Master Subscription Agreement

This **Master Subscription Agreement (“AGREEMENT”)** and any accompanying Tovuti product and pricing document,executed as a standalone order or agreed to as part of an online order process on Tovutis purchasing portal website is **BETWEEN TOVUTI LMS (Tovuti) AND The named entity on the Tovuti product and pricing document accompanied with this Agreement (The Client) This Agreement along with the product and pricing document is a binding contract between Tovuti, LLC, an Idaho limited liability company, and** the Client

**1. DEFINITIONS**

“**Affiliate**” means any entity, which directly or indirectly controls, is controlled by, or is under common control of the Client.

 “**Control**,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity. This Agreement shall apply to each of the Clients Affiliates, regardless whether they also use the Services.

“**Business Days**” means any days on which commercial banks in Boise, Idaho are open for business.

“**Documentation**” means any written or electronically transmitted information provided to the Client by Tovuti in connection with the Services.

“**Fees**” means the amounts payable to Tovtui by the Client in exchange for the Services ordered or agreed to as specified in the written proposal and subject to the Terms, and any additional amounts otherwise due and payable under this Agreement or the Terms, including, without limitation, late fees and collection costs.

“**Malicious Code**” means viruses, worms, time bombs, Trojan horses, and other harmful or malicious code, files, scripts, agents, or programs.

“**Services**” means any online, cloud-based, associated mobile applications or web-based platform and services that the Client purchases from Tovuti.

“**Terms**” means the terms and conditions applicable to the Clients use of the Services provided by Tovuti, a copy of which is located at (<https://www.tovutilms.com/terms>

“**Privacy Policy**”, which governs the use of any private information we gather from Users, located at at the following URL (<https://www.tovutilms.com/privacy-policy>);

“**End User License Agreement**”, which governs the use of any software licensed from Tovuti by Client located at at the following URL (<https://www.tovutilms.com/end-user-license>);

“**Third-Party Goods or Services**” means any goods or services provided to the Client by third-parties to interoperate with the Services, including, without limitation, any smartphones, tablets, computers, online, web-based or cloud-based applications, or offline software or other hardware products that are provided by third-parties.

“**Users**” means individuals who are authorized by the Client to use Tovuti Services, for whom subscriptions have been purchased or made available, and who have been supplied user identifications and passwords or granted access by the Client to create user identification passwords or by Tovuti at the Clients request. Users may include, but are not limited to, the Clients employees, members, consultants, agents, contractors and family members if applicable (each, an “Administrative User”); or third parties with which the Client transacts business (each, a “Registered User”). The number of allowed Users is defined in the Tovuti Agreement signed by both parties and attached herein

"**Active Users**" means any Users that has created a login and can be identified by an id, email or username on the Tovuti platform under the Client’s specific systems instance or who has opted in to the Clients portal, as provided by Tovuti and interacts within an instance within a 12 month period of time beginning at the time of signing this Agreement. The number of allowed "Active Users" will be as defined by the Tovuti Agreement signed by both parties and attached herein.

**“Tovuti Agreement”** means the specific set of features, functions and allotted number of Users agreed to be purchased by The Client and supplied by Tovuti to The Client for a set price, time and number of Users and or Active Users.

“**Clients Data**” means all electronic data or information submitted by the Client at any time in connection with the Services, including prior to provision of the Services.

**2. SUBSCRIPTION**

**2.1 Provision of Services**

Tovuti shall make the Services available to the Client at the level of Service consistent with the Tovuti Agreement. The Client agrees that purchases are neither contingent on the delivery of any future functionality or features nor dependent on any oral comments made by Tovuti regarding future functionality or features.

