

## PLATFORM AND SERVICES AGREEMENT

**THIS PLATFORM AND SERVICES AGREEMENT (THE “AGREEMENT”) IS HEREBY MADE BY AND BETWEEN:**

<b>Name:</b>	[Partner legal name] (“Partner”)		
<b>Address:</b>			
<b>Contact (for notices)</b>	<b>Name:</b>	<b>Title:</b>	<b>Email:</b>

AND

<b>Name:</b>	Book Oven Inc. (d.b.a. Pressbooks) (“Pressbooks”)		
<b>Address:</b>	5333 Casgrain Ave., #202, Montreal, QC, Canada, H2T 1X3		
<b>Contact (for notices)</b>	<b>Name:</b> Hugh McGuire	<b>Title:</b> President	<b>Email:</b> hugh@pressbooks.com

And is effective as of the following date and for the following Initial Term, as further explained in section 4.1:

<b>Effective Date:</b>	[ ], 2020 (the “Effective Date”)
<b>Initial Term:</b>	2 (two) years beginning on the Effective Date

This Agreement is comprised of this cover and signature page, the integral portion of the Agreement, and Appendices A, B and C.

This Agreement may be executed in counterparts (including by electronic transmission). Any such counterparts will constitute an original and will be taken together to constitute one and the same instrument. Electronic signatures affixed to this Agreement shall be as valid as original signatures. In consideration of the mutual promises and covenants contained in this Agreement, the parties agree to be bound by this Agreement. Each party represents and warrants that its respective signatories whose signatures appear below have been and are, on the Effective Date, duly authorized to execute this Agreement.

[PARTNER LEGAL NAME]	BOOK OVEN, INC. (D.B.A. PRESSBOOKS)
X: _____	X: _____
Name: _____	Name: Hugh McGuire
Title: _____	Title: President

**WHEREAS** Pressbooks has developed a proprietary hosted platform (the “**Platform**”) for the online editing and formatting of books and other structured documents in multiple formats including but not limited to Web, PDF, EPUB, and MOBI (“**Projects**” in this Agreement);

**WHEREAS** Pressbooks may perform additional services in order for Partner or its Users to use or access the Platform in various environments or circumstances, and other related services (the “**Services**”);

**WHEREAS** Partner wishes to engage Pressbooks to grant Partner access to the Platform and have Pressbooks perform the Services;

**WHEREAS** the parties wish to specify their respective rights and obligations;

**NOW THEREFORE** the parties agree to the following:

**1. PRESSBOOKS PLATFORM AND SERVICES**

1.1 **Provision of the Platform.** Subject to the terms and conditions of this Agreement and payment in full of the applicable Fees, Pressbooks shall make the Platform available to Partner and its Users pursuant to this Agreement and the license granted in section 5.5 herein, according to the Service Level Agreement as outlined in Appendix A, and subject to any limitations as outlined in Appendix B. For the purposes of this Agreement, “**Users**” includes “**Individual Users**” (individuals granted access to use the Platform by Partner, who shall be restricted to Partner staff, faculty, and students) and (if applicable) “**Institutional Users**”, educational institutions who are granted access to use the Platform by payment of additional Fees by such Users to Pressbooks.

1.2 **Platform Changes.** Partner acknowledges and agrees that Pressbooks may, from time to time and at its sole discretion, make changes or updates to the Platform (such as new features), including to reflect changes in technology, industry practices and patterns of system use. Partner is required to accept all updates, upgrades, patches, bug fixes, corrections, service packs and releases to the Platform or any constituent component thereof (“**Patches**”) necessary for the proper functioning and security of the Platform, as such Patches may be released by Pressbooks.

1.3 **Services.** Subject to the terms and conditions of this Agreement and payment of the applicable Fees, Pressbooks shall perform the Services, as further detailed in Appendix B.

