

## MASTER SUBSCRIPTION SERVICES AGREEMENT

This Master Subscription Services Agreement (“**Agreement**”) is effective the \_\_\_\_ day of \_\_\_\_, 2024 (“**Effective Date**”) and is made by and between **Tive, Inc.**, a Delaware corporation (“**Tive**”) with a principal place of business at 500 Rutherford Ave, Suite 209, Boston, MA 02129 and \_\_\_\_ (“**Customer**”) with a principal place of business at \_\_\_\_\_.

Tive and the Customer shall each be referred to as a “**Party**” and collectively as the “**Parties**”.

This Agreement governs the terms and conditions upon which the Customer has agreed to engage Tive to provide it with certain technology and services from time to time pursuant to a Sales Order. Each Sales Order will be subject to and governed by this Agreement.

In consideration of the mutual promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### 1. **DEFINITIONS**

1.1 **Admin Users** mean any employee of the Customer or its Affiliates and/or any independent contractor of the Customer or its Affiliates that have been provided with permission by Tive and/or the Customer to access to the Subscription Service in order to manage, modify and upload Customer Data and to manage User credentials.

1.2 **Affiliates** means any company, partnership or other entity now existing or hereafter organized that directly or indirectly controls, is controlled by or under common control with a Party. For purposes of this definition “control” means the direct possession of a majority of the outstanding voting shares of an entity.

1.3 **Confidential Information** has the meaning given to it in Section 4.1.

1.4 **Data** means text, images, documents, materials, photos, audio, video, and all other forms of data or communication.

1.5 **Customer Data** means all Data made available by the Customer or its Users to Tive or otherwise provided by the Customer or its Users in connection with the provision of the Services or otherwise uploaded by or on behalf of Customer or its Users into the Tive System.

1.6 **Documentation** means the documentation for the Subscription Service provided by Tive to assist in the use of the Subscription Service by the Customer.

1.7 **Feedback** means any Customer provided feedback and reports about any errors, problems, or defects in, or suggestions for changes and improvement to the Subscription Service.

1.8 **Losses** has the meaning given to it in Section 9.1.

1.9 **Non-Admin Users** mean any employee of the Customer or its Affiliates and/or independent contractor of the Customer or its Affiliates that have been provided with permission by Tive and/or the Customer to use the Services.

1.10 **Professional Services** means consulting and/or custom services to be provided by Tive. All Professional Services will be set out and described in a Sales Order.

1.11 **Sales Order** means each Tive ordering document electronically entered into or signed by duly authorized representatives of both Parties which references this Agreement, identifies the specific Services provided to the Customer by Tive, sets out the prices for the Services and

contains any other applicable terms and conditions. The initial Sales Order entered into by the Parties is attached hereto as Exhibit A.

1.12 **Sensor Data** means data submitted to, collected by, or generated by Tive in connection with Customer’s use of the Services, including data from temperature sensors, humidity sensors, accelerometers, light sensors, Wi-Fi access points, GPS, cellular connectivity, and shipment location but only in aggregate, anonymized form which can in no way identify or be linked specifically to Customer, its Affiliates, Users or any other person or entity.

1.13 **Services** means the Subscription Service and any Professional Services provided by Tive.

1.14 **Subscription Service** means Tive’s proprietary subscription-based solutions consisting of the Tive System, Tive Tags and Tive Trackers all as more fully set out and described on the applicable Sales Order.

1.15 **Tive Data** means all Data made available by Tive to the Customer in connection with the Customer’s use of the Services. Tive Data does not, however, include Customer Data.

1.16 **Tive Tag** means Tive’s proprietary sensory hardware that measures temperature provided by Tive for use by Customer with the Tive System.

1.17 **Tive System** means the proprietary online system and APIs used to track the location, condition, and status of shipments

1.18 **Tive Tracker** means any proprietary sensory hardware generally for measuring temperature, humidity, shock, orientation, acceleration, light, and shipment location provided by Tive for use by Customer with the Tive System. For the avoidance of doubt, Tive Trackers contain additional functionality than that contained in the Tive Tags.

1.19 **Users** means Admin Users and Non-Admin Users.

1.20 **Work Product** means any deliverables, content, reports, analyses or documentation developed by Tive on behalf of the Customer and delivered to the Customer in the performance of any Professional Services.

### 2. **SERVICES**

2.1 **Services**. Tive shall provide the Customer with the specific Services specified on a Sales Order. Any conflict between the terms and conditions set forth in this Agreement and any Sales Order shall be resolved in favor of this Agreement unless a Sales Order makes specific reference to the section of this Agreement that is to be amended in the Sales Order. Any exceptions expressly agreed upon in writing by the Parties pursuant to a particular Sales Order will apply only for purposes of that Sales Order, and will not be deemed to in any way amend, modify, cancel, or waive the provisions of this Agreement for any other Sales Order. Customer agrees that purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by Tive regarding future functionality or features.

