued. We truly appreciate your continued hard work and importance to the Company as Lead Software Architect, particularly at this time. As you know, the Company has retained Origin Merchant Partners to act as its financial advisor in connection with a sale and investment solicitation process to identify parties that are interested in acquiring or making an investment in the Company (a “**Transaction**”). It is possible that completion of a Transaction resulting from that process will require commencement by the Company, or by the Company's lender, The Toronto-Dominion Bank, of an insolvency proceeding.

In consideration of your ongoing loyalty to the Company, the Company is offering you a \$15,000 cash retention bonus in addition to your regular salary which shall be payable to you in cash upon the earlier of: (a) the execution by the Company of an agreement of purchase and sale in respect of a Transaction (or such other agreement as may be required to implement a Transaction), or (ii) the commencement by the Company, or by the Company's lender, The Toronto-Dominion Bank, of an insolvency proceeding. The retention bonus payment is inclusive of applicable vacation pay.

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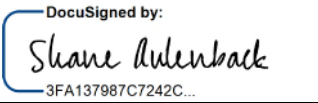
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Yours truly,

**KIVUTO SOLUTIONS INC.**

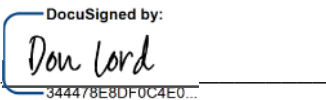
By:    
3FA137987C7242C...

Name: Shane Aulenback

Title: VP Engineering and Product Management

The foregoing is accepted and agreed to this 18 day of August, 2022:

**Don Lord**

By:    
344478E8DF0C4E0...

Title: Lead Software Architect

**STRICTLY PRIVATE AND CONFIDENTIAL****By Email**

August 2, 2022

Attention: Martina Koelzer  
495 Richmond Road  
Suite 100  
Ottawa ON K2A 4B2

Dear Ms. Koelzer;

**RE: Retention Bonus**

As Kivuto Solutions Inc. (the “**Company**”) enters this challenging period of its operations, the Company would like to assure you that your contributions continue to be valued. We truly appreciate your continued hard work and importance to the Company as Lead BI Developer/Analyst, particularly at this time. As you know, the Company has retained Origin Merchant Partners to act as its financial advisor in connection with a sale and investment solicitation process to identify parties that are interested in acquiring or making an investment in the Company (a “**Transaction**”). It is possible that completion of a Transaction resulting from that process will require commencement by the Company, or by the Company's lender, The Toronto-Dominion Bank, of an insolvency proceeding.

In consideration of your ongoing loyalty to the Company, the Company is offering you a \$10,000 cash retention bonus in addition to your regular salary which shall be payable to you in cash upon the earlier of: (a) the execution by the Company of an agreement of purchase and sale in respect of a Transaction (or such other agreement as may be required to implement a Transaction), or (ii) the commencement by the Company, or by the Company's lender, The Toronto-Dominion Bank, of an insolvency proceeding. The retention bonus payment is inclusive of applicable vacation pay.

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Yours truly,

**KIVUTO SOLUTIONS INC.**

DocuSigned by:  
*Shane Aulenback*  
By: 3FA137987C7242C...

Name: Shane Aulenback

Title: VP Engineering and Product Management

The foregoing is accepted and agreed to this 23 day of August, 2022:

**Martina Koelzer**

DocuSigned by:  
*Martina Koelzer*  
By: 4F9F0B533F7E4E3...

Title: Lead BI Developer/Analyst

**STRICTLY PRIVATE AND CONFIDENTIAL****By Email**

August 2, 2022

Attention: David Law  
495 Richmond Road  
Suite 100  
Ottawa ON K2A 4B2

Dear Mr. Law;

**RE: Retention Bonus**

As Kivuto Solutions Inc. (the “**Company**”) enters this challenging period of its operations, the Company would like to assure you that your contributions continue to be valued. We truly appreciate your continued hard work and importance to the Company as Director, IT, particularly at this time. As you know, the Company has retained Origin Merchant Partners to act as its financial advisor in connection with a sale and investment solicitation process to identify parties that are interested in acquiring or making an investment in the Company (a “**Transaction**”). It is possible that completion of a Transaction resulting from that process will require commencement by the Company, or by the Company's lender, The Toronto-Dominion Bank, of an insolvency proceeding.

In consideration of your ongoing loyalty to the Company, the Company is offering you a \$15,000 cash retention bonus in addition to your regular salary which shall be payable to you in cash upon the earlier of: (a) the execution by the Company of an agreement of purchase and sale in respect of a Transaction (or such other agreement as may be required to implement a Transaction), or (ii) the commencement by the Company, or by the Company's lender, The Toronto-Dominion Bank, of an insolvency proceeding. The retention bonus payment is inclusive of applicable vacation pay.

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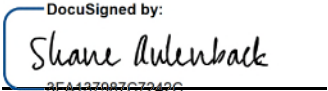
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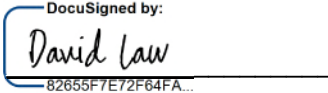
Yours truly,

**KIVUTO SOLUTIONS INC.**

By:   
Name: Shane Aulenback  
Title: VP Engineering and Product Management

The foregoing is accepted and agreed to this 5 day of August, 2022:

**David Law**

By: 

Title: Director, IT

**STRICTLY PRIVATE AND CONFIDENTIAL****By Email**

August 2, 2022

Attention: Florian Landsberger  
495 Richmond Road  
Suite 100  
Ottawa ON K2A 4B2

Dear Mr. Landsberger;

**RE: Retention Bonus**

As Kivuto Solutions Inc. (the “**Company**”) enters this challenging period of its operations, the Company would like to assure you that your contributions continue to be valued. We truly appreciate your continued hard work and importance to the Company as Director, Client Success, particularly at this time. As you know, the Company has retained Origin Merchant Partners to act as its financial advisor in connection with a sale and investment solicitation process to identify parties that are interested in acquiring or making an investment in the Company (a “**Transaction**”). It is possible that completion of a Transaction resulting from that process will require commencement by the Company, or by the Company's lender, The Toronto-Dominion Bank, of an insolvency proceeding.

In consideration of your ongoing loyalty to the Company, the Company is offering you a \$25,000 cash retention bonus in addition to your regular salary which shall be payable to you in cash upon the earlier of: (a) the execution by the Company of an agreement of purchase and sale in respect of a Transaction (or such other agreement as may be required to implement a Transaction), or (ii) the commencement by the Company, or by the Company's lender, The Toronto-Dominion Bank, of an insolvency proceeding. The retention bonus payment is inclusive of applicable vacation pay.

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Yours truly,

**KIVUTO SOLUTIONS INC.**

DocuSigned by:  
*Mark McKenzie*  
By: 128304E705D34B9  
Name: Mark McKenzie  
Title: CEO

**The foregoing is accepted and agreed to this \_\_\_\_\_ day of August, 2022:**

**Florian Landsberger**

DocuSigned by:  
*Florian Landsberger*  
By: E6EE5365A3AF4B8...

Title: Director, Client Success

**STRICTLY PRIVATE AND CONFIDENTIAL****By Email**

August 2, 2022

Attention: Yolanda Matos  
495 Richmond Road  
Suite 100  
Ottawa ON K2A 4B2

Dear Ms. Matos;

**RE: Retention Bonus**

As Kivuto Solutions Inc. (the “**Company**”) enters this challenging period of its operations, the Company would like to assure you that your contributions continue to be valued. We truly appreciate your continued hard work and importance to the Company as Account Manager, particularly at this time. As you know, the Company has retained Origin Merchant Partners to act as its financial advisor in connection with a sale and investment solicitation process to identify parties that are interested in acquiring or making an investment in the Company (a “**Transaction**”). It is possible that completion of a Transaction resulting from that process will require commencement by the Company, or by the Company's lender, The Toronto-Dominion Bank, of an insolvency proceeding.

In consideration of your ongoing loyalty to the Company, the Company is offering you a \$10,000 cash retention bonus in addition to your regular salary which shall be payable to you in cash upon the earlier of: (a) the execution by the Company of an agreement of purchase and sale in respect of a Transaction (or such other agreement as may be required to implement a Transaction), or (ii) the commencement by the Company, or by the Company's lender, The Toronto-Dominion Bank, of an insolvency proceeding. The retention bonus payment is inclusive of applicable vacation pay.

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Yours truly,

**KIVUTO SOLUTIONS INC.**

By: DocuSigned by:  
Costa Constantakis  
9F3D403000294951...  
Name: Costa Constantakis  
Title: VP, Sales & Marketing

**The foregoing is accepted and agreed to this \_\_\_\_\_ day of August, 2022:** August 4, 2022

**Yolanda Matos**

By: DocuSigned by:  
Yolanda Matos  
8A5D897CA5022406...  
Title: Account Manager

**STRICTLY PRIVATE AND CONFIDENTIAL****By Email**

August 2, 2022

Attention: Mark Tsang  
495 Richmond Road  
Suite 100  
Ottawa ON K2A 4B2

Dear Mr. Tsang;

**RE: Retention Bonus**

As Kivuto Solutions Inc. (the “**Company**”) enters this challenging period of its operations, the Company would like to assure you that your contributions continue to be valued. We truly appreciate your continued hard work and importance to the Company as Sales Engineer, particularly at this time. As you know, the Company has retained Origin Merchant Partners to act as its financial advisor in connection with a sale and investment solicitation process to identify parties that are interested in acquiring or making an investment in the Company (a “**Transaction**”). It is possible that completion of a Transaction resulting from that process will require commencement by the Company, or by the Company's lender, The Toronto-Dominion Bank, of an insolvency proceeding.

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Yours truly,

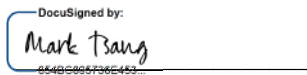
**KIVUTO SOLUTIONS INC.**

By:   
Name: Costa Constantakis  
Title: VP, Sales & Marketing

August 4, 2022

**The foregoing is accepted and agreed to this \_\_\_\_\_ day of August, 2022:**

**Mark Tsang**

By: 

Title: Sales Engineer



**STRICTLY PRIVATE AND CONFIDENTIAL**

**By Email**

August 2, 2022

Attention: Ken Tsang  
495 Richmond Road  
Suite 100  
Ottawa ON K2A 4B2

Dear Mr. Tsang;

**RE: Retention Bonus**

As Kivuto Solutions Inc. (the “**Company**”) enters this challenging period of its operations, the Company would like to assure you that your contributions continue to be valued. We truly appreciate your continued hard work and importance to the Company as Sales Engineer, particularly at this time. As you know, the Company has retained Origin Merchant Partners to act as its financial advisor in connection with a sale and investment solicitation process to identify parties that are interested in acquiring or making an investment in the Company (a “**Transaction**”). It is possible that completion of a Transaction resulting from that process will require commencement by the Company, or by the Company's lender, The Toronto-Dominion Bank, of an insolvency proceeding.

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Yours truly,

**KIVUTO SOLUTIONS INC.**

DocuSigned by:  
*Mark McKenzie*  
128304F705D34B9...  
By: \_\_\_\_\_  
Name: Mark McKenzie  
Title: CEO

The foregoing is accepted and agreed to this 18 day of August, 2022:

**Ken Tsang**

By: *K-Tsang*  
Title: Program Coordinator

**STRICTLY PRIVATE AND CONFIDENTIAL****By Email**

August 2, 2022

Attention: Jack Taing  
495 Richmond Road  
Suite 100  
Ottawa ON K2A 4B2

Dear Mr. Taing;

**RE: Retention Bonus**

As Kivuto Solutions Inc. (the “**Company**”) enters this challenging period of its operations, the Company would like to assure you that your contributions continue to be valued. We truly appreciate your continued hard work and importance to the Company as Team Lead, Product Support, particularly at this time. As you know, the Company has retained Origin Merchant Partners to act as its financial advisor in connection with a sale and investment solicitation process to identify parties that are interested in acquiring or making an investment in the Company (a “**Transaction**”). It is possible that completion of a Transaction resulting from that process will require commencement by the Company, or by the Company's lender, The Toronto-Dominion Bank, of an insolvency proceeding.

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Yours truly,

**KIVUTO SOLUTIONS INC.**

DocuSigned by:  
*Mark McKenzie*  
By: 128304E705D34B9  
Name: Mark McKenzie  
Title: CEO

The foregoing is accepted and agreed to this 25<sup>th</sup> day of August, 2022:

**Jack Taing**

DocuSigned by:  
*Jack Taing*  
By: 6C865C86320E140

Title: Team Lead, Product Support

**SCHEDULE "C"**

**Copies of Default Letters**

See attached



Financial Restructuring Group  
66 Wellington Street West, 12<sup>th</sup> Floor  
Toronto, Ontario, M5K 1A2  
Telephone No.: 416-308-3913  
Fax No.: 416-982-7710

September 21, 2022

KIVUTO SOLUTIONS INC.  
495 Richmond Rd, Suite 100  
Ottawa, Ontario  
K2A 4B2

Attention: Mr. Mark McKenzie

Dear Mr. McKenzie,

We refer to the Letter Agreement dated March 1, 2018 (the "Agreement"), as amended from time to time, signed by you in relation to the credit facilities (the "Facilities") granted to you by the Bank.

Under the Agreement, you are obligated to comply with the following (the "Obligations"):

**i. "EBITDA Variance to Financial Projections**

Maintain a negative variance of Financial Projections to EBITDA of no more than \$400,000, to be tested on a trailing twelve-month basis.

For the purpose of calculating the variance of Financial Projections to EBITDA, to the extent that wage subsidies or any other Covid-19 government related funding are received by the Borrower, and any one-time or deferred transaction fees are incurred by the Borrower, both of which have otherwise not been modeled into the Financial Projections reviewed by the Lender, such receipts and expenditures will be deducted or added back to EBITDA, accordingly."

***The above financial covenant is in default for the month of August 2022, as the actual negative variance of Financial Projections to EBITDA was greater than \$400,000, at \$2,445,312.***

You are in default of the Obligations. The Bank does not waive compliance with Obligation (i) above. Please be advised that the Bank preserves all rights and remedies under any and all agreements and security provided in connection with the Facility. If you fail to rectify the default to the complete satisfaction of the Bank, the Bank will exercise any or all rights and remedies under such agreements and security, and/or such rights and remedies as may otherwise be available to it at law.

If you have any queries or comments, please do not hesitate to contact the writer.

Yours truly,

**THE TORONTO-DOMINION BANK**

Andrea Jamnisek, Director  
Financial Restructuring Group

Zaria Haider, Senior Analyst  
Financial Restructuring Group



Financial Restructuring Group  
66 Wellington Street West, 12<sup>th</sup> Floor  
Toronto, Ontario, M5K 1A2  
Telephone No.: 416-308-3913  
Fax No.: 416-982-7710

September 2, 2022

KIVUTO SOLUTIONS INC.  
495 Richmond Rd, Suite 100  
Ottawa, Ontario  
K2A 4B2

Attention: Mr. Mark McKenzie

Dear Mr. McKenzie,

We refer to the Letter Agreement dated March 1, 2018 (the "Agreement"), as amended from time to time, signed by you in relation to the credit facilities (the "Facilities") granted to you by the Bank.

Under the Agreement, you are obligated to comply with the following (the "Obligations"):

**i. "EBITDA Variance to Financial Projections**

Maintain a negative variance of Financial Projections to EBITDA of no more than \$400,000, to be tested on a trailing twelve-month basis.

For the purpose of calculating the variance of Financial Projections to EBITDA, to the extent that wage subsidies or any other Covid-19 government related funding are received by the Borrower, and any one-time or deferred transaction fees are incurred by the Borrower, both of which have otherwise not been modeled into the Financial Projections reviewed by the Lender, such receipts and expenditures will be deducted or added back to EBITDA, accordingly."

***The above financial covenant is in default for the month of July 2022, as the actual negative variance of Financial Projections to EBITDA was greater than \$400,000, at \$1,970,824.***

You are in default of the Obligations. The Bank does not waive compliance with Obligation (i) above. Please be advised that the Bank preserves all rights and remedies under any and all agreements and security provided in connection with the Facility. If you fail to rectify the default to the complete satisfaction of the Bank, the Bank will exercise any or all rights and remedies under such agreements and security, and/or such rights and remedies as may otherwise be available to it at law.

If you have any queries or comments, please do not hesitate to contact the writer.

Yours truly,

**THE TORONTO-DOMINION BANK**

Andrea Jamnisek, Director  
Financial Restructuring Group

Zaria Haider, Senior Analyst  
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Financial Restructuring Group  
66 Wellington Street West, 12<sup>th</sup> Floor  
Toronto, Ontario, M5K 1A2  
Telephone No.: 416-308-3913  
Fax No.: 416-982-7710

July 27, 2022

KIVUTO SOLUTIONS INC.  
495 Richmond Rd, Suite 100  
Ottawa, Ontario  
K2A 4B2

Attention: Mr. Mark McKenzie

Dear Mr. McKenzie,

We refer to the Letter Agreement dated March 1, 2018 (the "Agreement"), as amended from time to time, signed by you in relation to the credit facilities (the "Facilities") granted to you by the Bank.

Under the Agreement, you are obligated to comply with the following (the "Obligations"):

**i. "EBITDA Variance to Financial Projections**

Maintain a negative variance of Financial Projections to EBITDA of no more than \$400,000, to be tested on a trailing twelve-month basis.

For the purpose of calculating the variance of Financial Projections to EBITDA, to the extent that wage subsidies or any other Covid-19 government related funding are received by the Borrower, and any one-time or deferred transaction fees are incurred by the Borrower, both of which have otherwise not been modeled into the Financial Projections reviewed by the Lender, such receipts and expenditures will be deducted or added back to EBITDA, accordingly."

***The above financial covenant is in default for the month of June 2022, as the actual negative variance of Financial Projections to EBITDA was greater than \$400,000, at \$2,035,318.***

You are in default of the Obligations. The Bank does not waive compliance with Obligation (i) above. Please be advised that the Bank preserves all rights and remedies under any and all agreements and security provided in connection with the Facility. If you fail to rectify the default to the complete satisfaction of the Bank, the Bank will exercise any or all rights and remedies under such agreements and security, and/or such rights and remedies as may otherwise be available to it at law.

If you have any queries or comments, please do not hesitate to contact the writer.

Yours truly,

**THE TORONTO-DOMINION BANK**

Andrea Jamnisek, Director  
Financial Restructuring Group

Zaria Haider, Senior Analyst  
Financial Restructuring Group



Financial Restructuring Group  
66 Wellington Street West, 12<sup>th</sup> Floor  
Toronto, Ontario, M5K 1A2  
Telephone No.: 416-308-3913  
Fax No.: 416-982-7710

July 04, 2022

KIVUTO SOLUTIONS INC.  
495 Richmond Rd, Suite 100  
Ottawa, Ontario  
K2A 4B2

Attention: Mr. Mark McKenzie

Dear Mr. McKenzie,

We refer to the Letter Agreement dated March 1, 2018 (the "Agreement"), as amended from time to time, signed by you in relation to the credit facilities (the "Facilities") granted to you by the Bank.

Under the Agreement, you are obligated to comply with the following (the "Obligations"):

**i. "EBITDA Variance to Financial Projections**

Maintain a negative variance of Financial Projections to EBITDA of no more than \$400,000, to be tested on a trailing twelve-month basis.

For the purpose of calculating the variance of Financial Projections to EBITDA, to the extent that wage subsidies or any other Covid-19 government related funding are received by the Borrower, and any one-time or deferred transaction fees are incurred by the Borrower, both of which have otherwise not been modeled into the Financial Projections reviewed by the Lender, such receipts and expenditures will be deducted or added back to EBITDA, accordingly."

***The above financial covenant is in default for the month of May 2022, as the actual negative variance of Financial Projections to EBITDA was greater than \$400,000, at \$1,796,516.***

You are in default of the Obligations. The Bank does not waive compliance with Obligation (i) above. Please be advised that the Bank preserves all rights and remedies under any and all agreements and security provided in connection with the Facility. If you fail to rectify the default to the complete satisfaction of the Bank, the Bank will exercise any or all rights and remedies under such agreements and security, and/or such rights and remedies as may otherwise be available to it at law.

If you have any queries or comments, please do not hesitate to contact the writer.

Yours truly,

**THE TORONTO-DOMINION BANK**

Andrea Jamnisek, Director  
Financial Restructuring Group

Zaria Haider, Senior Analyst  
Financial Restructuring Group





Financial Restructuring Group  
66 Wellington Street West, 12<sup>th</sup> Floor  
Toronto, Ontario, M5K 1A2  
Telephone No.: 416-308-3913  
Fax No.: 416-982-7710

June 06, 2022

KIVUTO SOLUTIONS INC.  
495 Richmond Rd, Suite 100  
Ottawa, Ontario  
K2A 4B2

Attention: Mr. Mark McKenzie

Dear Mr. McKenzie,

We refer to the Letter Agreement dated March 1, 2018 (the "Agreement"), as amended from time to time, signed by you in relation to the credit facilities (the "Facilities") granted to you by the Bank.

Under the Agreement, you are obligated to comply with the following (the "Obligations"):

**i. "EBITDA Variance to Financial Projections**

Maintain a negative variance of Financial Projections to EBITDA of no more than \$400,000, to be tested on a trailing twelve-month basis.

For the purpose of calculating the variance of Financial Projections to EBITDA, to the extent that wage subsidies or any other Covid-19 government related funding are received by the Borrower, and any one-time or deferred transaction fees are incurred by the Borrower, both of which have otherwise not been modeled into the Financial Projections reviewed by the Lender, such receipts and expenditures will be deducted or added back to EBITDA, accordingly."

***The above financial covenant is in default for the month of April 2022, as the actual negative variance of Financial Projections to EBITDA was greater than \$400,000, at \$1,389,893.***

You are in default of the Obligations. The Bank does not waive compliance with Obligation (i) above. Please be advised that the Bank preserves all rights and remedies under any and all agreements and security provided in connection with the Facility. If you fail to rectify the default to the complete satisfaction of the Bank, the Bank will exercise any or all rights and remedies under such agreements and security, and/or such rights and remedies as may otherwise be available to it at law.

If you have any queries or comments, please do not hesitate to contact the writer.

Yours truly,

**THE TORONTO-DOMINION BANK**

Andrea Jamnisek, Director  
Financial Restructuring Group

Zaria Haider, Senior Analyst  
Financial Restructuring Group

## SCHEDULE "D"

### Sales Tax Disclosure

**The findings summarized in this Schedule “D” are preliminary and have not yet been confirmed. Accordingly, the Borrower makes no representation or warranty regarding these findings or their accuracy, and the Lender shall not rely on these findings in any respect.**

As of June 21, 2018, the U.S. Supreme Court established a new “economic nexus” test which affirmed a state’s ability to assert taxing jurisdiction based on “economic” activities by remote sellers without physical presence (*South Dakota v. Wayfair, Inc.*). The *Wayfair* decision allows “economic nexus” standards to reach beyond the traditional physical presence tests creating collection responsibilities for sellers who surpass certain sales/transaction thresholds within the state. As of September 1, 2022, forty-six (46) state-level taxing jurisdictions, including the District of Columbia, enacted economic nexus provisions. Missouri, however, does not enforce its economic nexus provisions until January 1, 2023.

Initial assessments suggest that the Borrower may have established an economic nexus in sixteen (16) states: Alabama, Connecticut, Illinois, Indiana, Kentucky, Massachusetts, Maryland, Michigan, Minnesota, North Carolina, New Jersey, Ohio, Pennsylvania, Tennessee, Texas, and Washington. At present, the Borrower is only registered in two (2) taxing jurisdictions: Boulder, Colorado and New York State. States generally may not retroactively apply their economic nexus rules and regulations prior to the *Wayfair* decision; however, sales tax exposure would be established with physical presence before June 21, 2018, then concurrently with economic nexus standards afterward. Further analysis is required to confirm, among other things, whether the Borrower established economic nexus in any of the states listed above and, if so, when that occurred.

This is Exhibit "L" referred to in the Affidavit of Andrea Jamnisek sworn January 27, 2023.

A handwritten signature in black ink, consisting of a stylized 'L' followed by a 'J' and a long horizontal line extending to the right.

---

*Commissioner for Taking Affidavits (or as may be)*

**GENERAL SECURITY AGREEMENT**

**THIS GENERAL SECURITY AGREEMENT** (as amended, modified, supplemented, restated or replaced from time to time, this "**Agreement**"), dated as of March 1, 2018, made by **KIVUTO SOLUTIONS INC.**, a corporation existing under the federal laws of Canada (together with any successors, by amalgamation or otherwise, and permitted assigns, the "**Obligor**"), in favour of **THE TORONTO-DOMINION BANK**, as lender (the "**Lender**") under the Credit Agreement (as defined below).

**WITNESSETH:**

**WHEREAS** pursuant to a credit agreement dated as of March 1, 2018 (together with all amendments, modifications, supplements, restatements or replacements, if any, from time to time thereafter made thereto, the "**Credit Agreement**"), between the Lender and 10600598 Canada Inc. (the "**Borrower**"), the Lender has extended commitments to make loans and credit facilities (the "**Facilities**") available;

**AND WHEREAS** as a condition precedent to the making of Facilities available to the Borrower under the Credit Agreement, the Obligor is required to execute and deliver this Agreement as continuing collateral security to secure the performance of the Obligations (as defined below);

**AND WHEREAS** the Obligor has duly authorized the execution, delivery and performance of this Agreement;

**NOW THEREFORE** for good and valuable consideration, the receipt of which is hereby acknowledged, and in order to induce the Lender to make the loans and advances to the Obligor pursuant to the Credit Agreement, the Obligor agrees with the Lender, as follows:

1. As general and continuing security for the payment and performance of the Obligations the Obligor grants, assigns, transfers, sets over, grants a security interest in, mortgages and charges to the Lender, as and by way of a fixed and specific mortgage, charge and security interest in, all of the present and after acquired personal property and all of the present and future assets, property (both real and personal) and undertaking of the Obligor and in all right, title and interest which the Obligor now has or may hereafter have in all of its assets, property and undertaking, including without limitation, all present and after acquired assets, property and undertaking of the kinds hereinafter described (collectively, the "**Collateral**"):

- (a) all goods comprising the inventory of the Obligor, including but not limited to goods held for sale or lease or furnished or to be furnished under a contract of service or that are raw materials, work in progress or materials used or consumed in a business or profession or finished goods, including, without limitation, "inventory" as defined in the PPSA (hereinafter sometimes collectively referred to as "**Inventory**");
- (b) all goods which are not inventory or consumer goods, including but not limited to furniture, fixtures, equipment, machinery, plant, tools, vehicles and other tangible

personal property, including, without limitation, "equipment" as defined in the PPSA (hereinafter sometimes collectively referred to as "**Equipment**");

- (c) all Computer Hardware and Software Collateral (as defined below);
- (d) all accounts, debts, demands and choses in action which are now due, owing or accruing due or which may hereafter become due, owing or accruing due to the Obligor and all claims of any kind which the Obligor now has or may hereafter have, including but not limited to claims against the Crown and claims under insurance policies (hereinafter sometimes collectively referred to together with intangibles and the Collateral described in paragraphs 1(f) and (n) as "**Receivables**");
- (e) all Intellectual Property Collateral (as defined below);
- (f) all chattel paper;
- (g) all warehouse receipts, bills of lading and other documents of title, whether negotiable or not;
- (h) all instruments, shares, stock, warrants, bonds, debentures, debenture stock or other securities;
- (i) all financial assets;
- (j) all securities entitlements;
- (k) all investment property;
- (l) all securities accounts in the name of the Obligor, including any and all assets of whatever type or kind deposited in or credited to such securities accounts, including all financial assets, all security entitlements related to such financial assets, and all certificates and other instruments from time to time representing or evidencing the same, and all dividends, interest, distributions, cash and other property from time to time received or receivable upon or otherwise distributed or distributable in respect of or in exchange for any or all of the foregoing;
- (m) all rights, contracts (including, without limitation, rights and interests arising thereunder or subject thereto), instruments, agreements, licences, permits, consents, leases, policies, approvals, development agreements, building contracts, performance bonds, purchase orders, plans and specifications all of which may or may not be personal property but may be rights in which the Obligor has interests, all as may be amended, modified, supplemented, replaced or restated from time to time;
- (n) all rents, present or future, under any lease or agreement to lease any part of the lands of the Obligor or any building, erection, structure or facility now or

hereafter constructed or located on such lands, income derived from any tenancy, use or occupation thereof and any other income and profit derived therefrom;

- (o) all intangibles, including but not limited to all money, cheques, deposit accounts, letters of credit, advances of credit and goodwill;
- (p) with respect to the property described in paragraphs 1(a) to (o) inclusive, all books, accounts, invoices, letters, papers, documents and other records in any form evidencing or relating thereto and all contracts, securities, instruments and other rights and benefits in respect thereof;
- (q) with respect to the property described in paragraphs 1(a) to (p) inclusive, all substitutions and replacements thereof and increases, additions and accessions thereto; and
- (r) with respect to the property described in paragraphs 1(a) to (q) inclusive, all proceeds therefrom including personal property in any form or fixtures derived directly or indirectly from any dealing with such property or proceeds therefrom and any insurance or other payment as indemnity or compensation for loss of or damage to such property or any right to such payment, and any payment made in total or partial discharge or redemption of an intangible, chattel paper, instrument or security;

provided, however, the security interest created shall not charge, encumber, create a lien upon or otherwise mortgage any consumer goods which the Obligor may own. In this Agreement, the words "accessions", "account", "chattel paper", "consumer goods", "document of title", "equipment", "goods", "instrument", "intangible", "inventory" and "proceeds" shall have the same meanings as their defined meanings in the *Personal Property Security Act* of the Province of Ontario, as amended, re-enacted or replaced from time to time (the "**PPSA**"), and the terms "certificated security", "entitlement holder", "entitlement order", "financial asset", "security", "securities account", "security entitlement", "security intermediary" and "uncertificated security" whenever used herein have the meanings given to these terms in the *Securities Transfer Act, 2006* (Ontario) (the "**STA**") as amended, re-enacted or replaced from time to time.

The said mortgage, charge and security interest shall not extend or apply to:

- (i) the last day of the term of any lease or any agreement therefor now held or hereafter acquired by the Obligor, but should such mortgage, charge and security interest become enforceable, the Obligor shall thereafter stand possessed of such last day and shall hold it in trust to assign the same to any Person acquiring such term or the part thereof mortgaged and charged in the course of any enforcement of the said mortgage, charge and security or any realization of the subject matter thereof; or
- (ii) any present or after-acquired agreement, right, franchise, licence or permit (for the purpose of this paragraph, the "contractual rights") to which the Obligor is a party or of which the Obligor has the benefit to the extent that

the creation of the mortgage, charge or security therein would constitute a breach of the terms of or permit any Person to terminate any of the contractual rights or otherwise constitute a breach of or violation under any existing law, statute or regulation to which the Obligor is subject, provided that all such contractual rights will be held in trust by the Obligor for the benefit of the Lender. Notwithstanding the foregoing, the said mortgage, charge and security interest shall apply to any proceeds of the disposition of any such contractual rights and the Obligor further agrees to hold such proceeds in trust for the Lender and to keep such proceeds in a segregated account for the benefit of the Lender. In addition, the said mortgage, charge and security interest shall extend to the contractual rights upon delivery by the Lender to the Obligor of written notice to such effect following the occurrence and during the continuance of an Event of Default.

2. Unless otherwise defined herein or the context otherwise requires, capitalized terms used herein shall have the meanings provided in the Credit Agreement, and in this Agreement:

- (a) **"Agreement"** is defined in the preamble;
- (b) **"Computer Hardware and Software Collateral"** means:
  - (i) all computer and other electronic data processing hardware, integrated computer systems, central processing units, memory units, display terminals, printers, features, computer elements, card readers, tape drives, hard and soft disk drives, cables, electrical supply hardware, generators, power equalizers, accessories and all peripheral devices and other related computer hardware;
  - (ii) all software programs (including both source code, object code and all related applications and data files), whether now owned, licenced or leased or hereafter acquired by the Obligor, designed for use on the computers and electronic data processing hardware described in clause (i) above;
  - (iii) all firmware associated therewith;
  - (iv) all documentation (including flow charts, logic diagrams, manuals, guides and specifications) with respect to such hardware, software and firmware described in the preceding clauses (i) through (iii); and
  - (v) all rights with respect to all of the foregoing, including, without limitation, any and all intellectual property rights, copyrights, leases, licences, options, warranties, service contracts, program services, test rights, maintenance rights, support rights, improvement rights, renewal rights and indemnifications and any substitutions, replacements, additions or model conversions of any of the foregoing;

- (c) **"Control Agreement"** means:
- (i) with respect to any uncertificated securities included in the Collateral, an agreement between the issuer of such uncertificated securities and another Person whereby such issuer agrees to comply with instructions that are originated by such Person in respect of such uncertificated securities, without the further consent of the Obligor; and
  - (ii) with respect to any security entitlements in respect of financial assets deposited in or credited to a securities account included in the Collateral, an agreement between the securities intermediary and another Person in respect of such security entitlements pursuant to which such securities intermediary agrees to comply with any entitlement orders with respect to such security entitlements that are originated by the Lender, without the further consent of the Obligor.
- (d) **"Copyright Collateral"** means:
- (i) all copyrights (including without limitation copyrights for semi-conductor chip product mask works and all integrated circuit topography) of the Obligor, whether statutory or common law, registered or unregistered, now or hereafter in force throughout the world, and all applications for registration thereof, whether pending or in preparation, and all copyrights resulting from such applications;
  - (ii) all extensions and renewals of any thereof;
  - (iii) all copyright licences and other agreements providing the Obligor with the right to use any of the items of the type referred to in clauses (i) and (ii);
  - (iv) the right to sue for past, present and future infringements of any of the Copyright Collateral referred to in clauses (i) and (ii) and, to the extent applicable, clause (iii); and
  - (v) all proceeds of the foregoing, including, without limitation, licences, royalties, income, payments, claims, damages and proceeds of suit;
- (e) **"Credit Agreement"** is defined in the first recital;
- (f) **"Intellectual Property Collateral"** means, collectively, the Copyright Collateral, the Patent Collateral, the Trademark Collateral and the Trade Secrets Collateral, and includes, without limitation, the collateral described in Schedule I attached hereto;
- (g) **"Obligations"** means all of the present and future indebtedness, liabilities and obligations of the Obligor of any and every kind, nature or description whatsoever (whether direct or indirect, joint or several or joint and several, absolute or contingent, matured or unmatured, in any currency, and whether as principal



debtor, guarantor, surety or otherwise, including without limitation any interest that accrues thereon after or would accrue thereon but for the commencement of any case, proceeding or other action, whether voluntary or involuntary, relating to the bankruptcy, insolvency or reorganization of the Obligor, whether or not allowed or allowable as a claim in any such case, proceeding or other action) to the Lender (and its Affiliates) under, in connection with, relating to or with respect to each of the Loan Documents to which it is a party, and any unpaid balance thereof;

(h) **"Patent Collateral"** means:

- (i) all letters patent and applications for letters patent throughout the world, including all patent applications in preparation for filing anywhere in the world;
- (ii) all reissues, divisions, continuations, continuations-in-part, extensions, renewals and re-examinations of any of the items described in clause (i);
- (iii) all patent licences and other agreements providing the Obligor with the right to use any of the items of the type referred to in clauses (i) and (ii);
- (iv) the right to sue third parties for past, present or future infringements of any patent or patent application, and for breach or enforcement of any patent licence; and
- (v) all proceeds of, and rights associated with, the foregoing (including licence royalties and proceeds of infringement suits), and all rights corresponding thereto throughout the world;

(i) **"Trademark Collateral"** means:

- (i) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade dress, service marks, logos, other source of business identifiers, prints and labels on which any of the foregoing have appeared or appear and designs (all of the foregoing items in this clause (i) being collectively called a **"Trademark"**), now existing anywhere in the world or hereafter adopted or acquired, whether currently in use or not, all registrations and recordings thereof and all applications in connection therewith, whether pending or in preparation for filing, including registrations, recordings and applications in the Trade-marks Branch of the Canadian Intellectual Property Office or in any office or agency of Canada or any Province thereof or any foreign country, and all reissues, extensions or renewals thereof;
- (ii) all Trademark licences and other agreements providing the Obligor with the right to use any items of the type described in clause (i), including each Trademark licence referred to in Schedule I attached hereto;

- (iii) all of the goodwill of the business connected with the use of, and symbolized by, the items described in clause (i);
  - (iv) the right to sue third parties for past, present and future infringements of any Trademark Collateral described in clauses (i) and (ii); and
  - (v) all proceeds of, and rights associated with, the foregoing, including any claim by the Obligor against third parties for past, present or future infringement or dilution of any Trademark, Trademark registration or Trademark licence, including any Trademark, Trademark registration or Trademark licence referred to in Schedule I attached hereto, or for any injury to the goodwill associated with the use of any such Trademark or for breach or enforcement of any Trademark licence and all rights corresponding thereto throughout the world;
- (j) **"Trade Secrets Collateral"** means all common law and statutory trade secrets and all other confidential or proprietary or useful information (to the extent such confidential, proprietary or useful information is protected by the Obligor against disclosure and is not readily ascertainable) and all know-how obtained by or used in or contemplated at any time for use in the business of the Obligor, including without limitation recipes and food processing know-how (all of the foregoing being collectively called a **"Trade Secret"**), whether or not such Trade Secret has been reduced to a writing or other tangible form, including all documents and things embodying, incorporating or referring in any way to such Trade Secret, all Trade Secret licences, and including the right to sue for and to enjoin and to collect damages for the actual or threatened misappropriation of any Trade Secret and for the breach or enforcement of any such Trade Secret licence.

3. The fixed and specific mortgages and charges and the security interest granted under this Agreement secure payment and performance of all Obligations.

4. In addition to the representations and warranties made by the Obligor in the Credit Agreement, the Obligor hereby represents and warrants to the Lender as at the date of this Agreement and as at the date of the acquisition by the Obligor of Collateral (including any acquisition of Collateral after the date hereof) that:

- (a) with respect to any material Intellectual Property Collateral:
  - (i) such Intellectual Property Collateral is subsisting and has not been adjudged invalid or unenforceable, in whole or in part;
  - (ii) the Obligor has made all necessary and material filings and recordings in Canada or the United States, as applicable, to protect its interest in such Intellectual Property Collateral; and
  - (iii) the Obligor is the exclusive owner of the entire right, title and interest in and to such Intellectual Property Collateral owned by the Obligor and is entitled to use the Intellectual Property Collateral leased or licensed to the

Obligor and, to its knowledge, no claim has been made that the use of such Intellectual Property Collateral does or may violate the asserted rights of any third party;

- (b) the security interest created by this Agreement, once properly perfected in accordance with Applicable Law, will be a valid first priority security interest in the Collateral, subject to Permitted Liens;
- (c) the Obligor has not granted "control" (within the meaning of such term under the STA) over any investment property forming part of the Collateral to any Person other than the Lender; and

5. So long as any portion of the Obligations shall remain unpaid or the Lender shall have any outstanding commitment to the Obligor, in addition to the covenants of the Obligor in the Credit Agreement, the Obligor further covenants with the Lender that it will comply with or perform, or cause to be complied with or performed, the following obligations:

- (a) the Obligor shall maintain, use and operate the Collateral in accordance with past business practices and in accordance with the terms and conditions of the Credit Agreement;
- (b) the Obligor will immediately, and in any event within 24 hours, notify the Lender if any Person has the right to go into, collect or seize possession of the Collateral by means of execution, garnishment or other legal process;
- (c) except with respect to goods in transit or with respect to Equipment out for repair, the Obligor shall keep all Equipment and other tangible personal property of the Obligor in jurisdictions in which all required filings have been made for the perfection of the security interests created hereby;
- (d) with respect to any Equipment or Inventory in the possession or control of any third party, upon the request of the Lender, acting reasonably, the Obligor shall notify such third party of the Lender's security interest in such Equipment or Inventory and, upon the Lender's request following the occurrence and during the continuance of an Event of Default, direct such third party to hold all such Equipment or Inventory for the Lender's account and subject to the Lender's instructions;
- (e) the Obligor shall not, unless the Obligor shall reasonably and in good faith determine (and notice of such determination, in form and substance satisfactory to the Lender, shall have been delivered to the Lender) that any of the Intellectual Property is not material to the business of the Obligor and has negligible economic value, do any act, or omit to do any act, whereby any of the Intellectual Property may lapse or become abandoned, dedicated to the public, placed in the public domain, invalid or unenforceable, as the case may be;
- (f) the Obligor shall notify the Lender promptly if it knows, or has reason to believe, that any application or registration relating to any material item of the Intellectual

Property Collateral may become abandoned, dedicated to the public, placed in the public domain, invalid or unenforceable, or of any materially adverse determination or development regarding the Obligor's ownership of any of the Intellectual Property Collateral, its right to register the same or to keep and maintain and enforce the same;

- (g) the Obligor shall defend the title to the Collateral against all Persons and shall, upon reasonable demand by the Lender, furnish further assurance of title and execute any written instruments or do any other acts necessary to make effective the purposes and provisions of this Agreement; and
- (h) the Obligor shall ensure that the representations and warranties set forth in paragraph 4 hereof will be true and correct at all times.

6. Following the occurrence of an Event of Default which is continuing, (i) the Lender may notify any parties obligated on any of the Collateral to make any payment to the Lender of any amounts due or to become due thereunder and enforce collection of any of the Collateral by suit or otherwise and surrender, release, or exchange all or any part thereof, or compromise or extend or renew for any period (whether or not longer than the original period) any indebtedness thereunder or evidenced thereby, (ii) upon written request of the Lender, the Obligor will, at its own expense, notify any parties obligated on any of the Collateral to make any payment to the Lender of any amounts due or to become due thereunder, and (iii) any payment or other proceeds received by the Obligor from any party obligated on any of the Collateral shall be held by the Obligor in trust for the Lender and paid over to the Lender on request.

7. The Obligor agrees that, forthwith upon request by the Lender, from time to time at its own expense, the Obligor will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary and reasonably requested by the Lender in order to perfect, preserve and protect any mortgages, charges and security interest created, granted or purported to be created or granted hereby or to enable the Lender to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, the Obligor will:

- (a) if reasonably requested by the Lender, mark conspicuously each chattel paper included in the Receivables and each related contract with a legend, in form and substance satisfactory to the Lender, indicating that such document, chattel paper or related contract is subject to the security interest granted hereby;
- (b) if reasonably requested by the Lender, if any Receivable shall be evidenced by a promissory note or other instrument, negotiable document or chattel paper, deliver and pledge to the Lender hereunder such promissory note, instrument, negotiable document or chattel paper duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to the Lender;

- (c) execute and file such financing or financing change statements, or amendments thereto (including, without limitation, any assignment of claim from or other formality under or pursuant to the *Financial Administration Act* (Canada) or similar provincial or territorial legislation), and such other instruments or notices, as may be necessary and reasonably requested by the Lender in order to perfect and preserve the security interests and other rights granted or purported to be granted to the Lender hereby;
- (d) furnish to the Lender, from time to time at the Lender's reasonable request, statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Lender may reasonably request, all in reasonable detail;
- (e) direct the issuer of any certificated securities included in or relating to the Collateral as the Lender may specify in its request to register the applicable security certificate in the name of the Lender or such nominee as it may direct,
- (f) direct the issuer of any uncertificated securities included in or relating to the Collateral as the Lender may specify in its request to register in the books and records of such issuer the Lender or such nominee as it may direct as the registered owner of the uncertificated security; and
- (g) direct the securities intermediary for any security entitlements in respect of financial assets deposited in or credited to a securities account included in or relating to the Collateral as the Lender may specify in its request to transfer any or all of the financial assets to which such security entitlements relate as the Lender may specify,

and the Lender will be entitled but not bound or required to exercise any of the rights that any holder of the above may at any time have. The Lender will not be responsible for any loss occasioned by its exercise of such rights or by failure to exercise the same within the time limited for the exercise thereof other than any loss resulting from the gross negligence or wilful misconduct of the Lender.

With respect to the foregoing and the grant of the security interest hereunder, the Obligor hereby authorizes the Lender to file one or more financing or financing change statements, and amendments thereto, relative to all or any part of the Collateral without the signature of the Obligor where permitted by law. The Lender shall provide a copy of such statement to the Obligor together with details of registration thereof. A photographic or other reproduction of this Agreement or any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement where permitted by law.

8. The Obligor agrees that forthwith, upon request from time to time by the Lender acting reasonably, the Obligor shall give its consent in writing to:

- (a) the entering into by any issuer of any uncertificated securities included in or relating to the Collateral as the Lender may specify in its request, of a Control

Agreement with the Lender in respect of such uncertificated securities, which consent may be incorporated into an agreement to which such issuer, the Lender and the Obligor are parties; and

- (b) the entering into by any securities intermediary for any security entitlements in respect of the financial assets deposited in or credited to a securities account included in or relating to the Collateral as the Lender may specify in its request, of a Control Agreement with the Lender in respect of such security entitlements which consent may be incorporated into an agreement to which such securities intermediary, the Lender and the Obligor are parties.

9. The Obligor agrees that it shall not consent to:

- (a) the entering into by any issuer of any uncertificated securities included in or relating to the Collateral of a Control Agreement in respect of such uncertificated securities with any Person other than the Lender or such nominee or Lender as it may direct; or
- (b) the entering into by any securities intermediary for any security entitlements in respect of the financial assets deposited in or credited to a securities account included in or relating to the Collateral of a Control Agreement with respect to such securities accounts or security entitlements with any Person other than the Lender or such nominee or Lender as it may direct.

10. Unless an Event of Default has occurred and is continuing, the Obligor may use the Collateral in any lawful manner not inconsistent with this Agreement or the Credit Agreement, and the Lender and its representatives shall have the right to inspect the operations of the Obligor, its books and records and the Collateral in the manner and at the times set out in the Credit Agreement.

11. Following the occurrence of and during the continuance of an Event of Default, the Lender may have any Collateral comprising instruments, shares, stock, warrants, bonds, debentures, debenture stock or other securities, registered in its name or in the name of its nominee and will be entitled but not bound or required to exercise any of the rights that any holder of such securities may at any time have, but the Lender shall not be responsible for any loss occasioned by the exercise of any of such rights or by failure to exercise the same within the time limit for the exercise thereof save and except for the gross negligence or wilful misconduct of the Lender.

12. Upon the Obligor's failure to perform any of its duties hereunder the Lender may, but shall not be obliged to, perform any or all of such duties, without waiving any rights to enforce this Agreement, and the Obligor shall pay to the Lender, forthwith upon written demand therefor, an amount equal to the reasonable costs, fees and expenses incurred by the Lender in so doing plus interest thereon from the date such costs, fees and expenses are incurred until paid at the rate or rates set out in the Credit Agreement.

13. Upon the occurrence of an Event of Default that is continuing, the security hereby granted shall immediately become enforceable and the Lender may, in its sole discretion, forthwith or at any time thereafter:

- (a) declare any or all of the Obligations not then due and payable to be immediately due and payable in accordance with the terms of the Credit Agreement and, in such event, such Obligations shall be forthwith due and payable to the Lender without presentment protest or notice of dishonour;
- (b) commence legal action to enforce payment or performance of the Obligations;
- (c) require the Obligor to disclose to the Lender the location or locations of the Collateral and the Obligor agrees to make such disclosure when so required by the Lender;
- (d) require the Obligor, at the Obligor's sole expense, to assemble the Collateral and deliver or make the Collateral available at a place or places designated by the Lender to the Obligor that is reasonably convenient for the Obligor, and the Obligor agrees to so assemble, deliver or make available the Collateral;
- (e) enter any premises where the Collateral may be situate and take possession of the Collateral by any method permitted by law;
- (f) repair, process, modify, complete or otherwise deal with the Collateral and prepare for the disposition of the Collateral, whether on the premises of the Obligor or otherwise and take such steps as it considers necessary to maintain, preserve or protect the Collateral;
- (g) seize, collect, realize or dispose of the Collateral by private sale, public sale, lease, or otherwise upon such terms and conditions as the Lender may determine or otherwise deal with the Collateral or any part thereof in such manner, upon such terms and conditions and of such times as may seem to the Lender advisable;
- (h) carry on all or any part of the business or businesses of the Obligor and may, to the exclusion of all others, enter upon, occupy and use all or any of such premises, buildings, plant, undertaking and other property of or used by the Obligor as part of or for such time and in such manner as the Lender sees fit, free of charge, and the Lender shall not be liable to the Obligor for any act, omission, or negligence (other than gross negligence or wilful misconduct) in so doing or for any rent, charges, depreciation, damages or other amount in connection therewith or resulting therefrom and any sums expended by the Lender shall bear interest at the rate or rates set out in the Credit Agreement;
- (i) file such proofs of claim or other documents as may be necessary or desirable to have its claim lodged in any bankruptcy, winding-up, liquidation, dissolution or other proceedings (voluntary or otherwise) relating to the Obligor;

- (j) borrow money for the purpose of carrying on the business of the Obligor or for the maintenance, preservation or protection of the Collateral and mortgage, charge, pledge or grant a security interest in the Collateral, whether or not in priority to the security created herein, to secure repayment of any money so borrowed;
- (k) where the Collateral has been disposed of by the Lender as provided in paragraph 13(g), commence legal action against the Obligor for any deficiency;
- (l) pay or discharge any Lien or claims by any Person in the Collateral and the amount so paid shall be added to the Obligations and secured hereby and shall bear interest at the highest rate of interest charged by the Lender at that time in respect of any of the Obligations until payment thereof;
- (m) take any other action, suit, remedy or proceeding authorized or permitted by this Agreement, the PPSA or by law or equity;
- (n) to the extent permitted by Applicable Law, transfer any securities forming part of the Collateral into the name of the Lender or its nominee, with or without disclosing that the securities are subject to a security interest and cause the Lender or its nominee to become the entitlement holder with respect to any security entitlements forming part of the Collateral; and
- (o) sell, transfer or use any investment property included in the Collateral of which the Lender or its Lender has "control" within the meaning of subsection 1(2) of the PPSA.

14. Where required to do so by the PPSA or other Applicable Law, the Lender shall give to the Obligor the written notice required by the PPSA or other Applicable Law of any intended disposition of the Collateral.

15. Any notice or communication to be given under this Agreement to the Obligor or the Lender shall be effective if given in accordance with the provisions of the Credit Agreement and the Obligor and the Lender may change their respective address for notices in accordance with the said provisions.

16. If the Lender is entitled to exercise its rights and remedies in accordance with paragraph 13 hereof, the Lender may take proceedings in any court of competent jurisdiction for the appointment of a receiver (which term shall include a receiver and manager) (each herein referred to as a "**Receiver**") of the Collateral or may by appointment in writing appoint any Person to be a Receiver of the Collateral and may remove any Receiver so appointed by the Lender and appoint another in its stead; and any such Receiver appointed by instrument in writing shall have powers of the Lender set out in subparagraphs 13(b) to (l), inclusive, including, without limitation, the power (i) to take possession of the Collateral, (ii) to carry on the business of the Obligor, (iii) to borrow money required for the maintenance, preservation or protection of the Collateral or for the carrying on of the business of the Obligor on the security of the Collateral in priority to the security interest created under this Agreement, and (iv) to sell,



lease or otherwise dispose of the whole or any part of the Collateral at public auction, by public tender or by private sale, either for cash or upon credit, at such time and upon such terms and conditions as the Receiver may determine; provided that, to the extent permitted and in the manner prescribed by law any such Receiver shall be deemed the Lender of the Obligor and the Lender shall not be in any way responsible for any misconduct or negligence of any such Receiver.

17. Any proceeds of any disposition of any Collateral may be applied by the Lender to the payment of reasonable expenses incurred in connection with retaking, holding, repairing, processing, preparing for disposition and disposing of the Collateral (including the remuneration of any Receiver appointed pursuant to paragraph 16, solicitor's fees on a substantial indemnity basis and legal expenses and any other expenses), and any balance of such proceeds shall be applied by the Lender towards the payment of the Obligations in such order of application as the Lender may from time to time elect, subject to the provisions of the Credit Agreement. All such expenses and all amounts borrowed on the security of the Collateral under paragraphs 13 and 16 hereof shall bear interest at the rate or rates set out in the Credit Agreement. If the disposition of the Collateral fails to satisfy the Obligations and the expenses incurred by the Lender, the Obligor shall be liable to pay any deficiency to the Lender on demand.

18. Subject to Applicable Law, the Lender is authorized, in connection with any offer or sale of any securities forming part of the Collateral, to comply with any limitation or restriction as it may be advised by counsel is necessary to comply with Applicable Law, including compliance with procedures that may restrict the number of prospective bidders and purchasers, requiring that prospective bidders and purchasers have certain qualifications and restricting prospective bidders and purchasers to Persons who will represent and agree that they are purchasing for their own account or investment and not with a view to the distribution or resale of such securities. Subject to Applicable Law, the Lender will not be liable or accountable to the Obligor for any discount allowed by reason of the fact that such securities are sold in compliance with any such limitation or restriction.

19. The Obligor further agrees that:

- (a) the Obligor shall not be discharged by any extension of time, additional advances, renewals and extensions, the taking of further security, releasing security, extinguishment of the security interest as to all or any part of the Collateral, or any other act except a release or discharge of the security interest upon the full payment of the Obligations including reasonable charges, expenses, fees, costs and interest;
- (b) any failure by the Lender to exercise any right set out in this Agreement shall not constitute a waiver thereof; nothing in this Agreement or in the Obligations shall preclude any other remedy by action or otherwise for the enforcement of this Agreement or the payment in full of the Obligations;
- (c) the Lender may waive, in whole or in part, any breach by the Obligor of any of the provisions of this Agreement, any default by the Obligor in payment or performance of any of the Obligations or any of its rights and remedies, whether

provided for herein or otherwise, provided that no such waiver shall be effective unless given by the Lender to the Obligor in writing;

- (d) no waiver given in accordance with paragraph 19(c) shall be a waiver of any other or subsequent breach by the Obligor of any of the provisions of this Agreement, of any other or subsequent default by the Obligor in payment or performance of any of the Obligations or any of the rights and remedies of the Lender, whether provided for herein or otherwise;
- (e) all rights of the Lender hereunder shall be assignable to the extent permitted under the Credit Agreement;
- (f) the mortgage, charge and security interest created by this Agreement is intended to attach when this Agreement is signed by the Obligor with respect to all items of Collateral in which the Obligor has rights at that moment, and shall attach to all other Collateral immediately upon the Obligor acquiring any rights therein; and
- (g) value has been given.

20. The Obligor acknowledges having received an executed copy of this Agreement and of the financing statement registered under the PPSA evidencing the security interest created hereby.

21. The Obligor hereby irrevocably constitutes and appoints the Lender and each of its officers holding office from time to time as the true and lawful attorney of the Obligor with power of substitution in the name of the Obligor, to do any and all such acts and things or execute and deliver all such agreements, documents and instruments as the Lender, in its sole discretion, considers necessary or desirable to exercise any of its rights and remedies hereunder, and to do all acts or things necessary to realize or collect the proceeds, including, without limitation:

- (a) to ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral;
- (b) to receive, endorse, and collect any drafts or other instruments, documents and chattel paper, in connection with clause (a) above;
- (c) to file any claims or take any action or institute any proceedings which the Lender may reasonably deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of the Lender with respect to any of the Collateral; and
- (d) to perform the affirmative obligations of the Obligor hereunder.

The Obligor hereby acknowledges, consents and agrees that the power of attorney granted pursuant to this paragraph is irrevocable (until termination of the security interest hereunder) and coupled with an interest. The Obligor hereby ratifies and agrees to ratify all acts of any such attorney taken or done in accordance with this paragraph. The Lender agrees that it shall not

exercise the power of attorney granted pursuant to this paragraph 21 unless an Event of Default has occurred and is continuing.

