

## INTERIM BD-ROM DISC PATENT LICENSE AGREEMENT

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010 (“the Effective Date”) by and between

KONINKLIJKE PHILIPS ELECTRONICS N.V., having its registered office in Eindhoven, The Netherlands, (hereinafter referred to as “Philips”)

and

[\_\_\_\_\_], having its registered office in [\_\_\_\_\_](hereinafter referred to as “Licensee”).

WHEREAS, Philips and other members of the Blu-Ray Disc Association (“BDA”), a California non-profit mutual benefit corporation, have developed a new optical disc format, which has been presented under the name Blu-ray Disc (“BD”);

WHEREAS, Philips and other members of the BDA, have developed, as a sub-set of BD, a pre-recorded format, which has been presented under the name BD-ROM;

WHEREAS, the BD-ROM Format Specifications (as hereinafter defined) and the right to use the relevant Blu-ray Disc logo can be obtained from the BDA through the BDA’s website: <http://www.Blu-ray-disc.info>;

WHEREAS, Philips owns certain Patents (as hereinafter defined) relating to BD-ROM;

WHEREAS, Philips is considering offering to Licensee, after the expiry date of this Agreement, a BD-ROM Disc agreement, based on the VEEZA-model which Philips currently uses in relation to CD-R Discs. If Licensee wishes to enter into the aforementioned agreement, provided that Licensee is in full compliance with its obligations under this Agreement, Licensee shall not be required to pay the entrance fee provided in such agreement;

WHEREAS, for BD-Hybrid Discs separate agreements are needed for (i) BD-R Layer (as hereinafter defined), (ii) BD-RE Layer (as hereinafter defined), (iii) Pre-recorded DVD Layer (as hereinafter defined), (iv) Pre-Recorded CD Layer (as hereinafter defined), CD-R layer, CD-RW layer, DVD+R layer, DVD+RW layer, DVD-R layer and DVD-RW layer;

WHEREAS, Licensee has requested a license from Philips under the Patents of Philips, relating to Selected Product(s) (as hereinafter defined) and wishes such Selected Product(s) to be compatible with BD-Players (as hereinafter defined); and

WHEREAS, Philips is willing to grant Licensee a license under its Patents, on the conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual obligations and covenants hereinafter set forth, the parties hereto have agreed as follows:

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Initials Licensee \_\_\_\_\_

## 1. Definitions

The following terms used in this Agreement shall have the meanings set out below:

“**Associated Company**” shall mean any one or more business entities (1) owned or controlled by Philips or Licensee, (2) owning or controlling Philips or Licensee, or (3) owned or controlled by the business entity owning or controlling Philips or Licensee at the material time. For the purposes of this definition a business entity shall be deemed to own and/or to control another business entity if more than 50% (fifty per cent) of the voting stock of the latter business entity, ordinarily entitled to vote in the election of directors, (or, if there is no such stock, more than 50% (fifty per cent) of the ownership of or control in the latter business entity) is directly or indirectly held by the owning and/or controlling business entity.

“**Authorized Employee**” shall mean a person authorized by the Visitor Administrator (as defined in Clause 5.1) to (i) modify or confirm Manufacturing Equipment List and (ii) modify or submit Royalty Reporting Forms and (iii) apply for a Registration Number.

“**BD-Hybrid Data Disc**” shall mean an optical disc, designed and manufactured for (i) with respect to the BD-ROM Layer storing thereon digital information and (ii) with respect to the Further Layer storing, recording and/or rewriting thereon digital information, and which conforms to the BD-Hybrid Format Specifications and includes (i) at least one BD-ROM Layer (as hereinafter defined) and (ii) a Further Layer (as hereinafter defined).

“**BD-Hybrid Format Specifications**” shall mean the specifications for the BD-Hybrid format, as specified in the BD ROM Format Specifications “2) System Description: Blu-ray Disc Hybrid Format”, Part 1: Basic Format Specifications Version 1.0, of October 2005, as modified or extended by the BDA from time to time.

“**BD-Hybrid Movie Disc**” shall mean an optical disc, designed and manufactured for (i) with respect to the BD-ROM Layer storing thereon digital information and (ii) with respect to the Further Layer storing, recording and/or rewriting thereon digital information, and which conforms to the BD-Hybrid Format Specifications, and includes (i) at least one BD-ROM Layer which also conforms to Part 3 of the BD-ROM Format Specifications and (ii) a Further Layer.

**BD-Hybrid Data Discs** and **BD-Hybrid Movie Discs** hereinafter collectively referred to as “**BD-Hybrid Discs**”.

“**BD-J**” shall mean a fully programmable application environment specified in the document "System Description Blu-ray Disc Read-Only Format, Part 3 Audio Visual Basic Specifications", Version 2.0, of May 2006, as modified or extended by the BDA from time to time.

“**BD-MV Mandatory**” shall mean a video application format as specified by the mandatory part of the document "System Description Blu-ray Disc Read-Only Format, Part 3 Audio Visual Basic Specifications", Version 2.0, of May 2006, as modified or extended by the BDA from time to time.

“**BD-MV Optional**” shall mean a video application format as specified by the optional part of the document "System Description Blu-ray Disc Read-Only Format, Part 3 Audio Visual Basic Specifications", Version 2.0, of May 2006, as modified or extended by the BDA from time to time.

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“**BD-Player**” shall mean a BD playback device which is capable of reproducing signals in digital form from BD-ROM Discs, BD-Hybrid Discs, Dual Layer BD-ROM Discs, BD-R Discs and/or BD-RE Discs.

“**BD-R Disc**” shall mean a recordable disc with a capacity of no more than 27 GBytes per layer, designed and manufactured for recording thereon digital information, and which conforms at least to Part 1, Part 2 and, if applicable, Part 3 of the BD-R Format Specifications.

“**BD-RE Disc**” shall mean a rewritable disc with a capacity of no more than 27 GBytes per layer, designed and manufactured for recording, erasing and rewriting thereon digital information, and which conforms at least to Part 1, Part 2 and, if applicable, Part 3 of the BD-RE Format Specifications.

“**BD-RE Format Specifications**” shall mean the specifications for the Blu-ray Disc Rewritable Format, as specified in the document "System Description Blu-ray Disc Rewritable Format", comprising Part 1, Part 2 and Part 3, as modified or extended by the BDA from time to time.

“**BD-RE Layer**” shall mean a rewritable layer with a capacity of no more than 27 GBytes, designed and manufactured for recording, erasing and rewriting thereon digital information, and which conforms at least to Part 1, Part 2 and, if applicable, Part 3 of the BD-RE Format Specifications.

“**BD-R Format Specifications**” shall mean the specifications for the Blu-ray Disc Recordable Format, as specified in the document “System Description Blu-ray Disc Recordable Format”, comprising Part 1, Part 2 and Part 3, as modified or extended by the BDA from time to time.

“**BD-R Layer**” shall mean a recordable layer with a capacity of no more than 27 GBytes, designed and manufactured for recording thereon digital information, and which conforms at least to Part 1, Part 2 and, if applicable, Part 3 of the BD-R Format Specifications.

“**BD-ROM Data Discs**” shall mean a pre-recorded disc with a capacity of no more than 27 GBytes, designed and manufactured for storing thereon digital information, and which conforms to Part 1 and Part 2 of the BD-ROM Format Specifications.

**BD-ROM Data Discs** and **BD-ROM Movie Discs** hereinafter collectively referred to as “**BD-ROM Discs**”.

“**BD-ROM Disc Product(s)**” shall mean each of the BD-ROM products listed under the definition of Selected Products, irrespective of the selection by Licensee.

“**BD-ROM Format Specifications**” shall mean the specifications for the Blu-ray Disc Read-Only Format system, as specified in the document "1) System Description Blu-ray Disc Read-Only Format" comprising Part 1 "Basic Format Specifications version 1.xx", Part 2 "File System Specifications, version 1.xx" and Part 3 "Audio Visual Basic Specifications version 2.xx", as modified or extended by the BDA from time to time.

“**BD-ROM Layer**” shall mean a pre-recorded layer with a capacity of no more than 27 GBytes, designed and manufactured for storing thereon digital information, and which conforms at least to Part 1 and Part 2 of the BD-ROM Format Specifications.