2.2 **License Grant**. Subject to the terms and conditions of this Agreement, and in consideration for the payment of fees set out on the applicable Sales Order, Tive hereby grants to the Customer, solely during the term of the applicable Sales Order, a non-exclusive, non-transferable (except as set out in Section 11.2) license to access and use the Subscription Service solely for the Customer’s and, subject to Section 2.3, its Affiliates internal business purposes. This license is restricted to use by the Customer, its Affiliates and its authorized Users and does not

include the right to use the Subscription Service on behalf of any third party. The Customer agrees: (a) that only Users are permitted to use the Subscription Service; (b) that it is responsible for Users' actions or failures to act in connection with activities contemplated under this Agreement and (c) to otherwise take all commercially reasonable steps to protect the Subscription Service from unauthorized use and/or access.

2.3 *Affiliates Not Under Direct Sales Order.* Subject to the terms of the Sales Order, the Customer may make the Subscription Service available to its Affiliates provided that all licensing restrictions are complied with in each instance by each such Affiliate and that the Customer shall be liable for any breach of the terms and conditions of this Agreement by any of its Affiliates. Any license restrictions set out on a Sales Order shall be deemed to apply to both the Customer and its Affiliates. Customer shall be liable for any breach of the terms and conditions of this Agreement by any of its Affiliates – except where the Affiliate has signed its own Sales Order with Tive for the Services pursuant to Section 2.4.

2.4 *Affiliates Under Direct Sales Order.* In addition to Section 2.3, Customer's Affiliates may acquire Services subject to the terms and conditions of this Agreement by executing Sales Orders hereunder directly with Tive. Each Sales Order executed by an Affiliate hereunder shall incorporate the terms of this Agreement by reference and be deemed to be a two party agreement between Tive and such Affiliate. Each Affiliate executing a Sales Order shall be solely responsible for its obligations pursuant to such Sales Order as well as for the obligations to be performed pursuant to this Agreement and the liabilities arising out of this Agreement as if it was the named party instead of Customer. Customer shall have no obligations or liabilities as to such Sales Order signed by its Affiliate and Tive shall look solely to the Affiliate executing such Sales Order.

2.5 *Tive Trackers and Tive Tags.* All shipments of Tive Trackers and Tive Tags to Customer are FOB Tive's designated shipping facility and delivery shall be deemed to have been made (and risk of loss and title to the Tive Trackers and Tive Tags shall transfer to Customer) upon the transfer of the Tive Trackers and Tive Tags by Tive to its shipping agent. Tive Trackers may be refurbished, but in all cases subject to the warranty in Section 5.3. Within thirty (30) days of Customer's receipt of any of the Tive Trackers or Tive Tags, Customer may return such Tive Trackers and Tive Tags to Tive for a full refund (less original shipping costs and a \$0.50 restocking fee per Tive Tracker and Tive Tag). Customer shall be responsible for the costs to ship the Tive Trackers and Tive Tags back to Tive and Customer must return the Tive Trackers and Tive Tags to Tive in the same condition as provided by Tive (reasonable wear and tear excepted). Customer must obtain a returned materials authorization number ("RMA") from Tive prior to shipment back to Tive.

### 3. FEES; INVOICING

3.1 *Fees.* Customer agrees to pay Tive for Services provided and expenses incurred in accordance with and at the rates specified in each Sales Order. Unless otherwise set forth on the Sales Order, payment shall be due within ten (10) days after receipt of Tive's invoice and shall be made in US Dollars. In addition to paying the applicable fees, Customer shall also pay all reasonable travel and out-of-pocket expenses incurred by Tive in connection with any Services rendered provided that Customer has pre-approved of such travel and expenses in writing in advance. Tive reserves the right to increase the fees applicable to any Sales Order provided that (i) such fees may not be increased more than one time per annum, (ii) such increase may not exceed five percent (5%) over the prior year's fees, and, (iii) any such increase may not be applied during the initial term of the Sales Order and will only be applicable upon renewal.

3.2 *Invoicing Requirements.* Customer agrees to provide, within this section of the Agreement in the spaces below, a primary point of contact (PPOC) within its Accounting/Finance department who will provide Tive with Customer's invoicing requirements. Customer warrants that the information provided in the spaces below is correct.

Invoicing Contact Name: \_\_\_\_\_

Invoicing Contact Email Address: \_\_\_\_\_

Invoicing Contact Phone Number: \_\_\_\_\_

Tive will send a Google Form link to the Invoicing Contact Email Address specified in this section so they can provide Tive with Customer's invoicing requirements. Customer acknowledges that Tive may not fulfill Customer's first order until Customer has provided Tive with the correct requirements to properly invoice them.

