Buyer agrees to purchase and TiVo Poland Sp. z o.o. (“TiVo”) agrees to sell products (“Products”) and perform services (“Services” identified in the proposal or purchase order referencing this document executed by Buyer and TiVo (“Order”) pursuant to the terms and conditions of this document (collectively with the Order, the “Agreement”). To the extent any provisions contained in an Order conflict with any provisions of this document, the provisions of the Order shall control with respect to such Order. Any other terms or conditions asserted by Buyer as applicable to a transaction with TiVo, in a purchase order, confirmation, invoice, on a web site, or otherwise, are inapplicable.

The Products are licensed and not sold by TiVo, notwithstanding the references herein or anywhere else to “sale”, “sold”, “sell” or the like.

The terms and conditions of this document do not apply to the CubiSDK Software Development Kit. Buyer’s use of CubiSDK is governed by the end user license agreement accompanying the CubiSDK.

1. Delivery and Payment

(a) All Products shall be delivered electronically. Payment is due as set forth in the Order or, where the Order is silent, 30 days from the date of TiVo’s invoice (which invoice may be provided by TiVo at any time following TiVo’s delivery of the relevant Products). For the avoidance of doubt, all fees payable for Products are due and payable regardless of the extent to which Buyer deploys such Products pursuant to the licenses granted hereunder. Buyer will pay interest on late payments at the lesser of 15% per annum or the maximum rate allowed by law. TiVo will use commercially reasonable efforts to deliver Products and perform Services pursuant to the schedule set forth in the Order or (if applicable) the SOW (as defined in Section 11); however, delivery dates are approximate and TiVo is not liable for delays for any reason. Buyer agrees to pay all applicable taxes. Buyer acknowledges that TiVo’s prices are subject to change from time to time in TiVo’s sole discretion, and the prices paid by Buyer in the Order may not be the same as prices charged by TiVo in the future for the same Products and Services.

(b) Audit. Upon TiVo’s request from time to time, Buyer shall allow TiVo or any third party auditor designated by TiVo to examine and audit Buyer’s books and records relating to its activities undertaken in connection with this Agreement, including the number of End Products containing Client Products manufactured or distributed by or on behalf of Buyer. To the extent any such audit uncovers any underpayment of any amounts due to TiVo hereunder, Buyer shall promptly pay such amounts and shall reimburse Buyer for its expenses incurred in conducting such audit.

2. License

(a) Grant – Reseller. If Buyer is designated in the Order as a “Reseller”, then TiVo hereby grants to Buyer, subject to all terms and conditions of this Agreement and with respect to each Product effective only during the applicable license term specified in the Order therefor (the “License Term”), a non-exclusive and non-transferable license to, in each case solely in object code form: (i) embed, integrate, or otherwise incorporate Products designated on the Order as “Client Products” (“Client Products”) solely into the Buyer device(s) specified in the Order (“End Products”); (ii) subject to Section 2(e) below, distribute (directly or indirectly through distributors) within the territory specified in the Order (“Territory”) the Client Products as embedded, integrated, or otherwise incorporated into the End Products to multichannel video programming distributors (“Customers”) for use, resale and/or leasing in the Territory; (iii) reproduce, execute, perform and display the Client Products as embedded, integrated or otherwise incorporated into the End Products for purposes of performing demonstrations to prospective Customers and for providing support to Customers; (iv) distribute Products designated in the Order as “Server Products” (“Server Products”) to Customers for their use in supporting the operation of the Client
Products and App Products, and (v) distribute Products designated in the Order as “App Products” (“App Products”) to Customers for their distribution to end users of their multichannel video programming services for use by such end users within the Territory. The foregoing license is subject at all times to TiVo's the list of exclusive customer opportunities which Buyer is prohibited from pursuing (as such list may be updated from time to time) (“TiVo's Exclusive Customer List”). As such, Reseller shall submit for approval each customer opportunity to TiVo prior to pursuing any such customer opportunity to confirm compliance with TiVo’s Exclusive Customer List.