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“**BD-ROM Movie Disc**” shall mean a pre-recorded disc with a capacity of no more than 27 GBytes, designed and manufactured for storing thereon digital information, and which conforms to Part 1, Part 2 and Part 3 of the BD-ROM Format Specifications.

“**CD-Audio Standard Specifications**” shall mean the specifications for the CD-Audio System, including, if applicable, the Subcode/Control and Display System, Channels R ..W, chapter 5.8, the CD-TEXT mode, as made available, modified or extended from time to time.

“**CD-ROM Standard Specifications**” shall mean the specifications for the CD-ROM System as made available, modified or extended from time to time.

“**Dual Layer BD-ROM Data Disc**” shall mean a pre-recorded disc having dual BD-ROM Layers with a capacity of no more than 27 GBytes per layer, designed and manufactured for storing thereon digital information, and which conforms to Part 1 and Part 2 of the BD-ROM Format Specifications.

“**Dual Layer BD-ROM Movie Disc**” shall mean a pre-recorded disc having dual BD-ROM Layers with a capacity of no more than 27 Gbytes per layer, designed and manufactured for storing thereon digital information, and which conforms to Part 1, Part 2 and Part 3 of the BD-ROM Format Specifications.

**Dual Layer BD-ROM Data Discs and Dual Layer BD-ROM Movie Discs** hereinafter collectively referred to as “**Dual Layer BD-ROM Discs**”.

“**DVD-Audio Standard Specifications**” shall mean the specifications for the DVD-Audio System, as specified in the document "DVD Specifications for Read-Only Disc, Part 1: Physical Specifications Version 1.0 of August 1996, Part 2: File System Specifications Version 1.0 of August 1996 and Part 4: Audio Specifications Version 1.0 of March 1999, or any updated version thereof, as issued by the DVD Format/Logo Licensing Corporation.

“**DVD-ROM Standard Specifications**” shall mean the specifications for the DVD-ROM System, as specified in the document “DVD Specification for Read-Only Disc, version 1.0 (parts 1 and 2)” of August 1996, or any updated version thereof, as issued by the DVD Format/Logo Licensing Corporation.

“**DVD-Video Standard Specifications**” shall mean the specifications for the DVD-Video System, as specified in the document “DVD Specification for Read-Only Disc, version 1.0 (part 3)” of August 1996, or any updated version thereof, as issued by the DVD Format/Logo Licensing Corporation.

“**Further Layer**” shall mean a pre-recorded, recordable, or re-writable layer as specified in the BD-Hybrid Format Specifications as modified or extended by the BDA from time to time. For the avoidance of doubt, the (i) "Further Layer", at present, is limited to one Pre-Recorded DVD Layer or one Pre-Recorded CD Layer and (ii) Licensee will need to conclude separate license agreements with Philips for any Further Layer.

“**Licensed Patent(s)**” shall mean any one or more of the essential Patent(s) for the manufacture and sale of the various types of BD-ROM Disc Products, as follows:

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**Category I**

- (a) BD-ROM Data Discs, as listed in Annex A1;

**Category II**

- (b) BD-ROM Movie Disc and BD-MV Mandatory, as listed in Annex A1 and Annex A2;
- (c) BD-ROM Movie Disc and BD-MV Mandatory and BD-MV Optional, as listed in Annex A1, Annex A2 and Annex A3;
- (d) BD-ROM Movie Disc and BD-MV Mandatory and BD-J, as listed in Annex A1, Annex A2 and Annex A4;
- (e) BD-ROM Movie Disc and BD-MV Mandatory, BD-MV Optional and BD-J, as listed in Annex A1, Annex A2, Annex A3 and Annex A4;

**Category III**

- (f) BD Hybrid Data Discs comprising a single BD-ROM Layer, as listed in Annex A1.

**Category IV**

- (g) BD Hybrid Movie Disc comprising a single BD-ROM Layer and BD-MV Mandatory, as listed in Annex A1 and Annex A2;
- (h) BD Hybrid Movie Disc comprising a single BD-ROM Layer and BD-MV Mandatory and BD-MV Optional, as listed in Annex A1, Annex A2 and Annex A3.
- (i) BD Hybrid Movie Disc comprising a single BD-ROM Layer and BD-MV Mandatory and BD-J, as listed in Annex A1, Annex A2 and Annex A4.
- (j) BD Hybrid Movie Disc comprising a single BD-ROM Layer, BD-MV Mandatory, BD-MV Optional and BD-J, as listed in Annex A1, Annex A2, Annex A3 and A4;

**Category V**

- (k) Dual Layer BD-ROM Data Disc comprising dual BD-ROM Layers, as listed in Annex A1 and A5;

**Category VI**

- (l) Dual Layer BD-ROM Movie Disc comprising dual BD-ROM Layers and BD-MV Mandatory, as listed in Annex A1, Annex A2 and Annex A5;
- (m) Dual Layer BD-ROM Movie Disc comprising dual BD-ROM Layers and BD-MV Mandatory and BD-MV Optional, as listed in Annex A1, Annex A2, Annex A3 and Annex A5;

- (n) Dual Layer BD-ROM Movie Disc comprising dual BD-ROM Layers and BD-MV Mandatory and BD-J, as listed in Annex A1, Annex A2, Annex A4 and Annex A5;
- (o) Dual Layer BD-ROM Movie Disc comprising dual BD-ROM Layers and BD-MV Mandatory and MV-Optional and BD-J, as listed in Annex A1, Annex A2, Annex A3, Annex A4 and Annex A5.

The term “essential” as used in relation to Patents in this Agreement shall refer to Patents, the use of which is necessary (either directly or as a practical matter) for the BD-ROM Disc Products to be compliant with the BD-ROM Format Specifications and, when applicable, the BD-Hybrid Format Specifications (excluding any technology incorporated by reference in the BD-ROM Format Specifications and, when applicable, the BD-Hybrid Format Specifications).

For the purpose of this Agreement, Licensed Patents shall not include Patents that are jointly owned by Philips and one or more third parties. Additionally, essential patents shall not include Patents which are necessary (either directly or as a practical matter) in relation to BD-R Discs, BD-RE Discs, Pre-Recorded DVD Layer, Pre-Recorded CD Layer, CD-R layer, CD-RW layer, DVD+R layer, DVD+RW layer, DVD-R layer and DVD-RW layer.

Philips commissions independent patent experts to review its Patents granted/issued by the European Patent Office, the Japan Patent Office and the United States Patent and Trademark Office, listed as essential in Annexes A, in order to confirm the essentiality of such Patents. In the event that such independent patent expert would find that any of the Patents does not qualify as essential as defined in this Agreement, Philips will delete such Patent (as well as the equivalent corresponding Patents) from the relevant Annex and such Patent will be put on a list of non-essential Patents. Notwithstanding such deletion, Licensee shall retain the right to continue the use of such deleted Patent(s) in accordance with the provisions of this Agreement, without any additional payment, unless Licensee explicitly notifies Philips in writing of its decision to waive such right. The expiry dates of the essential Licensed Patents on a country-by-country basis are specified in Annexes A.

In the event that Philips or any of its Associated Companies would have additional Patents essential to the Selected Product (except for BD-J and other than Patents acquired from third parties after the date of September 1, 2004) in its Patent portfolio which have a filing date or are entitled to a priority date prior to September 1, 2004 for Selected Products (except for BD-J) or January 1, 2005 for BD-J, but which have not been listed as essential Patents in the respective Annexes hereto, Philips will notify Licensee accordingly and such additional Patents will be added to the Licensed Patents and such addition shall not affect the provisions of this Agreement. Any Patents as may be added as essential Patents to any of the respective Annexes hereto will similarly be subject to the review by the independent patent experts in accordance with the preceding paragraph.

The Patent lists provided to Licensee upon execution of this Agreement are subject to change in accordance with the provisions of this Agreement. With regard to the rights granted to Licensee hereunder, the Patent lists published by Philips on its Website (as hereinafter defined) or otherwise communicated by Philips to Licensee after the date of execution hereof shall prevail over the lists provided to Licensee upon the execution of this Agreement.

