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 (“Licensor”), and the Licensee named in the Order Form (each a “Party” and collectively the “Parties”). By signing the Order Form, Licensor and Licensee enter into this Agreement as of the Effective Date set forth in the Order Form and agree as follows:

1. DEFINITIONS

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

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

“API” means Licensor’s programmatic web application programming interfaces, code and associated tools and documentation as (and if) provided and modified by Licensor which will provide access to certain Content as released from Licensor from time to time (e.g. MCS), subject to the limitations and conditions described in this Agreement.

“API Call” shall mean any query, request for information, search request or other call to or via the API.

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

“Cap” shall mean an amount equal to (i) the License Fees paid or payable during the Initial Term divided by (ii)(x) the number of months during the Initial Term divided by (y) twelve (12) months.

“Content” shall mean the Data and Third Party Materials.

“Data” shall mean the data contained in the Metadata Packages, 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.


“Excerpts” shall mean the passages and/or extracts from third party publications which Licensor regularly compiles and provides to its licensees to the extent included with the Metadata Packages.

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

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

“Images” shall mean the images, cover art (e.g., album cover art or box cover art), rich media and other non-textual data which Licensor obtains from entertainment product manufacturers and other sources included in the Metadata Packages. The term Images includes Updates to Images.

“License 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).

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

“Materials” shall mean Content, the API and the Licensor Marks.
“Metadata Packages” means particular metadata packages selected for license to Licensee in the section of the Order Form titled “Metadata Packages”.

“Order Form” shall mean the order form signed by such Licensee and Licensor, which reference these online Terms and Conditions, and all appendices, exhibits and attachments thereto.

“Permitted Use” shall mean, (i) the display of the Data (other than Licensor’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 Licensor identification numbers) solely to reconcile and match Licensee’s product catalogue to the Data solely to support the foregoing permitted use in clause (i).

“Sports Images” means sports-related Images included in the Video Metadata and Sports Metadata packages, to the extent included with the Content, including Updates to such Images.

“Take Down Notice” shall mean any take-down request, claim of infringement or objection to or request to limit or prohibit or interfere with the continued use and/or publication received from third parties regarding items appearing in the 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 Excerpts, if any, the Images and Updates to the foregoing.

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

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

2.1 Licensor 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 Licensor 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 Licensor Marks during the Term solely in connection with the obligations set forth in Section 13; provided, however, that such right to use the Licensor Marks shall be at Licensor’s discretion and subject to Licensor’s branding guidelines. All use of the Licensor Marks (including any goodwill associated therewith) shall inure to the benefit of Licensor.

2.3 If any of the Content is delivered via API, then Licensor grants to Licensee a limited, non-exclusive, non-transferable right, with no right to sub-license, to access and use the API during the Term within the Territory for the Permitted Use.

2.4 As between Licensor and Licensee, Licensor and its licensors shall exclusively hold all right, title and interest in and to the Materials including, without limitation, any and all intellectual property and proprietary rights and any derivatives, revisions, enhancements, modifications or condensations. Licensee and third parties receive no ownership rights and, except as expressly provided in this Agreement, Licensee receives no other rights in the Materials.

2.5 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 (a) with respect to any patent or patent application that Licensor or its affiliates or licensors have the right to license and (b) except as expressly set forth in this Agreement, with respect to any other intellectual property or any product, content, technology, or service of Licensor 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 Materials on any platform or device, in any place or in any manner which is not expressly authorized hereunder. 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 Licensor or its affiliates or licensors.

2.6 If any of the Content is delivered via API, then Licensor reserves the right to modify and/or release new versions of the APIs and
Licensee shall use and implement the most recent version (and cease all use of any prior versions) within one-hundred and eighty (180) days of Licensor commercially releasing such new version. For purposes of this Agreement, the total Keys issued shall be determined by Licensor and the number of API Calls made by Licensee shall be calculated by Licensor in its sole discretion.

3. TERM

The Term of this Agreement shall be as set forth in the Order Form.

4. TERRITORY

The scope of the Agreement shall be limited to the Territory as set forth in the Order Form.