Should Customer's invoicing requirements change from what was originally provided to Tive, Customer agrees to provide Tive with the updated invoicing requirements, before placing additional orders, by sending an email to AR@tive.com. If Customer places an order that requires different invoicing requirements than what was originally provided to Tive, Customer agrees to provide Tive with the invoicing requirements specific to that order within ten (10) business days of the order date by sending an email to AR@tive.com.

3.3 *Disputed Charges.* If Customer disputes any charge or amount on any invoice and such dispute cannot be resolved promptly through good faith discussions between the Parties, Customer shall pay the amounts due under this Agreement less the disputed amount, and the Parties shall proceed in good faith to promptly resolve such disputed amount. An amount will be considered disputed in good faith if (i) the Customer delivers a written statement to Tive (to Tive's Accounts Receivable team at AR@tive.com) on or before the due date of the invoice, describing in detail the basis of the dispute (which may include Tive's failure to invoice Customer properly in accordance with Customer's invoicing requirements provided per Section 3.2 of this Agreement) and the amount being withheld by the Customer, and (ii) all other amounts due from the Customer that are not in dispute have been paid as and when required under this Agreement. Upon resolution of the dispute, Customer will pay the applicable agreed upon fees within ten (10) days of the resolution of the dispute.

3.4 *Late Payment/Suspension.* Except for amounts being disputed in good faith pursuant to Section 3.4, (i) Customer agrees to pay a late charge of one and one-half percent (1.5%) per month (or part of a month), or the maximum lawful rate permitted by applicable law, whichever is less, for all amounts, not subject to a good faith dispute, and not paid when due, (ii) Customer shall be liable to Tive for all reasonable fees and expenses, including reasonable attorney's fees and litigation costs, that Tive incurs to collect any undisputed fees due hereunder and (iii) if Customer is more than ten (10) days late on payment Tive reserves the right to suspend Customer's access to the Subscription Service (including, where applicable, any delivery of additional Tive Trackers and Tive Tags) until such time as payment is made in full.

3.5 *Taxes.* Fees are exclusive of taxes. The Customer shall be responsible for the payment of all sales, use, VAT and similar taxes arising from or relating to the Services rendered hereunder, except for taxes related to the net income of Tive and any taxes or obligations imposed upon Tive under federal, state and local wage laws.

### 4. CONFIDENTIALITY

4.1 *Confidential Information.* During the term of this Agreement, each Party will regard any information provided to it by the other Party and designated in writing as proprietary or confidential to be confidential

("Confidential Information"). Confidential Information shall also include information which, to a reasonable person familiar with the disclosing Party's business and the industry in which it operates, is of a confidential or proprietary nature. The Customer Data shall be deemed Customer's Confidential Information. The receiving Party shall hold in confidence, and shall not disclose (or permit or suffer its personnel to disclose) any Confidential Information to any person or entity *except* to a director, officer, employee, outside consultant, or advisor (collectively "Representatives") who have a need to know such Confidential Information in the course of the performance of their duties for the receiving Party and who are bound by a duty of confidentiality no less protective of the disclosing Party's Confidential Information than this Agreement. The receiving Party and its Representatives shall use such Confidential Information only for the purpose for which it was disclosed and shall not use or exploit such Confidential Information for its own benefit or the benefit of another without the prior written consent of the disclosing Party. Each Party accepts responsibility for the actions of its Representatives and shall protect the other Party's Confidential Information in the same manner as it protects its own valuable confidential information, but in no event shall less than reasonable care be used. The Parties expressly agree that the terms and pricing of this Agreement are Confidential Information and the Customer further agrees that neither it or any of its Users shall not publicly post any analysis or reviews of the Services without Tive's prior written approval. A receiving Party shall promptly notify the disclosing Party upon becoming aware of a breach or threatened breach hereunder and shall cooperate with any reasonable request of the disclosing Party in enforcing its rights.

4.2 Exclusions. Information will not be deemed Confidential Information hereunder if such information: (i) is known prior to receipt from the disclosing Party, without any obligation of confidentiality; (ii) becomes known to the receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party; (iii) becomes publicly known or otherwise publicly available, except through a breach of this Agreement by the receiving Party; or (iv) is independently developed by the receiving Party without use of the disclosing Party's Confidential Information. The receiving Party may disclose Confidential Information pursuant to the requirements of applicable law, legal process or government regulation, provided that it gives the disclosing Party reasonable prior written notice to permit the disclosing Party to contest such disclosure, and such disclosure is otherwise limited to the required disclosure.

