Terms and Conditions for Evaluation License Agreement

These Terms and Conditions for Evaluation License Agreement and all appendices, exhibits and attachments (collectively, the “Terms and Conditions”) are by and between Rovi Data Solutions, Inc., a Delaware company with headquarters at Two Circle Star Way, San Carlos, CA 94070 (“Rovi”), and the Licensee named in the Order Form (each a “Party” and collectively the “Parties”). By signing the Order Form, Rovi and Licensee agree as follows:

1. LICENSE GRANT AND RESERVATION OF RIGHTS
   1.1 License Grant. Subject to the terms and conditions of this Agreement, Rovi hereby authorizes Licensee to solely use Rovi Property solely internally for the Permitted Evaluation Use. All other uses of the Rovi Property are prohibited. “Permitted Evaluation Use” means the use of Rovi Property by Licensee solely for non-commercial, internal review and evaluation of Rovi Property.

   1.2 Reservation of Rights. Except as expressly set forth in this Agreement, no right or license, express or implied, is granted to Licensee or any third party by estoppel, implication, exhaustion or other doctrine of law, equity or otherwise with respect to any product, content, technology, intellectual property or service of Rovi or its affiliates or licensors. In addition, nothing in this Agreement shall be deemed to grant to Licensee or any third party the right or license to use Rovi Property on any platform or device, in any place or in any manner which is not expressly authorized hereunder. For clarity, no right or license, express or implied, is granted to Licensee or any third party by estoppel, implication, exhaustion or other doctrine of law, equity or otherwise with respect to any patent or patent application of Rovi or its affiliates or licensors. Nothing in this Agreement shall be deemed to be a waiver or release of Licensee’s or any third party’s past, present or future obligations to acquire such rights and/or licenses from Rovi or its affiliates or licensors.

2. ROVI PROPERTY
   Rovi shall make Rovi Property available to Licensee via FTP pickup from Rovi’s FTP servers, or via such other electronic delivery method agreed to by the parties. As between Licensee and Rovi, Rovi retains all right, title and interest, including, without limitation all intellectual property and proprietary rights in and to Rovi Property, including without limitation, any elements, components, content, technology, software, code and any derivative works, revisions, enhancements, modifications, condensations and/or compilations thereof or relating thereto. “Rovi Property” means the Rovi products selected in Exhibit 1. If Licensee provides Rovi with
any feedback (e.g. suggested improvements), about any Rovi Property or other Rovi technology, products or services in existence or in development ("Feedback"), Licensee assigns all right, title and interest in and to such Feedback to Rovi, and acknowledges that Rovi will be entitled to use, including without limitation, implement and exploit, any such Feedback in any manner without any restriction or obligation. Rovi is not obligated to act on such Feedback.

3. LICENSEE’S OBLIGATIONS
Licensee agrees that Licensee is responsible for its use of Rovi Property and for any consequences thereof. Licensee shall not permit or enable any third parties to use or access Rovi Property. Licensee agrees to use Rovi Property only for purposes that are legal and only as expressly authorized hereunder. Licensee also acknowledges and agrees that its use of Rovi Property is governed by third party terms of use and policies applicable thereto. Licensee further agrees that Licensee will not, directly or indirectly, do the following: (i) circumvent or modify any authentication technology or other security measure employed by Rovi or Rovi Property; (ii) violate any laws, rules and regulations; (iii) use Rovi Property to correct or modify third party content; (iv) reverse engineer, decompile, attack, disassemble, modify, translate, reconstruct, omit, distort, obscure, copy or create derivative works of all or any portion of any Rovi services, Rovi Property, or other Rovi property; (v) use, combine or distribute Rovi Property in any manner that would cause Rovi Property, in whole or in part, to become subject to any of the terms of an open source license, and Licensee acknowledges and agrees that nothing in this Agreement grants Licensee the right to do the foregoing; (vi) store or otherwise capture to physical media, or enable a third party to store or capture, any Rovi Property; and/or (vii) use or enable the use of Rovi Property in any way not expressly authorized hereunder.
Furthermore, to the extent trailers are part of Rovi Property, Licensee may only link to trailers pursuant to access instructions provided by Rovi and all rights to use any trailers shall cease on the earlier of (a) the date Rovi Property ceases to include any trailers, (b) the date this Agreement terminates and (c) ninety (90) days after Licensee receives access to trailers.