1.4 **Platform Support.** Pressbooks will provide technical support to Partner via electronic mail on weekdays during the hours of 9:00 am through 5:00 pm Eastern time, with the exclusion of Federal holidays (“**Support Hours**”). Partner’s predesignated Network Managers may initiate a helpdesk ticket during Support Hours by emailing [premiumsupport@pressbooks.com](mailto:premiumsupport@pressbooks.com). Pressbooks will use commercially reasonable efforts to respond to all Helpdesk tickets within two (2) business days.

**2. PARTNER OBLIGATIONS AND LICENSES**

- 2.1 Assistance.** Partner shall provide Pressbooks with all necessary information and assistance that is required for the performance of Pressbooks' obligations hereunder or otherwise that is reasonably requested by Pressbooks.
- 2.2 Equipment.** Partner shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Platform, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "**Equipment**"). Partner shall also be responsible for maintaining the security of the Equipment, Partner account, passwords (including but not limited to administrative and User passwords) and files, and for all uses of Partner account or the Equipment with or without Partner's knowledge or consent.
- 2.3 Partner Data Licenses.** Partner hereby grants Pressbooks a royalty-free, worldwide, non-exclusive, non-transferable and non-sublicensable license to use, process and transmit any non-public data or information (in whatever form) provided by Partner to Pressbooks (the "**Partner Data**") for the purposes of the provision of the Platform to Partner and its Users. Partner grants Pressbooks a royalty-free, worldwide, non-exclusive, non-transferable and non-sublicensable license to use anonymized, non-personally identifiable Partner Data as well as analytics and behavioural data related to Partner and its Users for Pressbooks' internal business purposes, limited to the monitoring of features used by the Partner and Users to address any functionality issues as they arise, with the goal to enhance the experience and improve upon the features available to all Platform Users.

### **3. FEES AND RELATED TERMS**

- 3.1 Fees.** In consideration for the provision of the Platform provided under this Agreement and the performance of the Services, Partner shall pay the fees described in Appendix C (the "**Fees**"). All amounts listed in Appendix C are in American dollars, unless otherwise indicated.
- 3.2 Taxes.** Unless otherwise stated, the Fees and any other additional charges described in Appendix C do not include any applicable sales, use, value added, property, excise or any other taxes or duties of any nature whatsoever, which shall be added if applicable.
- 3.3 Payment Modalities, Schedule and Terms.** Fees due to Pressbooks under this Agreement shall be due and payable by Partner according to the modalities and schedule as specified in Appendix C. All payments due must be made in the full amount, free of any deductions or withholdings and without exercising any right of set-off. Terms of payment are net 30 days.
- 3.4 Additional Fees to Institutional Users.** If applicable and specified in Appendix C, Partner acknowledges that additional Fees are being paid by Institutional Users, for access to the Platform and any additional Services specified in Appendix B.
- 3.5 Suspension of Platform.** If any amount of Fees owing by under this Agreement is overdue, Pressbooks may, subject to a written notice (including by email) and without limiting Pressbooks' other rights and remedies, suspend the Platform to Partner and / or its Users (as applicable) until such amounts are paid in full.

3.6 **Additional Terms in Appendix.** For clarity, any and all additional terms regarding Fees in Appendix C shall be considered integral to this Agreement.

#### 4. TERM; TERMINATION

4.1 **Initial Term and Automatic Renewal.** This Agreement will commence on the Effective Date as listed on the cover and signature page of this Agreement. This Agreement shall be in force for the “**Initial Term**” listed on the cover and signature page of this Agreement, and this Agreement shall automatically renew at the end of the Initial Term for additional “**Terms**” of one (1) year following the Initial Term. To avoid automatic renewal, a party shall provide notice for termination at least thirty (30) days prior to the expiration of the Initial Term, or expiration of the additional Term(s), as applicable.

4.2 **Early Termination for Cause.** Either party may terminate this Agreement effective immediately if they reasonably believe the other party has violated any portion of this Agreement. The breaching party shall benefit from a ten (10) day period to remedy such situation and avoid termination of this Agreement. In the case of Partner’s breach, Pressbooks in its sole discretion may suspend Partner’s access to the Platform during such remedy period.