22. The powers conferred on the Lender hereunder are solely to protect its interests in the Collateral and shall not impose any duty on the Lender to exercise any such powers. Except for reasonable care of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Lender shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral.

23. Notwithstanding any other term or condition of this Agreement, this Agreement shall not relieve the Obligor or any other party to the Credit Agreement or any Loan Document from the observance or performance of any term, covenant, condition or agreement on its part to be observed or performed thereunder or from any liability to any other party or parties thereto or impose any obligation on the Lender to observe or perform any such term, covenant, condition or agreement to be so observed or performed, and the Obligor hereby agrees to indemnify and hold harmless the Lender from and against any and all losses, liabilities (including liabilities for penalties), costs and expenses which may be incurred by the Lender in relation to the Collateral and from all claims, alleged obligation or undertaking on its part to observe, perform or discharge any of the terms, covenants and agreements contained in the Collateral. The Lender may, at its option, perform any term, covenant, condition or agreement on the part of the Obligor to be performed under or in respect of the Collateral (and/or enforce any of the rights of the Obligor thereunder) without thereby waiving any rights to enforce this Agreement. Nothing contained in this paragraph 23 shall be deemed to constitute the Lender the mortgagee in possession of the Collateral or the lessee under any lease or agreement to lease unless the Lender has agreed to become such mortgagee in possession or to be a lessee.

24. This Agreement shall be binding upon the Obligor and the Lender and their respective successors and assigns and shall enure to the benefit of the Obligor and the Lender and their respective successors and assigns. The Lender shall be entitled to transfer or assign any of its right, title or interest in, to, or arising under this Agreement, in accordance with the provisions governing assignment contained in the Credit Agreement.

25. The Obligor acknowledges and agrees that in the event it amalgamates with any other corporation or corporations, it is the intention of the parties hereto that the security interest created hereby (i) shall extend to "Collateral" (as that term is herein defined) owned by each of the amalgamating corporations and the amalgamated corporation at the time of amalgamation and to any "Collateral" thereafter owned or acquired by the amalgamated corporation, such that the term the "Obligor" when used herein would apply to each of the amalgamating corporations and the amalgamated corporation and (ii) shall secure the "Obligations" (as that term is herein defined) of each of the amalgamating corporations and the amalgamated corporation to the Lender at the time of amalgamation and any "Obligations" of the amalgamated corporation to the Lender thereafter arising. The security interest shall attach to the additional "Collateral" at the time of amalgamation and to any "Collateral" thereafter owned or acquired by the amalgamated corporation when such becomes owned or is acquired.

26. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

27. In the event of any conflict between the provisions hereunder and the provisions of the Credit Agreement then, notwithstanding anything contained in this Agreement, the provisions contained in the Credit Agreement shall prevail and the provisions of this Agreement will be deemed to be amended to the extent necessary to eliminate such conflict. If any act or omission of the Obligor is expressly permitted under the Credit Agreement but is expressly prohibited hereunder, such act or omission shall be permitted. If any act or omission is expressly prohibited hereunder, but the Credit Agreement does not expressly permit such act or omission, or if any act is expressly required to be performed hereunder but the Credit Agreement does not expressly relieve the Obligor from such performance, such circumstance shall not constitute a conflict between the applicable provisions hereunder and the provisions of the Credit Agreement.

28. This Agreement and the security interest, assignment and mortgage and charge granted hereby are in addition to and not in substitution for any other security now or hereafter held by the Lender and this Agreement is a continuing agreement and security that will remain in full force and effect until discharged by the Lender.

29. The Obligor will not be discharged from any of the Obligations or from this Agreement except by a release or discharge signed in writing by the Lender at the Obligor's expense.

30. If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect.

31. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by telecopy or pdf), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

**[Signature pages follow]**

**IN WITNESS WHEREOF** the undersigned has caused this Agreement to be duly executed and delivered by its officer thereunto duly authorized.

**KIVUTO SOLUTIONS INC.**

By: 

Name: Carlos Jose Meza-Rios

Title: CEO

*I have authority to bind the Corporation*

THE TORONTO-DOMINION BANK

Per: Elaine El-Zeghayer

Name: Elaine El-Zeghayer  
Title: Relationship Manager

Per: Scott Stirling

Name: Scott Stirling  
Title: Manager Commercial Credit  
*We have authority to bind the Bank*

**SCHEDULE I**  
to  
**GENERAL SECURITY AGREEMENT**

**A. Trademarks**Registered Trademarks

<u>Country</u>	<u>Trademark</u>	<u>Application No./ Registration No.</u>	<u>Filing Date/ Registration Date</u>	<u>Name of Owner</u>
Canada	KIVUTO	1589562 TMA872973	2014-03-10	Kivuto Inc.
Canada	ONTHEHUB	1431526 TMA794971	2011-04-06	Kivuto Solutions Inc.
United States	KIVUTO	86/046762 4860206	2015-11-24	Kivuto Solutions Inc.
United States	ONTHEHUB	86/045126 4635355	2014-11-11	Kivuto Solutions Inc.

Pending Trademark Applications

<u>Country</u>	<u>Trademark</u>	<u>Application No./ Registration No.</u>	<u>Filing Date/ Registration Date</u>	<u>Name of Owner</u>
Canada	TEXIDIUM	1846908	2017-07-12	Kivuto Solutions Inc.
United States	TEXIDIUM	87/544654	2017-07-26	Kivuto Solutions Inc.

**B. Patents**

NIL.

**C. Copyright**

NIL.

This is Exhibit "M" referred to in the Affidavit of Andrea Jamnisek sworn January 27, 2023.

A handwritten signature in black ink, consisting of a stylized 'L' followed by a 'J' and a long horizontal line extending to the right.

---

*Commissioner for Taking Affidavits (or as may be)*



**GENERAL SECURITY AGREEMENT**

**THIS GENERAL SECURITY AGREEMENT** (as amended, modified, supplemented, restated or replaced from time to time, this "**Agreement**"), dated as of March 1, 2018, made by **10600598 CANADA INC.**, a corporation existing under the federal laws of Canada (together with any successors, by amalgamation or otherwise, and permitted assigns, the "**Obligor**", which term shall include, without limitation, "Kivuto Solutions Inc." following the Amalgamation), in favour of **THE TORONTO-DOMINION BANK**, as lender (the "**Lender**") under the Credit Agreement (as defined below).

**WITNESSETH:**

**WHEREAS** pursuant to a credit agreement dated as of March 1, 2018 (together with all amendments, modifications, supplements, restatements or replacements, if any, from time to time thereafter made thereto, the "**Credit Agreement**"), between the Lender and the Obligor, the Lender has extended commitments to make loans and credit facilities (the "**Facilities**") available;

**AND WHEREAS** as a condition precedent to the making of Facilities available to the Obligor under the Credit Agreement, the Obligor is required to execute and deliver this Agreement as continuing collateral security to secure the performance of the Obligations (as defined below);

**AND WHEREAS** the Obligor has duly authorized the execution, delivery and performance of this Agreement;

**NOW THEREFORE** for good and valuable consideration, the receipt of which is hereby acknowledged, and in order to induce the Lender to make the loans and advances to the Obligor pursuant to the Credit Agreement, the Obligor agrees with the Lender, as follows:

1. As general and continuing security for the payment and performance of the Obligations the Obligor grants, assigns, transfers, sets over, grants a security interest in, mortgages and charges to the Lender, as and by way of a fixed and specific mortgage, charge and security interest in, all of the present and after acquired personal property and all of the present and future assets, property (both real and personal) and undertaking of the Obligor and in all right, title and interest which the Obligor now has or may hereafter have in all of its assets, property and undertaking, including without limitation, all present and after acquired assets, property and undertaking of the kinds hereinafter described (collectively, the "**Collateral**"):

- (a) all goods comprising the inventory of the Obligor, including but not limited to goods held for sale or lease or furnished or to be furnished under a contract of service or that are raw materials, work in progress or materials used or consumed in a business or profession or finished goods, including, without limitation, "inventory" as defined in the PPSA (hereinafter sometimes collectively referred to as "**Inventory**");

- (b) all goods which are not inventory or consumer goods, including but not limited to furniture, fixtures, equipment, machinery, plant, tools, vehicles and other tangible personal property, including, without limitation, "equipment" as defined in the PPSA (hereinafter sometimes collectively referred to as "**Equipment**");
- (c) all Computer Hardware and Software Collateral (as defined below);
- (d) all accounts, debts, demands and choses in action which are now due, owing or accruing due or which may hereafter become due, owing or accruing due to the Obligor and all claims of any kind which the Obligor now has or may hereafter have, including but not limited to claims against the Crown and claims under insurance policies (hereinafter sometimes collectively referred to together with intangibles and the Collateral described in paragraphs 1(f) and (n) as "**Receivables**");
- (e) all Intellectual Property Collateral (as defined below);
- (f) all chattel paper;
- (g) all warehouse receipts, bills of lading and other documents of title, whether negotiable or not;
- (h) all instruments, shares, stock, warrants, bonds, debentures, debenture stock or other securities;
- (i) all financial assets;
- (j) all securities entitlements;
- (k) all investment property;
- (l) all securities accounts in the name of the Obligor, including any and all assets of whatever type or kind deposited in or credited to such securities accounts, including all financial assets, all security entitlements related to such financial assets, and all certificates and other instruments from time to time representing or evidencing the same, and all dividends, interest, distributions, cash and other property from time to time received or receivable upon or otherwise distributed or distributable in respect of or in exchange for any or all of the foregoing;
- (m) all rights, contracts (including, without limitation, rights and interests arising thereunder or subject thereto), instruments, agreements, licences, permits, consents, leases, policies, approvals, development agreements, building contracts, performance bonds, purchase orders, plans and specifications all of which may or may not be personal property but may be rights in which the Obligor has interests, all as may be amended, modified, supplemented, replaced or restated from time to time;

- (n) all rents, present or future, under any lease or agreement to lease any part of the lands of the Obligor or any building, erection, structure or facility now or hereafter constructed or located on such lands, income derived from any tenancy, use or occupation thereof and any other income and profit derived therefrom;
- (o) all intangibles, including but not limited to all money, cheques, deposit accounts, letters of credit, advances of credit and goodwill;
- (p) with respect to the property described in paragraphs 1(a) to (o) inclusive, all books, accounts, invoices, letters, papers, documents and other records in any form evidencing or relating thereto and all contracts, securities, instruments and other rights and benefits in respect thereof;
- (q) with respect to the property described in paragraphs 1(a) to (p) inclusive, all substitutions and replacements thereof and increases, additions and accessions thereto; and
- (r) with respect to the property described in paragraphs 1(a) to (q) inclusive, all proceeds therefrom including personal property in any form or fixtures derived directly or indirectly from any dealing with such property or proceeds therefrom and any insurance or other payment as indemnity or compensation for loss of or damage to such property or any right to such payment, and any payment made in total or partial discharge or redemption of an intangible, chattel paper, instrument or security;

provided, however, the security interest created shall not charge, encumber, create a lien upon or otherwise mortgage any consumer goods which the Obligor may own. In this Agreement, the words "accessions", "account", "chattel paper", "consumer goods", "document of title", "equipment", "goods", "instrument", "intangible", "inventory" and "proceeds" shall have the same meanings as their defined meanings in the *Personal Property Security Act* of the Province of Ontario, as amended, re-enacted or replaced from time to time (the "**PPSA**"), and the terms "certificated security", "entitlement holder", "entitlement order", "financial asset", "security", "securities account", "security entitlement", "security intermediary" and "uncertificated security" whenever used herein have the meanings given to these terms in the *Securities Transfer Act, 2006* (Ontario) (the "**STA**") as amended, re-enacted or replaced from time to time.

The said mortgage, charge and security interest shall not extend or apply to:

- (i) the last day of the term of any lease or any agreement therefor now held or hereafter acquired by the Obligor, but should such mortgage, charge and security interest become enforceable, the Obligor shall thereafter stand possessed of such last day and shall hold it in trust to assign the same to any Person acquiring such term or the part thereof mortgaged and charged in the course of any enforcement of the said mortgage, charge and security or any realization of the subject matter thereof; or

- (ii) any present or after-acquired agreement, right, franchise, licence or permit (for the purpose of this paragraph, the "contractual rights") to which the Obligor is a party or of which the Obligor has the benefit to the extent that the creation of the mortgage, charge or security therein would constitute a breach of the terms of or permit any Person to terminate any of the contractual rights or otherwise constitute a breach of or violation under any existing law, statute or regulation to which the Obligor is subject, provided that all such contractual rights will be held in trust by the Obligor for the benefit of the Lender. Notwithstanding the foregoing, the said mortgage, charge and security interest shall apply to any proceeds of the disposition of any such contractual rights and the Obligor further agrees to hold such proceeds in trust for the Lender and to keep such proceeds in a segregated account for the benefit of the Lender. In addition, the said mortgage, charge and security interest shall extend to the contractual rights upon delivery by the Lender to the Obligor of written notice to such effect following the occurrence and during the continuance of an Event of Default.

2. Unless otherwise defined herein or the context otherwise requires, capitalized terms used herein shall have the meanings provided in the Credit Agreement, and in this Agreement:

- (a) **"Agreement"** is defined in the preamble;
- (b) **"Computer Hardware and Software Collateral"** means:
  - (i) all computer and other electronic data processing hardware, integrated computer systems, central processing units, memory units, display terminals, printers, features, computer elements, card readers, tape drives, hard and soft disk drives, cables, electrical supply hardware, generators, power equalizers, accessories and all peripheral devices and other related computer hardware;
  - (ii) all software programs (including both source code, object code and all related applications and data files), whether now owned, licenced or leased or hereafter acquired by the Obligor, designed for use on the computers and electronic data processing hardware described in clause (i) above;
  - (iii) all firmware associated therewith;
  - (iv) all documentation (including flow charts, logic diagrams, manuals, guides and specifications) with respect to such hardware, software and firmware described in the preceding clauses (i) through (iii); and
  - (v) all rights with respect to all of the foregoing, including, without limitation, any and all intellectual property rights, copyrights, leases, licences, options, warranties, service contracts, program services, test rights,

maintenance rights, support rights, improvement rights, renewal rights and indemnifications and any substitutions, replacements, additions or model conversions of any of the foregoing;

(c) **"Control Agreement"** means:

- (i) with respect to any uncertificated securities included in the Collateral, an agreement between the issuer of such uncertificated securities and another Person whereby such issuer agrees to comply with instructions that are originated by such Person in respect of such uncertificated securities, without the further consent of the Obligor; and
- (ii) with respect to any security entitlements in respect of financial assets deposited in or credited to a securities account included in the Collateral, an agreement between the securities intermediary and another Person in respect of such security entitlements pursuant to which such securities intermediary agrees to comply with any entitlement orders with respect to such security entitlements that are originated by the Lender, without the further consent of the Obligor.

(d) **"Copyright Collateral"** means:

- (i) all copyrights (including without limitation copyrights for semi-conductor chip product mask works and all integrated circuit topography) of the Obligor, whether statutory or common law, registered or unregistered, now or hereafter in force throughout the world, and all applications for registration thereof, whether pending or in preparation, and all copyrights resulting from such applications;
- (ii) all extensions and renewals of any thereof;
- (iii) all copyright licences and other agreements providing the Obligor with the right to use any of the items of the type referred to in clauses (i) and (ii);
- (iv) the right to sue for past, present and future infringements of any of the Copyright Collateral referred to in clauses (i) and (ii) and, to the extent applicable, clause (iii); and
- (v) all proceeds of the foregoing, including, without limitation, licences, royalties, income, payments, claims, damages and proceeds of suit;

(e) **"Credit Agreement"** is defined in the first recital;

(f) **"Intellectual Property Collateral"** means, collectively, the Copyright Collateral, the Patent Collateral, the Trademark Collateral and the Trade Secrets Collateral, and includes, without limitation, the collateral described in Schedule I attached hereto;

- (g) **"Obligations"** means all of the present and future indebtedness, liabilities and obligations of the Obligor of any and every kind, nature or description whatsoever (whether direct or indirect, joint or several or joint and several, absolute or contingent, matured or unmatured, in any currency, and whether as principal debtor, guarantor, surety or otherwise, including without limitation any interest that accrues thereon after or would accrue thereon but for the commencement of any case, proceeding or other action, whether voluntary or involuntary, relating to the bankruptcy, insolvency or reorganization of the Obligor, whether or not allowed or allowable as a claim in any such case, proceeding or other action) to the Lender (and its Affiliates) under, in connection with, relating to or with respect to each of the Loan Documents to which it is a party, and any unpaid balance thereof;
- (h) **"Patent Collateral"** means:
- (i) all letters patent and applications for letters patent throughout the world, including all patent applications in preparation for filing anywhere in the world;
  - (ii) all reissues, divisions, continuations, continuations-in-part, extensions, renewals and re-examinations of any of the items described in clause (i);
  - (iii) all patent licences and other agreements providing the Obligor with the right to use any of the items of the type referred to in clauses (i) and (ii);
  - (iv) the right to sue third parties for past, present or future infringements of any patent or patent application, and for breach or enforcement of any patent licence; and
  - (v) all proceeds of, and rights associated with, the foregoing (including licence royalties and proceeds of infringement suits), and all rights corresponding thereto throughout the world;
- (i) **"Trademark Collateral"** means:
- (i) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade dress, service marks, logos, other source of business identifiers, prints and labels on which any of the foregoing have appeared or appear and designs (all of the foregoing items in this clause (i) being collectively called a **"Trademark"**), now existing anywhere in the world or hereafter adopted or acquired, whether currently in use or not, all registrations and recordings thereof and all applications in connection therewith, whether pending or in preparation for filing, including registrations, recordings and applications in the Trade-marks Branch of the Canadian Intellectual Property Office or in any office or agency of Canada or any Province thereof or any foreign country, and all reissues, extensions or renewals thereof;

- (ii) all Trademark licences and other agreements providing the Obligor with the right to use any items of the type described in clause (i), including each Trademark licence referred to in Schedule I attached hereto;
  - (iii) all of the goodwill of the business connected with the use of, and symbolized by, the items described in clause (i);
  - (iv) the right to sue third parties for past, present and future infringements of any Trademark Collateral described in clauses (i) and (ii); and
  - (v) all proceeds of, and rights associated with, the foregoing, including any claim by the Obligor against third parties for past, present or future infringement or dilution of any Trademark, Trademark registration or Trademark licence, including any Trademark, Trademark registration or Trademark licence referred to in Schedule I attached hereto, or for any injury to the goodwill associated with the use of any such Trademark or for breach or enforcement of any Trademark licence and all rights corresponding thereto throughout the world;
- (j) **"Trade Secrets Collateral"** means all common law and statutory trade secrets and all other confidential or proprietary or useful information (to the extent such confidential, proprietary or useful information is protected by the Obligor against disclosure and is not readily ascertainable) and all know-how obtained by or used in or contemplated at any time for use in the business of the Obligor, including without limitation recipes and food processing know-how (all of the foregoing being collectively called a **"Trade Secret"**), whether or not such Trade Secret has been reduced to a writing or other tangible form, including all documents and things embodying, incorporating or referring in any way to such Trade Secret, all Trade Secret licences, and including the right to sue for and to enjoin and to collect damages for the actual or threatened misappropriation of any Trade Secret and for the breach or enforcement of any such Trade Secret licence.

3. The fixed and specific mortgages and charges and the security interest granted under this Agreement secure payment and performance of all Obligations.

4. In addition to the representations and warranties made by the Obligor in the Credit Agreement, the Obligor hereby represents and warrants to the Lender as at the date of this Agreement and as at the date of the acquisition by the Obligor of Collateral (including any acquisition of Collateral after the date hereof) that:

- (a) with respect to any material Intellectual Property Collateral:
  - (i) such Intellectual Property Collateral is subsisting and has not been adjudged invalid or unenforceable, in whole or in part;
  - (ii) the Obligor has made all necessary and material filings and recordings in Canada or the United States, as applicable, to protect its interest in such Intellectual Property Collateral; and

- (iii) the Obligor is the exclusive owner of the entire right, title and interest in and to such Intellectual Property Collateral owned by the Obligor and is entitled to use the Intellectual Property Collateral leased or licensed to the Obligor and, to its knowledge, no claim has been made that the use of such Intellectual Property Collateral does or may violate the asserted rights of any third party;
- (b) the security interest created by this Agreement, once properly perfected in accordance with Applicable Law, will be a valid first priority security interest in the Collateral, subject to Permitted Liens;
- (c) the Obligor has not granted "control" (within the meaning of such term under the STA) over any investment property forming part of the Collateral to any Person other than the Lender; and

5. So long as any portion of the Obligations shall remain unpaid or the Lender shall have any outstanding commitment to the Obligor, in addition to the covenants of the Obligor in the Credit Agreement, the Obligor further covenants with the Lender that it will comply with or perform, or cause to be complied with or performed, the following obligations:

- (a) the Obligor shall maintain, use and operate the Collateral in accordance with past business practices and in accordance with the terms and conditions of the Credit Agreement;
- (b) the Obligor will immediately, and in any event within 24 hours, notify the Lender if any Person has the right to go into, collect or seize possession of the Collateral by means of execution, garnishment or other legal process;
- (c) except with respect to goods in transit or with respect to Equipment out for repair, the Obligor shall keep all Equipment and other tangible personal property of the Obligor in jurisdictions in which all required filings have been made for the perfection of the security interests created hereby;
- (d) with respect to any Equipment or Inventory in the possession or control of any third party, upon the request of the Lender, acting reasonably, the Obligor shall notify such third party of the Lender's security interest in such Equipment or Inventory and, upon the Lender's request following the occurrence and during the continuance of an Event of Default, direct such third party to hold all such Equipment or Inventory for the Lender's account and subject to the Lender's instructions;
- (e) the Obligor shall not, unless the Obligor shall reasonably and in good faith determine (and notice of such determination, in form and substance satisfactory to the Lender, shall have been delivered to the Lender) that any of the Intellectual Property is not material to the business of the Obligor and has negligible economic value, do any act, or omit to do any act, whereby any of the Intellectual



Property may lapse or become abandoned, dedicated to the public, placed in the public domain, invalid or unenforceable, as the case may be;

- (f) the Obligor shall notify the Lender promptly if it knows, or has reason to believe, that any application or registration relating to any material item of the Intellectual Property Collateral may become abandoned, dedicated to the public, placed in the public domain, invalid or unenforceable, or of any materially adverse determination or development regarding the Obligor's ownership of any of the Intellectual Property Collateral, its right to register the same or to keep and maintain and enforce the same;
- (g) the Obligor shall defend the title to the Collateral against all Persons and shall, upon reasonable demand by the Lender, furnish further assurance of title and execute any written instruments or do any other acts necessary to make effective the purposes and provisions of this Agreement; and
- (h) the Obligor shall ensure that the representations and warranties set forth in paragraph 4 hereof will be true and correct at all times.

6. Following the occurrence of an Event of Default which is continuing, (i) the Lender may notify any parties obligated on any of the Collateral to make any payment to the Lender of any amounts due or to become due thereunder and enforce collection of any of the Collateral by suit or otherwise and surrender, release, or exchange all or any part thereof, or compromise or extend or renew for any period (whether or not longer than the original period) any indebtedness thereunder or evidenced thereby, (ii) upon written request of the Lender, the Obligor will, at its own expense, notify any parties obligated on any of the Collateral to make any payment to the Lender of any amounts due or to become due thereunder, and (iii) any payment or other proceeds received by the Obligor from any party obligated on any of the Collateral shall be held by the Obligor in trust for the Lender and paid over to the Lender on request.

7. The Obligor agrees that, forthwith upon request by the Lender, from time to time at its own expense, the Obligor will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary and reasonably requested by the Lender in order to perfect, preserve and protect any mortgages, charges and security interest created, granted or purported to be created or granted hereby or to enable the Lender to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, the Obligor will:

- (a) if reasonably requested by the Lender, mark conspicuously each chattel paper included in the Receivables and each related contract with a legend, in form and substance satisfactory to the Lender, indicating that such document, chattel paper or related contract is subject to the security interest granted hereby;
- (b) if reasonably requested by the Lender, if any Receivable shall be evidenced by a promissory note or other instrument, negotiable document or chattel paper, deliver and pledge to the Lender hereunder such promissory note, instrument, negotiable

document or chattel paper duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to the Lender;

- (c) execute and file such financing or financing change statements, or amendments thereto (including, without limitation, any assignment of claim from or other formality under or pursuant to the *Financial Administration Act* (Canada) or similar provincial or territorial legislation), and such other instruments or notices, as may be necessary and reasonably requested by the Lender in order to perfect and preserve the security interests and other rights granted or purported to be granted to the Lender hereby;
- (d) furnish to the Lender, from time to time at the Lender's reasonable request, statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Lender may reasonably request, all in reasonable detail;
- (e) direct the issuer of any certificated securities included in or relating to the Collateral as the Lender may specify in its request to register the applicable security certificate in the name of the Lender or such nominee as it may direct,
- (f) direct the issuer of any uncertificated securities included in or relating to the Collateral as the Lender may specify in its request to register in the books and records of such issuer the Lender or such nominee as it may direct as the registered owner of the uncertificated security; and
- (g) direct the securities intermediary for any security entitlements in respect of financial assets deposited in or credited to a securities account included in or relating to the Collateral as the Lender may specify in its request to transfer any or all of the financial assets to which such security entitlements relate as the Lender may specify,

and the Lender will be entitled but not bound or required to exercise any of the rights that any holder of the above may at any time have. The Lender will not be responsible for any loss occasioned by its exercise of such rights or by failure to exercise the same within the time limited for the exercise thereof other than any loss resulting from the gross negligence or wilful misconduct of the Lender.

With respect to the foregoing and the grant of the security interest hereunder, the Obligor hereby authorizes the Lender to file one or more financing or financing change statements, and amendments thereto, relative to all or any part of the Collateral without the signature of the Obligor where permitted by law. The Lender shall provide a copy of such statement to the Obligor together with details of registration thereof. A photographic or other reproduction of this Agreement or any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement where permitted by law.

8. The Obligor agrees that forthwith, upon request from time to time by the Lender acting reasonably, the Obligor shall give its consent in writing to:

- (a) the entering into by any issuer of any uncertificated securities included in or relating to the Collateral as the Lender may specify in its request, of a Control Agreement with the Lender in respect of such uncertificated securities, which consent may be incorporated into an agreement to which such issuer, the Lender and the Obligor are parties; and
- (b) the entering into by any securities intermediary for any security entitlements in respect of the financial assets deposited in or credited to a securities account included in or relating to the Collateral as the Lender may specify in its request, of a Control Agreement with the Lender in respect of such security entitlements which consent may be incorporated into an agreement to which such securities intermediary, the Lender and the Obligor are parties.

9. The Obligor agrees that it shall not consent to:

- (a) the entering into by any issuer of any uncertificated securities included in or relating to the Collateral of a Control Agreement in respect of such uncertificated securities with any Person other than the Lender or such nominee or Lender as it may direct; or
- (b) the entering into by any securities intermediary for any security entitlements in respect of the financial assets deposited in or credited to a securities account included in or relating to the Collateral of a Control Agreement with respect to such securities accounts or security entitlements with any Person other than the Lender or such nominee or Lender as it may direct.

10. Unless an Event of Default has occurred and is continuing, the Obligor may use the Collateral in any lawful manner not inconsistent with this Agreement or the Credit Agreement, and the Lender and its representatives shall have the right to inspect the operations of the Obligor, its books and records and the Collateral in the manner and at the times set out in the Credit Agreement.

11. Following the occurrence of and during the continuance of an Event of Default, the Lender may have any Collateral comprising instruments, shares, stock, warrants, bonds, debentures, debenture stock or other securities, registered in its name or in the name of its nominee and will be entitled but not bound or required to exercise any of the rights that any holder of such securities may at any time have, but the Lender shall not be responsible for any loss occasioned by the exercise of any of such rights or by failure to exercise the same within the time limit for the exercise thereof save and except for the gross negligence or wilful misconduct of the Lender.

12. Upon the Obligor's failure to perform any of its duties hereunder the Lender may, but shall not be obliged to, perform any or all of such duties, without waiving any rights to enforce this Agreement, and the Obligor shall pay to the Lender, forthwith upon written demand

therefor, an amount equal to the reasonable costs, fees and expenses incurred by the Lender in so doing plus interest thereon from the date such costs, fees and expenses are incurred until paid at the rate or rates set out in the Credit Agreement.

13. Upon the occurrence of an Event of Default that is continuing, the security hereby granted shall immediately become enforceable and the Lender may, in its sole discretion, forthwith or at any time thereafter:

- (a) declare any or all of the Obligations not then due and payable to be immediately due and payable in accordance with the terms of the Credit Agreement and, in such event, such Obligations shall be forthwith due and payable to the Lender without presentment protest or notice of dishonour;
- (b) commence legal action to enforce payment or performance of the Obligations;
- (c) require the Obligor to disclose to the Lender the location or locations of the Collateral and the Obligor agrees to make such disclosure when so required by the Lender;
- (d) require the Obligor, at the Obligor's sole expense, to assemble the Collateral and deliver or make the Collateral available at a place or places designated by the Lender to the Obligor that is reasonably convenient for the Obligor, and the Obligor agrees to so assemble, deliver or make available the Collateral;
- (e) enter any premises where the Collateral may be situate and take possession of the Collateral by any method permitted by law;
- (f) repair, process, modify, complete or otherwise deal with the Collateral and prepare for the disposition of the Collateral, whether on the premises of the Obligor or otherwise and take such steps as it considers necessary to maintain, preserve or protect the Collateral;
- (g) seize, collect, realize or dispose of the Collateral by private sale, public sale, lease, or otherwise upon such terms and conditions as the Lender may determine or otherwise deal with the Collateral or any part thereof in such manner, upon such terms and conditions and of such times as may seem to the Lender advisable;
- (h) carry on all or any part of the business or businesses of the Obligor and may, to the exclusion of all others, enter upon, occupy and use all or any of such premises, buildings, plant, undertaking and other property of or used by the Obligor as part of or for such time and in such manner as the Lender sees fit, free of charge, and the Lender shall not be liable to the Obligor for any act, omission, or negligence (other than gross negligence or wilful misconduct) in so doing or for any rent, charges, depreciation, damages or other amount in connection therewith or resulting therefrom and any sums expended by the Lender shall bear interest at the rate or rates set out in the Credit Agreement;

- (i) file such proofs of claim or other documents as may be necessary or desirable to have its claim lodged in any bankruptcy, winding-up, liquidation, dissolution or other proceedings (voluntary or otherwise) relating to the Obligor;
- (j) borrow money for the purpose of carrying on the business of the Obligor or for the maintenance, preservation or protection of the Collateral and mortgage, charge, pledge or grant a security interest in the Collateral, whether or not in priority to the security created herein, to secure repayment of any money so borrowed;
- (k) where the Collateral has been disposed of by the Lender as provided in paragraph 13(g), commence legal action against the Obligor for any deficiency;
- (l) pay or discharge any Lien or claims by any Person in the Collateral and the amount so paid shall be added to the Obligations and secured hereby and shall bear interest at the highest rate of interest charged by the Lender at that time in respect of any of the Obligations until payment thereof;
- (m) take any other action, suit, remedy or proceeding authorized or permitted by this Agreement, the PPSA or by law or equity;
- (n) to the extent permitted by Applicable Law, transfer any securities forming part of the Collateral into the name of the Lender or its nominee, with or without disclosing that the securities are subject to a security interest and cause the Lender or its nominee to become the entitlement holder with respect to any security entitlements forming part of the Collateral; and
- (o) sell, transfer or use any investment property included in the Collateral of which the Lender or its Lender has "control" within the meaning of subsection 1(2) of the PPSA.

14. Where required to do so by the PPSA or other Applicable Law, the Lender shall give to the Obligor the written notice required by the PPSA or other Applicable Law of any intended disposition of the Collateral.

15. Any notice or communication to be given under this Agreement to the Obligor or the Lender shall be effective if given in accordance with the provisions of the Credit Agreement and the Obligor and the Lender may change their respective address for notices in accordance with the said provisions.

16. If the Lender is entitled to exercise its rights and remedies in accordance with paragraph 13 hereof, the Lender may take proceedings in any court of competent jurisdiction for the appointment of a receiver (which term shall include a receiver and manager) (each herein referred to as a "**Receiver**") of the Collateral or may by appointment in writing appoint any Person to be a Receiver of the Collateral and may remove any Receiver so appointed by the Lender and appoint another in its stead; and any such Receiver appointed by instrument in writing shall have powers of the Lender set out in subparagraphs 13(b) to (l), inclusive, including, without limitation, the power (i) to take possession of the Collateral, (ii) to carry on

the business of the Obligor, (iii) to borrow money required for the maintenance, preservation or protection of the Collateral or for the carrying on of the business of the Obligor on the security of the Collateral in priority to the security interest created under this Agreement, and (iv) to sell, lease or otherwise dispose of the whole or any part of the Collateral at public auction, by public tender or by private sale, either for cash or upon credit, at such time and upon such terms and conditions as the Receiver may determine; provided that, to the extent permitted and in the manner prescribed by law any such Receiver shall be deemed the Lender of the Obligor and the Lender shall not be in any way responsible for any misconduct or negligence of any such Receiver.

17. Any proceeds of any disposition of any Collateral may be applied by the Lender to the payment of reasonable expenses incurred in connection with retaking, holding, repairing, processing, preparing for disposition and disposing of the Collateral (including the remuneration of any Receiver appointed pursuant to paragraph 16, solicitor's fees on a substantial indemnity basis and legal expenses and any other expenses), and any balance of such proceeds shall be applied by the Lender towards the payment of the Obligations in such order of application as the Lender may from time to time elect, subject to the provisions of the Credit Agreement. All such expenses and all amounts borrowed on the security of the Collateral under paragraphs 13 and 16 hereof shall bear interest at the rate or rates set out in the Credit Agreement. If the disposition of the Collateral fails to satisfy the Obligations and the expenses incurred by the Lender, the Obligor shall be liable to pay any deficiency to the Lender on demand.

18. Subject to Applicable Law, the Lender is authorized, in connection with any offer or sale of any securities forming part of the Collateral, to comply with any limitation or restriction as it may be advised by counsel is necessary to comply with Applicable Law, including compliance with procedures that may restrict the number of prospective bidders and purchasers, requiring that prospective bidders and purchasers have certain qualifications and restricting prospective bidders and purchasers to Persons who will represent and agree that they are purchasing for their own account or investment and not with a view to the distribution or resale of such securities. Subject to Applicable Law, the Lender will not be liable or accountable to the Obligor for any discount allowed by reason of the fact that such securities are sold in compliance with any such limitation or restriction.

19. The Obligor further agrees that:

- (a) the Obligor shall not be discharged by any extension of time, additional advances, renewals and extensions, the taking of further security, releasing security, extinguishment of the security interest as to all or any part of the Collateral, or any other act except a release or discharge of the security interest upon the full payment of the Obligations including reasonable charges, expenses, fees, costs and interest;
- (b) any failure by the Lender to exercise any right set out in this Agreement shall not constitute a waiver thereof; nothing in this Agreement or in the Obligations shall preclude any other remedy by action or otherwise for the enforcement of this Agreement or the payment in full of the Obligations;

- (c) the Lender may waive, in whole or in part, any breach by the Obligor of any of the provisions of this Agreement, any default by the Obligor in payment or performance of any of the Obligations or any of its rights and remedies, whether provided for herein or otherwise, provided that no such waiver shall be effective unless given by the Lender to the Obligor in writing;
- (d) no waiver given in accordance with paragraph 19(c) shall be a waiver of any other or subsequent breach by the Obligor of any of the provisions of this Agreement, of any other or subsequent default by the Obligor in payment or performance of any of the Obligations or any of the rights and remedies of the Lender, whether provided for herein or otherwise;
- (e) all rights of the Lender hereunder shall be assignable to the extent permitted under the Credit Agreement;
- (f) the mortgage, charge and security interest created by this Agreement is intended to attach when this Agreement is signed by the Obligor with respect to all items of Collateral in which the Obligor has rights at that moment, and shall attach to all other Collateral immediately upon the Obligor acquiring any rights therein; and
- (g) value has been given.

20. The Obligor acknowledges having received an executed copy of this Agreement and of the financing statement registered under the PPSA evidencing the security interest created hereby.

21. The Obligor hereby irrevocably constitutes and appoints the Lender and each of its officers holding office from time to time as the true and lawful attorney of the Obligor with power of substitution in the name of the Obligor, to do any and all such acts and things or execute and deliver all such agreements, documents and instruments as the Lender, in its sole discretion, considers necessary or desirable to exercise any of its rights and remedies hereunder, and to do all acts or things necessary to realize or collect the proceeds, including, without limitation:

- (a) to ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral;
- (b) to receive, endorse, and collect any drafts or other instruments, documents and chattel paper, in connection with clause (a) above;
- (c) to file any claims or take any action or institute any proceedings which the Lender may reasonably deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of the Lender with respect to any of the Collateral; and
- (d) to perform the affirmative obligations of the Obligor hereunder.

The Obligor hereby acknowledges, consents and agrees that the power of attorney granted pursuant to this paragraph is irrevocable (until termination of the security interest hereunder) and

coupled with an interest. The Obligor hereby ratifies and agrees to ratify all acts of any such attorney taken or done in accordance with this paragraph. The Lender agrees that it shall not exercise the power of attorney granted pursuant to this paragraph 21 unless an Event of Default has occurred and is continuing.

22. The powers conferred on the Lender hereunder are solely to protect its interests in the Collateral and shall not impose any duty on the Lender to exercise any such powers. Except for reasonable care of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Lender shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral.

23. Notwithstanding any other term or condition of this Agreement, this Agreement shall not relieve the Obligor or any other party to the Credit Agreement or any Loan Document from the observance or performance of any term, covenant, condition or agreement on its part to be observed or performed thereunder or from any liability to any other party or parties thereto or impose any obligation on the Lender to observe or perform any such term, covenant, condition or agreement to be so observed or performed, and the Obligor hereby agrees to indemnify and hold harmless the Lender from and against any and all losses, liabilities (including liabilities for penalties), costs and expenses which may be incurred by the Lender in relation to the Collateral and from all claims, alleged obligation or undertaking on its part to observe, perform or discharge any of the terms, covenants and agreements contained in the Collateral. The Lender may, at its option, perform any term, covenant, condition or agreement on the part of the Obligor to be performed under or in respect of the Collateral (and/or enforce any of the rights of the Obligor thereunder) without thereby waiving any rights to enforce this Agreement. Nothing contained in this paragraph 23 shall be deemed to constitute the Lender the mortgagee in possession of the Collateral or the lessee under any lease or agreement to lease unless the Lender has agreed to become such mortgagee in possession or to be a lessee.

24. This Agreement shall be binding upon the Obligor and the Lender and their respective successors and assigns and shall enure to the benefit of the Obligor and the Lender and their respective successors and assigns. The Lender shall be entitled to transfer or assign any of its right, title or interest in, to, or arising under this Agreement, in accordance with the provisions governing assignment contained in the Credit Agreement.

25. The Obligor acknowledges and agrees that in the event it amalgamates with any other corporation or corporations, it is the intention of the parties hereto that the security interest created hereby (i) shall extend to "Collateral" (as that term is herein defined) owned by each of the amalgamating corporations and the amalgamated corporation at the time of amalgamation and to any "Collateral" thereafter owned or acquired by the amalgamated corporation, such that the term the "Obligor" when used herein would apply to each of the amalgamating corporations and the amalgamated corporation and (ii) shall secure the "Obligations" (as that term is herein defined) of each of the amalgamating corporations and the amalgamated corporation to the Lender at the time of amalgamation and any "Obligations" of the amalgamated corporation to the Lender thereafter arising. The security interest shall attach to the additional "Collateral" at the time of amalgamation and to any "Collateral" thereafter owned or acquired by the amalgamated corporation when such becomes owned or is acquired.



26. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

27. In the event of any conflict between the provisions hereunder and the provisions of the Credit Agreement then, notwithstanding anything contained in this Agreement, the provisions contained in the Credit Agreement shall prevail and the provisions of this Agreement will be deemed to be amended to the extent necessary to eliminate such conflict. If any act or omission of the Obligor is expressly permitted under the Credit Agreement but is expressly prohibited hereunder, such act or omission shall be permitted. If any act or omission is expressly prohibited hereunder, but the Credit Agreement does not expressly permit such act or omission, or if any act is expressly required to be performed hereunder but the Credit Agreement does not expressly relieve the Obligor from such performance, such circumstance shall not constitute a conflict between the applicable provisions hereunder and the provisions of the Credit Agreement.

28. This Agreement and the security interest, assignment and mortgage and charge granted hereby are in addition to and not in substitution for any other security now or hereafter held by the Lender and this Agreement is a continuing agreement and security that will remain in full force and effect until discharged by the Lender.

29. The Obligor will not be discharged from any of the Obligations or from this Agreement except by a release or discharge signed in writing by the Lender at the Obligor's expense.

30. If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect.

31. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by telecopy or pdf), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

**[Signature pages follow]**

**IN WITNESS WHEREOF** the undersigned has caused this Agreement to be duly executed and delivered by its officer thereunto duly authorized.

**10600598 CANADA INC.**

By: 

Name: Carlos Jose Meza-Rios

Title: Vice President

*I have authority to bind the Corporation*

**THE TORONTO-DOMINION BANK**

Per: Elaine El-Zeghayar

Name: Elaine El-Zeghayar  
Title: Relationship Manager

Per: Scott Stirling

Name: Scott Stirling  
Title: Manager Commercial Credit  
*We have authority to bind the Bank*

**SCHEDULE I**  
**to**  
**GENERAL SECURITY AGREEMENT**

**A. Trademarks**

- NIL.

**B. Patents**

- NIL.

**C. Copyright**

- NIL.

This is Exhibit "N" referred to in the Affidavit of Andrea Jamnisek sworn January 27, 2023.

A handwritten signature in black ink, consisting of a stylized 'L' followed by a 'J' and a long horizontal line extending to the right.

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*Commissioner for Taking Affidavits (or as may be)*

**ASSIGNMENT OF INSURANCE****TO: THE TORONTO-DOMINION BANK ("TD")**

**IN CONSIDERATION** of the sum of Two Dollars (\$2.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the undersigned, all revenues, proceeds and other monies payable to the undersigned, with full power and authority to demand, sue for, enforce payment of, recover, receive and give receipts and discharges therefor, by virtue of the insurance policies identified in Schedule "A" attached hereto together with all endorsements and schedules thereto, as amended, restated, supplemented, replaced or otherwise modified from time to time (collectively, the "**Policy**") and any and all other insurance policies which are now or hereafter maintained by the undersigned are hereby unconditionally and irrevocably transferred and assigned, as security, to TD as its interest may appear.

This Assignment is in addition to and not in substitution for any other security now or hereafter held by TD and this Assignment is a continuing assignment and agreement which shall remain in full force and effect until discharged by TD by a release or discharge signed in writing by TD. Notwithstanding the foregoing provisions of this Agreement, TD shall not hereby assume or be liable for any obligations or payments in respect of the Policy. Upon termination of this Assignment, title to and ownership in the proceeds of insurance payable under the Policy shall be reverted automatically in the undersigned without any further act of TD or the undersigned.

If any provision of this Assignment is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability will attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof will continue in full force and effect.

This Assignment shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable herein.

This Agreement may be executed in number of counterparts and by different parties hereto in separate counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which counterparts together shall constitute but one agreement. Counterparts may be executed in original or facsimile form or similar method of electronic transmission.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

DATED this 1st day of ~~February~~<sup>March</sup>, 2018.

**KIVUTO SOLUTIONS INC.**

By: \_\_\_\_\_

Name: Carlos Jose Meza-Rios

Title: CEO

*I have authority to bind the Corporation*

## Schedule "A"

## Insurance Policies

No.	Insurer	Insurance Policy No.	Description
1.	Chubb Insurance Company	35946852	Commercial General Liability
2.	Chubb Insurance Company	79873141	Umbrella Liability
3.	Chubb Insurance Company	35946852	Commercial Property
4.	Chubb Insurance Company	35946852	Non-Owned Automobile
5.	Chubb Insurance Company	35946852	Integrity+ by Chubb for Technology (Claims Made)



This is Exhibit "O" referred to in the Affidavit of Andrea Jamnisek sworn January 27, 2023.

A handwritten signature in black ink, consisting of a stylized 'L' followed by a 'J' and a long horizontal line extending to the right.

---

*Commissioner for Taking Affidavits (or as may be)*

**COLLATERAL ASSIGNMENT OF ACQUISITION AGREEMENT**

**THIS COLLATERAL ASSIGNMENT OF ACQUISITION AGREEMENT** (as amended, modified, supplemented, restated or replaced from time to time, this "**Agreement**"), dated as of March 1, 2018, made by **10600598 CANADA INC.**, a corporation existing under the federal laws of Canada (together with any successors, by amalgamation or otherwise, and permitted assigns, the "**Assignor**", which term shall include, without limitation, "Kivuto Solutions Inc." following the Amalgamation) in favour of **THE TORONTO-DOMINION BANK**, as lender (the "**Lender**") under the Credit Agreement (as defined below).

**WITNESSETH:**

**WHEREAS** pursuant to a credit agreement dated as of March 1, 2018 (together with all amendments, modifications, supplements, restatements or replacements, if any, from time to time thereafter made thereto, the "**Credit Agreement**"), between the Lender and the Assignor, as borrower, the Lender has extended commitments to make loans and credit facilities (the "**Facilities**") available;

**AND WHEREAS** as a condition precedent to the making of Facilities available to the Assignor under the Credit Agreement, the Assignor is required to execute and deliver this Agreement as continuing collateral security;

**AND WHEREAS** the Assignor has duly authorized the execution, delivery and performance of this Agreement;

**NOW THEREFORE** for good and valuable consideration, the receipt of which is hereby acknowledged, and in order to induce the Lender to make the loans and advances to the Assignor pursuant to the Credit Agreement, the Assignor agrees with the Lender, as follows:

**ARTICLE 1 - DEFINITIONS**

1.01 Certain Terms. The following terms when used in this Agreement, including its preamble and recitals, shall have the following meanings (such definitions to be equally applicable to the singular and plural forms thereof):

"**Agreement**" is defined in the preamble.

"**Assigned Agreement**" means the share purchase agreement dated February 26, 2018, among Kivuto Solutions Inc., 10600598 Canada Inc. and the vendors party thereto for the purchase of all of the issued and outstanding shares in the capital of Kivuto Solutions Inc..

"**Assignor**" is defined in the preamble.

"**Credit Agreement**" is defined in the first recital.

"**Lender**" is defined in the first recital.

"**Obligations**" means all of the present and future indebtedness, liabilities and obligations of the Assignor of any and every kind, nature or description whatsoever (whether direct or indirect, joint or several or joint and several, absolute or contingent, matured or unmatured, in any currency, and whether as principal debtor, guarantor, surety or otherwise, including without limitation any interest that accrues thereon after or would accrue thereon but for the commencement of any case, proceeding or other action, whether voluntary or involuntary, relating to the bankruptcy, insolvency or reorganization of the Assignor, whether or not allowed or allowable as a claim in any such case, proceeding or other action) to the Lender (and its Affiliates) under, in connection with, relating to or with respect to each of the Loan Documents to which it is a party, and any unpaid balance thereof.

- 1.02 Credit Agreement Definitions. Unless otherwise defined herein or the context otherwise requires, capitalized terms used in this Agreement, including its preamble and recitals, have the meanings ascribed thereto in the Credit Agreement.
- 1.03 PPSA Definitions. Unless otherwise defined herein or in the Credit Agreement or the context otherwise requires, terms for which meanings are provided in the *Personal Property Security Act* (Ontario) are used in this Agreement, including its preamble and recitals, with such meanings.

## ARTICLE 2 - ASSIGNMENT, ETC.

- 2.01 Assignment. Upon and subject to the terms, conditions and provisions herein contained, the Assignor hereby unconditionally and irrevocably grants, as a general and continuing security for the payment and performance of the Obligations, a security interest in and assigns, transfers and sets over to and in favour of the Lender, as and by way of a fixed and specific assignment and security interest in all of its right, title, estate and interest in, to, under and in respect of (the "**Collateral Assignment**"):
- (a) the Assigned Agreement, and all benefits, powers and advantages of the Assignor to be derived therefrom and all covenants, obligations and agreements of the parties thereunder and otherwise to enforce the rights of the Assignor thereunder in the name of the Assignor;
  - (b) all deeds, documents, writings, papers, books, books of account and other records relating to the Assigned Agreement;
  - (c) all revenues and other moneys now due and payable or hereafter to become due and payable to the Assignor thereunder or in connection therewith by the other parties to the Assigned Agreement or receivable by the Assignor pursuant to or in connection with the Assigned Agreement; and
  - (d) the benefit of any guarantees or indemnities relating to any of the foregoing,

and in, to and under all amendments, modifications, extensions and replacements of the foregoing, to be held by the Lender as general and continuing security for

- the payment and satisfaction of all Obligations of the Assignor whether for principal, interest, costs, fees, expenses or otherwise; provided, however, that if the assignment by the Assignor hereunder of the Assigned Agreement (i) requires the consent of any Person which has not been obtained, (ii) requires the Lender to provide any notice or acknowledgement to the other party to the Assigned Agreement in order for such assignment to take place, or (iii) would result in a breach by the Assignor of the Assigned Agreement or termination thereof, then the Collateral Assignment shall not extend or apply to such Assigned Agreement(s) and such Assigned Agreement(s) will be held in trust by the Assignor for the benefit of the Lender, and on the exercise by the Lender of any of its rights under this Agreement, will be assigned by the Assignor as directed by the Lender.
- 2.02 Performance of Obligations. The Assignor covenants to observe and enforce the terms, covenants, conditions and obligations to be observed and enforced by the Assignor pursuant to the Assigned Agreement.
- 2.03 Attachment. The Assignor hereby acknowledges and agrees that value has been given, that the Assignor has rights in the Assigned Agreement existing as of the date hereof and that the security interest granted hereby will attach when the Assignor signs and delivers this Agreement.
- 2.04 No Liability. Nothing herein contained shall render any of the Lender, its agents, directors, officers, employees or any other Persons for whom the Lender is at law responsible, liable to any Person for the fulfilment or non-fulfilment of the obligations, covenants and agreements, including but not limited to the payment of any moneys thereunder or in respect thereto, of the Assignor under the Assigned Agreement. Notwithstanding the foregoing, the Assignor hereby indemnifies and agrees to save and hold harmless the Lender, its agents, directors, officers and employees (any one, an "**Indemnified Party**") from and against any and all claims, demands, actions, causes of action, losses, suits, damages and costs (collectively, the "**Claims**") whatsoever of any Person arising directly or indirectly from or out of the Assigned Agreement, save and except for any Claims arising from the gross negligence or wilful misconduct of any Indemnified Party.
- 2.05 Notice; Registration. The Lender shall have the right to serve this Agreement or notice thereof on any party to the Assigned Agreement.
- 2.06 Performance Until Default and Attorney of the Assignor. The Assignor hereby irrevocably appoints the Lender as its attorney-in-fact and agent, with full authority in the place and stead of the Assignor and in the name of the Assignor or otherwise, from time to time in the Lender's discretion, to take any action and to execute any instrument which the Lender may reasonably deem necessary or advisable to accomplish the purposes of this Agreement, including without limitation, (i) to exercise any of the rights, powers, authority and discretions which, under the terms of the Assigned Agreement, could be exercised by the Assignor with respect thereto, (ii) to ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in respect of the Assigned Agreement, (iii) to receive, endorse, and collect any drafts or other instruments, documents and chattel paper, in connection with clause (ii), and (iv) to file any claims or take any action or

- institute any proceedings which the Lender may deem necessary or desirable for the collection of any amounts payable under the Assigned Agreement or otherwise to enforce the rights of the Assignor and the Lender with respect to the Assigned Agreement, all of which is consented to by the Assignor; provided, that the Lender agrees that it shall not exercise any power or authority granted under the power of attorney granted pursuant to this Section unless an Event of Default has occurred and is continuing. The Assignor hereby acknowledges, consents and agrees that the power of attorney granted pursuant to this Section is (until termination of the security interest granted hereunder upon the payment and satisfaction in full of all Obligations and the termination of all Facilities) irrevocable and coupled with an interest.
- 2.07 Dealing with the Assigned Agreement. Subject to the rights of the Lender herein and in any other Loan Document, until the occurrence of a Default or an Event of Default, the Assignor shall be entitled to deal with the Assigned Agreement and to enforce all of the benefits, advantages and power thereunder and to collect and receive all monies payable to the Assignor under or in connection with the Assigned Agreement in the ordinary course of its business and the other parties to the Assigned Agreement shall be entitled to deal solely with the Assignor with respect to all matters relating to the Assigned Agreement, all as though this Agreement had not been made (subject to any irrevocable direction given in respect of any such monies and provided that all such monies received by the Assignor will continue to be subject to the security interest, assignment and transfer granted hereby and provided further that all money received by the Assignor pursuant to the Assigned Agreement will be received as trustee for the Lender and must be held separate and apart from other money of the Assignor and must be paid over to the Lender upon request) and to enforce all of the benefits, advantages and powers thereunder as though this Agreement had not been made.
- 2.08 Termination, Surrender, Alteration, Etc. Without the prior written consent of the Lender, the Assignor covenants and agrees that it shall not nor shall it agree at any time to (i) terminate, forfeit or cancel the Assigned Agreement, (ii) amend or modify the Assigned Agreement in any material respect, (iii) waive any failure of any party thereto to perform any material obligation thereunder, or (iv) suffer or permit anything allowing any party to terminate the Assigned Agreement or any of them.
- 2.09 Assignment, Pledging, Encumbrance. The Assignor covenants and agrees that it will not at any time during the term of this Agreement assign, pledge or encumber the Assigned Agreement, other than to the Lender or other than as permitted under the Credit Agreement.

### **ARTICLE 3 - REPRESENTATIONS AND COVENANTS**

- 3.01 Representations. The Assignor represents and warrants to the Lender that:
- (a) the Assignor has provided the Lender with true and complete copies of the Assigned Agreement;
  - (b) the Assigned Agreement is a valid and subsisting agreement, in full force and effect and unmodified and there are no defaults thereunder by the Assignor or, to the knowledge of the Assignor, any other party thereto;

- (c) as at the date hereof, the Assigned Agreement constitutes the entire agreement between the Assignor and each of the other parties thereto in respect of the matters contemplated therein; and
  - (d) no Assignor has granted to any other person (other than to or for the benefit of the Lender or as permitted in pursuant to the Credit Agreement) rights in respect of the Assigned Agreement which is to the same effect as any of the rights granted herein.
- 3.02 Further Assurances. The Assignor hereby covenants and agrees with the Lender that it shall from time to time and at all times hereafter upon written request so to do, make, do, execute and deliver or cause to be made, done, executed and delivered all such further acts, deeds, assurances and things as may be reasonably required by the Lender for more effectually implementing and carrying out the true intent and meaning of this Agreement.
- 3.03 Notice of Default or Amendment. The Assignor shall provide notice to the Lender of any material default under the Assigned Agreement and shall deliver to the Lender copies of any amendment to the Assigned Agreement.