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For the avoidance of doubt, technologies other than BD-ROM incorporated by reference (i) in the BD-ROM Format Specifications (including, but not limited to, the BD-ROM Mark, AACs, MPEG-2 Video, HDMI/HDCP, RPC, VC1, AVC, LPCM, MPEG1, DTS HD LBR, Dolby Digital +, Dolby Lossless and DTS Lossless) or (ii) in the BD-Hybrid Format Specifications (including but not limited to, the pre-recorded CD, pre-recorded DVD, recordable and rewritable CD, recordable and rewritable DVD and recordable and rewritable BD), are not covered by this Agreement.

**“Manufacturing Equipment List”** shall mean a statement, provided to Philips by electronic means in a form as explained in the relevant manual which is available on Philips’ Website or by such other means as may be subsequently communicated by Philips to Licensee.

**“Patents”** shall mean granted and subsisting patents and any applications for patents, but not utility models or any applications for utility models.

**“Pre-Recorded CD Layer”** shall mean a pre-recorded layer with a capacity of no more than 1 GByte per layer, designed and manufactured for storing thereon digital information, and which conforms to i) with respect to a CD-Audio layer (if applicable including CD-Text) to the CD-Audio Standard Specifications and ii) with respect to a CD-ROM layer to the CD-ROM Standard Specifications. For the avoidance of doubt any recordable or re-writable CD formats are expressly excluded.

**“Pre-Recorded DVD Layer”** shall mean a prerecorded layer with a capacity of no more than 5 GBytes, designed and manufactured for recording thereon digital information, and which conforms i) with respect to a DVD-ROM layer to the DVD-ROM Standard Specifications and ii) with respect to a DVD-Video layer to the DVD-ROM Standard Specifications and DVD-Video Standard Specifications, and iii) with respect to a DVD-Audio layer to the DVD-Audio Standard Specifications. For the avoidance of doubt any recordable or re-writable DVD formats are expressly excluded.

**“Registration Number”** shall mean a set of identification characters issued by Philips to Licensee for the purpose of identifying one unique manufacturing plant of Licensee.

**“Registration Number Guide”** shall mean the document entitled “Registration Number Guide”, as published by Philips on its Website and as amended by Philips from time to time.

**“Royalty Reporting Form”** shall mean a statement, provided to Philips by electronic means in a form as explained in the relevant manual which is available on Philips’ Website or by such other means as may be subsequently communicated by Philips to Licensee.

**“Sample Request Form”** shall mean a written request from Philips to Licensee to provide samples to Philips.

**“Selected Product(s)”** shall mean the following products as selected by Licensee:

Option A: BD-ROM Data Discs

Option B: BD-ROM Movie Disc and BD-MV Mandatory

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- Option C: BD-ROM Movie Disc, BD-MV Mandatory and BD-MV Optional
- Option D: BD-ROM Movie Disc, BD-MV Mandatory and BD-J
- Option E: BD-ROM Movie Disc, BD-MV Mandatory, BD-MV Optional and BD-J
- Option F: BD Hybrid Data Discs comprising a single BD-ROM Layer
- Option G: BD Hybrid Movie Disc comprising a single BD-ROM Layer and BD-MV Mandatory
- Option H: BD Hybrid Movie Disc comprising a single BD-ROM Layer and BD-MV Mandatory and BD-MV Optional
- Option I: BD Hybrid Movie Disc comprising a single BD-ROM Layer and BD-MV Mandatory and BD-J
- Option J: BD Hybrid Movie Disc comprising a single BD-ROM Layer, BD-MV Mandatory, BD-MV Optional and BD-J
- Option K: Dual Layer BD-ROM Data Disc comprising dual BD-ROM Layers
- Option L: Dual Layer BD-ROM Movie Disc comprising dual BD-ROM Layers and BD-MV Mandatory
- Option M: Dual Layer BD-ROM Movie Disc comprising dual BD-ROM Layers and BD-MV Mandatory and BD-MV Optional
- Option N: Dual Layer BD-ROM Movie Disc comprising dual BD-ROM Layers and BD-MV Mandatory and BD-J
- Option O: Dual Layer BD-ROM Movie Disc comprising dual BD-ROM Layers and BD-MV Mandatory and BD-MV Optional and BD-J
- Option(s):  A     B     C     D     E     F     G  
 H     I     J     K     L     M     N     O

(please tick any combination as appropriate)

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**For the avoidance of doubt, a product listed above that is not selected by Licensee shall not be considered a Selected Product for the purpose of this Agreement.**

“**Territory**” shall mean the geographic area known as [        ].

“**Website**” shall mean [www.ip.philips.com](http://www.ip.philips.com) or any other website designated by Philips from time to time in connection with this Agreement.

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## 2. Grant of rights

- 2.1 For the term of this Agreement and subject to the provisions hereof, Philips hereby grants to Licensee a non-exclusive, non-transferable license under the Licensed Patent(s) (listed in the relevant Annexes A) to manufacture Selected Product(s) within the Territory in accordance with the BD-ROM Format Specifications and/or BD-Hybrid Format Specifications and to sell or otherwise dispose of such Selected Product(s) so manufactured in all countries of the world.

Licensee acknowledges and agrees that the Selected Products manufactured and/or sold in accordance with the provisions of this Agreement shall be considered licensed only when (i) the Selected Products are duly reported and (ii) the royalties due hereunder are paid in accordance with the provision of Clause 4.2.

For the avoidance of doubt, Philips confirms that it shall not assert any of the Licensed Patents against Licensee, nor against any of Licensee's customers or subsequent buyers of Selected Product(s) manufactured and sold by Licensee, prior to the day on which such Selected Products are to be reported pursuant to the provisions of this Agreement, nor, provided that such Selected Product(s) have been duly reported in accordance with the provisions of this Agreement, prior to the day when payment of royalties in respect of Selected Product(s) manufactured and sold by Licensee is due in accordance with the provisions of this Agreement.

Licensee acknowledges and agrees that Patents for technologies, other than BD-ROM, incorporated by reference (i) in the BD-ROM Format Specifications (including, but not limited to, the BD-ROM Mark, AAC3, MPEG-2 Video, HDMI/HDCP, RPC, VC1, AVC, LPCM, MPEG1, DTS HD LBR, Dolby Digital +, Dolby Lossless and DTS Lossless) or (ii) in the BD-Hybrid Format Specifications (including but not limited to, the pre-recorded CD, pre-recorded DVD, recordable and rewritable CD, recordable and rewritable DVD and recordable and rewritable BD), are not covered by this Agreement.

- 2.2 Philips or its respective Associated Companies may hereafter acquire from third parties the right to grant licenses under Patents not yet licensed hereunder ("Later Acquired Patents"), the use of which is necessary either directly or as a practical matter for manufacturing Selected Product(s).

Philips is willing to grant Licensee (via a separate written agreement executed between Philips and Licensee) a non-exclusive, non-transferable license on reasonable, non-discriminatory conditions under Later Acquired Patents to manufacture Selected Product(s) in the Territory and to sell or otherwise dispose of Selected Product(s) so manufactured in all countries of the world, for as long as this Agreement is in force and effect and Licensee is in full compliance with its obligations under this Agreement.

It is acknowledged and agreed by the parties that in respect of Later Acquired Patents licensed pursuant to this Clause 2.2, additional royalties may have to be paid over and above the royalties specified in Clause 4.2.

For the avoidance of doubt, Philips shall not charge separate royalties in respect of (i) the BD-J and BD-MV Optional functionalities included in a BD-Hybrid Movie Disc or in a BD-ROM Movie Disc, (ii) the second BD-ROM Layer in a Dual Layer BD-ROM Movie

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Disc or a Dual Layer BD-ROM Data Disc, or (iii) AC-3, MPEG-2 Audio or DTS technologies in (a) the BD-ROM Layer of a BD-ROM Data Disc, BD-ROM Movie Disc, BD-Hybrid Data, BD-Hybrid Movie Disc and (b) the first and second BD-ROM Layer of a Dual BD-ROM Data Disc and a Dual BD-ROM Movie Disc; provided, however that Philips may charge a separate royalty for the use of AC-3, MPEG-2 Audio or DTS technologies used on a Further Layer of a BD-Hybrid Data Disc or a BD-Hybrid Movie Disc.