(b) Grant – Operator. If Buyer is designated in the Order as an “Operator”, then TiVo hereby grants to Buyer, subject to all terms and conditions of this Agreement and with respect to each Product effective only during the License Term, a non-exclusive and non-transferable license to, in each case solely in object code form: (i) embed, integrate, or otherwise incorporate the Client Products solely into the End Products; (ii) subject to Section 2(e) below, distribute (directly or indirectly through distributors) within the Territory the Client Products as embedded, integrated, or otherwise incorporated into the End Products to end users of Buyer’s multichannel video programming services for their use in the Territory pursuant to an agreement containing provisions not materially less protective of the Products than Section 2(c) below; (iii) reproduce, execute, perform and display the Client Products as embedded, integrated or otherwise incorporated into the End Products for purposes of providing support to such end users; (iv) execute, perform and display the Server Products on servers owned or controlled by Buyer for supporting the operation of the Client Products and App Products; and (v) distribute App Products to end users of Buyer’s multichannel video programming services for their use in the Territory pursuant to an agreement containing provisions not materially less protective of the Products than Section 2(c) below.

(c) Restrictions. The licenses granted hereunder are subject to such further restrictions as may be set forth in the Order. For the avoidance of doubt, the licenses granted hereunder for Client Products, Server Products and App Products apply only if and to the extent Product(s) from each such Product category are set forth on an Order and paid for by Buyer. Except as expressly set forth in this Agreement, Buyer may not use, exploit, distribute, modify, sublicense, rent, sell, encumber, display or perform the Products. In addition, Buyer may not distribute the Client Products other than as embedded, integrated or otherwise incorporated into End Products: (i) in accordance with the licenses granted hereunder; (ii) in a manner that prevents removal of the Client Products from the End Products or any reverse engineering or discovery of the source code of the Client Products; and (iii) in compliance with any encryption or other security requirements which TiVo may provide. Buyer may not embed, integrate or otherwise incorporate the Client Products into any device other than the device(s) described in the Order in accordance with the licenses granted hereunder. Except to the extent required to be permitted by law, or as expressly set forth in this agreement, Buyer shall not (and shall not enable or permit others to) decompile, reverse engineer, disassemble, attempt to derive the source code of, or decrypt any Product which is not expressly specified in the applicable Order as being provided in source code form. If Buyer violates the foregoing restriction, Buyer will assign and hereby irrevocably does assign to TiVo all right, title and interest in and to any modifications to the Products made by Buyer. All licenses not expressly granted in this Agreement are reserved and no other licenses or rights, express or implied, are granted (whether by implication, estoppel, or otherwise).

(d) Legends. Buyer will reproduce all of TiVo's (or its licensor's) copyright notices and other proprietary legends in the Products and on copies thereof.

(e) Additional Distribution Terms. Prior to any distribution of Client Products or App Products, Buyer must provide TiVo with an authorization letter (in a form provided by TiVo) executed by an authorized representative of Buyer (or, if Buyer is designated on the Order as a “Reseller”, the applicable Customer) under which Buyer (or the applicable Customer) requires its vendor(s) of conditional access software and/or services to provide such information to TiVo as is reasonably necessary for TiVo to confirm compliance with this Agreement, including Product usage limitations. In the event that usage of any Product exceeds the number of copies specified in the Order, TiVo shall charge Buyer (and Buyer must promptly pay) the then-applicable license fees corresponding to Buyer's usage, subject to any minimum quantity purchase requirements which may apply and TiVo may (in addition to any other rights and remedies) deactivate the excess number of Products in the event such fees are not paid within seven (7) days of TiVo's invoice.