5. LICENSEE OBLIGATIONS

Licensee shall:

5.1 (a) Implement all Updates accurately, (b) cease use and display of and comply with the Purge Obligation with respect to content removed from Materials as a result of such Updates, and (b) cease use and display of Materials that are the subject of any Take Down Notice and also comply with the Purge Obligation with respect to such Materials, in each case, within five (5) business days (or in the case of of Take Downs or Updates to album cover art, if any, the shorter of two (2) business days or three (3) calendar days) of receipt of the Update or Take Down Notice (email notification from Licensor constitutes notice).

5.2 Display Third Party Materials, other than Excerpts and Sports Images, if any, solely on Licensee Property and also solely for the purpose of the promotion of the products associated with such Third Party Materials (e.g. the album associated with an album cover art Image) in each case solely in connection with the Permitted Use. Display the Sports Images, if any, solely on Licensee Property and also solely for editorial purposes. For the avoidance of doubt, with respect to any athlete, no more than one headshot Image and two action shot Images may be displayed at any time. Licensee shall ensure any album cover art, if any, shall be accompanied by a (i) “buy button” containing an opportunity to purchase an associated sound recording and/or album or (ii) a link to purchase or stream the applicable song, album or track, in each case from a legal streaming music service authorized by the applicable rights holders. Licensee shall also ensure album cover art, if any, is not used in any way, directly or indirectly, in connection with any games, mash up mixes, alcohol, tobacco, firearms, gambling, feminine hygiene products or male erectile dysfunction products. Licensee shall display Excerpts, if any, on the Licensee Property solely in connection with criticism, commentary, news reporting, teaching, scholarship or research that constitutes fair use under the laws and regulations of the United States.

5.3 Not make available, redistribute, or resell, any Materials except as integrated into the Licensee Property as permitted hereunder, or resell any Materials itself as, or as part of, a standalone data-only product or service, the primary purpose of which is to enable third parties to retrieve Materials.

5.4 Not engage in or knowingly permit or enable any third party to engage in any of the following, directly or indirectly: modify, copy, translate, or permanently store Materials.

5.5 To the extent that the Content includes the Video Plus package, then with respect to the 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.

5.6 Not use, knowingly permit or knowingly enable the use of Materials, directly or indirectly, in connection with any illegal, libelous, obscene or pornographic content or activity that violates any applicable laws, rules or regulations or in any manner that could be construed as an endorsement of any product, service or person or as a so-called “commercial tie-up” or “commercial tie-in” or any similar use, on file-sharing or social networking websites or applications, or in any way not expressly authorized hereunder.

5.7 If the Content includes the Music or Music Plus package, then Licensee represents and warrants that the Licensor Record Label Questionnaire signed by Licensee and provided to Licensor is and shall remain true and correct at all times.

5.8 If the Licensee Property includes a Kiosk, then in connection with Licensee’s use of Content from the Music and/or Music Plus
as reasonably requested by Licensor from time to time, provided that Licensee shall not at any time provide any personally identifiable...

7.3 Licensee shall submit to Licensor all reports and information, if any, as required in this Agreement as well as such other information as reasonably requested by Licensor from time to time, provided that Licensee shall not at any time provide any personally identifiable...
7.4 If Licensee is required by any competent taxing authority to withhold taxes from payments made to Licensor hereunder ("Withholding Tax"), then Licensor shall deduct such Withholding Tax from the payment to Licensor and in such event shall pay such tax to the taxing authority on behalf of Licensor. Licensee shall obtain for and provide to Licensor, 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 Licensor 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 Licensor 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.

7.5 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; provided, that Licensor shall be responsible for paying any taxes on its net income and any payroll taxes relating to its employees. If Licensor is required by any taxing authority to collect and remit any such taxes to a taxing authority, Licensor shall invoice any such taxes to Licensee and Licensee shall pay Licensor 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 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.