- 2.3 Philips further agrees, for as long as this Agreement is in force and effect and Licensee is in full compliance with its obligations under this Agreement, to grant Licensee upon Licensee's request as well as to those of Licensee's Associated Companies who so request, a non-exclusive, non-transferable license, on reasonable, non-discriminatory conditions, to manufacture BD-Players and to sell or otherwise dispose of such BD-Players so manufactured in all countries of the world under any and all present and future Patents essential to the manufacture, sale or other disposal of BD-Players for which Philips and/or its Associated Companies have or may hereafter acquire the right to grant licenses.
- 2.4 In consideration of the undertakings set forth in Clauses 2.1, 2.2, and 2.3 and similar undertakings by third party licensees of Philips or any of its Associated Companies and without prejudice to the provisions of Clause 13, Licensee agrees to grant to Philips and its Associated Companies and to other third parties who have entered or will enter into a license agreement with Philips concerning Selected Product(s), non-exclusive, non-transferable licenses, on reasonable, non-discriminatory conditions comparable to those set forth herein, to manufacture, sell or otherwise dispose of Selected Product(s), under any and all present and future Patents, for which Licensee or its Associated Companies have or may hereafter acquire the right to grant licenses and which are essential to the manufacture, sale or other disposal of such Selected Product(s) and which Patents were first filed or are entitled to a priority date in any country of the world prior to the date of termination of this Agreement. The duration of such licenses shall be a period ending at the expiration date of the last to expire Patent of Licensee or the relevant Associated Company of Licensee, essential to Selected Product(s). For the avoidance of doubt, the undertaking set out in this Clause 2.4 shall only apply to those companies which accept or have accepted a similar undertaking as given by Licensee in this Clause 2.4 and only in respect of those Selected Product(s) as have been selected both by Licensee and such companies.
- 2.5 In addition, in consideration of the undertakings set forth in Clauses 2.1, 2.2, and 2.3 and similar undertakings by third party licensees of Philips or any of its Associated Companies and without prejudice to the provisions of Clause 13, Licensee agrees to grant to Philips and its Associated Companies and to other third parties who have entered or will enter into a license agreement with Philips concerning BD-Players, non-exclusive, non-transferable licenses, on reasonable, non-discriminatory conditions, to manufacture, sell or otherwise dispose of BD-Players under any and all present and future Patents, for which Licensee or its Associated Companies have or may hereafter acquire the right to grant licenses and which are essential to the manufacture, sale or other disposal of such BD-Players and which Patents were first filed or are entitled to a priority date in any country of the world prior to the date of termination of this Agreement. The duration of such licenses shall be a period ending at the expiration date of the last to expire Patent of Licensee or the relevant Associated Company of Licensee, essential to BD-Players. For the avoidance of doubt, the undertaking set out in this Clause 2.5 shall only apply to those

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companies which accept or have accepted a similar undertaking as given by Licensee in this Clause 2.5.

2.6 Philips undertakes that it will offer, at the request of any of Licensee's Associated Companies to any such Associated Company, a non-exclusive and non-transferable license under the Licensed Patents on reasonable and non-discriminatory conditions comparable to those set forth herein, to manufacture, sell or otherwise dispose of BD-ROM Disc Product(s).

2.7 IT IS EXPRESSLY ACKNOWLEDGED AND AGREED THAT:

- (I) THE LICENSES AND LICENSE UNDERTAKINGS HEREIN CONTAINED WITH RESPECT TO THE MANUFACTURE OF SELECTED PRODUCT(S) DO NOT EXTEND TO METHODS OR THE MANUFACTURE OR SALE OF EQUIPMENT FOR COMPRESSION OR DECOMPRESSION OF AUDIO SIGNALS (INCLUDING BUT NOT LIMITED TO THE SYSTEM KNOWN AS AC-3, DTS-HD OR DTS) OR VIDEO SIGNALS IN ACCORDANCE WITH THE SYSTEM KNOWN UNDER THE NAME MPEG-2 VIDEO, AVC or VC1 NOR TO MASTER RECORDING MACHINES, EQUIPMENT OR METHODS FOR THE REPLICATION OF DISCS, NOR TO THE MANUFACTURE OF MATERIALS OR REPRODUCTION RIGHTS FOR INFORMATION (SUCH AS AUDIO, VIDEO, TEXT AND/OR DATA-RELATED INFORMATION), CONTAINED ON DISCS TO BE PLAYED BACK ON A PLAYER. FURTHER, THE LICENSE UNDERTAKINGS WITH RESPECT TO THE MANUFACTURE OF PLAYERS DO NOT EXTEND TO THE MANUFACTURE OF COMPONENTS FOR PLAYERS (INCLUDING BUT NOT LIMITED TO SEMICONDUCTOR DEVICES, INTEGRATED CIRCUITS, LASERS, MOTORS AND LENSES), EXCEPT FOR CIRCUITRY AND/OR SYSTEM ASPECTS SPECIFIC TO THE BD SYSTEMS; AND
- (II) THE RIGHTS AND LICENSES GRANTED UNDER THIS AGREEMENT DO NOT EXTEND TO ANY COMBINATION OF ONE OR MORE SELECTED PRODUCT(S) OR PLAYERS WITH ANY OTHER ELEMENTS, PRODUCTS, SYSTEMS, EQUIPMENT OR SOFTWARE.

### 3. Procurement from third party sources

3.1 Licensee acknowledges and agrees that:

- (a) the purchase or sale of BD-ROM Disc Products using any one or more of the Licensed Patents, which have been manufactured by any third party not licensed by Philips, constitutes an act of Patent infringement; and
- (b) Philips, in addition to any other right or remedy it may have under this Agreement or at law, shall be entitled to terminate this Agreement by virtue of such act of Patent infringement.

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Licensee acknowledges and agrees that, with respect to the procurement of any BD-ROM Disc Products from any third party source, it is incumbent upon Licensee to ascertain whether the manufacturer of such BD-ROM Disc Products to be purchased is properly licensed by Philips. Accordingly, Licensee acknowledges and agrees that failure to provide conclusive written documentation evidencing that BD-ROM Disc Products procured from third party sources using any one or more of the Licensed Patents have been manufactured by a licensed manufacturer shall entitle Philips to terminate this Agreement with immediate effect and the 30-day cure period provided in Clause 13.3 shall not apply. Such BD-ROM Disc Products shall, for all purposes, be deemed not to have been the subject of a license from Philips.

Licensee shall properly identify in its Royalty Reporting Forms to be submitted to Philips pursuant to the provisions of this Agreement:

- (a) each third party manufacturer for all BD-ROM Disc Products procured, whether directly from such third party licensed manufacturer or through other sources, including, without limitation, traders or importers; and
- (b) the quantities of BD-ROM Disc Products so purchased and manufactured by each such identified third party manufacturer.

#### **4. Royalties, Reports and Payments**

4.1 In consideration of the rights granted by Philips, Licensee shall, upon execution of this Agreement, make a non-refundable payment of €25,000 (twenty-five thousand Euros) to Philips' bank account as specified in Clause 4.3.

4.2 In further consideration of the rights granted hereunder by Philips to Licensee, Licensee shall pay to Philips a royalty for each Selected Product manufactured and/or sold or otherwise disposed of by Licensee, any of Licensee's Associated Companies or an agent of Licensee, in any country where at least one of the Licensed Patents relating to the respective Selected Product exists.

For each Selected Product manufactured, sold or otherwise disposed of by Licensee, Licensee shall pay a royalty as follows:

€0.03 (three Euro cents) for each BD-ROM Data Disc;

€0.03 (three Euro cents) for each Dual Layer BD-ROM Data Disc;

€0.03 (three Euro cents) for each BD-Hybrid Data Disc, and, in addition the costs for the Further Layer, as described in the following paragraph;

€0.04 (four Euro cents) for each BD-ROM Movie Disc;

€0.04 (four Euro cents) for each Dual Layer BD-ROM Movie Disc;

€0.04 (four Euro cents) for each BD-Hybrid Movie Disc, and, in addition the costs for the Further Layer, as described in the following paragraph

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It is acknowledged and agreed by the parties hereto that in respect of Patents as may be used in the Further Layer of a BD-Hybrid Discs, additional royalties have to be paid over and above the royalties specified in this Clause 4.2. Prior to the manufacture and sale and other disposal of a BD-Hybrid Discs, Licensee shall notify Philips in writing and shall enter into the relevant agreement(s) and pay the additional royalties with respect to the Further Layer of such BD-Hybrid Disc.