4.3 **Transition.** Upon termination or expiration of this Agreement for any reason, Partner shall have 90 days (the “**Transition Period**”) to request Pressbooks transfer all Partner Data or Projects in Pressbooks systems to Partner. Upon such request, Pressbooks shall deliver all Partner Data or Projects to Partner within ten (10) business days, in a machine-readable format.

4.4 **Deletion Following Transition Period.** Unless otherwise agreed in writing between the parties, following the end of the Transition Period, Pressbooks shall have no obligation to maintain or grant access to any of Partner Data or Projects and may thereafter, unless legally prohibited, delete all of Partner Data or Projects in Pressbooks systems or otherwise in Pressbooks possession or under Pressbooks control.

4.5 **Survival.** The provisions of this Agreement which should by their very nature survive termination shall survive termination.

#### 5. INTELLECTUAL PROPERTY

5.1 **Definitions.** For the purposes of this Agreement, “**Computer Code**” includes but is not limited to source code in any programming language, object code, frameworks, CSS, PHP, JavaScript or similar files, templates, modules, or any similar files, and related documentation. “**Intellectual Property Rights**” shall include any and all patents, copyrights, trademarks, trade names and other proprietary rights, whether registered or not, and in effect worldwide.

5.2 **Pressbooks Property.** Pressbooks (or its licensors) retains any and all rights in and to: (i) the Platform and its constituent components, including any enhancements, upgrades or other modifications to the Platform or any constituent component thereof, including its constituent Computer Code, subject to the license described further in this paragraph; (ii) all Pressbooks trademarks (including, without limitation, the “Pressbooks” trademark and logo); (iii) any and all tangible results of any Services performed; and (iv) all Intellectual Property Rights related to any of the foregoing. Partner acknowledges and agrees that it will acquire no ownership rights or licences to any Pressbooks intellectual property unless otherwise expressly provided in this

Agreement. The parties acknowledge that the Platform is distributed under the GNU General Public License v3 (the “**GNU License**”), and that Partner acquires any and all rights to the Platform as outlined in the GNU License. Notwithstanding the foregoing, certain add-ons to the Platform (and their constituent Computer Code) are not distributed under the GNU License and remain Pressbooks property and subject to the limitations outlined in this Agreement.

- 5.3 **Limitations on Partner.** Notwithstanding the generality of the forgoing section 5.2, Partner and / or its Users shall not, or shall not attempt, to copy, sell, license, distribute, transfer, modify, adapt, translate, prepare derivative works from, decompile, reverse engineer, disassemble or otherwise attempt to derive Computer Code from, the Platform, except as provided for in the GNU license and subject to section 5.3 hereinabove.
- 5.4 **Partner Property in Projects.** To the extent that the use of the Platform by Partner or Users results in any intellectual property whatsoever in any Project, such Projects and their associated Intellectual Property Rights shall be owned by the Partner or User, as applicable.
- 5.5 **Pressbooks License to Partner.** In exchange for the payment of the Fees, Pressbooks hereby grants Partner and its Users a royalty-free, worldwide, non-exclusive, non-transferable and non-sublicensable license to use the Platform during the Term of this Agreement solely for the purpose of using the Platform to create Projects and any other function envisaged by the Platform.
- 5.6 **Feedback.** Pressbooks shall own all right, title and interest in and to any suggestions, requests or recommendations for improvements or enhancements to the Platform or other feedback that Partner (including any of its Users) may propose or make during the term of this Agreement or which Partner (including any of its Users) and Pressbooks may jointly make during the term of this Agreement (collectively, “**Feedback**”). Partner hereby irrevocably (i) assigns (on its behalf and on behalf of the Users) all right, title and interest in and to the Feedback to Pressbooks, and (ii) waives in favour of Pressbooks, its successors and assigns any and all moral rights that Partner (including any of the Users) has or may have in the Feedback and agrees to provide Pressbooks such assistance as it may require to document, perfect, and maintain Pressbooks' rights to the Feedback.

