

MEMORANDUM

TO: MAYOR AND CITY COMMISSION

FROM: CITY ATTORNEY'S OFFICE

DATE: June 6, 2022

RE: Software Agreement with Tovuti, Inc. for Learning Management System

Attached hereto for your consideration is a proposed Software Agreement with Tovuti, Inc. for a fully hosted Learning Management System (LMS) platform for Lakeland Electric. This new LMS software platform solution will replace the obsolete Moodle platform, which required replacement due to its use of Adobe Flash that reached the end of its useful life in 2021 and the server hosting the Moodle platform was retired by the City's IT Department and will no longer be supported.

As a result, much of the 2022 training for Lakeland Electric staff was conducted using paper and virtual classroom settings. This proved to be economically and logistically challenging since nearly 600 users were pulled out of the field multiple times since January for training. Implementation of the new LMS software platform will enable Lakeland Electric to complete the remainder of the 2022 training via LMS and prepare staff for the 2023 training cycle.

Specifically, Tovuti, Inc.'s LMS software platform solution will enable Lakeland Electric to provide administration, documentation, tracking, reporting, automation and delivery of educational courses, training programs, as well as learning and development programs. Some of the courses and programs developed by Lakeland Electric will encompass Critical Infrastructure Protection (CIP) Training related to NERC CIP requirements, Standards of Conduct related to FERC requirements, Substation Safety/Situational Awareness, and Substation Access Training for employees.

On January 6, 2021, the City's Purchasing Department issued Request for Proposal (RFP) No. 1027 seeking the services of qualified vendors to provide a fully hosted LMS for approximately 500–1000 employees, contractors and vendors. The responses the City received to this RFP were unacceptable in price and scope. Therefore, much of the 2022 training was conducted manually.

In April 2022, Lakeland Electric reached out to vendors for new quotes to better understand current price structures. The City received quotes from the two (2) vendors listed below.

Vendor	Location	1500 Users for 1 Year
Tovuti, Inc.	Eagle, ID	\$17,500
Cornerstone Marick	Brooklandville, MD	\$43,500

Upon evaluation by City staff, Tovuti, Inc. was selected as the most responsive responsible quote with the lowest price for one (1) year of service. Upon further discussions with Tovuti, Inc., it was determined that a longer three (3) year term would be more cost effective for the City. Upon City Commission approval, the Agreement with Tovuti, Inc. will be effective for an initial term of three (3) years. The Agreement contains one (1) additional three (3) year automatic renewal option unless the City provides ninety (90) days prior written notice of its intent not to renew prior to the expiration of the initial term of the Agreement. All services provided by Tovuti, Inc. will be performed in accordance with the terms and conditions of the Software Agreement and Tovuti Inc.'s proposal dated May 25, 2022.

The total cost for the initial three (3) year term is \$56,500 and will remain firm. Should the parties exercise the option of renewal, pricing for services will be subject to a 5% increase. The price for the first year of the LMS software solution is \$17,500, in addition to \$4,000 for implementation services, for a total cost of \$21,500, which is included in Lakeland Electric's FY22 budget. The remaining two (2) year initial term cost will be subject to future budget approval by the City Commission.

It is recommended that the City Commission approve this Software Agreement with Tovuti, Inc. and authorize the appropriate City officials to execute all corresponding documents on behalf of the City.

Attachment

SOFTWARE AS A SERVICE AGREEMENT

This Software as a Service 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 Tovuti's purchasing portal website, executed by and between Tovuti Inc., a Delaware corporation (“Tovuti”) and the City of Lakeland, Florida (the “Client”), each referred to as a “Party”, and collectively the “Parties”.

WHEREAS, Tovuti desires to provide software as a service to Client according to the terms and conditions set forth below;

WHEREAS, Client desires to purchase from and engage with Tovuti and such software services provided below;

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

1. DEFINITIONS

"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 Purchase Terms signed by both parties and attached herein.

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

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

“Client’s 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.

“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 of whether they also use the Services.

“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 Tovuti 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.

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

“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 use of the Services provided by Tovuti, a copy of which is located at (<https://www.tovutilms.com/terms.>) In the event of a conflict between the Terms and the provisions of this Agreement, the Agreement shall govern.

“**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.