A Selected Product shall be considered sold when invoiced or, if not invoiced, when delivered to a party other than Licensee.

No royalties shall be payable for Selected Products purchased by Licensee and that were manufactured by a third party manufacturer, duly licensed by Philips, provided that Licensee can demonstrate to Philips' satisfaction, that such third party licensed manufacturer has paid to Philips the royalties due in respect of such Selected Products. For the avoidance of doubt, in respect of the Further Layer of BD-Hybrid Discs, royalties may still be due in accordance with the separate agreement(s) concluded with Licensee.

For the avoidance of doubt, in the event that the manufacture by Licensee of Selected Products within the Territory would not infringe any of the Licensed Patents, Licensee shall have no obligation to report and pay royalties due on the basis of this Agreement in respect of Selected Products manufactured within the Territory and which are sold for final use within the Territory or imported (either by Licensee or by a third party) into a country where no Licensed Patents exist, for final use in such country.

- 4.3 Within 7 days after each calendar month of each year during the term of this Agreement, Licensee shall submit to Philips (even in the event that no sales have been made) a Royalty Reporting Form submitted by an Authorized Employee on behalf of Licensee, in the manner as provided for on [www.ip.philips.com](http://www.ip.philips.com), setting forth with respect to the preceding monthly period:
- (1) the quantities of BD-ROM Disc Products manufactured by Licensee, specified per individual type of BD-ROM Disc Product;
  - (2) the quantities of BD-ROM Disc Products, specified per individual type of BD-ROM Disc Product, purchased from other sources, specifying:
    - (a) each third party manufacturer for all BD-ROM Disc Products procured, whether directly from such third party manufacturer or through other sources, including, without limitation, traders or importers; and
    - (b) the quantities of BD-ROM Disc Products so manufactured by each such third party manufacturer;
  - (3) on a per-country basis, specifying per individual type of BD-ROM Disc Product:
    - (a) the identity of the buyers, the trademarks (including brands and disc titles) used on or in connection with the BD-ROM Disc Products and the quantities of BD-ROM Disc Products sold or otherwise disposed of to such buyers; and

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- (b) the identity of other manufacturers, the trademarks (including brands and disc titles) used on or in connection with the BD-ROM Disc Products and the quantities of BD-ROM Disc Products sold or otherwise disposed of to such other manufacturers;
- (4) a computation of the royalties due under this Agreement in respect of Selected Product(s).

Licensee shall pay the royalties due to Philips within 30 days after the end of each monthly period to Philips' bank account as specified below or as Philips may indicate otherwise on Philips' Website:

Bank account no.:	8923019
Name:	Koninklijke Philips Electronics N.V.-Licenses
Bank:	Citibank N.A., London
Swiftcode:	CITIGB2L
IBANcode:	GB61CITI18500808923019.
Sortcode:	18 50 08
Ref:	BD-ROM Disc PLA

IT IS EXPRESSLY ACKNOWLEDGED AND AGREED THAT THE REPORTING PURSUANT TO THIS CLAUSE 4.3 OF BD-ROM DISC PRODUCTS THAT ARE NOT SELECTED PRODUCT(S) SHALL NOT IN ANY WAY CONSTITUTE A LICENSE, WHETHER EXPRESS OR IMPLIED, UNDER ANY PATENTS OR OTHER INTELLECTUAL PROPERTY RIGHTS OF PHILIPS, AND PHILIPS RESERVES ALL RIGHTS AGAINST LICENSEE, LICENSEE'S ASSOCIATED COMPANIES, LICENSEE'S SUPPLIERS AND LICENSEE'S CUSTOMERS, IN RESPECT OF BD-ROM DISC PRODUCTS THAT ARE NOT SELECTED PRODUCTS.

- 4.4 In the event that Licensee fails to submit to Philips a Royalty Reporting Form for any royalty reporting period within 30 days from the end of the relevant reporting period in accordance with the provisions of Clause 4.3, Licensee shall be obliged to pay to Philips within 30 days from the date on which any such Royalty Reporting Form became due, an estimated royalty (hereinafter referred to as an "Advance"), being an amount equal to the highest amount of royalties due for any royalty reporting period over the preceding eight royalty reporting periods (or over all preceding royalty reporting periods if fewer than eight). Such payment shall be treated as a non-refundable advance, primarily against the royalties and interest for the relevant royalty reporting period and then, if any sum remains, against any future royalties or other payments payable by Licensee hereunder.

Licensee acknowledges and agrees that any Advance shall not be due by way of penalty, but that such payment shall constitute a non-refundable advance as aforesaid. For the avoidance of doubt, such payment shall be payable without any further notice or action by Philips, legal or otherwise, and shall take effect by virtue of the failure to submit a Royalty Reporting Form on time (and even if such Royalty Reporting Form is subsequently submitted prior to the date on which the Advance is due and no corresponding payment is received by Philips within the 30 day period specified in Clause 4.3). The payment by Licensee of an Advance shall not affect Licensee's obligation to submit a Royalty Reporting Form and shall be without prejudice to any other rights or remedies of Philips,

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including, without limitation, Philips' right to charge 2% (two per cent) interest per month on overdue payments (including overdue payments of the Advance), and Philips' right to terminate this Agreement in accordance with its provisions. The Advance will not be set off against other sums due to Philips until a Royalty Reporting Form has been submitted in respect of the relevant royalty reporting period. In respect of any royalty reporting period for which an Advance has been paid and the Royalty Reporting Form subsequently submitted, Philips will first set off against the Advance all royalties and interest due for that period. Any remaining sum from the Advance will be set off against further royalty, interest or Advance payments due to Philips hereunder (if any).

- 4.5 Licensee shall submit to Philips, once per calendar year, an audit statement by its external auditors, who shall be certified public auditors as specified in the Audit Guidelines attached hereto as Annex B2, confirming that the Royalty Reporting Forms as submitted by Licensee to Philips for the last 12 months, are true, complete and accurate in every respect. Such statement must meet the requirements as specified in the Audit Guidelines and shall be submitted to Philips within 90 days following the end of Licensee's financial year. The correctness of this audit statement may be verified by Philips by means of a work paper review, conducted by one of the certified public auditors selected by Philips. Licensee shall procure that its auditors provide full cooperation with said work paper review. Notwithstanding this audit statement, Philips reserves the right to inspect the books and records of Licensee from time to time in accordance with Clause 4.10.
- 4.6 Within 15 working days following expiration or termination of this Agreement, Licensee shall submit to Philips a written report specifying the number of BD-ROM Disc Products in stock at the time of expiration or termination of this Agreement as well as the number of all BD-ROM Disc Products manufactured during the calendar quarter in which the Agreement has expired or has been terminated and which have not yet been reported to Philips in accordance with the provisions of this Agreement. Concurrent with the submission of said written report, Licensee shall pay the royalties due on all Selected Product(s) calculated in accordance with Clause 4.2 and, if applicable, Clause 4.12. In addition, within 45 days following such expiration or termination, Licensee shall submit to Philips a formal written confirmation from an external auditor, who shall be a certified public auditor, certifying the correctness, accuracy and completeness of such report. Any Selected Product(s) not reported or on which no royalties have been received by Philips in accordance with the above shall be deemed to be unlicensed. For the avoidance of doubt, this Clause 4.6 shall be without prejudice to the provisions of Clause 13.7.
- 4.7 Any payment under this Agreement which is not made on the date(s) specified herein, shall accrue interest at the rate of 2% (two per cent) per month (or part thereof) or the maximum amount permitted by law, whichever is lower.
- 4.8 All payments to Philips under this Agreement shall be made by transfer in Euro or in such other currency, convertible in the sense of Articles VIII and XIX of the Articles of Agreement of the International Monetary Fund, as designated by Philips. The rate of exchange for converting the currency (if other than Euros) of the Territory shall be the telegraphic transfer selling rate of the designated currency as officially quoted in the Territory by the officially authorized foreign exchange bank for payment of currency transactions on the day that the amount is due and payable.