4. TERM AND TERMINATION
The Term of this Agreement shall be as set forth in the Order Form. Rovi may at any time and in its sole discretion modify, limit, suspend, disable, terminate or discontinue all or any aspect of Rovi Property, including, without limitation, its general availability and Licensee’s use of and access to all or any portion of Rovi Property. In addition, this Agreement may be terminated by Rovi at any time and for any reason. This Agreement shall automatically terminate upon a breach by Licensee of its obligations hereunder.

5. EFFECT OF TERMINATION
If, at any time, Rovi terminates Licensee’s access to and/or discontinues providing any or all Rovi Property (together with any earlier versions of such Rovi Property, the “Terminated Rovi Property”), (i) all licenses and rights granted to Licensee herein for the Terminated Rovi Property shall automatically terminate, and (ii) Licensee shall immediately cease using the Terminated Rovi Property and comply with the Purge Obligation with respect to the Terminated Rovi Property. In addition, upon the termination of this Agreement for any reason,
(y) all licenses and rights granted to Licensee herein shall terminate, and (z) Licensee shall immediately cease using all Rovi Property and comply with the Purge Obligation. “Purge Obligation” shall mean the obligation by Licensee to destroy all copies of Rovi Property, in any form, and purge all copies of Rovi Property from Licensee’s computer systems, software, technology, documents or other computer or other storage device or media under Licensee’s ownership, access or control or in which any materials have been placed and destroy all written or tangible materials, documents or other media containing Rovi Property. Rovi shall have no liability to Licensee for any changes, limitations, suspensions, disablements, terminations or discontinuances of Rovi Property or this Agreement.

6. CONFIDENTIALITY

Neither Party shall disclose the other Party’s confidential information, the terms or existence of this Agreement or discussions between the Parties to any third party without the prior written consent of the other Party. Confidential information means the other Party’s business and/or technical information which a) is in written, recorded, graphical or other tangible form and is marked "Confidential" or “Trade Secret” or similar designation, b) is in oral form and identified by the Discloser as "Confidential" or “Trade Secret” or similar designation at the time of disclosure, or c) the nature of which could reasonably be construed to be confidential. These confidentiality obligations shall not apply to the extent information is (i) lawfully in the public domain, (ii) lawfully possessed by the recipient before disclosure by the other Party, (iii) lawfully disclosed to a Party by a third party without obligation of confidentiality, (iv) independently developed by a Party without reference to or use of the other Party’s proprietary or confidential information, or (v) legally required to be disclosed, provided the compelled Party shall seek maximum confidential treatment available (including through a protective order if available), and shall provide reasonable advance notice to the other Party so that the other Party may seek confidential treatment.

7. INDEMNIFICATION

Licensee shall indemnify, defend, and hold harmless Rovi and its subsidiaries, affiliates, successors, assigns, licensors, joint owners advertisers and partners and their respective members, officers, directors, employees, licensors, agents, from and against any claim arising from or in any way related to Licensee’s use of any Rovi Property or violation of this Agreement, including, without limitation, any liability of any kind and nature including, without limitation, any expenses, claims, losses, damages, suits, judgments, litigation costs and attorneys' fees. Licensee shall conduct the defense of all such claims, at its own expense, subject to Rovi’s right to (i) conduct the defense of such claims at Licensee’s expense, or participate in the defense of such claims with its own counsel at its own expense, and (ii) approve any settlement that binds or purports to bind Rovi.

8. DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY

LICENSEE EXPRESSLY UNDERSTANDS AND AGREES TO THE DISCLAIMERS AND LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION WHICH SHALL APPLY TO LICENSEE AND THIS AGREEMENT TO THE EXTENT PERMITTED BY APPLICABLE LAW.
LICENSEE'S USE OF ROVI PROPERTY, ROVI SERVICES AND/OR MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH ROVI PROPERTY OR ANY ROVI SERVICES IS AT LICENSEE'S SOLE RISK. ROVI PROPERTY AND ANY ROVI SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. ROVI EXPRESSLY DISCLAIMS ALL INDEMNITIES, REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY LICENSEE FROM ROVI SHALL CREATE ANY SUCH WARRANTY.