(f) Additional Reseller Terms. If Buyer is designated in the Order as a “Reseller”, then the terms of this Section 2(f) apply. Buyer may not distribute any Product to a Customer unless the Customer has entered into a sublicense agreement in the form provided by TiVo to Buyer. Buyer shall inform TiVo in writing about any breach of any sublicense agreement between the Buyer and any Customer and shall take all reasonable steps requested by TiVo in responding to and mitigating such breach. The Buyer shall keep (i) an up-to-date list of its Customers that includes (1) a detailed list of all Products licensed by those Customers, (2) the date the Products were shipped
4. No Warranty.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, TiVo MAKES NO WARRANTIES OR CONDITIONS WITH RESPECT TO THE PRODUCTS OR SERVICES PROVIDED HEREUNDER AND HEREBY DISCLAIMS (AND BUYER WAIVES AND RELEASES) TO THE MAXIMUM EXTENT PERMITTED BY LAW ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS,
IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS AND THE USE OF REASONABLE SKILL AND CARE. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, TIVO DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS (WHETHER WRITTEN OR ORAL) REGARDING THE USE, OR THE RESULTS OF THE USE, OF THE PRODUCTS OR SERVICES, RELATED DOCUMENTATION OR OTHER WRITTEN MATERIALS IN TERMS OF CORRECTNESS, ACCURACY, SUFFICIENCY, RELIABILITY, OR OTHERWISE, AND SHALL HAVE NO LIABILITY OTHER THAN IN ACCORDANCE WITH THE EXPRESS TERMS OF THIS AGREEMENT.

5. Intellectual Property Indemnity

(a) Indemnity. TiVo shall defend, at its own expense, any third-party claims brought against Buyer in any jurisdiction within the European Union to the extent alleging infringement by the Products of any copyrights or trade secret rights enforceable within the European Union (a “Claim”), and pay (subject to Section 15) those amounts finally awarded by a court of competent jurisdiction against Buyer (including damages, interest, costs, and reasonable attorneys’ fees) or payable pursuant to a settlement agreed by TiVo with respect to such Claims. The foregoing obligation does not apply in relation to: (1) any infringement by any software or technology other than the Products, (2) the audio/video content or any other content processed by the Products, (3) the combination or use of the Products with any products (including the End Products), services, technology or trademarks not provided by TiVo, (4) any Excluded Technology (as described in Section 8(b) below), (5) any infringement which arises out of any modification or adaptation made at Buyer’s or (if applicable) a Customer’s request (including pursuant to an SOW) or (6) any infringement relating to any breach of this Agreement by Buyer (including Section 8(b) below) or any unauthorized use of the Products by Buyer or any Customer or other third party. For the avoidance of doubt, TiVo has no obligation hereunder with respect to any third party claim of patent infringement.

(b) Required Procedures. TiVo will have no obligation under Section 5(a) unless Buyer: (i) promptly notifies TiVo in writing as soon as reasonably practicable after Buyer first becomes aware of the Claim, but in no event later than 30 days after Buyer first receives notice of the Claim; (ii) gives TiVo sole control of the defense of the Claim and any related settlement negotiations; and (iii) all requested assistance for defending the Claim. Upon request by TiVo, Buyer will execute a joint representation agreement and waiver of conflicts of interests that will allow counsel retained and directed by TiVo to (1) represent both TiVo and Buyer with respect to the Claim and (2) represent TiVo in the future and be adverse to Buyer in the future. TiVo will not be liable for any settlement of a Claim made without TiVo’s prior written consent. If Buyer obtains counsel, either without TiVo’s consent or for the defense of claims other than a Claim, Buyer does so at its own expense. If a Claim is asserted prior to delivery of the Product, TiVo may decline to make such delivery.

(c) Mitigation. If a Product or any part of a Product is the subject of a Claim, then TiVo (acting at its own cost and at its own discretion) shall use commercially reasonable efforts to: (i) obtain for the Buyer (or, where applicable, the Customer) the right to continued use of the Product; (ii) replace the Product with one that does not infringe the relevant copyright or trade secret right; or (iii) modify the Product in a way that renders the Product non-infringing. In the event TiVo is unable to accomplish any of the foregoing (i) through (iii) through use of commercially reasonable efforts, TiVo shall have the right to remove the applicable Product from the scope of this Agreement upon written notice to Buyer.

(d) DISCLAIMER. THIS SECTION CONTAINS (I) TIVOS ENTIRE LIABILITY AND ALL OBLIGATIONS RELATED TO INTELLECTUAL PROPERTY INFRINGEMENT OR MISAPPROPRIATION, AND (II) BUYER’S EXCLUSIVE REMEDIES AGAINST TIVO FOR INTELLECTUAL PROPERTY INFRINGEMENT OR MISAPPROPRIATION. THESE REMEDIES ARE PROVIDED IN LIEU OF ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE WARRANTY AGAINST INFRINGEMENT SPECIFIED IN THE UNIFORM COMMERCIAL CODE.