## 6. **CONFIDENTIALITY AND NON-DISCLOSURE**

For the purposes of this Agreement, “**Confidential Information**” shall be defined as all information howsoever received by a party and in whatever form, which pertains to a party, to any of its related entities or affiliates or to its clients or Users, the subject of which concerns information on the party’s (or its client’s or User’s, as applicable) strategic plans, partnership agreements, policies, information of a technical nature, information of an administrative or financial nature such as information on costs, profits, markets, sales, plans for future developments, partners, advertising, members and suppliers lists, as well as any other information of a similar nature not in the public domain, and includes but is not limited to Partner Data. The existence of and contents of this Agreement shall also be considered Confidential Information. Any documents or work assembled or composed by a party containing Confidential Information shall constitute Confidential Information within the meaning of this Agreement and be treated as such.

Unless otherwise required by law or expressly authorized in writing by the other party to this Agreement, neither party shall, either directly or indirectly, in any capacity whatsoever, divulge, disclose or communicate any Confidential Information to any person, entity, firm who is not a party to this Agreement, or any other third party, or utilize or exploit any Confidential Information for the benefit of itself or any third-party, or to the detriment of a party to this Agreement. The parties shall use the Confidential Information of the other party solely for the performance of its obligations under this Agreement.

The obligations of non-disclosure and non-use as described in the previous paragraph shall continue in perpetuity following the termination of this Agreement for any reason, unless the information ceases to be Confidential Information. Upon termination of this Agreement, within 10 business days the parties shall return all tangible (including electronic) Confidential Information of the other party or destroy it, and in such case provide proof of its destruction.

## **7. REPRESENTATIONS AND WARRANTIES; WARRANTIES DISCLAIMERS**

**7.1 Pressbooks to Partner.** Pressbooks represents and warrants to Partner that:

- (a) Authority:** (i) it has the full right, power and authority to enter into this Agreement; and (ii) that Pressbooks' entering into this Agreement shall not result in a breach of or constitute a default under any agreement or instrument to which it is a party;
- (b) Services and Platform:** Pressbooks, its employees and agents have the necessary rights, knowledge, experience, and skills to perform the Services and provide the Platform as outlined in this Agreement;
- (c) Rights:** to its reasonable knowledge, the Platform does not violate any third-party Intellectual Property Rights.

**7.2 Partner to Pressbooks.** Partner represents and warrants to Pressbooks that:

- (a) Authority:** (i) it has the full right, power and authority to enter into this Agreement; (ii) that Partner's entering into this Agreement shall not result in a breach of or constitute a default under any agreement or instrument to which Partner is a party;
- (b) Projects:** To the best of its knowledge, Partner Data and other material used in the creation of Projects does not violate any rights (including Intellectual Property Rights) of any third party. In case of violation of this sub-section by Partner or its Users, Partner shall indemnify Pressbooks as per section 9 of this Agreement.

- 7.3 **Warranty Disclaimer.** Pressbooks expressly disclaims on its behalf and on behalf of its affiliates, shareholders, officers, directors, employees and agents all representations, warranties and conditions express, legal or implied not contained herein, including representations, warranties and conditions of merchantability, quality, performance, fitness for a particular purpose, accuracy and non-infringement. Among others, Pressbooks does not represent or warrant and expressly disclaims that: (i) the Platform and Services will meet partner’s business requirements; and (ii) all errors can be corrected or found in order to be corrected.