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- 4.9 All costs, stamp duties, taxes and other similar levies arising from or in connection with the conclusion of this Agreement shall be borne by Licensee. In the event that the government of a country imposes any taxes on payments made by Licensee to Philips hereunder and requires Licensee to withhold such tax from such payments, Licensee may deduct such tax from such payments. In such event, Licensee shall promptly provide Philips with tax receipts issued by the relevant tax authorities so as to enable Philips to support a claim for credit against income taxes which may be payable by Philips and/or its Associated Companies in The Netherlands and to enable Philips to document, if necessary, its compliance with tax obligations in any jurisdiction outside The Netherlands.
- 4.10 In order that the Royalty Reporting Forms provided for in this Clause 4 may be verified, Licensee shall keep adequate records and books of account relating to the manufacture and sale of BD-ROM Disc Products (including but not limited to Selected Product(s)) for which at least one Licensed Patent remains in force in any country of the world, including the purchase of raw materials used in the manufacture of BD-ROM Disc Products, and the purchase of BD-ROM Disc Products from third party sources. Licensee shall keep all such records and books available for inspection for a period of 5 years following the sale or other disposal of each BD-ROM Disc Products.

In the event that competent authorities take possession of the records and books of Licensee for tax investigation purposes or otherwise, Licensee shall ensure a complete set of photocopies of all such records and books is kept so as to allow inspection in accordance with this Clause 4.10.

Philips shall have the right to inspect the books and records of Licensee from time to time, in order to verify the correctness of the aforementioned Royalty Reporting Forms. Any such inspection shall take place no more than once per calendar year and shall be conducted by a certified public auditor appointed by Philips. Philips shall give Licensee written notice of such inspection at least 7 days prior to the inspection. Licensee shall willingly co-operate and promptly provide all such assistance in connection with such inspection as Philips and/or the auditor may require, including, without limitation, allowing the auditors to take, and to take with them, photocopies of all such documents as the auditors consider necessary or appropriate for the purpose of preparing their audit statement or otherwise in connection with the inspection. The access and inspection may extend to the books and records relating to the manufacture and sale of optical discs (of any type, including but not limited to BD-ROM Disc Products). The inspection shall be conducted at Philips' expense, provided that in the event that Licensee fails to provide full co-operation as set out in this Clause 4.10 or in the event that Licensee has failed to submit any Royalty Reporting Form or any yearly written statement by its external auditors, as provided for in Clause 4.3 and Clause 4.5, in respect of the period to which the inspection relates or in the event that any discrepancy or error exceeding 3% (three per cent) of the monies actually due is established, in addition to Licensee's obligation promptly to satisfy such underpayment, the cost of the inspection shall be borne by Licensee, without prejudice to any other claim or remedy as Philips may have under this Agreement or under applicable law.

Failure by Licensee to co-operate with the inspection as set out in the preceding paragraph shall constitute a material breach of this Agreement and in the event of such failure Licensee shall be liable for the cost of the inspection, as well as all costs and damages resulting from such failure. Further, such failure shall entitle Philips to terminate this

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Agreement, without prejudice to any other claim or remedy as Philips may have under this Agreement or under applicable law.

Philips' right of inspection as set out in this Clause 4.10 shall survive termination or expiration of this Agreement for a period of 5 years.

- 4.11 Without prejudice to the provisions of Clause 4.10, Licensee shall provide all relevant additional information as Philips may reasonably request from time to time, so as to enable Philips to ascertain which products manufactured, sold or otherwise disposed of by Licensee are subject to the payment of royalties to Philips hereunder, the Patents which have been used in connection with such products, and the amount of royalties payable.
- 4.12 It is confirmed that, prior to the execution of this Agreement, Licensee has submitted to Philips a written royalty reporting statement (as attached hereto as Annex B1) in respect of all BD-ROM Disc Products (in which any one or more of the Licensed Patents existing at the time is (are) used) manufactured and sold or otherwise disposed of by Licensee before the Effective Date, indicating the starting date of production and/or procurement of such BD-ROM Disc Products.

Within 7 days following the execution of this Agreement, Licensee shall pay to Philips the royalties for such Selected Products, calculated by applying the applicable royalty rates of: €0.04 (four Euro cents) and/or €0.03 (three Euro cents) specified per product type in Clause 4.2.

This written royalty reporting statement shall similarly be subject to Philips' right of audit as set out in Clause 4.10. Within 45 days following the execution of this Agreement, Licensee shall submit to Philips an audit statement by its external auditors, who shall be certified public auditors, confirming that this written royalty reporting statement is true, complete and accurate in every respect. Such statement must meet the requirements as specified in the Audit Guidelines.

## 5. Means of communication

- 5.1 Licensee shall assign, by given written notice to Philips, one of its full-time employees as an administrator for communicating electronically with Philips. Licensee represents that this person ("Visitor Administrator") shall have the authority to appoint Authorized Employees on behalf of Licensee. Licensee may at any time during the term of this Agreement assign another of its full-time employees as a replacement Visitor Administrator by giving written notice of such appointment to Philips. Any written notice under this Clause 5.1 shall specify the Visitor Administrator's e-mail address. The Visitor Administrator must register him/herself on Philips' Website.

## 6. Manufacturing Equipment Identification System and Sample Discs

- 6.1 It is confirmed that, prior to the execution of this Agreement, Licensee shall submit to Philips an overview of its manufacturing equipment currently used, or which is technically capable of being used for the manufacture of BD-ROM Disc Products. Further, upon any acquisition, transfer or disposal of manufacturing equipment used, or which is technically

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capable of being used for the manufacture of BD-ROM Disc Products, Licensee shall submit to Philips details of any such adjustment(s) to its manufacturing equipment. Further, Licensee shall submit to Philips an overview containing all adjustments to its manufacturing equipment during the preceding year, together with and confirmed by the audit statement referred to in Clause 4.5. Such Manufacturing Equipment List shall be signed and submitted to Philips by an Authorized Employee on behalf of Licensee, in the manner as provided for on www.ip.philips.com.

- 6.2 Upon the request of Philips, Licensee shall submit to Philips within 30 days the requested number of sample BD-ROM Disc Products of each mould used in each production line identified on the Sample Request Form. The corresponding system numbers and mould number indicated on the Sample Request Form shall be clearly marked on the outer diameter of the each sample disc. As these samples will be used by Philips for the purpose only of verifying whether BD-ROM Disc Products found in the market correspond with the samples submitted by Licensee, thereby enabling Philips to verify the declared source of such BD-ROM Disc Products (as mentioned in shipping documents, invoices or otherwise) the samples will be requested periodically. The sample BD-ROM Disc Products are to be submitted to the address as specified in the Sample Request Form.

## **7. Registration Number**

- 7.1 Licensee via its Authorized Employee shall apply to Philips for a Registration Number for each of Licensee's manufacturing plants, prior to commencing the manufacture of BD-ROM Disc Products.
- 7.2 Licensee shall include on each BD-ROM Disc Product that it manufactures and ensure that each BD-ROM Disc Product that it acquires includes a non-detachable and clearly legible Registration Number in the form and in accordance with the Registration Number Guide.

## **8. Access to Facilities**

- 8.1 Licensee shall give Philips' representatives immediate and unfettered access to any and all of its manufacturing plants at which optical discs (of any type, including but not limited to BD-ROM Disc Products) are manufactured or held, or at which equipment capable of manufacturing optical discs (of any type, including but not limited to BD-ROM Disc Products) is present, for the purpose of determining whether Licensee is in full compliance with its obligations under this Agreement.

Licensee shall also procure that Philips' representatives shall have immediate and unfettered access to the facilities of any company that keeps optical discs (of any type, including but not limited to BD-ROM Disc Products) in stock for Licensee and to any warehouses in which Licensee holds optical discs (of any type, including but not limited to BD-ROM Disc Products), for the purpose of verifying whether Licensee is in full compliance with its obligations under this Agreement.

