KIVUE PERFORM® SOFTWARE

Software-as-a-Service AGREEMENT ("Agreement")

This Agreement is between the Customer which has placed an Order or accepted our proposal ("Customer") and Kivue Limited of 33 Kings Road, Reading, Berkshire, RG1 3AR ("Us" or "We") in respect of the Software-as-a-Service (defined below). By using the Services, Customer agrees to be bound by the terms of this Agreement and warrant that it has full authority to enter into these terms.

1. Definitions

Application	Kivue's proprietary software application Kivue Perform® in machine readable form used in the Software-as-a-Service, as updated by the Maintenance Releases.
Authorised Users	Means Customer's employees, contractors and consultants and those of its group companies who are authorised by the Customer to access and use the Software-as-a-Service under this Agreement.
Fees	The fees payable for the Services as set out in the Order.
Initial Term	Means the initial subscription period specified in the Order.
Order	The order form confirming the subscription fees, user login and other quantities relating to Customer's use of the Services.
Maintenance Releases	Regular releases of the Application by Us that correct faults, adds functionality or otherwise amends or upgrades the Application.
Renewal Term	Has the meaning set forth in clause 2.1.
Services	The Software-as-a-Service, and other related services, as agreed in the Order, to be provided by Us under this Agreement
Software-as-a-Service	The services provided by Us under this Agreement to allow Authorised Users to access and use the Application via the Customer's browser.
Term	The Initial Term and any Renewal Term

2. Access Grant and Services

2.1. Subject to the terms and conditions of this Agreement We grant the Customer a non-exclusive, non-transferrable right to access and use the Software-as-a-Service for the Initial Term solely for Customer's own normal business purposes. This right shall automatically renew for subsequent periods equivalent to the Initial Term (each a "Renewal Term") unless not less than 30 days' written notice is served by either party on the other prior to the end of the Initial Term or then current Renewal Term.

2.2. Customer may not, and shall be responsible for ensuring that the Authorised Users shall not, use the Software-as-a-Service other than as specified in clause 2.1 without prior written consent from Us in which case, additional fees may be payable by Customer.

2.3. We shall not be responsible for supplying any line access, hardware or any other equipment on the Customer's premises.

2.4. We reserve the right at all times without prior notice to suspend the Customer's access to , and/or the provision of the Services, for such period as is necessary to carry out emergency system maintenance, emergency upgrading, emergency testing and/or repair, but we shall endeavour to give prior notice to the Customer where reasonably practicable.

2.5. We reserve the right at all times without prior notice at our sole discretion to suspend, remove or refuse to host (but we are under no obligation to monitor) certain kinds of content (including, but not limited to, content that requires unsafe write access to our servers or requires Us to install software that we do not usually use or support) and any other content that causes harm or may in our sole opinion cause harm to our servers or the provision of the Services or which is defamatory, obscene, offensive, blasphemous or infringes third party intellectual property rights and Customer agrees not to store, distribute or transmit any such content on, to or through the Services. We shall not be liable to the Customer for any loss or damage caused as a result of our suspending, removing or refusing to host material or content pursuant to this clause. In exercising our rights under this clause 2.5 we shall exercise due caution.

2.6. We may as part of the Services anonymise Customer's Authorised Users' Application usage data to create reports showing general usage statistics of our clients for research and analytics purposes and the Customer agrees to such anonymising and inclusion of such usage data in such reports. All intellectual property rights in such reports shall at all times remain with and vest in Us.

Kivue Limited registered in England and Wales, Number 8607212 Address 33 Kings Road, Reading, RG1 3AR

3. Customer's Obligations

3.1. Customer shall:

3.1.1. pay Us the Fees set out in the Order prior to use of the Services;

3.1.2. pay for the number of user logins for the Software-as-a-Service set out in the Order (whether or not these are used) and pay for additional user logins from when Customer creates them and upon reasonable notice by Us (of not less than 10 working days), grant us physical or remote access to your systems to conduct an audit of logins and users;

3.1.3. pay for any extensions or additions to the Services outside of the Order. Where the fees are for or in respect of additional logins for Authorised Users, these will be managed in accordance with clause 3.2 below;