#### **ARTICLE 4 - DEFAULT**

- 4.01 Rights of Lender Upon a Default. Whenever an Event of Default shall have occurred and is continuing under the Credit Agreement, without limiting the rights of the Lender under or pursuant to this Agreement, the Credit Agreement, any other Loan Document or any other security provided by the Assignor to the Lender pursuant to or in connection with the Credit Agreement or otherwise provided by Applicable Law, the Lender shall be entitled and shall have the authority by itself or through its agents (including, without limitation, any receiver or receiver and manager):
- (a) to renew, amend or otherwise deal with (including without limitation, the authority to demand, sue for, recover, receive and give receipts for all revenue or other moneys in connection with) the Assigned Agreement on such terms as it may deem appropriate;
  - (b) to perform, at the Assignor's expense any and all obligations or covenants of the Assignor under the Assigned Agreement and to enforce performance by the other party to the Assigned Agreement of its respective obligations, covenants and agreements thereunder;
  - (c) without limiting the generality of Section 4.01(a) hereof, to deal with the Assigned Agreement to the same extent as the Assignor could do;
  - (d) to take possession of and collect any amounts which may become payable to the Assignor in respect of the Assigned Agreement and pay therefrom all reasonable expenses and charges, the payment of which may be necessary to preserve and protect any such Assigned Agreement;
  - (e) to sell, either by public or private sale, or otherwise dispose of the Assigned Agreement in such manner, upon such terms and conditions, for such consideration and at such time as the Lender may deem expedient

and without notice to the Assignor except as required by Applicable Law and without any liability for any loss resulting therefrom;

- (f) to apply any monies received by it in accordance with the terms hereof against the Obligations in any manner contemplated under the Credit Agreement or to hold the same in a separate account for such time as it may see fit and then apply the same as aforesaid, the whole without prejudice to the Lender's claim or claims of or for any deficiency in respect thereof; and
- (g) to compound, compromise, grant extensions, take and give up securities, accept compositions, grant releases and discharges and otherwise deal with the parties to the Assigned Agreement and others, and with the Assigned Agreement and other securities as the Lender may see fit, without prejudice to the liability of the Assignor or to the Lender's rights to hold and realize upon the Assigned Agreement,

the whole without any liability or responsibility of any kind on the part of the Lender or its agents.

4.02 Exercise of Powers. Where any discretionary powers hereunder are vested in the Lender, the same may be exercised by an officer or manager of the Lender or its appointed agents, as the case may be, including, without limitation, any receiver or receiver and manager.

4.03 Dealing with Assigned Agreement. The Lender shall not be obliged to exhaust its recourse against the Assignor or any other Person or Persons or against any other security the Assignor may hold in respect of the Obligations before realizing upon or otherwise dealing with the Assigned Agreement in such manner as the Lender may consider desirable at any time when this Agreement shall have become and remain enforceable.

## ARTICLE 5 - GENERAL

5.01 No Release. This Agreement shall remain in full force and effect without regard to, and the obligations of the Assignor shall not be affected or impaired by:

- (a) any amendment, modification, replacement of or addition or supplement to the Credit Agreement, any other Loan Document or any other security provided to the Lender;
- (b) any exercise or non-exercise of any right, remedy, power or privilege in respect of this Agreement, the Credit Agreement, any other Loan Document or any other security provided to the Lender;
- (c) any waiver, consent, extension, indulgence or other action, inaction or admission under or in respect of this Agreement, the Credit Agreement, any other Loan Document or any other security provided to the Lender;
- (d) any default by the Assignor under, or any invalidity or unenforceability of, or any limitation of the liability of the Assignor or on the method or terms of payment under, or any irregularity or other defect in the Credit

Agreement, any other Loan Document or any other security provided to the Lender;

- (e) any merger, consolidation or amalgamation of the Assignor into or with any other Person; or
- (f) any insolvency, bankruptcy, liquidation, reorganization, arrangement, composition, winding-up, dissolution or similar proceeding involving or affecting the Assignor.

5.02 No Partnership. Nothing herein contained shall be deemed or construed by the parties hereto or by any third party as creating the relationship of partnership or of joint venture between the Assignor and the Lender, it being understood and agreed that none of the provisions herein contained or any acts of the Lender or of the Assignor shall be deemed to create any relationship between the Lender and the Assignor other than the relationship of assignee and assignor.

5.03 Rights and Remedies Cumulative. The rights and remedies given to the Lender hereunder shall be cumulative of and not substituted for any rights or remedies to which the Lender may be entitled under the Credit Agreement, any other Loan Document or any other security provided to the Lender pursuant to or in connection with any of the foregoing or at law and may be exercised whether or not any of the Lender has pursued or is then pursuing any other such rights and remedies. Nothing in this Agreement shall curtail or limit the remedies of the Lender as permitted either by Applicable Law or in any statute to a creditor, all such remedies being in addition to and not in substitution for any other rights of the Lender under this Agreement, the Credit Agreement, any other Loan Document or any other security provided to the Lender pursuant to or in connection with any of the foregoing.

5.04 Time of Essence. Time shall be of the essence of this Agreement.

5.05 Waiver. No consent or waiver, express or implied, by the Lender to or of any breach or default by the Assignor in performance of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by the Assignor hereunder. Failure on the part of the Lender to complain of any act or failure to act of the Assignor or to declare the Assignor in default, irrespective of how long such failure continues, shall not by itself constitute a waiver by the Lender of its rights hereunder.

5.06 Acknowledgement and Consent of Assignment. The Assignor confirms and agrees that it has obtained any acknowledgements or consents from the parties to the Assigned Agreement, in form and substance acceptable to the Lender, with respect to the assignment by the Assignor of the Assigned Agreement pursuant to this Agreement.

## **ARTICLE 6 - MISCELLANEOUS PROVISIONS**

6.01 Document. This Agreement is a Loan Document executed pursuant to the Credit Agreement and shall (unless otherwise expressly indicated herein) be construed, administered and applied in accordance with the terms and provisions thereof.



- 6.02 Amendments, etc. No amendment to or waiver of any provision of this Agreement nor consent to any departure by the Assignor herefrom shall in any event be effective unless the same shall be in writing and signed by the Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given.
- 6.03 Protection of Collateral. The Lender may from time to time, at its option, perform any act which the Assignor agrees hereunder to perform and which the Assignor shall fail to perform after being requested in writing so to perform (it being understood that no such request need be given after the occurrence and during the continuance of an Event of Default) and the Lender may from time to time take any other action which the Lender reasonably deems necessary for the maintenance, preservation or protection of any of the assigned rights or of its security interest therein.
- 6.04 Addresses for Notices. Any notice or communication to be given under this Agreement to the Lender or the Assignor shall be effective if given in accordance with the provisions of the Credit Agreement as to the giving of notice to each and the Assignor and the Lender may change its address for notices in accordance with the said provisions.
- 6.05 Section Captions. Section captions used in this Agreement are for convenience of reference only, and shall not affect the construction of this Agreement.
- 6.06 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.
- 6.07 Conflicts. In the event of any conflict between the provisions hereunder and the provisions of the Credit Agreement then, notwithstanding anything contained herein, the provisions contained in the Credit Agreement shall prevail and the provisions of this agreement will be deemed to be amended to the extent necessary to eliminate such conflict. If any act or omission of the Assignor is expressly permitted under the Credit Agreement but is expressly prohibited hereunder, such act or omission shall be permitted. If any act or omission is expressly prohibited hereunder, but the Credit Agreement does not expressly permit such act or omission, or if any act is expressly required to be performed hereunder but the Credit Agreement does not expressly relieve the Assignor from such performance, such fact shall not constitute a conflict between the applicable provisions hereunder and the provisions of the Credit Agreement.
- 6.08 Governing Law, Entire Agreement, etc. This Agreement shall be governed by and construed in accordance with the internal laws of the Province of Ontario and the federal laws of Canada applicable therein. Subject to and without limiting in any way the provisions regarding the paramountcy of the Credit Agreement in section 6.07 above, this Agreement and the other Loan Documents constitute the entire understanding among the parties hereto with respect to the subject matter hereof and supersede any prior agreements, written or oral, with respect thereto.

- 6.09 Assignment. This Agreement shall enure to the benefit of and be binding upon each of the Lender and its successors and permitted assigns and the Assignor and its successors and assigns; provided that the Assignor shall not have the right to assign its obligations hereunder and the Lender may only assign its rights, title and interest in, to and arising under this Agreement in accordance with the provisions of the Credit Agreement concerning assignments and participations.
- 6.10 Additional Continuing Security. This Agreement and the assignment granted hereby are in addition to and not in substitution for any other security now or hereafter held by the Lender and this Agreement is a continuing agreement and security that will remain in full force and effect until discharged by the Lender.
- 6.11 Discharge. The Assignor will not be discharged from any of the Obligations or from this Agreement except by a release or discharge signed in writing by the Lender, at the Assignor's expense, which shall be provided by the Lender, upon the request and at the expense of the Assignor, within a reasonable time after the Obligations have been paid in full and the Credit Agreement and the Commitments have been terminated.
- 6.12 Executed Copy. The Assignor acknowledges receipt of a fully executed copy of this Agreement.
- 6.13 Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by telecopy or pdf), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

**[Signature page follows]**

**IN WITNESS WHEREOF** the undersigned has duly executed this Agreement on the date first written above.

**10600598 CANADA INC.**

By: 

Name: Carlos Jose Meza-Rios

Title: Vice President

*I have authority to bind the Corporation*

Attention: Carlos Meza

Address: 126 York St. Suite 200

Ottawa, ON, K1N 5T5 Canada

Telephone: +1 (613) 526-3005

Email: [carlos@legadocapital.ca](mailto:carlos@legadocapital.ca)

This is Exhibit "P" referred to in the Affidavit of Andrea Jamnisek sworn January 27, 2023.

A handwritten signature in black ink, consisting of a stylized 'L' followed by a 'J' and a long horizontal line extending to the right.

---

*Commissioner for Taking Affidavits (or as may be)*

**ACKNOWLEDGEMENT AND CONFIRMATION AGREEMENT**

**TO:** The Toronto-Dominion Bank (the "**Lender**")

**RE:** Credit Agreement dated as of March 1, 2018 (together with all amendments, modifications, supplements, restatements or replacements, if any, from time to time, the "**Credit Agreement**") between the Lender and 10600598 Canada Inc. (the "**Borrower**")

**DATE:** March 1, 2018

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**WHEREAS:**

- A. The Lender made available certain credit facilities to the Borrower pursuant to the Credit Agreement;
- B. The Borrower granted certain security agreements (the "**Security**") in favour of the Lender, as security for its debts, liabilities and obligations under the Credit Agreement and other Loan Documents;
- C. Pursuant to Articles of Amalgamation dated as of the date hereof, the Borrower, Kivuto Solutions Inc. and 10633011 Canada Inc. (the "**Amalgamating Entities**") amalgamated to form the amalgamated corporation continuing under the corporate name "Kivuto Solutions Inc." ("**Amalco**"); and
- D. The undersigned has entered into this agreement to acknowledge and confirm, as successor by amalgamation to each of the Amalgamating Entities, the continuing enforceability and effect of all outstanding Loan Documents, notwithstanding the Amalgamation.

**NOW THEREFORE THIS ACKNOWLEDGEMENT AND CONFIRMATION AGREEMENT WITNESSES THAT** for good and valuable consideration (the receipt and sufficiency of which are hereby irrevocably acknowledged) the undersigned agrees as follows:

- 1. Capitalized terms used herein and not otherwise defined shall have the meanings given to them in the Credit Agreement.
- 2. Amalco hereby acknowledges and confirms to the Lender that:
  - (a) it is a corporation resulting from the Amalgamation continuing under the corporate name "Kivuto Solutions Inc.";
  - (b) Amalco, by operation of law, possesses all of the property, rights, privileges and franchises and is subject to all of the liabilities, including civil, criminal and administrative proceedings, and all contracts and debts of each of the Amalgamating Entities;

- (c) the Credit Agreement and each other Loan Document to which any Amalgamating Entity was a party is a legal, valid and binding obligation, enforceable against Amalco in accordance with its terms;
  - (d) Amalco is bound by, and indebted to the Lender pursuant to the Credit Agreement in the same manner and to the same extent as the Borrower;
  - (e) the Security remains in full force and effect and shall continue as obligations of Amalco and continue to secure, inter alia, all indebtedness and liabilities from time to time arising under, in connection with or pursuant to the Credit Agreement and the Loan Documents; and
  - (f) Amalco reaffirms the covenants and agreements contained in the Credit Agreement, Security, and each other Loan Document to which each Amalgamating Entity is a party.
3. Nothing in this agreement shall release or affect any other party to the Credit Agreement or any of the Loan Documents, against which all remedies are preserved.
4. Amalco agrees to execute such further assurances, security agreements and other documentation as may be required by the Lender for more effectively carrying out the true intent of this agreement.
5. ~~provis~~<sup>the</sup> of this agreement shall be binding upon Amalco and its successors and assigns and shall enure to the benefit of the Lender and its successors and permitted assigns under the Credit Agreement.
6. This agreement shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.
7. This agreement may be executed in any number of counterparts, and/or by facsimile or PDF file, each of which shall constitute an original and all of which, taken together, shall constitute one and the same instrument

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF** the undersigned has caused this Acknowledgement and Confirmation Agreement to be executed by its officer thereunto duly authorized as of the date first written above.

**KIVUTO SOLUTIONS INC.**

By: 

Name: Carlos Jose Meza-Rios

Title: CEO

*I have authority to bind the Corporation*

This is Exhibit "Q" referred to in the Affidavit of Andrea Jamnisek sworn January 27, 2023.

A handwritten signature in black ink, consisting of a stylized 'L' followed by a 'J' and a long horizontal line extending to the right.

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*Commissioner for Taking Affidavits (or as may be)*



**PRIORITIES AND STANDSTILL AGREEMENT**

THIS AGREEMENT dated as of the 1<sup>st</sup> day of March, 2018.

B E T W E E N:

THE TORONTO-DOMINION BANK, a Canadian chartered bank

(hereinafter referred to as "TD")

OF THE FIRST PART;

- and -

**BDC CAPITAL INC.**, a wholly-owned and subsidiary of Business Development Bank of Canada, incorporated in accordance with the Canada Business Corporations Act, its head office located at 5 Place Ville-Marie, Suite 300, in Montreal, Province of Quebec, H3B 5E7;

(hereinafter referred to as "BDC Capital")

OF THE SECOND PART;

- and -

**10600598 CANADIAN**, a corporation incorporated under the laws of Canada, having its registered office at 199 Bay Street, 5300 Commerce Court West, Toronto, Ontario, M5L 1B9

(hereinafter referred to as the "Debtor")

OF THE THIRD PART;

**WHEREAS** the Debtor is or may become indebted or liable to TD and has granted certain security to TD in connection with such indebtedness or liability;

**AND WHEREAS** the Debtor is or may become indebted or liable to BDC Capital and has granted certain security to BDC Capital in connection with such indebtedness or liability;

**AND WHEREAS** the parties hereto wish to enter into this Agreement in order to set out the respective priorities of the security issued to TD and BDC Capital on the terms and conditions set out herein.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the premises and other good and valuable consideration, the parties hereto hereby covenant, undertake, declare and agree as follows:

**ARTICLE 1 - DEFINITIONS**

1.1 In this Agreement the following terms have the following meanings:

- (a) "**BDC Capital Indebtedness**" means all present and future indebtedness and other obligations of the Debtor to BDC Capital from time to time including, without limitation, all indebtedness and other obligations owing under or in connection with the BDC Capital Loan Agreement;

- (b) "**BDC Capital Loan Agreement**" means in the letter of offer, dated February 9, 2018, addressed by BDC Capital to the Debtor and accepted by the Debtor on February 9, 2018, as amended from time to time;
- (c) "**BDC Capital Security**" means any and all security which may be held by BDC Capital now or hereafter on the property and assets of the Debtor for the BDC Capital Indebtedness, including, without limitation, that described in Schedule "B" hereto;
- (d) "**Blockage Notice**" means a written notice issued to BDC Capital by TD setting out in reasonable detail the particulars of the occurrence of a Senior Event of Default under the TD Loan Agreement or the TD Security;
- (e) "**Business Day**" means a day on which the main branch of BDC Capital and TD in Toronto, Ontario are open for normal banking business but in any event not including a Saturday or Sunday;
- (f) "**Enforcement Action**" means the commencement of action against the Debtor, as applicable, power of sale, foreclosure or other judicial or private sale proceedings, appointing or obtaining the appointment of a receiver, a manager or a receiver and manager or other person having similar powers in respect of any person or property, attornment of rents, taking possession or control of any property or any action or proceeding seeking payment or recovery of all or any part of any indebtedness or damages in lieu thereof, or accepting a transfer of any property in lieu of foreclosure, or taking any action against any guarantors under any of the TD Loan Agreement and the BDC Capital Loan Agreement comprising the TD Security or the BDC Capital Security or against any party or parties who may be entitled to claim contribution or indemnity against the Debtor, or the exercise of any other rights or remedies available to a creditor under its security or otherwise at law or in equity, including without limitation, any bankruptcy proceedings;
- (g) "**Life Insurance Policy**" means the insurance policy on the lives of Carlos Jose Meza Rios and Jeffery David Blacklock in the aggregate coverage amount of \$11,000,000 that have been or will be obtained pursuant to the BDC Capital Loan Agreement and that is subject to the BDC Capital Security, and includes any amendments, modifications, replacements or substitutions therefor and all proceeds payable thereunder or in connection therewith;
- (h) "**Person**" means any individual, corporation, financial institution, trust, trustee, partnership, unincorporated association, government, governmental agency, or court or other authority, including any officer appointed by any court or other authority;
- (i) "**Senior Event of Default**" means the occurrence of a Default or an Event of Default as such terms are defined under the TD Loan Agreement;
- (j) "**Standstill Commencement Notice**" means a written notice issued to TD by BDC Capital setting out in reasonable detail the particulars of the occurrence of an event of default under the BDC Capital Loan Agreement or the BDC Capital Security;
- (k) "**Standstill Period**" means a period commencing on the earliest of, (i) receipt by BDC Capital of a Blockage Notice, and (ii) receipt by TD of a Standstill Commencement Notice, and terminating in each case on the earliest of, (iii) 120 days from the date of receipt of the Blockage Notice or Standstill Commencement Notice, as applicable, (iv) the date on which the Senior Event of Default giving rise to the Blockage Notice or the Standstill Commencement Notice, as applicable, has been waived or cured, (v) the date on which either TD or the BDC Capital agrees to withdraw or revoke its Blockage Notice or Standstill Commencement Notice, and (vi) the date upon which either TD or BDC Capital commences an Enforcement Action, provided that the maximum Standstill Period in any consecutive period of 365 days shall not exceed 180 days;
- (l) "**TD Indebtedness**" means all present and future indebtedness, liabilities and other obligations of the Debtor to TD from time to time including, without limitation, all indebtedness and other obligations owing under or in connection with the TD Loan Agreement;
- (m) "**TD Loan Agreement**" means in a credit agreement dated as of the 1<sup>st</sup> day of March, 2018 made between TD and the Debtor (as same may be amended, restated, supplemented or otherwise modified from time to time); and

- (n) "TD Security" means any and all security which may be held by TD now or hereafter in respect of the TD Indebtedness, including, without limitation, that described in Schedule "A" hereto.

#### **ARTICLE 2- CONSENT**

- 2.1 BDC Capital hereby acknowledges its consent to the creation and issue by the Debtor to TD of the TD Security and to the entering into by the Debtor of the TD Loan Agreement and that the creation, issue, existence and incurring of the same does not constitute a default or under the BDC Capital Security or the BDC Capital Loan Agreement.
- 2.2 TD hereby acknowledges its consent to the creation and issue by the Debtor to BDC Capital of the BDC Capital Security and to the giving by the Debtor of the BDC Capital Loan Agreement to BDC Capital and that the creation, issue, existence and incurring of the same does not constitute a default under the TD Security or the TD Loan Agreement.

#### **ARTICLE 3 - SUBORDINATION**

- 3.1 Subject to Section 3.2, BDC Capital agrees that BDC Capital Security is hereby postponed and subordinated in all respects to the security constituted by the TD Security on all the property, assets and undertaking of the Debtor, both present and future.
- 3.2 TD and BDC Capital agree that any proceeds payable at any time and from time to time pursuant to and in accordance with the Life Insurance Policy shall be paid to BDC Capital and TD hereby subordinates the TD Security to BDC Capital for the limited purposes of this Section 3.2.
- 3.3 BDC Capital may not alter the terms of the BDC Capital Loan Agreement if the effect of the amendment is: (i) to increase the interest rate on BDC Capital Indebtedness; (ii) to change the dates on which payments of principal or interest are due on the BDC Capital Indebtedness, except to postpone those dates; (iii) to amend any default or event of default, except to remove or make less restrictive a provision for defects provided therein, or to add a covenant in respect of such debt; (iv) to modify the stipulations relating to the repayment or prepayment of the BDC Capital Indebtedness, except to postpone its dates or to reduce the premiums payable in this respect; (v) add an additional lien or encumber a charge of other property to secure payment of the BDC Capital Indebtedness; or (vi) modify any other provision, except as permitted by this Agreement, if such amendment would materially increase the obligations of the Debtor under this Agreement or give BDC Capital significant additional rights in the future in a way that is prejudicial to any debtor or TD.
- 3.4 TD may not amend the TD Loan Agreement or any related instrument or agreement, if it has the effect of: (i) increasing the maximum amount available under the TD Indebtedness; or (ii) modifying the financial covenants.
- 3.5 The subordinations and postponements contained herein shall apply in all events and circumstances regardless of:
  - (a) anything contained in any prior agreement, document or instrument;
  - (b) the giving of or failure to give any notice to the Debtor or other Person;
  - (c) the terms or provision of the TD Loan Agreement, the BDC Capital Loan Agreement, the TD Security and the BDC Capital Security;
  - (d) the date of execution, attachment, registration or perfection of any security interest held by TD or BDC Capital;
  - (e) the date of any advance or advances made to the Debtor by TD or BDC Capital;
  - (f) the date of default by the Debtor under any of the TD Security or the BDC Capital Security or the dates of crystallization of any floating charges held by TD or BDC Capital;
  - (g) any forbearance whatsoever as to time, performance or otherwise or any release, discharge, loss or alteration in or dealing with all or any part of the TD Indebtedness, the TD Loan Agreement, the TD Security, the BDC Capital Indebtedness, the BDC Capital Loan Agreement or the BDC Capital Security;
  - (h) any defence, set-off or counterclaim which any Person may assert;

- (i) any bankruptcy proceedings in respect of the Debtor; or
  - (j) any priority granted by any principle of law or any statute.
- 3.6 Any insurance proceeds received by the Debtor or by TD or BDC Capital in respect of the collateral charged by the TD Security or the BDC Capital Security shall be dealt with according to the preceding provisions hereof as though such insurance proceeds were paid or payable as proceeds of realization of the collateral for which they compensate.
- 3.7 If any of the TD Security or the BDC Capital Security is claimed by a trustee in bankruptcy, or found by a court of competent jurisdiction, to be unenforceable, invalid, unregistered or unperfected, then the foregoing provisions of this Article 3 shall not apply to such security to the extent that such security is so claimed or found to be unenforceable, invalid, unregistered or unperfected as against a third party unless the secured party shall be diligently contesting such claim or appealing such decision and has provided the other secured party with a satisfactory indemnity.
- 3.8 Each of TD and BDC Capital agree that they will use their best efforts to give prompt written notice to the other of any action taken by them against the Debtor to enforce their security in accordance with the terms of this Agreement. Such notice may be given prior to or forthwith after taking such action, but failure to give such notice will not give TD or BDC Capital any cause of action or right to damages or other remedy against one another.

#### **ARTICLE 4 – RESTRICTIONS ON PAYMENT**

- 4.1 Subject to Article 5, during the term of this Agreement, the Debtor shall be permitted or be entitled to make (and BDC Capital shall receive or be entitled to receive) regularly scheduled payments of interest as provided in the BDC Capital Loan Agreement.
- 4.2 During the term of this Agreement, the Debtor shall not be permitted or be entitled to make (and BDC Capital shall not receive or be entitled to receive) any repayments of the principal amount set forth in the BDC Capital Loan Agreement.

#### **ARTICLE 5- POSTPONEMENT& STANDSTILL**

- 5.1 During the Standstill Period payment of all or any part of BDC Capital Indebtedness by the Debtor to BDC Capital is hereby deferred and postponed to payment in full of the TD Indebtedness and no payment from the Debtor shall be made or received on account of BDC Capital Indebtedness in advance of the TD Indebtedness without the prior written consent of TD. Upon the completion of any Standstill Period, the Debtor, as applicable, shall be entitled to make, and BDC Capital shall be entitled to receive, any payments which were prevented from being made during such Standstill Period.
- 5.2 BDC Capital shall not be permitted to exercise any Enforcement Action or other rights under the BDC Capital Security during a Standstill Period unless the TD Indebtedness has been accelerated and TD has commenced an Enforcement Action with respect to the TD Security over substantially all of the assets of the Debtor. Notwithstanding the foregoing, during the Standstill Period, BDC Capital shall be permitted *measures take to* which are strictly necessary for it to exercise its remedies or other secured rights under the BDC Capital Security, and namely for purposes of protecting and preserving its rights under Insolvency Laws, including, for purposes of protecting its rights, call or make demand for repayment of the BDC Capital Indebtedness.

#### **ARTICLE 6- COVENANTS OF THE DEBTOR**

- 6.1 The Debtor hereby confirms to and agrees with TD and BDC Capital that:
- (a) so long as any of the indebtedness of the Debtor herein referred to remains outstanding, it shall stand possessed of its assets so charged for TD and BDC Capital in accordance with their respective interests and priorities as herein set out; and
  - (b) none of the provisions of this Agreement create any rights in favour of the Debtor or affect the manner in which TD or BDC Capital or any receiver and manager appointed by them over the property, assets and undertaking of the Debtor exercises its rights under the TD Security and the BDC Capital Security.

**ARTICLE 7- GENERAL**

- 7.1 From time to time upon request therefor TD and BDC Capital may advise each other of any information which it may have relating to the affairs of the Debtor, including its business and financial affairs and the particulars of the indebtedness and liability of the Debtor to each other and all security held by each therefor. The Debtor hereby consents to any such exchange of information.
- 7.2 Neither TD nor BDC Capital shall take any action to defeat the priorities set forth in this Agreement. Each of TD and BDC Capital hereby waives any right the other may have to require the other to marshal in its favour.
- 7.3 Each of TD, BDC Capital and the Debtor shall do, perform, execute and deliver all acts, deeds and documents as may be necessary from time to time to give full force and effect to the intent of this Agreement; provided, however, that no consent of the Debtor shall be necessary to any amendment of the terms hereof by TD and BDC Capital unless the interests of the Debtor are directly affected thereby.
- 7.4 This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument and shall be effective as of the formal date hereof. This Agreement also may be executed by facsimile or pdf, and any signature contained hereon by facsimile or pdf shall be deemed to be equivalent to an original signature for all purposes. Any party delivering this Agreement by facsimile or pdf shall forthwith deliver originally executed copies to the other parties hereto, provided that the failure to do so does not invalidate the effectiveness of the facsimile or electronic execution and delivery thereof.
- 7.5 Any communication required or permitted to be given under this Agreement will be in writing and will be effectively made and given if (a) delivered personally, (b) sent by prepaid courier service, or (c) sent prepaid by facsimile transmission, in each case to the address or facsimile number of the relevant party set out on the signature pages to this Agreement. Any communication so given will be deemed to have been given and to have been received on the day of actual delivery if so delivered, or on the day of facsimile transmission provided that such day is a Business Day and the communication is so delivered or sent prior to 4:30 p.m. (local time at the place of receipt). Otherwise, such communication will be deemed to have been given and to have been received on the following Business Day. Any party may from time to time change their respective addresses or facsimile numbers for notice by giving notice to the others in accordance with the provisions of this Section.
- 7.6 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
- 7.7 Where there is any conflict or inconsistency between the provisions in this Agreement on the one hand, including, without limitation, conflicts or inconsistencies regarding the priority of the security of the parties hereto, and similar provisions in the TD Loan Agreement, BDC Capital Loan Agreement, TD Security or the BDC Capital Security on the other hand, the provisions of this Agreement will prevail.
- 7.8 Neither TD nor BDC Capital shall assign all or part of any of its TD Security or the BDC Capital Security, as the case may be, without first obtaining a written agreement from the assignee under which the assignee agrees to be bound by the terms of this Agreement.
- 7.9 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

*[Signature Page Follows]*

IN WITNESS WHEREOF the parties hereto have executed this Agreement under the hands of their duly authorized officers.

Address: TD Commercial Banking  
North York CBC  
1470 Don Mills Road, 3rd Floor  
Toronto, Ontario M3B 2X9

Attention: Elaine El Zeghayar  
Fax: (416) 445 6874

**THE TORONTO-DOMINION BANK**

By: Elaine El Zeghayar  
Name: Elaine El Zeghayar  
Title: Relationship Manager

Scott Stirling  
Manager Commercial Credit.

Address: BDC Capital Inc.  
Sun Life Financial Centre  
50 O'Connor Street, Suite 1100  
Ottawa, ON K1P 5E1

Attention: Managing Director, Growth and Transition  
Capital  
Fax No.: (613) 947-3485

**BDC CAPITAL INC.**

By: \_\_\_\_\_  
Name: Sean Crouse, Director

By: \_\_\_\_\_  
Name: Cyril Cochrane, Managing Director

Address: 10600598 Canada Inc.  
126 York St. Suite 200  
Ottawa, ON, K1N 5T5

Attention: Carlos Jose Meza-Rios

**10600598 CANADA INC.**

By: \_\_\_\_\_  
Name: Carlos Jose Meza-Rios  
Title: Vice President

IN WITNESS WHEREOF the parties hereto have executed this Agreement under the hands of their duly authorized officers.

Address: TD Commercial Banking  
North York CBC  
1470 Don Mills Road, 3rd Floor  
Toronto, Ontario M3B 2X9

Attention: Elaine El Zeghayar  
Fax: (416) 445 6874

**THE TORONTO-DOMINION BANK**

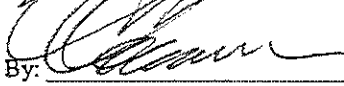
By: \_\_\_\_\_  
Name: Elaine El Zeghayar  
Title: Relationship Manager

Address: BDC Capital Inc.  
Sun Life Financial Centre  
50 O'Connor Street, Suite 1100  
Ottawa, ON K1P 5E1

Attention: Managing Director, Growth and Transition  
Capital  
Fax No.: (613) 947-3485

**BDC CAPITAL INC.**

By:   
Name: Sean Crouse, Director

By:   
Name: Cyril Cochrane, Managing Director

Address: 10600598 Canada Inc.  
126 York St. Suite 200  
Ottawa, ON, K1N 5T5

Attention: Carlos Jose Meza-Rios

**10600598 CANADA INC.**

By: \_\_\_\_\_  
Name: Carlos Jose Meza-Rios  
Title: Vice President

IN WITNESS WHEREOF the parties hereto have executed this Agreement under the hands of their duly authorized officers.

Address: TD Commercial Banking  
North York CBC  
1470 Don Mills Road, 3rd Floor  
Toronto, Ontario M3B 2X9

Attention: Elaine El Zeghayar  
Fax: (416) 445 6874

**THE TORONTO-DOMINION BANK**

By: \_\_\_\_\_  
Name: Elaine El Zeghayar  
Title: Relationship Manager

Address: BDC Capital Inc.  
Sun Life Financial Centre  
50 O'Connor Street, Suite 1100  
Ottawa, ON K1P 5E1

Attention: Managing Director, Growth and Transition  
Capital  
Fax No.: (613) 947-3485

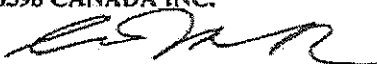
**BDC CAPITAL INC.**

By: \_\_\_\_\_  
Name: Sean Crouse, Director

Address: 10600598 Canada Inc.  
126 York St. Suite 200  
Ottawa, ON, K1N 5T5

Attention: Carlos Jose Meza-Rios

**10600598 CANADA INC.**

By:   
Name: Carlos Jose Meza-Rios  
Title: Vice President



**SCHEDULE "A"**

**TD SECURITY**

1. General Security Agreement granted by the Debtor in favour of TD.
2. Collateral assignment of material contracts granted by the Debtor in favour of TD.
3. Limited recourse guarantee entered into by Legado Capital Partners LP in favour of TD.
4. Securities pledge agreement entered into by Legado Capital Partners LP in favour of TD.
5. Guarantee entered into by Kivuto Solutions Inc. in favour of TD.
6. Assignment of insurance by Kivuto Solutions Inc. in favour of TD.
7. General security agreement granted by Kivuto Solutions Inc. in favour of TD.

**SCHEDULE "B"**

**BDC Capital SECURITY**

1. General Security Agreement dated [ ] granted by the Debtor in favour of BDC Capital;
2. General Security Agreement dated [ ] granted by Kivuto Solutions Inc. in favour of BDC Capital;
3. Guarantee of the obligations of the Debtor granted by Kivuto Solutions Inc. in favour of BDC Capital;
4. Limited Recourse Guarantee from Legado Capital LP together with a share pledge agreement in respect of the shares of the Debtor in favour of BDC Capital; and
5. Assignment of the Life Insurance Policy (as such term is defined herein).

**AMENDING AGREEMENT**

**THIS AMENDING AGREEMENT** dated August 17, 2020

**BETWEEN:**

**BDC CAPITAL INC.**, a wholly-owned subsidiary of Business Development Bank of Canada

(“**BDC Capital**”)

**AND:**

**THE TORONTO-DOMINION BANK**

(“**TD**”)

**AND:**

**KIVUTO SOLUTIONS INC.**

(the “**Debtor**”)

**WHEREAS:**

- A. BDC Capital, TD and 10600598 Canada Inc., a predecessor of the Debtor, entered into a priorities and standstill agreement dated March 1, 2018, (the “**Priority Agreement**”) in order to set out the respective priorities of the BDC Capital Security and the TD Security;
- B. All capitalized terms used in this Amending Agreement shall have the meaning ascribed thereto in the Priority Agreement, unless otherwise defined herein; and
- C. BDC Capital and TD wish to enter into this Amending Agreement to amend the Priority Agreement;

**NOW THEREFORE** in consideration of the premises and other good and valuable consideration, the parties hereto covenant and agree as follows:

1. This Amending Agreement shall amend the Priority Agreement as provided herein and shall be read and construed therewith as if they constituted but one document.
2. TD hereby acknowledges and consents to the letter dated August 17, 2020 (the “**BDC Amending Letter**”) amending the terms of the BDC Capital Loan Agreement. BDC hereby acknowledges and consents to the fourth amending agreement dated August 17 (the “**TD Amending Agreement**”) and together with the BDC Amending Letter, the “**Loan Amendments**”) amending the terms of the TD Loan Agreement.
3. Notwithstanding the terms of the Priority Agreement, as set out in the Loan Amendments, the amounts payable to TD under TD Bank’s Participation Kicker will be payable only after the other indebtedness, liabilities and obligations of the Debtor to TD under the TD Loan Agreement are paid in full, the amounts payable to BDC Capital under the BDC Capital Loan Agreement other than the Bonus on Sale are paid in full and the repayment of the invested amount of the 2020 equity investment of up to \$7,731,922.
4. This Amending Agreement is supplemental to and shall be read with and be deemed to be part of the Priority Agreement, which shall be deemed to be amended as herein provided.
5. The Priority Agreement is also hereby amended *pro tanto* to give effect to this Amending Agreement.
6. All the terms and conditions of the Priority Agreement, except insofar as the same are amended by the express provisions of this Amending Agreement, are confirmed and ratified in all respects, shall survive and shall not merge with or be extinguished by the execution and delivery of this Amending Agreement and shall hereafter continue in full force and effect, as amended.
7. This Amending Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.
8. This Amending Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original, pdf

- or faxed form and the parties adopt any signatures received in such manner as original signatures of the parties.
9. This Amending Agreement shall be construed in accordance with the laws of the Province of Ontario.
  10. Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include the masculine, feminine and neuter genders

**[Remainder of Page Intentionally Blank]**

IN WITNESS WHEREOF the parties hereto have executed this Amending Agreement under the hand(s) of their duly authorized officer(s) on the date first above written.

**BDC CAPITAL INC**

Per:   
Name: Roger Wilson  
Title: AVP GTC Portfolio Management

Per:   
Name: Benoit Gagnon  
Title: Analyst GTC Portfolio Management

I/We have authority to bind the Corporation.

**THE TORONTO-DOMINION BANK**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I/We have authority to bind the Bank.

**KIVUTO SOLUTIONS INC.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I/We have authority to bind the Corporation.

IN WITNESS WHEREOF the parties hereto have executed this Amending Agreement under the hand(s) of their duly authorized officer(s) on the date first above written.

**BDC CAPITAL INC**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the Corporation.

**THE TORONTO-DOMINION BANK**

Per: \_\_\_\_\_  
Name: Andrea Jamnisek  
Title: Director, Financial Restructuring Group

Per: \_\_\_\_\_  
Name: Type text here  
Title:

I/We have authority to bind the Bank.

**KIVUTO SOLUTIONS INC.**

Per: \_\_\_\_\_  
Name: Carlos Jose Meza-Rios  
Title: Chief Executive Officer

I/We have authority to bind the Corporation.

This is Exhibit "R" referred to in the Affidavit of Andrea Jamnisek sworn January 27, 2023.

A handwritten signature in black ink, consisting of a stylized 'L' followed by a 'J' and a long horizontal line extending to the right.

---

*Commissioner for Taking Affidavits (or as may be)*

**GUARANTEE**

**THIS GUARANTEE** (as amended, modified, supplemented, restated or replaced from time to time, this "**Guarantee**"), dated as of March 1, 2018, made by **KIVUTO SOLUTIONS INC.**, a corporation existing under the federal laws of Canada (together with its successors, by amalgamation or otherwise, and permitted assigns, the "**Guarantor**"), in favour of **THE TORONTO-DOMINION BANK**, as lender (the "**Lender**") under the Credit Agreement (as defined below);

**WHEREAS** pursuant to a credit agreement dated as of March 1, 2018 (together with all amendments, modifications, supplements, restatements or replacements, if any, from time to time thereafter made thereto, the "**Credit Agreement**"), among the Lender and the Borrower (as defined below), the Lender has extended commitments to make loans and credit facilities (the "**Facilities**") available to the Borrower;

**AND WHEREAS** as a condition precedent to the making of the Facilities available to the Borrower under the Credit Agreement, the Guarantor is required to execute and deliver this Guarantee in favour of the Lender;

**AND WHEREAS** the Guarantor has duly authorized the execution, delivery and performance of this Guarantee;

**NOW THEREFORE** for good and valuable consideration, the receipt of which is hereby acknowledged, and in order to induce the Lender to make the loans and advances to the Borrower pursuant to the Credit Agreement, the Guarantor agrees with the Lender, as follows:

1. Unless otherwise defined herein or the context otherwise requires, terms used in this Guarantee have the meanings defined in the Credit Agreement, and the following terms have the following meanings:

- (a) "**Borrower**" means 10600598 Canada Inc., together with its successors, by amalgamation or otherwise, and permitted assigns; and
- (b) "**Guaranteed Liabilities**" means all of the present and future indebtedness, liabilities and obligations of the Borrower of any and every kind, nature or description whatsoever (whether direct or indirect, joint or several or joint and several, absolute or contingent, matured or unmatured, in any currency, and whether as principal debtor, guarantor, surety or otherwise, including without limitation any interest that accrues thereon after or would accrue thereon but for the commencement of any case, proceeding or other action, whether voluntary or involuntary, relating to the bankruptcy, insolvency or reorganization of the Borrower, whether or not allowed or allowable as a claim in any such case, proceeding or other action) to the Lender (and its Affiliates) under, in connection with, relating to or with respect to each of the Loan Documents to which it is a party, and any unpaid balance thereof.

In this Guarantee words importing the singular number only include the plural and *vice versa*.



2. The Guarantor hereby unconditionally and irrevocably guarantees to the Lender the full and punctual payment and performance when due, whether at stated maturity, by required payment, by acceleration, declaration, demand or otherwise, of the Guaranteed Liabilities.

3. If any or all of the Guaranteed Liabilities are not duly paid by the Borrower and are not recoverable under paragraph 2 hereof for any reason whatsoever, the Guarantor will, as a separate and distinct obligation, indemnify and save harmless the Lender from and against all losses resulting from the failure of the Borrower to pay such Guaranteed Liabilities.

4. If any or all of the Guaranteed Liabilities are not duly paid by the Borrower and are not recoverable under paragraph 2 hereof or the Lender is not indemnified under paragraph 3 hereof, in each case, for any reason whatsoever, or from the enforcement of this Guarantee, such Guaranteed Liabilities will, as a separate and distinct obligation, be recoverable from the Guarantor as primary obligor.

5. This Guarantee shall be a continuing, absolute, unconditional and irrevocable Guarantee of all of the Guaranteed Liabilities, shall apply to and secure all and any of the Guaranteed Liabilities, and shall remain in full force and effect until all of the Guaranteed Liabilities have been paid in full and the Facilities have been terminated; and this Guarantee shall not be considered as wholly or partially satisfied by the payment or liquidation at any time of any sum of money for the time being due or remaining unpaid to the Lender.

6. This Guarantee constitutes a guarantee of payment when due and not of collection, and the Guarantor specifically agrees that the Lender shall not be bound to pursue or exhaust its recourse against the Borrower or others or any securities or other guarantees they may at any time hold before being entitled to payment from the Guarantor.

7. The Guarantor's liability to make payment under this Guarantee shall arise forthwith after demand for payment has been made in writing on the Guarantor in accordance with the provisions hereof (including, without limitation, paragraph 13 hereof) and the Guarantor's liability shall bear interest from the date of such demand at the rate or rates set out in paragraph 8 hereof.

8. The rate or rates of interest payable by the Guarantor from the date of a demand for payment under this Guarantee shall be the rate or rates of interest payable by the Borrower in respect of the Guaranteed Liabilities under the Credit Agreement. Whenever interest to be paid is to be calculated on the basis of a year of 360 days or any other period of time that is less than a calendar year, the yearly rate of interest to which the rate determined pursuant to such calculation is equivalent is the rate so determined multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 360 or such other period of time, as the case may be.

9. The Guarantor hereby agrees that:

- (a) save and except for Excluded Taxes (as defined in the Credit Agreement), all payments by the Guarantor hereunder shall be made free and clear of and without deduction for, or on account of, any present or future income, stamp or

other taxes, levies, fees, duties, withholdings or other charges of any nature whatsoever imposed by any taxing authority (such non-excluded items being called "**Taxes**"). In the event that any withholding or deduction from any payment to be made by the Guarantor hereunder is required in respect of any Taxes pursuant to any applicable law, rule or regulation, then the Guarantor will:

- (i) pay directly to the relevant authority the full amount required to be so withheld or deducted, including, without limitation, the full amount of any Taxes to be withheld or deducted in respect of any additional amount referred to in clause (iii) below;
- (ii) promptly forward to the Lender an official receipt or other documentation satisfactory to the Lender evidencing such payment to such authority; and
- (iii) pay to the Lender such additional amount or amounts as is necessary to ensure that the net amount actually received by the Lender will equal the full amount the Lender would have received had no such withholding or deduction been required.

Moreover, if any Taxes are directly asserted against the Lender with respect to any payment received by the Lender hereunder, the Lender may pay such Taxes and the Guarantor will promptly pay such additional amounts (including any penalties, interest or expenses) as are necessary in order that the net amount received by the Lender after the payment of such Taxes (including any Taxes on such additional amount) shall equal the amount the Lender would have received had such Taxes not been asserted.

- (b) if the Guarantor fails to pay any Taxes when due to the appropriate taxing authority or fails to remit to the Lender required receipts or other required documentary evidence, the Guarantor shall indemnify the Lender for any incremental Taxes, interest or penalties that may become payable by the Lender as a result of any such failure; and
- (c) without prejudice to the survival of any other agreement of the Guarantor hereunder, the agreements and obligations of the Guarantor contained in this paragraph 9 shall survive the payment in full of the Guaranteed Liabilities.

If, after any payment of Taxes by the Guarantor under this paragraph, any part of any Taxes paid by the Lender is subsequently recovered by the Lender, the Lender shall reimburse the Guarantor to the extent of the amount so recovered.

10. The Guarantor hereby agrees that payments hereunder on account of the Guaranteed Liabilities shall be made in the currency (the "**Agreed Currency**") in which each such Guaranteed Liability is payable and if any payment is received in another currency (the "**Other Currency**"), such payment shall constitute a discharge of the liability of the Guarantor hereunder only to the extent of the amount of the Agreed Currency which the Lender is able to purchase with the amount of the Other Currency received by it on the Business Day immediately

following such receipt in accordance with normal procedures and after deducting any premium and costs of exchange.

11. The Guarantor hereby agrees that:

- (a) if, for the purpose of obtaining judgment in any court in any jurisdiction, it becomes necessary to convert into a particular currency (the "**Judgment Currency**") any amount due in the Agreed Currency, then the conversion shall be made on the basis of the rate of exchange prevailing at any time on the Business Day immediately preceding the day on which judgment is given. For the foregoing purposes "**rate of exchange**" means the rate at which the Lender, in accordance with its normal banking procedures, is able on the relevant date to purchase the Agreed Currency with the Judgment Currency after deducting any premium and costs of exchange; and
- (b) the obligation of the Guarantor in respect of any sum due to the Lender hereunder shall, notwithstanding any judgment in a currency other than the Agreed Currency, be discharged only to the extent that on the Business Day following receipt by the Lender of any sum adjudged to be so due in such Other Currency, the Lender may, in accordance with normal banking procedures, purchase the Agreed Currency with such Other Currency after deducting any premiums and costs of exchange. In the event that the Agreed Currency so purchased is less than the sum originally due to the Lender in the Agreed Currency, the Guarantor, as a separate obligation and notwithstanding any such judgment, hereby indemnifies and holds harmless the Lender against such loss.

12. The Guarantor hereby agrees that provisions of the Credit Agreement, including, without limitation, the schedules to the Credit Agreement, which impose obligations on the Guarantor, create valid and binding obligations of the Guarantor. The Guarantor hereby agrees that any consents, waivers or other actions attributed to the Guarantor in the Credit Agreement are valid and binding on the Guarantor. The Guarantor agrees to take, or cause to be taken, all actions required to be taken by it pursuant to the terms and conditions of the Credit Agreement.

13. Upon the occurrence and during the continuance of an Event of Default, the Lender may treat all Guaranteed Liabilities as due and payable and the Lender may forthwith demand payment under this Guarantee and collect from the Guarantor the total amount hereby guaranteed. A written statement of an officer of the Lender as to the amount of Guaranteed Liabilities remaining unpaid to the Lender at any time shall be *prima facie* evidence thereof absent manifest error.

14. This Guarantee shall be in addition to and not in substitution for any other guarantees or other securities which the Lender may now or hereafter hold in respect of the Guaranteed Liabilities and the Lender shall not be under any obligation to marshal in favour of the Guarantor or exercise any right or remedies under any other guarantees or other securities or any moneys or other assets which the Lender may be entitled to receive or may have a claim upon; and no loss of or in respect of or unenforceability of any other guarantees or other securities which the Lender may now or hereafter hold in respect of the Guaranteed Liabilities,

whether occasioned by the fault of the Lender or otherwise, shall in any way limit or lessen the Guarantor's liability.

15. Without prejudice to or in any way limiting or lessening the Guarantor's liability and without obtaining the consent of or giving notice to the Guarantor, the Lender may grant time, renewals, extensions, indulgences, releases and discharges to and accept compositions from or otherwise deal with the Borrower and others, including the Guarantor and any other guarantor as the Lender may see fit, and the Lender may take, abstain from taking or perfecting, vary, exchange, renew, compromise, discharge, give up, realize on or otherwise deal with securities and guarantees in such manner as the Lender may reasonably see fit; and the liability of the Guarantor hereunder shall be absolute, unconditional and irrevocable irrespective of any other circumstance which would constitute a defence available to or a discharge of the liabilities of a guarantor. All monies collected by the Lender shall be applied pursuant to the terms and conditions of the Credit Agreement.

16. Until repayment in full of all of the Guaranteed Liabilities and termination of all Facilities, (i) all dividends, compositions, proceeds of securities, securities valued or payments received by the Lender from the Borrower or others or from estates in respect of the Guaranteed Liabilities shall be regarded for all purposes as payments in gross without any right on the part of the Guarantor to claim the benefit thereof in reduction of the liability under this Guarantee, and (ii) the Guarantor shall not claim or prove in the bankruptcy or insolvency of the Borrower in competition with the Lender or in any circumstances have any right to be subrogated to the Lender.

17. This Guarantee shall not be discharged or otherwise affected by the loss of capacity of the Borrower, by any change in the name of the Borrower or in the objects, capital structure or constitution of the Borrower, or by the sale of the Borrower's business or any part thereof, or by the Borrower being amalgamated with a corporation or by any amendment, supplement or replacement of the Credit Agreement or any other Loan Document, but shall, notwithstanding any such event, continue to apply to all Guaranteed Liabilities whether theretofore or thereafter incurred; and in the case of the Borrower being amalgamated, merged or consolidated with a corporation, this Guarantee shall apply to the Guaranteed Liabilities of the amalgamated or resulting corporation, and the term "Borrower" shall include such amalgamated or resulting corporation.

18. All advances, renewals and credits made or granted by the Lender to or for the Borrower after the bankruptcy or insolvency of the Borrower, but before the Lender has received notice of such bankruptcy or insolvency, shall be deemed to form part of the Guaranteed Liabilities; and all advances, renewals and credits obtained from the Lender under or pursuant to the Credit Agreement by or on behalf of the Borrower shall be deemed to form part of the Guaranteed Liabilities, notwithstanding any lack or limitation of power, incapacity or disability of the Borrower or of the directors or agents thereof, or that the Borrower may not be a legal or suable entity, or any irregularity, defect or informality in the obtaining of such advances, renewals or credits, whether or not the Lender had knowledge thereof; and (without limiting the generality of paragraph 4 hereof) any such advance, renewal or credit which may not be recoverable from the Guarantor as guarantor shall be recoverable from the Guarantor as principal

debtor in respect thereof and shall be paid to the Lender on demand with interest at the rate set out in paragraph 8 hereof.

19. Until payment in full to the Lender of the Guaranteed Liabilities and termination of all Facilities, the Guarantor hereby irrevocably waives any claim or other rights which it may now have or may hereafter acquire against the Borrower that arise from the existence, payment, performance or enforcement of the Guarantor's obligations under this Guarantee, including any right of subrogation, reimbursement, exoneration or indemnification, any right to participate in any claim or remedy of the Lender against the Borrower which the Lender now has or hereafter acquires, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law, including the right to take or receive from the Borrower, directly or indirectly, in cash or other property or by set-off or in any manner, payment of security on account of such claim or other rights. If any amount shall be paid to the Guarantor in violation of the preceding sentence and the Guaranteed Liabilities shall not have been paid in cash in full, such amount shall be deemed to have been paid to the Guarantor for the benefit of, and held in trust for, the Lender, and shall forthwith be paid to the Lender to be credited and applied against the Guaranteed Liabilities, whether matured or unmatured. The Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by the Credit Agreement and that the waiver set forth in this paragraph is knowingly made in contemplation of such benefits.

20. The Guarantor agrees that all debts and liabilities, present and future, of the Borrower to the Guarantor are hereby assigned to the Lender and postponed to the Guaranteed Liabilities, and all money received by the Guarantor in respect thereof will be held in trust for the Lender and forthwith upon receipt will be paid over to the Lender, the whole without in any way lessening or limiting the liability of the Guarantor hereunder and this assignment and postponement is independent of the Guarantee and will remain in full force and effect until, in the case of the assignment, the liability of the Guarantor under this Guarantee has been discharged or terminated and, in the case of the postponement, until all Guaranteed Liabilities are performed and paid in full. Notwithstanding the foregoing, prior to the occurrence of a Default or an Event of Default that is continuing, the Guarantor may receive payments in respect of indebtedness owing to any Parent, Subsidiary, Affiliate or other related Person as permitted under the Credit Agreement.

21. The Guarantor agrees that except as contained in this Guarantee or any other Loan Document, there are no collateral agreements between the Guarantor and the Lender in respect of the subject matter hereof; and it is specifically agreed that the Lender shall not be bound by any representations or promises made by the Borrower or anyone else whomsoever to the Guarantor. Possession of this instrument by the Lender shall be conclusive evidence against the Guarantor that the instrument was not delivered in escrow or pursuant to any agreement that it should not be effective until any condition precedent or subsequent has been complied with. No amendment or waiver of the terms hereof shall be effective unless made in writing.

22. The Guarantor hereby waives notice of acceptance of this instrument.

23. Any notice or communication to be given under this Guarantee to the Guarantor or the Lender shall be effective if given in accordance with the provisions of the Credit

Agreement and the Guarantor and the Lender may change their respective address for notices in accordance with the said provisions.

24. This Guarantee shall be irrevocable and the liability of the Guarantor hereunder shall be absolute and unconditional irrespective of any lack of validity or enforceability of the Credit Agreement or any of the other Loan Documents.

25. When all Loan Obligations have been paid in full (other than obligations which survive the termination of the Credit Agreement) and the Credit Agreement and all Facilities have been terminated, the Lender will promptly, following a request by the Guarantor and, at the expense of the Guarantor, deliver a notice to the Guarantor confirming the termination of this Guarantee.

26. The Guarantor acknowledges that it possesses and will possess all information with respect to the Borrower which is and may be material to this Guarantee and that the Lender has no obligation to disclose to the Guarantor any information which any of them may now or hereafter possess concerning the Borrower.

27. This Guarantee is governed by the laws of the Province of Ontario (without reference to its choice of law rules) and the federal laws of Canada applicable therein. Any litigation based hereon, or arising out of, under, or in connection with, this Guarantee and any other document, or any course of conduct, course of dealing, statements (whether oral or written) or actions of the Lender or the Guarantor shall be brought and maintained exclusively in the courts of the Province of Ontario; provided, however, that any suit seeking enforcement against any collateral or other property may be brought, at the option of the Lender, in the courts of any jurisdiction where such collateral or other property may be found. The Guarantor hereby expressly and irrevocably attorns and submits to the jurisdiction of the courts of the Province of Ontario sitting in the City of Toronto, Ontario, Canada for the purpose of any such litigation as set forth above and, to the fullest extent permitted by law, irrevocably agrees to be bound by any final, non-appealable judgment rendered thereby in connection with such litigation or by a final, non-appealable judgment of any applicable appellate court. The Guarantor hereby expressly and irrevocably waives, to the fullest extent permitted by law, any objection which it may have or hereafter may have to the laying of venue of any such litigation brought in any such court referred to above and any claim that any such litigation has been brought in an inconvenient forum. To the extent that the Guarantor has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution or otherwise) with respect to itself or its property, to the fullest extent permitted by law, the Guarantor hereby irrevocably waives such immunity in respect of its obligations under this Guarantee.

28. This Guarantee shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Liabilities is rescinded or must otherwise be returned by the Lender upon the insolvency, bankruptcy or reorganization of the Borrower or otherwise, all as though such payments had not been made.

29. In the event of any conflict between the provisions hereunder and the provisions of the Credit Agreement then, notwithstanding anything contained in this Guarantee, the

provisions contained in the Credit Agreement shall prevail and the provisions of this Guarantee will be deemed to be amended to the extent necessary to eliminate such conflict. If any act or omission of the Guarantor is expressly permitted under the Credit Agreement but is expressly prohibited hereunder, such act or omission shall be permitted. If any act or omission is expressly prohibited hereunder, but the Credit Agreement does not expressly permit such act or omission, or if any act is expressly required to be performed hereunder but the Credit Agreement does not expressly relieve the Guarantor from such performance, such circumstance shall not constitute a conflict between the applicable provisions hereunder and the provisions of the Credit Agreement.

30. If any provision of this Guarantee is determined by any court of competent jurisdiction to be invalid or unenforceable in whole or in part, such invalidity or unenforceability will attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof will continue in full force and effect.