## 8. LIMITATION OF LIABILITY

- 8.1 **Exclusion of Indirect Damages.** To the maximum extent permitted by law, in no event will Pressbooks, its shareholders, officers, directors, employees or agents: be liable for any indirect, incidental, extraordinary, consequential, special, punitive or exemplary damages (including, without limitation, loss of revenue or profits, lost or damaged data, loss of use, business interruption or any other pecuniary loss), arising out of or relating to this Agreement or caused by the any of the Services or the Platform even if Pressbooks has been advised of the possibility of such damages. This limitation of liability will apply regardless of the form of action, whether in contract, warranty, tort, delict, quasi-delict, negligence, strict liability or under any other legal theory.
- 8.2 **Amount Limitation.** To the extent permitted by law, the total liability of Pressbooks for claims by Partner or any other person arising under this Agreement shall be limited to the Fees paid by Partner to Pressbooks during the 6-month period preceding the event from which the liability arises.
- 8.3 **Infringement Limitation.** If all or any portion of the Platform is, in Pressbooks’ opinion, likely to or otherwise does become the subject of a claim for infringement of any Intellectual Property Rights, Pressbooks may, at its option and its sole cost and expense, either: (i) procure in favour of Partner the right to use the same as contemplated herein, (ii) modify the same to become non-infringing provided that any such modification does not materially impair the ability of the Platform, or any part thereof to conform to and perform in accordance with the specifications therefor or the intended use of the Platform; or (iii) replace the infringing part of the Platform, with compatible, feature and functionally equivalent, and non-infringing products or documentation, as the case may be. If in Pressbooks’ reasonable opinion it is not commercially reasonable for it to comply with any of (i), (ii) or (iii) above, it may upon written notice to Partner, terminate this Agreement in case the Platform is infringing. The remedies set forth in this section 8.3 are Partner’s sole remedy in the event of a potential infringement or a claim for infringement in connection with the Platform.

## 9. PARTNER INDEMNIFICATION

Each party (“**Indemnitor**”) shall defend the other party (“**Indemnitee**”) against any claim, demand, suit or proceeding made or brought against Indemnitee, any of its Affiliates, or any of their respective shareholders, officers, directors, employees, or agents (collectively “**Indemnified Parties**”) by a third party alleging that: (a) Indemnitor’s (or any User’s, in the case of Partner) use of the Platform is in breach of this Agreement, infringes or misappropriates the Intellectual Property Rights or other rights of a third party (including but not limited to Projects infringing such rights in the case of Partner) or violates applicable law; (b) the violation of any law,

regulation, or other legal mandate, by Indemnitor; (c) the breach by Indemnitor, its officers, directors, employees, or agents of any covenant, condition, warranty, or representation contained in this Agreement; or (d) the gross negligence or willful misconduct of Indemnitor, its officers, directors, employees, or agents (a “**Claim**”). Indemnitor shall indemnify and hold harmless the Indemnified Parties for any loss, claim, damages, cost, expenses, and other liability (including reasonable lawyers’ and expert’s fees and expenses) that any Indemnified Party incurs a result of or in connection with a Claim; provided that Indemnitee: (i) promptly gives Indemnitor written notice of the Claim; (ii) gives Indemnitor sole control of the defense and settlement of the Claim (provided that Indemnitor may not settle any Claim unless the settlement unconditionally releases Indemnitee of all liability); and (iii) provide to Indemnitor all reasonable assistance, at Indemnitor’s expense.

## **10. GENERAL PROVISIONS**

- 10.1 **Governing Law; Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Quebec, Canada and the Federal laws of Canada applicable therein in force at the time without regard to conflict of law provisions. Any legal action or proceeding regarding this Agreement shall be brought exclusively in the courts located in the Judicial District of Montreal, Canada. The foregoing choice of jurisdiction and venue shall not prevent either party from seeking injunctive relief with respect to a violation of Intellectual Property Rights, confidentiality obligations or enforcement or recognition of any award or order in any appropriate jurisdiction.
- 10.2 **Right of Publicity.** Pressbooks reserves the right to publicize the use of the Platform by Partner and / or is Users. Pressbooks may publicly identify Partner or its Users as Partner of Pressbooks, and use Partner’s logo(s) in connection with publicized Pressbooks Partner lists, advertising, and other promotional and marketing materials, in any media whatsoever.
- 10.3 **Notice.** All notices, permissions and approvals required to be sent hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the 5th day after mailing, (iii) the 2nd day after sending by confirmed facsimile, or (iv) the 1st day after sending by email. All notices sent to a party in connection with this Agreement (including its termination) must be addressed to the party’s contact listed on the first page of this Agreement.
- 10.4 **Force Majeure.** No party will be liable for any failure or delay in the performance of its obligations under this Agreement for any cause beyond its reasonable control including, without limitation, acts of God, fire or other disaster, catastrophe or unusual internet delays, outages, or congestion, denial of service attacks, and other “hacker” activity.
- 10.5 **Relationship of Parties.** This Agreement is an agreement between separate legal entities and neither party is the agent or employee of the other for any purpose whatsoever. The parties do not intend to create a partnership or joint venture between themselves. Neither party shall have the right to bind the other to any agreement or to incur any obligation or liability on behalf of the other party, except as provided for in this Agreement.
- 10.6 **Entire Agreement; Modifications.** This Agreement including its Appendices constitute the complete agreement between the parties and supersedes all prior or contemporaneous agreements or representations or warranties, written or oral, concerning the subject matter of