6. Indemnity by Buyer
Buyer will indemnify, defend and hold TiVo and its Affiliates, and each of their directors, officers, employees and agents, harmless from and against any and all claims, actions, suits, proceedings, losses, damages, liabilities, settlements, judgments, costs and expenses (including attorneys fees) arising out of or relating to: (i) any allegation of bodily injury (including death) or property damage attributable to any End Products or the pre-installation, installation, post-installation, activation, or other deployment activities relating thereto; (ii) Buyer’s (or, if Buyer is a Reseller, Buyer’s Customers’) advertising, marketing and/or distribution of the End Products or App Products, including without limitation, unfair or misleading advertising, unfair business practices, service termination; (iii) an allegation of infringement of intellectual property rights relating to any matter described in Section 5(a)(1) through (6) above; or (iv) any audio/video content or services provided to end users of the Client Products or App Products. "Affiliate" means, in relation to any party, any corporation or entity directly or indirectly controlling, controlled by, or under common control with that party. For the purposes of this definition, "control" means the ownership of greater than 50% of the voting securities of that party.

7. Confidential Information

(a) Confidential Information; Exceptions. All materials and information disclosed by TiVo or Buyer, and their Affiliates, and (i) identified as containing confidential or proprietary information when disclosed or (ii) that a reasonable person would recognize as confidential or proprietary considering the nature of the information and/or the circumstances of disclosure constitutes "Confidential Information", provided that Confidential Information does not include information that recipient can demonstrate (i) is, or becomes, publicly known through no wrongful act on the recipient’s part; (ii) is explicitly approved for release by written authorization of the discloser; (iii) is lawfully obtained from a third party without a duty of confidentiality, provided the disclosure of such information does not, to the recipient’s knowledge, violate any contractual or legal obligation such third party has to the discloser; (iv) is known to the recipient prior to such disclosure without an obligation of confidentiality; or (v) is independently developed by the recipient without the use of any of the discloser’s Confidential Information. Without limitation, the Products and all related documentation constitute Confidential Information of TiVo.

(b) Standard of Care. The recipient will (i) not disclose Confidential Information to any third party other than as expressly permitted under this document; (ii) restrict disclosure of Confidential Information to only those employees, agents or consultants of recipient and its Affiliates who need to know the Confidential Information for the purpose of this Agreement and who are bound by confidentiality terms substantially similar to those in this Agreement; (iii) be liable to the discloser for any unauthorized use of Confidential Information by any such employees, agents or consultants in violation of such terms; (iv) not reverse engineer, de-compile or disassemble any Confidential Information; (v) use the same degree of care as its own information of like importance, but at least use reasonable care, in safeguarding against disclosure of Confidential Information; (vi) promptly notify the discloser upon discovery of any unauthorized use or disclosure of the Confidential Information and take reasonable steps to regain possession of the Confidential Information and prevent further unauthorized actions or other breach of this document; and (vii) only use the Confidential Information in furtherance of the purpose of the transactions contemplated herein. The foregoing obligations and restriction shall survive any expiration or termination of this Agreement.

(c) Required Disclosure. The recipient will not be in breach of this Section 7 for any disclosure of Confidential Information to the extent required by law or legal process, provided that the recipient shall notify the discloser a reasonable time prior to making any such disclosure and shall cooperate with the discloser’s efforts to seek a protective order or otherwise prevent or restrict such disclosure.

(d) Publicity. Neither party shall issue any press releases or similar communications regarding the existence or subject matter of the Agreement without the prior written approval of the other party, other than to the extent required by law or the rules of any securities exchange.

(e) Other. If the terms of this section conflict with any confidentiality or nondisclosure terms agreed to by the parties in a separate written agreement governing this transaction, the terms of such separate agreement will control.
8. Intellectual Property Rights

(a) Buyer acknowledges and agrees that this Agreement does not convey to Buyer any ownership right, interest or title in or to the Products or related documentation, or to any copyright, trade secret, patent, trademark or other intellectual property right associated therewith or arising therefrom, and that as between the parties, all of the forgoing is and remains the sole property of TiVo. Buyer will not obtain any rights to the Products other than as expressly set out herein.