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## 9. Most Favorable Rate

- 9.1 In the event that licenses under the Patents referred to in Clause 2 are granted by Philips for Selected Product(s) to a third party under substantially similar conditions, but at a royalty rate more favorable than the rate payable by Licensee under this Agreement, Licensee shall be entitled to the same royalty rate as applicable to such third party, provided always that this right of Licensee shall not apply in respect of cross-license agreements or other agreements providing for a consideration which is not exclusively based on the payment of royalties and further provided that this right of Licensee shall not apply in respect of licenses or other arrangements made pursuant to a court decision or the settlement of a dispute between Philips and a third party, irrespective of the nature of such dispute, the terms of the court decision or the settlement terms.

## 10. No Warranty and Indemnification

- 10.1 Philips makes no representation or warranty as to the ability of Licensee to achieve compatibility of Selected Product(s) with BD-Players.
- 10.2 It is acknowledged by Licensee that third parties may own industrial and/or intellectual property rights in the field of BD-ROM Discs. Philips makes no warranty whatsoever that the manufacture, sale or other disposal of BD-ROM Discs does not infringe or will not cause infringement of any industrial and/or intellectual property rights other than the Licensed Patents. Philips and its Associated Companies shall be fully indemnified and held harmless by Licensee from and against any and all third party claims in connection with BD-ROM Discs manufactured, sold or otherwise disposed of by Licensee.

## 11. Confidentiality

- 11.1 Licensee shall, during the term of this Agreement as specified in Clause 13.1 and for a period of 3 years thereafter, not disclose to any third party any information acquired from Philips or any of Philips' Associated Companies in connection with this Agreement, or use such information for any purpose other than the manufacture and disposal of Selected Product(s) in accordance with the provisions of this Agreement. This obligation shall not apply to the extent information so acquired:
- (a) was known to Licensee prior to the date on which such information was acquired from Philips or any of Philips' Associated Companies, as shown by records of Licensee or otherwise demonstrated to Philips' satisfaction; or
  - (b) is or has become available to the public through no fault of Licensee; or
  - (c) was or is received from a third party who was under no confidentiality obligation in respect of such information.
- 11.2 The obligations concerning confidentiality contained in Clause 11.1 shall survive termination of this Agreement.

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- 11.3 Philips shall, during the term of this Agreement as specified in Clause 13.1 and for a period of 3 years thereafter, not disclose to any third party any confidential information obtained in connection with Clause 4.3, Clause 4.5, Clause 4.6, Clause 4.12 except that Philips may disclose such information to its external auditors, legal representatives and to the competent courts to the extent this is necessary for Philips in connection with the enforcement of its rights hereunder. Further, Philips shall not use such information for other purposes than to verify Licensee's compliance with its royalty reporting and payment obligations as provided in this Agreement and to enforce Philips' rights hereunder. Philips' obligations set out in this paragraph shall not apply to the extent the information:
- (a) was known to Philips prior to the date on which such information was acquired from Licensee or any of Licensee's Associated Companies, as shown by records of Philips or otherwise demonstrated to Licensee's satisfaction;
  - (b) is or has become available to the public through no fault of Philips;
  - (c) was or is received from a third party who was under no confidentiality obligation in respect of such information.

## 12. No Assignment

- 12.1 This Agreement shall inure to the benefit of and be binding upon each of the parties hereto and their respective permitted assignees. It may not be assigned in whole or in part by Licensee without the prior written consent of Philips, expressed in a written legal instrument signed by authorized representatives of each of the parties hereto.

## 13. Term and Termination

- 13.1 This Agreement shall enter into force on the Effective Date. In the event that validation of this Agreement is required by the competent governmental authorities, the Effective Date shall be the date of such validation. Unless terminated earlier in accordance with the provisions of this Clause 13, this Agreement shall remain in force until December 31, 2009 or until the expiration date of the last to expire Licensed Patent in the Territory essential to Selected Product(s), whichever comes first.

Upon the expiration of all Licensed Patents in the Territory essential to Selected Product(s), Philips shall not assert any of the Licensed Patents against Licensee or Licensee's customers, provided that Licensee has entered into a contractual arrangement with Philips providing for the situation that, although such Selected Product(s) manufactured by Licensee are no longer covered by any of the Licensed Patents in the Territory, such Selected Product(s) are being imported by Licensee or a third party into one or more other countries in which one or more of the Licensed Patents subsist.

- 13.2 Licensee may terminate this Agreement upon giving Philips 3 months notice of its intention to terminate.

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- 13.3 Without prejudice to the provisions of Clause 13.4 through Clause 13.7, each party may terminate this Agreement at any time by means of a written notice to the other party in the event that the other party fails to perform any obligation under this Agreement and such failure is not remedied within 30 days after receipt of a notice specifying the nature of such failure and requiring it to be remedied. Such right of termination shall not be exclusive of any other remedies or means of redress to which the non-defaulting party may be lawfully entitled and all such remedies shall be cumulative. Any such termination shall not affect any royalty or other payment obligations under this Agreement accrued prior to such termination.
- 13.4 Philips may terminate this Agreement forthwith by means of a written notice to Licensee in the event that a creditor or other claimant takes possession of, or a receiver, administrator or similar officer is appointed over any of the assets of Licensee, or in the event that Licensee makes any voluntary arrangement with its creditors or becomes subject to any court or administration order pursuant to any bankruptcy or insolvency law.
- 13.5 Additionally, insofar as legally permitted, Philips may terminate this Agreement at any time by means of a written notice to Licensee in case Licensee or an Associated Company of Licensee has been found liable by a competent court or administrative authority to have committed an act of copyright piracy.
- 13.6 Philips shall have the right to terminate this Agreement forthwith or to revoke the license granted under any of Philips' or any of its Associated Companies' Patents in the event that Licensee or any of its Associated Companies brings a claim of infringement of any of Licensee's or any of Licensee's Associated Companies' essential Patents relating to BD-ROM Discs or BD-Players against Philips or any of its Associated Companies and Licensee refuses to license such Patents on fair and reasonable conditions.
- 13.7 Upon the termination of this Agreement by Philips for any reason pursuant to Clause 13.3 through Clause 13.6, Licensee shall immediately cease the manufacture, sale or other disposal of Selected Product(s) in which any one or more of the Licensed Patents are used.

Provided that all Selected Product(s) in stock have been duly reported in accordance with Clause 4.6 and further provided that the royalties due on such discs in accordance with Clause 4.2 and, if applicable, Clause 4.12 have been paid by Licensee in accordance with Clause 4.3, Licensee shall be entitled to sell such reported Selected Product(s) within a period of 60 days following such expiration or termination.

Any such Selected Product(s) sold within said 60 day-period shall be deemed to be licensed by Philips under this Agreement. Any such Selected Product(s) sold after said 60 day-period shall be deemed to be unlicensed.

If Philips does not receive the written report and corresponding payment within the 15 day period as specified in Clause 4.6, any and all Selected Product(s) sold by Licensee after expiration or termination of this Agreement shall be deemed to be unlicensed.

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- 13.8 All provisions of this Agreement which are intended to survive (whether express or implied) the expiry or termination of this Agreement, shall so survive (including but not limited to Clause 1, Clause 4.1, Clause 4.2, Clause 4.3, Clause 4.4, Clause 4.6, Clause 4.7, Clause 4.9, Clause 4.10, Clause 4.11, Clause 8, Clause 10, Clause 11, Clause 12, Clause 13.1, Clause 13.3, Clause 13.4, Clause 13.7, Clause 13.8, Clause 14).

#### 14. Miscellaneous

- 14.1 Licensee acknowledges that Philips may make modifications to the wording of the Interim BD-ROM Disc Patent License Agreement in the future. Licensee shall at all times have the option of entering into the latest version of a BD-ROM Disc agreement as published by Philips on its Website or otherwise communicated by Philips to Licensee after the Effective Date of this Agreement.