“**Tovuti Purchase Terms**” means the specific set of features, functions and allotted number of Users agreed to be purchased by the Client and supplied by Tovuti in the form of an electronically generated terms (either attached hereto as **Exhibit A**) or incorporated by internal reference number associated with the Client for a set price, time and number of Users and or Active Users.

“**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 Purchase Terms signed by both parties and attached herein

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 Purchase Terms. 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 on a subscription at a specific level and based on a set number of Users, bandwidth, storage space and other limitations defined in the Tovuti Purchase Terms. The Client may not use the Services inconsistent with the Terms and Conditions or beyond the usage, storage or other applicable restrictions set forth in the Agreement without express written permission from Tovuti. Any Usage, storage space and other defined limitations being used in excess of 110% of the Agreed to level of services will be charged a fee based on Tovuti’s then current pricing, (i) additional Users and number of Users or seats may be added to the current subscription level and may, by request of the Client, be added during the subscription term at the same pricing as that for the preexisting subscriptions, prorated for the remainder of the subscription term in effect at the time the additional subscriptions are added, and (ii) the added subscriptions shall terminate on the same date as the pre-existing subscriptions. Except as otherwise specified by the Tovuti Purchase Terms, 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 Purchase Terms. The Client is responsible for ensuring that the Clients employees and customers comply at all times with the Terms in using the Services. The Client may not (i) permit any third-party to install, configure, access, use or copy all or any portion of the Software or SaaS Services; (ii) modify, reverse engineer, decompile, disassemble, distribute, create derivative works based on, copy or otherwise exploit all or any portion of the Services or Software except as expressly permitted by applicable law, rule or regulation; (iii) sell, sublicense, rent, lease, or otherwise transfer rights to

all or any portion of the Services or Software; (iv) use the Services or Software to operate in or as a time-sharing, outsourcing or service bureau environment or in any manner which supports the business of a third party; (v) obscure, remove or alter any intellectual property rights notices or markings on the Services or Software; or (vi) use the Services or Software in any manner which could (a) pose a security risk or (b) disable, overburden, damage, or impair the performance or operation of the computing environment on which the Services or Software are hosted (including where such use interferes with any other party's use thereof).

2.3 Renewal Services

90 days of the expiration of the then current Term and any renewal term for the Services, Client will notify Tovuti should Client wish to cancel the renewal of this Agreement at the end of its Term. Should no notice be given by the Client to Tovuti within 90 days of the expiration period of the then current Term, Tovuti will consider this Agreement and its terms to be renewed by the Client. A proposed increase to the base annual rate of the last Agreement may be added in the amount of but not to exceed 5% of such prior year's fees or (ii) the increase in any published or quoted list prices for Services. Except as expressly provided otherwise, there will be no other increase in the fees charged for 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 API License

If Client purchased an application programming interface ("API") license, Tovuti will grant a limited, non-exclusive, revocable, non-sublicensable, non-transferable license, to access each API set forth in the Tovuti Purchase Terms. The API(s) are provided in the form of a web service that enables a "connection" into our servers. Tovuti will provide Client with the information necessary to enable Clients secure use of the API(s). Client may not use or install the API(s) for any other purpose without Tovuti's express written consent, and may not copy, rent, adapt, disassemble, lease, assign, sublicense, reverse engineer, modify or decompile, the API(s) or any part thereof. Tovuti reserves the right to limit the number and/or frequency of API requests or take other actions necessary to protect the integrity of Tovuti's services.

3.3 Tovuti's Responsibilities

Tovuti shall: (i) provide the Client basic support consistent with the level of the Tovuti Purchase Terms 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.

3.4 The Client's 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 Client's 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 Client's 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.

3.5 Usage Limitations

The Services may be subject to other limitations, such as, 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 Client's 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 Client's 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 Client's 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 Client's Tovuti Purchase Terms. Except as otherwise specified by Tovuti: (i) all Fees are quoted and payable in United States dollars; (ii) all Fees are based on Services purchased and shall not be limited if usage by the Client is less than purchased "ordered by the Client and not actual usage; (iii) payment obligations are non-cancelable and Fees

paid are non-refundable (except as provided in Section 11.3); 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 Overage Fees

During the Term of this Agreement Client agrees to stay within the number of Active Users and storage space as purchased and agreed to in the Tovuti Purchase Terms. Any usage above 110% within a given month will be considered over usage and Tovuti will automatically charge the additional fees to the Client account per section 2.2 above.