4.3 Injunctive Relief. Notwithstanding any other provision of this Agreement, both Parties acknowledge that any use of the disclosing Party's Confidential Information in a manner inconsistent with the provisions of this Agreement may cause the disclosing Party irreparable and immediate damage for which remedies other than injunctive relief may be inadequate. Therefore, both Parties agree that, in addition to any other remedy to which the disclosing Party may be entitled hereunder, at law or equity, the disclosing Party shall be entitled to an injunction or injunctions (without the posting of any bond and without proof of actual damages) to restrain such use in addition to other appropriate remedies available under applicable law.

## 5. WARRANTIES

5.1 Subscription Service Warranty. Tive warrants that during the term of any Sales Order for the Subscription Service, the Subscription Service will conform, in all material respects, with the Documentation. Tive does not warrant that it will be able to correct all reported defects or that use of the Subscription Service will be uninterrupted or error free. Tive makes no warranty regarding features or services provided by third parties. For any breach of the above warranty, Tive will, at no additional cost to the Customer, provide remedial services necessary to enable the Subscription Service to conform to the warranty. The Customer will

provide Tive with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any defects. Such warranty shall only apply if the Subscription Service has been utilized by the Customer and its Users in accordance with the Sales Order and this Agreement.

5.2 Professional Services Warranty. Tive warrants that any Professional Services provided hereunder shall be provided in a competent manner and in accordance with any specifications set out in the Sales Order in all material respects. Tive further warrants that any Work Product provided pursuant to any Professional Services engagement shall comply, in all material respects, with the specifications set out in the applicable Sales Order. If the Services are not performed as warranted or the Work Product does not so comply, then, upon the Customer's written request, Tive shall promptly re-perform, or cause to be re-performed, such Professional Services, at no additional charge to the Customer. Such warranties and other obligations shall survive for thirty (30) days following the completion of the Professional Services or the delivery of each applicable portion of the Work Product, as the case may be.

5.3 Tive Tracker/Tive Tag Warranty. Tive warrants to Customer that the Tive Sensors and Tive Tags (each a "Hardware Product"), when delivered in its original packaging, will be free of defects in material and workmanship for a period of one (1) year from the date of original purchase (the "Hardware Warranty Period"). The determination of whether the Hardware Product is defective shall be made by Tive in its sole discretion with consideration given to the overall performance of the Hardware Product. If Tive determines the Hardware Product is not in compliance with this limited warranty, Tive will elect, in its discretion, to either (a) to repair the Hardware Product, (b) replace the Hardware Product, or (c) credit or refund the net price paid to Tive for the defective Hardware Product. This limited warranty and Customer's remedies will not apply to loss or damage to the Hardware Product caused by one or more of the following: negligence; abuse; misuse; mishandling; improper installation, storage, or maintenance; abnormal physical or environmental stress or conditions; damage due to fire, natural disaster, or acts of God; vandalism; civil disturbances; improper power supply; corrosive environment installations or use; induced vibration; integration or use with a third-party product or service not recommended or approved by Tive; accident; failure to follow installation, operating, maintenance, environmental, or other instructions or documentation provided by Tive; and any actions or events beyond Tive's reasonable control or otherwise outside the design parameters of the Hardware Products. THIS LIMITED WARRANTY IS VOID IF THE HARDWARE PRODUCT IS NOT USED FOR THE PURPOSE FOR WHICH IT IS DESIGNED OR IF IT IS REPAIRED OR ALTERED BY ANYONE OTHER THAN TIVE OR ITS AUTHORIZED REPRESENTATIVES. Tive reserves the right to utilize new, reconditioned, refurbished, repaired, or remanufactured products or parts in the warranty repair or replacement process. Such products and parts will be comparable in function and performance to an original product or part, as determined by Tive in its sole discretion, and warranted for the remainder of the original Hardware Warranty Period. In order to make a warranty claim, Customer must notify Tive in writing within sixty (60) days after Customer's discovery of the defect or the expiration of the original Warranty Period, whichever occurs first. Upon receiving that notice, Tive may require Customer to promptly return the Hardware Product, freight and shipping insurance prepaid by Customer to a facility designated by Tive. Customer's warranty claim should be addressed to support@tive.com. This limited warranty is not applicable or transferrable to any subsequent owner, purchaser, or other transferee of the Hardware Product.

5.4 Data Security. Tive agrees to use appropriate safeguards and comply with all applicable data protection laws, to prevent use or disclosure of the Customer Data other than as provided for by this Agreement. Tive agrees to implement industry standard physical safeguards, technical

safeguards and policy, procedure and documentation requirements that reasonably and appropriately protect the confidentiality, integrity and availability of the Customer Data.

5.5 No Other Warranty. TIVE DOES NOT REPRESENT THAT THE SERVICES WILL BE ERROR-FREE OR THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR THAT ALL ERRORS IN THE SERVICES WILL BE CORRECTED OR THAT THE OVERALL SYSTEM THAT MAKES THE SUBSCRIPTION SERVICE AVAILABLE (INCLUDING BUT NOT LIMITED TO THE INTERNET, CELLULAR NETWORKS, OTHER TRANSMISSION NETWORKS, AND CUSTOMER'S LOCAL NETWORK AND EQUIPMENT) WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE WARRANTIES STATED IN SECTION 5 ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY TIVE. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICES ARE ACCURATE OR SUFFICIENT FOR CUSTOMER'S PURPOSES.