31. This Guarantee shall enure to the benefit of and be binding upon the Lender and their respective successors and permitted assigns and the Guarantor and its successors; provided that the Guarantor shall not have the right to assign its obligations hereunder and the Lender may only assign its rights, title and interest in, to and arising under this Guarantee in accordance with the provisions of the Credit Agreement concerning assignments and participations.

32. This Guarantee may be executed by one or more of the parties to this Guarantee on any number of separate counterparts (including by telecopy or pdf), and all such counterparts taken together shall be deemed to constitute one and the same instrument.

**[Signature page to follow]**

**IN WITNESS WHEREOF** the Guarantor has caused this Guarantee to be duly executed and delivered by its officer thereunto duly authorized.

**KIVUTO SOLUTIONS INC.**

By:  \_\_\_\_\_

Name: Carlos Jose Meza-Rios

Title: CEO

*I have authority to bind the Corporation*



This is Exhibit "S" referred to in the Affidavit of Andrea Jamnisek sworn January 27, 2023.

A handwritten signature in black ink, consisting of a stylized 'L' followed by a 'J' and a long horizontal line extending to the right.

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*Commissioner for Taking Affidavits (or as may be)*

**LIMITED RECOURSE GUARANTEE**

**THIS GUARANTEE** (as amended, modified, supplemented, restated or replaced from time to time, this "**Guarantee**"), dated as of March 1, 2018, made by **LEGADO CAPITAL PARTNERS LP**, a limited partnership existing under the laws of the Province of Ontario (together with its successors and permitted assigns, the "**Guarantor**"), in favour of **THE TORONTO-DOMINION BANK** as lender (the "**Lender**") under the Credit Agreement (as defined below);

**WHEREAS** pursuant to a credit agreement dated as of March 1, 2018 (together with all amendments, modifications, supplements, restatements or replacements, if any, from time to time thereafter made thereto, the "**Credit Agreement**"), among the Lender and the Borrower (as defined below), the Lender has extended commitments to make loans and credit facilities (the "**Facilities**") available to the Borrower;

**AND WHEREAS** as a condition precedent to the making of the Facilities available to the Borrower under the Credit Agreement, the Guarantor is required to execute and deliver this Guarantee in favour of the Lender;

**AND WHEREAS** the Guarantor has duly authorized the execution, delivery and performance of this Guarantee;

**NOW THEREFORE** for good and valuable consideration, the receipt of which is hereby acknowledged, and in order to induce the Lender to make the loans and advances to the Borrower pursuant to the Credit Agreement, the Guarantor agrees with the Lender, as follows:

1. Unless otherwise defined herein or the context otherwise requires, terms used in this Guarantee have the meanings defined in the Credit Agreement, and the following terms have the following meanings:

- (a) "**Borrower**" means 10600598 Canada Inc., together with its successors, by amalgamation or otherwise, and permitted assigns;
- (b) "**Guaranteed Liabilities**" means all of the present and future indebtedness, liabilities and obligations of the Borrower of any and every kind, nature or description whatsoever (whether direct or indirect, joint or several or joint and several, absolute or contingent, matured or unmatured, in any currency, and whether as principal debtor, guarantor, surety or otherwise, including without limitation any interest that accrues thereon after or would accrue thereon but for the commencement of any case, proceeding or other action, whether voluntary or involuntary, relating to the bankruptcy, insolvency or reorganization of the Borrower, whether or not allowed or allowable as a claim in any such case, proceeding or other action) to the Lender (and its Affiliates) under, in connection with, relating to or with respect to each of the Loan Documents to which it is a party, and any unpaid balance thereof; and
- (c) "**Guarantor Pledge**" means the securities pledge agreement dated as of the date hereof made by the Guarantor in favour of the Lender.

In this Guarantee words importing the singular number only include the plural and *vice versa*.

2. The Guarantor hereby unconditionally and irrevocably guarantees to the Lender the full and punctual payment and performance when due, whether at stated maturity, by required payment, by acceleration, declaration, demand or otherwise, of the Guaranteed Liabilities.

3. If any or all of the Guaranteed Liabilities are not duly paid by the Borrower and are not recoverable under paragraph 2 hereof for any reason whatsoever, the Guarantor will, as a separate and distinct obligation, indemnify and save harmless the Lender from and against all losses resulting from the failure of the Borrower to pay such Guaranteed Liabilities.

4. If any or all of the Guaranteed Liabilities are not duly paid by the Borrower and are not recoverable under paragraph 2 hereof or the Lender is not indemnified under paragraph 3 hereof, in each case, for any reason whatsoever, or from the enforcement of this Guarantee, such Guaranteed Liabilities will, as a separate and distinct obligation, be recoverable from the Guarantor as primary obligor.

5. This Guarantee shall be a continuing, absolute, unconditional and irrevocable Guarantee of all of the Guaranteed Liabilities, shall apply to and secure all and any of the Guaranteed Liabilities, and shall remain in full force and effect until all of the Guaranteed Liabilities have been paid in full and the Facilities have been terminated; and this Guarantee shall not be considered as wholly or partially satisfied by the payment or liquidation at any time of any sum of money for the time being due or remaining unpaid to the Lender.

6. This Guarantee constitutes a guarantee of payment when due and not of collection, and the Guarantor specifically agrees that the Lender shall not be bound to pursue or exhaust its recourse against the Borrower or others or any securities or other guarantees they may at any time hold before being entitled to payment from the Guarantor.

7. The Guarantor's liability to make payment under this Guarantee shall arise forthwith after demand for payment has been made in writing on the Guarantor in accordance with the provisions hereof (including, without limitation, paragraph 14 hereof) and the Guarantor's liability shall bear interest from the date of such demand at the rate or rates set out in paragraph 8 hereof.

8. The rate or rates of interest payable by the Guarantor from the date of a demand for payment under this Guarantee shall be the rate or rates of interest payable by the Borrower in respect of the Guaranteed Liabilities under the Credit Agreement. Whenever interest to be paid is to be calculated on the basis of a year of 360 days or any other period of time that is less than a calendar year, the yearly rate of interest to which the rate determined pursuant to such calculation is equivalent is the rate so determined multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 360 or such other period of time, as the case may be.

9. The Guarantor hereby agrees that:

- (a) save and except for Excluded Taxes (as defined in the Credit Agreement), all payments by the Guarantor hereunder shall be made free and clear of and without deduction for, or on account of, any present or future income, stamp or other taxes, levies, fees, duties, withholdings or other charges of any nature whatsoever imposed by any taxing authority (such non-excluded items being called "**Taxes**"). In the event that any withholding or deduction from any payment to be made by the Guarantor hereunder is required in respect of any Taxes pursuant to any applicable law, rule or regulation, then the Guarantor will:
- (i) pay directly to the relevant authority the full amount required to be so withheld or deducted, including, without limitation, the full amount of any Taxes to be withheld or deducted in respect of any additional amount referred to in clause (iii) below;
  - (ii) promptly forward to the Lender an official receipt or other documentation satisfactory to the Lender evidencing such payment to such authority; and
  - (iii) pay to the Lender such additional amount or amounts as is necessary to ensure that the net amount actually received by the Lender will equal the full amount the Lender would have received had no such withholding or deduction been required.

Moreover, if any Taxes are directly asserted against the Lender with respect to any payment received by the Lender hereunder, the Lender may pay such Taxes and the Guarantor will promptly pay such additional amounts (including any penalties, interest or expenses) as are necessary in order that the net amount received by the Lender after the payment of such Taxes (including any Taxes on such additional amount) shall equal the amount the Lender would have received had such Taxes not been asserted.

- (b) if the Guarantor fails to pay any Taxes when due to the appropriate taxing authority or fails to remit to the Lender required receipts or other required documentary evidence, the Guarantor shall indemnify the Lender for any incremental Taxes, interest or penalties that may become payable by the Lender as a result of any such failure; and
- (c) without prejudice to the survival of any other agreement of the Guarantor hereunder, the agreements and obligations of the Guarantor contained in this paragraph 9 shall survive the payment in full of the Guaranteed Liabilities.

If, after any payment of Taxes by the Guarantor under this paragraph, any part of any Taxes paid by the Lender is subsequently recovered by the Lender, the Lender shall reimburse the Guarantor to the extent of the amount so recovered.

10. The Lender will be limited in recourse under this Guarantee to the Collateral (as defined in the Guarantor Pledge) and any amounts received or receivable pursuant to a realization on the Collateral under the Guarantor Pledge, and the liability of the Guarantor under this Guarantee is limited to the liability required to permit the Lender to so realize upon the

Collateral. The Lender shall not under any circumstances have any right to any other payment from the Guarantor, and no assets of the Guarantor, other than the Collateral, shall be subject to any claims of the Lender with respect to this Guarantee. The Lender shall not be entitled to, and shall not, sue or commence or join any action or proceeding against the Guarantor to recover any sum owing by it pursuant to this Guarantee unless such suit, action or proceeding is necessary to permit the Lender to realize upon the Collateral (and then only to the extent so necessary).

11. The Guarantor hereby agrees that payments hereunder on account of the Guaranteed Liabilities shall be made in the currency (the "**Agreed Currency**") in which each such Guaranteed Liability is payable and if any payment is received in another currency (the "**Other Currency**"), such payment shall constitute a discharge of the liability of the Guarantor hereunder only to the extent of the amount of the Agreed Currency which the Lender is able to purchase with the amount of the Other Currency received by it on the Business Day immediately following such receipt in accordance with normal procedures and after deducting any premium and costs of exchange.

12. The Guarantor hereby agrees that:

- (a) if, for the purpose of obtaining judgment in any court in any jurisdiction, it becomes necessary to convert into a particular currency (the "**Judgment Currency**") any amount due in the Agreed Currency, then the conversion shall be made on the basis of the rate of exchange prevailing at any time on the Business Day immediately preceding the day on which judgment is given. For the foregoing purposes "**rate of exchange**" means the rate at which the Lender, in accordance with its normal banking procedures, is able on the relevant date to purchase the Agreed Currency with the Judgment Currency after deducting any premium and costs of exchange; and
- (b) the obligation of the Guarantor in respect of any sum due to the Lender hereunder shall, notwithstanding any judgment in a currency other than the Agreed Currency, be discharged only to the extent that on the Business Day following receipt by the Lender of any sum adjudged to be so due in such Other Currency, the Lender may, in accordance with normal banking procedures, purchase the Agreed Currency with such Other Currency after deducting any premiums and costs of exchange. In the event that the Agreed Currency so purchased is less than the sum originally due to the Lender in the Agreed Currency, the Guarantor, as a separate obligation and notwithstanding any such judgment, hereby indemnifies and holds harmless the Lender against such loss.

13. The Guarantor hereby agrees that provisions of the Credit Agreement, including, without limitation, the schedules to the Credit Agreement, which impose obligations on the Guarantor, create valid and binding obligations of the Guarantor. The Guarantor hereby agrees that any consents, waivers or other actions attributed to the Guarantor in the Credit Agreement are valid and binding on the Guarantor. The Guarantor agrees to take, or cause to be taken, all actions required to be taken by it pursuant to the terms and conditions of the Credit Agreement.

14. Upon the occurrence and during the continuance of an Event of Default, the Lender may treat all Guaranteed Liabilities as due and payable and the Lender may forthwith demand payment under this Guarantee and collect from the Guarantor the total amount hereby guaranteed. A written statement of an officer of the Lender as to the amount of Guaranteed Liabilities remaining unpaid to the Lender at any time shall be *prima facie* evidence thereof absent manifest error.

15. This Guarantee shall be in addition to and not in substitution for any other guarantees or other securities which the Lender may now or hereafter hold in respect of the Guaranteed Liabilities and the Lender shall not be under any obligation to marshal in favour of the Guarantor or exercise any right or remedies under any other guarantees or other securities or any moneys or other assets which the Lender may be entitled to receive or may have a claim upon; and no loss of or in respect of or unenforceability of any other guarantees or other securities which the Lender may now or hereafter hold in respect of the Guaranteed Liabilities, whether occasioned by the fault of the Lender or otherwise, shall in any way limit or lessen the Guarantor's liability.

16. Without prejudice to or in any way limiting or lessening the Guarantor's liability and without obtaining the consent of or giving notice to the Guarantor, the Lender may grant time, renewals, extensions, indulgences, releases and discharges to and accept compositions from or otherwise deal with the Borrower and others, including the Guarantor and any other guarantor as the Lender may see fit, and the Lender may take, abstain from taking or perfecting, vary, exchange, renew, compromise, discharge, give up, realize on or otherwise deal with securities and guarantees in such manner as the Lender may reasonably see fit; and the liability of the Guarantor hereunder shall be absolute, unconditional and irrevocable irrespective of any other circumstance which would constitute a defence available to or a discharge of the liabilities of a guarantor. All monies collected by the Lender shall be applied pursuant to the terms and conditions of the Credit Agreement.

17. Until repayment in full of all of the Guaranteed Liabilities and termination of all Facilities, (i) all dividends, compositions, proceeds of securities, securities valued or payments received by the Lender from the Borrower or others or from estates in respect of the Guaranteed Liabilities shall be regarded for all purposes as payments in gross without any right on the part of the Guarantor to claim the benefit thereof in reduction of the liability under this Guarantee, and (ii) the Guarantor shall not claim or prove in the bankruptcy or insolvency of the Borrower in competition with the Lender or in any circumstances have any right to be subrogated to the Lender.

18. This Guarantee shall not be discharged or otherwise affected by the loss of capacity of the Borrower, by any change in the name of the Borrower or in the objects, capital structure or constitution of the Borrower, or by the sale of the Borrower's business or any part thereof, or by the Borrower being amalgamated with a corporation or by any amendment, supplement or replacement of the Credit Agreement or any other Loan Document, but shall, notwithstanding any such event, continue to apply to all Guaranteed Liabilities whether theretofore or thereafter incurred; and in the case of the Borrower being amalgamated, merged or consolidated with a corporation, this Guarantee shall apply to the Guaranteed Liabilities of the

amalgamated or resulting corporation, and the term "Borrower" shall include such amalgamated or resulting corporation.

19. All advances, renewals and credits made or granted by the Lender to or for the Borrower after the bankruptcy or insolvency of the Borrower, but before the Lender has received notice of such bankruptcy or insolvency, shall be deemed to form part of the Guaranteed Liabilities; and all advances, renewals and credits obtained from the Lender under or pursuant to the Credit Agreement by or on behalf of the Borrower shall be deemed to form part of the Guaranteed Liabilities, notwithstanding any lack or limitation of power, incapacity or disability of the Borrower or of the directors or agents thereof, or that the Borrower may not be a legal or suable entity, or any irregularity, defect or informality in the obtaining of such advances, renewals or credits, whether or not the Lender had knowledge thereof; and (without limiting the generality of paragraph 4 hereof) any such advance, renewal or credit which may not be recoverable from the Guarantor as guarantor shall be recoverable from the Guarantor as principal debtor in respect thereof and shall be paid to the Lender on demand with interest at the rate set out in paragraph 8 hereof.

20. Until payment in full to the Lender of the Guaranteed Liabilities and termination of all Facilities, the Guarantor hereby irrevocably waives any claim or other rights which it may now have or may hereafter acquire against the Borrower that arise from the existence, payment, performance or enforcement of the Guarantor's obligations under this Guarantee, including any right of subrogation, reimbursement, exoneration or indemnification, any right to participate in any claim or remedy of the Lender against the Borrower which the Lender now has or hereafter acquires, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law, including the right to take or receive from the Borrower, directly or indirectly, in cash or other property or by set-off or in any manner, payment of security on account of such claim or other rights. If any amount shall be paid to the Guarantor in violation of the preceding sentence and the Guaranteed Liabilities shall not have been paid in cash in full, such amount shall be deemed to have been paid to the Guarantor for the benefit of, and held in trust for, the Lender, and shall forthwith be paid to the Lender to be credited and applied against the Guaranteed Liabilities, whether matured or unmatured. The Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by the Credit Agreement and that the waiver set forth in this paragraph is knowingly made in contemplation of such benefits.

21. The Guarantor agrees that all debts and liabilities, present and future, of the Borrower to the Guarantor are hereby assigned to the Lender and postponed to the Guaranteed Liabilities, and all money received by the Guarantor in respect thereof will be held in trust for the Lender and forthwith upon receipt will be paid over to the Lender, the whole without in any way lessening or limiting the liability of the Guarantor hereunder and this assignment and postponement is independent of the Guarantee and will remain in full force and effect until, in the case of the assignment, the liability of the Guarantor under this Guarantee has been discharged or terminated and, in the case of the postponement, until all Guaranteed Liabilities are performed and paid in full. Notwithstanding the foregoing, prior to the occurrence of a Default or an Event of Default that is continuing, the Guarantor may receive payments in respect of indebtedness owing to any Parent, Subsidiary, Affiliate or other related Person as permitted under the Credit Agreement.

22. The Guarantor agrees that except as contained in this Guarantee or any other Loan Document, there are no collateral agreements between the Guarantor and the Lender in respect of the subject matter hereof; and it is specifically agreed that the Lender shall not be bound by any representations or promises made by the Borrower or anyone else whomsoever to the Guarantor. Possession of this instrument by the Lender shall be conclusive evidence against the Guarantor that the instrument was not delivered in escrow or pursuant to any agreement that it should not be effective until any condition precedent or subsequent has been complied with. No amendment or waiver of the terms hereof shall be effective unless made in writing.

23. The Guarantor hereby waives notice of acceptance of this instrument.

24. Any notice or communication to be given under this Guarantee to the Guarantor or the Lender shall be effective if given in accordance with the provisions of the Credit Agreement and the Guarantor and the Lender may change their respective address for notices in accordance with the said provisions.

25. This Guarantee shall be irrevocable and the liability of the Guarantor hereunder shall be absolute and unconditional irrespective of any lack of validity or enforceability of the Credit Agreement or any of the other Loan Documents.

26. When all Loan Obligations have been paid in full (other than obligations which survive the termination of the Credit Agreement) and the Credit Agreement and all Facilities have been terminated, the Lender will promptly, following a request by the Guarantor and, at the expense of the Guarantor, deliver a notice to the Guarantor confirming the termination of this Guarantee.

27. The Guarantor acknowledges that it possesses and will possess all information with respect to the Borrower which is and may be material to this Guarantee and that the Lender has no obligation to disclose to the Guarantor any information which any of them may now or hereafter possess concerning the Borrower.

28. This Guarantee is governed by the laws of the Province of Ontario (without reference to its choice of law rules) and the federal laws of Canada applicable therein. Any litigation based hereon, or arising out of, under, or in connection with, this Guarantee and any other document, or any course of conduct, course of dealing, statements (whether oral or written) or actions of the Lender or the Guarantor shall be brought and maintained exclusively in the courts of the Province of Ontario; provided, however, that any suit seeking enforcement against any collateral or other property may be brought, at the option of the Lender, in the courts of any jurisdiction where such collateral or other property may be found. The Guarantor hereby expressly and irrevocably attorns and submits to the jurisdiction of the courts of the Province of Ontario sitting in the City of Toronto, Ontario, Canada for the purpose of any such litigation as set forth above and, to the fullest extent permitted by law, irrevocably agrees to be bound by any final, non-appealable judgment rendered thereby in connection with such litigation or by a final, non-appealable judgment of any applicable appellate court. The Guarantor hereby expressly and irrevocably waives, to the fullest extent permitted by law, any objection which it may have or hereafter may have to the laying of venue of any such litigation brought in any such court referred to above and any claim that any such litigation has been brought in an inconvenient



forum. To the extent that the Guarantor has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution or otherwise) with respect to itself or its property, to the fullest extent permitted by law, the Guarantor hereby irrevocably waives such immunity in respect of its obligations under this Guarantee.

29. This Guarantee shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Liabilities is rescinded or must otherwise be returned by the Lender upon the insolvency, bankruptcy or reorganization of the Borrower or otherwise, all as though such payments had not been made.

30. In the event of any conflict between the provisions hereunder and the provisions of the Credit Agreement then, notwithstanding anything contained in this Guarantee, the provisions contained in the Credit Agreement shall prevail and the provisions of this Guarantee will be deemed to be amended to the extent necessary to eliminate such conflict. If any act or omission of the Guarantor is expressly permitted under the Credit Agreement but is expressly prohibited hereunder, such act or omission shall be permitted. If any act or omission is expressly prohibited hereunder, but the Credit Agreement does not expressly permit such act or omission, or if any act is expressly required to be performed hereunder but the Credit Agreement does not expressly relieve the Guarantor from such performance, such circumstance shall not constitute a conflict between the applicable provisions hereunder and the provisions of the Credit Agreement.

31. If any provision of this Guarantee is determined by any court of competent jurisdiction to be invalid or unenforceable in whole or in part, such invalidity or unenforceability will attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof will continue in full force and effect.

32. This Guarantee shall enure to the benefit of and be binding upon the Lender and their respective successors and permitted assigns and the Guarantor and its successors; provided that the Guarantor shall not have the right to assign its obligations hereunder and the Lender may only assign its rights, title and interest in, to and arising under this Guarantee in accordance with the provisions of the Credit Agreement concerning assignments and participations.

33. This Guarantee may be executed by one or more of the parties to this Guarantee on any number of separate counterparts (including by telecopy or pdf), and all such counterparts taken together shall be deemed to constitute one and the same instrument.

**[Signature page to follow]**

**IN WITNESS WHEREOF** the Guarantor has caused this Guarantee to be duly executed and delivered by an officer of its general partner duly authorized.

**LEGADO CAPITAL PARTNERS LP** by its  
general partner **LEGADO CAPITAL  
PARTNERS GP INC.**

By:   
Name: Carlos Jose Meza-Rios c/s  
Title: Vice President  
*I have authority to bind the Partnership*

This is Exhibit "T" referred to in the Affidavit of Andrea Jamnisek sworn January 27, 2023.

A handwritten signature in black ink, consisting of a stylized 'L' followed by a 'J' and a long horizontal line extending to the right.

---

*Commissioner for Taking Affidavits (or as may be)*

**SECURITIES PLEDGE AGREEMENT**

**THIS SECURITIES PLEDGE AGREEMENT** (as amended, modified, supplemented, restated or replaced from time to time, this "**Pledge Agreement**"), dated as of March 1, 2018 made by **LEGADO CAPITAL PARTNERS LP**, a limited partnership existing under the laws of the Province of Ontario (together with any successors and permitted assigns, the "**Pledgor**"), in favour of **THE TORONTO-DOMINION BANK**, as lender (the "**Lender**") under the Credit Agreement (as defined below).

**WITNESSETH:**

**WHEREAS** pursuant to a credit agreement dated as of March 1, 2018 (together with all amendments, modifications, supplements, restatements or replacements, if any, from time to time thereafter made thereto, the "**Credit Agreement**"), between the Lender and **10600598 CANADA INC.**, as borrower (together with its successors, by amalgamation or otherwise, and permitted assigns, the "**Borrower**", which term shall include, without limitation, "Kivuto Solutions Inc." following the Amalgamation), the Lender has extended commitments to make loans and credit facilities (the "**Facilities**") available to the Borrower;

**AND WHEREAS** as a condition precedent to the making of Facilities under the Credit Agreement, the Pledgor is required to execute and deliver this Pledge Agreement as continuing collateral security to secure the performance of the Obligations (as defined below);

**AND WHEREAS** the Pledgor has duly authorized the execution, delivery and performance of this Pledge Agreement;

**NOW THEREFORE** for good and valuable consideration, the receipt of which is hereby acknowledged, and in order to induce the Lender to make the loans and advances to the Borrower pursuant to the Credit Agreement, the Pledgor agrees with the Lender, as follows:

**ARTICLE I****DEFINITIONS**

1.1 Certain Terms. The following terms when used in this Pledge Agreement, including its preamble and recitals, shall have the following meanings (such definitions to be equally applicable to the singular and plural forms thereof):

"**Account Control Agreement**" means, with respect to a Securities Account, a securities account control agreement between the Pledgor, the Lender and the Securities Intermediary which maintains such Securities Account on behalf of the Pledgor, as the same may be amended from time to time.

"**Collateral**" is defined in Section 2.1.

"**Credit Agreement**" is defined in the first recital.

**"Delivery"** and the corresponding term **"Delivered"** when used with respect to Collateral means:

- (i) in the case of Collateral constituting Certificated Securities, transfer thereof to the Lender or its nominee by physical delivery of the Security Certificates to the Lender or its nominee, such Collateral to be endorsed for transfer or accompanied by stock powers of attorney duly executed in blank, all in form and content satisfactory to the Lender;
- (ii) in the case of Collateral constituting Uncertificated Securities, (A) registration thereof on the books and records of the issuer thereof in the name of the Lender or its nominee or (B) the execution and delivery by the issuer thereof of an effective agreement (each, an **"Issuer Control Agreement"**), pursuant to which such issuer agrees that it will comply with instructions originated by the Lender or its nominee without further consent of the Pledgor or any other person;
- (iii) in the case of Collateral constituting Security Entitlements in respect of Financial Assets deposited in or credited to a Securities Account, (A) completion of all actions necessary to constitute the Lender or its nominee the entitlement holder with respect to each such Security Entitlement or (B) the execution and delivery by the relevant Securities Intermediary of an effective Account Control Agreement pursuant to which such Securities Intermediary agrees to comply with entitlement orders originated by the Lender or its nominee without further consent of the Pledgor or any other person; and
- (iv) in each case such additional or alternative procedures as may hereafter become reasonably appropriate to grant control of, or otherwise perfect a security interest in, any Collateral in favour of the Lender or its nominee.

**"Discharge Event"** means the payment in full (or cancellation or cash collateralization on terms acceptable to the Lender in the case of letters of credit or bankers' acceptances) of all Obligations (other than obligations that survive the termination of the Credit Agreement) and the termination of all Facilities.

**"Distributions"** means all stock dividends, liquidating dividends, shares of stock resulting from (or in connection with the exercise of) stock splits, reclassifications, warrants, options, non-cash dividends, amalgamations, mergers, consolidations, and all other distributions (whether similar or dissimilar to the foregoing) on or with respect to any Pledged Shares or other shares of capital stock constituting Collateral, but shall not include Dividends.

**"Dividends"** means cash dividends and cash distributions with respect to any Pledged Shares or other Pledged Property made in the ordinary course of business but excludes any liquidating dividend.

**"Issuer Control Agreement"** has the meaning set out in clause (ii) of the definition of "Delivery".

**"Lender"** is defined in the first recital.

**"Obligations"** means all of the present and future indebtedness, liabilities and obligations of the Pledgor of any and every kind, nature or description whatsoever (whether direct or indirect, joint or several or joint and several, absolute or contingent, matured or unmatured, in any currency, and whether as principal debtor, guarantor, surety or otherwise, including without limitation any interest that accrues thereon after or would accrue thereon but for the commencement of any case, proceeding or other action, whether voluntary or involuntary, relating to the bankruptcy, insolvency or reorganization of the Pledgor, whether or not allowed or allowable as a claim in any such case, proceeding or other action) to the Lender (and its Affiliates) under, in connection with, relating to or with respect to each of the Loan Documents to which it is a party, and any unpaid balance thereof.

**"Pledge Agreement"** is defined in the preamble.

**"Pledged Property"** means all Pledged Shares and all other pledged shares of capital stock, all substitutions therefor and additions thereto, all other securities, all other instruments which are now being delivered by the Pledgor to the Lender or which may from time to time hereafter be delivered by the Pledgor to the Lender for the purpose of being pledged under this Pledge Agreement, and all proceeds of any of the foregoing.

**"Pledged Share Issuer"** means each Person identified in Attachment I hereto as the issuer of the Pledged Shares identified opposite the name of such Person, and each other Person whose capital stock is pledged or is required to be pledged from time to time under the Credit Agreement by the Pledgor to the Lender as Collateral hereunder.

**"Pledged Shares"** has the meaning set out in clause (i) of the definition of "Stock".

**"Pledgor"** is defined in the preamble.

**"PPSA"** means the *Personal Property Security Act* as in effect in the Province of Ontario.

**"Stock"** means

- (i) all shares, options, warrants and other Securities owned by or issued to the Pledgor, including, without limitation, the shares, options and warrants in the capital stock described in Attachment I, as such Attachment may be amended, supplemented or modified from time to time (collectively, the **"Pledged Shares"**), all Security Certificates, if any, and other instruments evidencing or representing such Pledged Shares, and all dividends, interest, distributions, cash, instruments and other property, income, profits and proceeds from time to time received or receivable upon or otherwise distributed or distributable in respect of or in exchange for any and all of the Pledged Shares;
- (ii) all additional or substitute shares of capital stock or other equity interests of any class of any issuer from time to time issued to or otherwise acquired by the Pledgor in any manner in respect of Pledged Shares, the Security Certificates, if any, and other instruments representing such additional or substitute shares, and all dividends, interests, distributions, cash, instruments and other property, income, profits and proceeds from

time to time received or receivable upon or otherwise distributed or distributable in respect of or an exchange for any or all of such additional or substitute shares; and

(iii) to the extent not otherwise included in the foregoing, all Proceeds thereof.

1.2 Credit Agreement Definitions. Unless otherwise defined herein or the context otherwise requires, terms used in this Pledge Agreement, including its preamble and recitals, have the meanings ascribed thereto in the Credit Agreement.

1.3 PPSA Definitions. Unless otherwise defined herein or in the Credit Agreement or the context otherwise requires, terms for which meanings are provided in the PPSA (including, without limitation, the terms "Certificated Security", "Financial Asset", "Proceeds", "Securities Account", "Securities Intermediary", "Security", "Security Certificate", "Uncertificated Security" and "Security Entitlement") are used in this Pledge Agreement, including its preamble and recitals, with such meanings.

## ARTICLE II

### PLEDGE

2.1 Grant of Security Interest. As general and continuing collateral security for the payment and performance of the Obligations, the Pledgor hereby pledges, hypothecates, assigns, charges, mortgages, delivers, transfers and grants to the Lender a continuing security interest in, all of the following property (collectively, the "**Collateral**"):

- (a) all Securities Accounts in the name of the Pledgor, including any and all assets of whatever type or kind deposited in or credited to such Securities Accounts, including all Financial Assets, all Security Entitlements related to such Financial Assets, and all certificates and other instruments from time to time representing or evidencing the same;
- (b) all Stock;
- (c) all Financial Assets;
- (d) all Security Entitlements; and
- (e) all Proceeds in respect of the foregoing and all rights and interest of the Pledgor in respect thereof or evidenced thereby, including all money received or receivable from time to time by the Pledgor in connection with the sale of any of the foregoing.

2.2 Security for Obligations. This Pledge Agreement and the Collateral granted herewith secures the payment and performance in full of all Obligations whether for principal, interest, costs, fees, expenses, or otherwise. The security interest granted hereby and all rights of the Lender hereunder and all obligations of the Pledgor hereunder are unconditional and absolute and independent and separate from any other security for the Obligations, whether executed by the Pledgor or any other person.

2.3 Subsequently Acquired Collateral. To the extent the Pledgor acquires, by way of amalgamation or otherwise, any additional Collateral at any time or from time to time after the date hereof, such Collateral will automatically (and without any further action being required to be taken by the Lender) be subject to the security interest and pledge created hereby. The Pledgor will take, or cause to be taken, as promptly as practicable and, in any event within three Business Days after it obtains such additional Collateral, all steps and actions as the Lender reasonably deems necessary to ensure that the additional Collateral is Delivered to the Lender.

2.4 Delivery of Collateral. All Collateral must be Delivered promptly to the Lender or its nominee. The Lender may, at its option, cause all or any of the Collateral to be registered in the name of the Lender or its nominee.

2.5 Dividends on Pledged Shares. In the event that any Dividend is to be paid on any Pledged Share at a time when no Event of Default has occurred or would result therefrom, such Dividend or payment may be paid directly to the Pledgor, and shall not form part of the Collateral. If any Event of Default has occurred and is continuing or would result from the payment of any Dividend on any Pledged Share, then any such Dividend or payment shall be paid directly to the Lender, and the Pledgor shall promptly pay any such Dividend received by it in contravention of this Section to the Lender and until such Dividend is so paid to the Lender it shall be held separate and apart from the Pledgor's other property in trust for the benefit of the Lender by the Pledgor.

2.6 Continuing Security Interest. This Pledge Agreement shall create a continuing security interest in the Collateral and shall:

- (a) remain in full force and effect until the occurrence of a Discharge Event;
- (b) be binding upon the Pledgor and its successors and assigns; and
- (c) enure, together with the rights and remedies of the Lender hereunder, to the benefit of the Lender.

The Lender may not assign or otherwise transfer any of its right, title or interest in, to or arising under this Pledge Agreement except in accordance with the provisions governing assignment by the Lender contained in the Credit Agreement. Upon the occurrence of a Discharge Event, the security interest granted herein shall terminate and all rights to the Collateral shall revert to the Pledgor. Upon the occurrence of any such Discharge Event, the Lender will, at the Pledgor's sole expense, deliver to the Pledgor, without any representations, warranties or recourse of any kind whatsoever (except a representation that it has not assigned the same, nor created a lien on or otherwise encumbered same), all certificates and instruments representing or evidencing all Pledged Shares, together with all other Collateral held by the Lender hereunder, and execute and deliver to the Pledgor such documents as the Pledgor shall reasonably request to evidence such termination.



### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES

The Pledgor represents and warrants to the Lender, as at the date of each pledge and delivery hereunder (including each pledge and delivery of Pledged Shares after the date hereof) by the Pledgor to the Lender of any Collateral, as set forth in this Article:

3.1 Existence, etc. The Pledgor is a limited partnership duly formed and existing under the laws of the Province of Ontario. Legado Capital Partners GP Inc., general partner of the Pledgor ("**Legado GP**"), has been duly incorporated and organized and is validly existing under the laws of the Province of Ontario; this Pledge Agreement has been duly authorized by all necessary corporate action on the part of the Legado GP for and on behalf of the Pledgor and constitutes a legal and valid agreement binding of the Pledgor, enforceable in accordance with its terms; the making and performance of this Pledge Agreement will not result in the breach of, constitute a default under, contravene any provision of, or result in the creation of any lien, charge, security interest, encumbrance of any other rights of others upon any property of the Pledgor pursuant to any agreement, indenture or other instrument to which the Pledgor is a party or by which the Pledgor or any of its property may be bound or affected.

3.2 Ownership, No Liens, etc. The Pledgor is the legal and beneficial owner of, and has good and marketable title to (and has full right and authority to create the security interest, pledge and assign and to cause Delivery of the Collateral) the Collateral, free and clear of all Liens, except any lien or security interest granted pursuant hereto in favour of the Lender, Permitted Liens and any security interest in favour of a Securities Intermediary which has been consented to in writing by the Lender, provided such security interest in favour of such Securities Intermediary is subordinated to the Lender's security interest in the Collateral. There is no existing agreement, option, right or privilege capable of becoming an agreement or option pursuant to which the Pledgor would be required to sell or otherwise dispose of any of the Collateral.

3.3 Control. No Collateral is in the possession or control of any person asserting a claim thereto or security interest therein, except that the Lender or its nominee or a Securities Intermediary acting on its behalf may have possession or control of the Collateral.

3.4 As to Pledged Shares. In the case of any Pledged Shares constituting Collateral, (a) all of such Pledged Shares are duly authorized and validly issued, fully paid, and non-assessable, and constitute such percentage of all of the issued and outstanding shares of each such class of capital stock of each Pledged Share Issuer as set forth on Attachment I attached hereto, (b) there is no agreement, option, warrant, privilege or right pursuant to which the Pledgor may be required to sell or otherwise dispose of any of the Pledged Shares, and (c) the Pledgor has no direct Subsidiaries as of the date hereof other than the Pledged Share Issuers.

3.5 Authorization, Approval, etc. Except for the consent of the boards of directors of the Pledgor and the Pledged Share Issuers, which have been obtained, no authorization, approval, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other Person is required either:

- (a) for the pledge by the Pledgor of any Collateral pursuant to this Pledge Agreement or for the execution, delivery, and performance of this Pledge Agreement by the Pledgor; or
- (b) for the exercise by the Lender of the voting or other rights provided for in this Pledge Agreement, or the remedies in respect of the Collateral pursuant to this Pledge Agreement except as may be required in connection with a disposition of the Collateral pledged hereunder by laws affecting the offering and sale of securities generally.

#### ARTICLE IV

#### COVENANTS

4.1 Protect Collateral; Further Assurances, etc. The Pledgor will not sell, assign, transfer, pledge or encumber in any other manner the Collateral (except in favour of the Lender hereunder, or except as permitted by the Credit Agreement). The Pledgor will warrant and defend the right and title herein granted unto the Lender in and to the Collateral (and all right, title, and interest represented by the Collateral) against the claims and demands of all Persons whomsoever, subject to Permitted Liens. The Pledgor agrees that at any time, and from time to time, at the expense of the Pledgor, the Pledgor will promptly execute and deliver all further instruments and take all further action reasonably requested by the Lender that may be reasonably necessary in the opinion of the Lender in order to perfect and protect any security interest granted or purported to be granted hereby or to enable the Lender to exercise and enforce its rights and remedies hereunder with respect to any Collateral.

4.2 Stock Powers, etc. The Pledgor agrees that all Pledged Shares (and all other shares of capital stock constituting Collateral) delivered by the Pledgor pursuant to this Pledge Agreement will be accompanied by duly executed undated blank stock powers, or other equivalent instruments of transfer acceptable to the Lender. The Pledgor will, from time to time upon the request of the Lender, promptly deliver to the Lender such stock powers, instruments, and similar documents, satisfactory in form and substance to the Lender, with respect to the Collateral as the Lender may reasonably request and will, from time to time upon the request of the Lender, promptly transfer any Pledged Shares or other shares of common stock constituting Collateral into the name of any nominee designated by the Lender.

4.3 Continuous Pledge. Subject to Section 2.5 and Section 4.4 hereof, the Pledgor will, at all times, keep pledged to the Lender pursuant hereto, and shall deliver forthwith to the Lender, all Pledged Shares and all other shares of capital stock constituting Collateral, all Dividends and Distributions with respect to the Pledged Shares, and all other Collateral and rights from time to time received by or distributable to the Pledgor in respect of any Collateral and will immediately duly pledge on a perfected basis, subject only to Permitted Liens, all capital stock issued by any Pledged Share Issuer to the Pledgor.

4.4 Voting Rights; Dividends, etc. The Pledgor agrees that after any Event of Default shall have occurred and be continuing:

- (a) it shall promptly, upon receipt thereof by the Pledgor and, without any request therefor by the Lender, deliver to the Lender all Dividends, Distributions, and all proceeds of the Collateral, all of which shall be held by the Lender as additional Collateral for use in accordance with Section 6.3 (other than as permitted by the Credit Agreement);
- (b) the Lender may exercise (to the exclusion of the Pledgor) the voting power and all other incidental rights of ownership with respect to any Pledged Shares or other shares of capital stock constituting Collateral and the Pledgor hereby grants to the Lender an irrevocable proxy, exercisable under such circumstances, to vote the Pledged Shares and such other Collateral; and
- (c) it shall promptly deliver to the Lender such additional proxies and other documents reasonably requested by the Lender that may be necessary, in the opinion of the Lender, to allow the Lender to realize such Dividends, Distributions or proceeds of Collateral or to exercise such voting power.

All Dividends, Distributions and proceeds which may at any time, and from time to time, be held by the Pledgor but which the Pledgor is then obligated to deliver to the Lender, shall, until delivery to the Lender, be held by the Pledgor separate and apart from its other property in trust for the Lender until delivery to the Lender. The Lender agrees that unless an Event of Default shall have occurred and be continuing, the Pledgor shall have the exclusive voting power with respect to any shares of capital stock (including any of the Pledged Shares) constituting Collateral and the Lender shall, upon the written request of the Pledgor, promptly deliver such proxies and other documents, if any, as shall be reasonably requested by the Pledgor which are necessary to allow the Pledgor to exercise voting power with respect to any such share of capital stock (including any of the Pledged Shares) constituting Collateral; provided, however, that no vote shall be cast, or consent, waiver, or ratification given, or action taken by the Pledgor that would be prejudicial to the interests of the Lender, impair any Collateral or be inconsistent with or violate any provision of the Credit Agreement or any other Loan Document (including this Pledge Agreement) or would have the intent of reducing in a material way the value of the Collateral as security for the Obligations or imposing any restriction on the transferability of any of the Collateral.

4.5 Representations and Warranties. The Pledgor will ensure that the representations and warranties set forth in Article III will be true and correct at all times.

## ARTICLE V

### THE LENDER

5.1 Lender Appointed Attorney-in-Fact. The Pledgor hereby irrevocably appoints the Lender the Pledgor's attorney-in-fact with effect following the occurrence and during the continuance of an Event of Default, with full authority in the place and stead of the Pledgor and in the name of the Pledgor or otherwise, from time to time in the Lender's discretion, to take any action and to execute any instrument which the Lender may reasonably deem necessary or advisable to accomplish the purposes of this Pledge Agreement, including without limitation:

- (a) to transfer any or all of the Pledged Property into the name of the Lender or its nominee;
- (b) to ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral;
- (c) to receive, endorse, and collect any drafts or other instruments, documents and chattel paper, in connection with clause (a) above; and
- (d) to file any claims or take any action or institute any proceedings which the Lender may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of the Lender with respect to any of the Collateral.

The Pledgor hereby acknowledges, consents and agrees that the power of attorney granted pursuant to this Section is (until termination of the security interest granted hereunder upon the occurrence of a Discharge Event) irrevocable and coupled with an interest.

5.2 Lender May Perform. If the Pledgor fails to perform any agreement contained herein, the Lender may itself perform, or cause performance of, such agreement, and the expenses of the Lender incurred in connection therewith shall be payable by the Pledgor pursuant to Section 6.4.

5.3 Lender Has No Duty. The powers conferred on the Lender hereunder are solely to protect its interest in the Collateral and shall not impose any duty on it to exercise any such powers. Except for reasonable care of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Lender shall have no duty as to any Collateral or responsibility for:

- (a) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any Pledged Property, whether or not the Lender has or is deemed to have notice or knowledge of such matters; or
- (b) taking any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral.

5.4 Reasonable Care. The Lender is required to exercise reasonable care in the custody and preservation of any of the Collateral in its possession; provided, however, the Lender shall be deemed to have exercised reasonable care in the custody and preservation of any of the Collateral if it affords the Collateral the same treatment that it would give its own property or otherwise takes such action for that purpose as the Pledgor requests in writing, but failure of the Lender to comply with any such request at any time shall not in itself be deemed a failure to exercise reasonable care.

## ARTICLE VI

### REMEDIES

6.1 Certain Remedies. Whenever an Event of Default shall have occurred under the Credit Agreement and be continuing, without limiting the rights of the Lender under or pursuant to this

Pledge Agreement, the Credit Agreement, any other Loan Document or any other security provided by the Pledgor to the Lender pursuant to or in connection with the Credit Agreement or otherwise provided by Applicable Law, the Lender shall be entitled and shall have the authority by itself or through its agents (including, without limitation, any receiver or receiver and manager) to do any of the following:

- (a) The Lender may exercise in respect of the Collateral on commercially reasonable terms given the circumstances at such time, in addition to other rights and remedies provided for herein or otherwise available to it under Applicable Law or any other agreement (including the right to give entitlement orders, instructions or a notice of exclusive control to a Securities Intermediary subject to an Account Control Agreement or an issuer subject to an Issuer Control Agreement), all the rights and remedies of a secured party upon default under the PPSA (whether or not the PPSA applies to the affected Collateral) and also may, without notice except as specified below, sell the Collateral or any part thereof in one or more parcels at public or private sale, at the Lender's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as the Lender may deem commercially reasonable. The Pledgor agrees that, to the extent notice of sale shall be required by law, at least fifteen days prior notice to the Pledgor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Lender shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Lender may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.
- (b) The Lender may:
  - (i) transfer all or any part of the Collateral into the name of the Lender or its nominee, with or without disclosing that such Collateral is subject to the lien and security interest hereunder;
  - (ii) vote any of the Collateral (whether or not registered in the name of the Lender or its nominee) and give or withhold all consents, waivers and ratifications in respect thereof;
  - (iii) notify the parties obligated on any of the Collateral to make payment to the Lender of any amount due or to become due thereunder;
  - (iv) enforce collection of any of the Collateral by suit or otherwise, and surrender, release or exchange all or any part thereof, or compromise or extend or renew for any period (whether or not longer than the original period) any obligations of any nature of any party with respect thereto;
  - (v) endorse any cheques, drafts, or other writings in the Pledgor's name to allow collection of the Collateral;

- (vi) take control of any proceeds of the Collateral; and
  - (vii) execute (in the name, place and stead of the Pledgor) endorsements, assignments, stock powers and other instruments of conveyance or transfer with respect to all or any of the Collateral.
- (c) The Lender may purchase any of the Collateral, whether in connection with a sale made under the power of sale herein contained or pursuant to judicial proceedings or otherwise and accept the Collateral in satisfaction of the Obligations upon notice to the Pledgor of its intention to do so in the manner required by law.
- (d) The Lender may (i) grant extensions of time, (ii) take and perfect or abstain from taking and perfecting security, (iii) give up securities, (iv) accept compositions or compromises, (v) grant releases and discharges, and (vi) release any part of the Collateral or otherwise deal with the Pledgor, debtors of the Pledgor, sureties and others and with the Collateral and other security as the Lender sees fit without prejudice to the liability of the Pledgor to the Lender or the Lender's rights hereunder.
- (e) The Lender will not be liable or responsible for any failure to seize, collect, realize, or obtain payment with respect to the Collateral and is not bound to institute proceedings or to take other steps for the purpose of seizing, collecting, realizing or obtaining possession or payment with respect to the Collateral or for the purpose of preserving any rights of the Lender, the Pledgor or any other person, in respect of the Collateral.
- (f) The Lender may apply any proceeds of realization of the Collateral to payment of expenses in connection with the preservation and realization of the Collateral as above described and the Lender may, subject to the provisions of the Credit Agreement, apply any balance of such proceeds to payment of the Obligations in such order as the Lender sees fit. If the Lender purchases any of the Collateral, the proceeds of such purchase shall be deemed to be the fair market value of the Collateral so purchased. If there is any surplus remaining, the Lender may pay it to any person having a claim thereto in priority to the Pledgor of whom the Lender has knowledge and any balance remaining must be paid to the Pledgor. If the disposition of the Collateral fails to satisfy the Obligations secured by this Pledge Agreement and the aforesaid expenses, the Pledgor will be liable to pay any deficiency to the Lender forthwith on demand.

6.2 Compliance with Restrictions. The Pledgor agrees that in any sale of any of the Collateral following an Event of Default, the Lender is hereby authorized to comply with any limitation or restriction in connection with such sale as it may be advised by counsel is necessary in order to avoid any violation of Applicable Law (including compliance with such procedures as may restrict the number of prospective bidders and purchasers, require that such prospective bidders and purchasers have certain qualifications, and restrict such prospective bidders and purchasers to Persons who will represent and agree that they are purchasing for their own account for investment and not with a view to the distribution or resale of such Collateral), or in order to obtain any required approval of the sale or of the purchaser by any governmental regulatory authority or official, and the Pledgor further agrees that such compliance shall not

result in such sale being considered or deemed not to have been made in a commercially reasonable manner, nor shall the Lender be liable nor accountable to the Pledgor for any discount allowed by the reason of the fact that such Collateral is sold in compliance with any such limitation or restriction.

6.3 Application of Proceeds. All cash proceeds received by the Lender in respect of any sale of, collection from, or other realization upon, all or any part of the Collateral may be applied (after payment of any amounts payable to the Lender pursuant to the Credit Agreement) in whole or in part by the Lender against, all or any part of the Obligations in such order as the Lender shall elect, subject to the provisions of the Credit Agreement. Any surplus of such cash or cash proceeds held by the Lender and remaining after payment and satisfaction in full of all the Obligations, and the termination of all Commitments, shall be paid over to the Pledgor or to whomsoever may be lawfully entitled to receive such surplus.

6.4 Indemnity and Expenses. The Pledgor hereby indemnifies and holds harmless the Lender from and against any and all claims, losses and liabilities arising out of or resulting from this Pledge Agreement (including enforcement of this Pledge Agreement), save and except for claims, losses and liabilities arising from the gross negligence or wilful misconduct of the Lender. Upon demand, the Pledgor will pay to the Lender the amount of any and all reasonable and documented out-of-pocket expenses, including the reasonable fees and disbursements of its counsel and of any Securities Intermediary, experts and agents, which the Lender may incur in connection with:

- (a) the administration of this Pledge Agreement;
- (b) the custody, preservation, use, or operation of, or the sale of, collection from, or other realization upon, any of the Collateral;
- (c) the exercise or enforcement of any of the rights of the Lender hereunder; or
- (d) the failure by the Pledgor to perform or observe any of the provisions hereof.

## ARTICLE VII

### GENERAL

7.1 No Release. This Pledge Agreement shall remain in full force and effect without regard to, and the obligations of the Pledgor shall not be affected or impaired by:

- (a) any amendment, modification, replacement of or addition or supplement to the Credit Agreement, any other Loan Document or any other security provided to the Lender;
- (b) any exercise or non-exercise of any right, remedy, power or privilege in respect of this Pledge Agreement, the Credit Agreement, any other Loan Document or any other security provided to the Lender;

- (c) any waiver, consent, extension, indulgence or other action, inaction or admission under or in respect of this Pledge Agreement, the Credit Agreement, any other Loan Document or any other security provided to the Lender;
- (d) any default by the Borrower under, or any invalidity or unenforceability of, or any limitation of the liability of the Borrower or on the method or terms of payment under, or any irregularity or other defect in the Credit Agreement, any other Loan Document or any other security provided to the Lender;
- (e) any merger, consolidation or amalgamation of the Pledgor into or with any other Person; or
- (f) any insolvency, bankruptcy, liquidation, reorganization, arrangement, composition, winding-up, dissolution or similar proceeding involving or affecting the Pledgor;

7.2 No Partnership. Nothing herein contained shall be deemed or construed by the parties hereto or by any third party as creating the relationship of partnership or of joint venture among the Pledgor and the Lender, it being understood and agreed that none of the provisions herein contained or any acts of the Lender or of the Pledgor shall be deemed to create any relationship between the Lender and the Pledgor other than the relationship of pledgee and pledgor.

7.3 Rights and Remedies Cumulative. The rights and remedies given to the Lender hereunder shall be cumulative of and not substituted for any rights or remedies to which the Lender may be entitled under the Credit Agreement, any other Loan Document or any other security provided to the Lender pursuant to or in connection with any of the foregoing or at law and may be exercised whether or not the Lender has pursued or is then pursuing any other such rights and remedies. Nothing in this Pledge Agreement shall curtail or limit the remedies of the Lender as permitted either by Applicable Law or in any statute to a creditor, all such remedies being in addition to and not in substitution for any other rights of the Lender under this Pledge Agreement, the Credit Agreement, any other Loan Document or any other security provided to the Lender pursuant to or in connection with any of the foregoing.

7.4 Time of Essence. Time shall be of the essence of this Pledge Agreement.

7.5 Waiver. No consent or waiver, express or implied, by the Lender to or of any breach or default by the Pledgor in performance of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by the Pledgor hereunder. Failure on the part of the Lender to complain of any act or failure to act of the Pledgor or to declare the Pledgor in default, irrespective of how long such failure continues, shall not by itself constitute a waiver by the Lender of its rights hereunder.

7.6 Saskatchewan Law. The Pledgor hereby covenants and agrees with the Lender that:

- (a) The *Land Contract (Actions) Act* (Saskatchewan) shall have no application to any action, as defined in that Act, with respect to this Pledge Agreement or the other Loan Documents; and



- (b) *The Limitation of Civil Rights Act* (Saskatchewan) shall have no application to this Pledge Agreement, the other Loan Documents or any agreement renewing, extending or collateral to this Pledge Agreement or other Loan Documents.

## ARTICLE VIII

### MISCELLANEOUS PROVISIONS

8.1 Acknowledgement. The Pledgor acknowledges that value has been given by the Lender for the granting of the security interest granted herein, that the Pledgor has rights in the Pledged Property (other than future or hereafter acquired Pledged Property) and that the parties have not agreed to postpone the time for attachment of the security interest granted herein.

8.2 Loan Document. This Pledge Agreement is a Loan Document executed pursuant to the Credit Agreement and shall (unless otherwise expressly indicated herein) be construed, administered and applied in accordance with the terms and provisions of the Credit Agreement.

8.3 Amendments, etc. No amendment to or waiver of any provision of this Pledge Agreement nor consent to any departure by the Pledgor herefrom shall in any event be effective unless the same shall be in writing and signed by the Lender and the Pledgor, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given.

8.4 Protection of Collateral. The Lender may from time to time, at its option, perform any act which the Pledgor agrees hereunder to perform and which the Pledgor shall fail to perform after being reasonably requested in writing so to perform (it being understood that no such request need be given after the occurrence of an Event of Default) and the Lender may from time to time take any other action which the Lender reasonably deems necessary for the maintenance, preservation or protection of any of the Collateral or of its security interest therein.

8.5 Addresses for Notices. Any notice or communication to be given under this Pledge Agreement to the Pledgor or the Lender shall be effective if given in accordance with the provisions of the Credit Agreement as to the giving of notice to each and the Pledgor and the Lender may change their respective address for notices in accordance with the said provisions.

8.6 Section Captions. Section captions used in this Pledge Agreement are for convenience of reference only, and shall not affect the construction of this Pledge Agreement.

8.7 Severability. Wherever possible each provision of this Pledge Agreement shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any provision of this Pledge Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Pledge Agreement.

8.8 Conflicts. In the event of any conflict between the provisions hereunder and the provisions of the Credit Agreement then, notwithstanding anything contained herein, the provisions contained in the Credit Agreement shall prevail and the provisions of this Pledge

Agreement will be deemed to be amended to the extent necessary to eliminate such conflict. If any act or omission of the Pledgor is expressly permitted under the Credit Agreement but is expressly prohibited hereunder, such act or omission shall be permitted. If any act or omission is expressly prohibited hereunder, but the Credit Agreement does not expressly permit such act or omission, or if any act is expressly required to be performed hereunder but the Credit Agreement does not expressly relieve the Pledgor from such performance, such circumstance shall not constitute a conflict between the applicable provisions hereunder and the provisions of the Credit Agreement.

8.9 Governing Law, Entire Agreement, etc. This Pledge Agreement shall be governed by and construed in accordance with the internal laws of the Province of Ontario and the federal laws of Canada applicable therein. Subject to and without in any way limiting the provisions regarding the paramountcy of the Credit Agreement contained in Section 8.8 above, this Pledge Agreement together with any Issuer Control Agreement or Account Control Agreement Delivered to the Lender pursuant to the terms hereof and the other Loan Documents constitute the entire understanding among the parties hereto with respect to the subject matter hereof and supersede any prior agreements, written or oral, with respect thereto.

8.10 Assignment. This Pledge Agreement shall enure to the benefit of and be binding upon the Lender and its successors and permitted assigns and the Pledgor and its successors and assigns; provided that the Pledgor shall not have the right to assign its obligations hereunder and the Lender may only assign its rights, title and interest in, to and arising under this Pledge Agreement in accordance with the provisions of the Credit Agreement concerning assignments and participations.

8.11 Counterparts. This Pledge Agreement may be executed by one or more of the parties to this Pledge Agreement on any number of separate counterparts (including by telecopy or pdf), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

8.12 Executed Copy. The Pledgor acknowledges receipt of a fully executed copy of this Pledge Agreement.

**[Signature page follows]**

IN WITNESS WHEREOF, the parties caused this Pledge Agreement to be duly executed and delivered as of the date first written above.