3.1.4. only access, and ensure that the Authorised Users access, the Software-as-a-Service on one of the web browsers approved by us (and notified to Customer from time to time) and shall promptly install such browsers as we recommend from time to time for the purposes of (amongst other things) assuring browser security and suitability;

3.1.5. keep, and ensure that all Authorised Users keep, all user login passwords confidential;

3.1.6. notify Us as soon as Customer become aware of any unauthorised use of or attempts to gain access to or interfere with the Software-as-a-Service;

3.1.7. not use, and ensure that the Authorised Users shall not use, the Services to store Personal Data (as defined in the General Data Protection regulations EU 2016/679 or successor legislation, including special categories of Personal Data) or any other personally identifiable information, except business email addresses necessary for user logins for administrative purposes;

3.1.8. ensure that any Authorised User is bound by the terms of this Agreement prior to accessing the Services and complies with the same.

3.2 The Customer will ensure that no one other than the Authorised Users, and no more than the permitted number of Authorised User/user logins, in accordance with the Order, access the Software as a Service. Without prejudice to the foregoing the Customer may add Authorised Users/user logins by notifying Kivue in advance. Authorised Users/user logins may be added in blocks of 5 (or such other number as may be specified in the Order) and the additional Authorised Users/user logins will be added, at pro rata cost, for the remainder of the Initial Term or then current Renewal Term.

4. Maintenance Releases and Use of Application and Services

4.1. We may issue Maintenance Releases with new functionality and features which may require Customer to train Authorised Users in their use. If it is not possible for Customer to undertake this training, if Customer wishes to delay implementation of the Maintenance Release or Customer is not able to install the browser we recommend, Customer must notify us immediately of the reason for this. We will only provide support for the latest Maintenance Release and (in our discretion) the one immediately prior to that.

4.2. Customer shall not, and Customer may not cause or allow any third party to, and warrants that its Authorised Users shall not: (i) decompile, copy, adapt, reverse engineer, dissemble, modify, adapt or make error corrections to, or reduce to human perceivable form the Application in whole or in part except as provided by law.

4.3. Customer may not use the Application or Services or any information provided by Us to create any software that is or appears to be similar to that of the Application or Services nor use such information in any manner which infringes copyright or our confidential information in it.

5. Intellectual Property

5.1. Customer acknowledges that all intellectual property rights in the Application and the Services belong to Us and its only rights to the Application and Services are as set out in this Agreement.

5.2. We acknowledge that any logos or company name used to customise the Software-as-a-Service belong to Customer and that all data which Customer has loaded into the Software-as-a-Service and representations of it onscreen, in printed form or in reports generated by the Services, belong to Customer. Customer acknowledges that it is Customer's responsibility to keep these secure.

5.3. We undertake at our own expense to defend Customer or, at our option, to settle any claim or action brought against Customer alleging that the authorised possession or use of the Services (or any part thereof) under this Agreement infringes the UK intellectual property rights of a third party ("a Claim") and we shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against Customer as a result of or in connection with any such Claim.

5.4. Clause 5.3 shall not apply where a Claim is attributable to possession or use of the Services (or any part thereof) by Customer, other than in accordance with this Agreement; or in combination with any hardware or software not supplied or specified by Us; or for use of a non-current release of the Application. Furthermore our obligations under clause 5.3 are conditional upon Customer giving written notice of the Claim to Us as soon as reasonably practicable, specifying the nature of the Claim in reasonable detail.

5.5. If a Claim is made, or in our reasonable opinion is likely to be made, against Customer, We may at our sole option and expense (i) procure for Customer the right to continue to use the Services (or any part thereof) in accordance with the terms of this Agreement; (ii) modify the Application so that it ceases to be infringing; (iii) replace the Application with non-infringing software; (iv) or terminate this Agreement immediately by notice in writing to Customer and on cessation of use of the Services by Customer, refund on a pro rata basis any of Fees paid by Customer for the unexpired period of the Term up to the date of termination.

5.6. Maintenance Releases and/or replacement Services will comply with the warranties contained in clause 6.1 and have the same rights in respect thereof.

5.7. Clause 5 constitutes our only liability in respect of Claims and Customer's exclusive remedy.

6. Warranty

6.1. We warrant that, for a period of 30 days from the date of first use by you ("Warranty Period"), the Software-as-a-Service will perform substantially in accordance with the Order.