## 6. LIMITATION OF LIABILITY.

6.1 Limitation. Except for a Party's gross negligence or willful misconduct, a Party's breach of its obligations in Section 4, a Party's indemnification obligations in Section 9 or violation of the other Party's intellectual property rights, (a) neither Party will be liable to the other or any third party for loss of profits or for any special, indirect, incidental, consequential or exemplary damages (including without limitation, damages for loss of business profits, loss of goodwill, business interruption, loss of business information and/or data) in connection with the performance of the Services, or the performance of any other obligations under this Agreement, even if it is aware of the possibility of the occurrence of such damages and (b) to the fullest extent permitted by applicable law, the total cumulative liability of each Party to the other Party for any and all claims and damages under this Agreement, whether arising by statute, contract, tort or otherwise, will not exceed the fees paid or payable by Customer to Tive under the Sales Order for the Services which form the subject of the claim during the twelve (12) month period immediately preceding the event giving rise to the claim. The provisions of this Agreement allocate risks between the Parties. The pricing set forth in each Sales Order reflects this allocation of risk and the limitation of liability specified herein.

## 7. TERM

7.1 Term. This Agreement will commence on the Effective Date and will continue in effect until otherwise terminated in accordance with Section 7.2 below. The term of each Sales Order for the Subscription Service shall be set out on the Sales Order. Unless otherwise set forth in the Sales Order, each Sales Order shall automatically renew for additional terms of one (1) year each unless either Party notifies the other Party in writing of its election not to renew such Sales Order at least sixty (60) days prior to the then current renewal date. Customer's non-renewal notice shall be sent by email to [cancellations@tive.com](mailto:cancellations@tive.com).

7.2 Termination. Notwithstanding the foregoing, either Party may terminate this Agreement or any Sales Order (i) immediately in the event of a material breach of this Agreement or any such Sales Order by the other Party that is not cured within thirty (30) days of written notice from the other Party, or (ii) immediately if the other Party ceases doing business or is the subject of a voluntary or involuntary bankruptcy, insolvency or similar proceeding, that is not dismissed within sixty (60) days of filing. Termination of a Sales Order shall not be deemed a termination of this Agreement. Termination of this Agreement shall,

however, terminate all outstanding Sales Orders. Either Party may also terminate this Agreement upon no less than thirty (30) days' prior written notice to the other Party for any reason, if at such time there are no outstanding Sales Orders then currently in effect. All rights and obligations of the Parties which by their nature are reasonably intended to survive such termination or expiration will survive termination or expiration of this Agreement and each Sales Order.

7.3 Effect of Termination. Upon any termination or expiration of this Agreement or any applicable Sales Order, Tive shall no longer provide the applicable Services to the Customer and the Customer shall promptly cease and cause its Users to promptly cease using the Services. The Customer shall pay Tive for all fees that had accrued prior to the termination date. Except as expressly provided herein, termination of this Agreement by either party will be a nonexclusive remedy for breach and will be without prejudice to any other right or remedy of such party. Upon termination of this Agreement, each party shall promptly return or destroy all Confidential Information of the other party in its possession.

7.4 Suspension. Without limiting any of its other rights or remedies, Tive reserves the right to suspend Customer's access to the Subscription Service (including, where applicable, any delivery of additional Tive Trackers and Tive Tags): (i) for scheduled or emergency maintenance, (ii) upon notice to Customer in the event that Customer is more than ten (10) days late in payment of any undisputed fees owed hereunder pursuant to Section 3.5, (iii) in the event Customer is in breach of any other term or condition of this Agreement (beyond any applicable notice and cure period), (iv) if Customer's use of the Subscription Service results in (or is reasonably likely to result in) damage to or material degradation of the Subscription Service that could interfere with Tive's ability to provide access to the Subscription Service to other users, (v) if the use or provision of the Subscription Service in connection with Customer's goods or shipments could expose Tive to any legal risks or (vi) if Tive receives an order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body, that expressly or by reasonable implication requires Tive to suspend or terminate Customer and/or any authorized User's access to the Subscription Service.