**LEGADO CAPITAL PARTNERS LP** by its  
general partner **LEGADO CAPITAL  
PARTNERS GP INC.**

By: 

Name: Carlos Jose Meza-Rios

Title: Vice President

*I have authority to bind the Partnership*

Attention: Carlos Meza

Address: 126 York St. Suite 200

Ottawa, ON, K1N 5T5 Canada

Telephone: +1 (613) 526-3005

Email: [carlos@legadocapital.ca](mailto:carlos@legadocapital.ca)

ATTACHMENT I to  
Pledge Agreement**Item A. Pledged Shares****Pre-Amalgamation**

<u>Pledged Share Issuer</u>	<u>Number/Class of Shares Owned</u>	<u>Number/Class of Shares Pledged</u>	<u>% of Shares Pledged of All Outstanding Shares</u>
10600598 Canada Inc.	12,900,100 Class A	12,900,100 Class A	100%

**Post-Amalgamation**

<u>Pledged Share Issuer</u>	<u>Number/Class of Shares Owned</u>	<u>Number/Class of Shares Pledged</u>	<u>% of Shares Pledged of All Outstanding Shares</u>
Kivuto Solutions Inc. (a corporation amalgamated under the laws of Canada)	27,164,106 Class A 6,145,000 Class B	27,164,106 Class A 6,145,000 Class B	100%

This is Exhibit "U" referred to in the Affidavit of Andrea Jamnisek sworn January 27, 2023.

A handwritten signature in black ink, consisting of a stylized 'L' followed by a 'J' and a long horizontal line extending to the right.

---

*Commissioner for Taking Affidavits (or as may be)*



[Main Menu](#) [New Enquiry](#)

# Enquiry Result

File Currency: 17JAN 2023

All Pages

[Show All Pages](#)

**Note: All pages have been returned.**

<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	KIVUTO SOLUTIONS INC.								
<b>File Currency</b>	17JAN 2023								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	736444683	1	3	1	6	13FEB 2023			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>		
736444683		001	1		20180213 1132 1590 3243	P PPSA	5		
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	KIVUTO SOLUTIONS INC.								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
	126 YORK STREET, SUITE 200				OTTAWA	ON	K1N 5T5		
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>								
	THE TORONTO-DOMINION BANK								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
	1470 DON MILLS ROAD, 3RD FLOOR				TORONTO	ON	M3B 2X9		
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
		X	X	X	X	X			
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>		<b>V.I.N.</b>		

<b>General Collateral Description</b>	<b>General Collateral Description</b>				<b>442</b>
<b>Registering Agent</b>	<b>Registering Agent</b>				
	FOGLER, RUBINOFF LLP (D. ROMPEN)				
	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>	
	77 KING STREET WEST, SUITE 3000 PO BOX 9	TORONTO	ON	M5K 1G8	

CONTINUED

<b>Type of Search</b>	Business Debtor				
<b>Search Conducted On</b>	KIVUTO SOLUTIONS INC.				
<b>File Currency</b>	17JAN 2023				
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>
	736444683	1	3	2	6
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>					
	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule Attached</b>	<b>Registration Number</b>
		001	1		20230118 0951 1590 7266
<b>Record Referenced</b>	<b>File Number</b>	<b>Page Amended</b>	<b>No Specific Page Amended</b>	<b>Change Required</b>	<b>Renewal Years</b>
	736444683		X	A AMNDMNT	
<b>Reference Debtor/ Transferor</b>	<b>First Given Name</b>		<b>Initial</b>	<b>Surname</b>	
	<b>Business Debtor Name</b>				
	KIVUTO SOLUTIONS INC.				
<b>Other Change</b>	<b>Other Change</b>				
<b>Reason / Description</b>	<b>Reason / Description</b>				
	AMENDMENT OF REFERENCE FILE NUMBER 736444683 TO CHANGE THE ADDRESS OF THE DEBTOR KIVUTO SOLUTIONS INC.				
<b>Debtor/ Transferee</b>	<b>Date of Birth</b>	<b>First Given Name</b>		<b>Initial</b>	<b>Surname</b>
	<b>Business Debtor Name</b>				<b>Ontario Corporation Number</b>
	KIVUTO SOLUTIONS INC.				
	<b>Address</b>		<b>City</b>	<b>Province</b>	<b>Postal Code</b>
	495 RICHMOND RD., SUITE 100		OTTAWA	ON	K2A 4B2
<b>Assignor Name</b>	<b>Assignor Name</b>				
<b>Secured Party</b>	<b>Secured party, lien claimant, assignee</b>				
	<b>Address</b>		<b>City</b>	<b>Province</b>	<b>Postal Code</b>
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>
				<b>Motor Vehicle Included</b>	<b>Amount</b>
					<b>Date of Maturity or</b>
					<b>No Fixed Maturity Date</b>

<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>	<b>Model</b>	<b>V.I.N.</b> <b>443</b>
<b>General Collateral Description</b>	<b>General Collateral Description</b>			
<b>Registering Agent</b>	<b>Registering Agent or Secured Party/ Lien Claimant</b>			
	FOGLER, RUBINOFF LLP (THILL)			
	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>
	77 KING STREET WEST, SUITE 3000 PO BOX 9	TORONTO	ON	M5K 1G8

END OF FAMILY

<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	KIVUTO SOLUTIONS INC.								
<b>File Currency</b>	17JAN 2023								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	736444692	2	3	3	6	13FEB 2023			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>		
736444692		001	1		20180213 1132 1590 3244	P PPSA	5		
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	10600598 CANADA INC.								
	<b>Address</b>			<b>City</b>	<b>Province</b>	<b>Postal Code</b>			
	199 BAY STREET, 5300 COMMERCE COURT WEST			TORONTO	ON	M5L 1B9			
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	<b>Address</b>			<b>City</b>	<b>Province</b>	<b>Postal Code</b>			
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>								
	THE TORONTO-DOMINION BANK								
	<b>Address</b>			<b>City</b>	<b>Province</b>	<b>Postal Code</b>			
	1470 DON MILLS ROAD, 3RD FLOOR			TORONTO	ON	M3B 2X9			
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
		X	X	X	X	X			
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>	<b>Model</b>		<b>V.I.N.</b>				



<b>General Collateral Description</b>	<b>General Collateral Description</b>			
	<b>444</b>			
<b>Registering Agent</b>	<b>Registering Agent</b>			
	FOGLER, RUBINOFF LLP (D. ROMPEN)			
	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>
	77 KING STREET WEST, SUITE 3000 PO BOX 9	TORONTO	ON	M5K 1G8

CONTINUED

<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	KIVUTO SOLUTIONS INC.								
<b>File Currency</b>	17JAN 2023								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>				
	736444692	2	3	4	6				
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>									
	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule Attached</b>	<b>Registration Number</b>	<b>Registered Under</b>			
		001	2		20180313 1550 1590 5251				
<b>Record Referenced</b>	<b>File Number</b>	<b>Page Amended</b>	<b>No Specific Page Amended</b>	<b>Change Required</b>	<b>Renewal Years</b>	<b>Correct Period</b>			
	736444692		X	A AMNDMNT					
<b>Reference Debtor/ Transferor</b>	<b>First Given Name</b>	<b>Initial</b>	<b>Surname</b>						
	<b>Business Debtor Name</b>	10600598 CANADA INC.							
<b>Other Change</b>	<b>Other Change</b>								
<b>Reason / Description</b>	<b>Reason / Description</b>								
	TO CHANGE THE NAME OF THE DEBTOR TO KIVUTO SOLUTIONS INC. PURSUANT TO ARTICLES OF AMALGAMATION FILED ON MARCH 1, 2018 AND TO CHANGE THE ADDRESS OF THE DEBTOR TO 126 YORK STREET, SUITE 200, OTTAWA, ONTARIO								
<b>Debtor/ Transferee</b>	<b>Date of Birth</b>	<b>First Given Name</b>	<b>Initial</b>	<b>Surname</b>					
	<b>Business Debtor Name</b>	KIVUTO SOLUTIONS INC.				<b>Ontario Corporation Number</b>			
	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>					
	126 YORK STREET, SUITE 200	OTTAWA	ON	K1N 5T5					
<b>Assignor Name</b>	<b>Assignor Name</b>								
<b>Secured Party</b>	<b>Secured party, lien claimant, assignee</b>								
	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>					
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>

<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>	<b>Model</b>	<b>V.I.N.</b> <b>445</b>
<b>General Collateral Description</b>	<b>General Collateral Description</b>			
<b>Registering Agent</b>	<b>Registering Agent or Secured Party/ Lien Claimant</b>			
	FOGLER, RUBINOFF LLP (D. ROMPEN)			
	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>
	77 KING STREET WEST, SUITE 3000 PO BOX 9	TORONTO	ON	M5K 1G8

CONTINUED

<b>Type of Search</b>	Business Debtor				
<b>Search Conducted On</b>	KIVUTO SOLUTIONS INC.				
<b>File Currency</b>	17 JAN 2023				
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>
	736444692	2	3	5	6
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>					
	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule Attached</b>	<b>Registration Number</b>
		002	2		20180313 1550 1590 5251
<b>Record Referenced</b>	<b>File Number</b>	<b>Page Amended</b>	<b>No Specific Page Amended</b>	<b>Change Required</b>	<b>Renewal Years</b>
	736444692				
<b>Reference Debtor/ Transferor</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>
	<b>Business Debtor Name</b>				
<b>Other Change</b>	<b>Other Change</b>				
<b>Reason / Description</b>	<b>Reason / Description</b>				
	K1N 5T5				
<b>Debtor/ Transferee</b>	<b>Date of Birth</b>	<b>First Given Name</b>		<b>Initial</b>	<b>Surname</b>
	<b>Business Debtor Name</b>				<b>Ontario Corporation Number</b>
	<b>Address</b>		<b>City</b>	<b>Province</b>	<b>Postal Code</b>
<b>Assignor Name</b>	<b>Assignor Name</b>				
<b>Secured Party</b>	<b>Secured party, lien claimant, assignee</b>				
	<b>Address</b>		<b>City</b>	<b>Province</b>	<b>Postal Code</b>

<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>446 Fixed Maturity Date</b>
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>		<b>V.I.N.</b>		
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
<b>Registering Agent</b>	<b>Registering Agent or Secured Party/ Lien Claimant</b>								
	<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>	

END OF FAMILY

<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	KIVUTO SOLUTIONS INC.								
<b>File Currency</b>	17JAN 2023								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	736640415	3	3	6	6	22FEB 2027			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>		
736640415		001	1		20180222 1030 1590 3793	P PPSA	9		
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	KIVUTO SOLUTIONS INC.								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
	126 YORK STREET, SUITE 200				OTTAWA	ON	K1N 5T5		
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>								
	BDC CAPITAL INC.								
	<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>	
	SUITE 1100-50 O'CONNOR STREET					OTTAWA	ON	K1P 6L2	
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
		X	X	X	X				

<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>	<b>Model</b>	<b>V.I.N.</b>	<b>447</b>
<b>General Collateral Description</b>	<b>General Collateral Description</b>				
<b>Registering Agent</b>	<b>Registering Agent</b>				
	KELLY SANTINI LLP AG				
	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>	
	160 ELGIN ST. SUITE 2401	OTTAWA	ON	K2P 2P7	

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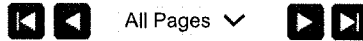
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## Enquiry Result

File Currency: 17JAN 2023

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<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	10600598 CANADA INC.								
<b>File Currency</b>	17JAN 2023								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	736444692	1	2	1	4	13FEB 2023			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>		
736444692		001	1		20180213 1132 1590 3244	P PPSA	5		
<b>Individual Debtor</b>	<b>Date of Birth</b>		<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>		
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	10600598 CANADA INC.								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
	199 BAY STREET, 5300 COMMERCE COURT WEST				TORONTO	ON	M5L 1B9		
<b>Individual Debtor</b>	<b>Date of Birth</b>		<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>		
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>								
	THE TORONTO-DOMINION BANK								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
	1470 DON MILLS ROAD, 3RD FLOOR				TORONTO	ON	M3B 2X9		
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
		X	X	X	X	X			
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>		<b>V.I.N.</b>		

<b>General Collateral Description</b>	<b>General Collateral Description</b>				<b>449</b>
<b>Registering Agent</b>	<b>Registering Agent</b>				
	FOGLER, RUBINOFF LLP (D. ROMPEN)				
	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>	
	77 KING STREET WEST, SUITE 3000 PO BOX 9	TORONTO	ON	M5K 1G8	

CONTINUED

<b>Type of Search</b>	Business Debtor							
<b>Search Conducted On</b>	10600598 CANADA INC.							
<b>File Currency</b>	17JAN 2023							
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>			
	736444692	1	2	2	4			
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>								
	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule Attached</b>	<b>Registration Number</b>	<b>Registered Under</b>		
		001	2		20180313 1550 1590 5251			
<b>Record Referenced</b>	<b>File Number</b>	<b>Page Amended</b>	<b>No Specific Page Amended</b>	<b>Change Required</b>	<b>Renewal Years</b>	<b>Correct Period</b>		
	736444692		X	A AMNDMNT				
<b>Reference Debtor/ Transferor</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
	<b>Business Debtor Name</b>							
	10600598 CANADA INC.							
<b>Other Change</b>	<b>Other Change</b>							
<b>Reason / Description</b>	<b>Reason / Description</b>							
	TO CHANGE THE NAME OF THE DEBTOR TO KIVUTO SOLUTIONS INC. PURSUANT TO ARTICLES OF AMALGAMATION FILED ON MARCH 1, 2018 AND TO CHANGE THE ADDRESS OF THE DEBTOR TO 126 YORK STREET, SUITE 200, OTTAWA, ONTARIO							
<b>Debtor/ Transferee</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>		
	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>		
	KIVUTO SOLUTIONS INC.							
	<b>Address</b>			<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
	126 YORK STREET, SUITE 200			OTTAWA	ON	K1N 5T5		
<b>Assignor Name</b>	<b>Assignor Name</b>							
<b>Secured Party</b>	<b>Secured party, lien claimant, assignee</b>							
	<b>Address</b>			<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>

<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>	<b>Model</b>	<b>V.I.N.</b> <b>450</b>
<b>General Collateral Description</b>	<b>General Collateral Description</b>			
<b>Registering Agent</b>	<b>Registering Agent or Secured Party/ Lien Claimant</b>			
	FOGLER, RUBINOFF LLP (D. ROMPEN)			
	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>
	77 KING STREET WEST, SUITE 3000 PO BOX 9	TORONTO	ON	M5K 1G8

CONTINUED

<b>Type of Search</b>	Business Debtor				
<b>Search Conducted On</b>	10600598 CANADA INC.				
<b>File Currency</b>	17JAN 2023				
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>
	736444692	1	2	3	4
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>					
	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule Attached</b>	<b>Registration Number</b>
		002	2		20180313 1550 1590 5251
<b>Record Referenced</b>	<b>File Number</b>	<b>Page Amended</b>	<b>No Specific Page Amended</b>	<b>Change Required</b>	<b>Renewal Years</b>
	736444692				
<b>Reference Debtor/ Transferor</b>	<b>First Given Name</b>		<b>Initial</b>	<b>Surname</b>	
	<b>Business Debtor Name</b>				
<b>Other Change</b>	<b>Other Change</b>				
<b>Reason / Description</b>	<b>Reason / Description</b>				
	K1N 5T5				
<b>Debtor/ Transferee</b>	<b>Date of Birth</b>	<b>First Given Name</b>		<b>Initial</b>	<b>Surname</b>
	<b>Business Debtor Name</b>				
	<b>Address</b>			<b>City</b>	<b>Province</b> <b>Postal Code</b>
<b>Assignor Name</b>	<b>Assignor Name</b>				
<b>Secured Party</b>	<b>Secured party, lien claimant, assignee</b>				
	<b>Address</b>			<b>City</b>	<b>Province</b> <b>Postal Code</b>

<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>451 Fixed Maturity Date</b>
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>		<b>V.I.N.</b>		
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
<b>Registering Agent</b>	<b>Registering Agent or Secured Party/ Lien Claimant</b>								
	<b>Address</b>				<b>City</b>		<b>Province</b>	<b>Postal Code</b>	

END OF FAMILY

<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	10600598 CANADA INC.								
<b>File Currency</b>	17JAN 2023								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	736640487	2	2	4	4	22FEB 2027			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>		
736640487		001	1		20180222 1039 1590 3796	P PPSA	9		
<b>Individual Debtor</b>	<b>Date of Birth</b>		<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>		
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	10600598 CANADA INC.								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
	126 YORK STREET, SUITE 200				OTTAWA	ON	K1N 5T5		
<b>Individual Debtor</b>	<b>Date of Birth</b>		<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>		
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>								
	BDC CAPITAL INC.								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
	SUITE 1100-50 O'CONNOR STREET				OTTAWA	ON	K1P 6L2		
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
		X	X	X	X				

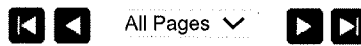


<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>	<b>Model</b>	<b>V.I.N.</b>	<b>452</b>
<b>General Collateral Description</b>					
<b>General Collateral Description</b>					
<b>Registering Agent</b>					
<b>Registering Agent</b>					
KELLY SANTINI LLP AG					
<b>Address</b>					
160 ELGIN ST. SUITE 2401			<b>City</b>	<b>Province</b>	<b>Postal Code</b>
			OTTAWA	ON	K2P 2P7

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## Business Debtor Enquiry

File Currency: **17JAN 2023**

**Search Criteria: 10633011 CANADA INC.**

**No Match.**

**No registered financing statement or registered claim for lien was found for this enquiry.**

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This is Exhibit "V" referred to in the Affidavit of Andrea Jamnisek sworn January 27, 2023.

A handwritten signature in black ink, consisting of a stylized 'L' followed by a 'J' and a long horizontal line extending to the right.

---

*Commissioner for Taking Affidavits (or as may be)*



Financial Restructuring Group  
66 Wellington Street West, 12<sup>th</sup> Floor  
Toronto, Ontario, M5K 1A2  
Telephone No.: 416-308-3913  
Fax No.: 416-982-7710

April 8, 2022

KIVUTO SOLUTIONS INC.  
495 Richmond Rd, Suite 100  
Ottawa, Ontario  
K2A 4B2

Attention: Mr. Mark McKenzie

Dear Mr. McKenzie,

We refer to the Letter Agreement dated March 1, 2018 (the "Agreement"), as amended from time to time, signed by you in relation to the credit facilities (the "Facilities") granted to you by the Bank.

Under the Agreement, you are obligated to comply with the following (the "Obligations"):

**i. "EBITDA Variance to Financial Projections**

Maintain a negative variance of Financial Projections to EBITDA of no more than \$400,000, to be tested on a trailing twelve-month basis.

For the purpose of calculating the variance of Financial Projections to EBITDA, to the extent that wage subsidies or any other Covid-19 government related funding are received by the Borrower, and any one-time or deferred transaction fees are incurred by the Borrower, both of which have otherwise not been modeled into the Financial Projections reviewed by the Lender, such receipts and expenditures will be deducted or added back to EBITDA, accordingly."

***The above financial covenant was in default for the months of January 2022 and February 2022, as the actual negative variance of Financial Projections to EBITDA was greater than \$400,000, at \$712,932 and \$893,647, respectively.***

You are in default of the Obligations. The Bank does not waive compliance with Obligation (i) above. Please be advised that the Bank preserves all rights and remedies under any and all agreements and security provided in connection with the Facility. If you fail to rectify the default to the complete satisfaction of the Bank, the Bank will exercise any or all rights and remedies under such agreements and security, and/or such rights and remedies as may otherwise be available to it at law.

If you have any queries or comments, please do not hesitate to contact the writer.

Yours truly,

**THE TORONTO-DOMINION BANK**

Andrea Jamnisek, Director  
Financial Restructuring Group

Zaria Haider, Senior Analyst  
Financial Restructuring Group

Confidential



Financial Restructuring Group  
66 Wellington Street West, 12<sup>th</sup> Floor  
Toronto, Ontario, M5K 1A2  
Telephone No.: 416-308-3913  
Fax No.: 416-982-7710

April 27, 2022

KIVUTO SOLUTIONS INC.  
495 Richmond Rd, Suite 100  
Ottawa, Ontario  
K2A 4B2

Attention: Mr. Mark McKenzie

Dear Mr. McKenzie,

We refer to the Letter Agreement dated March 1, 2018 (the "Agreement"), as amended from time to time, signed by you in relation to the credit facilities (the "Facilities") granted to you by the Bank.

Under the Agreement, you are obligated to comply with the following (the "Obligations"):

**i. "EBITDA Variance to Financial Projections**

Maintain a negative variance of Financial Projections to EBITDA of no more than \$400,000, to be tested on a trailing twelve-month basis.

For the purpose of calculating the variance of Financial Projections to EBITDA, to the extent that wage subsidies or any other Covid-19 government related funding are received by the Borrower, and any one-time or deferred transaction fees are incurred by the Borrower, both of which have otherwise not been modeled into the Financial Projections reviewed by the Lender, such receipts and expenditures will be deducted or added back to EBITDA, accordingly."

***The above financial covenant is in default for the month of March 2022, as the actual negative variance of Financial Projections to EBITDA was greater than \$400,000, at \$1,417,621.***

You are in default of the Obligations. The Bank does not waive compliance with Obligation (i) above. Please be advised that the Bank preserves all rights and remedies under any and all agreements and security provided in connection with the Facility. If you fail to rectify the default to the complete satisfaction of the Bank, the Bank will exercise any or all rights and remedies under such agreements and security, and/or such rights and remedies as may otherwise be available to it at law.

If you have any queries or comments, please do not hesitate to contact the writer.

Yours truly,

**THE TORONTO-DOMINION BANK**

Andrea Jamnisek, Director  
Financial Restructuring Group

Zaria Haider, Senior Analyst  
Financial Restructuring Group



Financial Restructuring Group  
66 Wellington Street West, 12<sup>th</sup> Floor  
Toronto, Ontario, M5K 1A2  
Telephone No.: 416-308-3913  
Fax No.: 416-982-7710

June 06, 2022

KIVUTO SOLUTIONS INC.  
495 Richmond Rd, Suite 100  
Ottawa, Ontario  
K2A 4B2

Attention: Mr. Mark McKenzie

Dear Mr. McKenzie,

We refer to the Letter Agreement dated March 1, 2018 (the "Agreement"), as amended from time to time, signed by you in relation to the credit facilities (the "Facilities") granted to you by the Bank.

Under the Agreement, you are obligated to comply with the following (the "Obligations"):

**i. "EBITDA Variance to Financial Projections**

Maintain a negative variance of Financial Projections to EBITDA of no more than \$400,000, to be tested on a trailing twelve-month basis.

For the purpose of calculating the variance of Financial Projections to EBITDA, to the extent that wage subsidies or any other Covid-19 government related funding are received by the Borrower, and any one-time or deferred transaction fees are incurred by the Borrower, both of which have otherwise not been modeled into the Financial Projections reviewed by the Lender, such receipts and expenditures will be deducted or added back to EBITDA, accordingly."

***The above financial covenant is in default for the month of April 2022, as the actual negative variance of Financial Projections to EBITDA was greater than \$400,000, at \$1,389,893.***

You are in default of the Obligations. The Bank does not waive compliance with Obligation (i) above. Please be advised that the Bank preserves all rights and remedies under any and all agreements and security provided in connection with the Facility. If you fail to rectify the default to the complete satisfaction of the Bank, the Bank will exercise any or all rights and remedies under such agreements and security, and/or such rights and remedies as may otherwise be available to it at law.

If you have any queries or comments, please do not hesitate to contact the writer.

Yours truly,

**THE TORONTO-DOMINION BANK**

Andrea Jamnisek, Director  
Financial Restructuring Group

Zaria Haider, Senior Analyst  
Financial Restructuring Group



Financial Restructuring Group  
66 Wellington Street West, 12<sup>th</sup> Floor  
Toronto, Ontario, M5K 1A2  
Telephone No.: 416-308-3913  
Fax No.: 416-982-7710

July 04, 2022

KIVUTO SOLUTIONS INC.  
495 Richmond Rd, Suite 100  
Ottawa, Ontario  
K2A 4B2

Attention: Mr. Mark McKenzie

Dear Mr. McKenzie,

We refer to the Letter Agreement dated March 1, 2018 (the "Agreement"), as amended from time to time, signed by you in relation to the credit facilities (the "Facilities") granted to you by the Bank.

Under the Agreement, you are obligated to comply with the following (the "Obligations"):

**i. "EBITDA Variance to Financial Projections**

Maintain a negative variance of Financial Projections to EBITDA of no more than \$400,000, to be tested on a trailing twelve-month basis.

For the purpose of calculating the variance of Financial Projections to EBITDA, to the extent that wage subsidies or any other Covid-19 government related funding are received by the Borrower, and any one-time or deferred transaction fees are incurred by the Borrower, both of which have otherwise not been modeled into the Financial Projections reviewed by the Lender, such receipts and expenditures will be deducted or added back to EBITDA, accordingly."

***The above financial covenant is in default for the month of May 2022, as the actual negative variance of Financial Projections to EBITDA was greater than \$400,000, at \$1,796,516.***

You are in default of the Obligations. The Bank does not waive compliance with Obligation (i) above. Please be advised that the Bank preserves all rights and remedies under any and all agreements and security provided in connection with the Facility. If you fail to rectify the default to the complete satisfaction of the Bank, the Bank will exercise any or all rights and remedies under such agreements and security, and/or such rights and remedies as may otherwise be available to it at law.

If you have any queries or comments, please do not hesitate to contact the writer.

Yours truly,

**THE TORONTO-DOMINION BANK**

Andrea Jamnisek, Director  
Financial Restructuring Group

Zaria Haider, Senior Analyst  
Financial Restructuring Group



Financial Restructuring Group  
66 Wellington Street West, 12<sup>th</sup> Floor  
Toronto, Ontario, M5K 1A2  
Telephone No.: 416-308-3913  
Fax No.: 416-982-7710

July 27, 2022

KIVUTO SOLUTIONS INC.  
495 Richmond Rd, Suite 100  
Ottawa, Ontario  
K2A 4B2

Attention: Mr. Mark McKenzie

Dear Mr. McKenzie,

We refer to the Letter Agreement dated March 1, 2018 (the "Agreement"), as amended from time to time, signed by you in relation to the credit facilities (the "Facilities") granted to you by the Bank.

Under the Agreement, you are obligated to comply with the following (the "Obligations"):

**i. "EBITDA Variance to Financial Projections**

Maintain a negative variance of Financial Projections to EBITDA of no more than \$400,000, to be tested on a trailing twelve-month basis.

For the purpose of calculating the variance of Financial Projections to EBITDA, to the extent that wage subsidies or any other Covid-19 government related funding are received by the Borrower, and any one-time or deferred transaction fees are incurred by the Borrower, both of which have otherwise not been modeled into the Financial Projections reviewed by the Lender, such receipts and expenditures will be deducted or added back to EBITDA, accordingly."

***The above financial covenant is in default for the month of June 2022, as the actual negative variance of Financial Projections to EBITDA was greater than \$400,000, at \$2,035,318.***

You are in default of the Obligations. The Bank does not waive compliance with Obligation (i) above. Please be advised that the Bank preserves all rights and remedies under any and all agreements and security provided in connection with the Facility. If you fail to rectify the default to the complete satisfaction of the Bank, the Bank will exercise any or all rights and remedies under such agreements and security, and/or such rights and remedies as may otherwise be available to it at law.

If you have any queries or comments, please do not hesitate to contact the writer.

Yours truly,

**THE TORONTO-DOMINION BANK**

Andrea Jamnisek, Director  
Financial Restructuring Group

Zaria Haider, Senior Analyst  
Financial Restructuring Group





Financial Restructuring Group  
66 Wellington Street West, 12<sup>th</sup> Floor  
Toronto, Ontario, M5K 1A2  
Telephone No.: 416-308-3913  
Fax No.: 416-982-7710

September 2, 2022

KIVUTO SOLUTIONS INC.  
495 Richmond Rd, Suite 100  
Ottawa, Ontario  
K2A 4B2

Attention: Mr. Mark McKenzie

Dear Mr. McKenzie,

We refer to the Letter Agreement dated March 1, 2018 (the "Agreement"), as amended from time to time, signed by you in relation to the credit facilities (the "Facilities") granted to you by the Bank.

Under the Agreement, you are obligated to comply with the following (the "Obligations"):

**i. "EBITDA Variance to Financial Projections**

Maintain a negative variance of Financial Projections to EBITDA of no more than \$400,000, to be tested on a trailing twelve-month basis.

For the purpose of calculating the variance of Financial Projections to EBITDA, to the extent that wage subsidies or any other Covid-19 government related funding are received by the Borrower, and any one-time or deferred transaction fees are incurred by the Borrower, both of which have otherwise not been modeled into the Financial Projections reviewed by the Lender, such receipts and expenditures will be deducted or added back to EBITDA, accordingly."

***The above financial covenant is in default for the month of July 2022, as the actual negative variance of Financial Projections to EBITDA was greater than \$400,000, at \$1,970,824.***

You are in default of the Obligations. The Bank does not waive compliance with Obligation (i) above. Please be advised that the Bank preserves all rights and remedies under any and all agreements and security provided in connection with the Facility. If you fail to rectify the default to the complete satisfaction of the Bank, the Bank will exercise any or all rights and remedies under such agreements and security, and/or such rights and remedies as may otherwise be available to it at law.

If you have any queries or comments, please do not hesitate to contact the writer.

Yours truly,

**THE TORONTO-DOMINION BANK**

Andrea Jamnisek, Director  
Financial Restructuring Group

Zaria Haider, Senior Analyst  
Financial Restructuring Group



Financial Restructuring Group  
66 Wellington Street West, 12<sup>th</sup> Floor  
Toronto, Ontario, M5K 1A2  
Telephone No.: 416-308-3913  
Fax No.: 416-982-7710

September 21, 2022

KIVUTO SOLUTIONS INC.  
495 Richmond Rd, Suite 100  
Ottawa, Ontario  
K2A 4B2

Attention: Mr. Mark McKenzie

Dear Mr. McKenzie,

We refer to the Letter Agreement dated March 1, 2018 (the "Agreement"), as amended from time to time, signed by you in relation to the credit facilities (the "Facilities") granted to you by the Bank.

Under the Agreement, you are obligated to comply with the following (the "Obligations"):

**i. "EBITDA Variance to Financial Projections"**

Maintain a negative variance of Financial Projections to EBITDA of no more than \$400,000, to be tested on a trailing twelve-month basis.

For the purpose of calculating the variance of Financial Projections to EBITDA, to the extent that wage subsidies or any other Covid-19 government related funding are received by the Borrower, and any one-time or deferred transaction fees are incurred by the Borrower, both of which have otherwise not been modeled into the Financial Projections reviewed by the Lender, such receipts and expenditures will be deducted or added back to EBITDA, accordingly."

***The above financial covenant is in default for the month of August 2022, as the actual negative variance of Financial Projections to EBITDA was greater than \$400,000, at \$2,445,312.***

You are in default of the Obligations. The Bank does not waive compliance with Obligation (i) above. Please be advised that the Bank preserves all rights and remedies under any and all agreements and security provided in connection with the Facility. If you fail to rectify the default to the complete satisfaction of the Bank, the Bank will exercise any or all rights and remedies under such agreements and security, and/or such rights and remedies as may otherwise be available to it at law.

If you have any queries or comments, please do not hesitate to contact the writer.

Yours truly,

**THE TORONTO-DOMINION BANK**

Andrea Jamnisek, Director  
Financial Restructuring Group

Zaria Haider, Senior Analyst  
Financial Restructuring Group



Financial Restructuring Group  
66 Wellington Street West, 12<sup>th</sup> Floor  
Toronto, Ontario, M5K 1A2  
Telephone No.: 416-308-3913  
Fax No.: 416-982-7710

October 25, 2022

KIVUTO SOLUTIONS INC.  
495 Richmond Rd, Suite 100  
Ottawa, Ontario  
K2A 4B2

Attention: Mr. Mark McKenzie

Dear Mr. McKenzie,

We refer to the Letter Agreement dated March 1, 2018 (the "Agreement"), as amended from time to time, signed by you in relation to the credit facilities (the "Facilities") granted to you by the Bank.

Under the Agreement, you are obligated to comply with the following (the "Obligations"):

**i. "EBITDA Variance to Financial Projections**

Maintain a negative variance of Financial Projections to EBITDA of no more than \$400,000, to be tested on a trailing twelve-month basis.

For the purpose of calculating the variance of Financial Projections to EBITDA, to the extent that wage subsidies or any other Covid-19 government related funding are received by the Borrower, and any one-time or deferred transaction fees are incurred by the Borrower, both of which have otherwise not been modeled into the Financial Projections reviewed by the Lender, such receipts and expenditures will be deducted or added back to EBITDA, accordingly."

***The above financial covenant is in default for the month of September 2022, as the actual negative variance of Financial Projections to EBITDA was greater than \$400,000, at \$2,854,091.***

You are in default of the Obligations. The Bank does not waive compliance with Obligation (i) above. Please be advised that the Bank preserves all rights and remedies under any and all agreements and security provided in connection with the Facility. If you fail to rectify the default to the complete satisfaction of the Bank, the Bank will exercise any or all rights and remedies under such agreements and security, and/or such rights and remedies as may otherwise be available to it at law.

If you have any queries or comments, please do not hesitate to contact the writer.

Yours truly,

**THE TORONTO-DOMINION BANK**

Andrea Jamnik, Director  
Financial Restructuring Group

Zaria Haider, Senior Analyst  
Financial Restructuring Group

This is Exhibit "W" referred to in the Affidavit of Andrea Jamnisek sworn January 27, 2023.

A handwritten signature in black ink, consisting of a stylized 'L' followed by a 'J' and a long horizontal line extending to the right.

---

*Commissioner for Taking Affidavits (or as may be)*

December 12, 2022

Reply To: Tim Duncan  
Direct Dial: 416.941.8817  
E-mail: [tduncan@foglers.com](mailto:tduncan@foglers.com)  
Our File No. 180782

**VIA REGULAR MAIL, REGISTERED MAIL AND EMAIL**

Kivuto Solutions Inc.  
495 Richmond Road, Suite 100  
Ottawa ON K2A 4B2

[mmckenzie@kivuto.com](mailto:mmckenzie@kivuto.com)

Attention: Mark McKenzie

Legado Capital Partners LP, by its general  
partner,  
Legado Capital Partners GP Inc.  
495 Richmond Road, Suite 100  
Ottawa ON K2A 4B2

[mmckenzie@kivuto.com](mailto:mmckenzie@kivuto.com)

Attention: Mark McKenzie

Dear Sirs:

**Re: Credit Agreement of Kivuto Solutions Inc. (the "Company"); Loan from The  
Toronto-Dominion Bank ("TD Bank"); Legado Capital Partners LP, Guarantor**

We are the solicitors for TD Bank.

By credit agreement dated March 1, 2018 and as thereafter amended on June 30, 2018, January 31, 2019, November 5, 2009, August 18, 2020, December 24, 2021, January 31, 2022 and November 23, 2022, TD Bank and the Company entered into various credit facility arrangements (the "**Credit Agreement**"). The Credit Agreement and loans provided for therein (the "**Loans**") are secured by various forms of security including but not limited to a first position General Security Agreement on all of the assets and undertaking of the Company, an assignment of all insurance, a pledge of all issued and outstanding shares of the Company and a limited recourse guarantee provided by Legado Capital Partners LP.

The Credit Agreement and Loans are in default. We understand that the Company has, for quite some time, not maintained the required negative variance of Financial Projections to EBITDA of no more than \$400,000 and the Company has received prior written notice of this. The Company's ability to repay TD Bank appears impaired. These circumstances are violations of the Credit Agreement and are Events of Default. TD Bank is entitled to require immediate repayment of all amounts.

In accordance with the Credit Agreement, there is due and owing the following sums inclusive of principal and interest, as of December 8, 2022, and for which demand for payment from the Company and from the Guarantors is hereby made:

The VISA Facility (CAD)

For Principal	\$1,463.10
Total	\$1,463.10

The Term Facility (USD)

For Principal	\$14,461,326.08
For Accrued & Unpaid Interest to December 8, 2022 at the rates specified in the Credit Agreement	\$540,195.87
Total	\$15,001,521.95

Further, as set out in the Seventh Amending Agreement between the Company and TD Bank, and Amendment fee in the amount of CAD\$30,000.00 is also fully earned and payable as of the date hereof.

The total amount due as of the date of this letter is therefore US\$15,001,521.95 and CAD\$31,463.10. Interest is accruing on these amounts in accordance with the terms of the Credit Agreement. As you are in default of your obligations and/or your covenants with TD Bank, we hereby demand repayment in full of the foregoing indebtedness, plus all expenses and legal fees and disbursements incurred by TD Bank due to the said defaults, up to and including the date of payment.

Enclosed is a Notice of Intention to Enforce Security pursuant to the provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3. Please make payment within the next ten (10) days of the amount noted above plus interest to TD Bank to the attention of Andrea Jamnisek at 66 Wellington Street West, 12<sup>th</sup> Floor, Toronto, Ontario M5K 1A2, [andrea.jamnisek@td.com](mailto:andrea.jamnisek@td.com). Please be advised that if TD Bank is not in receipt of payment in full of the foregoing amount as required herein, we have instructions from TD Bank to commence whatever legal proceedings we deem necessary in order to recover the full amount of the indebtedness due and owing by the Company to TD Bank and to enforce all security held by TD for the obligation of the Company to TD Bank as contemplated in the enclosed Notice of Intention to Enforce Security.

Please be advised that we are herein simultaneously making demand upon the guarantor of the obligations of the Company to TD Bank, Legado Capital Partners LP.

Yours truly,

**FOGLER, RUBINOFF LLP**

A handwritten signature in black ink, appearing to be 'T. Duncan', written over a horizontal line.

Tim Duncan  
TD/SP  
Enclosure

cc: A. Jamnisek, D. Chochla

## FORM 86

## NOTICE OF INTENTION TO ENFORCE SECURITY

(s. 244(1) of the Bankruptcy and Insolvency Act)

**(By Registered Mail, Ordinary Mail and Email)**

TO: Kivuto Solutions Inc. (the "**Company**"), an insolvent person.

**TAKE NOTICE** that:

1. The Toronto-Dominion Bank, secured creditor, intends to enforce its security on the property of the insolvent person described below:
  - a. All assets of the insolvent person, wherever located, including personal property, accounts receivable, inventory, equipment, intellectual property, chattel paper, warehouse receipts, bills of lading and other documents of title, instruments, shares, stock, warrants, bonds, debentures, debenture stock or other securities, financial assets, securities entitlements, investment property, securities accounts in the name of the Company, all rights, contracts, instruments, agreements, licences, permits, consents, leases, policies, approvals, development agreements, building contracts, performance bonds, purchase orders, plans and specifications all of which may or may not be personal property but may be rights in which the Company has interests, all rents, present or future, under any lease or agreement to lease any part of the lands of the Company or any building, erection, structure or facility now or hereafter constructed or located on such lands, income derived from any tenancy, use or occupation thereof and any income and profit derived therefrom, all intangibles, including but not limited to all money, cheques, deposit accounts, letters of credit, advances of credit and goodwill, all books, accounts, invoices, letters, papers, documents and other records in any form evidencing or relating thereto and all contracts, securities, instruments and other rights and benefits in respect thereof, all substitutions, replacements, additions and accessions with respect to any of the above, and all proceeds from any of the above, including personal property in any form or fixtures derived directly or indirectly from any dealing with such property or proceeds therefrom and any insurance or other payment indemnity or compensation for loss of or damage to such property or any right to such payment, and any payment made in total or partial discharge or redemption of an intangible, chattel paper, instrument or security.
2. The security that is to be enforced is in the form of:
  - a. See Schedule "A"
3. The total amount of indebtedness to Toronto-Dominion Bank and secured by the security as at the date hereof is CAD\$31,463.10 and US\$15,001,521.95, including principal and interest as of December 8, 2022, together with interest and costs continuing to accrue, and
4. The secured creditor will not have the right to enforce the security until after the expiry of the ten (10) day period following the sending of this notice, unless the insolvent person (the Company) consents to an earlier enforcement.



DATED at Toronto, this 12<sup>th</sup> day of December, 2022.

**The Toronto-Dominion Bank  
by its solicitors herein, Fogler, Rubinoff LLP**



Per: Tim Duncan

This Notice is a required document under the *Bankruptcy and Insolvency Act* (the "Act"). The use of the word, "insolvent", is prescribed by the act but nothing in it shall be deemed to imply that any person to whom this Notice is delivered is, in fact, insolvent.

The undersigned hereby consents to the immediate enforcement of the security and the appointment of a receiver pursuant to the security over all of the Company's assets and undertaking.

Dated:

Kivuto Solutions Inc.

By: \_\_\_\_\_

Name:

Title:

Legado Capital Partners LP, by its general partner,  
Legado Capital Partners GP Inc.

By: \_\_\_\_\_

Name:

Title:

Schedule "A"

Kivuto Solutions Inc.

1. General Security Agreement, March 1, 2018
2. Assignment of Insurance, dated March 1, 2018
3. Collateral Assignment of Acquisition Agreement, dated March 1, 2018
4. Acknowledgement and Confirmation Agreement, dated March 1, 2018
5. Intercreditor Agreement, dated March 1, 2018
6. Guarantee of Legado Capital Partners LP, dated March 1, 2018
7. Guarantee of Kivuto Solutions Inc., dated March 1, 2018

Legado Capital Partners LP

1. Securities Pledge Agreement, dated March 1, 2018

This is Exhibit "X" referred to in the Affidavit of Andrea Jamnisek sworn January 27, 2023.

A handwritten signature in black ink, consisting of a stylized 'L' followed by a 'J' and a long horizontal line extending to the right.

---

*Commissioner for Taking Affidavits (or as may be)*



Financial Restructuring Group  
 66 Wellington Street West, 12<sup>th</sup> Floor  
 Toronto, Ontario, M5K 1A2  
 Telephone No.: 416-983-4019  
 Fax No.: 416-308-3913

November 18, 2022

BDC Capital Inc.  
 Sun Life Financial Centre  
 50 O'Connor Street, Suite 1100  
 Ottawa, ON K1P 5E1

Attention: Roger Wilson

Dear Mr. Wilson,

Under Toronto-Dominion Bank's Loan Agreement, Kivuto Solutions Inc. (the "Borrower"), is obligated to maintain a negative variance of Financial Projections to EBITDA of no more than \$400,000, to be tested on a trailing twelve-month basis. For the purpose of calculating the variance of Financial Projections to EBITDA, to the extent that wage subsidies or any other Covid-19 government related funding are received by the Borrower, and any one-time or deferred transaction fees are incurred by the Borrower, both of which have otherwise not been modeled into the Financial Projections reviewed by the Lender, such receipts and expenditures will be deducted or added back to EBITDA, accordingly.

Please take notice that the above financial covenant is in default as the actual negative variance of Financial Projections to EBITDA as at September 30, 2022 was greater than \$400,000, at \$2,854,091 and the Toronto-Dominion Bank has not waived compliance with same (the "Default"). The Borrower has been in breach of its obligations in this regard on an ongoing basis since January 31, 2022.

This is an official Blockage Notice to BDC Capital Inc. as contemplated in the Priorities and Standstill Agreement made between Toronto-Dominion Bank and BDC Capital Inc., dated March 1, 2018, and as defined under section 1.1 therein.

If you have any queries or comments, please do not hesitate to contact the writer.

Yours truly,

**THE TORONTO-DOMINION BANK**

---

Andrea Jamnisek, Director  
 Financial Restructuring Group

---

Michael Vos, VP  
 Financial Restructuring Group

Confidential

THE TORONTO-DOMINION BANK  
Applicant

-and- KIVUTO SOLUTIONS INC.  
Respondent

Court File No. CV-23-00693569-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**AFFIDAVIT**

**FOGLER, RUBINOFF LLP**

Lawyers  
77 King Street West  
Suite 3000, P.O. Box 95  
TD Centre North Tower  
Toronto, ON M5K 1G8

**Tim Duncan (LSO# 61840S)**

tduncan@foglers.com

Tel: 416.941.8817

Fax: 416.941.8852

Lawyers for the Applicant,  
The Toronto-Dominion Bank

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

and

KIVUTO SOLUTIONS INC.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

**CONSENT**

BDO Canada Limited hereby consents to act as Receiver in the above-noted matter.

DATED AT Toronto, this 26<sup>th</sup> day of January, 2023.

**BDO CANADA LIMITED**

Per: 

Name: Matthew Marchand

Title: Senior Vice President

THE TORONTO-DOMINION BANK  
Applicant

-and- KIVUTO SOLUTIONS INC.  
Respondent

Court File No. CV-23-00693569-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**CONSENT**

**FOGLER, RUBINOFF LLP**

Lawyers  
77 King Street West  
Suite 3000, P.O. Box 95  
TD Centre North Tower  
Toronto, ON M5K 1G8

**Tim Duncan (LSO# 61840S)**

tduncan@foglers.com  
Tel: 416.941.8817  
Fax: 416.941.8852

Lawyers for the Applicant,  
The Toronto-Dominion Bank

KIVUTO SOLUTIONS INC.  
REPORT OF THE PROPOSED RECEIVER

January 27, 2023



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

BETWEEN:

**THE TORONTO-DOMINION BANK**

Applicant

- and -

**KIVUTO SOLUTIONS INC.**

Respondent

**APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3, as amended, and under section 101 of the  
*Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended**

**REPORT OF BDO CANADA LIMITED  
IN ITS CAPACITY AS PROPOSED RECEIVER OF  
KIVUTO SOLUTIONS INC.**

**JANUARY 27, 2023**

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## I. INTRODUCTION

1. BDO Canada Limited (“**BDO**”) understands that an application will be made before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) by The Toronto-Dominion Bank (“**TD**” or the “**Bank**”) for an order (the “**Receivership Order**”) appointing BDO as receiver and manager (the “**Receiver**”) pursuant to section 243 (1) of the *Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended* (the “**BIA**”) and section 101 of the *Courts of Justice Act R.S.O 1990, c. C.43 as amended* (the “**CJA**”), without security, of all of the assets, properties and undertakings (collectively, the “**Property**”) of Kivuto Solutions Inc. (“**Kivuto**” or the “**Company**”).
2. BDO was previously retained by the Company to act as financial advisor to Kivuto to assist in addressing liquidity concerns, provide strategic advice and communicate with the Company’s stakeholders, including its lender, TD.
3. BDO is a licensed trustee within the meaning of section 2 of the BIA and has consented to act as Receiver in these proceedings in the event that the Court grants the relief sought by the Bank. We are writing this report (the “**Report**”) as proposed Receiver of Kivuto (the “**Proposed Receiver**”) in the same manner as if we had already been appointed as Receiver by the Court.
4. Certain information has been omitted from this Report and redacted from certain appendices to this Report, as should the proposed transaction not close, it would be prejudicial to the interests of the creditors of the Company if such information became available to future prospective purchasers of Kivuto’s assets. The Proposed Receiver has also prepared and filed with the Court, subject to a request for a sealing order, a confidential supplementary report dated January 27, 2023 (the “**Confidential Supplementary Report**”), which should be read by the Court in conjunction with this Report and will assist the Court in considering the relief being sought by the Proposed Receiver herein.
5. The Proposed Receiver’s legal counsel is Fogler Rubinoff LLP (“**Fogler**”). To the extent a conflict arises with respect to Fogler’s ability to counsel the Receiver, Loopstra Nixon LLP (“**Loopstra**”) will act as independent counsel to the Receiver.

## II. QUALIFICATIONS

6. In preparing this Report, the Receiver has relied upon unaudited financial information, the Company’s books and records, and other financial information provided to it by the Company’s lenders (collectively, the “**Information**”). The Receiver has reviewed the Information for reasonableness, internal consistency, and use in the context in which it was provided, and in consideration of the nature of the evidence provided to this Court, in relation to the relief sought therein. The Receiver has not, however, audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Auditing

Standards (“GAAS”) pursuant to the Canadian Institute of Chartered Accountants Handbook and, as such, the Receiver expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information. An examination of the Company’s financial forecasts in accordance with the Chartered Professional Accountants of Canada Handbook has not been performed. Future-oriented financial information reported on or relied upon in this Report is based on management’s assumptions regarding future events and actual results achieved may vary from forecast and such variations may be material.

7. Unless otherwise noted, all monetary amounts contained in this Report are expressed in Canadian dollars.

### III. PURPOSE OF REPORT

8. The purpose of this Report is to:
- a) Provide the Court with background information on:
    - (i) An overview of the Company, including its corporate structure and operations;
    - (ii) The Company’s debt structure and a summary of the Company’s sources of fundings from its lenders; and
    - (iii) The Company’s current financial position and liquidity.
  - b) Outline the proposed sale transaction which has been negotiated, including:
    - (i) The marketing and sales process undertaken by the Company’s sales agent, Origin Merchant Partners (“**Origin**” or the “**Sales Agent**”), to solicit offers for and pursue a sale or divestiture of the Company’s assets;
    - (ii) Providing information regarding the proposed asset transaction (“**Transaction**”), including the agreement of purchase and sale dated January 17, 2023 (the “**Sale Agreement**”) entered into between the Company as vendor and Valsoft Corporation Inc. (“**Valsoft**”) and Aspire Ontario Inc. (“**Aspire**” and collectively with Valsoft, the “**Purchasers**”), which are unrelated parties acting at arm’s length; and
    - (iii) The Receiver’s recommendation with respect to the Transaction.
  - c) Provide the Court with a summary of the security opinion prepared by Loopstra, independent counsel to the Receiver in this matter;
  - d) Recommend that, in the event the Court appoints BDO as Receiver, the Court issue an order:
    - (i) Approving the Sale Agreement and authorizing the Receiver to complete the Transaction contemplated therein, including the execution of any additional necessary documents to complete same (including a transition services agreement, if applicable);
    - (ii) Upon completion of the proposed Transaction (as evidenced by the Receiver filing a certificate certifying same), vesting the Purchased Assets (as defined herein) in the Purchasers; and

(iii) Sealing the Confidential Supplementary Report, including the confidential appendices attached thereto.

#### IV. BACKGROUND

9. Reference is made to the Affidavit of Andrea Jamnisek, sworn January 27, 2023 in support of TD's application to appoint BDO as receiver over all of the property, assets and undertakings of the Company (the "**Jamnisek Affidavit**").

##### Company Overview & Corporate Structure

10. Kivuto is a privately-owned Canadian corporation which operates as a leading independent provider of digital content management and distribution solutions for academia, partnering with a broad ecosystem of vendors to provide solutions to thousands of renowned academic institutions that allow customers and users to manage their digital education resources.
11. Kivuto was formed on March 1, 2018, following the acquisition of Kivuto Solutions Inc. ("**Legacy Kivuto**") by 10600598 Canada Inc. ("**106 Canada**"). On February 23, 2018, 106 Canada entered into an agreement to purchase all of the issued and outstanding shares of Legacy Kivuto. On March 1, 2018, the transaction was finalized and immediately on closing, 106 Canada amalgamated with Legacy Kivuto and one its subsidiaries, 10633011 Canada Inc., with the surviving company to continue under the legal name Kivuto Solutions Inc.
12. Kivuto is a wholly owned subsidiary of Legado Capital Partners LP ("**Legado LP**"). The general partner of Legado LP is Legado Capital Partners GP Inc. ("**Legado GP**"). Further, Kivuto wholly owns a subsidiary, Kivuto Solutions LLC ("**Kivuto LLC**"), which is registered in the State of Delaware. All day-to-day operations are carried out by Kivuto, with no active operations occurring in Legado GP or Legado LP. Kivuto LLC contains the employee contract of Kivuto's chief executive officer, Mr. Mark McKenzie and a USD denominated bank account used by many of Kivuto's customers. The Company's corporate organization chart is attached hereto as **Appendix "A"**.
13. Kivuto operates from a leased premises municipally known as 495 Richmond Road, Suite 103, Ottawa, Ontario (the "**Premises**") pursuant to an assignment agreement dated November 16, 2021, made between IMI Material Handling Logistics Inc. (the "**Assignor**"), Dov (495 Richmond) Limited (the "**Landlord**") and the Company, as assignee.
14. Kivuto's key management ("**Management**") includes Mr. Mark McKenzie, chief executive officer, Mrs. Sarah Footitt, chief financial officer, Mr. Costa Constantakis, vice president sales and marketing, and Mr. Shane Aulenback, vice president engineering and product management.
15. In addition to Management, Kivuto employs approximately 50 full-time employees as at January 18, 2023. The Receiver understands that none of Kivuto's employees are represented by a union. The Company supports a registered retirement pension plan, including matching pension contributions and a health benefit plan for its employees.

### **Causes of Financial Difficulties**

16. The Company has undergone significant changes in operations in the past several years which have left the Company unprofitable and with limited liquidity. Primary factors contributing to the Company's financial difficulties are summarized below:
- a) In 2018, one of the Company's most significant customers terminated a material contract related to one of its legacy product programs offered through Kivuto's technology platform which the Receiver understands represented approximately 23% of the Company's revenues and 40% of its earnings before interest, taxes depreciation and amortization in 2017. The loss of this legacy program, along with the loss of other customer contracts, resulted in significantly lower revenues in 2019 onwards which were not offset by growth in revenue from new products, leading to significant losses and asset impairments;
  - b) Efforts to recapitalize the Company were made, including the engagement of an investment banker to explore recapitalization strategies as well as completing internal rounds of financing from shareholders for \$7.6 million in late 2020. However, these efforts were unsuccessful in deleveraging the Company's over leveraged balance sheet and unsustainable capital structure; and
  - c) Due to continuing losses and liquidity constraints, including the projected continuation of cash flow shortfalls, the Company is unable to service its debt obligations with TD and BDC Capital Inc. ("**BDC**").

## **V. FINANCIAL POSITION**

### **Historical Operating Results**

17. Set out below is a summary of the Company's income statement for: (i) the fiscal year ending December 31, 2019 (audited) ("**FY19**"); (ii) the fiscal period ending December 31, 2020 (audited) ("**FY20**"); (iii) the fiscal period ending December 31, 2021 (audited) ("**FY21**"); and (iv) the fiscal period ending December 31, 2022 (internal, unaudited) ("**FY22**").

Kivuto Solutions Inc. Consolidated statement of income (\$000)				
	Audited FY19	Audited FY20	Audited FY21	Internal FY22
Revenue	\$ 16,302	\$ 14,913	\$ 11,166	\$ 8,410
Cost of revenue	3,333	3,025	2,526	2,525
Gross profit	12,969	11,888	8,640	5,886
Gross margin	79.6%	79.7%	77.4%	70.0%
Expenses	35,831	45,884	13,736	9,667
Loss before other income	(22,862)	(33,996)	(5,096)	(3,781)
Other income	1,044	1,497	735	(4,754)
Income before taxes	(21,819)	(32,499)	(4,360)	(8,535)
Tax expense (recovery)	(387)	-	-	16
Net income (loss)	\$ (21,432)	\$ (32,499)	\$ (4,360)	\$ (8,551)

18. The income statement summary indicates that the Company had negative earnings before taxes in each of the past four fiscal years, ranging from (\$4.4) million in FY21 to (\$32.5) million in FY20. Between FY19 and FY22, combined losses before taxes have totaled (\$67.2) million. Included in these losses are significant impairment amounts related to the Company's intangible assets and goodwill, recorded in FY19 and FY20, totaling \$42.3 million.
19. Set out below is a summary of the Company's internal and unaudited balance sheet as at December 31, 2022:

Kivuto Solutions Inc. Consolidated balance sheet (\$000)			
<b>ASSETS</b>		<b>LIABILITIES AND SHAREHOLDER'S EQUITY</b>	
<b>Current Assets</b>		<b>Current Liabilities</b>	
Cash and cash equivalents	\$ 1,515	Accounts payable and accrued liabilities	\$ 1,891
Accounts receivable	367	Current portion of long-term debt	1,564
Inventory	117	Deferred revenue	1,484
Prepaid expenses	362	<b>Total Current Liabilities</b>	<b>\$ 4,940</b>
<b>Total Current Assets</b>	<b>\$ 2,361</b>	Government assistance loan	337
Property and equipment	\$ 153	Long-term debt	34,998
Intangible assets	2,205	<b>Total Liabilities</b>	<b>\$ 40,275</b>
Goodwill	2,257	<b>Shareholder's Equity</b>	
<b>Total Assets</b>	<b>\$ 6,977</b>	Share capital	40,485
		Contributed surplus	161
		Retained earnings	(73,945)
		<b>Total Shareholder's Equity</b>	<b>(33,298)</b>
		<b>Total Liabilities and Shareholder's Equity</b>	<b>\$ 6,977</b>

20. According to the Company's December 31, 2022 balance sheet, the largest assets consists of intangibles and goodwill. The Company's next largest asset consists of cash, which balance has been supported by the deferral of

certain debt servicing obligations by both TD and BDC in the latter part of 2022, to afford the Company the runway to carry out a sales process and close a sale or investment transaction.

