

DVD+RW/+R RECORDER CONTENT
PROTECTION AGREEMENT

This Agreement is entered into this ____ day of _____, 2002 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 "Adopter").

WHEREAS, Sony Corporation of Japan ("Sony"), Hewlett-Packard Company of California, U.S.A. ("HP"), Ricoh Company, Ltd. of Japan ("Ricoh"), Mitsubishi Chemical Corporation of Japan ("Mitsubishi"), Yamaha Corporation of Japan ("Yamaha") and Philips (said six companies hereinafter collectively referred to as "the DVD+RW Format Group") have jointly defined a new data storage and reproduction system, which has been presented under the name DVD+RW System (hereinafter referred to as "the DVD+RW System") and have also defined a new recordable system, which has been presented under the name DVD+R System (said two systems hereinafter referred to as "the DVD+RW/+R Systems");

WHEREAS, Adopter has entered into a DVD+RW/+R Recorder Patent License Agreement on even date with Philips and has thereby obtained the right to manufacture and sell DVD+RW/+R Recorders (as defined in the DVD+RW/+R Recorder Patent License Agreement) in accordance with the provisions of the DVD+RW/+R Recorder Patent License Agreement;

WHEREAS, the DVD Format Group has agreed, with the aim of protecting the legitimate interests of copyright owners, to apply and incorporate as a key requirement for the DVD+RW/+R Systems (as hereinafter defined), certain content protection measures, which adopters of the DVD+RW/+R Systems will be required to comply with;

WHEREAS, the content protection measures to be applied in DVD+RW/+R Recorders are embodied in the Content Protection Requirements (as hereinafter defined);

NOW, THEREFORE, in consideration of the mutual obligations and covenants hereinafter set forth, it is hereby agreed as follows:

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Article 1 - Definitions

1.01 The following terms, when used in this Agreement, shall have the respective meanings ascribed thereto below. Any capitalised term used in this Agreement but not defined herein shall have the same meaning as in the DVD+RW/+R Recorder Patent License Agreement.

“Associated Company” shall mean any one or more business entities (1) owned or controlled by Philips or Adopter, (2) owning or controlling Philips or Adopter, or (3) owned or controlled by the business entity owning or controlling Philips or Adopter 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 held by the owning and/or controlling business entity.

“Compliance Rules” shall mean the content protection rules as set out in Exhibit A hereto.

“Content Participant” shall mean a company which (a) is primarily engaged in the production and distribution of theatrical motion pictures or other video or audiovisual content, and (b) has entered into a DVD+RW Recorder Content Participant Agreement with Philips.

“Content Participant Agreement” shall mean the DVD+RW Content Participant Agreement entered into between Philips and a Content Participant relating to the protection of Controlled Content in relation to the DVD+RW/+R Systems.

“Content Protection Requirements” shall mean the content protection requirements set forth in the Compliance Rules for DVD+RW/+R Recorders (Exhibit A) and the Robustness Rules (Exhibit B) and the DVD+RW/+R Format Specifications, which may be amended from time to time by Philips in accordance with the provisions of Article 2, in relation to the DVD+RW/+R Systems, including but not limited to the requirements to implement certain specified content protection technologies developed and licensed by third parties.

“Controlled Content” shall mean a commercial release of a motion picture or other audiovisual work in which a Content Participant owns or controls the copyrights and which content must be controlled to prevent unauthorized copying, as is indicated by a

content protection signaling technology as specified in Section 3 of the Compliance Rules.

“**Copy Never**” shall mean commercial audiovisual content which has been labelled as “Copy Never”, indicating that it is not to be reproduced.

“**Copy No More**” shall mean commercial audiovisual content which has been labelled as “Copy No More”, indicating that such content may have originated as Copy One Generation, but that from the version transmitted no more copies may be made.

“**Copy One Generation**” shall mean commercial audiovisual content which has been labelled as “Copy One Generation”, indicating that only one generation of copies may be made of such content.

“**DVD+RW/+R Special Purpose Disc**” shall mean a DVD+RW/+R Disc on which no content other than Special Purpose Content may be recorded.

“**Exempted Application**” shall mean any product or application incorporating the DVD+RW/+R technology, which is exempted from the Content Protection Requirements. Instead, such application shall comply with adapted content protection requirements providing for an adequate level of protection against the unauthorised copying of content material, as will be published by Philips.

“**Eligible Adopter**” shall mean a company which has entered into the DVD+RW/+R Recorder Patent License Agreement and the DVD+RW Recorder Content Protection Agreement with Philips and is in full compliance with its obligations under said two agreements.