NONE OF ROVI, ITS AFFILIATES OR LICENSORS SHALL BE LIABLE TO LICENSEE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF ROVI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO CASE SHALL THE AGGREGATE LIABILITY OF ROVI OR ITS AFFILIATES OR LICENSORS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND/OR ROVI PROPERTY EXCEED US$10.00. LICENSEE HAS BEEN ADVISED AND AGREES THAT NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, ROVI DOES NOT REPRESENT, WARRANT OR COVENANT THAT IT HAS SECURED ALL NECESSARY RIGHTS WITH RESPECT TO ANY IMAGES OR OTHER RICH MEDIA AND LICENSEE SHALL AND IT IS LICENSEE'S SOLE RESPONSIBILITY TO IDENTIFY, SOLICIT AND OBTAIN ANY NECESSARY RIGHTS AND APPROVALS FOR ITS USE THEREOF.

9. Miscellaneous

9.1 Licensee may not assign or transfer (e.g. through a transfer of assets) this Agreement, in whole or in part (including, without limitation, Licensee's rights and/or obligations hereunder), without Rovi's prior written consent. If any part of this Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of this Agreement remain in full force and effect. The failure of Rovi to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. This Agreement shall be governed by and construed in accordance with the laws of the State of California (other than the conflict of law rules) and subject to the sole jurisdiction of the courts sitting in San Mateo County, California. This Agreement does not create any relationship other than Rovi as an independent contractor performing services covered by this Agreement, and Licensee as the party contracting with Rovi for those services. No party is a partner or a legal representative of the other for any purpose whatsoever, nor is any party authorized to make any contract, agreement or warranty on behalf of any other party. Under no circumstance shall one party's employees be construed to be employees of the other party.

9.2 All notices (including address change notices) required or permitted hereunder will be in writing and will be delivered personally; served by certified mail, return receipt requested; by
overnight mail service such as Federal Express, all charges pre-paid; by e-mail; or by fax. Except as otherwise provided herein, notices shall be deemed to be received upon the earlier of (1) actual receipt or (2) three days after mailing or delivery. The failure or refusal of the recipient to accept or receive notice given hereunder does not affect the validity of the notice. Notices shall be sent to Rovi at the address below and to Licensee at the address first set forth herein or to Licensee e-mail address set forth below, or to such other address as Licensee or Rovi may specify in writing to the other party from time to time.

Rovi Data Solutions, Inc.
2 Circle Star Way
San Carlos,
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Attn: General Counsel
E-mail: legalnotices@tivo.com
Fax: (818) 295-6772

With Copy To:
Rovi Data Solutions, Inc.
2233 N. Ontario Street
Burbank, CA 91504
Attn: Legal

9.3 Neither party shall issue any press release or make any public disclosure regarding this Agreement. This Agreement may be executed in one or more counterparts (including fax or email) each of which shall be deemed an original but all of which taken together shall be deemed one and the same instrument. In the event of any termination or expiration of this Agreement for any reason, Sections 1.2, 2, 5, 6, 7, 8 and 9 shall survive such termination or expiration. Notwithstanding the foregoing, other provisions may survive expiration or termination of this Agreement if their survival is reasonably necessary to effectuate the intent of the parties under this Agreement. This Agreement constitutes the complete and exclusive agreement between the parties with respect to the subject matter hereof, superseding and replacing any and all prior agreements, communications, and understandings, both written and oral, regarding such subject matter. Rovi shall be entitled to reasonable attorney's fees, costs and related expenses arising out of any action to enforce this Agreement. Licensee acknowledges that any breach under this Agreement may cause Rovi irreparable harm for which there may be no adequate remedy at law and, in such case, Licensee agrees that Rovi shall be entitled to seek equitable relief by injunction or otherwise, without the obligation of posting a bond or surety.