

TiVo RECORD TAG GENERATOR LICENSE

Customer, as licensee, hereby accepts the terms and conditions of this TiVo Record Tag Generator License (this “**Agreement**”), entered into as of the date Customer has signed the Order Form (the “**Effective Date**”), for the purpose of granting Customer a limited license to use the TiVo Record Tag Generator (“**TRTG**”), an executable file furnished by TiVo.

1.1 “Documentation” means the user’s manual and text file credentials provided to Customer along with the Software.

1.2 “Executable File” means the fully compiled version of a software program that can be executed by a computer and used by an end user without further compilation.

1.3 “Fees” means the fees indicated on the Order Form.

1.4 “Intellectual Property Rights” means all copyrights, trademarks, service marks, trade secrets, patents, patent applications, moral rights, contract rights, and other proprietary rights.

1.5 “Licensed Software” means the software program or programs that enable Record Tag functionality, and any modified, updated or enhanced versions of such programs that TiVo may provide to Customer pursuant to this Agreement or to a separate maintenance and support agreement.

1.6 “Reporting Services” means services TiVo provides to Customer. The end product of the Reporting Services are reports provided to Customer on a monthly basis. Customer may elect to receive reports of Record Tag usage data for up to five (5) programs per month. Customer must send email notification of the programs identified for reporting to the TiVo client services representative by the 15th each month.

1.7 “Required Hardware” means the following minimum equipment:

- (a) Processor: 1.5GHz or better
- (b) RAM: 512MB or better
- (c) HD: 10 GB or better
- (d) Screen: 1024 x 768 or better
- (e) Network: Yes
- (f) OS: TRTG has been verified for Windows XP, Windows Vista, and Windows 7
- (g) Digital encoder with watch folder capabilities or other system that has watch folder capabilities to instruct the encoder
- (h) TiVo® Premiere DVR

i. The TiVo box, provided, requires broadband access to connect to the TiVo service on a daily basis. The TiVo box remains the property of TiVo for distribution and authoring purposes only.

- (i) A television
- (j) Other cables and adapters commonly found in a broadcast production environment such as RCA cables, XLR to RCA, etc. An RF modulator that passes CC data or a QAM modulator for internal cable distribution of video for QC.

1.8 “Source Code” means the human-readable version of a software program that can be compiled into an Executable File.

1.9 “Features”

(a) Program record tags (thumbs up) - unlimited.

1.10 “Technical Support” Technical support is provided via phone or email. All communications regarding technical support should be directed to the TiVo account manager.

2. LICENSE GRANT. Subject to the terms and conditions of this Agreement (including Customer’s obligation to pay the Fees), TiVo grants to Customer a limited, non-exclusive, non-transferable license to use the Licensed Software (in an Executable File form only) only in the United States, solely for use in Customer’s promotions by enabling the Record Tag feature on the TiVo Service and in accordance with this Agreement.

3. RESTRICTIONS ON USE. Customer acknowledges that the Licensed Software and its structure, organization and Source Code constitute valuable trade secrets of TiVo. Customer will not, and will not allow, use of the Licensed Software in any promotions other than Customer’s. Customer will not allow any third party to use or access the Licensed Software, including any parent companies, subsidiary companies, companies with which Customer shares a parent company, or any subcontractors. Accordingly, Customer agrees not to (a) modify, adapt, alter, translate, or create derivative works from the Licensed Software; (b) merge the Licensed Software with other software; (c) sublicense, lease, rent, loan, or otherwise transfer or allow the use of the Licensed Software to any third party; (d) reverse engineer, decompile, disassemble, or otherwise attempt to derive the Source Code for the Licensed Software; or (e) otherwise use or copy the Licensed Software except as expressly allowed under Section 2.

4. DELIVERY, INSTALLATION AND ACCEPTANCE. TiVo will deliver the Licensed Software to Customer via secure FTP or USB stick. The Licensed Software will be deemed irrevocably accepted upon delivery. Customer is responsible for procuring and maintaining the Required Hardware. TiVo will provide commercially reasonable assistance to Customer for installation of the Licensed Software; Customer will allow TiVo access to the installation site and Customer’s support personnel as necessary to facilitate installation.

5. WARRANTY DISCLAIMER. THE LICENSED SOFTWARE, DOCUMENTATION, AND REPORTING SERVICES, ON-GOING DATA PROVISION, AND ANY CONSULTING OR ADVICE PROVIDED BY TIVO FOR SETUP, ARE PROVIDED ON AN “AS IS” BASIS. TIVO AND ITS SUPPLIERS EACH EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE LICENSED SOFTWARE, ANY SERVICES PROVIDED PURSUANT TO THIS AGREEMENT, THE DOCUMENTATION AND ON-GOING DATA PROVISIONING, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. CUSTOMER ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES FROM TIVO OR TIVO’S SUPPLIERS.