(b) Buyer will obtain and pay for, or (if Buyer is designated as a “Reseller” in the Order) will ensure that its Customers obtain and pay for (and in any event TiVo shall have no responsibility for), all rights and licenses relating to third party technologies and standards implemented or used by or within the End Products, including without limitation in relation to, as applicable (1) media codecs and containers such as H.264/AVC, MPEG-2, AAC, WMV, XVID/DivX, MP3 and WMA, (2) third party audio and video technology such as Dolby or DTS audio enhancements and SmoothStreaming, (3) electronic program guide presentation and functionality, including parental controls, (4) HDCP and HDMI, and (5) conditional access, digital rights management and copy protection technology, such as Microsoft WMDRM, PlayReady and Macrovision, in each case regardless of the extent to which any of the foregoing is implemented in or by the Products (collectively, “Excluded Technology”). Buyer will indemnify, defend and hold TiVo and its Affiliates, and each of their directors, officers, employees and agents, harmless from and against any and all claims, actions, suits, proceedings, losses, damages, liabilities, settlements, judgments, costs and expenses (including attorneys fees) arising out of or relating to any actual or alleged failure to obtain all necessary rights and licenses relating to Excluded Technology implemented or used by or within the End Products.

(c) TiVo and its Affiliates and licensees may freely use, reproduce, license, distribute, and otherwise commercialize in any product or service any suggestions, comments, or other feedback related to the Products that Buyer provides.

(d) Buyer hereby grants to TiVo a non-exclusive, and royalty-free license to reproduce, make or have made, create derivative works from, distribute, publicly display, publicly perform, import and use any software, hardware, data, materials and technology provided by Buyer or any Customer to TiVo in connection with this Agreement as necessary or desirable to perform its obligations under this Agreement (including those under any Order or SOW). If Buyer is designated as a Reseller in the Order, Buyer shall cause its Customers and/or suppliers to grant an equivalent license to TiVo to the extent Buyer cannot sublicense such rights.

9. Maintenance & Support Services

Any support services specified in the Order, whether for the benefit of Buyer or (if Buyer is designated in the Order as a “Reseller”) its Customers, will be provided for the time period specified in the Order and will be subject to TiVo’s Support Policies and Procedures. TiVo’s Support Policies and Procedures are subject to revision from time to time, provided that no revision providing for a material decrease in the level of support provided shall apply during any time period for which support services have been pre-paid prior to the revision.

10. Customization Services

(a) To the extent the Order includes or incorporates a Statement of Work (“SOW”) for TiVo’s performance of Services relating to the Products (such as, by way of example, Services for installation and configuration of Products or modification of a Product to meet Buyer’s requirements), the terms of this Section 10 apply to such SOW and Services. TiVo’s obligations to perform the Services are limited to its use of commercially reasonable efforts and its business and technical judgment based on information provided to TiVo by Buyer. Unless the SOW expressly provides otherwise, TiVo’s obligation with respect to any Services will be complete and applicable payments shall be due upon TiVo’s delivery of the modified Product or other deliverable(s) specified in the SOW that is materially compliant with the specifications therefor set forth in the SOW. Any modified Product provided under an SOW constitutes a “Product”
hereunder once all applicable payments for such Product are made to TiVo. Any modified Product remains the property of TiVo. Buyer shall reimburse TiVo for the costs of travel and accommodation of TiVo’s staff if any work under an SOW requires travel. Any amounts paid to TiVo under a SOW are non-refundable.

(b) Buyer shall provide to TiVo, at Buyer’s expense and in a timely manner, the following resources, and such other additional resources, as TiVo may from time to time reasonably request in connection with TiVo’s performance of the Services: (i) qualified Buyer personnel or representatives who will be designated by Buyer to consult with TiVo on a regular basis in connection with the Services and provide TiVo with documentation or other information necessary to perform the Services; and (ii) access to Buyer’s premises and appropriate systems and/or workspace for TiVo personnel at Buyer’s premises as necessary for performance of those portions of the Services to be performed at Buyer’s premises.