9. INDEMNITIES

9.1 Licensee’s Indemnity: Licensor shall indemnify and defend Licensee and its affiliates, successors, and assigns and their respective members, officers, directors, employees, 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 of (i) the actual or alleged breach of this Agreement by Licensor and (ii) the Materials as used in full compliance with this Agreement is found to infringe on such third party’s copyrights or trademark rights under United States law. Licensor 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. Licensor’s indemnification obligations under this Section 9.1 with respect to Claims are conditioned on (a) Licensee’s prompt written notification to Licensor of third party Claims for which Licensee is seeking indemnification by Licensor setting forth in reasonable detail the nature of such Claim (e.g. a screen shot of the user interface and/or webpage displaying the Data that gives rise to such Claim), (b) Licensee not taking any action that would materially prejudice Licensor’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, Licensor shall have no obligation to indemnify, or defend the Licensee Indemnified Parties or any third parties for any Claims arising out of or related to the following, regardless of whether expressly permitted herein: (i) the combination or use of Materials with any non-Materials, if such Claim would not have arisen but for such use or combination, (ii) any modification to the Materials, (iii) any specifications, designs or instructions provided to Licensor 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 installation of such Update in accordance with Section 5.1, or (v) any use of Materials that is not authorized by Licensor or breach of this Agreement, in each case by Licensee or any third parties or with...
access to the Materials, directly or indirectly via Licensee.

9.2 Licensee’s Indemnity: Licensee shall indemnify and defend Licensor and its affiliates, successors, and assigns and their respective members, officers, directors, employees, licensors, and agents (collectively, the “Licensor Indemnified Parties”) from and against any Claims made or brought by unaffiliated third parties that arise out of or relate to any Claim arising because of (i) the actual or alleged breach of this Agreement by Licensee; and (ii) illegal or unauthorized use of Materials by third parties with access to the Materials, directly or indirectly via Licensee. Licensee shall conduct the defense of all such Claims, at its own expense, subject to Licensor’s right to participate with its own counsel at its expense and to approve any settlement that purports to bind Licensor. Licensee’s indemnification obligations under this Section 9.2 with respect to Claims are conditioned on (a) Licensor’s prompt written notification to Licensee of third party Claims for which Licensor is seeking indemnification by Licensee setting forth in reasonable detail the nature of such Claim (e.g. a screen shot of the user interface and/or webpage displaying the Data that gives rise to such Claim), (b) Licensor not taking any action that would materially prejudice Licensee’s defense of such Claim and (c) reasonable cooperation by Licensor with respect to the defense of such Claim. Notwithstanding the foregoing or anything in this Agreement to the contrary, Licensee shall have no obligation to indemnify or defend the Licensor Indemnified Parties for any Claims arising out of or related to a breach of this Agreement by Licensor.

9.3 Disclaimer of Representations and Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT NEITHER PARTY MAKES ANY REPRESENTATIONS OR 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. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, EXCEPT IN THE CASE OF A PARTY’S GROSS NEGLIGENCE, A PARTY’S WILLFUL MISCONDUCT, LICENSEE’S PAYMENT OBLIGATIONS HEREUNDER, A BREACH OF A PARTY’S CONFIDENTIALITY OBLIGATIONS HEREUNDER, LICENSOR’S OBLIGATIONS SET FORTH IN SECTION 9.1, LICENSEE’S OBLIGATIONS SET FORTH IN SECTION 9.2 OR LICENSEE’S USE OF THE MATERIALS IN VIOLATION OF THIS AGREEMENT, IN NO CASE SHALL THE AGGREGATE LIABILITY OF EITHER PARTY OR ITS RESPECTIVE AFFILIATES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE CAP. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO CASE SHALL THE AGGREGATE LIABILITY OF LICENSOR OR ITS AFFILIATES ARISING OUT OF OR IN CONNECTION WITH ITS OBLIGATIONS SET FORTH IN SECTION 9.1 WITH RESPECT TO THIRD PARTY MATERIALS EXCEED THE CAP. EXCEPT WITH RESPECT TO LICENSOR’S OBLIGATIONS SET FORTH IN SECTION 9.1, LICENSEE’S OBLIGATIONS SET FORTH IN SECTION 9.2, A PARTY’S GROSS NEGLIGENCE, A PARTY’S WILLFUL MISCONDUCT, A BREACH OF A PARTY’S CONFIDENTIALITY OBLIGATIONS HEREUNDER, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR INDIRECT DAMAGES EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LICENSEE HAS BEEN ADVISED AND AGREES THAT NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, LICENSOR DOES NOT REPRESENT, WARRANT OR COVENANT THAT IT HAS SECURED ALL NECESSARY RIGHTS WITH RESPECT TO THE THIRD PARTY MATERIALS. THIRD PARTY MATERIALS ARE PROVIDED AS-IS WITHOUT REPRESENTATIONS, WARRANTIES AND INDEMNIFICATION (EXCEPT FOR THE INDEMNITIES PROVIDED IN SECTION 9.1), AND, ACCORDINGLY, NO PORTION OF ANY FEES PAID BY LICENSEE HEREUNDER ARE IN RESPECT OF THE THIRD PARTY MATERIALS THEMSELVES, AND LICENSEE SHALL AND IT IS LICENSEE’S SOLE RESPONSIBILITY TO IDENTIFY, SOLICIT AND OBTAIN ANY NECESSARY RIGHTS AND APPROVALS FOR ITS USE OF THIRD PARTY MATERIALS.