6. LIMITATION OF LIABILITY. IN NO EVENT WILL TIVO OR ITS SUPPLIERS BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL OR INCIDENTAL DAMAGES, INCLUDING ANY LOST DATA AND LOST PROFITS, ARISING FROM OR RELATING TO THIS AGREEMENT, EVEN IF TIVO KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH

DAMAGES. TiVo's TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND THE LICENSED SOFTWARE, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED \$500. CUSTOMER ACKNOWLEDGES THAT THIS SECTION REFLECTS THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT TiVo WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY.

7. TERM AND TERMINATION

7.1 Term. The term of this Agreement will begin on the Effective Date and will terminate one year thereafter unless earlier terminated pursuant to section 7.2.

7.2 Termination. Customer may terminate this Agreement at any time, with or without cause, upon written notice to TiVo. TiVo may terminate this Agreement, effective immediately upon written notice to Customer, if (a) Customer breaches any provision in Section 3, (b) Customer fails to pay any portion of the Fees when due, or (c) Customer breaches any other provision of this Agreement and does not cure the breach within thirty (30) days after receiving written notice thereof from TiVo.

7.3 Effects of Termination. Upon termination or expiration of this Agreement for any reason, any amounts owed to TiVo under this Agreement before such termination or expiration will be immediately due and payable, all licensed rights granted in this Agreement will immediately cease to exist, and Customer must promptly discontinue all use of the Licensed Software, erase all copies of the Licensed Software from Customer's computers, and return to TiVo all copies of the Licensed Software and Documentation on tangible media in Customer's possession or control and certify in writing to TiVo that it has fully complied with these requirements.

7.4 Survival. Sections 1 ("Definitions"), 3 ("Restrictions on Use"), 5 ("Warranty Disclaimer"), 6 ("Limitation of Liability"), 7.3 ("Effects of Termination"), 7.4 ("Survival"), and 8 ("General") will survive expiration or termination of this Agreement for any reason.

8. GENERAL

8.1 Proprietary Rights. TiVo has exclusive, worldwide Intellectual Property Rights in and to a) the Licensed Software and Documentation, and b) and all reports and information furnished by TiVo in connection with Reporting Services (collectively "TiVo Proprietary Materials"). All rights in and to the TiVo Proprietary Materials not expressly granted to Customer in this Agreement are reserved by TiVo and its suppliers. Nothing in this Agreement will be deemed to grant, by implication, estoppel or otherwise, a license under any of TiVo's existing or future patents; TiVo agrees that it will not assert any of its rights under such patents against Customer based upon the exercise by Customer of the license granted in Section 2. Customer will not remove, alter, or obscure any proprietary notices (including copyright notices) of TiVo or its suppliers on the TiVo Proprietary Materials.

8.2 No Maintenance or Support. TiVo is not required to provide any maintenance or support services with respect to the Licensed Software under this Agreement.

8.3 Inspections. Customer will permit TiVo or its representatives to review Customer's relevant records and inspect Customer's facilities to ensure compliance with this Agreement. TiVo will give Customer at least ten (10) days advance notice of any such inspection

and will conduct the same during normal business hours in a manner that does not unreasonably interfere with Customer's normal operations.

8.4 Assignments. Customer may not assign or transfer, by operation of law or otherwise (including merger or change of control whether or not an actual assignment is deemed to have occurred), any of its rights under this Agreement (including its licenses with respect to the Licensed Software) to any third party without TiVo's prior written consent. Any attempted assignment or transfer in violation of the foregoing is void.

8.5 Notices. All notices, consents and approvals under this Agreement must be delivered in writing by courier, by electronic facsimile (fax), or by certified or registered mail, (postage prepaid and return receipt requested) to the other party at the address set forth beneath such party's signature, and will be effective upon receipt or when delivery is refused. Either party may change its address by giving notice of the new address to the other party.

8.6 Governing Law and Venue. This Agreement will be governed by the laws of the State of California as such laws apply to contracts between California residents performed entirely within California. Any action or proceeding arising from or relating to this Agreement must be brought in a federal court in the Northern District of California or in state court in Santa Clara County, California, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding; provided, however, that TiVo may bring an action or proceeding in any jurisdiction to enforce its Intellectual Property Rights.

8.7 Remedies. The parties' rights and remedies under this Agreement are cumulative. Customer acknowledges that the Licensed Software contains valuable trade secrets and proprietary information of TiVo, that any actual or threatened breach of Section 3 will constitute immediate, irreparable harm to TiVo for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach. If any legal action is brought to enforce this Agreement, the prevailing party will be entitled to receive its attorneys' fees, court costs and other collection expenses, in addition to any other relief it may receive.

8.8 Waivers. All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

8.9 Severability. If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Without limiting the generality of the foregoing, Customer agrees that Section 6 will remain in effect notwithstanding the unenforceability of any provision in Section 5.

8.10 Confidentiality of Agreement. Neither party will disclose any terms of this Agreement to anyone other than its attorneys, accountants and other professional advisors except (a) as required by law or (b) pursuant to a mutually agreeable press release.

8.11 Construction. The headings of Sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word "including" means "including but not limited to".

8.12 Counterparts. This Agreement may be executed in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument.

8.13 Entire Agreement. The terms and conditions of this Agreement, together with those on the Order Form signed by Customer, constitute the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement may be amended only by a written document signed by both parties.