11. Term; Termination

(a) The term of this Agreement will commence on the date specified in the Order and continue until and unless terminated as set forth herein.

(b) This Agreement may be terminated by either party on written notice delivered to the other party upon the occurrence of any of the following events: (i) there has been a material breach of this Agreement on the part of the other party and the other party fails to cure such material breach within thirty (30) days of receipt of a written notice thereof; (ii) the other party ceases to do business, or otherwise terminates its business operations; or (iii) the other party seeks protection under any bankruptcy, insolvency, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against the other party and is not dismissed within sixty (60) days.

(c) TiVo may terminate this Agreement immediately in the event Buyer breaches any provision of Section 2(c) or Section 7.

(d) Upon the termination of this Agreement for any reason by either party: (i) Buyer shall immediately pay to TiVo any sums due to TiVo under this Agreement; (ii) if Buyer is designated on the Order as an “Operator”, then Buyer’s license under Section 2(b) will continue until the end of the applicable License Term with respect to all Products for which Operator has paid all applicable fees to TiVo; and (iii) if Buyer is designated on the Order as a “Reseller”, then Buyer’s license under Section 2(a) will terminate immediately, provided that sublicense agreements validly entered into by Buyer with Customers pursuant to Section 2(f) prior to termination shall remain in full force and effect following termination and Buyer shall direct such Customers to TiVo with respect to any additional TiVo products or related services such Customers may desire to purchase.

(e) Except to the extent as may be expressly set forth herein, termination is not the sole remedy under this Agreement and (whether or not termination is effected) all other remedies will remain available, including those provided by applicable law. Sections 2(c)-(h), 3, 4(d), 5, 6, 7, 10(d), 10(e) and 11 through 16 shall survive termination of this Agreement. Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination, and TiVo’s right to be paid all accrued but unpaid payment obligations.

12. Government Contract Compliance

(a) If Buyer distributes Products directly to any government or public entity, including U.S., state, local, foreign or international governments or public entities, or indirectly via a prime contractor or subcontractor of such governments or entities, TiVo makes no representations, certifications, or warranties whatsoever about compliance with government or public entity acquisition statutes or regulations, including, without limitation, statutes or regulations that may relate to pricing, quality, origin or content.
13. Export Compliance

(a) Commodities, technology, and software (collectively referred to as “Items”) shared pursuant to this document are subject to the export control laws of the United States and other countries that may lawfully control the export of such Items. Moreover, the furnishing of support services with respect to Items that are controlled as defense or military Items may also be subject to such laws. Accordingly, Buyer agrees it will not transfer such Items or furnish such services except in compliance with the export laws of the United States and any other country that may lawfully control the export of such Items or the provision of such services. The Buyer will indemnify and hold TiVo harmless from any claims, liabilities, damages, penalties, forfeitures, and associated costs and expenses (including attorneys’ fees) that TiVo may incur due to Buyer’s non-compliance with applicable export laws, rules, and regulations. Finally, Buyer will immediately notify TiVo of any violation of any export law, rule, or regulation, which may affect TiVo or relate to the activities covered under this document.

(b) If an export/import license, permit, or other government required authority (collectively referred to as “government authorization”) is required in order for TiVo to transfer Products or any other TiVo property under this document and such government authorization to non-TiVo party(ies) is not approved, then TiVo is not obligated to proceed with such transfer until the required government authorization is granted.

14. Use of Marks

TiVo and its affiliates may use, reproduce and display Buyer’s name, trademarks, and corporate logos on their websites and marketing and promotional materials for purposes of identifying Buyer as a customer of TiVo. Buyer, without the express prior written consent of TiVo, has no right to use TiVo’s or its Affiliates’ trademarks, trade names, corporate slogans, corporate logos, or corporate designations in the sale, lease, or advertising of any products, or any product container, component part, business forms, sales, advertising, or promotional materials, or other business supplies or materials, whether in writing, orally or otherwise.