## 8. OWNERSHIP; USE OF DATA; OBLIGATIONS

8.1 Subscription Service. The Customer acknowledges and agrees that as between Tive and the Customer, all right, title and interest in and to the Subscription Service (but excluding any Customer Data) and including all modifications and configurations, all Tive Data and all of Tive's proprietary technology, including, without limitation, all software, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information made available to the Customer by Tive in providing the Subscription Service and all derivatives thereof are and shall remain Tive's or its licensors'. Tive retains ownership of all underlying software, firmware and other intellectual property embedded into the Tive Trackers and Tive Tags. The Tive name, all Tive logos, and the product names associated with the Subscription Service are trademarks of Tive or third parties, and no right or license is granted to use them. The Customer and its Users shall not remove any Tive trademark or logo from the Subscription Service. During the term of this Agreement, Tive grants to the Customer a limited, worldwide, non-exclusive, non-transferable (except as set out in Section 11.2), royalty-free right to use, display, transmit, and distribute the Tive Data solely in connection with the Customer's permitted use of the Subscription Service. Tive shall have the right to collect, use and distribute Sensor Data for purposes of improving, developing and marketing its products and services provided, however, that Tive shall not disclose any such data unless such data is in an aggregated, anonymized form.

8.2 Customer Data. The Customer retains ownership of all right, title and interest in and to all Customer Data. During the term of this Agreement, the Customer hereby grants to Tive a limited, worldwide, non-exclusive, non-transferable (except as set out in Section 11.2), royalty-free right to use, copy, display, transmit, and distribute the Customer Data solely as necessary to provide the Subscription Service to the Customer.

8.3 Customer Obligations. The Customer is responsible for all activities conducted under its User logins and for its Users' use of the Services and compliance with this Agreement. Unauthorized use, resale or commercial exploitation of the Subscription Service in any way is expressly prohibited. Without Tive's express prior written consent in each instance, the Customer and its Users shall not (and shall not allow any third party to): reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form or structure of the Subscription Service or access the Subscription Service in order to build a competitive product or service or copy any ideas, features, functions or graphics of the Subscription Service. Except as expressly permitted in this Agreement, the Customer shall not use the Subscription Service on behalf of any third-party or allow any third party to use the Subscription Services. The Customer shall be liable for the use of the Services and any breach of this Agreement by any of its Users. In addition to Tive's other remedies hereunder, Tive reserves the right upon notice to the Customer to terminate any User's right to access the Subscription Service if such User has violated any of the restrictions contained in this Agreement. The Customer is solely responsible for all Customer Data. Tive does not guarantee the accuracy, integrity or quality of the Customer Data. Neither the Customer nor its Users shall use the Subscription Service to: (a) send, upload or otherwise transmit any Customer Data that is unlawful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable; (b) upload or otherwise transmit, display or distribute any Customer Data that infringes any trademark, trade secret, copyright or other proprietary or intellectual property rights of any person; (c) upload or otherwise transmit any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; (d) interfere with or disrupt the Subscription Service or networks connected to the Subscription Service; or (e) violate any applicable law or regulation.

8.4 Work Product. The parties agree that unless otherwise expressly set forth in a Sales Order, Customer will have a non-exclusive, non-transferable (except as set forth in Section 11.2) license to use any Work Product developed by Tive in the performance of any Professional Services and delivered to Customer, upon Customer's payment in full of all amounts due hereunder, solely for Customer's internal use in connection with its use of the Subscription Service. Tive retains ownership of all information, software and other property owned by it prior to this Agreement or which it develops independently of this Agreement and all Work Product compiled or developed by Tive in the performance of this Agreement.

8.5 Feedback. In the event Customer provides Tive with Feedback, Customer hereby grants to Tive an irrevocable, fully-paid up, non-exclusive, royalty-free, perpetual and worldwide license to use, reproduce, distribute, create derivative works of, publicly perform, and publicly display such Feedback in any medium or format, whether now known or later developed. Tive acknowledges and agrees that Feedback is provided by Customer and its Users on an "AS IS" basis without warranty, indemnity, or liability of any kind.

## 9. INDEMNITY

9.1 Tive Indemnification. Subject to Section 9.3 below, Tive will

indemnify, defend and hold the Customer and its Affiliates harmless from and against any and all costs, liabilities, losses, and expenses (including, but not limited to, reasonable legal fees) (collectively, "Losses") incurred arising out of or in connection with a claim, suit, action, or proceeding brought by any third party against the Customer or any of its Affiliates alleging that the use of the Services or Work Product as permitted hereunder infringes any patent, copyright, trademark, or constitutes a misappropriation of a trade secret of a third party. Excluded from the above indemnification obligations are claims to the extent arising from (a) use of the Services or Work Product in violation of this Agreement or applicable law, (b) use of the Services or Work Product after Tive notifies the Customer to discontinue use because of an infringement claim, (c) any claim relating to any Customer Data or Customer provided materials, (d) modifications to the Services or Work Product made other than by Tive (where the claim would not have arisen but for such modification), (e) the combination, operation, or use of the Services or Work Product with materials, software or equipment which was not provided by Tive, to the extent that the Customer's liability for such claim would have been avoided in the absence of such combination, operation, or use; or (f) compliance by Tive with the Customer's custom requirements or specifications if and to the extent such compliance with the Customer's custom requirements or specifications resulted in the infringement. If the Services are held to infringe, Tive will, at its own expense, in its sole discretion use commercially reasonable efforts either (a) to procure a license that will protect the Customer against such claim without cost to the Customer; (b) to replace the Services with non-infringing Services; or (c) if (a) and (b) are not commercially feasible, terminate the Agreement or the applicable Sales Order and refund to the Customer any prepaid unused fees paid to Tive for the infringing Services. The rights and remedies granted the Customer under this Section 9.1 state Tive's entire liability, and the Customer's exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a third party, whether arising under statute, common law or otherwise.