- a) TD deferred the payment of a quarterly principal payment in December 2022 in the approximate amount of \$125,000, plus deferred interest payments for December 2022 and January 2023, with each interest payment being approximately \$150,000; and
  - b) BDC deferred interest payments made by the Company in calendar 2022, in the amount of approximately \$393,000 in early December 2022. Further, BDC continues to defer monthly interest payments in the approximate amount of \$155,000. The Company's loan agreement with BDC provides for principal to be repaid as a balloon payment on maturity of the loan and as such principal payments are deferred until such time.
21. The December 31, 2022 balance sheet reports that the book value of the Company's liabilities, being \$40.3 million, are \$33.3 million greater than the book value of its assets, being \$7.0 million. Retained earnings total negative \$73.9 million.

## VI. CREDITORS

### Credit Facilities and Security

22. The Receiver understands the Company's secured debt facilities consist of loans made available by TD and BDC which as at December 31, 2022 the Company reports indebtedness, inclusive of accrued interest, owing to TD and BDC of \$19.75 million and \$16.81 million, respectively, for a total of \$36.56 million.
23. Pursuant to a credit agreement dated as of March 1, 2018 between TD, as lender, and the Company, as borrower, as amended by a first amending agreement dated as of June 30, 2018, a second amending agreement dated as of January 31, 2019, a third amending agreement dated as of November 5, 2019, a fourth amendment dated as of August 18, 2020, a fifth amending agreement dated as of December 24, 2021, a sixth amending agreement dated as of January 31, 2022, and a seventh amending agreement dated as of November 23, 2022 (collectively, the "**TD Loan Agreement**"), TD extended credit facilities in the aggregate amount of approximately USD \$14,758,491 as of January 25, 2023 including accrued interest and penalties (the "**TD Facilities**"). As at December 31, 2022, the Company reports owing approximately \$19.75 million to TD.
24. TD holds the following security in respect of the TD Credit Facilities (individually or collectively referred to as "**Security**"):
  - a) A general security agreement from 106 Canada dated March 1, 2018;
  - b) A general security agreement from Kivuto dated March 1, 2018;



- c) An unlimited guarantee from Kivuto dated March 1, 2018;
  - d) A collateral assignment of acquisition agreement with 106 Canada dated March 1, 2018; and
  - e) An assignment of insurance agreement with Kivuto dated March 1, 2018.
25. Pursuant to the Security, the Company granted a security interest in all of its assets, properties and undertakings (the "**Property**") to TD.
26. Pursuant to a credit agreement dated as of February 9, 2018 between BDC, as lender, and the Company, as borrower, as amended by a first amending agreement dated as of August 17, 2020, a second amending agreement dated as of December 22, 2021, a third amending agreement dated as of March 3, 2022, and a fourth amending agreement dated as of November 29, 2022 (collectively, the "**BDC Loan Agreement**"), BDC extended credit facilities (the "**BDC Facilities**") to the Company. As at December 31, 2022, the Company reports owing approximately \$16.81 million on the BDC Credit Facilities.
27. The TD Loan Agreement and the BDC Loan Agreement provided for, among other things, loan repayment deferral accommodations, a cash flow variance covenant and a schedule of milestones to complete the SISF (as defined herein), including closing a transaction by January 31, 2023.
28. Pursuant to the TD Loan Agreement and defaults of the Company contained therein, on or around December 12, 2022, TD issued a notice of default and a notice of intention to enforce security pursuant to section 244 of the BIA, putting TD in a position to act should a transaction not materialize or be acceptable to TD.

#### **Other Secured & Priority Creditors**

29. The Receiver understands that the Company has certain liabilities as at December 31, 2022, which rank, or may rank, in whole or in part, in priority to the secured claims of TD (the "**Priority Claims**"), being:
- a) Employee compensation: Subject to Kivuto's employees entering into employment agreements with the Purchasers, with liabilities remaining owing to those employees entering into employment contracts with the Purchasers being Assumed Liabilities (as defined herein) pursuant to the Sale Agreement, the Company reports that employees were owed, as at December 31, 2022, approximately \$97,000 for wages, \$87,000 for vacation, \$90,000 for commissions and \$171,000 for discretionary bonuses. Notwithstanding the amounts reported as outstanding as at December 31, 2022, the Company has kept payroll current.
- Further, a contingent liability for employee and management retention plans were established during the SISF in the amounts of \$135,000 and \$250,000, respectively. As at December 31, 2022 the amounts potentially owing for employee and management retention plans was \$135,000 and \$151,250, respectively;

- b) Payroll deductions at source: Payroll source deduction filings are current and remitted with each bi-weekly payroll through a third-party payroll provider. As such no payroll deductions amounts are reported as outstanding;
  - c) Pensions: The Company supports a group registered retirement plan for the benefit of eligible employees, including pension contribution matching. The Company reports an outstanding employee pension plan liability of approximately \$1,800. The outstanding pension obligations of employees, if any, are not liabilities which will be assumed by the Purchasers.
  - d) Sales taxes: A significant portion of the Company's revenue pertains to international sales. As such, in addition to sales taxes collected from Canadian jurisdictions, the Company also collects sales taxes from sales in certain foreign jurisdictions. The Company reports GST payable of approximately \$2,200 plus combined sales taxes payable of approximately \$39,800 owing to the State of New York, the European Union, Australia and Singapore. Additionally, the Company, although not registered for sales taxes in certain United States jurisdictions, may be liable for sales taxes owing in such jurisdictions pursuant to legislation in the United States. The Company estimates the potential sales tax liability owing to these United States jurisdictions may total \$1.7 million. The Receiver is of the view that any amounts which may be owing for foreign sales taxes are unsecured claims in the Kivuto estate.
30. If appointed, the Receiver will comply with the provisions of the *Bankruptcy and Insolvency Act* and the *Wage Earner Protection Program Act* for any employees which do not enter into employment contracts with the Purchaser and for which employment liabilities are not assumed by the Purchasers.

### **Unsecured Creditors**

31. The Receiver understands that the Company has unsecured trade payables and accrued liabilities owing of approximately \$1.28 million as well as deferred revenues of \$1.48 million as at December 31, 2022. The proposed Transaction contemplates the assumption of substantially all of these liabilities which remain outstanding on the date of Closing (as defined in the Sale Agreement) by the Purchasers.
32. Additionally, the Receiver understands that the Company has entered into a regional relief and recovery fund contribution agreement ("**RRRF**") dated November 13, 2020 with the Federal Economic Development Agency for Southern Ontario. As at December 31, 2022 the Company reports a fair value balance owing on the RRRF of \$0.34 million, however, the Company received \$0.5 million from the RRRF and no repayments have been made. The proposed Transaction does not contemplate the assumption of RRRF liability by the Purchasers.

## VII. SALES PROCESS

### SISP Overview & Results

33. In late May 2022, after consultation with TD, BDC and Kivuto's board of directors (the "**Board**" and collectively with TD and BDC, the "**Stakeholders**"), the Company sought proposals to conduct a sale and investment solicitation process ("**SISP**") to facilitate a sale and/or investment in Kivuto. The Company, with the assistance of BDO approached ten (10) parties to submit proposals to lead the sales process, of which six (6) parties submitted proposals, including: Origin, Tyton Partners, BDO Transaction Advisory Services, KPMG Corporate Finance, Welch Capital Partners and Gerbsman Partners. Three (3) United States based investment banking firms specializing in technology and already familiar with Kivuto, and one (1) Canadian based investment banking firm did not submit a proposal due to the level of financial distress faced by the Company and the expedited sales process requirement. Management and BDO conducted interviews with each of the six (6) parties which submitted proposals.
34. On June 20, 2022, after consultation with and approval from the Stakeholders, the Company engaged Origin to conduct the SISP to facilitate a sale and/or investment in Kivuto. BDO, as financial advisor to the Company was consulted by Origin and the Company with respect to the SISP. Further, BDO attended and participated in both weekly and ad hoc meetings with Origin and the Company since the commencement of the SISP, which meetings dealt with strategy, updates and next steps related to the SISP.
35. The SISP represents a fair and transparent process under which potential purchasers were marketed to and given an opportunity to acquire the Company. Origin's services included:
  - a) Reviewing possible strategic options with respect to a transaction and providing advice regarding the appropriate form and structure of a transaction to meet the Company's objectives;
  - b) Developing a marketing strategy and preparing marketing materials such as a teaser, confidential information memorandum ("**CIM**"), non-disclosure agreement ("**NDA**"), and electronic data room;
  - c) Identifying and approaching potential investors or acquirers;
  - d) Coordinating management presentations;
  - e) Coordinating due diligence;
  - f) Analyzing and negotiating offers; and
  - g) Advising and participating in communications and regular updates to key stakeholders.

36. The key dates pursuant to the SISP were originally set out as follows:

<u>Event</u>	<u>Date</u>
Sales Agent to create list of potential purchasers and distribute teaser letter and NDA	June 27, 2022
Sales Agent to prepare CIM and have available for potential purchasers	June 27, 2022
Sales Agent to prepare process letter and have available for potential purchasers	July 12, 2022
Phase I non-binding expression of interest bid deadline (“ <b>Phase I Bid Deadline</b> ”)	On or about July 27, 2022
Phase II bid deadline (“ <b>Phase II Bid Deadline</b> ”)	On or about August 25, 2022
Selection of winning bid and final agreement	On or about August 29, 2022
Application to the Court for approval order	As soon as reasonably practicable after the final agreement
Closing of the transaction	On or before October 14, 2022

37. Origin, with the assistance of Management, identified 140 potential buyers, of which 97 were strategic buyers and 43 were financial buyers (the “**Prospective Purchasers**”). The 140 Prospective Purchasers were contacted by Origin beginning June 27, 2022, and were solicited to sign a NDA. A total of 30 executed NDA’s were received, 15 from strategic buyers and 15 from financial buyers (“**Potential Bidders**”), and each Potential Bidder was:

- a) Sent a CIM that provided an overview of the acquisition opportunity; and
- b) Provided access to a virtual data room, which went live on or around July 8, 2022, containing detailed financial and non-financial information relevant to the acquisition opportunity.

38. On or around July 12, 2022, Origin issued a SISP process letter (the “**Process Letter**”) to Potential Bidders detailing the preferred structure of a transaction, being a sale of 100% of the Company on a net debt free basis for cash consideration, but alternative structures would be considered. The purpose of the Process Letter was to, among other things, assist with the solicitation of non-binding offers as well as inform prospective purchasers of the Phase I Bid Deadline and the Phase II Bid Deadline. A copy of the Process Letter is attached hereto as **Appendix “B”**.

39. To be considered for inclusion of Phase II of the SISP, Potential Bidders were asked to submit a proposal reflecting the basis upon which they would enter into a transaction by the Phase I Bid Deadline (each a “**Phase I Bid**”). Upon receipt of a Phase I Bid, qualifying parties would be provided with detailed procedures for the submission of a definitive proposal by the Phase II Bid Deadline (each a “**Phase II Bid**”).

40. The Receiver was advised by Origin that only two (2) Phase I Bids (the “**Bidders**”) were received by the Phase I Bid Deadline (the “**Phase I Bid Submissions**”), each being for 100% of the Company’s shares. Origin also advised, however, that several other parties were contemplating submitting a Phase I Bid and requested an extension from the Phase I Bid Deadline. Given the purchase price of the Phase I Bid Submissions were below expectations, parties were permitted to make late submissions, however, the process would not be delayed waiting for late submissions.
41. Two additional Phase I Bids (the “**Late Bidders**”) were ultimately received after the Phase I Bid Deadline, one on September 27, 2022 and a second on October 11, 2022, which was subsequently revised on October 18, 2022 (the “**Late Phase I Bid Submissions**”). The Late Phase I Bid Submissions, however, were for only a portion of the Company’s assets and offered significantly less value than the Phase I Bids Submissions.
42. After the receipt of the Phase I Bid Submissions, the Company, through Origin, continued to negotiate certain deal points with the respective Bidders, and as such receipt of Phase II Bids by the Phase II Bid Deadline, became increasingly challenging to meet. After consultation and approval from the Stakeholders the Phase II Bid Deadline was extended to allow additional time to receive Phase II Bids.
43. On or around October 5, 2022, one of the Bidders submitted a Phase II Bid. On or around October 12, 2022, the second of the two Bidders (the “**Phase II Bidders**”) also submitted a Phase II Bid (the “**Phase II Bid Submissions**”).
44. Shortly thereafter, on or around October 20, 2022, one of the Phase II Bidders elected to withdraw their Phase II Bid Submission and candidacy for the acquisition opportunity.
45. On or around October 24, 2022, the Company entered into a non-binding letter of intent with the sole remaining Phase II Bidder (the “**Target Purchaser**”) to purchase 100% of the shares of the Company by way of a ‘plan of arrangement’ pursuant to the *Companies’ Creditors Arrangement Act* (“**CCAA**”), or any similarly appropriate statute, subject to, among other things, due diligence and set a target transaction closing date of December 23, 2022. Notwithstanding the non-binding letter of intent expressly discussed a share deal, it was also confirmed that the Target Purchaser would entertain an asset deal for reduced consideration. The Target Purchaser commenced financial and other due diligence on or around October 24, 2022.
46. On November 29, 2022, the Target Purchaser advised Origin that they were withdrawing from the SISP, for various reasons identified through their site visit and due diligence, and they no longer wished to pursue the acquisition opportunity. Additionally, Origin re-engaged in conversations with the Late Bidders, one of which expressed interest in revisiting their bid, however, the structure and value remained unsatisfactory.
47. There remained interest from the Late Bidders. Each of the Late Bid Submissions were, however, for either: (i) only certain of Kivuto’s assets and not the entirety of the Company; and (ii) at a very low valuation relative to the Phase I Bid Submissions and the Phase II Bid Submissions.

48. The Company, with the assistance of its advisors BDO and Origin, and in consultation with TD and its advisors, began to examine alternative realization strategies, including a last effort to canvas the market anew for a buyer.
49. On or around December 5, 2022, the Purchasers expressed an interest in acquiring the Company after Origin and the Company expanded their outreach efforts. The Purchasers were not part of Origin's initial outreach which included 140 Prospective Purchasers. On or around December 19, 2022, the Company and the Purchasers entered into a non-binding letter of intent (the "**LOI**") contemplating the acquisition of all or substantially all of Kivuto's assets, which resulted in the negotiation of the Sale Agreement that is discussed further below. The LOI included a non-refundable deposit in order to provide the Purchasers with time for an expedited due diligence process.
50. The identities of Bidder A, Bidder B, Late Bidder 1 and Late Bidder 2 are set out in a confidential schedule (the "**Confidential Schedule**") to the Confidential Supplementary Report, separately filed, which is requested to be sealed until further order of the Court and not unsealed at the time of unsealing the Confidential Supplementary Report, as these bidders are not parties to this application and may have an expectation of confidentiality with respect to their offers.

#### **Additional Potential Acquirers**

51. In addition to the formal SISP, the Company has advised the Receiver that, prior to the engagement of Origin and commencement of the SISP, for years the Company was exploring opportunities to recapitalize the business. On or around December 6, 2019 the Company engaged a United States based investment banker (one of the three (3) specialized firms previously referenced), AQ Technology Partners ("**AQ**") for the purposes of completing a similar sale and investment solicitation process (the "**AQ Process**"). The Company terminated the agreement with AQ on or around June 10, 2022 as there were no material advancements or prospects of advancing the AQ Process, AQ was no longer interested in leading the AQ Process (or leading the SISP) given the degree of the Company's financial distress, and the Company had retained Origin to complete the SISP. Notwithstanding the termination, the agreement with AQ contained a provision that in the event of termination AQ shall continue to be entitled to the full amount of any success fee (as defined in the AQ agreement) if at any time prior to the expiry of twelve months after such termination, the Company consummates a transaction with a party who AQ or the Company contacted or had discussions about the Company during the term of the AQ agreement ("**Covered Persons**"). The Purchasers meet the definition of a Covered Person.
52. The Receiver is of the view that any amounts which may be owing to AQ is an unsecured claim in the Kivuto estate.

## VIII. TRANSACTION

### Proposed Offer

53. A copy of the redacted Sale Agreement is attached hereto as **Appendix "C"**. A copy of the unredacted Sale Agreement is attached to the Confidential Supplementary Report. Capitalized terms in this section not otherwise defined herein have the meaning ascribed to them in the Sale Agreement.
54. Pursuant to the Sale Agreement, the Purchasers has agreed to purchase for a cash purchase price minus the amount of any shortfall, if any, of a Closing Cash threshold (the "**Purchase Price**"), which Purchase Price is detailed in the Confidential Supplementary Report, all of the right, title and interest of the Company, if any, in and to all of the assets of the Company, except for Excluded Assets (defined below), which shall include but is not limited to:
- a) All cash and cash equivalents;
  - b) Accounts Receivable;
  - c) Intellectual Property;
  - d) Software;
  - e) Inventory;
  - f) Books and Records;
  - g) Tangible assets, including furniture, fixtures, or equipment, which are situated in Canada;
  - h) Goodwill and other intangible assets; and
  - i) Assumed Contracts as defined in the Purchase Agreement (collectively, the **Purchased Assets**).
55. The Purchased Assets, however, do not include the following:
- a) The minute books and corporate records of the Company, along with any books, files, documents, information, data and other records and embodiments thereof that are required by applicable law to be retained by the Company;
  - b) Contracts that are not Assumed Contracts;
  - c) Commercial leases, real property leases, or other similar agreements for the rental or lease of real property, including the Premises;
  - d) Tangible assets which are situated in the United States;
  - e) Bank accounts of the Company;
  - f) Shares of Kivuto;

- g) Shares of Kivuto's United States subsidiaries, if any, including Kivuto LLC; and
  - h) Income tax refunds and other tax refunds receivable by the Company and all tax returns of the Company (collectively, the "**Excluded Assets**").
56. The Purchase Price will be paid on Closing. On Closing, the Purchased Assets are to be conveyed to the Purchasers pursuant to an approval and vesting order ("**AVO**"), on an "as is, where is" basis, and subject to usual terms and conditions contained in such a transaction, and subject to the Court's approval. The Purchase Price is to be satisfied as follows:
- a) The Purchasers paid a non-refundable deposit (the "**Non-Refundable Deposit**") on or around December 20, 2022, which is being held in trust by Kivuto's legal counsel;
  - b) The Purchasers paid a refundable deposit (the "**Refundable Deposit**") equal to 10% of the Purchase Price, before any adjustment to the Closing Cash balance, on or around January 19, 2023, which is being held in trust by Kivuto's legal counsel; and
  - c) At the Time of Closing, the Purchasers shall pay the balance of the Purchase Price, being the amount of the Purchase Price less the Non-Refundable Deposit and less the Refundable Deposit.
57. The Purchasers will also be assuming certain liabilities (the "**Assumed Liabilities**"). The Assumed Liabilities include the following:
- a) Continuing employment will be offered to at least 65% of Kivuto's approximately 50 employees on substantially the same terms and conditions as they are currently employed, with any wages, vacation pay entitlement, commissions, bonuses, and tenure accrued and unpaid in the course of their employment with Kivuto recognized and assumed by the Purchasers; and
  - b) Obligations of Kivuto owing for amounts relating to the Assumed Contracts, which amounts comprise substantially all of the trade payables, accrued liabilities and deferred revenue of the Company as at the Closing Date.
58. The Sale Agreement contemplates a target closing date of 1-business day after the date the AVO is issued by the Court (the "**Target Closing Date**"). Parties shall use commercially reasonable efforts to affect the Closing on the Target Closing Date, however, if the Closing does not occur on the Target Closing Date, commercially reasonable efforts shall be made to close the Transaction by no later than 10-days after the Target Closing Date (the "**Outside Date**"). The Closing of the Transaction will take place virtually by exchange of documents electronically.
59. The Sale Agreement contemplates that a transition services agreement (the "**TSA**") will be entered into between the Purchasers and the Vendor (the Receiver) prior to the Closing Date to provide for an orderly transitioning of the Purchased Assets to the Purchasers following Closing, if requested by the Purchasers. Pursuant to the Sale



Agreement the TSA shall have a term of no more than 45-days from the Closing Date and shall contemplate the provision by the Receiver to the Purchasers of the transition services detailed below at the Receiver's current rates for such services to be paid by the Purchasers:

- a) Transition of accounts receivable and accounts payable of the Company to the Purchasers' bank accounts;
  - b) Transition of the Company's Worldline and PayPal accounts to the Purchasers;
  - c) Accounting services to facilitate the foregoing transition of accounts;
  - d) Relocation of Purchased Assets located at the Premises; and
  - e) Communication with internal and external Kivuto stakeholders.
60. The Sale Agreement provides for certain conditions precedent to Closing in favour of the Purchasers, including, among other things:
- a) The Appointment Order shall have been issued by the Court;
  - b) The AVO shall have been issued by the Court;
  - c) No Material Adverse Change has occurred; and
  - d) The Parties will have entered into a TSA, if requested by the Purchasers.
61. In light of the above, the Receiver's view is that the Sale Agreement and Transaction contemplated therein represent the highest and best possible outcome for the Company's stakeholders. The Receiver respectfully recommends the Court approve the Transaction and authorize and direct the Receiver to complete all matters needed to close the Transaction for the following reasons:
- a) Efforts to get the best price: The market was widely canvassed as a going concern sale over a period of approximately six (6) months, resulting in five total expressions of interest, of which only the LOI: (i) contemplated substantially all of the Company's assets; and (ii) represented the only offer to acquire the assets after the completion of due diligence;
  - b) Interest of the parties: TD is the first ranking secured creditor and supports the Transaction notwithstanding it will suffer a significant shortfall in the proposed Transaction. Further, the Sale Agreement contemplates: (i) at least 65% of Kivuto's employees being offered employment agreements with the Purchaser; and (ii) the Purchasers assuming the vast majority of the Company's contracts (including deferred revenue obligations) and associated trade vendor liabilities;
  - c) Efficacy and integrity of the process: The SISP, with the assistance of the Sales Agent, was commercially reasonable and conducted with integrity. All interested parties were given an opportunity to participate in the sales process. No objections or concerns regarding the sales process have been brought to the

Receiver's attention. Furthermore, the Sale Agreement was negotiated in good faith, and is the best and highest price under the circumstances;

- d) There was no unfairness: In the view of the Receiver, there has been no unfairness in the conduct of the SISP. No party has been prejudiced or excluded and the lack of any other binding offers received confirms the Receiver's conclusion that the proposed Transaction is the highest and best offer available for the Company and stakeholders of the Company;
- e) Viability as a going concern: The Company's liquidity position substantially eliminates an opportunity to further market the business for sale without putting the Transaction at risk and the Receiver understands that there is no additional funding available to support an extension of the SISP or completion of another sales process. Absent an immediate sale of Kivuto's assets, the Company's operations would be discontinued; and
- f) Liquidated recoveries: The Receiver has not completed a liquidation analysis of the Company given: (i) the book value of the Company's assets (\$7.0 million as at December 31, 2022, the majority of which is made of intangibles and goodwill); (ii) the limited valuations of the offers received during the SISP, which were for the Company's assets, including intangible assets and goodwill; (iii) the continued erosion of the Company's cash, notwithstanding the deferral of certain debt servicing obligations of the Company; and (iv) the nature of the Company's technology business requires ongoing operations to maximize value. As such the Receiver is of the view that TD would suffer a significantly larger shortfall on its advances to the Company should the Company's business and assets be liquidated and not sold as a going concern as proposed in the Transaction. TD is supportive of the Transaction.

## IX. SECURITY OPINION

- 62. The Receiver has obtained an independent legal opinion on TD's Security from Loopstra (the "**TD Security Opinion**"). Loopstra has provided an opinion to the Receiver that the security interests of TD, on the assets of Kivuto, are valid and enforceable and have been properly perfected in Ontario, subject to standard assumptions, qualifications and limitations. A copy of the TD Security Opinion is attached hereto as **Appendix "D"**.
- 63. It is the Receiver's understanding that BDC holds the subordinate security position, behind TD. In the circumstances and assuming the Transaction is approved by the Court, TD will suffer a significant shortfall and no funds will be available for distribution to BDC. Accordingly, the Receiver has not requested Loopstra to review the BDC security at this time.

## X. RECOMMENDATIONS

- 64. Based on the foregoing, the Receiver respectfully recommends that the Court issue an order:

- (a) Approving the Sale Agreement and authorizing the Receiver to complete the Transaction contemplated therein, including the execution of necessary documents to complete same;
- (b) Upon completion of the proposed Transaction (as evidenced by the Receiver filing a certificate certifying same), vesting the Purchased Assets in the Purchasers; and
- (c) Sealing the Confidential Supplementary Report, including the confidential appendices attached thereto.

All of which is respectfully submitted on the 27<sup>th</sup> day of January, 2023.

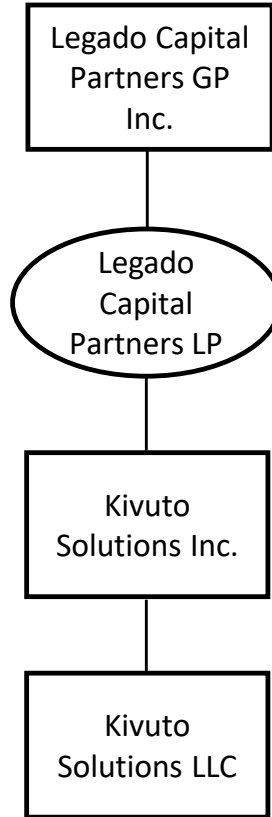
**BDO Canada Limited**  
**as the Proposed Receiver of**  
**Kivuto Solutions Inc.**  
**and not in its personal or corporate capacity**



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**Matthew Marchand, CPA, CMA, CIRP, LIT**  
Senior Vice President

# Kivuto Organizational Chart



**STRICTLY PRIVATE AND CONFIDENTIAL**

July [•], 2022

[Contact name & Company]

[•]  
[•]  
[•]  
[•]

**Re: Project Kinetic - Process for Non-Binding Proposals**

Dear [•]:

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On behalf of Kivuto Solutions Inc. (“**Kivuto**” or the “**Company**”), we would like to thank you for your interest in pursuing a potential strategic transaction with the Company (the “**Transaction**”). The terms and contents of this letter are subject to the terms of the confidentiality agreement previously executed by you. The preferred structure of a Transaction is the sale of 100% of the Company on a net debt free basis for cash consideration, but alternative structures may be considered. Kivuto is a leading global independent edtech provider, offering unique solutions to thousands of academic institutions and partnering with a variety of world class technology providers to solve critical issues for its clients.

Origin Merchant Partners (“**Origin**”) has been retained by the Company to solicit preliminary, non-binding written proposals (the “**Proposals**”, or each a “**Proposal**”) in order to identify a limited number of parties to be invited to proceed to a detailed evaluation of a potential Transaction with the Company. In particular, the Company has instructed Origin to solicit Proposals from interested parties with the following objectives:

1. Identify a partner capable of working alongside the Company to finalize a Transaction that maximizes value for stakeholders while meeting the Company’s timing objectives (outlined further in this letter)
2. While the first objective is paramount, the Company is also seeking a partner that can support the Company’s vision and utilize the existing operating platform to continue growth in the edtech market

On behalf of Kivuto, we invite you to submit a Proposal regarding a potential Transaction with the Company. Your Proposal should be based on the information contained in the confidential information memorandum (the “**CIM**”) provided to you, along with the contents of the dataroom (the “**VDR**”) and any accompanying discussions. To the extent you require additional information before you submit a Proposal, we would ask that you submit a list of questions to Origin in order to ensure an orderly and expedient response. Origin will seek to answer such questions as it sees appropriate to facilitate the submission of your Proposal.

**Contents of Proposal**

To be considered for inclusion in the next round of the process, your Proposal should reflect the basis upon which you would enter into the Transaction, based on the information available to you, and should describe in sufficient detail all material matters relating to the proposed Transaction. While your Proposal may be non-binding, at a minimum your Proposal should include clear statements with respect to the following information:

1. **Identity of the Purchaser.** Please specify the identity of the entity or entities acquiring the Company (i.e. if you propose acquiring the Company indirectly, through a subsidiary, a limited partnership or other entity), including the identity of any entity that controls such acquiring entity;
2. **Purchase Price.** Please express the cash purchase price (in Canadian dollars) that you are prepared to pay in connection with the Transaction, including an explanation of the methods and key assumptions used to determine your purchase price;
3. **Financing.** Please provide a discussion of how you propose to finance the transaction and, if other than internal funds, the expected sources of such financing, the expected timing for commitment of funds and the steps required to secure such commitment;
4. **Additional Diligence.** Please describe the nature of additional diligence you foresee being required before being comfortable entering into a binding agreement with Kivuto;
5. **Management and Employees.** Please outline your future plans for the business, including your assumptions and intentions with respect to management and employees;
6. **Other Approvals, Conditions and Timing.** Please outline any regulatory, shareholder, lender or other third-party approvals that would be required or potentially required and the estimated timetable required to conclude a Transaction and whether your Proposal is conditional on any other items, along with the level of support your Proposal has received within your organization. Further, please set out any conditions to closing that you wish to impose or any other terms and conditions that would be required in order to complete the Transaction;
7. **Contact Information.** Please include the names and telephone numbers of those persons whom we should contact with respect to your Proposal;
8. **Other.** Please discuss any other matters you believe may be helpful in our evaluation of your interest in and ability to finance and complete the Transaction on a timely basis.

### **Timing and Delivery Details**

The Company requests that your written Proposal should be received by Origin by **12:00 p.m. EDT** on **July 27<sup>th</sup>, 2022**. Proposals should be directed to:

**Origin Merchant Partners**  
220 Bay Street, Suite 1500  
Toronto, Ontario M5J 2W4

**Jim Meloche, Principal**  
jim.meloche@originmerchant.com  
416-670-8287

**Shaun Quennell, Director**  
shaun.quennell@originmerchant.com  
416-710-3722

### **Process Outline – Phase Two**

Origin and the Company will evaluate the various proposals received with the objectives of realizing the highest value with certainty of execution, ensuring appropriate treatment of all stakeholders, and consummating the Transaction on an expeditious timeline. Using these criteria, a select group of qualifying parties will be invited to participate in a second phase of the process which will include access to an online data room comprising more detailed financial and operating information regarding the Company.

Qualifying parties will be provided with detailed procedures for the submission of a definitive and binding proposal (the “**Definitive Proposal**”) at a later date. We currently anticipate that the qualifying parties participating in the second stage of the process will be asked to submit Definitive Proposals on or about **August 23<sup>rd</sup>, 2022**.

### **Process – Disclaimer**

Neither the Company nor Origin shall have any obligation arising from the receipt of any Proposal, rejection of any interested or prospective buyer, or the process of assessing any Proposal. Any such obligation will arise only upon execution of a definitive purchase agreement and shall be limited to those specific obligations set forth in such definitive purchase agreement.

Kivuto and Origin expressly reserve the right at any time, with or without providing notice or reasons, to: (i) amend or terminate the process; (ii) decline to permit any interested party to participate in the process; (iii) negotiate with one or more interested parties with respect to a transaction; (iv) terminate discussions with any or all interested parties; (v) reject any or all offers; (vi) accept an offer other than the highest offer; (vii) pursue other value maximizing alternatives; or (viii) limit access at any time to any additional information; all without any liability to the Company or Origin. The Company shall have complete discretion for all decisions regarding the process.

In addition, Kivuto and Origin reserve the right to amend any information which has been made available to interested parties either by way of addition, deletion or amendment. Each interested party will be solely responsible for all costs incurred by it in connection with the process, and no finder’s fees, commissions, expenses or other compensation will be paid by Kivuto or Origin to agents, consultants, advisors or other intermediaries of any interested parties.

The Company and its representatives disclaim any and all liability for any information supplied to participants, either written or oral, and no representation or warranty is made with respect to the accuracy or completeness of such information. By submitting a Proposal and/or a Definitive Proposal, participants acknowledge that they are relying solely upon their own independent investigation and evaluation of the Company.

The existence and content of this letter, the CIM and the VDR are subject to the confidentiality agreement which you have previously executed. You are not permitted to disclose the contents of the CIM or VDR to any third-party except as expressly permitted under the terms of the confidentiality agreement.

All communication regarding the Transaction must be addressed to Origin. Under no circumstances should you contact the management, employees, customers or any other parties involved with the Company directly. The Company also requests that all inquiries be directed to Origin who will co-ordinate all communication with interested parties. The Company and Origin further reserve the right to exclude any interested party from the process if this communication guideline is breached.

On behalf of Kivuto, we appreciate your interest in this opportunity and we look forward to working with you.

Sincerely,

**ORIGIN MERCHANT PARTNERS**



**KIVUTO SOLUTIONS INC.**

- and -

**VALSOFT CORPORATION INC.**

- and -

**ASPIRE ONTARIO INC.**

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**AGREEMENT OF PURCHASE AND SALE**

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January 17<sup>th</sup>, 2023

**AGREEMENT OF PURCHASE AND SALE**

**THIS AGREEMENT OF PURCHASE AND SALE** is made as of January 17<sup>th</sup>, 2023

**BETWEEN:**

**KIVUTO SOLUTIONS INC.**

(together with any receiver appointed in respect of Kivuto Solutions Inc. in accordance with the terms hereof, and as the context may require, the “**Vendor**”)

- and -

**VALSOFT CORPORATION INC.,**

- and -

**ASPIRE ONTARIO INC.**

(collectively the “**Purchaser**”)

**RECITALS:**

A. The Vendor has agreed to sell and the Purchaser has agreed to purchase the Purchased Assets (as defined herein), subject to and in accordance with the terms and conditions contained herein and the approval of the Court;

B. The Transaction is to be implemented in a receivership proceeding to be commenced by the Vendor’s senior secured lender The Toronto-Dominion Bank (“**TD**”). Upon execution and delivery of this Agreement, the Vendor will take reasonable steps to assist TD in obtaining the Appointment Order (as defined herein) to appoint the Receiver as the receiver and manager of the current and future assets, undertaking and properties of the Vendor;

C. The Appointment Order shall contemplate, and subject to the approval of the Court (as defined herein), the Receiver will have the power and authority to, *inter alia*, sell, convey and transfer the Vendor’s assets, undertaking and properties in accordance with the terms and conditions herein;

D. Upon the issuance of the Appointment Order, the Vendor shall immediately assign its rights and obligations under this Agreement to the Receiver, and the Receiver will assume the Vendor’s rights and obligations under this Agreement (solely in its capacity as Court-appointed Receiver of the Vendor and not in its personal capacity) and proceed to close the Transaction forthwith in accordance with the provisions of the Approval and Vesting Order;

**NOW THEREFORE** in consideration of the premises, the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the Parties (as defined herein) hereto covenant, agree and declare as follows:

## **ARTICLE 1 DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

In this Agreement, the following terms will have the following meanings:

**"Accounts Receivable"** means all accounts receivable, notes receivable and other debts due or accruing due to the Vendor in connection with the Purchased Business;

**"Agreement"** means this agreement, and all schedules attached to this agreement, in each case as they may be amended or supplemented from time to time, and the expressions **"hereof"**, **"herein"**, **"hereto"**, **"hereunder"**, **"hereby"** and similar expressions refer to this Agreement. Unless otherwise indicated, references to **"Articles"**, **"Sections"** and **"Schedules"** are to articles and sections and schedules of this agreement;

**"Applicable Law"** means collectively, (i) any applicable domestic or foreign law including any statute, subordinate legislation or treaty, and (ii) any applicable guideline, directive, rule, standard, requirement, policy, order, judgment, injunction, award or decree of a Governmental Authority having the force of law;

**"Appointment Order"** means the order to be made by a Court of competent jurisdiction promptly after the execution and delivery of this Agreement, appointing the Receiver as the receiver and manager of the Vendor effective on a date to be determined by such Court;

**"Approval and Vesting Order"** means an order or orders to be made by the Court in substantially the form attached hereto as Schedule "A" which, among other things, (i) authorizes the Vendor to enter into this Agreement and sell the Purchased Assets pursuant to and in accordance with this Agreement and approves same, and (ii) provides that, upon Closing, all the Vendor's right, title and interest in the Purchased Assets sold pursuant to this Agreement shall irrevocably vest in the Purchaser or as the Purchaser may further direct, free and clear of all registered or unregistered Encumbrances except for permitted encumbrances, if any, such vesting to occur upon the delivery by the Vendor to the Purchaser of the Receiver's Certificate;

**"Assumed Liabilities"** has the meaning attributed to such term in section 2.2.1;

**"Books and Records"** means all information stored or maintained in hard copy, digital or electronic format or otherwise, relating and pertaining to the Purchased Assets in the possession or control of the Vendor; provided, however, that **"Books and Records"** shall not include any bank or accounting records;

**"Business Day"** means any day, other than Saturday, Sunday or any statutory holiday in the Province of Ontario;

“**Closing**” means the completion of the Transaction;

“**Closing Cash**” means the amount of cash and cash equivalent of the Vendor as at 11:59 p.m. on the date immediately preceding the Closing Date, calculated in accordance with GAAP, consistently applied with those used in the preparation of the Vendor’s financial statements;

“**Closing Date**” means the date on which Closing occurs;

“**Closing Documents**” means the documents to be executed and/or delivered at or prior to Closing as a condition in favour of either of the Parties;

“**Contracts**” means all of the contracts, licences, leases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements and engagements to which the Vendor is a party or otherwise bound;

“**Court**” means the Ontario Superior Court of Justice (Commercial List);

“**Encumbrances**” means all liens (statutory or otherwise), charges, security interests, hypothecs, pledges, title retention agreements or arrangements, mortgages, restrictions on use, development or similar agreements, title defects, work orders, options, adverse claims, servitudes, encroachments, prior claims, assignments, liabilities (direct, indirect, absolute or contingent), obligations, trusts, deemed trusts, judgments, writs of seizure or execution, notices of sale, contractual rights, rights of first refusal, or any other right or interest of any nature or any other financial or monetary claims or any other arrangement or condition whether or not registered, published or filed, statutory or otherwise, secured or unsecured, or other encumbrances of any kind or character whatsoever; including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Appointment Order; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Encumbrances to be listed in the Approval and Vesting Order;

“**Excluded Assets**” has the meaning attributed to such term in Section 2.1.2;

“**Final Order**” means, in respect of any order of the Court or any other court: (i) the operation and effect of such order shall not have been stayed, amended, modified, reversed, dismissed or appealed within the applicable appeal period; or (ii) any motion or other proceeding to stay, amend, modify, reverse, dismiss or appeal such order shall have been dismissed with no further appeal therefrom and the applicable appeal period shall have expired;

“**Governmental Authority**” means any agency, board, bureau, court, commission, department, legislature, parliament or tribunal, or any federal, provincial, territorial, municipal, local or other governmental entity or authority;

“**GST/HST**” means tax payable under Part IX of the *Excise Tax Act* (Canada);

“**Intellectual Property**” means all intellectual property of the Vendor used by or currently being developed for use in the Purchased Business, and all rights of the Vendor therein whether registered or unregistered, including without limitation:

- (a) all patents, patent applications and other patent rights, including provisional and continuation patents;
  - (b) all registered and unregistered trademarks, service marks, logos, slogans, corporate names, business names and other indicia of origin, and all applications and registrations therefor;
  - (c) registered and unregistered copyrights;
  - (d) internet domain names, applications and reservations for internet domain names, uniform resource locators and the corresponding internet sites;
  - (e) industrial designs;
  - (f) trade secrets and proprietary information not otherwise listed in (a) through (e);
- and
- (g) those intellectual property assets listed in Schedule B.

**"Interim Period"** means the period from the date that this Agreement is entered into by the Parties to the Closing Time;

**"Inventory"** means IBM SPSS SKUs;

**"Liability"** or **"Liabilities"** means any and all liabilities, obligations, covenants, charges, costs, debt and indebtedness, of any and every kind and nature whatsoever, absolute or contingent, liquidated or unliquidated;

**"Material Adverse Change"** means any event, change, circumstance, effect or other matter that has a material adverse effect on: (i) the business, financial condition or results of operations of the Vendor, taken as a whole; or (ii) the ability of the Purchaser or the Vendors to consummate the Transaction in accordance with the terms herein; provided that "Material Adverse Change" shall not include any event, change, circumstance, effect or other matter resulting from: (i) general economic or political conditions; (ii) conditions generally affecting the industry the Purchased Business operates in; (iii) any changes in financial, banking or securities markets in general, including any disruption thereof and any decline in the price of any security or any market index or any change in prevailing interest rates; (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (v) any action required or contemplated to be taken by this Agreement or any action taken (or omitted to be taken) with the written consent of or at the written request of the Purchaser; (vi) any changes in Applicable Law or accounting rules or the enforcement, implementation or interpretation thereof; (vii) the public announcement, pendency or completion of the transactions contemplated by this Agreement, including losses of employees, customers, suppliers, distributors or others having relationships with the Vendor or the Purchased Business as a result thereof; (viii) seasonal changes in the Purchased Business, provided such changes are consistent with past practice and experience; (ix) any riot, insurrection, state of martial law, civil commotion, fire, flood, earthquake, any natural or man-made disaster or act of God, any global, regional or locally wide-spread disease, pestilence, epidemic or pandemic, or similar threat to public health, including

without limitation the virus known as COVID-19 or the strain of coronavirus that results in such virus, or the escalation or worsening of any of the foregoing;

“**Non-Refundable Deposit**” has the meaning attributed to such term in Section 3.2(a);

“**Offered Employees**” means those employees of the Vendor set forth in Schedule “D” hereto, a copy of which shall be populated and provided to the Vendor at least five (5) Business Days prior to the Closing Date;

“**Outside Date**” means ten (10) days after the Target Closing Date, or such other date as the Parties may agree to in writing;

“**Parties**” means the Vendor and the Purchaser;

“**Person**” means any individual, partnership, limited partnership, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority, however designated or constituted;

“**Purchase Price**” means the aggregate of the amounts to be paid pursuant to Section 3.1;

“**Purchased Assets**” has the meaning attributed to such term in Section 2.1.1;

“**Purchased Business**” means the business of the Vendor, being that of a leading independent provider of digital content management and distribution solutions for academia, partnering with a broad ecosystem of vendors to provide solutions to thousands of renowned academic institutions that allow customers and users to manage their digital education resources;

“**Purchaser**” has the meaning attributed to such term on the title page of this Agreement;

“**Receiver**” means BDO Canada Limited in its capacity as the Court-appointed Receiver of Kivuto Solutions Inc.;

“**Receiver’s Certificate**” has the meaning attributed to such term in Section 2.4(g);

“**Refundable Deposit**” has the meaning attributed to such term in Section 3.2(b);

“**Retained Employees**” means those Offered Employees who have accepted the Purchaser’s offer of employment made pursuant to Article 8;

“**Sales Taxes**” means all applicable value-added, sales, use, consumption, multi-staged, personal property, customs, excise, stamp, transfer or similar taxes, duties or charges, including all applicable GST/HST;

“**Software**” means computer software and programs (both source code and object code form) owned by the Vendor, including all proprietary rights in such computer software and programs and all documentation and other materials related to such computer software and program;

**"Target Closing Date"** means one (1) Business Day after the date the Approval and Vesting Order is issued by the Court, provided if an appeal of the Approval and Vesting Order has been commenced by delivery of a Notice of Appeal, the Target Closing Date shall be one (1) Business Day after the day on which the Approval and Vesting Order has become a Final Order, or such other date as the Parties may agree to in writing, acting reasonably;

**"Tax"** or **"Taxes"** means any federal, provincial, state, local, foreign or other income, gross receipts, profits, franchise, transfer, sales, use, customs, payroll, occupation, health, property, excise, valued added (including goods and services tax) or other taxes, fees, duties, assessments, withholdings or governmental charges of any nature (including interest, penalties and additions to such taxes or charges);

**"Time of Closing"** means the time on the Closing Date on which Closing occurs as evidenced by the delivery of the Receiver's Certificate;

**"Transaction"** means the transaction of purchase and sale contemplated by this Agreement;

**"Transition Services Agreement"** means an agreement, if any, entered into by the Parties in accordance with Section 7.2(b) of this Agreement;

**"Vendor"** has the meaning attributed to such term on the cover page of this Agreement; and

**"Vendor's Solicitors"** means Fasken Martineau DuMoulin LLP.

## **1.2 Schedules**

The following schedules form part of this Agreement:

- (a) Schedule "A" – Form of Approval and Vesting Order
- (b) Schedule "B" – Assumed Contracts
- (c) Schedule "C" – Purchase Price Allocation
- (d) Schedule "D" – Offered Employees
- (e) Schedule "E" – Transition Services

## **1.3 Headings**

The division of this Agreement into separate Articles, Sections and Schedules, the provision of a table of contents and the insertion of headings is for convenience of reference only and will not affect the construction or interpretation of this Agreement.

## **1.4 Gender and Number**

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.

## **1.5 Currency**

Except where otherwise expressly provided, all amounts in this Agreement are stated and will be paid in Canadian currency.

## **1.6 Invalidity of Provisions**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by Applicable Law, the Parties waive any provision of law that renders any provision of this Agreement invalid or unenforceable in any respect. The Parties will engage in good faith negotiations to replace any provision that is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision that it replaces.

## **1.7 Governing Law**

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

## **1.8 “Including”**

All usage of the word “including” in this Agreement will mean “including without limitation” or “including but not limited to” throughout this Agreement.

## **1.9 Statutory References**

Any reference to a statute will mean the statute in force as at the date hereof, together with all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated and/or replaced, from time to time, and any successor statute thereto, unless otherwise expressly provided.

## **1.10 Date for Any Action**

When calculating the period of time within which or following which any act is to be done or step taken, the date that is the reference day in calculating such period will be excluded. If the last day of such period is not a Business Day, the period will end on the next Business Day.

## **1.11 Recognized Meanings**

Words or abbreviations that have well known or trade meanings are used herein in accordance with their recognized meanings.

## **1.12 Arm’s Length Negotiations**



The Parties acknowledge that they are dealing with one another at arm's length. This Agreement will not be construed in favour of or against either Party by reason of the extent to which either Party or its professional advisors participated in the preparation of this Agreement.

## ARTICLE 2 PURCHASE AND SALE OF ASSETS

### 2.1 Purchased Assets and Excluded Assets

2.1.1 Subject to the provisions of this Agreement, and conditional upon the issuance by the Court of the Approval and Vesting Order, the Vendor will sell, assign and transfer to the Purchaser and the Purchaser will purchase from the Vendor, effective as of the Time of Closing, all of the right, title and interest of the Vendor, if any, in and to all of the assets of the Vendor, excepting Excluded Assets, which shall include but is not limited to:

- (a) all cash and cash equivalents;
- (b) Accounts Receivable;
- (c) Intellectual Property;
- (d) Software;
- (e) Inventory;
- (f) the Books and Records;
- (g) tangible assets, including furniture, fixtures, or equipment of the Vendor, if any, which are situated in Canada;
- (h) Goodwill and other intangible assets; and
- (i) for greater certainty and notwithstanding that any of the following may already be included in the assets to be purchased described immediately above, all Product Technology Assets, Customer Contracts, Texidium Customer Contracts, Vendor Contracts, Publisher Contracts, Partner Contracts, Web Service Partner Contracts, Intellectual Property Assets, Registered and Unregistered Copyrights, Internet Domains, Industrial Designs, and Operational Infrastructure Assets, all of which are defined and more fully described in Schedule "B" of this Agreement (collectively the "**Assumed Contracts**"),

provided, however, that the above shall not include the Excluded Assets, which the Purchaser shall not acquire nor take title to or possession of. All of the foregoing, excluding the Excluded Assets, are hereinafter collectively called the "**Purchased Assets**".

2.1.2 The Purchased Assets shall not include any of the following assets (collectively, the “**Excluded Assets**”):

- (a) the minute books and corporate records of the Vendor, along with any books, files, documents, information, data and other records and embodiments thereof that are required by Applicable Law to be retained by the Vendor or which primarily relate to the Transaction;
- (b) the Contracts that are not Assumed Contracts;
- (c) commercial leases, real property leases, or other similar agreements for the rental or lease of real property of the Vendor, including the commercial lease for the Vendor's office space situated in Ottawa, Canada;
- (d) tangible assets, including furniture, fixtures, or equipment of the Vendor, if any, which are situated in the United States;
- (e) bank accounts of the Vendor, wherever situated;
- (f) shares of Kivuto Solutions Inc.;
- (g) shares of Kivuto Solutions Inc.'s United States based subsidiaries, if any, including Kivuto Solutions LLC; and
- (h) income tax refunds and other Tax refunds receivable by the Vendor and all tax returns of the Vendor.

## **2.2 Assumed Liabilities and Excluded Liabilities**

2.2.1 The Purchaser shall assume Liabilities of the Vendor solely in respect of:

- (a) the Assumed Contracts; and
  - (b) the Retained Employees except as set forth in Article 8,
- (collectively, the “**Assumed Liabilities**”).

2.2.2 Except as explicitly identified in section 2.2.1, no other Liabilities of any kind shall be assumed by the Purchaser.

## **2.3 Allocation and Assumption of Purchased Assets and Assumed Liabilities**

2.3.1 The Vendor acknowledges that the Purchaser shall have the right, in its sole and unfettered discretion, to determine which purchasing entity, i.e., either Valsoft Corporation Inc. or Aspire Ontario Inc., shall: (a) purchase the Purchased Assets, or some combination thereof; (b) assume the Assumed Liabilities, or some combination thereof; or, (c) assume any other right, entitlement, liability, or obligation of any kind under this Agreement, or some combination thereof, provided that:

- (a) in all cases, all Purchased Assets and all Assumed Liabilities shall be allocated to either Valsoft Corporation Inc. or Aspire Ontario Inc.;
- (b) regardless of the chosen allocation, all terms of this Agreement shall remain in force and effect; and
- (c) the Purchaser shall advise the Vendor of its intended allocation of all Purchased Assets and all Assumed Liabilities in advance of Closing.

## **2.4 Acknowledgments by Purchaser**

The Purchaser acknowledges that:

- (a) the interest of the Vendor in the Purchased Assets may be limited and the Vendor will be obliged to convey to the Purchaser only such interest as the Vendor has therein and no interest of any third party, provided that nothing in this Section 2.4(a) shall be applied or construed so as to derogate from the title or interest acquired by the Purchaser pursuant to and in accordance with the Approval and Vesting Order. To the extent that any obligation of the Vendor requires the co-operation or assistance of any third party, the Vendor will not be required to compel any such co-operation or assistance for the purposes of making any conveyance to the Purchaser. The provisions of this Subsection 2.4(a) shall not derogate from the Purchaser's right to rely upon the conditions to Closing in favour of the Purchaser as set out herein;
- (b) the Purchaser shall be solely responsible for obtaining all consents required by the Purchaser in accordance with the terms hereof to the assignment and transfer to the Purchaser of the Purchased Assets. The Vendor agrees that it will do or cause to be done such things as are reasonably requested by the Purchaser in order to assist the Purchaser to obtain required consents provided that the Vendor shall have no obligation to obtain any consents or to provide or pay any consideration or incur any costs to obtain such consents;
- (c) the Purchaser has inspected the Purchased Assets, has relied entirely upon its own inspection and investigation, and is purchasing the Vendor's right, title and interest, if any, in and to the Purchased Assets on an "as is, where is" basis as they exist at the Time of Closing with no recourse to the Vendor and that there is no representation, warranty or condition, express or implied, statutory or otherwise, as to the title, Encumbrances, description, fitness for any purpose, merchantability, quality, quantity, state, condition (environmental or otherwise), defect (patent or latent), existence, location, value, the validity or enforceability of any rights (including intellectual property rights), any requirement to licences, permits, approvals, consents for transfer, ownership, occupation or use, compliance with any governmental laws, regulations, by-laws and orders or in respect of any other matter or thing whatsoever, except for the express warranties and representations contained in Article 4. Without limiting the generality of the foregoing, no condition, warranty or representation provided for

or implied by any statute or regulation of the Province of Ontario has been or will be given by the Vendor, and the Purchaser expressly waives all express or implied conditions, warranties and representations by the Vendor;

- (d) Without limiting the generality of paragraph (c), the Purchaser acknowledges and agrees that the Parties have expressly agreed to exclude from this Agreement all representations and warranties with respect to the following matters:
  - (i) the description, title, condition, validity (including infringement status) state of repair and fitness for any purpose of the Purchased Assets; and
  - (ii) the execution, good standing, validity, binding effect or enforceability of the permitted encumbrances, if any;
- (e) any asset lists, information packages and other material concerning the Purchased Assets or the sale thereof provided by or on behalf of the Vendor have been prepared solely for the convenience of the Purchaser and are not warranted or represented to be complete or accurate and are not part of this Agreement (unless specifically provided in such material) and the descriptions of the Purchased Assets provided to the Purchaser are for the purposes of identification only, and no condition, warranty or representation has been or will be given by the Vendor concerning the accuracy, completeness or any other matter concerning such descriptions; and
- (f) upon the issuance of the Appointment Order and the assignment of the rights and obligations under this Agreement to the Receiver, the Receiver's rights and obligations under this Agreement shall be solely in its capacity as Court-appointed receiver and manager of the assets, undertakings and properties of Kivuto Solutions Inc., pursuant to the Appointment Order, and not in its personal or other capacity. The Receiver, including the Receiver's solicitors, will have no personal or corporate liability under or as a result of this Agreement, or otherwise in connection herewith, save and except for any liability caused by the gross negligence or willful misconduct of the Receiver;
- (g) the Approval and Vesting Order shall provide that the Receiver, upon the conditions to Closing having been satisfied or waived by the Receiver and the Purchaser, respectively, in accordance with the terms of this Agreement, shall file a certificate with the Court substantially in the form attached to the Approval and Vesting Order (the "**Receiver's Certificate**") and that title to the Purchased Assets shall vest in the Purchaser effective immediately upon the delivery of the Receiver's Certificate to the Purchaser, free and clear of all Encumbrances except for permitted encumbrances, if any;
- (h) despite issuance of the Approval and Vesting Order, the Purchaser shall have no rights thereunder, nor any right, title or interest in the Purchased Assets until the Receiver's Certificate is executed by the Receiver, as aforesaid; and

- (i) the Receiver shall make available to the Purchaser at the office of the Receiver, immediately following Closing, all other documents which are required and which the Purchaser has reasonably requested prior to Closing to give effect to this Transaction in accordance with the terms of this Agreement.

All documentation referred to in this section, except as otherwise provided herein, shall be in form and substance acceptable to the Purchaser and the Receiver each acting reasonably.