6.2. In case of any breach of the above warranty, Customer's exclusive remedy and our sole obligation and liability will be (i) to carry out corrective work to make the Software-as-a-Service conform to the said warranty; (ii) or if such corrective work would in our opinion be commercially unreasonable, we will suspend your access to the Software-as-a-Service until it is suitably reconfigured and refund the Fees paid by Customer in relation to the period of suspension.

6.3. The above warranty will not apply if the Software-as-a-Service: (i) is used other than as set out in this Agreement and the Order, (ii) has been modified by Customer or any third party (iii) the defect has been caused by use of it on equipment or software not notified to or approved by Us.

6.4. Customer acknowledges that the Services are provided by Us "as is" and that except as provided in clause 6.1, all conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded.

7. Limits of Liability

7.1. We shall not in any circumstances have any liability for any direct or indirect, immediate or consequential loss or damages which may be suffered by Customer (or any person claiming under or through Customer), whether arising in contract, tort (including negligence) or which otherwise fall within any of the following categories: (i) special damage (even if We were aware of the circumstances in which such special damage could arise); (ii) loss of profits; (iii) loss of anticipated savings; (iv) loss of business opportunity; (v) loss of goodwill; (vi) loss or corruption of data loaded onto or stored in the Application or Services.

7.2. Our total liability, whether in contract, tort (including negligence) or otherwise shall not exceed a sum equal to the Fees paid for the immediately preceding Term.

7.3. The exclusions of liability in this Agreement shall apply to the fullest extent permissible in law. We do not exclude liability for: death or personal injury caused by our negligence or that of our officers or employees; fraud or fraudulent misrepresentation; breach of obligations implied by s12 of the Sale of Goods Act 1979 or s2 of the Supply of Goods and Services Act 1982; or any other liability which may not lawfully be excluded.

7.4. Customer acknowledges and undertakes that it is solely responsible for all disclosure or loss of Personal Data which it or its Authorised Users have loaded onto or stored in the Application or Services and hereby indemnify Us for the Term and thereafter in relation to any claims made in this regard.

7.5. Customer further acknowledges and accepts that it is responsible for its use of the Software-as-a-Service and for all analysis, decisions, actions, planning, assessments and determinations made as a result of any output from the Services.

8. Confidentiality

Each party shall, during the Term and thereafter, keep confidential all, and shall not use for its own purposes (other than implementation of this Agreement) nor without the prior written consent of the other, disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any, information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party, unless that information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this Agreement, or subsequently comes lawfully into the possession of such party from a third party. Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information.

9. Termination and Obligations on Termination

9.1. This Agreement is effective from the earlier of (i) the commencement date specified in the Order, and (ii) upon first access to the Services by Customer and will remain in effect for the Term.

9.2. We reserve the right to terminate or suspend this Agreement and use of the Services in our sole discretion by written notice to Customer if Customer fails to pay any sum due to Us by Customer or if Customer is in breach or fail to comply with any term of this agreement.

9.3. Upon expiry of the Term access to the Services will cease and any data stored on the platform will be available for a period of 15 days after the effective date of termination and after that shall be deleted from the database. Data backed up for disaster recovery purposes will be stored, encrypted at rest, in accordance with Kivue's standard backup procedures, a description of which is available on request.

10. General

10.1. **Variation.** This Agreement may only be modified by a written amendment signed by Customer and Us.

10.2. **Waiver.** No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

10.3. **Notices.** Any notice or other communication to be given under this Agreement shall be in writing sent to the address of the other party set forth in the Order. Such notice or other communication shall be deemed to have been duly given if left at or sent by hand of by registered post, or by email or such other address or email address as a party may designate by written notice to the other.

10.4. **Severance.** If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, the provision will be severed and the remainder of the provisions of this Agreement will continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

10.5. **Assignment.** We may at any time subcontract, assign, novate, charge or deal in any other manner with this Agreement or with any or all of Our rights and obligations under this Agreement provided We give prior written notice to Customer. This Agreement is personal to the Customer and may not be assigned to any third party in whole or in part without Our prior written consent.

10.6. **Entire agreement.** This Agreement constitutes the entire agreement between Us and Customer and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between the parties, whether written or oral, relating to its subject matter.

10.7. **Governing law and jurisdiction.** This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction.