TERMS AND CONDITIONS FOR DATA LICENSE AND SERVICE AGREEMENT

These Terms and Conditions for Data License and Service 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 2160 Gold Street, San Jose, CA 95002 (“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. DEFINITIONS

In addition to other definitions contained in the Agreement, the following definitions shall apply:

“Agreement” shall mean the Data License and Service Agreement, including these Terms and Conditions and the Order Form.

“Data” shall mean the particular Rovi database(s) expressly selected for license to Licensee in the section of the Order Form titled “Rovi Content,” including Updates to Data and the table structures and arrangement of and correlations within and among the data elements, but excluding any Third Party Materials.

“Images” shall mean the (i) images, cover art (e.g., album cover art or box cover art), rich media and other non-textual data which Rovi receives from entertainment product manufacturers and other industry sources and provides to its licensees to the extent included with the Rovi Content expressly selected in the Order Form, subject to applicable approvals from third parties, at no cost and (ii) if the database(s) expressly selected for license to Licensee in the section of the Order Form titled “Rovi Content” includes any Athlete Images content, then the term “Images” shall also include such Athlete Images content. The term Images includes Updates to Images.

“Licensee Fee” shall have the meaning set forth in the Order Form.

“Licensee” shall have the meaning set forth in the Order Form.

“Licensee Property” shall mean Licensee’s products and services which shall be at all times exclusively (1) owned, controlled and operated by Licensee and (2) Licensee branded (i.e. not co-branded or white labeled).

“Order Form” shall mean the order form signed by such Licensee and Rovi, which reference these online Terms and Conditions.

“Permitted Use” shall mean, (i) the display of the Data (other than Rovi’s identification numbers included in the Data) on the Licensee Property solely in connection with the sale and promotion by Licensee on the licensee Property of music, movies, television programs, video games and/or books, as applicable, directly corresponding to the displayed Data and (ii) internal use by Licensee of Data (including such Rovi identification numbers) solely to reconcile and match Licensee’s product catalogue to the Data solely to support the foregoing permitted use in clause (i).

“Rovi Content” shall mean the Data and Third Party Materials selected in the Order Form.

“Rovi Marks” shall mean those trademarks, service marks, logos and other distinctive brand features of Rovi or its affiliated entities or licensors as designated by Rovi from time to time.

“Rovi Materials” shall mean Rovi Content and the Rovi Marks.

“Take Down Notice(s)” shall mean any take-down request, claim of infringement or objection to or request to limit or prohibit the continued use and/or publication received from third parties regarding items appearing in the Rovi Materials.

“Term” shall have the meaning set forth in the Order Form.

“Territory” shall have the meaning set forth in the Order Form.

“Third Party Materials” shall mean the Images and Updates to the foregoing. Additionally, the term Third Party Materials includes, to the extent the Rovi Material includes (i) any non-United States Rovi Video content, the portions of Rovi Content consisting of the air time, air date and other scheduling information relating to television programming originating, broadcasted or distributed outside of the United States and Updates thereto; and (ii) Audio Samples, the Audio Sample Service and Updates thereto.

“Updates” shall mean the periodic additions, deletions and changes to the Rovi Materials.

2. LICENSE GRANTS, LIMITATION & RESERVATION OF RIGHTS & NO EXHAUSTION

2.1 Subject to the terms and conditions of this Agreement, Rovi grants Licensee a limited, non-exclusive, non-transferable right, with no right to sub-license during the Term, to use, display, communicate, reproduce and transmit the Data within the Territory for the Permitted Use. All other uses of the Data are prohibited.

2.2 Subject to the terms and conditions of this Agreement, Rovi further grants Licensee a limited, revocable, non-exclusive, royalty free, fully paid, non-transferable license, with no right to sub-license, to use, reproduce and display in the Territory the Rovi Marks during the Term solely in connection with the obligations set forth in the FTP Terms or the API Terms (each as defined in the Additional Terms),
5.6 Not use, combine or distribute Rovi Materials in any manner that would cause Rovi Materials, 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 or any third party the right to do the foregoing.

5.7 Not use, permit or enable the use of Rovi Materials, directly or indirectly, in connection with any illegal, libelous, obscene or pornographic content or activity that violates any laws, rules, regulations or third party rights.

6. ROVI OBLIGATIONS

In addition to the acknowledgements, obligations and agreements set forth elsewhere in the Agreement, Rovi shall:

6.1 Make the Rovi Materials available to Licensee electronically as set forth in the Order Form or by an electronic delivery method that is mutually agreed to by the Parties, and in a format mutually agreed to by the Parties, provided that Rovi may at any time discontinue providing, terminate availability of and require Licensee to immediately cease using any Rovi Materials, including but not limited to if such content becomes unavailable to Rovi or subject to a Take Down Notice, at which time all rights and licenses granted by Rovi hereunder in and to such Rovi Materials shall immediately terminate.

6.2 Use reasonable care in maintaining the scope and accuracy of the Data.

7. LICENSEE FEES, REPORTS, AND PAYMENTS

7.1 For the Term of this Agreement, and in full and sole consideration of the licenses and rights granted in this Agreement, Licensee shall pay to Rovi, by wire transfer or check or other payment method agreed to by Rovi, the License Fee(s) set forth in the Order Form in US dollars within thirty (30) days of commencing each applicable time period for which payment is due (e.g. if a monthly License Fee is due then Licensee shall pay Rovi such fee each month within thirty (30) days of the commencement of each month) or as otherwise set forth in the Order Form and any transaction fees related to such payment, including but not limited to returned check fees. All amounts paid to Rovi under this Agreement are nonrefundable.

7.2 Licensee shall submit to Rovi all reports and information, if any, as required in this Agreement as well as such other information as reasonably requested by Rovi from time to time, provided that Licensee shall not at any time provide any personally identifiable information about any party to Rovi, except as mutually agreed to by the Parties. Such reports and information shall be complete and accurate. Licensee shall provide copies of any data and other materials used to complete such reports. Licensee shall maintain complete and accurate records and data to back up such reports for a rolling three-year period.

7.3 Any payments not received by Rovi when due shall carry finance charges computed at the lesser of one and one half percent (1.5%) per month or the highest amount permitted by law. Notwithstanding anything in this Agreement to the contrary, if payment of any License Fee is more than thirty (30) days past due, Rovi may stop providing Licensee with access to the Rovi Materials without notice, and during any such period of suspension, the terms of this Agreement shall continue in full force and effect, including all payment obligations. Licensee shall reimburse Rovi for all reasonable collection fees incurred during the collection of overdue payment amounts, including reasonable attorneys’ fees. The foregoing shall not be Rovi’s exclusive remedy for late payment.

7.4 Rovi shall have the right to inspect the books, records and operations of Licensee as they pertain to the fees payable to Rovi hereunder and compliance with this Agreement. Such examination shall take place during normal business hours, at Licensee’s place of business, upon reasonable notice to Licensee, at Rovi’s sole cost and expense (however, if a discrepancy of over five percent (5%) is found in good faith, Licensee shall pay the reasonable cost of the audit), and not more than once per calendar year. Any such inspection must be undertaken within two (2) years after the end of the calendar year being inspected.

7.5 If Licensee is required by any competent taxing authority to withhold taxes from payments made to Rovi hereunder (“Withholding Tax”), then Licensee shall deduct such Withholding Tax from the payment to Rovi and in such event shall pay such tax to the taxing authority on behalf of Rovi. Licensee shall obtain for and provide to Rovi, within ninety (90) days after submitting such Withholding Tax (and no longer than one year after the period for which the corresponding licensee fee payment was made), the original tax certificate or receipt issued by the taxing authority evidencing such tax payment and sufficient to allow Rovi to apply for an appropriate tax credit. In the event Licensee does not so provide the original tax certificate or receipt issued by the taxing authority, Licensee shall be liable for and shall reimburse Rovi for the amounts deducted as Withholding Taxes from the payment. The parties agree to take all reasonable steps before payment is made to reduce or eliminate Withholding Taxes under applicable law including income tax treaties.

7.6 Licensee agrees to pay all sales tax, use tax, value added tax, goods and services tax, transaction tax or similar excise tax due to any taxing authority with respect to transactions resulting from this Agreement. If Rovi is required by any taxing authority to collect and remit any such taxes to a taxing authority, Rovi shall invoice any such taxes to Licensee and Licensee shall pay Rovi for such taxes.
8. 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 any 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) 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.

9. INDEMNITIES

9.1 Rovi's Indemnity: Rovi shall indemnify and defend Licensee and its employees, officers, directors and agents ("Licensee Indemnified Parties") from and against any and all claims made or brought by an unaffiliated third party, including, without limitation, judgments, settlements, liabilities, damages, expenses, penalties and fees (collectively, "Claims"). That arise out of or relate to any Claim arising because the Data as used in full compliance with this Agreement is found to infringe upon such third party's copyrights or trademark rights under United States law. The foregoing indemnity obligation shall be Licensee's sole remedy with respect to claims of intellectual property infringement. Rovi shall conduct the defense of all such Claims, at its own expense, subject to Licensee's right to participate with its own counsel at its expense and to approve any settlement that purports to bind Licensee. Rovi's indemnification obligations under this Section 9.1 with respect to Claims are conditioned on (a) Licensee's prompt written notification to Rovi of third party Claims for which Licensee is seeking indemnification by Rovi setting forth in reasonable detail the nature of such Claim (e.g., a screenshot of the user interface and/or webpage displaying the Data that gives rise to such Claim), (b) Rovi not taking any action that would materially prejudice Rovi's defense of such Claim and (c) reasonable cooperation by Licensee with respect to the defense of such Claim. Notwithstanding the foregoing or anything in this Agreement to the contrary, Rovi shall have no obligation to indemnify, hold harmless or defend the Licensee Indemnified Parties or other third parties for any Claims arising from or based upon the following, regardless of whether expressly permitted herein: (i) the combination or use of Rovi Materials with any non-Rovi Materials not provided by Rovi, if such Claim would not have arisen but for such use or combination, (ii) any modification to the Rovi Materials, (iii) any specifications, designs or instructions provided to Rovi by or on behalf of Licensee, (iv) the failure to immediately or accurately install an Update, if such Claim could have been avoided by the immediate and accurate installation of such Update, or (v) any use of Rovi Materials that is not authorized by Rovi or breach of this Agreement, in each case by Licensee or any third parties or any use of any Rovi Materials on any social media property.

9.2 Licensee's Indemnity: Licensee shall indemnify and defend Rovi and its affiliates, successors, assigns and licensors and their respective members, officers, directors, advertisers, employees, licensors, and agents from and against any Claims made or brought by third parties arising out of the actual or alleged breach of this Agreement; the Licensee Property, excluding Claims based solely upon the Rovi Materials used in full compliance with this Agreement; and illegal or unauthorized use of Rovi Materials by third parties and/or any use of any Rovi Materials on any social media property. Licensee shall conduct the defense of all such Claims, at its own expense, subject to Rovi's right to participate with its own counsel at its expense and to approve any settlement that purports to bind Rovi. Licensee's indemnification obligations under this Section 9.2 with respect to Claims are conditioned on (a) Rovi's prompt written notification to Licensee of third party Claims for which Rovi is seeking indemnification by Licensee setting forth in reasonable detail the nature of such Claim (e.g., a screenshot of the user interface and/or webpage displaying the Data that gives rise to such Claim), (b) Rovi not taking any action that would materially prejudice Licensee's defense of such Claim and (c) reasonable cooperation by Rovi with respect to the defense of such Claim.

9.3 Disclaimer of Representations and Warranties. ROVI EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9.4 Limitation of Liability. EXCEPT AS SET FORTH IN SECTION 9.1, IN NO CASE SHALL ROVI OR ITS AFFILIATES BE LIABLE FOR ANY CLAIMS BY THIRD PARTIES. ROVI SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGES ARISING OUT OF OR CAUSED BY THE USE AND/OR ACCESS TO THE ROVI MATERIALS TO THE EXTENT ARISING FROM ANY FAILURE TO COMPLY WITH THE TERMS OF THIS AGREEMENT BY LICENSEE OR ANY THIRD PARTY. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO
12.1 The additional terms located at https://business.tivo.com/products/metadata-additional-terms-and-conditions (the “Additional Terms”) may apply and, if applicable, are part of these Terms and Conditions and incorporated herein.
12.2 If the Rovi Materials includes any content from Twitter Inc., then Licensee acknowledges and agrees that Licensee’s use of Rovi Materials is governed by Twitter Inc.’s terms of use or service and policies applicable thereto.

12.3 To the extent that Rovi provides Licensee with any content received from Metacritic.com (“Metacritic”), Licensee agrees that Licensee’s use of such content is subject to the terms and conditions, including any and all attribution and linking requirements, set forth in Metacritic’s usage requirements located at https://business.tivo.com/metacriticusageguidelines.pdf.

13. GENERAL

13.1 Publicity: Rovi and/or its affiliates may issue press releases stating that Licensee has signed this Agreement. Otherwise neither Party shall issue any press release regarding this Agreement. Notwithstanding anything to the contrary herein, Rovi and/or its affiliates may at any time “line list” Licensee (and Licensee’s logo) as an authorized licensee and/or reference Licensee (and Licensee’s logo) as a custom web site, earnings releases and other investor communications, marketing materials, presentations or customer lists which lists may be shared by Rovi and/or its affiliates with third parties, including, without limitation, rights holders in the Rovi Materials and/or mention that Licensee has signed this Agreement in earnings releases and other investor communications. For the avoidance of doubt, neither Rovi nor its affiliates need Licensee’s approval if they are repeating a public statement that is substantially similar to a previously-approved public statement.

13.2 Entire Agreement: Each Party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. The Agreement represents the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, negotiations, understandings, representations, statements and writings among the Parties relating thereto with regard to the subject matter hereof.