### ARTICLE 3 PURCHASE PRICE AND RELATED MATTERS

#### 3.1 Purchase Price, Closing Date Balance Sheet

The purchase price to be paid by the Purchaser to the Vendor for the Purchased Assets shall be [REDACTED] minus the amount of shortfall of Closing Cash from [REDACTED] if Closing Cash is less than [REDACTED] (collectively, the “**Purchase Price**”). For greater certainty, if Closing Cash is equal to or in excess of [REDACTED] the Purchase Price shall be [REDACTED]. Prior to the Closing Date, the Vendor and the Purchaser shall agree on the amount of Closing Cash to be used to determine the Purchase Price payable at Closing.

#### 3.2 Payment of Deposits

- (a) The Parties acknowledge that [REDACTED] has been paid by the Purchaser to the Vendor on December 20, 2022, as a non-refundable deposit (the “**Non-Refundable Deposit**”);
- (b) Concurrently with the execution and delivery of this Agreement, the Purchaser shall pay to the Vendor’s Solicitors, in trust, a deposit of [REDACTED] by wire transfer of immediately available funds (the “**Refundable Deposit**”), which Refundable Deposit shall be held in accordance with the provisions of this Agreement pending completion or other termination of this Agreement and shall be applied against and towards the Purchase Price due on Closing;
- (c) if the Closing does not occur by reason of the failure by the Purchaser to perform any of the covenants or agreements on the Purchaser’s part to be performed hereunder and which cannot otherwise be remedied by the Purchaser by the Outside Date, then the Refundable Deposit shall be forfeited to the Vendor on account of liquidated damages as its sole remedy for such default and no Party to this Agreement shall have a claim against any other Party hereto with respect to this Agreement other than the Vendor’s claim to the Refundable Deposit as aforesaid. Retention of the Refundable Deposit shall be the Vendor's sole and exclusive remedy for any such breach by the Purchaser; and
- (d) if the Closing does not occur for any other reason by the Outside Date, the Refundable Deposit shall be returned to the Purchaser without interest and no

Party to this Agreement shall have a claim against any other Party hereto with respect to this Agreement other than the Purchaser's claim to the return of the Refundable Deposit as aforesaid.

### **3.3 Payment at Closing**

- (a) At the Time of Closing,
- (i) the Purchaser shall pay the balance of the Purchase Price, being the amount of Purchase Price minus the Non-Refundable Deposit and minus the Refundable Deposit, by wire transfer of immediately available funds to the Vendor's Solicitor or as the Vendor may direct in writing.
  - (ii) the Vendor shall wire or otherwise transfer the amount of the Closing Cash to an account designated by the Purchaser.

### **3.4 Allocations re Purchase Price**

The Parties agree that the Purchase Price shall be allocated among the Purchased Assets as set forth in Schedule "C", which allocation if not agreed to as of the date of this Agreement, shall be mutually agreed to between the Parties in writing, acting reasonably, prior to Closing and form part of this Agreement.

### **3.5 Taxes, Purchase Exemption Certificates and Elections**

All amounts payable by the Purchaser to the Vendor pursuant to this Agreement do not include any Sales Tax, and all Sales Taxes are the responsibility and for the account of the Purchaser. The Purchaser will be liable for and will pay at the Time of Closing all applicable Sales Taxes upon or in connection with the purchase of the Purchased Assets by the Purchaser, unless the Purchaser provides the Vendor with valid exemption certificates acceptable to the Vendor, acting reasonably. Regardless of whether or not the Purchaser provides the Vendor with any such exemption certificates, the Purchaser shall indemnify the Vendor from and against all claims, liabilities, costs and fees (including legal fees on a full indemnity basis) arising out of the Purchaser's failure to pay any such taxes. If available at law, the Vendor and the Purchaser will jointly execute on or prior to the Time of Closing an election under Section 167 of the *Excise Tax Act* (Canada) to permit the Purchased Assets to be transferred free of GST/HST and the Vendor and the Purchaser will file such elections with the Canada Revenue Agency with their respective GST/HST returns for the period in which the Closing occurs.

### **3.6 Registration and Other Costs**

Except as otherwise provided herein, each of the Vendor and the Purchaser shall be responsible for its own costs (including without limitation costs of its solicitors) in respect of this Transaction. The Purchaser shall be responsible for the cost of registering notice of the Approval and Vesting Order, and for any Sales Taxes (including but not limited to provincial Sales Taxes and GST/HST) payable in connection with the transfer of the Purchased Assets to the Purchaser pursuant hereto.

### 3.7 Post-Closing Cash

If the Vendor or any of its affiliates comes into possession of any cash or cash equivalents purchased by the Purchaser pursuant to this Agreement after the Closing Date (the "**Post-Closing Cash**"), the Vendor shall wire or otherwise transfer any Post-Closing Cash to an account designated by the Purchaser in writing. The terms and conditions associated with the transfer of the Post-Closing Cash to the Purchaser by the Vendor shall be subject to the terms outlined in the Transition Services Agreement, if any, negotiated between the Parties.

## ARTICLE 4 REPRESENTATIONS AND WARRANTIES

### 4.1 Representations By Vendor

The Vendor represents, warrants and covenants to the Purchaser as follows and acknowledges that the Purchaser is relying on such representations, warranties and covenants in connection with the terms and conditions of this Agreement:

- (a) subject to obtaining the Approval and Vesting Order prior to Closing, on Closing the Vendor shall have the power and authority to sell the Purchased Assets to the Purchaser, in accordance with the terms and conditions of this Agreement and the Approval and Vesting Order;
- (b) the Vendor has done no act to encumber the Purchased Assets except in accordance with the Appointment Order and has not disposed of the Purchased Assets;
- (c) at the Time of Closing the Vendor will be registered for the purposes of Part IX of the *Excise Tax Act* (Canada) with a valid GST/HST number and shall provide its registration number to the Purchaser on or prior to the Closing; and
- (d) the Vendor is not a non-resident of Canada within the meaning of that term as used in the *Income Tax Act* (Canada).
- (e) During the Interim Period, the Vendor shall maintain its business and operations in the normal course of business, in substantially the same manner as conducted on the date of this Agreement, and shall not transport, remove, or dispose of its assets, excepting any of the Excluded Assets, except:
  - (i) as contemplated or permitted by this Agreement (including the Approval and Vesting Order);
  - (ii) as necessary in connection with the receivership proceedings;
  - (iii) as otherwise provided for in the Appointment Order and any other Court Order issued prior to the Closing Time; or

- (iv) as consented to by the Purchaser and Vendor, such consent not to be unreasonably withheld, conditioned or delayed.

#### **4.2 No Other Representations**

Except as set forth in this Agreement, the Vendor makes no covenants, representations or warranties whatsoever, including with respect to the condition of the Purchased Assets and the sufficiency or condition of the Vendor's title thereto.

#### **4.3 Representations By Purchaser**

The Purchaser represents, warrants and covenants to the Vendor that:

- (a) the Purchaser is duly incorporated, organized and a subsisting corporation under the laws of the jurisdiction of its formation and the Purchaser has all necessary corporate power and authority to enter into this Agreement and carry out its obligations hereunder. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder have been duly authorized by all necessary corporate action on the part of the Purchaser and this Agreement and the documents to be delivered pursuant hereto are valid and binding obligations of the Purchaser enforceable against the Purchaser in accordance with their respective terms;
- (a) the Purchaser is not a non-Canadian for the purposes of the *Investment Canada Act* (Canada) and at the Time of Closing will be registered for the purposes of Part IX of the *Excise Tax Act* (Canada) with a valid GST/HST number; and
- (b) the Purchaser has not committed an act of bankruptcy, is not insolvent, has not proposed a compromise or arrangement to its creditors generally, has not had any application for a bankruptcy order filed against it, has not taken any proceeding and no proceeding has been taken to have a receiver appointed over any of its assets, has not had an encumbrancer take possession of any of its property and has not had any execution or distress become enforceable or levied against any of its property.

#### **4.4 Representations and Warranties on Closing Date**

All representations and warranties set forth in this Article 4 will be true and correct on and as of the Time of Closing with the same force and effect as if made on and as of such date.

#### **4.5 No Finder's Fee**

Each of the Parties represents and warrants to each other that such Party has not taken, and agrees that it will not take any action that would cause any other Party to become liable to any claim or demand for a brokerage, finder's fee or other similar payment in regard to the Transaction.



#### **4.6 Survival of Covenants, Representations and Warranties**

To the extent that they have not been fully performed at or prior to the Time of Closing, the covenants contained in this Agreement, including, without limitation, all indemnification obligations of the Parties, and in all certificates and documents delivered pursuant hereto will survive the Closing contemplated hereby.

### **ARTICLE 5 - CONDITIONS**

#### **5.1 Conditions in Favour of the Purchaser**

The Purchaser's obligations under this Agreement are conditional upon the performance of or compliance with the following terms and conditions (which are included in this Agreement for the benefit of the Purchaser and where applicable, may be waived in writing in whole or in part by the Purchaser at any time):

- (a) the representations and warranties of the Vendor set forth in Article 4 hereof shall be true and correct as of the Time of Closing and have the same force and effect as if made at and as of such time;
- (b) at the Time of Closing, no order will have been issued by a court of competent jurisdiction which remains in effect, and no action or proceeding will have been instigated which remains pending before a court of competent jurisdiction, to prevent the purchase and sale of the Purchased Assets or any portion thereof pursuant to this Agreement;
- (c) the Parties will have entered into a Transition Services Agreement, if requested by the Purchaser, in accordance with Section 7.2(b) of this Agreement;
- (d) the Vendor shall have executed and delivered all necessary agreements, instruments and documentation, and complied with all the terms, covenants and conditions of this Agreement to be performed or complied with by the Vendor to conclude the Transaction at or prior to the Time of Closing;
- (e) no Material Adverse Change has occurred;
- (f) the Appointment Order shall have been issued by the Court;
- (g) the Approval and Vesting Order shall have been issued by the Court; and
- (h) the Receiver shall have delivered to the Purchaser the Receiver's Certificate.

#### **5.2 Purchaser's Right to Terminate**

If any of the conditions contained in Section 5.1 are not performed or fulfilled by the Outside Date to the reasonable satisfaction of the Purchaser or where applicable, waived by the Purchaser, the Purchaser may terminate this Agreement by notice to the Vendor, and in such

event the Refundable Deposit shall be returned to the Purchaser without interest, and the Vendor and the Purchaser will be released from all obligations hereunder.

### **5.3 Conditions in Favour of the Vendor**

The Vendor's obligations under this Agreement are conditional upon the performance of or compliance with the following terms and conditions (which are included in this Agreement for the benefit of the Vendor and where applicable, may be waived in writing in whole or in part by the Vendor at any time):

- (a) the representations and warranties of the Purchaser set forth in Article 4 hereof shall be true and correct as of the Time of Closing and have the same force and effect as if made at and as of such time;
- (b) the Purchaser shall have executed and delivered all necessary agreements, instruments and documentation and complied with all the terms, covenants and conditions of this Agreement to be performed or complied with by the Purchaser to conclude the Transaction at or prior to the Time of Closing;
- (c) the Purchaser shall have paid the Purchase Price;
- (d) at the Time of Closing, no order will have been issued by a court of competent jurisdiction which remains in effect, and no action or proceeding will have been instigated which remains pending before a court of competent jurisdiction, to prevent the purchase and sale of the Purchased Assets or any portion thereof pursuant to this Agreement;
- (e) the Appointment Order shall have been issued by the Court; and
- (f) the Approval and Vesting Order shall have been issued by the Court.

### **5.4 Vendor's Right to Terminate**

If any of the conditions contained in Subsections 5.3(a), 5.3(b) or 5.3(c) are not performed or fulfilled by the Outside Date to the reasonable satisfaction of the Vendor and cannot otherwise be remedied by the Purchaser within a reasonable timeframe or, where applicable, waived by the Vendor, the Vendor may terminate this Agreement by notice to the Purchaser, and in such event the Vendor and the Purchaser will be released from all obligations hereunder other than in respect of the Refundable Deposit which shall be forfeited to the Vendor. If any of the conditions contained in Subsections 5.3(d), 5.3(e) or 5.3(f) are not performed or fulfilled at or prior to the Outside Date to the reasonable satisfaction of the Vendor or where applicable, waived by the Vendor, the Vendor may terminate this Agreement by notice to the Purchaser, and in such event the Refundable Deposit shall be returned to the Purchaser without interest, and the Vendor and the Purchaser will be released from all obligations hereunder.

## ARTICLE 6 - CLOSING

### 6.1 Closing Date

- (a) The Closing of the Transaction will take place at the Time of Closing virtually by exchange of documents electronically.
- (b) The Parties shall cooperate with each other and shall use their commercially reasonable efforts to affect the Closing on the Target Closing Date.
- (c) If the Closing does not occur on the Target Closing Date, the Parties shall use commercially reasonable efforts to close the Transaction by no later than the Outside Date. If the Closing does not occur on or before the Outside Date, this Agreement may be terminated by either the Purchaser or the Vendor, in their sole discretion, provided that the reason for the Closing not having occurred is not due to any act or omission, or breach of this Agreement, by the Party proposing to terminate the Agreement.

### 6.2 Deliveries at the Closing by the Vendor

At or prior to the Time of Closing, the Vendor shall execute and/or deliver, or cause to be executed and / or delivered, to the Purchaser:

- (a) an issued or entered copy of the Approval and Vesting Order;
- (b) a certificate of the Vendor certifying that except as disclosed in the certificate, the Vendor has not been served with any notice of appeal with respect to the Appointment Order or the Approval and Vesting Order, or any notice of any application, motion or proceeding seeking to enjoin, restrict or prohibit the Transaction;
- (c) a certificate of the Receiver (without personal liability on the part of the individual making such certificate) confirming that the Receiver is not a non-resident of Canada within the meaning of section 116 of the *Income Tax Act* and that, to the best of the Receiver's knowledge, the Receiver is not a non-resident of Canada within the meaning of the aforementioned section 116;
- (d) the Receiver's Certificate;
- (e) a certificate of the Vendor (without personal liability on the part of the individual making such certificate) certifying that each of the representations and warranties of the Vendor set forth in Section 4.1 are true and accurate in all material respects on the Closing Date, except as disclosed therein;
- (f) an executed copy of the Transition Services Agreement, if any, negotiated and entered into by the Parties pursuant to Section 7.2(b);

- (g) a bill of sale executed by the Vendor, including a document or documents evidencing that all Intellectual Property rights have been assigned or otherwise transferred to the Purchaser;
- (h) pursuant to Section 3.5, and if requested by the Purchaser and available at law, an executed joint election under Section 167 of the *Excise Tax Act* (Canada) to permit the Purchased Assets to be transferred free of GST/HST;
- (i) the Books and Records; and
- (j) such further and other documentation as is referred to in this Agreement or as the Purchaser may reasonably require to give effect to this Agreement.

### **6.3 Deliveries at the Closing by the Purchaser**

At or prior to the Time of Closing, the Purchaser shall execute and/or deliver, or cause to be executed and / or delivered, to the Vendor:

- (a) payment of the balance of the Purchase Price required to be paid on Closing pursuant to Section 3.3;
- (b) account information sufficient to enable the Vendor to wire or otherwise transfer any of the cash or cash equivalents purchased pursuant to this Agreement in accordance with Section 3.3(a)(ii);
- (c) a schedule or other document showing the allocation of the Purchased Assets and Assumed Liabilities as between either Valsoft Corporation Inc. or Aspire Ontario Inc., as applicable, in accordance with Section 2.3;
- (d) evidence satisfactory to the Vendor of payment of all Taxes required to be paid by the Purchaser pursuant to Section 3.5 or valid purchase exemption certificates pursuant to Section 3.5;
- (e) a certificate of the Purchaser (without personal liability on the part of the individual making such certificate), certifying that each of the representations and warranties of the Purchaser set forth in Section 4.3 are true and accurate in all material respects on the Closing Date, except as disclosed therein; and
- (f) such further and other documentation as is referred to in this Agreement or as the Vendor may reasonably require to give effect to this Agreement.

## **ARTICLE 7 ADDITIONAL AGREEMENTS OF THE PARTIES**

### **7.1 Proceedings for the Appointment Order and Approval and Vesting Order**

- (a) The Vendor shall use reasonable efforts to assist TD in obtaining the Appointment Order and the Approval and Vesting Order. The Vendor shall

consult and co-ordinate with the Purchaser and its counsel regarding the parties upon whom the motion seeking the Appointment Order and the Approval and Vesting Order will be served and the manner and timing of service, provided that the motion seeking such orders shall be served upon such parties not less than seven (7) Business Days prior to the scheduled date for hearing of the motion.

- (b) The Vendor shall provide the Purchaser and its counsel with a copy of the form of the Appointment Order and the Approval and Vesting Order and supporting material to be filed in Court by the Vendor relating to the Transaction at least three (3) Business Days before service thereof. The Vendor agrees that all such documents shall be consistent with the terms and conditions of this Agreement. The Vendor shall forthwith provide the Purchaser with copies of all motion materials served upon it relating to this Agreement and the Purchased Assets.
- (c) The Purchaser shall, at its own expense, promptly provide to the Vendor all information, documents and assistance within the Purchaser's possession or control as the Vendor may reasonably require to apply for the Appointment Order and the Approval and Vesting Order.

## **7.2 Co-operation and Transition**

- (a) The Parties shall co-operate fully in good faith with each other and their respective legal advisors, accountants and other representatives in connection with any steps required to be taken as part of their respective obligations under this Agreement.
- (b) At the request of the Purchaser prior to the Closing Date, the Parties shall enter into a Transition Services Agreement, in form and substance satisfactory to the Parties, acting reasonably and in good faith, to provide for the transition of the Purchased Assets into the Purchaser's overall operations and business and to allow for an orderly passing of the Purchased Assets to the Purchaser following Closing. The Transition Services Agreement shall have a term of no more than 45 days from the Closing Date, and shall contemplate the provision by the Receiver to the Purchaser of the transition services set forth in Schedule "E" attached hereto, at the Receiver's (or contractors of the Receiver's) current rates for such services to be paid by the Purchaser.

## **7.3 Possession of Assets**

The Vendor or the Receiver, as applicable, shall remain in possession of the Purchased Assets until the Time of Closing, at which time the Purchaser shall take possession of the Purchased Assets where situated. In no event shall the Purchased Assets be sold, assigned, conveyed or transferred to the Purchaser until all the conditions set out in this Agreement and the Approval and Vesting Order have been satisfied or waived and the Purchaser has satisfied or the Vendor or the Receiver, as applicable, has waived all the delivery requirements outlined in Article 5 hereof.

#### 7.4 Tax Indemnity

The Purchaser shall indemnify and save the Vendor harmless for and from all losses, costs and damages suffered by the Vendor as a result of any Tax, interest and/or penalty levied against the Vendor by Canada Revenue Agency or any other Governmental Authority in connection with the Transaction, including any requirement of the Vendor to remit to the Receiver General of Canada any HST, interest and/or penalties on the Purchase Price, including any adjustments thereto.

#### 7.5 Confidentiality

Prior to Closing, the Purchaser shall maintain in confidence and not disclose to any Person this Agreement or the terms thereof or any information or documentation obtained, prepared or summarized by the Purchaser or its representatives (collectively, the “**Confidential Information**”), except, on a need to know basis, to those individuals employed by the Purchaser, its professional consultants, including the Purchaser’s legal counsel, and to those Persons who have agreed in writing in favour of the Vendor and the Purchaser not to disclose any Confidential Information (collectively, the “**Purchaser Representatives**”). The Purchaser will ensure that each Purchaser Representative treats the Confidential Information as confidential and any failure of a Purchaser Representative to do so will be a breach of this Agreement by the Purchaser.

#### 7.6 Restrictive Covenants

7.6.1 For five (5) years from the Closing Date,

- (a) the Vendor shall not directly or indirectly within Canada or the United States, on Vendor’s own behalf or on behalf of any other Person, engage in, invest in, conduct or otherwise participate in any business that is competitive with the Purchased Business;
- (b) the Vendor shall not directly or indirectly (including through the use of social media), on Vendor’s own behalf or on behalf of any other Person, (i) solicit or attempt to solicit any client of the Vendor for the purpose of obtaining the custom, business, trade or services of that client of the Vendor, (ii) induce or attempt to induce any client of the Vendor to reduce or curtail its business with the Purchaser or to terminate or change the terms of its relationship with the Purchaser; or (iii) otherwise conduct any business with any client of the Vendor that may be competitive with the Purchased Business; and
- (c) the Vendor shall not, directly or indirectly, on Vendor’s own behalf or on behalf of any other Person, employ, engage, attempt to employ or engage, or solicit for employment or engagement (as a contractor or otherwise) or otherwise induce or attempt induce any changes to the terms of the employment or engagement of any Retained Employee.

7.6.2 The Vendor agrees that the Purchaser shall be entitled to seek equitable and/or injunctive relief in any court of competent jurisdiction to prevent any breach or

threatened breach of covenants set forth in this Section, in addition to any other available legal or equitable remedies, and shall be entitled to recover their costs and reasonable attorneys' fees in enforcement if successful.

## **ARTICLE 8 - Employees**

### **8.1 Employees**

Subject to the Closing and the terms of this Article 8, at least five (5) Business Days prior to the Closing Date, the Purchaser shall offer employment effective as of the Closing Date on terms substantially similar in the aggregate to those existing as of the Closing Date to the Offered Employees, where the list of Offered Employees will be mutually agreed to between the Parties, acting reasonably, prior to the Closing. The offers, which shall be made to at least 65% of all active employees of the Vendor, shall recognize the prior service of such Offered Employees with the Vendor for all employment purposes. Prior to making such offers, the Purchaser shall provide to the Vendor for its review, the form of the offers of employment made to the Offered Employees.

### **8.2 Replacement Plans.**

The Purchaser shall not assume any of the benefit or pension plans of the Vendor or Liability for accrued benefits or pension obligations or any other liability under or in respect of any of the benefit or pension plans of the Vendor. As of the Closing Date, the Retained Employees shall cease to accrue further benefits under the Vendor's benefit or pension plans. The Purchaser shall permit the Retained Employees to participate in benefit plans sponsored by the Purchaser (such plans to be called the "**Replacement Plans**"). The Purchaser shall endeavour to cause each Replacement Plan to recognize the prior service of the Retained Employee rendered to the Vendor for purposes of eligibility to participate, vesting and entitlement to benefits under such Replacement Plans but not for the purpose of benefit accrual.

## **ARTICLE 9 - GENERAL**

### **9.1 Notices**

Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be given by email or by hand-delivery as hereinafter provided. Any such notice or other communication, if sent by electronic communication, shall be deemed to have been received on the Business Day following the sending, or if delivered by hand shall be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address shall also be governed by this section. Notices and other communications shall be addressed as follows:

- (a) if to the Vendor:

Attention:

**Mark McKenzie, Chief Executive Officer**

Kivuto Solutions Inc.  
495 Richmond Road, Suite 100  
Ottawa, ON, K2A 4B2  
Canada

E-mail: [MMcKenzie@kivuto.com](mailto:MMcKenzie@kivuto.com)

with a copy to:

**Dylan Chochla, Partner**  
Fasken Martineau DuMoulin LLP  
Bay Adelaide Centre  
333 Bay St. #2400, Toronto  
ON M5H 2T6

E-mail : [dchochla@fasken.com](mailto:dchochla@fasken.com)

(b) if to the Purchaser at:

Attention:

**David Felicissimo, General Counsel**  
Valsoft Corporation Inc.  
7405 TransCanada Suite 100  
Montreal, Quebec  
H4T 1Z2

E-mail: [David.f@valsoftcorp.com](mailto:David.f@valsoftcorp.com)

with a copy c/o:

**Blake, Cassels & Graydon LLP**  
Commerce Court West  
199 Bay Street, Suite 4000  
Toronto, Ontario, M5L 1A9

Attention:

**John Leopardi, Partner**

Email: [john.leopardi@blakes.com](mailto:john.leopardi@blakes.com)

**Linc Rogers, Partner**

Email: [linc.rogers@blakes.com](mailto:linc.rogers@blakes.com)

**Christopher Keliher, Associate**

Email: [christopher.keliher@blakes.com](mailto:christopher.keliher@blakes.com)

## 9.2 Entire Agreement

Except as specifically set forth in this Agreement, there are no representations,



warranties, agreements or covenants made by any of the Parties hereto and not contained herein and this Agreement supersedes any prior agreement, whether written or oral, between the Parties and constitutes the entire agreement of the Parties with respect to the purchase and sale of the Purchased Assets.

### **9.3 Further Assurances**

Each of the Parties hereto will, from time to time and at all times hereafter upon every reasonable written request to do so, make, do, execute and deliver, or cause to be made, done, executed and delivered all such further acts, deeds, assurances and things as may be necessary in the opinion of any Party or counsel for any Party for more effectually implementing and carrying out the true intent and meaning of this Agreement.

### **9.4 Successors and Assigns**

This Agreement will be binding upon the Parties hereto, their respective heirs, executors, administrators, successors or permitted assigns. The Vendor may not assign this Agreement or any rights hereunder without: (i) the approval of the Court; or (ii) the written consent of the Purchaser.

### **9.5 Counterparts**

This Agreement may be executed in several counterparts, including by facsimile or other means of electronic communication and all such counterparts will constitute one agreement, binding on the Parties hereto, notwithstanding that all the Parties are not signatories to the original or the same counterpart.

### **9.6 No Waiver of Breach**

No failure of any Party to this Agreement to pursue any remedy resulting from a breach of this Agreement by another Party will be construed as a waiver of that breach by that Party or any other Party or as a waiver of any subsequent or other breach.

### **9.7 Solicitors as Agents and Tender**

Any notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated in this Agreement may be given or delivered and accepted or received by the Purchaser's solicitors on behalf of the Purchaser and by the Vendor's Solicitors on behalf of the Vendor and any tender of Closing Documents (other than documents required to be registered electronically) may be made upon the Vendor's Solicitors and the Purchaser's Solicitors, as the case may be, at their respective offices.

### **9.8 Expenses and Legal Fees**

Each of the Parties hereto will assume the payment of and be responsible for all expenses, costs and legal fees incurred by reason hereof by such Party whether incurred prior to or subsequent to the date hereof and neither Party will be obligated in any way whatsoever to pay or contribute to any such expenses or costs incurred by the other Party hereto. For greater certainty: (a) all legal

or financial advisory fees incurred by the Vendor shall be paid solely by the Vendor, (b) all legal or financial advisory fees incurred by the Purchaser shall be paid solely by the Purchaser; and (c) the fees, if any, incurred by a sales agent, broker, or other person engaged to find, facilitate, or otherwise consummate a transaction for the Purchased Assets shall be paid solely from the proceeds generated from the sale of the Purchased Assets.

**9.9 Time of Essence**

Time will be of the essence of this Agreement.

**9.10 Risk**

Up to the Time of Closing, all risk of loss or damage by fire or any other cause or hazard to the Purchased Assets will remain with the Vendor, which will hold all insurance policies and proceeds thereof in trust for the Vendor and the Purchaser. In the event of any material destruction or damage by fire or any other cause or hazard to any of the Purchased Assets prior to the Time of Closing, which destruction or damage is of such a nature that the Purchaser determines that it no longer wishes to complete the Transaction, acting in its sole and unfettered discretion, then the Purchaser, at its sole option, may within five (5) days of receiving written notice of such destruction or damage, which written notice refers to this provision of this Agreement, terminate this Agreement without liability or obligation to the Vendor. Forthwith thereafter, the Refundable Deposit, without interest, shall be returned to the Purchaser.

*[remainder of page left intentionally blank]*

**IN WITNESS WHEREOF** the Parties hereto have duly executed and delivered this Agreement as of the date first above written.

**KIVUTO SOLUTIONS INC.**

DocuSigned by:  
Per: Mark McKenzie  
EG700F695E0F42E...  
Name:  
Title:  
I have authority to bind the Vendor

**VALSOFT CORPORATION INC.**

DocuSigned by:  
Per: David Felicissimo  
4F18C0FA344E4E2...  
Name:  
Title:

I have authority to bind the Purchaser

**ASPIRE ONTARIO INC.**

Per: \_\_\_\_\_  
Name:  
Title:

I have authority to bind the Purchaser

**IN WITNESS WHEREOF** the Parties hereto have duly executed and delivered this Agreement as of the date first above written.

**KIVUTO SOLUTIONS INC.**

DocuSigned by:  
Per: Mark McKenzie  
EG700F695EBF42E...

Name:

Title:

I have authority to bind the Vendor

**VALSOFT CORPORATION INC.**

Per: \_\_\_\_\_

Name:

Title:

I have authority to bind the Purchaser

**ASPIRE ONTARIO INC.**

DocuSigned by:  
Per: [Signature]  
60A26C4F9D6D473...

Name:

Title:

I have authority to bind the Purchaser

**SCHEDULE "A"**  
**FORM OF APPROVAL AND VESTING ORDER**

*See Attached*

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) [●], THE [●]  
JUSTICE [●] )  
) DAY OF JANUARY, 2023

B E T W E E N:

**THE TORONTO-DOMINION BANK**

Applicant

- and -

**KIVUTO SOLUTIONS INC.**

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended

**APPROVAL AND VESTING ORDER**

THIS MOTION, made by BDO Canada Limited in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets of Kivuto Solutions Inc. (the “**Debtor**”) for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Debtor, as vendor, and Valsoft Corporation Inc. and Aspire Ontario Inc., as purchasers (collectively, the “**Purchasers**”) dated [DATE] and appended to the Report of the Receiver dated [DATE] (the “**Report**”), and vesting in the Purchasers the Debtor’s right, title and interest in and to the assets described in the

Sale Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario by videoconference.

ON READING the Notice of Motion and the Report and on hearing the submissions of counsel for the Receiver, the Applicant, the Purchasers, the Debtor, and such other counsel who were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME] sworn [DATE] filed:

### **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

### **CAPITALIZED TERMS**

2. THIS COURT ORDERS that capitalized terms not defined herein shall have the meanings set out in the Sale Agreement.

### **SALE APPROVAL**

3. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Debtor, which was assigned to and adopted by the Receiver, is hereby authorized and approved, with such minor amendments as the Debtor or Receiver may deem necessary. The Debtor and Receiver are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchasers.

4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver’s certificate to the Purchasers substantially in the form attached as Schedule A hereto (the “**Receiver’s Certificate**”), all of the Debtor’s right, title and interest in and to the Purchased

Assets described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in the Purchasers, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice [NAME] dated [DATE]; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule C) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver’s Certificate, forthwith after delivery thereof.



7. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchasers all human resources and payroll information in the Debtor's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "[●]" to the Sale Agreement. The Purchasers shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

8. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act (Canada)* in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchasers pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act (Canada)* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

**AID AND RECOGNITION**

9. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

---

Schedule A – Form of Receiver’s Certificate

Court File No. [●]

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

- and -

KIVUTO SOLUTIONS INC.

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice [NAME OF JUDGE] of the Ontario Superior Court of Justice (the “Court”) dated [DATE OF ORDER], [NAME OF RECEIVER] was appointed as the receiver (the “Receiver”) of the undertaking, property and assets of Kivuto Solutions Inc. (the “Debtor”).

B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of [DATE OF AGREEMENT] (the “Sale Agreement”) between the Debtor, as vendor, and Valsoft Corporation Inc. and Aspire Ontario Inc., as purchasers (collectively, the “Purchasers”) and provided for the vesting in the Purchasers of the Debtor’s

right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchasers of a certificate confirming (i) the payment by the Purchasers of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section [●] of the Sale Agreement have been satisfied or waived by the Receiver and the Purchasers; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchasers have paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section [●] of the Sale Agreement have been satisfied or waived by the Receiver and the Purchasers; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**BDO Canada Limited, in its capacity as  
Receiver of the undertaking, property and  
assets of Kivuto Solutions Inc., and not in its  
personal capacity**

Per: \_\_\_\_\_  
Name:  
Title:

**Schedule B – Purchased Assets**

**537**

**Schedule C – Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real Property  
(unaffected by the Vesting Order)**

**SCHEDULE "B"**  
**ASSUMED CONTRACTS**

Product Technology Assets:

Including, but not limited to the following Vendor product solutions (collectively the "**Product Technology Assets**"):

- ELMS
- Texidium
- PAL
- eReader

Customer Contracts:

Including, but not limited to the following Vendor KVC Customer contracts (collectively the "**Customer Contracts**"):

- Norton
- Knox College
- George Mason University
- Yale University
- University of Exeter
- Clarivate Analytics (US) LLC
- Georgia Institute of Tech
- The Pennsylvania State University
- University of Massachusetts, Boston
- University of Missouri - Columbia Campus - KVC
- University of Pennsylvania
- California State University, Long Beach
- Vanderbilt University Medical Center

- University of Alberta
- Tufts University
- La Trobe University Information and Communication Technology
- University of Bristol
- University of Colorado
- Brandeis University
- Vanderbilt University
- Georgetown University
- Virginia Commonwealth University
- Princeton University
- University of Liverpool
- Baylor College of Medicine
- The University of British Columbia
- California State University, Los Angeles - KVC
- The University of Akron
- University of Florida
- Georgia State University
- University of Alabama at Birmingham
- University of Minnesota
- University of Louisville
- Technische Hochschule Koln
- The American University in Cairo
- Austin Community College District
- Purdue University Global (Kaplan)
- Michigan State University



- University of San Francisco
- Florida State University
- Humber College
- King's College London
- University of California, San Francisco
- Fachhochschule Bielefeld
- New York University (NYU)
- University of Westminster
- Harrisburg Area Community College
- University of North Carolina - Charlotte
- McGill University
- Tulane University
- California State Polytechnic, Pomona
- Hochschule Hamm-Lippstadt
- Stanford University
- Manchester Metropolitan University
- University of Ottawa
- OCAD UNIVERSITY
- Drexel University
- Hochschule Niederrhein
- California State Polytechnic, San Luis Obispo
- University of Buffalo
- Bucks County Community College
- Winston Salem State University
- Bochum University of Applied Sciences

- TAFE Queensland (TAFE QLD)
- Northwestern University
- Rocky Mountain College of Art & Design
- SAS Institute (Canada) Inc.
- University of Guelph / Guelph-Humber
- San Diego State University
- University System of Georgia
- Eastern Michigan University
- Belmont University
- Wright State University
- Minnesota State Colleges and Universities System
- California State University, Fresno
- LIM College
- SHI International
- Adobe Systems Incorporated
- University of North Texas System
- St. George's School (Colegio San Jorge de Inglaterra)
- Toronto Catholic District School Board / Softchoice Corporation
- Wellesley College
- British Columbia Institute of technology
- SUNY Canton
- The University of Auckland
- California State University, Bakersfield - KVC
- California State University, Channel Islands
- California State University, San Bernardino - KVC

- HEC Montréal
- Salem State University
- California State University - Sonoma
- California State University Stanislaus
- California Institute of Technology
- Humboldt State University, CSU - KVC
- Northcentral University
- Perdoceo Educational Corporation
- UCLA (University of California, Los Angeles)
- University of California, Irvine (UC, Irvine)
- University of Victoria
- University of Colorado Boulder (Domain Site)
- Harvard University
- Mount Holyoke College - South Hadley Campus
- Massey University
- VMUG (Vmware User Group)
- University of Rochester
- McMaster University

Including, but not limited to the following Vendor Texidium Customer contracts (collectively the "Texidium Customer Contracts"):

- Conestoga College
- Universidad Tecnologica de Mexico SC (UNITEC)
- Universidad del Valle de Mexico (UVM)
- George Brown College

- Pearson Canada (Pearson Education)
- Knowledge One
- Algonquin College
- Canadian International Freight Forwarders Association Inc.
- Cestar College
- Insurance Institute of Canada (IIC)
- CCI Learning Solutions Inc
- Éditions JFD
- Douglas College
- The University of Texas at Austin - PETEX
- Brock University
- Queens College of Business
- Essential Impact
- Global College of Business and Tech
- Trios College
- Fraser International College
- Grey Stone
- Ace Career College
- OntarioLearn D2L
- Red River College
- Niagara College
- Classification Primer
- Langara College
- IBT College
- All Saints Catholic High School

- Louis Riel Vocational College
- Canadian College of Naturopath Medicine
- Mount Royal University
- Cegep a Distance
- BC Emergency Health Services
- College Boreal
- University of Lethbridge
- Parkland College
- SAIT (Southern Alberta Institute of Technology)

Vendor Contracts (collectively the "**Vendor Contracts**):

Including, but not limited to the following Vendor ISV Vendor contracts:

- Acethinker
- ACP IT Solutions
- Acronis
- Affinity Click
- Ascend Education
- Astute Digital Solutions
- ATI Studios
- Avangate
- Avira
- Bechtle AG
- CCI Learning
- Check Point Software Technologies
- CleverFiles

- Cobra
- Corel
- Cyberlink
- Cybersecurity Essentials Pty
- Digiarty
- Digimania
- Douglas Stewart
- DrVis Software GmbH
- EaseUS
- FineShare
- Global Education
- Global Regulations Inc
- Graphixly
- Harbinger Knowledge Products
- Hemidal Security
- Hola VPN
- iGrafx
- IHS Global (eViews)
- Impelsys
- Inpixon
- Insight
- Insightful Corporation
- Intelligent Software
- Jasper Learning
- Kintolonline

- Kromtech Alliance (Mackeeper)
- Lamantine Software
- lugum
- MacPaw Inc
- MAGIX
- Mailbird Inc
- Minitab
- Movai Software
- National Instruments
- NDG
- Nero
- NordVPN
- Norton LifeLock (formerly Symantec)
- Nurgo Software
- OriginLab Corporation
- PageCloud
- PanGlobal Training Systems
- Parallels
- PDF Technologies Inc (Filmage)
- Pearl Mountain
- Qoppa Software
- QSR International
- Quark
- SAS Institute
- Scientifics Software International

- Scite AI
- Setapp
- SigmaXL
- Smith Micro Software
- SnapFashun Group
- Sozialforschung GmbH
- Spektra Systems (Cloudlabs)
- StatSoft & TIBCO
- Stellar Data
- Sticky Password
- STRUCTUREPOINT
- Switch
- Systat
- Tefincom SA
- TextExpander, Inc. (used to be known as SmileOnMyMac LLC)
- The Game Creators
- Total Training
- White Smoke
- WipeBook
- Wolfram Research
- Wondershare Global
- XtremeLabs
- EaseUS
- Geekersoft
- Spondooli



Including, but not limited to the following Vendor Publisher contracts (collectively the "Publisher Contracts"):

- ACSD
- Agio Publishing House
- aha! Process
- AHIMA
- Amacom
- AME Learning
- American Technical Publishers
- Bentham Science Publishers
- Berrett-Koehler
- Bloomsbury
- Books of Discovery
- Braindead
- Canadian GeoExchange Coalition
- Canadian Scholars - Women's Press
- Captus Press
- CCI Learning
- Cengage & Nelson
- Centennial College Press
- Common Act
- CYC-Net
- D2L
- Dekalam Hire Learning
- Elsevier

- Emond Publishing
- Erudite Science
- F. A. Davis
- Fernwood Publishing
- Forum for International Trade Training Inc. (FITT)
- HealthCareCAN
- Human Kinetics Publishers Inc
- Jones & Bartlett Learning
- KnowledgeOne
- Kogan Page
- MacMillan
- McGraw Hill Ryerson
- Mike Murach & Associates
- Mujo Learning Systems
- New Society Publishing
- Nugent Training & Consulting Services
- O'Reilly
- Oxford University Press
- Packt Publishing
- PAULIST Press
- Pearson
- Rowman & Littlefield
- Sage Publishing
- Scholastic Inc
- Taylor & Francis Books

- The Entrepreneurial Learning Initiative
- University of Toronto Press
- Vretta
- Wiley
- Wolters Kluwer
- Hobart Institute of Welding Technology

Partner Contracts:

Including, but not limited to the following Vendor Managed Services Partner contracts (collectively the "**Partner Contracts**"):

- Adobe
- D2L
- IBM
- Maxon
- Microsoft
- VMware

Including, but not limited to the following Vendor Web Services Partner contracts (collectively the "**Web Service Partner Contracts**"):

- Academia Ltd
- Asknet AG
- DCCS IT Business Solutions
- GENX Solutions
- JournetED
- NESS
- SHI

- Signpost Belgie BVBA
- SLIM
- SoftwareONE
- SURF
- ThinkEDU

Intellectual Property assets:

Including, but not limited to the following Vendor KVC registered and unregistered trademarks, service marks, logos, slogans, corporate names, business names and other indicia of origin, and all applications and registrations therefor (collectively the "**Intellectual Property Assets**"):

- Kivuto
- Kivuto Cloud
- Texidium
- Texidium eReader
- OnTheHub
- ELMS (Education License Management System)
- PAL (Publisher Adoption Library)

Including, but not limited to the following Vendor registered and unregistered copyrights (collectively the "**Registered and Unregistered Copyrights**"):

- Kivuto product documentation
- Kivuto implementation methodologies
- Kivuto marketing materials and collateral
- Kivuto sales collateral
- Kivuto legal contract templates
- OnTheHub website design

- Kivuto.com website design

Including, but not limited to the following Vendor internet domain names, applications and reservations for internet domain names, uniform resource locators and the corresponding internet sites (collectively the "**Internet Domains**"):

- www.kivuto.com
- www.texidium.com
- www.onthehub.com

Including, but not limited to the following Vendor industrial designs (collectively the "**Industrial Designs**"):

- Kivuto product architecture (technical, application, functional)
- Kivuto product designs (UI/UX)
- Kivuto product code

Including, but not limited to all Vendor trade secrets and proprietary information not otherwise listed above.

Operational Infrastructure Assets (collectively the "**Operational Infrastructure Assets**"):

Including, but not limited to the following Vendor operational assets:

- Office furnishings
- IT infrastructure (servers, laptop computers, desktop computers, monitors, telecom equipment, etc)
- Engineering infrastructure (servers, development environment, QA/testing environment, etc)
- Operational contracts associated with Purchased Assets

**SCHEDULE "C"**  
**PURCHASE PRICE ALLOCATION**

The Purchase Price shall be allocated as follows:

Cash and cash equivalents	\$ _____
Accounts Receivable:	\$ _____
Intellectual Property:	\$ _____
Software:	\$ _____
Inventory:	\$ _____
Books and Records:	\$ _____
Furniture, Fixtures, or Equipment	\$ _____
Goodwill and other Intangible Assets:	\$ _____
Assumed Contracts:	\$ _____
Other Assets (if applicable)	\$ _____

**SCHEDULE "D"**  
**OFFERED EMPLOYEES**

Pursuant to Section 8.1 of the Agreement, the Purchaser, at least five (5) Business Days prior to the Closing Date, shall offer employment to the Offered Employees.

The Offered Employees include:

**SCHEDULE "E"**  
**TRANSITION SERVICES**

- Transition of Accounts Receivables and accounts payables of the Vendor to the Purchaser's bank accounts
- Transition of Vendor's Worldline and Paypal accounts to the Purchaser
- Accounting services to facilitate the foregoing transition of accounts
- Relocation of tangible assets to the Purchaser's premises
- Communication with internal and external stakeholders



January 24, 2023

VIA EMAIL ([clonergan@bdo.ca](mailto:clonergan@bdo.ca) / [mmarchand@bdo.ca](mailto:mmarchand@bdo.ca))

**BDO CANADA LIMITED**

20 Wellington St. East – Suite 500

Toronto, ON M5E 1C5

Attn: Clark Lonergan, Partner & SVP / Matthew Marchand, Partner & VP

Dear Sirs:

**Re: Review of security held by The Toronto-Dominion Bank (“TD” or the “Lender”) as against Kivuto Solutions Inc. (“Amalco”; or, the “Debtor”)**

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At your request, we have reviewed the security granted by the Debtor to TD. We undertake the analysis herein with a view to forming an opinion as to the enforceability of the security as against the personal property of the Debtor situated in Ontario.

This report is provided solely for the benefit of BDO Canada Limited, in its capacity as Court-appointed receiver of the Debtor (the “Receiver”) and may not be used or relied upon by any other person or for any other purpose without our prior express written consent.

**Amalgamation & Terminology**

We understand that the Debtor is the successor by amalgamation of (a) 10600598 Canada Inc. (“106Co”) and (b) Kivuto Solutions Inc. (“KSI”). We have assumed for the purposes of our review that the Debtor is, in fact, the legal successor by amalgamation of each of 106Co and KSI. We have not undertaken any steps to independently verify the same.

We have received and reviewed the closing book in respect of the Loan Document and Security Documents (each as defined herein). In context of such closing, and in anticipation of the aforementioned amalgamation, we understand that each of the amalgamating entities executed certain loan and security documents, which the Debtor subsequently acknowledged and confirmed as binding and valid as against it, post-amalgamation, pursuant to an acknowledgement and confirmation agreement dated March 1, 2018 (the “**Acknowledgement & Confirmation Agreement**”), executed by the Debtor in favour of the Lender.

We have reviewed a copy of the Acknowledgement & Confirmation Agreement and have assumed the same to be a true and complete copy of the same. The Acknowledgement & Confirmation



Agreement appears to be executed on behalf of the Debtor by Carlos Jose Meza-Rios, in his capacity as CEO. We have assumed that the Acknowledgement & Confirmation Agreement has been executed by the appropriate person, within the scope of the authority of such person; and, that the Acknowledgement & Confirmation Agreement represents a valid and subsisting obligation of the Debtor to the Lender.

Accordingly, any reference to the “Debtor” hereinafter shall, unless otherwise stated, include (1) Amalco, (2) 106Co, and/or (3) KSI, as context requires.

## **Loan Document**

### ***The Credit Agreement***

We have reviewed a copy of a credit agreement between the Lender and the Debtor dated March 1, 2018, and of seven amending agreements made between then and November 23, 2022 (as amended, the “**Credit Agreement**”).<sup>1</sup> We have assumed the same to be a true and complete copy of the Credit Agreement (including all amending agreements).

Pursuant to the Credit Agreement, the Lender established various credit facilities in favour of the Debtor, including but not limited to a term loan facility in the maximum amount of \$24,000,000 (CAD) (the “**Term Facility**”); and, a VISA credit facility in the maximum amount of \$22,500 (CAD).

The Term Facility was made available by way of single advance, and (through various amendments) matures on January 31, 2023 or upon demand. The Term Facility bears interest at a rate of 2.75% + the greater of:

- (i) the base rate determined by the Lender for loans made in U.S. Dollars in Canada to Canadian commercial customers; and
- (ii) the rate of interest determined by the Lender to be equal to the weighted average of the rates on overnight federal funds transactions with members of the US Federal Reserve System arranged by federal funds brokers plus 100 basis points.

The Credit Agreement provides that the VISA credit facility comprises part of the Debtor’s loan obligations for all purposes under the Credit Agreement and is secured on a *pari passu* basis with all other obligations thereunder.

The Credit Agreement was executed on behalf of the 106Co by Carlos Jose Meza-Rios, identified as Vice President. We have assumed that the Credit Agreement has been executed by the appropriate person, within the scope of the authority of such person. The Credit Agreement is

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<sup>1</sup> *NOTE: The copy of the third amendment we have received and reviewed is not signed. However, we understand that such amendment was executed; and, regardless, the changes contemplated by the third amendment are further altered by subsequent amendments, which would render the changes in the third amendment moot. Accordingly, we have assumed that either (a) the third amendment has been executed and/or (b) whether or not that is the case, the terms third amendment are no longer operable and do not affect our review of the security discussed herein.*



confirmed by Amalco, pursuant to the Acknowledgement & Confirmation Agreement. We have assumed that value was advanced by the Lender to the Debtor thereunder; and, that the Credit Agreement represents a valid and subsisting obligation of the Debtor to the Lender.

The Credit Agreement will hereinafter be referred to as the “**Loan Document**”.

### **The Security Documents**

#### ***106Co General Security Agreement***

As security for its obligations to the Lender under the Loan Document, 106Co executed a general security agreement dated March 1, 2018 (the “**106-GSA**”). We have reviewed a copy of the 106-GSA, and have assumed the same to be a true and complete copy.

Pursuant to the 106-GSA, 106Co granted a security interest in favour of the Lender in all of its existing and after-acquired personal property; all of the present and future assets, property (both real and personal) and undertakings of the 106Co; and in all right, title and interest which 106Co now has or may later have in all of its assets, property and undertaking.

The 106-GSA appears to be executed on behalf of 106Co by Carlos Jose Meza-Rios, in his capacity as Vice President. We have assumed that the 106-GSA has been executed by the appropriate person, within the scope of the authority of such person. The 106-GSA is confirmed by the Amalco, pursuant to the Acknowledgement & Confirmation Agreement. We have assumed that adequate consideration has been exchanged between the Lender and the Debtor thereunder; and, that the 106-GSA represents a valid and subsisting obligation of the Debtor to the Lender.

#### ***KSI Guarantee***

In connection with the Loan Document, KSI executed an unlimited guarantee dated March 1, 2018 (the “**KSI Guarantee**”) in favour of the Lender, pursuant to which KSI guaranteed all of the present and future indebtedness, liabilities and obligations of 106Co to the Lender under the Loan Document and any agreements ancillary thereto. The KSI Guarantee appears to be executed on behalf of KSI by Carlos Jose Meza-Rios, in his capacity as CEO. We have assumed that the KSI Guarantee has been executed by the appropriate persons, within the scope of the authority of such persons; that adequate consideration has been exchanged between the Lender and KSI connected thereto; and, that the KSI Guarantee represents valid and subsisting obligations of KSI to Lender.

#### ***KSI General Security Agreement***

As security for its obligations to the Lender under the Loan Document, KSI executed a general security agreement dated March 1, 2018 (the “**KSI-GSA**”). We have reviewed a copy of the KSI-GSA, and have assumed the same to be a true and complete copy.



Pursuant to the KSI-GSA, KSI granted a security interest in favour of the Lender in all of its existing and after-acquired personal property; all of the present and future assets, property (both real and personal) and undertakings of the KSI; and in all right, title and interest which KSI now has or may later have in all of its assets, property and undertaking.

The KSI-GSA appears to be executed on behalf of KSI by Carlos Jose Meza-Rios, in his capacity as Vice President. We have assumed that the KSI-GSA has been executed by the appropriate person, within the scope of the authority of such person. As “Security” under the Loan Document, the KSI-GSA is confirmed by Amalco pursuant to the Acknowledgement & Confirmation Agreement. We have assumed that adequate consideration has been exchanged between the Lender and the Debtor thereunder; and, that the KSI-GSA represents a valid and subsisting obligation of the Debtor to the Lender.

### ***Collateral Assignment of Acquisition Agreement<sup>2</sup>***

As further security for its obligations to the Lender under the Loan Document, the Debtor executed a Collateral Assignment of Acquisition Agreement dated March 1, 2018 (the “**Acquisition Agreement**”). We have reviewed a copy of the Acquisition Agreement, and we have assumed the same to be a true and complete copy.

Pursuant to the Acquisition Agreement, in order to ensure the payment and performance of all the present and future indebtedness, liabilities and obligations of the Debtor under the Loan Document and any documents ancillary thereto, the Debtor grants a security interest in in favour of the Lender in all right, title, estate and interest in, to, under and in respect of:

- a) the share purchase agreement dated February 26, 2018, among Kivuto Solutions Inc, 10600598 Canada Inc and the vendors party thereto, (the “**SPA**”),
- b) all deeds, documents, writings, papers, books, books of account and other records relating to the SPA;
- c) all revenues and other moneys now due and payable or hereafter to become due and payable to the Debtor or in connection therewith by the other parties to the SPA or receivable by the Debtor pursuant to or in connection with the SPA; and,
- d) the benefit of any guarantees or indemnities relating to any of the foregoing.

The Acquisition Agreement appears to be executed on behalf of the 106Co by Carlos Jose Meza-Rios, in his capacity as Vice President. We have assumed that the Acquisition Agreement has been executed by the appropriate person, within the scope of the authority of such person. As “Security” under the Loan Document, the Acquisition Agreement is confirmed by Amalco pursuant to the Acknowledgement & Confirmation Agreement. We have assumed that adequate

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<sup>2</sup> We are unsure if this agreement is relevant at this this time, given the nature of the subject of the assignment. However, the recent demand made by the Lender included such agreement as part the security referenced in the Lender’s Section 244 notice, delivered pursuant to the *Bankruptcy and Insolvency Act*. Accordingly, we have included the same as part of this review.



consideration has been exchanged between the Lender and the Debtor thereunder; and, that the Acquisition Agreement represents a valid and subsisting obligation of the Debtor to the Lender.

**Assignment of Insurance**

As security for its obligations to TD, the Debtor entered into an Assignment of Insurance Agreement dated March 1, 2018 (the “**Assignment of Insurance**”). We have reviewed a copy of the Assignment of Insurance and have assumed the same to be a true and complete copy.

Pursuant to the Assignment of Insurance, the Debtor transferred and assigned as security to the Lender the following policies:

No.	Insurer	Insurance Policy No.	Description
1.	Chubb Insurance Company	35946852	Commercial General Liability
2.	Chubb Insurance Company	79873141	Umbrella Liability
3.	Chubb Insurance Company	35946852	Commercial Property
4.	Chubb Insurance Company	35946852	Non-Owned Automobile
5.	Chubb Insurance Company	35946852	Integrity+ by Chubb for Technology (Claims Made)

The Assignment of Insurance appears to be executed on behalf of the KSI by Carlos Jose Meza-Rios, in his capacity as CEO. We have assumed that the same has been executed by the appropriate person, within the scope of the authority of such person. As “Security” under the Loan Document, the Assignment of Insurance is confirmed by Amalco pursuant to the Acknowledgement & Confirmation Agreement. We have assumed that adequate consideration has been exchanged between the Lender and the Debtor thereunder; and, that the Assignment of Insurance represents a valid and subsisting obligation of the Debtor to the Lender

The 106-GSA, the KSI-GSA, the Acquisition Agreement and the Assignment of Insurance are hereinafter, collectively, referred to as the “**Security Documents**”.

**Security Searches**

*A. Personal Property Security Search*

We have obtained and reviewed a search under the *Personal Property Security Act* (Ontario) (“**PPSA**”) in respect of the Debtor and all amalgamating entities, current to January 23, 2023.



The searches disclose that the Lender is one of two parties with registrations against the Debtor. The Lender's registrations are detailed as follows:

- a registration in favour of the Lender against the Debtor in respect of "inventory", "equipment", "accounts", "other" and "motor vehicle included", registered on February 13, 2018, under file no. 736444683 and registration no. 20180213 1132 1590 3243, expiring on February 13, 2024; and
- a registration in favour of the Lender against the Debtor in respect of "inventory", "equipment", "accounts", "other" and "motor vehicle included", registered on February 13, 2018 under file no. 736444692 and registration no. 20180213 1132 1590 3244, expiring on February 13, 2024;

The other party with PPSA registrations against the Debtor is BDC Capital Inc. ("**BDC**"). Those registrations are each registered subsequent to those in favour of the Lender, and are detailed as follows:

- a registration in favour of BDC against the Debtor in respect of "inventory", "equipment", "accounts", and "other", registered on February 22, 2018, under file no. 736640415 and registration no. 20180222 1030 1590 3793, expiring on February 22, 2027; and
- a registration in favour of BDC against the Debtor in respect of "inventory", "equipment", "accounts", and "other", registered on February 22, 2018, under file no. 736640487 and registration no. 20180222 1039 1590 3796, expiring on February 22, 2027.

Although we offer no opinion as to the priority of the security interests considered herein, we note that (a) the registrations in favour of BDC are dated after the registrations in favour of the Lender; and, (b) pursuant to a priorities and standstill agreement dated March 1, 2018, by and between the Lender, BDC and 106Co, BDC appears to have subordinated and postponed its security interests against 106Co to those interests of the Lender.