“**Material Breach**” shall mean a breach which (a) has resulted in or is likely to result in commercially significant harm to Content Participants resulting from the unauthorized copying of their Controlled Content using DVD+RW/+R Recorders, or (b) constitutes a threat to the integrity or security of the content protection technologies specified in the Content Protection Requirements related to their use in connection with DVD+RW/+R Recorders. Without limiting the breaches which may be deemed not “Material,” a breach that does not have a material adverse effect on the integrity, security or performance of the content protection technologies mandated by the Content Protection Requirements shall not be considered a “Material Breach” if the breach was inadvertent or otherwise unintentional or if Adopter brought the breach to Philips’ attention in a timely manner, provided always that the enabling of so-called bit-to-bit copying by DVD+RW/+R Recorders manufactured by Adopter, shall always

qualify as a Material Breach under this Agreement even if such breach was inadvertent or unintentional.

“Robustness Rules” shall mean the rules relating to the robust implementation of the DVD+RW/+R Compliance Rules as set out in Exhibit B hereto.

“Special Purpose Content” shall mean those specific categories of content which are the only categories of content that may be recorded on DVD+RW/+R Special Purpose Discs, as will be defined by Philips in the future.

“Special Purpose DVD+RW/+R Recorder” shall mean a DVD+RW/+R Recorder which may not record any content other than Special Purpose Content.

“Third Party Beneficiary” shall mean a Content Participant who is in full compliance with its obligations under its DVD+RW Recorder Content Participant Agreement.

“Third Party Beneficiary Claim” shall mean the claim which may be brought by a Third Party Beneficiary against Adopter in the event of a Material Breach, in accordance with the provisions hereof.

“VWM Watermarks” shall mean the watermarking technology as proposed by the so-called VWM companies (consisting of Digimarc, Hitachi, Macrovision, NEC, Pioneer, Philips and Sony) to the DVD Copy Control Association.

Article 2 - Compliance with Content Protection Requirements

- 2.01 Adopter shall ensure that all DVD+RW/+R Recorders manufactured by Adopter under the DVD+RW/+R Recorder Patent License Agreement comply with the Content Protection Requirements in accordance with the provisions of this Agreement.
- 2.02 Adopter acknowledges and agrees that the Content Protection Requirements may be amended by Philips from time to time, with a view to technological developments relating to the protection of Controlled Content. Except as necessary to ensure content protection and except as necessary to correct errors or omissions, Philips will not make material changes in the Content Protection Requirements that will (a) prevent pre-change DVD+RW/+R Recorders from playing post-change DVD+RW/+R Discs to which such DVD+RW/+R Recorders would otherwise have had access, or that will prevent pre-change DVD+RW/+R Discs from playing on post-change DVD+RW/+R

Recorders or (b) materially increase the cost or complexity of implementations of Content Protection Requirements.

- 2.03 Adopter acknowledges and agrees that no later than 24 months following a written notice from one or more of the major Content Participants informing Philips that it (they) has (have) commenced embedding VWM Watermarks and continues to embed in at least 50% of the new releases of its (their) Controlled Content and provided that encryption technologies required for VWM compliance are available for the DVD+RW/+R Systems (both as regards the technical implementation and as regards license conditions, in the sense that the relevant license shall be offered on reasonable and non-discriminatory conditions), Adopter shall have implemented in its DVD+RW/+R Recorders the functionality to detect and respond to such VWM Watermarks in accordance with the Content Protection Requirements. Philips will promptly notify Adopter of the receipt by Philips of such notification. In the event that the majority of Content Participants reaches agreement with Philips and the hardware industry to use a different watermarking system, the provisions of this Article 2.03 will apply similarly with respect to the implementation of such newly selected watermarking system instead, with a new grace period of 24 month starting from the day of such agreement, unless otherwise specified in that agreement.
- 2.04 Adopter acknowledges and agrees that Philips may in the future define categories of Special Purpose Content and that Philips may prescribe additional copy protection requirements for Special Purpose DVD+RW/+R Recorders.
- 2.05 Philips will notify Adopter in writing of any amendments to the Content Protection Requirements. Adopter shall comply with all amendments to the Content Protection Requirements within 24 months after notification by Philips of such amendments, or within such other reasonable period as Philips may specify in such notice.
- 2.06 Nothing in this Agreement shall be construed to modify or relieve Adopter of any of its obligations, including without limitation any obligations relating to content protection, arising under any other agreement into which Adopter has entered in order to obtain the right to use any technology identified in the Content Protection Requirements.

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Article 3 - Adopters Group

- 3.01 Philips shall arrange for the creation of a DVD+RW/+R adopters group (“the Adopters Group”) in which Eligible Adopters may participate. Participation in the

Adopters Group shall be open to all Eligible Adopters who have confirmed to Philips in writing that they wish to participate in the Adopters Group. Philips intends to organise a meeting between the DVD+RW Format Group and the Adopters Group once per year. In addition, on Philips' initiative, or, if so requested by a majority of the Adopters Group, Philips may call additional meetings of the Adopters Group. The purpose of such meetings will be to discuss and evaluate relevant developments and proposals, if any, for possible amendments to the Content Protection Requirements.