5.3 Invoicing and Payment

The Client, should the Client choose to pay monthly, will provide Tovuti with a 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, if applicable. 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 Client's Tovuti Purchase Terms, all invoiced Fees are due no later than forty-five (45) days of receipt of the invoice, in accordance with Florida Statute Section 218.74, et.seq., the Local Government Prompt Payment Act. The Client is responsible for maintaining complete and accurate billing and contact information with Tovuti.

5.4 Overdue Fees and Late Fees

All past due fees owed by the Client that are over sixty (60) days past due from the time invoiced will accrue a late fee at the rate of 1.0%, in accordance with Florida Statute Section 218.74, et.seq., the Local Government Prompt Payment Act, 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 Client's prior Orders.

5.5 Suspension of Service and Acceleration

If any amount the Client owes Tovuti is overdue by 60 or more days (or 10 or more days overdue in the case of amounts the Client has authorized Tovuti to charge to the Client's credit card), Tovuti may, without limiting Tovuti's other rights and remedies, accelerate all unpaid Fee obligations under this Agreement, suspend the Client's current Services, or withhold future Services purchased by the Client, until all such amounts are paid in full.

5.6 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 Client's purchases from Tovuti. If Tovuti has the legal obligation to pay or collect Taxes for which the Client is 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 or 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 Client's own intranets or otherwise for the Client's 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 Client Owns its Data

The Client exclusively owns all rights, title and interest in and to all of the Client's Data. Notwithstanding the foregoing, the term "the Client's 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 Client's Data for support purposes without first obtaining the Client's explicit permission. Tovuti will not market products or services or the products and services of third parties to the Client's Registered Users without first obtaining the Client's 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, visually, electronically, in writing, or in any other manner, 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 Client's Confidential Information shall include the Client's 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 Client's 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, (iv) was independently developed by the Receiving Party; or (v) is subject to disclosure pursuant to Florida Statutes Chapter 119, the Florida Public Records Act, or any other applicable law.

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. The Receiving Party shall promptly advise the Disclosing Party in the event that it learns or has reason to believe that any person who has had access to the Confidential Information has violated or intends to violate the terms of this Agreement and shall reasonably cooperate in seeking injunctive relief against any such person.

7.3 Protection of The Clients Data

Tovuti shall not (i) modify the Client's 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 prompt prior notice of such compelled disclosure (to the extent legally permitted) to enable the Disclosing Party to seek a protective order or other appropriate remedy, 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 Receiving Party will disclose the Confidential Information only to the extent legally required, and the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

7.5 European Union Data Protection Directive

EU Data Protection. If Client is subject to the European Union Data Protection Directive 95/46/EC, the European Union General Data Protection Regulation or similar statute, in relation to Personal Information Tovuti shall not process Client's Data on its behalf. Client agrees they are the controller of such information and that Tovuti is the processor of such information. If any term of this Agreement expressly conflicts with any term of the DPA, the conflicting term in the DPA shall control.

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 of this limited warranty, the Client's exclusive remedy shall be as provided in Section 11.2 (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

To the extent permitted by law, 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 Client's 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.

Tovuti shall indemnify, defend and hold Client, its partners, parents, subsidiaries, and affiliates, and their respective successors, assigns, members, principals, officers, directors, employees and agents, harmless from and against any and all claims, lawsuits, investigations or demands (and any and all costs, liabilities, damages and expenses arising therefrom (including amounts paid in settlement and reasonable attorneys' fees), to the extent such claims, lawsuits, investigations or demands allege that Tovuti's system 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 shall continue as defined by Tovuti Purchase Terms, which initial term shall not be terminated unless in compliance with Section 11.2.

11.2 Termination

Termination for convenience is not permitted in this Agreement and all Terms and Conditions remain in force until expiration of this Agreement unless Termination of Cause occurs. Without limiting the Service Level Agreement located at (<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's breach, if such breach remains uncured at the expiration of such additional 30-day cure 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 upon written notice to the Client. The Client must issue a notice of non-renewal 90 Days prior to the end of the initial term as defined in the Tovuti Purchase Terms. In the event that sufficient budgeted funds are not available for a new fiscal period, the Client shall notify Tovuti of such occurrence and the Agreement shall terminate on the last day of the then current fiscal period without penalty or expense to the City, except for payment for services rendered by Tovuti up to the last day of the then current fiscal period, which will not cause this Agreement to automatically renew in accordance with the terms and conditions set forth herein.