15. Limitation of Liability

(a) EXCEPT FOR PERSONAL INJURY AND PROPERTY DAMAGE, THE TOTAL AGGREGATE LIABILITY OF TIVO AND ITS AFFILIATES IN CONNECTION WITH THIS AGREEMENT AND THE PRODUCTS AND SERVICES, WHETHER FOR BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT, OR OTHERWISE, IS LIMITED TO THE PRICE OF THE PARTICULAR PRODUCTS SOLD HEREUNDER BY TIVO TO BUYER WITH RESPECT TO WHICH LOSSES OR DAMAGES ARE CLAIMED. IN NO EVENT WILL TIVO OR ITS AFFILIATES BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, COLLATERAL, PUNITIVE, OR EXEMPLARY DAMAGES TO THE FULL EXTENT SUCH MAY BE DISCLAIMED.
BY LAW (COLLECTIVELY, “EXCLUDED DAMAGES”). EXCLUDED DAMAGES INCLUDE, WITHOUT LIMITATION, COST OF REWORK, REMOVAL, RETESTING, OR REINSTALLATION, LABOR COSTS, LOSS OF GOODWILL, LOSS OF PROFITS, LOSS OF SAVINGS, LOSS OF USE, LOSS OF DATA, OR BUSINESS INTERRUPTION, OR LOSS OR DAMAGE ASSOCIATED WITH OTHER PRODUCTS OR COMPONENTS THAT BUYER COMBINES WITH THE TIVO PRODUCTS.

(b) The parties stipulate that the allocations of risk, disclaimers of warranties and exclusions and limitations of liability in this Agreement are reasonable and are reflected in the prices charged for the Products by TiVo hereunder.

16. Compliance With Anti-Corruption Laws

(a) Buyer represents and warrants that it is in compliance with all applicable anti-corruption laws, and that it has not taken, and shall not take, any action that would cause TiVo or any TiVo Affiliate to violate any anti-corruption law, including but not limited to the United States Foreign Corrupt Practices Act, the United Kingdom Bribery Act, and local anti-corruption laws in the jurisdictions in which Services pursuant to this Agreement are performed. Buyer represents and warrants that Buyer has and shall maintain in place throughout the term of this Agreement appropriate training programs for its employees and contractors as well as its own policies and procedures to ensure compliance with all anti-corruption laws, and will enforce such policies and procedures where appropriate.

(b) Without limiting the foregoing, Buyer warrants that it, and its employees, agents, and representatives have not and will not, directly or indirectly, offer, pay, give promise, or authorize the payment of any money, gift or anything of value to: (i) any officer, employee or person acting in an official capacity for any government department, agency or instrumentality, including state-owned or -controlled companies, and public international organizations, as well as a political party or official thereof or candidate for political office (“Government Official”), or (ii) any person while Buyer knows or has reason to know that all or a portion of such money, gift or thing of value will be offered, paid or given, directly or indirectly, to any Government Official, for the purpose of (a) influencing an act or decision of the Government Official in his or her official capacity, (b) inducing the Government Official to do or omit to do any act in violation of the lawful duty of such official, (c) securing an improper advantage, or (d) inducing the Government Official to use his influence to affect or influence any act or decision of a government or instrumentality, in order to assist TiVo or any of its Affiliates in obtaining or retaining business.

(c) Buyer agrees that should it learn or have reason to know of any payment or transfer (or any offer or promise to pay or transfer) that would violate applicable anti-corruption laws, it shall immediately disclose it to TiVo.

(d) Buyer represents and warrants that, unless disclosed to Buyer in a separate written statement, none of its employees, directors, officers or principals is a Government Official. If at any time during the term of this Agreement any employee, director, officer, or principal is named, appointed, or otherwise becomes a Government Official, the Buyer will notify TiVo in writing within five (5) business days.

(e) Buyer represents and warrants that it has not been convicted of, pleaded guilty, or charged with any offense involving fraud, corruption or bribery in any jurisdiction or country.

(f) Without limiting the generality of any of the foregoing, Buyer shall ensure that any person associated with Buyer who is performing services or providing goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Reseller in this Section 16 (“Relevant Terms”). Buyer shall in all circumstances be responsible for the observance and performance by such persons of the Relevant Terms, and shall in all circumstances be directly liable to TiVo for any breach by such persons of any of the Relevant Terms howsoever arising.