10. TERMINATION

10.1 In the event of a material breach of this Agreement, the non-breaching Party shall have the right to terminate this Agreement effective thirty (30) days after specific notice of such material breach to the other Party, absent cure thereof within such thirty (30) days, provided that in the case of a breach that is not possible to cure and also on the third occasion of any failure by Licensee to pay the License Fee, in each case such thirty (30) day cure shall not be required and termination shall be effective immediately upon written notice. In addition, the occurrence of any of the following shall constitute an actionable material breach that it is not possible to cure: If a Party is or is declared to be insolvent, bankrupt or unable to pay its debts when due, makes an assignment for the benefit of its creditors or institutes or becomes the subject of a proceeding relating to its solvency, bankruptcy or liquidation or any other form of relief for debtors or for the appointment of a receiver, trustee, liquidator or similar official in respect of its assets. Termination of this Agreement by any Party pursuant to the terms hereof will not act as a waiver of any breach of this Agreement and will not act as a release of either Party from any accrued liability or obligation.
10.2 Upon the termination of this Agreement and/or termination of Licensee’s rights with respect to any Materials for any reason, (a) all rights and licenses granted by Licensor herein to Licensee and any third parties, if applicable, in such Materials shall terminate, and (b) Licensee (i) shall immediately comply with the Purge Obligation with respect to such Materials, (ii) shall ensure any third parties with access to Materials through, directly or indirectly, Licensee (other than end users of the Licensee Property), also immediately comply with the Purge Obligation with respect to such Materials and (iii) shall ensure that end users of the Licensee Property agree to immediately comply with the Purge Obligation and shall use commercially reasonable efforts to ensure that such end users immediately comply with the Purge Obligation. “Purge Obligation” shall mean the obligation by Licensee and any third parties with access to Materials through, directly or indirectly, Licensee to (1) destroy all copies of Materials, in any form, and purge all copies of Materials from the Licensee Property and from any documents, computers, servers, technology and any other storage device or medium under Licensee’s ownership, access or control or in which any materials have been placed and (2) destroy all written or tangible materials and media containing Materials. Licensee shall certify in writing to Licensor regarding such complete purge, cessation and destruction and to the effect that, to the best of Licensee’s knowledge, the Materials are not stored, through Licensee’s acts or omissions, accidental or otherwise, on any storage device or medium not currently under Licensee’s control.

11. FORCE MAJEURE

Except for obligations of Confidentiality and obligations of payment, the executory obligations of the Parties hereunder shall be excused without liability to the extent, but only to the extent, delayed or prevented by earthquake, storm, flood, fire, explosion, power failure beyond the reasonable control of the affected Party or civil insurrection (collectively, “Force Majeure”), provided that written notice of such Force Majeure is given by the affected Party to the other within twenty (20) days of such Party’s becoming affected by the Force Majeure. At the election of the Party not directly affected by a Force Majeure, a period of time equal to the duration of any suspension of performance by the other Party as a result of a Force Majeure shall be added to the end of the then current Term of this Agreement, and such Term shall be accordingly extended.