**2.2 Subscriptions**

The Client agrees that (i) Services are purchased as subscriptions and may not be accessed or used by the Client, the Users, or the Clients employees, contractors, or other participants in excess of the subscription amounts specified in the Tovuti Agreement, (ii) additional subscriptions may, by request of the Client, be added during the subscription term at the same pricing as that for the pre-existing subscriptions, prorated for the remainder of the subscription term in effect at the time the additional subscriptions are added, and (iii) the added subscriptions shall terminate on the same date as the pre-existing subscriptions. Except as otherwise specified by the Tovuti Agreement, subscriptions are based on the persons designated by the Client as the permissible Users or employees, contractors, or other participants and cannot be shared or used by anyone except as permitted in the Tovuti Agreement. The Client is responsible for ensuring that the Clients employees and customers comply at all times with the Terms in using the Services.

**3. USE OF THE SERVICES**

**3.1 Use**

The Services consist of software running remotely on cloud based servers controlled by Tovuti’s third-party hosting provider. By accepting the use of Services the Client agrees Tovuti may add the phrase “Powered By Tovuti” somewhere visible but not distracting to Users on the Tovuti System. The Client has no right to receive either an object code or source code version of the software operating on the remote servers. The Clients usage rights are constrained by the Terms and are limited to accessing the Services via a designated portal using username(s) and password(s) provided to the Client by Tovuti. The Client must have a high-speed internet connection, hardware, and software that is compatible with the Services as indicated by Tovuti.

**3.2 Tovuti’s Responsibilities**

Tovuti shall: (i) provide the Client basic support consistent with the level of the Tovuti Agreement purchased by the Client at no additional charge, (ii) use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which Tovuti shall give at least 24 hours notice via our website or electronic data message (EDM), or (ii) any unavailability caused by circumstances beyond Tovuti’s reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Tovuti’s employees), or Internet service provider failures or delays or other systemic Internet issues, and (iii) provide the Services only in accordance with applicable laws and government regulations.

**3.3 The Clients Responsibilities**

The Client shall (i) be responsible for their Users’ compliance with this Agreement, (ii) be solely responsible for the accuracy, quality, integrity and legality of the Clients Data in which they allow, authorize or elect to upload into the Tovuti instance for which has been purchased by them and made available to the Client by Tovuti and of the means by which the Client acquired the Clients Data, (iii) Make best efforts to prevent unauthorized access to or use of the Services, and notify Tovuti promptly of any such unauthorized access or use, and (iv) use the Services only in accordance with this Agreement and applicable laws and government regulations. The Client shall not (i) make the Services available to anyone other than the Users the Client authorize or grant permission to, (ii) sell, resell, rent or lease the Services, (iii) use the Services to store or transmit infringing, libelous, obscene or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy or intellectual property rights, (iv) use the Services to store or transmit Malicious Code, (v) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, (vi) attempt or permit others to attempt to gain unauthorized access to the Services or their related systems or networks, (vii) load test the Services in order to test scalability, or (viii) copy, reproduce, publicly perform or create derivative works based upon the Services or Documentation or make or have made any feature or functionality of the Services.

**3.4 Usage Limitations**

The Services may be subject to other limitations, such as, limits on disk storage space or Internet bandwidth. Tovuti shall employ commercially reasonable efforts to apprise the Client of any such limitations. The Services may not be used for any purpose in violation of applicable laws or regulations.

**4. THIRD-PARTY GOODS OR SERVICES**

**4.1 Acquisition of Third-Party Goods or Services**

The Client may purchase and use Third-Party Goods and Services to interoperate with the Services provided by Tovuti. Any purchase or use by The Client of any Third-Party Goods or Services are solely between The Client and the third-party provider. Tovuti does not warrant, take responsibility for, or make any claim that any Third-Party Good and Services will interoperate with Tovuti’s system.

**4.2 Third-Party Goods or Services and The Clients Data**

If The Client installs or enables Third-Party Goods or Services, The Client acknowledges that Tovuti may allow third-party providers to transport The Clients Data as required for the interoperation of such Third-Party Goods or Services with Tovuti’s Services. Tovuti shall not be responsible for any disclosure, modification or deletion of The Clients Data resulting from any such access. The Services may allow The Client to restrict such access by restricting Users from installing or enabling any additional Third-Party Goods or Services not purchased by The Client.