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 11.2, 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 Client's Data for a period of 30 days after the effective date of termination of this Agreement to enable the Client to download the Client's Data. After such time period, Tovuti shall have no obligation to maintain or provide access to any of the Client's Data and shall thereafter, unless legally prohibited, delete all of the Client's 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 (Limited Warranties and Disclaimers), 9 (Indemnification from Third-Party Claims), 10 (Limitation of Liability), 11.3 (Refund or Payment upon Termination), 11.4 (Return of the Clients Data), 12 (Who You 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, Inc., a corporation having its mailing address at 775 S. Rivershore Lane, Suite 200, Eagle, Idaho 83616, USA. The Client should direct all notices under this Agreement to "Legal" to that address. The parties agree that the substantive laws of the state of Florida, 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. Any legal action ("Action") brought under, arising under, relating in any way to, or in connection with this Agreement, its subject matter, or any transactions contemplated hereby, including the interpretation, validity, enforceability and enforcement of this Agreement, shall be brought only in the state or federal courts of the State of Florida (the "Florida Courts"). Each Party submits to the exclusive jurisdiction of the Florida Courts in the state courts of Polk County, Florida or the United States District Court in and for the Middle District of Florida, Tampa Division

and agrees not to commence any Action covered by this provision in any other court or forum; provided, that a final judgment in any such litigation shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each Party irrevocably and unconditionally waives and agrees not to assert (i) any objection to the laying of the venue of any Action in the Idaho Courts; (ii) any claim that an Action brought in the Idaho Courts been brought in an inconvenient forum; and (iii) any claim that the Idaho Courts do not have jurisdiction with respect to an Action. Each Party irrevocably consents to service of process in connection with any Action being made by utilizing the notice provisions set forth in this Agreement and agrees not to contest any service of process made in an Action in such manner. Each Party irrevocably and unconditionally waives any right to a trial by jury and agrees that any Party may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and bargained-for agreement among the Parties irrevocably to waive their right to trial by jury in any Action.

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 the second Business Day after emailing, so long as no notice of non-delivery has been received. Notices to the Client shall be addressed to the system administrator designated by the Client for the Client's 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 choose 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

Neither party may assign any of its or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld). Except, Tovuti may assign this Agreement in its sole discretion. 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.

13.9 Public Records

Tovuti shall comply with Florida Statute Section 119.071 as it relates to public records and as specifically set forth in **Exhibit B** attached hereto.



Lakeland Electric (Revised)

Tovuti Purchase Terms created: May 25, 2022 Reference: 20220526-013052811

Lakeland Electric

501 East Lemon
Street
Lakeland, FL 33801
United States

Clarke Freed

clarke.freed@lakelandelectric.com

Larry Watt

larry.watt@lakelandelectric.com
863.834.6534

Alexandria Davis

alexandria.davis@lakelandelectric.com
863.834.8191

Comments

Heather Miller - Senior Sales Engineer Tovuti



Products & Services

Item & Description	Quantity	Unit Price	Total
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Item & Description	Quantity	Unit Price	Total
<p>Tovuti Setup Fee</p> <p>Instance Creation with initial configuration based on subscription purchased. Initial admin user creation and fully prepped for the kick off with Tovuti Coaching Staff.</p> <p>Areas Covered:</p> <p>1) System Stand Up, Database and Configuration</p> <p>2) Custom Tovuti URL and Admin Setup</p> <p>3) Instance Test and Validation</p> <p>4) Priority setup and deployment for new clients complete within 24 hours</p>	1	\$4,000.00	\$4,000.00
<p>Tovuti Platform Subscription</p> <p>Up to 1,500 Users for Tovuti Pro</p> <p>Higher user tier pricing can be viewed here https://www.tovutilms.com/calculate-pricing</p> <p>Tovuti's Live Coaching by the legendary Tovuti Experience Team. The timing of these coaching sessions can be customized to meet the client's pace, for example, one per day or one per week. NOTE: Coaching sessions must be used within the first 30 days.</p> <p>Four Tovuti coaching sessions cover:</p> <ul style="list-style-type: none"> Call One - Basic Training + Curriculum Outline Call Two - Building Courses & Content Call Three - User Groups, Adding Learners, and Reporting 	1	\$17,500.00 / year	\$17,500.00 / year for 3 years