9.2 Customer Indemnity. Subject to Section 9.3 below, the Customer shall indemnify, defend, and hold Tive and its Affiliates harmless from and against any and all Losses resulting from a claim, suit, action, or proceeding brought by any third party against Tive or any of its Affiliates that arises out of or results from a claim arising out of the Customer Data or any of Customer's products or shipments that are monitored or tracked via the Subscription Service.

9.3 Indemnification Procedure. The indemnified Party shall (i) promptly notify the indemnifying Party in writing of any claim, suit or proceeding for which indemnity is claimed, provided that failure to so notify will not remove the indemnifying Party's obligation except to the extent it is prejudiced thereby, and (ii) allow the indemnifying Party to solely control the defense of any claim, suit or proceeding and all negotiations for settlement; provided that the indemnifying Party shall not settle any claim without the indemnified Party's prior written consent (such consent not to be unreasonably withheld or delayed). The indemnified Party shall also provide the indemnifying Party with reasonable cooperation and assistance in defending such claim (at the indemnifying Party's cost).

## 10. INSURANCE.

Tive shall maintain in full force and effect during the term of any Sales Order Form the following insurance: (a) Workers' compensation and employers' liability insurance with limits to conform with amounts required by applicable law; (b) Commercial general liability insurance with limits not less than one million dollars (\$1,000,000) per occurrence/two million dollars (\$2,000,000) annual aggregate and (c) Professional liability (Errors and Omissions) including Cyber Insurance each with limits not less than one million dollars (\$1,000,000) annual aggregate for all claims each policy year. As evidence of insurance coverage, upon

request Tive shall deliver certificates of insurance issued by Tive insurance carrier showing such policies in force during the term of this Agreement

## 11. GENERAL

11.1 Entire Agreement. This Agreement, including all Sales Orders, contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous proposals, understandings, representations, warranties, covenants, and any other communications (whether written or oral) between the Parties relating to this Agreement and is binding upon the Parties and their permitted successors and assigns. Only a written instrument that refers to this Agreement or the applicable Sales Order and that are duly signed by the authorized representatives of both Parties may amend this Agreement or such Sales Order. Any inconsistent or conflicting terms and conditions contained in any purchase order issued by the Customer shall be of no force or effect, even if the purchase order is accepted by Tive. This Agreement shall be construed and interpreted fairly, in accordance with the plain meaning of its terms, and there shall be no presumption or inference against the Party drafting this Agreement in construing or interpreting the provisions hereof.

11.2 Assignment. This Agreement shall be binding upon and for the benefit of Tive, the Customer and their permitted successors and assigns. Neither Party may assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of the other Party, and any attempted assignment or delegation without such consent will be void; provided that either Party may assign this Agreement and all Sales Orders, without consent, as part of a corporate reorganization, consolidation, merger, or sale of all or substantially all of its assets by providing written notice to the other Party. Tive may use independent contractors or subcontractors to assist in the delivery of Services; provided, however, that Tive shall remain liable for the actions or omissions of such independent contractors or subcontractors and for the payment of their fees.

11.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to its conflict of law provisions. The United Nations Convention on Contracts for the International Sale of Goods (CISG) will not apply.

11.4 Disputes. Any disputes between the Parties arising out of this Agreement shall be resolved as follows: Members of the senior management of both Parties shall meet to attempt to resolve such disputes. If a dispute cannot be resolved within fifteen (15) days, either Party may make a written demand for mediation. Within fifteen (15) days after such written notification, the Parties shall meet for one day with an impartial mediator. The costs and expenses of the mediator shall be shared equally by the Parties. If the dispute is not resolved by mediation, the dispute shall be settled by binding arbitration conducted in accordance with the JAMS procedures pursuant to its Streamlined Arbitration Rules and Procedure, by a single arbitrator, in New York, New York. The arbitrator shall be selected as provided in the Streamlined Arbitration Rules and Procedure. Unless provided otherwise herein, the arbitrator may not award non-monetary or equitable relief of any sort. The arbitrator shall have no power to award damages inconsistent with this Agreement. No discovery shall be permitted in connection with the arbitration unless it is expressly authorized by the arbitrator upon a showing of substantial need by the Party seeking discovery. All aspects of the arbitration shall be treated as confidential. Neither the Parties nor the arbitrator may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a Party shall give written notice to all other Parties and shall afford such Parties a reasonable opportunity to protect their interests. The result of the

arbitration shall bind the Parties, and judgment on the arbitrator's award may be entered in any court having jurisdiction. Each Party shall bear its own costs of the arbitration. The fees and expenses of the arbitrator shall be shared equally by the Parties. The parties agree that a party need not invoke the procedures set forth in this Section 11.4 in order to seek injunctive relief pursuant to Section 4.3.