13.3 Amendment: Rovi reserves the right to change these Terms and Conditions and/or the Additional Terms in our sole discretion and with or without notice to you. The most current version of these Terms and Conditions located at https://business.tivo.com/products/metadata-terms-and-conditions (or such other website as Rovi shall notify you of from time to time (e-mail is sufficient)) and the Additional Terms located at https://business.tivo.com/products/metadata-additional-terms-and-conditions (or such other website as Rovi shall notify you of from time to time (e-mail is sufficient)), as applicable, will supersede all previous versions. By using any Rovi Content subsequent to publication of modifications to these Terms and Conditions and the Additional Terms, you are automatically bound by and subject to the full language of the most current Terms and Conditions and Additional Terms, as revised. Except for changes made by Rovi as provided in the first three sentences of this Section 13.3, any other modification, alteration, waiver or change in any of the terms of this Agreement shall be valid or binding upon the Parties hereto unless made in writing and duly executed by both of the Parties hereto.

13.4 Law/Jurisdiction: This Agreement shall be governed by and interpreted in accordance with the laws of the State of California and the United States of America without regard to the principles of conflicts of law and subject to the sole jurisdiction of the federal and state courts sitting in San Jose, California. Should any part of this Agreement be held unenforceable or in conflict with the applicable laws or regulations of any jurisdiction, the invalid or unenforceable part or provision shall be replaced with a provision which accomplishes, to the extent possible, the original business purpose of such part or provision in a valid and enforceable manner, and the remainder of this Agreement shall remain binding upon the Parties.

13.5 Assignment: Licensee shall not directly or indirectly assign or transfer by operation or law or otherwise (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 express prior written consent. In addition, if Licensee directly or indirectly acquires, is acquired by or consolidates, merges or otherwise combines with a third party during the Term (i.e. through a transaction or series of transactions that would not require consent pursuant to the immediately prior sentence), then the licenses and rights granted in this Agreement by Rovi (including, without limitation, any rights to use Rovi Materials) shall not extend to such third party or any of its properties, businesses or services.

13.6 Independent Contractors: The Parties acknowledge that they are dealing with each other as independent contractors. Nothing in this Agreement may be construed as creating or constituting an employer-employee relationship, a partnership, a joint venture, or any agency between the Parties.

13.7 Notices: Unless otherwise instructed by Licensee in a written notice provided in accordance with this Section, all notices delivered hereunder, including, without limitation, invoices and other correspondence given to Licensee relating to billing matters shall be addressed to the person and address indicated in the Licensee Notice Contact Information section of the Order Form. Unless otherwise instructed by Rovi in a writing provided in accordance with this Section, all notices given to Rovi hereunder shall be addressed to Rovi at the addresses set forth below:
Except as otherwise provided herein, all notices shall be in writing and personally delivered; 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 (a) actual receipt or (b) three (3) days after such notice is provided by the sender to the applicable delivery service for delivery. The failure or refusal of the recipient to accept or receive notice given hereunder does not affect the validity of the notice.

13.8 Survival: The provisions of the sections entitled: Confidentiality, Indemnities, Termination, and General hereof as well as provisions relating to Taxes and payment obligations incurred in respect of any period on or prior to the effective date of termination or expiration shall survive termination or expiration of this Agreement for any reason. 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.

13.9 Waiver: Waiver by either Party of a default or breach or a succession of defaults or breaches, or any failure by either Party to enforce any rights hereunder, shall not be deemed to constitute a waiver of any subsequent default or breach with respect to the same or any other provision hereof, and shall not deprive such Party of any right to terminate this Agreement arising by reason of any subsequent default or breach.

13.10 Headings: The headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

13.11 Counterparts: This Agreement may be executed by facsimile or email and in counterparts, each of which (including signature pages) shall be deemed an original, but all of which together shall be deemed one and the same instrument.

13.12 Attorneys Fees: The prevailing Party shall be entitled to reasonable attorney’s fees, costs and related expenses arising out of any action to enforce this Agreement.

13.13 Third Party Beneficiaries: Nothing in this Agreement should be construed to confer any rights to third party beneficiaries; provided that Rovi’s licensors shall each be third party beneficiaries of this Agreement and shall be entitled to enforce all rights of Rovi hereunder as if they were a party hereto.

13.14 Export Laws: Licensee agrees to comply with applicable U.S. export and reexport control laws, regulations and requirements. Without limiting the foregoing, Licensee specifically agrees that Licensee will not export, reexport or transfer any Rovi Materials to (1) any country under U.S. embargo, which currently includes Cuba, Iran, North Korea, Sudan, Syria and the Crimea Region of Ukraine or (2) any person entity listed on a U.S. Government denied persons list or (3) for any U.S. Government restricted end-use, including end-uses related to the development, production or use of nuclear, chemical or biological weapons or missiles, in each case in violation of U.S. export and reexport control laws, without first obtaining any export license, permit or other approval from the U.S. Government that may be required.