Item & Description	Quantity	Unit Price	Total
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Call Four - AdHoc based on Clients needs and upgraded features/packages

Tovuti Virtual Classroom supports the following;

- * Webinar mode (no attendee webcams): Up to 100 Attendees
- * Meeting mode (with attendees sharing their webcams, up to 10 webcams total per meeting): Up to 25 Attendees
- * Max Presenters - 5
- * Max Meetings Congruently - 2
- * Max Duration per meeting- 8 hours

Tovuti Virtual Classroom SLA can be viewed here
 - <https://www.tovutilms.com/virtual-classroom-sla>

Complimentary 45 Day BizLibrary Trial	1	\$0.00	\$0.00
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As a new member of the Tovuti Family, you will be given free access to the BizLibrary Production Library for the first 45-days after signature. The Library consists of 2,400+ pre-built courses for all of your training needs.

Subtotals

Annual subtotal	\$17,500.00
One-time subtotal	\$4,000.00
Total	\$21,500.00

Before you sign the Tovuti Purchase Terms, an email must be sent to you to verify your identity. Find your profile below to request a verification email.

Larry Watt

larry.watt@lakelandelectric.com

[sig|req|signer1]

Clarke Freed

clarke.freed@lakelandelectric.com

[sig|req|signer2]

Troy McClain

troy@tovutiteam.com

[sig|req|signer3]

These Tovuti Purchase Terms expire on June 10, 2022

Purchase terms

By signing this agreement, you are agreeing to the terms of Tovuti's Software As A Service Agreement, outlined here:

<https://www.tovutilms.com/msa>

Term

- 36 months
- Tovuti Pricing, Service, and Terms of these services shall be subject to the SaaS agreement found here. No cancellation for convenience is permitted once services are started or as executed between both parties by signing this Agreement.

Payment Terms

- Annual Billing
- Due within 45 days of receipt.

Renewal

- Renewal is automatic for the same term length and payment terms.
- At the end of the agreed-to contracted period, the client may, at their own discretion, issue a written notice of Non-Renewal 60 days prior to the end of the contracted period. Upon receipt of the Non-Renewal notice, Tovuti will expire the contract as agreed and no further billing will apply
- Discounts and start-up fees are not applicable to renewals.

Questions? Contact me



Heather Miller

Senior Sales Engineer

heather.miller@tovutiteam.com

Tovuti

775 S Rivershore Ln, Suite 200

Eagle ID 83616

US

Exhibit “B”

IF TOVUTI, INC. HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO TOVUTI, INC.’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS: KEVIN COOK - DIRECTOR OF COMMUNICATIONS AT: PHONE: 863-834-6264, E-MAIL: KEVIN.COOK@LAKELANDGOV.NET, ADDRESS: ATTN: COMMUNICATIONS DEPARTMENT, 228 S. MASSACHUSETTS AVE., LAKELAND, FLORIDA 33801.

In accordance with Florida Statute §119.0701, Tovuti, Inc. shall keep and maintain public records required by the Client in performance of services pursuant to the contract. Upon request from the Client’s custodian of public records, Tovuti, Inc. shall provide the Client with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided pursuant to Florida Statute Chapter 119 or as otherwise provided by law. Tovuti, Inc. shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if Tovuti, Inc. does not transfer the records to the Client. Tovuti, Inc. shall, upon completion of the contract, transfer, at no cost, to the Client all public records in possession of Tovuti, Inc. or keep and maintain public records required by the Client to perform services pursuant to the contract. If Tovuti, Inc. transfers all public records to the Client upon completion of the contract, Tovuti, Inc. shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Tovuti, Inc. keeps and maintains public records upon completion of the contract, Tovuti, Inc. shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Client, upon request from the Client’s custodian of public records, in a format that is compatible with the information technology systems of the Client.