We have assumed that the information contained in the PPSA searches is correct, accurate and complete, and that monies or other consideration were advanced by the Lender to the Debtor, as applicable, such that the respective member of the Debtor acquired value from TD, such that the security interest granted and now held by the Lender under each of the aforementioned registrations attached and is perfected under prevailing laws, and continues to be so registered, attached and perfected as of the date hereof.

A copy of the PPSA search is attached hereto as Appendix "A".



*B. Real Property Searches*

We have not been asked to review or assess any security interest in respect of any real property. Accordingly, we have not conducted searches of any real property in Ontario or elsewhere. Should you require any such inquiry, we can conduct the same upon request.

*C. Bank Act Search*

We have obtained a search certificate issued by the Authorized Section 427 Bank Act Registrar in respect of the Debtor and all amalgamating entities, dated January 24, 2023, which indicates that no "Notice of Intention to Give Security" under section 427 of the *Bank Act* (Canada) has been filed in respect of the Debtor. A copy of the Bank Act Search is attached hereto as Appendix "B".

**Assumptions and Qualifications**

*Specific Assumptions*

- Such specific assumptions as set out in the body of this review.

*Specific Qualifications*

- Such specific qualifications as set out in the body of this review.

*General Assumptions and Qualifications*

- In addition to such other assumptions and qualifications set out herein, our review is subject to the general assumptions and qualifications set out in Appendix "C" attached hereto.

**Conclusion**

Subject to the assumptions and qualifications above and otherwise herein, and those set out in the Appendix "C" hereto, it is our opinion that the security interests granted by the Debtor to the Lender under the Security Documents, as the concerns personal property of the Debtor situated in Ontario, are valid and enforceable as of the date hereof.

If you require any further assistance or have any questions in respect of the matters discussed herein, please do not hesitate to contact us.

Yours very truly,

LOOPSTRA NIXON LLP

E. & O. E.  
Encl.



**APPENDIX "A"**  
**PPSA SEARCHES**  
**(see attached)**



Enquiry Result

File Currency: 23JAN 2023




Show All Pages

**Note: All pages have been returned.**

Type of Search	Business Debtor								
Search Conducted On	KIVUTO SOLUTIONS INC.								
File Currency	23JAN 2023								
	File Number	Family	of Families	Page	of Pages	Expiry Date	Status		
	736444683	1	3	1	9	13FEB 2024			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number	Registered Under	Registration Period		
736444683		001	1		20180213 1132 1590 3243	P PPSA	5		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	KIVUTO SOLUTIONS INC.								
	Address				City	Province	Postal Code		
	126 YORK STREET, SUITE 200				OTTAWA	ON	K1N 5T5		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address				City	Province	Postal Code		
Secured Party	Secured Party / Lien Claimant								
	THE TORONTO-DOMINION BANK								
	Address				City	Province	Postal Code		
	1470 DON MILLS ROAD, 3RD FLOOR				TORONTO	ON	M3B 2X9		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
		X	X	X	X	X			
Motor Vehicle Description	Year	Make			Model	V.I.N.			
General Collateral Description	General Collateral Description								

Registering Agent	Registering Agent			
Address	City	Province	Postal Code	
FOGLER, RUBINOFF LLP (D. ROMPEN)				
77 KING STREET WEST, SUITE 3000 PO BOX 9	TORONTO	ON	M5K 1G8	

**565**

CONTINUED

Type of Search	Business Debtor								
Search Conducted On	KIVUTO SOLUTIONS INC.								
File Currency	23JAN 2023								566
	File Number	Family	of Families	Page					of Pages
	736444683	1	3	2					9
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>									
	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule Attached	Registration Number			Registered Under	
		001	1		20230118 0951 1590 7266				
Record Referenced	File Number	Page Amended	No Specific Page Amended	Change Required	Renewal Years	Correct Period			
	736444683		X	A AMNDMNT					
Reference Debtor/ Transferor	First Given Name			Initial	Surname				
	Business Debtor Name								
	KIVUTO SOLUTIONS INC.								
Other Change	Other Change								
Reason / Description	Reason / Description								
	AMENDMENT OF REFERENCE FILE NUMBER 736444683 TO CHANGE THE ADDRESS OF THE DEBTOR KIVUTO SOLUTIONS INC.								
Debtor/ Transferee	Date of Birth	First Given Name			Initial	Surname			
	Business Debtor Name							Ontario Corporation Number	
	KIVUTO SOLUTIONS INC.								
	Address				City	Province	Postal Code		
	495 RICHMOND RD., SUITE 100				OTTAWA	ON	K2A 4B2		
Assignor Name	Assignor Name								
Secured Party	Secured party, lien claimant, assignee								
	Address				City	Province	Postal Code		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
Motor Vehicle Description	Year	Make			Model		V.I.N.		
	General Collateral Description								
Registering Agent	Registering Agent or Secured Party/ Lien Claimant								
	FOGLER, RUBINOFF LLP (THILL)								

	Address	City	Province	Postal Code
	77 KING STREET WEST, SUITE 3000 PO BOX 9	TORONTO	ON	M5K 1G8

CONTINUED

Type of Search	Business Debtor								
Search Conducted On	KIVUTO SOLUTIONS INC.								
File Currency	23JAN 2023								<b>568</b>
	File Number	Family	of Families	Page					of Pages
	736444683	1	3	3					9
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>									
	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule Attached	Registration Number			Registered Under	
		01	001		20230119 1452 1590 7631				
Record Referenced	File Number	Page Amended	No Specific Page Amended	Change Required	Renewal Years	Correct Period			
	736444683			B RENEWAL	1				
Reference Debtor/ Transferor	First Given Name			Initial	Surname				
	Business Debtor Name								
	KIVUTO SOLUTIONS INC.								
Other Change	Other Change								
Reason / Description	Reason / Description								
Debtor/ Transferee	Date of Birth	First Given Name			Initial	Surname			
	Business Debtor Name							Ontario Corporation Number	
	Address				City	Province	Postal Code		
Assignor Name	Assignor Name								
Secured Party	Secured party, lien claimant, assignee								
	Address				City	Province	Postal Code		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
Motor Vehicle Description	Year	Make			Model			V.I.N.	
General Collateral Description	General Collateral Description								
Registering Agent	Registering Agent or Secured Party/ Lien Claimant								
	FOGLER, RUBINOFF LLP (THILL)								

	Address	City	Province	Postal Code
	77 KING STREET WEST, SUITE 3000 PO BOX 9	TORONTO	ON	M5K 1G8

END OF FAMILY

**569**

Type of Search	Business Debtor								
Search Conducted On	KIVUTO SOLUTIONS INC.								
File Currency	23JAN 2023						<b>570</b>		
	File Number	Family	of Families	Page	of Pages	Expiry Date	Status		
	736444692	2	3	4	9	13FEB 2024			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number	Registered Under	Registration Period		
736444692		001	1		20180213 1132 1590 3244	P PPSA	5		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	10600598 CANADA INC.								
	Address				City	Province	Postal Code		
	199 BAY STREET, 5300 COMMERCE COURT WEST				TORONTO	ON	M5L 1B9		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address				City	Province	Postal Code		
Secured Party	Secured Party / Lien Claimant								
	THE TORONTO-DOMINION BANK								
	Address				City	Province	Postal Code		
	1470 DON MILLS ROAD, 3RD FLOOR				TORONTO	ON	M3B 2X9		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
		X	X	X	X	X			
Motor Vehicle Description	Year	Make			Model	V.I.N.			
General Collateral Description	General Collateral Description								
Registering Agent	Registering Agent								
	FOGLER, RUBINOFF LLP (D. ROMPEN)								
	Address				City	Province	Postal Code		
	77 KING STREET WEST, SUITE 3000 PO BOX 9				TORONTO	ON	M5K 1G8		

CONTINUED

Type of Search	Business Debtor								
Search Conducted On	KIVUTO SOLUTIONS INC.								
File Currency	23JAN 2023 <span style="float: right;">571</span>								
	File Number	Family	of Families	Page					of Pages
	736444692	2	3	5					9
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>									
	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule Attached	Registration Number			Registered Under	
		001	2		20180313 1550 1590 5251				
Record Referenced	File Number	Page Amended	No Specific Page Amended	Change Required	Renewal Years	Correct Period			
	736444692		X	A AMNDMNT					
Reference Debtor/ Transferor	First Given Name			Initial	Surname				
	Business Debtor Name								
	10600598 CANADA INC.								
Other Change	Other Change								
Reason / Description	Reason / Description								
	TO CHANGE THE NAME OF THE DEBTOR TO KIVUTO SOLUTIONS INC. PURSUANT TO ARTICLES OF AMALGAMATION FILED ON MARCH 1, 2018 AND TO CHANGE THE ADDRESS OF THE DEBTOR TO 126 YORK STREET, SUITE 200, OTTAWA, ONTARIO								
Debtor/ Transferee	Date of Birth	First Given Name			Initial	Surname			
	Business Debtor Name							Ontario Corporation Number	
	KIVUTO SOLUTIONS INC.								
	Address				City	Province	Postal Code		
	126 YORK STREET, SUITE 200				OTTAWA	ON	K1N 5T5		
Assignor Name	Assignor Name								
Secured Party	Secured party, lien claimant, assignee								
	Address				City	Province	Postal Code		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
Motor Vehicle Description	Year	Make			Model			V.I.N.	
General Collateral Description	General Collateral Description								
Registering Agent	Registering Agent or Secured Party/ Lien Claimant								
	FOGLER, RUBINOFF LLP (D. ROMPEN)								



	Address	City	Province	Postal Code
	77 KING STREET WEST, SUITE 3000 PO BOX 9	TORONTO	ON	M5K 1G8

CONTINUED

Type of Search	Business Debtor								
Search Conducted On	KIVUTO SOLUTIONS INC.								
File Currency	23JAN 2023								<b>573</b>
	File Number	Family	of Families	Page					of Pages
	736444692	2	3	6					9
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>									
	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule Attached	Registration Number			Registered Under	
		002	2		20180313 1550 1590 5251				
Record Referenced	File Number	Page Amended	No Specific Page Amended	Change Required	Renewal Years	Correct Period			
	736444692								
Reference Debtor/ Transferor	First Given Name			Initial	Surname				
	Business Debtor Name								
Other Change	Other Change								
Reason / Description	Reason / Description								
	K1N 5T5								
Debtor/ Transferee	Date of Birth	First Given Name			Initial	Surname			
	Business Debtor Name							Ontario Corporation Number	
	Address				City	Province	Postal Code		
Assignor Name	Assignor Name								
Secured Party	Secured party, lien claimant, assignee								
	Address				City	Province	Postal Code		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
Motor Vehicle Description	Year	Make			Model			V.I.N.	
General Collateral Description	General Collateral Description								
Registering Agent	Registering Agent or Secured Party/ Lien Claimant								

	Address	City	Province	Postal Code

CONTINUED

Type of Search	Business Debtor								
Search Conducted On	KIVUTO SOLUTIONS INC.								
File Currency	23JAN 2023								<b>575</b>
	File Number	Family	of Families	Page					of Pages
	736444692	2	3	7					9
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>									
	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule Attached	Registration Number			Registered Under	
		001	1		20230119 1052 1590 7547				
Record Referenced	File Number	Page Amended	No Specific Page Amended	Change Required	Renewal Years	Correct Period			
	736444692		X	A AMNDMNT					
Reference Debtor/ Transferor	First Given Name			Initial	Surname				
	Business Debtor Name								
	KIVUTO SOLUTIONS INC.								
Other Change	Other Change								
Reason / Description	Reason / Description								
	AMENDMENT OF REFERENCE FILE NUMBER 736444692 TO CHANGE THE ADDRESS OF THE DEBTOR KIVUTO SOLUTIONS INC.								
Debtor/ Transferee	Date of Birth	First Given Name			Initial	Surname			
	Business Debtor Name							Ontario Corporation Number	
	KIVUTO SOLUTIONS INC.								
	Address				City	Province	Postal Code		
	495 RICHMOND RD., SUITE 100				OTTAWA	ON	K2A 4B2		
Assignor Name	Assignor Name								
Secured Party	Secured party, lien claimant, assignee								
	Address				City	Province	Postal Code		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
Motor Vehicle Description	Year	Make			Model		V.I.N.		
General Collateral Description	General Collateral Description								
Registering Agent	Registering Agent or Secured Party/ Lien Claimant								
	FOGLER, RUBINOFF LLP (THILL)								

	Address	City	Province	Postal Code
	77 KING STREET WEST, SUITE 3000 PO BOX 9	TORONTO	ON	M5K 1G8

CONTINUED

Type of Search	Business Debtor								
Search Conducted On	KIVUTO SOLUTIONS INC.								
File Currency	23JAN 2023								<b>577</b>
	File Number	Family	of Families	Page					of Pages
	736444692	2	3	8					9
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>									
	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule Attached	Registration Number			Registered Under	
		01	001		20230119 1452 1590 7630				
Record Referenced	File Number	Page Amended	No Specific Page Amended	Change Required	Renewal Years	Correct Period			
	736444692			B RENEWAL	1				
Reference Debtor/ Transferor	First Given Name			Initial	Surname				
	Business Debtor Name								
	KIVUTO SOLUTIONS INC.								
Other Change	Other Change								
Reason / Description	Reason / Description								
Debtor/ Transferee	Date of Birth	First Given Name			Initial	Surname			
	Business Debtor Name							Ontario Corporation Number	
	Address				City	Province	Postal Code		
Assignor Name	Assignor Name								
Secured Party	Secured party, lien claimant, assignee								
	Address				City	Province	Postal Code		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
Motor Vehicle Description	Year	Make			Model			V.I.N.	
General Collateral Description	General Collateral Description								
Registering Agent	Registering Agent or Secured Party/ Lien Claimant								
	FOGLER, RUBINOFF LLP (THILL)								

	Address	City	Province	Postal Code
	77 KING STREET WEST, SUITE 3000 PO BOX 9	TORONTO	ON	M5K 1G8

END OF FAMILY

**578**

Type of Search	Business Debtor								
Search Conducted On	KIVUTO SOLUTIONS INC.								
File Currency	23JAN 2023						<b>579</b>		
	File Number	Family	of Families	Page	of Pages	Expiry Date	Status		
	736640415	3	3	9	9	22FEB 2027			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number	Registered Under	Registration Period		
736640415		001	1		20180222 1030 1590 3793	P PPSA	9		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	KIVUTO SOLUTIONS INC.								
	Address				City	Province	Postal Code		
	126 YORK STREET, SUITE 200				OTTAWA	ON	K1N 5T5		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address				City	Province	Postal Code		
Secured Party	Secured Party / Lien Claimant								
	BDC CAPITAL INC.								
	Address				City	Province	Postal Code		
	SUITE 1100-50 O'CONNOR STREET				OTTAWA	ON	K1P 6L2		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
		X	X	X	X				
Motor Vehicle Description	Year	Make			Model	V.I.N.			
General Collateral Description	General Collateral Description								
Registering Agent	Registering Agent								
	KELLY SANTINI LLP AG								
	Address				City	Province	Postal Code		
	160 ELGIN ST. SUITE 2401				OTTAWA	ON	K2P 2P7		

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Enquiry Result

File Currency: 23JAN 2023

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Type of Search	Business Debtor								
Search Conducted On	10600598 CANADA INC.								
File Currency	23JAN 2023								
	File Number	Family	of Families	Page	of Pages	Expiry Date	Status		
	736444692	1	2	1	6	13FEB 2024			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number	Registered Under	Registration Period		
736444692		001	1		20180213 1132 1590 3244	P PPSA	5		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	10600598 CANADA INC.								
	Address				City	Province	Postal Code		
	199 BAY STREET, 5300 COMMERCE COURT WEST				TORONTO	ON	M5L 1B9		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address				City	Province	Postal Code		
Secured Party	Secured Party / Lien Claimant								
	THE TORONTO-DOMINION BANK								
	Address				City	Province	Postal Code		
	1470 DON MILLS ROAD, 3RD FLOOR				TORONTO	ON	M3B 2X9		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
		X	X	X	X	X			
Motor Vehicle Description	Year	Make			Model		V.I.N.		
General Collateral Description	General Collateral Description								

Registering Agent	Registering Agent			
Address	City	Province	Postal Code	
FOGLER, RUBINOFF LLP (D. ROMPEN)				
77 KING STREET WEST, SUITE 3000 PO BOX 9	TORONTO	ON	M5K 1G8	

582

CONTINUED

Type of Search	Business Debtor										
Search Conducted On	10600598 CANADA INC.										
File Currency	23JAN 2023										
	File Number	Family	of Families	Page						of Pages	
	736444692	1	2	2						6	
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>											
	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule Attached	Registration Number				Registered Under		
		001	2		20180313 1550 1590 5251						
Record Referenced	File Number	Page Amended	No Specific Page Amended	Change Required	Renewal Years	Correct Period					
	736444692		X	A AMNDMNT							
Reference Debtor/ Transferor	First Given Name			Initial	Surname						
	Business Debtor Name										
	10600598 CANADA INC.										
Other Change	Other Change										
Reason / Description	Reason / Description										
	TO CHANGE THE NAME OF THE DEBTOR TO KIVUTO SOLUTIONS INC. PURSUANT TO ARTICLES OF AMALGAMATION FILED ON MARCH 1, 2018 AND TO CHANGE THE ADDRESS OF THE DEBTOR TO 126 YORK STREET, SUITE 200, OTTAWA, ONTARIO										
Debtor/ Transferee	Date of Birth	First Given Name			Initial	Surname					
	Business Debtor Name								Ontario Corporation Number		
	KIVUTO SOLUTIONS INC.										
	Address				City	Province	Postal Code				
	126 YORK STREET, SUITE 200				OTTAWA	ON	K1N 5T5				
Assignor Name	Assignor Name										
Secured Party	Secured party, lien claimant, assignee										
	Address				City	Province	Postal Code				
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date		
Motor Vehicle Description	Year	Make			Model			V.I.N.			
General Collateral Description	General Collateral Description										
Registering Agent	Registering Agent or Secured Party/ Lien Claimant										
	FOGLER, RUBINOFF LLP (D. ROMPEN)										

	Address	City	Province	Postal Code
	77 KING STREET WEST, SUITE 3000 PO BOX 9	TORONTO	ON	M5K 1G8

CONTINUED

Type of Search	Business Debtor									
Search Conducted On	10600598 CANADA INC.									
File Currency	23JAN 2023									
	File Number	Family	of Families	Page						of Pages
	736444692	1	2	3						6
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>										
	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule Attached	Registration Number				Registered Under	
		002	2		20180313 1550 1590 5251					
Record Referenced	File Number	Page Amended	No Specific Page Amended	Change Required			Renewal Years	Correct Period		
	736444692									
Reference Debtor/ Transferor	First Given Name			Initial	Surname					
	Business Debtor Name									
Other Change	Other Change									
Reason / Description	Reason / Description									
	K1N 5T5									
Debtor/ Transferee	Date of Birth	First Given Name			Initial	Surname				
	Business Debtor Name							Ontario Corporation Number		
	Address				City		Province	Postal Code		
Assignor Name	Assignor Name									
Secured Party	Secured party, lien claimant, assignee									
	Address				City		Province	Postal Code		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date	
Motor Vehicle Description	Year	Make			Model			V.I.N.		
General Collateral Description	General Collateral Description									
Registering Agent	Registering Agent or Secured Party/ Lien Claimant									

	Address	City	Province	Postal Code

CONTINUED

Type of Search	Business Debtor								
Search Conducted On	10600598 CANADA INC.								
File Currency	23JAN 2023								
	File Number	Family	of Families	Page					of Pages
	736444692	1	2	4					6
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>									
	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule Attached	Registration Number			Registered Under	
		001	1		20230119 1052 1590 7547				
Record Referenced	File Number	Page Amended	No Specific Page Amended	Change Required	Renewal Years	Correct Period			
	736444692		X	A AMNDMNT					
Reference Debtor/ Transferor	First Given Name			Initial	Surname				
	Business Debtor Name								
	KIVUTO SOLUTIONS INC.								
Other Change	Other Change								
Reason / Description	Reason / Description								
	AMENDMENT OF REFERENCE FILE NUMBER 736444692 TO CHANGE THE ADDRESS OF THE DEBTOR KIVUTO SOLUTIONS INC.								
Debtor/ Transferee	Date of Birth	First Given Name			Initial	Surname			
	Business Debtor Name							Ontario Corporation Number	
	KIVUTO SOLUTIONS INC.								
	Address				City	Province	Postal Code		
	495 RICHMOND RD., SUITE 100				OTTAWA	ON	K2A 4B2		
Assignor Name	Assignor Name								
Secured Party	Secured party, lien claimant, assignee								
	Address				City	Province	Postal Code		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
Motor Vehicle Description	Year	Make			Model			V.I.N.	
General Collateral Description	General Collateral Description								
Registering Agent	Registering Agent or Secured Party/ Lien Claimant								
	FOGLER, RUBINOFF LLP (THILL)								



	Address	City	Province	Postal Code
	77 KING STREET WEST, SUITE 3000 PO BOX 9	TORONTO	ON	M5K 1G8

CONTINUED

Type of Search	Business Debtor									
Search Conducted On	10600598 CANADA INC.									
File Currency	23JAN 2023									
	File Number	Family	of Families	Page						of Pages
	736444692	1	2	5						6
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>										
	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule Attached	Registration Number				Registered Under	
		01	001		20230119 1452 1590 7630					
Record Referenced	File Number	Page Amended	No Specific Page Amended	Change Required			Renewal Years	Correct Period		
	736444692			B RENEWAL			1			
Reference Debtor/ Transferor	First Given Name			Initial	Surname					
	Business Debtor Name									
	KIVUTO SOLUTIONS INC.									
Other Change	Other Change									
Reason / Description	Reason / Description									
Debtor/ Transferee	Date of Birth	First Given Name			Initial	Surname				
	Business Debtor Name							Ontario Corporation Number		
	Address				City		Province	Postal Code		
Assignor Name	Assignor Name									
Secured Party	Secured party, lien claimant, assignee									
	Address				City		Province	Postal Code		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date	
Motor Vehicle Description	Year	Make			Model			V.I.N.		
General Collateral Description	General Collateral Description									
Registering Agent	Registering Agent or Secured Party/ Lien Claimant									
	FOGLER, RUBINOFF LLP (THILL)									

	Address	City	Province	Postal Code
	77 KING STREET WEST, SUITE 3000 PO BOX 9	TORONTO	ON	M5K 1G8

END OF FAMILY

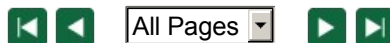
**590**

Type of Search	Business Debtor								
Search Conducted On	10600598 CANADA INC.								
File Currency	23JAN 2023						<b>591</b>		
	File Number	Family	of Families	Page	of Pages	Expiry Date	Status		
	736640487	2	2	6	6	22FEB 2027			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number	Registered Under	Registration Period		
736640487		001	1		20180222 1039 1590 3796	P PPSA	9		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	10600598 CANADA INC.								
	Address				City	Province	Postal Code		
	126 YORK STREET, SUITE 200				OTTAWA	ON	K1N 5T5		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address				City	Province	Postal Code		
Secured Party	Secured Party / Lien Claimant								
	BDC CAPITAL INC.								
	Address				City	Province	Postal Code		
	SUITE 1100-50 O'CONNOR STREET				OTTAWA	ON	K1P 6L2		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
		X	X	X	X				
Motor Vehicle Description	Year	Make			Model	V.I.N.			
General Collateral Description	General Collateral Description								
Registering Agent	Registering Agent								
	KELLY SANTINI LLP AG								
	Address				City	Province	Postal Code		
	160 ELGIN ST. SUITE 2401				OTTAWA	ON	K2P 2P7		

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**APPENDIX "B"**  
**BANK ACT SEARCHES**  
**(see attached)**

## Confirmation Letter / Lettre de confirmation

594

Teranet Collateral Management Solutions Corporation / Teranet Solutions de gestion des garanties

Suite 200, 4126 Norland Avenue, Burnaby, BC V5G 3S8

Authorized Section 427 Bank Act Registrar / Bureau d'enregistrement autorisé conformément à l'article 427 de la *Loi sur les banques*.

2023/01/24 10:32:53 AM PST

Dye & Durham Corporation  
4610-199 Bay Street  
Toronto, Ontario  
M5L 1E9

Ref / Objet: 05404637

Tel/Tél: 1-416-964-2677  
Fax/Télécopie: 1-416-923-1077  
e-Mail/Courriel:

Acct#: 7129

Dear Sir / Madam

Monsieur / Madame

Re: **Bank Act Security - Section 427**

Objet: **Garanties données en vertu de la *Loi sur les banques* - article 427**

We have processed your request(s) and hereby confirm the following results: (\*see below).

Nous avons donné suite à votre (vos) demande(s) et nous vous faisons part des résultats suivants: (\* voir ci-dessous).

### REFERENCE

(2) A search has been made of the [notices of intention to give security](#) under the Bank Act registered in the province of [Ontario](#). As at the date and time above, our records indicate the following.

### REFERENCE

(2) Nous avons examiné [les préavis](#) qui se rapportent aux garanties données en vertu de la *Loi sur les banques* et qui sont enregistrés pour la province de: [Ontario](#). À la date et à l'heure indiquées ci-dessus.

### Your search for the company

[KIVUTO SOLUTIONS INC.](#)

returns the following results:

### Votre recherche pour la société

[KIVUTO SOLUTIONS INC.](#)

révèle les résultats suivants:

Type	Registration Name Enregistrement au nom de	Address Adresse	Date	Number Numéro	Bank Banque
------	---	--------------------	------	------------------	----------------

(2) No matches were found / Aucune donnée correspondante au registre



For Registrar / Pour le Régistrare

We acknowledge receipt of fees as follows:

Nous accusons réception des droits prescrits dont les montants s'établissent comme suit:

Type	Fee Tarif	GST/HST TPS/TVH	Qty Qté	TOTAL	Receipt No. Numéro du reçu
(2)	\$14.00	\$0.78	1	\$14.78	05404637 - R-R-SN-W

**\$14.78**

GST-HST / TPS-TVH #: 713 901 494 RT0001

## Confirmation Letter / Lettre de confirmation

595

Teranet Collateral Management Solutions Corporation / Teranet Solutions de gestion des garanties

Suite 200, 4126 Norland Avenue, Burnaby, BC V5G 3S8

Authorized Section 427 Bank Act Registrar / Bureau d'enregistrement autorisé conformément à l'article 427 de la *Loi sur les banques*.

2023/01/24 10:45:22 AM PST

Dye & Durham Corporation  
4610-199 Bay Street  
Toronto, Ontario  
M5L 1E9

Ref / Objet: 05404655

Tel/Tél: 1-416-964-2677  
Fax/Télécopie: 1-416-923-1077  
e-Mail/Courriel:

Acct#: 7129

Dear Sir / Madam

Monsieur / Madame

Re: **Bank Act Security - Section 427**

Objet: **Garanties données en vertu de la *Loi sur les banques* - article 427**

We have processed your request(s) and hereby confirm the following results: (\*see below).

Nous avons donné suite à votre (vos) demande(s) et nous vous faisons part des résultats suivants: (\* voir ci-dessous).

### REFERENCE

(2) A search has been made of the [notices of intention to give security](#) under the Bank Act registered in the province of [Ontario](#). As at the date and time above, our records indicate the following.

### REFERENCE

(2) Nous avons examiné [les préavis](#) qui se rapportent aux garanties données en vertu de la *Loi sur les banques* et qui sont enregistrés pour la province de: [Ontario](#). À la date et à l'heure indiquées ci-dessus.

### Your search for the company

[10600598 CANADA INC.](#)

returns the following results:

### Votre recherche pour la société

[10600598 CANADA INC.](#)

révèle les résultats suivants:

Type	Registration Name Enregistrement au nom de	Address Adresse	Date	Number Numéro	Bank Banque
(2)	No matches were found / Aucune donnée correspondante au registre				



For Registrar / Pour le Régistrare

We acknowledge receipt of fees as follows:

Nous accusons réception des droits prescrits dont les montants s'établissent comme suit:

Type	Fee Tarif	GST/HST TPS/TVH	Qty Qté	TOTAL	Receipt No. Numéro du reçu
(2)	\$14.00	\$0.78	1	\$14.78	05404655 - R-R-SN-W
				<b>\$14.78</b>	

GST-HST / TPS-TVH #: 713 901 494 RT0001





## APPENDIX “C”

### GENERAL ASSUMPTIONS AND QUALIFICATIONS

#### Assumptions

For the purposes of the views expressed in the security review to which these general assumptions and qualifications are appended, we have made the following assumptions:

- (a) all signatures, including, without limitation, any electronic or digital signatures, are genuine, all documents submitted to us as originals are authentic, and all documents submitted to us as copies conform to authentic original documents;
- (b) that each of the documents provided to us was executed on the day appearing on each document as the date of the document or the date of execution;
- (c) the full legal capacity of those individuals signing any documents at all relevant times;
- (d) the documents and any amendments thereto that we have reviewed have not been otherwise amended or supplemented since execution;
- (e) other than as disclosed and discussed, no further registrations by the Lender were required to maintain perfected security interests under governing laws;
- (f) that the security interests granted by the Security Documents have attached;
- (g) the conduct of the parties to the documents has complied with any requirement of good faith, fair dealing and conscionability;
- (h) there are no agreements or understandings between any parties, written or oral, and there is no usage of trade or course of prior dealing between any parties that would, in either case, define, supplement or qualify the terms of the documents;
- (i) the accuracy and completeness of the records maintained by any office of public record;
- (j) that the funds purported to be advanced by pursuant to the Loan Document and secured by the Security Documents have actually been advanced to the appropriate parties following or, as the case may be, in advance of the execution of the Loan Document, and remain outstanding; and
- (k) there are no facts that would disentitle the Lender from relying on the “Indoor Management Rule” (if necessary and available under governing laws).

#### Qualifications

The views expressed in the security review to which these general assumptions and qualifications are appended are subject to the following qualifications:



- (a) the enforceability of the Loan Document and the Security Documents may be limited by general principles of equity, and no opinion is given as to any specific remedy that may be granted, imposed or rendered (including equitable remedies such as specific performance and injunction);
- (b) no opinion is expressed as to title or the beneficial interest of any person in any property;
- (c) no opinion, other than expressly stated, is expressed regarding any security interests or registered or unregistered third-party claims which may rank in priority to the Lender's security interests;
- (d) no opinion, other than expressly stated, is expressed regarding the priority of the security interests discussed herein or their relative priority as between the Lender and any other creditor of the Company; and
- (e) the enforcement of the Letter Agreement and Leases, as amended from time to time, the Security Documents and Mortgages and any other documents held by the Lender or any judgment arising out of or in connection therewith may be limited by bankruptcy, insolvency, winding-up, reorganization, limitation of action, moratorium, fraudulent conveyance, assignments and preferences, or other laws affecting creditors' rights generally.

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

and

KIVUTO SOLUTIONS INC.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY  
ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE

**CONFIDENTIAL SUPPLEMENTARY REPORT OF THE PROPOSED  
RECEIVER, BDO CANADA LIMITED**

**January 27, 2023**

**(Filed with Court under sealed envelope for Court consideration)**

Court File No. CV-23-00693569-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

THE HONOURABLE	)	TUESDAY, THE 7 <sup>TH</sup>
	)	
JUSTICE MCEWEN	)	DAY OF FEBRUARY, 2023

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

and

KIVUTO SOLUTIONS INC.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

**ORDER**  
**(appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “BIA”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “CJA”) appointing BDO Canada Limited (“BDO”) as receiver and manager (in such capacity, the “Receiver”) without security, of all of the assets, undertakings and properties of Kivuto Solutions Inc. (the “Debtor”) acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario by videoconference.

ON READING the Affidavit of Andrea Jamnisek (sworn/affirmed) January 27, 2023 and the Exhibits thereto, the Report of BDO in its capacity as the Proposed Receiver, dated January 27, 2023 (the "Report") and the confidential supplementary report of BDO, dated January 27, 2023 (the "Confidential Report") and on hearing the submissions of counsel for the applicant, the Debtor, the Purchasers and the Receiver, no one appearing for \*\*Press F11 to insert (name)\*\* although duly served as appears from the Affidavit of Service of \*\*Press F11 to insert (name)\*\* (sworn/affirmed) \*\*Press F11 to insert (date)\*\* and on reading the Consent of BDO to act as the Receiver,

**SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the application is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

**APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, BDO is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

**RECEIVER'S POWERS**

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, repudiate or disclaim any contracts or agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform, modify and/or terminate any contracts or agreements to which the Debtor is a party;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;

- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$100,000; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* shall not be required.

- (m) in particular, to complete, with such reasonable and appropriate changes as may be necessary, an agreement of purchase and sale for the assets and undertaking of the Debtor, as Vendor, and Valsoft Corporation Inc. and Aspire Ontario Inc., as purchasers, dated January 17, 2023 and as described in the Pre-Receivership Report, filed;
- (n) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (o) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (p) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;



- (q) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (r) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (s) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (t) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

**DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “Persons” and each being a “Person”) shall forthwith advise the Receiver of the existence of any Property in such Person’s possession or control, shall grant immediate and continued access

to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate

access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days' notice to such landlord and any such secured creditors.

**NO PROCEEDINGS AGAINST THE RECEIVER**

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

**NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH THE RECEIVER**

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

**CONTINUATION OF SERVICES**

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers,

facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

**RECEIVER TO HOLD FUNDS**

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the “Post Receivership Accounts”) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

**EMPLOYEES**

14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor’s behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

**PIPEDA**

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “Sale”). Each prospective Purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The Purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

**LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “Possession”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “Environmental Legislation”),

provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER'S ACCOUNTS**

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a Judge of the Commercial List of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “Receiver’s Borrowings Charge”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.



22. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### **SERVICE AND NOTICE**

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <https://www.bdo.ca/en-ca/extranets/Kivuto/>.

26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

**GENERAL**

27. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

29. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located,

for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. THIS COURT ORDERS that the applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the applicant's security or, if not so provided by the applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

32. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

33. THIS COURT ORDERS that this Order is effective from the date it is made and is enforceable without any need for entry or filing.

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**SCHEDULE “A”****RECEIVER CERTIFICATE**

CERTIFICATE NO. \*\*Press F11 to insert (number)\*\*

AMOUNT \$ \*\*Press F11 to insert (amount)\*\*

1. THIS IS TO CERTIFY that BDO Canada Limited, the receiver and manager (the “Receiver”) of the assets, undertakings and properties Kivuto Solutions Inc. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the “Property”) appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) dated the 7<sup>th</sup> day of February 2023 (the “Order”) made in an application having Court file number CV-23-00693569-00CL, has received as such Receiver from the holder of this certificate (the “Lender”) the principal sum of \$\*\*Press F11 to insert (amount)\*\* , being part of the total principal sum of \$\*\*Press F11 to insert (amount)\*\* which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \*\*Press F11 to insert (day)\*\* day of each month] after the date hereof at a notional rate per annum equal to the rate of \*\*Press F11 to insert (rate)\*\* per cent above the prime commercial lending rate of Bank of \*\*Press F11 to insert (bank)\*\* from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the

Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

1. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

2. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

3. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

4. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_, day of February, 2023.

BDO Canada Limited, solely in its capacity as Receiver of the Property, and not in its personal or corporate capacity

Per:

\_\_\_\_\_  
Name: \*\*Press F11 to insert (name)\*\*  
Title: \*\*Press F11 to insert (title)\*\*

THE TORONTO-DOMINION BANK  
Applicant

-and- KIVUTO SOLUTIONS INC.  
Respondent

Court File No. CV-23-00693569-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

**FOGLER, RUBINOFF LLP**

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Lawyers for the Applicant,  
The Toronto-Dominion Bank

Court File No. CV-23-00693569-00CL

~~Revised: January 21, 2014~~

~~s.243(1) BIA (National Receiver) and s. 101 CJA (Ontario) Receiver~~

~~Court File No. \_\_\_\_\_~~

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE

)

TUESDAY, THE 7<sup>TH</sup>

)

~~THE HONOURABLE \_\_\_\_\_~~

)

~~WEEKDAY, THE #~~

)

JUSTICE ~~\_\_\_\_\_~~ MCEWEN

)

DAY OF ~~MONTH~~ FEBRUARY,  
~~20YR~~ 2023

**PLAINTIFF<sup>†</sup>**

B E T W E E N:

Plaintiff

THE TORONTO-DOMINION BANK

Applicant

~~—and—~~

**DEFENDANT**

KIVUTO SOLUTIONS INC.

Respondent

~~Defendant~~

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND  
INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE  
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

**ORDER  
(appointing Receiver)**

~~†-The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.~~

THIS ~~MOTION~~APPLICATION made by the ~~Plaintiff~~<sup>2</sup>Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing ~~[RECEIVER'S NAME]~~BDO Canada Limited ("BDO") as receiver ~~and manager~~ (in such ~~capacities~~capacity, the "Receiver") without security, of all of the assets, undertakings and properties of ~~[DEBTOR'S NAME]~~Kivuto Solutions Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario by videoconference.

~~ON READING the affidavit of [NAME] sworn [DATE] and the Exhibits thereto and on hearing the submissions of counsel for [NAMES], no one appearing for [NAME] although duly served as appears from the affidavit of service of [NAME] sworn [DATE] and on reading the consent of [RECEIVER'S NAME] to act as the Receiver;~~

ON READING the Affidavit of Andrea Jamnisek (sworn/affirmed) January 27, 2023 and the Exhibits thereto, the Report of BDO in its capacity as the Proposed Receiver, dated January 27, 2023 (the "Report") and the confidential supplementary report of BDO, dated January 27, 2023 (the "Confidential Report") and on hearing the submissions of counsel for the applicant, the Debtor, the Purchasers and the Receiver, no one appearing for \*\*Press F11 to insert (name)\*\* although duly served as appears from the Affidavit of Service of \*\*Press F11 to insert (name)\*\* (sworn/affirmed) \*\*Press F11 to insert (date)\*\* and on reading the Consent of BDO to act as the Receiver,

## SERVICE

<sup>2</sup> ~~Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".~~



1. THIS COURT ORDERS that the time for service of the Notice of ~~Motion~~Application and the ~~Motion~~application is hereby abridged and validated<sup>3</sup> so that this motion is properly returnable today and hereby dispenses with further service thereof.

### APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, ~~[RECEIVER'S NAME]~~BDO is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

### RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security

~~<sup>3</sup>-If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, repudiate or disclaim any contracts or agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform, modify and/or terminate any contracts ~~or~~ for agreements to which the Debtor is a party;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the ~~Receiver's~~ Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;

- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings.<sup>4</sup> The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor;
- (k) ~~(k)~~ to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) ~~(k)~~ to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$100,000; and

~~<sup>4</sup>This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;<sup>5</sup>

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, ~~[or section 31 of the Ontario *Mortgages Act*, as the case may be,]<sup>5</sup> shall not be required, ~~and in each case the Ontario *Bulk Sales Act* shall not apply.~~~~

(m) in particular, to complete, with such reasonable and appropriate changes as may be necessary, an agreement of purchase and sale for the assets and undertaking of the Debtor, as Vendor, and Valsoft Corporation Inc. and Aspire Ontario Inc., as purchasers, dated January 17, 2023 and as described in the Pre-Receivership Report, filed;

(n) ~~(h)~~ to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(o) ~~(m)~~ to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property

~~<sup>5</sup> If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.~~

and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (p) ~~(n)~~ to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (q) ~~(o)~~ to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (r) ~~(p)~~ to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (s) ~~(q)~~ to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (t) ~~(r)~~ to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

**DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons") and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such ~~Person's~~Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the ~~Receiver's~~Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that ~~Person's~~Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days' notice to such landlord and any such secured creditors.

**NO PROCEEDINGS AGAINST THE RECEIVER**

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

**NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH THE RECEIVER**

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement,



licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

### **CONTINUATION OF SERVICES**

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the ~~Debtor's~~Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the

credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

## **EMPLOYEES**

14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the ~~Debtor's~~Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## **PIPEDA**

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "“Sale”"). Each prospective ~~purchaser~~Purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The ~~purchaser~~Purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in

a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the ~~Receiver's~~Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross

negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

### ~~RECEIVER'S~~RECEIVER'S ACCOUNTS

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the ~~"Receiver's Charge"~~) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the ~~Receiver's~~Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.<sup>6</sup>

19. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a ~~judge~~Judge of the Commercial List of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its

~~<sup>6</sup>Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~

fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

### **FUNDING OF THE RECEIVERSHIP**


21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$~~\_\_\_\_\_~~100,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "~~Receiver's~~Receiver's Borrowings Charge~~"~~") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the ~~Receiver's~~Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued ~~Reeeiver's~~Receiver's Certificates.

### SERVICE AND NOTICE

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the **"Protocol"**) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL : <https://www.bdo.ca/en-ca/extranets/Kivuto/>.

26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by

forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

**GENERAL**

27. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

29. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and

that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. THIS COURT ORDERS that the ~~Plaintiff~~applicant shall have its costs of this ~~motion~~application, up to and including entry and service of this Order, provided for by the terms of the ~~Plaintiff's~~applicant's security or, if not so provided by the ~~Plaintiff's~~applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the ~~Debtor's~~Debtor's estate with such priority and at such time as this Court may determine.

32. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

33. THIS COURT ORDERS that this Order is effective from the date it is made and is enforceable without any need for entry or filing.

\_\_\_\_\_

\_\_\_\_\_



**SCHEDULE "SCHEDULE "A"****RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_\*\*Press F11 to insert (number)\*\*

AMOUNT \$ \_\_\_\_\_\*\*Press F11 to insert (amount)\*\*

1. THIS IS TO CERTIFY that ~~[RECEIVER'S NAME]~~BDO Canada Limited, the receiver and manager (the "Receiver") of the assets, undertakings and properties ~~[DEBTOR'S NAME]~~Kivuto Solutions Inc. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 7<sup>th</sup> day of February 2023 (the "Order") made in an ~~action~~application having Court file number CL CV-23-00693569-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_\*\*Press F11 to insert (amount)\*\*, being part of the total principal sum of \$ \_\_\_\_\_\*\*Press F11 to insert (amount)\*\* which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_\*\*Press F11 to insert (day)\*\* day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_\*\*Press F11 to insert (rate)\*\* per cent above the prime commercial lending rate of Bank of \_\_\_\_\_\*\*Press F11 to insert (bank)\*\* from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to

the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. ~~4.~~ All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. ~~5.~~ Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. ~~6.~~ The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. ~~7.~~ The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_, day of \_\_\_\_\_, ~~20~~ February, 2023.



~~[RECEIVER'S  
NAME]~~ BDO Canada  
Limited, solely in its  
capacity  
- as Receiver of the  
Property, and not in its  
personal or corporate  
capacity



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er  
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Name: \*\*Press F11  
to insert (name)\*\*  
Title: \*\*Press F11 to  
insert (title)\*\*

THE TORONTO-DOMINION BANK  
Applicant

-and-

KIVUTO SOLUTIONS INC.  
Respondent

Court File No. CV-23-00693569-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

PROCEEDING COMMENCED AT  
TORONTO

ORDER

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Lawyers for the Applicant,

The Toronto-Dominion Bank

<b>Summary report:</b>	
<b>Litera Compare for Word 11.3.0.46 Document comparison done on 01/26/2023 11:43:42 PM</b>	
<b>Style name:</b> Default Style	
<b>Intelligent Table Comparison:</b> Active	
<b>Original filename:</b> receivership-order-EN (1).doc	
<b>Modified DMS:</b> nd://4882-6527-7506/6/Draft Receivership Order.docx	
<b>Changes:</b>	
<u>Add</u>	142
<del>Delete</del>	169
<del>Move From</del>	0
<u>Move To</u>	0
<u>Table Insert</u>	4
<del>Table Delete</del>	7
<u>Table moves to</u>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>322</b>

Court File No. CV-23-00693569-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

THE HONOURABLE	)	TUESDAY, THE 7 <sup>TH</sup>
	)	
JUSTICE MCEWEN	)	DAY OF FEBRUARY, 2023

B E T W E E N:

**THE TORONTO-DOMINION BANK**

Applicant

- and -

**KIVUTO SOLUTIONS INC.**

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended

**APPROVAL AND VESTING ORDER**

THIS MOTION, made by the Applicant and supported by BDO Canada Limited ("**BDO**") in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of Kivuto Solutions Inc. (the "**Debtor**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Debtor, as vendor, and Valsoft Corporation Inc. and Aspire Ontario Inc., as purchasers (collectively, the "**Purchasers**") dated January 17, 2023 and appended to the Report of BDO in its capacity as Proposed Receiver of the Debtor, dated January 27, 2023 (the "**Report**") and appended with out redaction to the Confidential Supplementary Report of BDO

dated January 27, 2023 (the “**Confidential Report**”), and vesting in the Purchasers the Debtor’s right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario by videoconference.

ON READING the Notice of Application, the Affidavit of Andrea Jamnisek, the Report and the Confidential Report and on hearing the submissions of counsel for the Receiver, the Applicant, the Purchasers, the Debtor, and such other counsel who were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME] sworn [DATE] filed:

**SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

**CAPITALIZED TERMS**

2. THIS COURT ORDERS that capitalized terms not defined herein shall have the meanings set out in the Sale Agreement.

**SALE APPROVAL**

3. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Debtor, which was assigned to and adopted by the Receiver, is hereby authorized and approved, with such minor amendments as the Debtor or Receiver may deem necessary. The Debtor and Receiver are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchasers.

4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchasers substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchasers, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Appointment Order of the Honourable Justice McEwen dated February 7, 2023; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule B) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.



6. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

7. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchasers all human resources and payroll information in the Debtor's records pertaining to the Debtor's past and current employees, including personal information of those employees contemplated as the "Offered Employees" at section 8.1 the Sale Agreement. The Purchasers shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

8. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchasers pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or

provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

### **SEALING ORDER**

9. THIS COURT ORDERS that the Confidential Report and its confidential appendices therein and the exhibits therein, including the unredacted Sale Agreement referred to in the Report of the Receiver, shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and the sealed envelope shall not be opened until no earlier one day after successful closing as evidenced by the filing of the Receiver's Certificate as referred to above or further order of this Honourable Court.

### **AID AND RECOGNITION**

10. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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## Schedule A – Form of Receiver’s Certificate

Court File No. CV-23-00693569-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

B E T W E E N:

**THE TORONTO-DOMINION BANK**

Applicant

- and -

**KIVUTO SOLUTIONS INC.**

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice McEwen of the Ontario Superior Court of Justice (the “**Court**”) dated February 7, 2023, BDO Canada Limited was appointed as the receiver and manager (the “**Receiver**”) of the undertaking, property and assets of Kivuto Solutions Inc. (the “**Debtor**”).

B. Pursuant to an Order of the Court dated February 7, 2023, the Court approved the agreement of purchase and sale made as of January 17, 2023 (the “**Sale Agreement**”) between the Debtor, as vendor, and Valsoft Corporation Inc. and Aspire Ontario Inc., as purchasers (collectively, the “**Purchasers**”) and provided for the vesting in the Purchasers of the Debtor’s

right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchasers of a certificate confirming (i) the payment by the Purchasers of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section 5 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchasers; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchasers have paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section 5 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchasers; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**BDO Canada Limited, in its capacity as  
Receiver of the undertaking, property and  
assets of Kivuto Solutions Inc., and not in its  
personal or corporate capacity**

Per: \_\_\_\_\_  
Name:  
Title:



**Schedule B – Permitted Encumbrances, Easements and Restrictive Covenants** **649**

**(unaffected by the Vesting Order)**

NIL

THE TORONTO-DOMINION BANK  
Applicant

-and- KIVUTO SOLUTIONS INC.  
Respondent

Court File No. CV-23-00693569-00CL

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

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**APPROVAL AND VESTING ORDER**

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Lawyers for the Applicant,  
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Court File No. — CV-23-00693569-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE — ) ~~WEEKDAY~~ TUESDAY, THE # 7<sup>TH</sup>  
JUSTICE — MCEWEN ) DAY OF ~~MONTH~~ FEBRUARY, ~~20YR~~ 2023

B E T W E E N:

THE TORONTO-DOMINION BANK

~~PLAINTIFF~~ Applicant

~~Plaintiff~~

- and -

KIVUTO SOLUTIONS INC.

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended

~~DEFENDANT~~  
~~Defendant~~

**APPROVAL AND VESTING ORDER**

THIS MOTION, made by ~~[RECEIVER'S NAME]~~ the Applicant and supported by BDO Canada Limited ("BDO") in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of ~~[DEBTOR]~~ Kivuto Solutions Inc. (the "Debtor") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the ~~Receiver and [NAME OF PURCHASER]~~ (the "Purchaser") dated ~~[DATE]~~ Debtor, as vendor, and Valsoft Corporation Inc.



and Aspire Ontario Inc., as purchasers (collectively, the “Purchasers”) dated January 17, 2023 and appended to the Report of ~~the~~BDO in its capacity as Proposed Receiver of the Debtor, dated ~~[DATE]~~January 27, 2023 (the “Report”) and appended with out redaction to the Confidential Supplementary Report of BDO dated January 27, 2023 (the “Confidential Report”), and vesting in the ~~Purchaser~~Purchasers the Debtor’s right, title and interest in and to the assets described in the Sale Agreement (the “Purchased Assets”), was heard this day at 330 University Avenue, Toronto, Ontario by videoconference.

ON READING the Notice of Application, the Affidavit of Andrea Jamnisek, the Report and the Confidential Report and on hearing the submissions of counsel for the Receiver, ~~[NAMES OF OTHER PARTIES APPEARING]~~the Applicant, the Purchasers, the Debtor, and such other counsel who were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME] sworn [DATE] filed<sup>+</sup>:

### SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

### CAPITALIZED TERMS

2. THIS COURT ORDERS that capitalized terms not defined herein shall have the meanings set out in the Sale Agreement.

### SALE APPROVAL

<sup>+</sup>~~This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.~~

3. ~~1.~~ THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved,<sup>2</sup> and the execution of the Sale Agreement by the Debtor, which was assigned to and adopted by the Receiver<sup>3</sup>; is hereby authorized and approved, with such minor amendments as the Debtor or Receiver may deem necessary. The Debtor and Receiver ~~is~~are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the ~~Purchaser~~Purchasers.

4. ~~2.~~ THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the ~~Purchaser~~Purchasers substantially in the form attached as Schedule A hereto (the "~~Receiver's~~"Receiver's Certificate"), all of the ~~Debtor's~~Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement ~~{and listed on Schedule B hereto}~~<sup>4</sup> shall vest absolutely in the ~~Purchaser~~Purchasers, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims"<sup>5</sup>)

~~<sup>2</sup> In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.~~

~~<sup>3</sup> In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.~~

~~<sup>4</sup> To allow this Order to be free-standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.~~

~~<sup>5</sup> The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.~~

including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Appointment Order of the Honourable Justice ~~[NAME]~~McEwen dated ~~[DATE]~~February 7, 2023; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; ~~and (iii) those Claims listed on Schedule C hereto~~ (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule DB) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

~~3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the [Registry Division of {LOCATION}] of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver][Land Titles Division of {LOCATION} of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act]<sup>6</sup>, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.~~

5. ~~4.~~ THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds<sup>7</sup> from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the ~~Receiver's~~Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets

<sup>6</sup>Elect the language appropriate to the land registry system (Registry vs. Land Titles).

<sup>7</sup>The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".

immediately prior to the sale<sup>8</sup>, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. ~~5.~~ THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the ~~Receiver's~~Receiver's Certificate, forthwith after delivery thereof.

7. ~~6.~~ THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the ~~Purchaser~~Purchasers all human resources and payroll information in the ~~Company's~~Debtor's records pertaining to the ~~Debtor's~~Debtor's past and current employees, including personal information of those employees ~~listed on Schedule "A"~~contemplated as the "Offered Employees" at section 8.1 the Sale Agreement. The ~~Purchaser~~Purchasers shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

8. ~~7.~~ THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;

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~~<sup>8</sup> This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~

- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the ~~Purchaser~~Purchasers pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

### SEALING ORDER

9. ~~8.~~ THIS COURT ORDERS AND DECLARES ~~that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).~~ that the Confidential Report and its confidential appendices therein and the exhibits therein, including the unredacted Sale Agreement referred to in the Report of the Receiver, shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and the sealed envelope shall not be opened until no earlier one day after successful closing as evidenced by the filing of the Receiver's Certificate as referred to above or further order of this Honourable Court.

AID AND RECOGNITION

10. ~~9.~~ THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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Schedule A – Form of Receiver’s Certificate

Court File No. CV-23-00693569-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

B E T W E E N:

THE TORONTO-DOMINION BANK

~~PLAINTIFF~~ Applicant

Plaintiff

- and -

KIVUTO SOLUTIONS INC.

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended

~~DEFENDANT~~

Defendant

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~ Justice McEwen of the Ontario Superior Court of Justice (the “Court”) dated ~~[DATE OF ORDER]~~, ~~[NAME OF RECEIVER]~~ February 7, 2023, BDO Canada Limited was appointed as the receiver and manager (the “Receiver”) of the undertaking, property and assets of ~~[DEBTOR]~~ Kivuto Solutions Inc. (the “Debtor”).

B. Pursuant to an Order of the Court dated ~~[DATE]~~February 7, 2023, the Court approved the agreement of purchase and sale made as of ~~[DATE OF AGREEMENT]~~January 17, 2023 (the "Sale Agreement") between the ~~Receiver [Debtor] and [NAME OF PURCHASER]~~ (the "~~Purchaser~~"Debtor, as vendor, and Valsoft Corporation Inc. and Aspire Ontario Inc., as purchasers (collectively, the "Purchasers") and provided for the vesting in the ~~Purchaser~~Purchasers of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the ~~Purchaser~~Purchasers of a certificate confirming (i) the payment by the ~~Purchaser~~Purchasers of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section ~~5~~5 of the Sale Agreement have been satisfied or waived by the Receiver and the ~~Purchaser~~Purchasers; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The ~~Purchaser has~~Purchasers have paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section ~~5~~5 of the Sale Agreement have been satisfied or waived by the Receiver and the ~~Purchaser~~Purchasers; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

~~[NAME OF RECEIVER]~~BDO Canada Limited, in its capacity as Receiver of the undertaking, property and assets of ~~[DEBTOR]~~Kivuto Solutions Inc., and not in its personal or corporate capacity

Per: \_\_\_\_\_



Name:

Title:

**Schedule B—Purchased Assets**

~~Schedule C—Claims to be deleted and expunged from title to Real Property~~

**Schedule DB – Permitted Encumbrances, Easements and Restrictive Covenants **663**  
~~related to the Real Property~~**

**(unaffected by the Vesting Order)**

NIL

THE TORONTO-DOMINION BANK

-and-

KIVUTO SOLUTIONS INC.

Applicant

Respondent

Court File No. CV-23-00693569-00CL

*ONTARIO*

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

PROCEEDING COMMENCED AT

TORONTO

APPROVAL AND VESTING ORDER

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<b>Summary report:</b>	
<b>Litera Compare for Word 11.3.0.46 Document comparison done on 01/27/2023 12:07:46 AM</b>	
<b>Style name:</b> Default Style	
<b>Intelligent Table Comparison:</b> Active	
<b>Original filename:</b> approval-and-vesting-order-EN (1).doc	
<b>Modified DMS:</b> nd://4856-9365-9980/7/Draft Approval and Vesting Order.doc	
<b>Changes:</b>	
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Delete	135
<del>Move From</del>	0
<u>Move To</u>	0
<u>Table Insert</u>	1
<del>Table Delete</del>	0
<u>Table moves to</u>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>257</b>

THE TORONTO-DOMINION BANK  
Applicant

-and- KIVUTO SOLUTIONS INC.  
Respondent

Court File No. CV-23-00693569-00CL

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**APPLICATION RECORD**

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