this Agreement. This Agreement may not be modified or amended except in writing and signed by a duly authorised representative of each party.

- 10.7 **Successors and Assigns.** All obligations set forth in this Agreement will bind and enure to the benefit of the respective successors and permitted assigns of the parties. Partner will not assign any of its rights, obligations or privileges (by operation of law or otherwise) hereunder that is not an affiliate, parent, subsidiary, or successor of Partner, without the prior written consent of Pressbooks. Pressbooks reserves the right to assign its rights, obligations or privileges (by operation of law or otherwise) hereunder without the prior written consent of Partner.
- 10.8 **Severability.** If any of the provisions contained in this Agreement are found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions contained herein shall not be in any way affected or impaired hereby.
- 10.9 **Waiver.** The failure of a party to enforce any provision of this Agreement shall not constitute a waiver of such provision or of the right of such party to enforce such provision and every other provision.
- 10.10 **Language.** The parties acknowledge having expressly required that this Agreement is to be drawn up in the English language. *Les parties aux présentes reconnaissent avoir expressément exigé que les présentes soient rédigées en anglais.*

## APPENDIX A – SERVICE LEVEL AGREEMENT

### A1. Platform Availability

Pressbooks will make the Platform available over the internet 24 hours a day, 7 days a week, 365 days a year, including statutory holiday, less Excusable Downtime (as defined below) for an average of 99% over a calendar month (hereinafter “**Uptime**”).

### A2. Excusable Downtime

“Excusable Downtime” includes any event that:

- is caused by components which are not Pressbooks' responsibility;
- is caused by Partner or its Users (including their respective representatives or agents), or the equipment or software of any of the foregoing;
- is a planned downtime, i.e., an interruption of the Platform as announced by Pressbooks. Partner will be notified at least 24 hours in advance;
- is the result of a force majeure event.

## APPENDIX B – SERVICES AND PLATFORM LIMITATIONS

Pressbooks shall perform the following Services for Partner to access the Platform, and subject to the following limitations:

- (...)

### If applicable:

Pressbooks shall perform the following Services for Institutional Users to access the Platform, and subject to the following limitations:

- (...)

## **APPENDIX C - FEES AND ADDITIONAL PROVISIONS RELATED TO FEES**

This Appendix C sets out the Fees payable under this Agreement and supplements the provisions of Section 3 herein.

### **C1. FEES PAYABLE BY PARTNER**

The Fees payable by Partner to Pressbooks under this Agreement for access to the Platform and performance of the Services shall be the following:

- [...].

### **C2. PARTNER PAYMENT SCHEDULE AND MODALITIES**

Fees payable by Partner shall be payable according to the following schedule and subject to the following modalities:

- [...].

**If applicable:**

### **C3. FEES PAYABLE BY INSTITUTIONAL USERS**

Fees payable by Institutional Users to Pressbooks under this Agreement for access to the Platform and performance of the Services shall be the following:

- [...].

### **C4. INSTITUTIONAL USERS PAYMENT SCHEDULE AND MODALITIES**

Fees payable by Institutional Users shall be payable according to the following schedule and subject to the following modalities:

- [...].