**5. FEES AND PAYMENT**

**5.1 User Fees**

The Client shall pay all Fees specified in the Clients Tovuti Agreement. Except as otherwise specified by Tovuti: (i) all Fees are quoted and payable in United States dollars; (ii) all Fees are based on Services ordered by the Client and not actual usage; (iii) payment obligations are non-cancelable and Fees paid are non-refundable; and (iv) the level of service cannot be decreased during the relevant subscription term. Fees are based on monthly periods that begin on the subscription start date and each monthly anniversary thereof; therefore, Fees for subscriptions added in the middle of a monthly period will be charged for that full monthly period and the monthly periods remaining in the relevant subscription term.

**5.2 Invoicing and Payment**

The Client, should the Client choose to pay monthly, will provide Tovuti with valid and updated credit card, ACH or any other form of electronic payment as accepted by Tovuti, or with a valid purchase order acceptable to Tovuti. If The Client provides credit card information to Tovuti, The Client authorizes Tovuti to charge such credit for all Fees due and payable according to this Agreement, including, without limitation, any sales tax. No credit card processing or credit card fees will be charged. Fees for subscriptions shall be paid by The Client in full in advance of the subscription term, either annually or in accordance with any different billing frequency, as specified in The Clients Tovuti Agreement, Unless otherwise agreed to all invoiced Fees are due upon receipt of the invoice date. The Client is responsible for maintaining complete and accurate billing and contact information with Tovuti.

**5.3 Overdue Fees**

If any Fees are not paid by the Client when due then such Fees may accrue a late fee at the rate of 1.5% of the outstanding Fees per month, or the maximum rate permitted by law, whichever is lower, from the date the Fees were due until paid and Tovuti may condition future Orders on different payment terms specified in this Agreement or The Clients prior Orders.

**5.4 Suspension of Service and Acceleration**

If any amount The Client owes Tovuti is overdue by 30 or more days (or 10 or more days overdue in the case of amounts The Client has authorized Tovuti to charge to The Clients credit card), Tovuti may, without limiting Tovuti’s other rights and remedies, accelerate all unpaid Fee obligations under this Agreement, suspend The Clients current Services, or withhold future Services purchased by The Client, until all such amounts are paid in full.

**5.5 Taxes**

Unless otherwise specified by Tovuti, Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, “**Taxes**”). The Client is responsible for paying all Taxes associated with The Clients purchases from Tovuti. If Tovuti has the legal obligation to pay or collect Taxes for which The Client are responsible, the appropriate amount shall be invoiced to and paid by The Client, unless The Client provides Tovuti with a valid tax exemption certificate authorized by the appropriate taxing authority.

**6. PROPRIETARY RIGHTS**

**6.1 Reservation of Rights**

This is a subscription to a service. Subject to the limited rights expressly granted hereunder, Tovuti reserves all rights, title and interest in and to the Services, including, without limitation, all related intellectual property rights. No rights, including any rights under license, either express are implied, are granted to The Client hereunder other than as expressly set forth herein. The Client will have no ownership or license rights to such additions or modifications except for this subscription.

**6.2 Restrictions**

The Client shall not (i) permit any third party to access the Services except as permitted herein or as otherwise agreed, (ii) create derivative works based on the Services provided by Tovuti, (iii) copy, frame or mirror any part or content of the Services, other than copying or framing on The Clients own intranets or otherwise for The Clients own internal business purposes, (iv) reverse engineer the Services, or (v) access the Services in order to build a competitive product or service or copy any features, functions, or graphics of the Services.

