

**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:  
*Mark McKenzie*  
Per: \_\_\_\_\_  
EG700F695E0F42E...  
Name:  
Title:  
I have authority to bind the Vendor

**VALSOFT CORPORATION INC.**

DocuSigned by:  
*David Felicissimo*  
Per: \_\_\_\_\_  
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: MAST  
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.

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**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