- 14.2 Any notice required under this Agreement to be sent by either party shall be given in writing by means of a letter, facsimile or electronic mail directed:

in respect of Licensee, to:

in respect of Philips, to:

Koninklijke Philips Electronics N.V.  
c/o Philips Intellectual Property & Standards - Legal Department  
High Tech Campus 44  
Building HTC 44-4  
P.O. Box 220  
5600 AE Eindhoven  
The Netherlands

Fax. +31 40 2745267

or such other address as may have been previously specified in writing by either party to the other.

- 14.3 This Agreement sets forth the entire understanding and agreement between the parties as to the subject matter hereof and supersedes and replaces all prior arrangements, discussions and understandings between the parties relating thereto. No variation of this Agreement shall be binding upon either party unless made in writing and signed by an authorized representative of each of the parties hereto.
- 14.4 Nothing contained in this Agreement shall be construed:

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- (a) as imposing on either party any obligation to instigate any suit or action for infringement of any of the Patents licensed hereunder or to defend any suit or action brought by a third party which challenges or relates to the validity of any such Patents. Licensee shall have no right to instigate any such suit or action for infringement of any of the Patents licensed by Philips hereunder, nor the right to defend any such suit or action which challenges or relates to the validity of any such Patent licensed by Philips hereunder;
  - (b) as imposing any obligation to file any patent application, to secure any Patent or to maintain any Patent in force;
  - (c) as conferring any license or right to copy or imitate the appearance and/or design of any product of Philips or any of its Associated Companies;
  - (d) as conferring any license to manufacture, sell or otherwise dispose of any product or device other than a Selected Product.
- 14.5 Neither the failure nor the delay of either party to enforce any provision of this Agreement shall constitute a waiver of such provision or of the right of either party to enforce each and every provision of this Agreement.
- 14.6 Should any provision of this Agreement be finally determined void or unenforceable in any judicial proceeding, such determination shall not affect the operation of the remaining provisions hereof, provided that, in such event, Philips shall have the right to terminate this Agreement by means of a written notice to Licensee.

**(to be selected by account manager IP&S)**

14.7 This Agreement shall be governed by and construed in accordance with the laws of:

- The Netherlands  
(for all Countries of Registration other than the United States of America and the People's Republic of China)
- The State of New York, United States of America  
(when the Country of Registration is the United States of America)
- Hong Kong Special Administrative Region (SAR)  
(when the Country of Registration is the People's Republic of China)

Any dispute between the parties hereto in connection with this Agreement (including any question regarding its existence, validity or termination) shall be submitted to the competent court/s with Primary Jurisdiction (as indicated below):

- The courts of The Hague, The Netherlands  
(for all Countries of Registration other than the United States of America and the People's Republic of China)
- The state courts located in the County of New York, New York and the United States District Court for the Southern District of New York  
(when the Country of Registration is the United States of America)

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- Any competent court of the Hong Kong SAR  
(when the Country of Registration is the People's Republic of China)
- 14.8 Other than as provided in Clause 14.9 any dispute between the parties in connection with this Agreement (including any question regarding its existence, validity or termination) shall be submitted to the Court/s with Primary Jurisdiction, provided always that, where Philips is the plaintiff, it may, alternatively and at its sole discretion, submit such dispute either to the competent courts in the country where Licensee's registered office is located, or to the competent courts in any country where Licensee or its Associated Companies are otherwise located or have manufacturing facilities, or, for claims arising in relation to the sale or other disposal of BD-ROM Disc Products by Licensee or its Associated Companies, to any of the competent courts in the country of destination of the relevant BD-ROM Disc Products. Licensee irrevocably waives any rights it may have to object to the jurisdiction, process and venue of any such court and to the effectiveness, execution and enforcement of any order or judgment (including, but not limited to, a default judgment) of any such court in relation to this Agreement, to the maximum extent permitted by the law of any jurisdiction, or to the laws which might be claimed to be applicable regarding the effectiveness, enforcement or execution of such order or judgment.
- 14.9 The parties acknowledge and agree that any effort to defeat or circumvent the appropriate jurisdiction or jurisdictions for disputes as set out in Clause 14.8 are to be dealt with expeditiously and accordingly if:
- (1) Licensee refers a dispute to any court other than the Court/s with Primary Jurisdiction and Philips alleges that Licensee has done so in breach of Clause 14.8; and
  - (2) a dispute arises between the parties as to
    - (a) whether Licensee has referred a dispute to a court (other than the Court/s with Primary Jurisdiction) that, under Clause 14.8, lacks jurisdiction; and/or
    - (b) the appropriate remedy by way of injunction and/or damages or otherwise due to Philips from Licensee arising from such breach,

Philips may refer the dispute under (2) to arbitration by giving to Licensee a Notice, including a reference to this Clause 14.9, specifying the dispute that Philips has referred to arbitration. The question for arbitration is a simple one, the answer to which will generally be very clear. Consequently, the arbitration shall be conducted by one arbitrator appointed by the Deken of the Nederlandse Orde van Advocaten (the "Deken") at Philips' request. The arbitrator shall be a lawyer qualified under the laws of, and engaged in private practice in, The Netherlands. Before his appointment he shall have given an assurance (either on oath or binding as a matter of professional conduct) to discharge the office of arbitrator impartially. The arbitration shall be conducted in the Dutch language at The Hague, The Netherlands. If the arbitrator dies, resigns, refuses to arbitrate or becomes incapable of arbitrating, Philips shall request the Deken to appoint a new arbitrator. If an arbitration had already commenced prior to the new arbitrator being appointed, it shall continue as if

Initials Philips \_\_\_\_\_

Initials Licensee \_\_\_\_\_



the new arbitrator had been acting from the beginning. The arbitrator shall use his best endeavors to issue a final award within 20 days of his appointment. Procedural matters not specified in this Clause 14.9, including costs of the arbitration, shall be determined by the arbitrator. Neither party may apply to a Court to determine any question of law arising in the course of, or otherwise in relation to, the arbitration, or appeal to a Court on a question of law relating to an award.

14.10 This Clause 14.10 shall apply if the tick box "Arbitration in the Hong Kong SAR" is ticked. Any dispute between the parties in connection with this Agreement (including any question regarding its existence, validity or termination) shall be settled by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce ("ICC") in effect at the time of applying for arbitration and as may be amended by the rest of this Clause 14.10. The arbitral award shall be final and binding upon the parties. The arbitration shall be conducted as follows:

- (1) the arbitration institute shall be the International Court of Arbitration of the ICC;
- (2) the place of arbitration shall be Hong Kong;
- (3) the language of the arbitration shall be English; and
- (4) the arbitral tribunal (hereinafter referred to as "the tribunal") shall be comprised of an arbitrator or arbitrators appointed as follows:
  - (a) the parties shall agree on a sole arbitrator; or
  - (b) where the parties fail to agree on a sole arbitrator within 21 Days from the date when the claimant's request for arbitration has been received by the other party, each party shall appoint an arbitrator, and the two arbitrators so appointed shall appoint a third arbitrator who shall act as president of the tribunal;
  - (c) if either party fails to appoint an arbitrator within 14 Days of receiving notice of the appointment of an arbitrator by the other party, such arbitrator shall, at the written request of that other party, be appointed by the International Court of Arbitration of the ICC;
  - (d) if the two arbitrators to be appointed by the parties fail to agree upon a third arbitrator within 30 Days of the appointment of the second arbitrator, the third arbitrator shall be appointed by the International Court of Arbitration of the ICC at the written request of either party.

Should a vacancy arise because any arbitrator dies, resigns, refuses to act, or becomes incapable of performing his functions, the vacancy shall be filled by the method by which that arbitrator was originally appointed. When a vacancy is filled, the newly established tribunal shall exercise its discretion to determine whether any hearings shall be repeated.

Any arbitrator appointed to act in an arbitration under this Clause 14.10 shall be a lawyer in private practice, qualified to practice in one or more of the Hong Kong SAR, the United States of America, Germany or the United Kingdom, shall be fluent in the English language, and shall not be a national of either the Country of Registration or of The Netherlands.

AS WITNESS, the parties hereto have caused this Agreement to be signed on the date first written above.

KONINKLIJKE PHILIPS ELECTRONICS  
N.V.

[LICENSEE]

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Name:  
Title:

Reference copy

Initials Philips \_\_\_\_\_

Initials Licensee \_\_\_\_\_