**6.3 The Clients Owns its Data**

The Client exclusively owns all rights, title and interest in and to all of The Clients Data. Notwithstanding the foregoing, the term “The Clients Data” does not include any analytical or statistical information regarding devices or operating systems used to access or utilize the Services; syncing, wait or down times; aggregated user or transaction data; errors encountered by Users; or the identifiers of where within the Services any technical problems arose. Tovuti (or a third party on Tovuti’s behalf) may track, collect, and utilize such information to test, evaluate, support, market, or otherwise improve the quality of Tovuti’s Services.

Tovuti (or a third party on Tovuti’s behalf) will never access or use The Clients Data for support purposes without first obtaining The Clients explicit permission. Tovuti will not market products or services or the products and services of third parties to The Clients Registered Users without first obtaining the Clients permission in writing.

**7. CONFIDENTIALITY**

**7.1 Definition of Confidential Information**

As used herein, “**Confidential Information**” means all confidential information disclosed by a party (“**Disclosing Party**”) to the other party (“**Receiving Party**”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. The Clients Confidential Information shall include The Clients Data; Tovuti’s Confidential Information shall include the Services; and Confidential Information of each party shall include the terms and conditions of this Agreement, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than The Clients Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

**7.2 Protection of Confidential Information**

Except as otherwise permitted in writing by the Disclosing Party, (i) the Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.

**7.3 Protection of The Clients Data**

Tovuti shall not (i) modify The Clients Data, (ii) disclose The Clients Data except as compelled by law in accordance with Section 7.4 (Compelled Disclosure) or as expressly permitted in writing by The Client, or (iii) access The Clients Data except to provide the Services, prevent or address service or technical problems, or at The Clients request in connection with customer support matters.

**7.4 Compelled Disclosure**

The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party’s Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

**8. LIMITED WARRANTIES AND DISCLAIMERS**

**8.1 Tovuti’s Limited Warranty**

Tovuti warrants that the Services shall be provided by Tovuti in a professional, competent and workmanlike manner and the Services shall perform materially in accordance with this Agreement. For any breach this limited warranty, The Clients exclusive remedy shall be as provided in Section 11.3 (Termination) and Section 11.4 (Refund or Payment upon Termination) below.

**8.2 Mutual Representations and Warranties**

Each party represents and warrants that (i) it has the legal authority to enter into this Agreement and be bound by its terms and conditions, and (ii) it will not transmit to the other party any Malicious Code (except for Malicious Code previously transmitted to the warranting party by the other party).

**9. Indemnification from Third-Party Claims**

The Client shall indemnify, defend, and hold harmless Tovuti and our Affiliates, and respective officers, directors, contractors, and agents, from and against any claim made or brought against The Client by a third-party (a) alleging that the Clients Data in which The Client elected, authorized or allowed to be placed on Tovuti’s system breaches any agreement in which the Client may have with that particular party other than Tovuti or infringes or misappropriates the intellectual property rights of a third-party, or violates applicable law.

**10. LIMITATION OF LIABILITY**

**10.1 Limitation of Liability**

IN NO EVENT SHALL EITHER PARTY’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED TWO TIMES (2X) THE TOTAL AMOUNT PAID BY THE CLIENT HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT GIVING RISE TO THE CLAIM.

**10.2 Exclusion of Consequential and Related Damages**

IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

**11. TERM AND TERMINATION**

**11.1 Term of Agreement**

This Agreement commences on the date signed by The Client and continues until the Agreement ends unless automatically renewed as according to the terms.

**11.2 Termination**

Without limiting the Service Level Agreement located at ([https://www.tovutilms.com/sla)](https://www.tovutilms.com/sla), in the event of an outage of the Services in full for a period longer than seventy-two (72) hours, except for reasons outside of Tovuti’s control, the Client may terminate this Agreement immediately with written notice; otherwise, a party may terminate this Agreement for cause (i) upon 30-days’ written notice to the other party of a breach of contract if such breach remains uncured at the expiration of such period or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Tovuti may also terminate this Agreement any time after the first renewal term ends at any time upon 60-days’ written notice to The Client.