11.5 Headings. The headings to the sections of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement.

11.6 Relationship of the Parties. Tive and the Customer are independent contractors, and nothing in this Agreement shall be construed as making them partners or creating the relationships of employer and employee, master and servant, or principal and agent between them, for any purpose whatsoever. Neither Party shall make any contracts, warranties or representations or assume or create any obligations, express or implied, in the other Party's name or on its behalf.

11.7 Force Majeure. Except for the obligation to make payments, nonperformance of either Party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, recognized health threats as determined by the World Health Organization, the Centers for Disease Control, or local government authority or health agencies (including but not limited to the health threats of COVID-19, H1N1, or similar infectious diseases), curtailment of transportation facilities, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing Party.

11.8 Notices. Any notice, approval, request, authorization, direction or other communication under this Agreement shall be given in writing and shall be deemed to have been delivered and given for all purposes (i) on the delivery date if delivered personally to the Party to whom the same is directed; (ii) one (1) business day after deposit with a nationally recognized overnight carrier, with written verification of receipt to the address of the Party set forth on the applicable Sales Order or (iii) by email to the email address set forth on the applicable Sales Order provided receipt of such email is confirmed. Any notice by Customer regarding any termination of this Agreement or a Sales Order or non-renewal of a Sales Order shall be sent by email to [cancellations@tive.com](mailto:cancellations@tive.com). Either Party may change its address by giving written notice of such change to the other Party.

11.9 Modifications to Subscription Service. Tive may make modifications to the Subscription Service or particular components of the Subscription Service from time to time provided that such modifications do not materially degrade any functionality or features of the Subscription Service.

11.10 Publicity. The Customer hereby grants Tive a non-exclusive license solely during the term of this Agreement to list the Customer's name and display the Customer's logo in the customer section of Tive's website and to use the Customer's name and logo in Tive's customer lists but only to the extent that other customers of Tive are also listed on such list. Any other use by Tive of the Customer's name, logo or trademark requires the Customer's prior written consent.

11.11 Export; Government Rights. Both Parties will comply with all applicable export regulations. The following provision applies only if Customer is a branch or agency of the United States Government or is purchasing the Software Service on behalf of the United States Government. The Subscription Service and the Documentation have been developed at private expense and are sold commercially. The Subscription Service is comprised of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 (SEPT 1995) and are provided to the

Government for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 (JUN 1995) and 227.7202-3 (JUN 1995). Certain components of the Subscription Service may also be Commercially Available Off-the-Shelf (COTS) items, as defined in FAR 2.101. The Subscription Service and the Documentation are provided under any U.S. government contracts or subcontracts with the most restricted and the most limited rights permitted by law and regulation. Whenever so permitted, the government and any intermediate buyers will obtain only those rights specified in Tive's standard commercial license. Thus, the Subscription Service referenced herein, and the Documentation provided by Tive hereunder, which are provided to any agency of the U.S. Government or U.S. Government contractor or subcontractor at any tier shall be subject to the maximum restrictions on use as permitted by FAR 52.227-19 (June 1987) or DFARS 227.7202-3(a) (Jan. 1, 2000) or successor regulations.

11.12 No Third Party Beneficiaries. Nothing contained in this Agreement is intended or shall be construed to confer upon any person any rights, benefits or remedies of any kind or character whatsoever, or to create any obligation of a Party to any such person.

11.13 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any Party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in "portable document format" (".pdf"), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

11.14 Waiver and Severability. Performance of any obligation required by a Party hereunder may be waived only by a written waiver signed by an authorized representative of the other Party, which waiver shall be effective only with respect to the specific obligation described therein. The failure of either Party to exercise any of its rights under this Agreement will not be deemed a waiver or forfeiture of such rights. The invalidity or unenforceability of one or more provisions of this Agreement will not affect the validity or enforceability of any of the other provisions hereof, and this Agreement will be construed in all respects as if such invalid or unenforceable provision(s) were omitted.

**Tive and Customer have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.**

Tive, Inc.

Customer: [\_\_\_\_\_]

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_



EXHIBIT A  
INITIAL SALES ORDER