12. ADDITIONAL TERMS

The Additional Terms located at https://business.tivo.com/products/metadata-additional-terms-and-conditionsv2.html (the “Additional Terms”) may apply and, if applicable, are part of these Terms and Conditions and incorporated herein.

13. COPYRIGHT NOTICES AND ATTRIBUTION Licensee shall display the following attribution on the Licensee Property “about page”, or, if the Licensee Property does not have an “about page”, then on the Licensee Property user interface: “[TiVo logo here] Portions of content provided by TiVo Corporation. ©[Insert current year] TiVo Corporation.” Writer attribution must be displayed at the end of all biographies, reviews and synopses, to the extent such attribution is included in such content. Licensor may modify the foregoing attribution, at any time, upon thirty (30) days prior written notice (notice by e-mail or posting to the Helpdesk and/or, if any of the Content is made available via API, the Developer Portal constitutes notice). Licensee shall display without modification applicable attribution, indications of authorship or ownership and copyright notices as set forth in this Agreement or otherwise included with any Materials.

14. GENERAL

14.1 Publicity: Licensor and/or its affiliates may issue press releases stating that Licensee has signed this Agreement, subject to Licensee’s consent (which shall not be unreasonably withheld, delayed or conditioned). Otherwise neither Party shall issue any press release regarding this Agreement. Notwithstanding anything to the contrary herein, Licensor 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 customer in web sites, earnings releases and other investor communications, marketing materials, presentations or customer lists which lists may be shared by Licensor and/or its affiliates with third parties, including, without limitation, rights holders in the Materials and/or mention that Licensee has signed this Agreement in earnings releases and other investor communications. For the avoidance of doubt, neither Licensor nor its affiliates need Licensee’s approval if they are repeating a public statement that is substantially similar to a previously-approved public statement.

14.2 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.

14.3 Amendment. Licensor 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-conditionsv2.html (or such other website as Licensor 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-conditionsv2.html (or such other website as Licensor shall notify you of from time to time (e-mail is sufficient)), as applicable, will supersede all previous versions. By using any 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 Licensor as provided in the first three sentences of this Section 14.3, 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.

14.4 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.

14.5 Assignment: Assignment: Neither this Agreement nor any of the rights or obligations hereunder may be assigned, transferred and/or delegated, whether by operation of law or otherwise, by Licensee without Licensor’s written consent, which consent shall not be unreasonably withheld or delayed. Any purported assignment in violation of this provision shall be void and of no effect. Subject to the foregoing, this Agreement and the obligations of the Parties hereunder shall be binding upon the Parties and their respective successors, permitted assigns and legal representatives. 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 Licensor (including, without limitation, any rights to use Materials) shall not extend to such third party or any of its properties, businesses or services.

14.6 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.

14.7 Notices: Unless otherwise instructed by Licensee in a written notice provided in accordance with this Section, all notices delivered hereunder to Licensee, 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 Licensor in a writing provided in accordance with this Section, all notices given to Licensor hereunder shall be addressed to Licensor at the addresses set forth below:

Rovi Data Solutions, Inc. With Copy To:
2160 Gold Street Rovi Data Solutions, Inc.
San Jose, CA 95002 2233 N. Ontario Street
Attn: General Counsel Burbank, CA 91504
E-mail: legalnotices@tivo.com Attn: Legal

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.

14.8 **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.

14.9 **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.

14.10 **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.

14.11 **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.

14.12 **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.

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

14.14 **Feedback:** Licensor, its affiliates and its licensees may freely use, reproduce, license, distribute, and otherwise commercialize any suggestions, comments, or other feedback related to the Materials that Licensee provides. Licensee acknowledges and agrees that Licensor is not obligated to act on such feedback.

14.15 **Exports 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 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.