**11.3 Refund or Payment upon Termination**

Upon termination of this Agreement Tovuti shall refund The Client any prepaid Fees covering the remainder of the term of all subscriptions after the effective date of termination, except for termination for cause by Tovuti under Section 11.3, in which case The Client shall pay any unpaid Fees covering the remainder of the term after the effective date of termination. In no event shall any termination relieve The Client of the obligation to pay any Fees payable to Tovuti for the period prior to the effective date of termination.

**11.4 Return of The Clients Data**

Tovuti will maintain The Clients Data for a period of 30 days after the effective date of termination of this Agreement to enable The Client to download The Clients Data. After such time period, Tovuti shall have no obligation to maintain or provide access to any of The Clients Data and shall thereafter, unless legally prohibited, delete all of The Clients Data in Tovuti’s systems or otherwise in Tovuti’s possession or under Tovuti’s control.

**11.5 Surviving Provisions**

Section 5 (Fees, and Payment), 6 (Proprietary Rights), 7 (Confidentiality), 8.3 (Disclaimer), 9 (Mutual Indemnification), 10 (Limitation of Liability), 11.4 (Refund or Payment upon Termination), 11.5 (Return of The Clients Data), 12 (Who The Client Are Contracting With, Notices, Governing Law and Jurisdiction) and 13 (General Provisions) shall survive any termination or expiration of this Agreement.

**12. WHO YOU ARE CONTRACTING WITH, NOTICES, GOVERNING LAW AND JURISDICTION**

**12.1 General**

The Client is contracting with Tovuti, LLC, an Idaho limited liability a mailing address at P.O. Box 1165 Eagle Idaho 83616 USA; and telephone: 1-208-246-8601. The Client should direct all notices under this Agreement to “Legal” at that address. The Client agrees that the substantive laws of the state of Idaho, exclusive of its choice of law provisions, will apply to the construction and interpretation of this Agreement and also with respect to any lawsuit arising out of or in connection with this Agreement.

**12.2 Manner of Giving Notice**

Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second Business Day after mailing, or (iii) the second Business Day after sending by confirmed facsimile. Notices to The Client shall be addressed to the system administrator designated by The Client for The Clients relevant Services account, and in the case of billing-related notices, to the relevant billing contact designated by The Client, or to the email address The Client provides to Tovuti. The Client agrees to provide Tovuti with The Client's current email address at all times. By The Client's acceptance of this Agreement, The Client agrees to have opted-in for the receipt of email communications pursuant to the provisions of the United States CAN-SPAM Act.

**12.3 Agreement to Governing Law and Jurisdiction**

Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of and venue within the applicable courts stated above.

**13. GENERAL PROVISIONS**

**13.1 Export Compliance**

Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Services. Without limiting the foregoing, (i) each party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) The Client shall not permit Users to access or use the Services in violation of any U.S. export embargo, prohibition or restriction.

**13.2 Relationship of the Parties**

The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

**13.3 No Third-Party Beneficiaries**

Unless explicitly stated otherwise elsewhere in this agreement, no Person other than the parties themselves has any rights or remedies under this agreement.

**13.4 Waiver and Cumulative Remedies**

No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

**13.5 Severability**

If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

**13.6 Attorney Fees**

The Client shall pay on demand all of Tovuti’s reasonable attorneys’ fees and other costs incurred by Tovuti to collect any Fees due Tovuti under this Agreement. In any action arising out of or related to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorneys’ fees and costs incurred in bringing or defending the action, including on any appeal.

**13.7 No Assignment**

The Client may not assign any of The Clients rights or obligations hereunder, whether by operation of law or otherwise, without Tovuti’s prior written consent (not to be unreasonably withheld). Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**13.8 Entire Agreement**

This Agreement, including all exhibits and addenda, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless it is either (i) set forth in a written Addendum attached by Tovuti to this Agreement and signed by both The Client and Tovuti in writing or (ii) is otherwise signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any appendix or addendum hereto, the terms of such appendix or addendum shall prevail.