(g) Upon TiVo’s request from time to time, Buyer shall allow TiVo or any third party auditor designated by TiVo to examine and audit Buyer’s books and records relating to its activities undertaken in connection with this Agreement, and make extracts or copies of such books and records, for the purpose of ascertaining whether Buyer is in compliance with the requirements of this Article 15. If any such examination and audit shall disclose any noncompliance, then without prejudice to TiVo’s other rights and remedies, Reseller shall pay the costs of such examination and audit.
17. General

(a) Entire Agreement; Amendment. This Agreement constitutes the entire and final agreement and supersedes all other communications. No modifications will be binding unless made in a written amendment signed by authorized representatives of both parties.

(b) Severability; Waiver. If any provision is held invalid, all other provisions will remain valid. A waiver of any provision of this Agreement will only be valid if provided in writing and will only be applicable to the specific incident and occurrence so waived. The failure by either party to insist upon the strict performance of this Agreement, or to exercise any term hereof, will not act as a waiver of any right, promise or term, which will continue in full force and effect.

(c) Assignment. Neither party may assign or transfer this Agreement (or any of its rights or obligations under this Agreement, in whole or in part, whether voluntarily or by operation of law) without the prior written consent of the other party; any attempted assignment or transfer without such consent will be void. Notwithstanding the foregoing, without such prior written consent: (i) TiVo may, upon written notice to Buyer, assign this Agreement in whole to any acquiring or surviving entity by way of merger, consolidation, the acquisition of the entire issued share capital of TiVo, or the acquisition of all or substantially all of TiVo's assets; and (ii) TiVo may delegate any obligation hereunder to any Affiliate of TiVo, provided that TiVo remains liable for the performance of such obligation. This agreement inures to the benefit of and is binding upon the parties and their respective successors and assigns.

(d) Excusable Delay. TiVo will not be liable for any delay or failure to perform due to force majeure or any other cause beyond its control.

(e) Relationship. The parties are independent contractors with respect to each other. This Agreement does not constitute and shall not be construed as constituting a partnership or joint venture among the parties hereto, or an employee-employer relationship.

(f) Notices. To be valid, all notices permitted or required under this Agreement must be sent in writing by a party to the other party's address set forth in the Order (unless a party changes such information by giving notice in accordance with this section). Notices will be deemed given (a) when personally delivered, or (b) on the first business day after deposit when sent by a recognized international overnight document delivery service.

(g) Governing Law and Arbitration. This Agreement is governed in all respects by the laws of England, without regard to conflict of law rules. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be determined by arbitration administered by the International Centre for Dispute Resolution ("ICDR") in accordance with its International Arbitration Rules by three arbitrators appointed in accordance with said Rules, except that instead of the ICDR selecting the arbitrators from the list it generates, each party to this Agreement shall, not later than 14 days after being provided the list, appoint a person from the list to serve as an arbitrator, and the two appointed arbitrators shall, not later than 14 days after the appointment of the second arbitrator, appoint the third arbitrator from the list, who shall serve as the presiding arbitrator. If any arbitrators are not selected within these time periods, the ICDR shall, at the written request of any party, complete the appointments that have not been made. The place of arbitration will be London, United Kingdom, and the language of the arbitration (including all pleadings, filings, written evidence, decisions and other relevant documents) will be English. Any written evidence in a language other than English shall be submitted with an English translation. The presiding arbitrator shall deliver a reasoned opinion in connection with the panel's decision. Each arbitrator must be a practicing attorney or a retired judge with experience in the relevant industry. The arbitrators will not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected on appeal to a court of competent jurisdiction for any such error. The award rendered by the panel will be final and specifically enforceable under applicable law, and judgment may be entered upon it in any court having jurisdiction thereof. The panel shall include in the award to the prevailing party in the arbitration reimbursement for all reasonable out-of-pocket costs and expenses (including reasonable legal fees) the prevailing party incurred in the arbitration. Notwithstanding the foregoing, either party shall have the right to seek injunctive or other equitable relief in any court of competent jurisdiction.

(h) Breach of this Section 16 shall be deemed a material breach.