Article 4 - Remedies

- 4.01 Adopter acknowledges that strict compliance with the terms hereof (notably, without limitation, the provisions of Article 2.01) is essential to maintain the value, integrity and security of the Content Protection Requirements and the technologies identified therein and that any failure by Adopter or any of its Associated Companies to comply with the Content Protection Requirements in connection with DVD+RW/+R Recorders manufactured by Adopter, may cause such DVD+RW/+R Recorders to be used for the unauthorised copying of Controlled Content onto DVD+RW/+R Discs, or the playback on DVD+RW/+R Recorders of such unauthorised copies, which may result in irreparable harm to the interests of the relevant Content Participant in the Controlled Content, in addition to harming the interests of Philips.
- 4.02 The parties hereto agree that it would be impossible to assess the amount of damages in the event of certain breaches by Adopter. In the event of a breach which involves the manufacture or distribution of DVD+RW/+R Recorders which fail to comply with the Content Protection Requirements, Adopter shall be liable to Philips in an amount equal to its and its Associated Companies' profits on such DVD+RW/+R Recorders, but in no event less than US\$ 1,000,000 (one million US Dollars).
- 4.03 Adopter acknowledges that monetary damages may not be a sufficient remedy for a breach by Adopter that involves the manufacture or distribution of DVD+RW/+R Recorders which fail to comply with the Content Protection Requirements, and that Philips shall be entitled, without prejudice to any other right or remedy to which Philips may be entitled hereunder, to equitable relief as may be deemed proper by a court of competent jurisdiction, as well as to injunctive relief against the manufacture, distribution, commercial use and sale of Adopter's products which do not comply with the Content Protection Requirements. Any such action by Philips, Sony or HP shall be

in addition to and shall not be exclusive of any right of any Third Party Beneficiary hereunder.

- 4.04 Adopter hereby confers a third party beneficiary right, in accordance with the procedures set forth in this Article 4, upon Third Party Beneficiaries. Adopter agrees that, in the event of any Material Breach by Adopter and/or any of its Associated Companies, any one or more Third Party Beneficiaries who have been harmed by such Material Breach, shall be entitled to bring a claim or action against Adopter, as the case may be, in accordance with the procedures set forth in this Article 4. Any act or omission of Adopter and/or any of its Associated Companies which constitutes an act of non-compliance or breach arising under any other agreement into which Adopter has entered into in connection with the use of any content protection technology identified in the Content Protection Requirements, shall not trigger third party beneficiary rights hereunder.
- 4.05 Any Third Party Beneficiary or Beneficiaries who have been or will be harmed by a Material Breach may commence an action seeking the remedies set forth in Article 4.06. Said Third Party Beneficiaries shall provide written notice to Philips within 5 business days of the commencement of said action, which notice Philips shall provide to all other Third Party Beneficiaries. Any Third Party Beneficiary who has been harmed or will be harmed by the same Material Breach shall have the right to join in said action by seeking to intervene within 30 calendar days of the receipt of written notice from Philips, and may not bring a separate action with respect to such breach. It is the intent of this Agreement that only one Third Party Beneficiary action may be brought against Adopter arising out of the same Material Breach, and this Agreement shall not be construed to create any Third Party Beneficiary right with respect to the same Material Breach that is not joined in the same action. Adopter shall not object to any motion to intervene brought in compliance with this Article 4.05. For the purpose of this Article 4 (including, without limitation, both as regards the procedure and for the calculation of damages), any substantially related series of breaches that satisfy the definition of Material Breach shall be deemed a single Material Breach.
- 4.06 The remedies available under this Agreement in a Third Party Beneficiary action shall include and be limited to: (i) injunctive relief against the manufacture, distribution, commercial use and sale of DVD+RW/+R Recorders which do not comply with the Content Protection Requirements, and (ii) monetary damages as provided in Article 4.07. Exercise of a Content Participant's Third Party Beneficiary Rights shall not constitute an election against any statutory or other extra-contractual remedies or other relief against Adopter that may be available to Content Participant. Any action by any Third Party Beneficiary and any remedies granted in such action shall not be exclusive of and shall be without prejudice to any right of Philips under this Agreement or any

other right of the DVD+RW Format Group under any Agreement pertaining to DVD+RW/+R Recorders.

- 4.07 Adopter acknowledges that it may be impossible to assess the exact amount of damages resulting from a Material Breach. It is therefore agreed that in the event of any Material Breach, Adopter shall be liable to the Third Party Beneficiary(ies) participating in the Third Party Beneficiary action for damages in an amount equal to its and its Associated Companies' profits on the non-compliant DVD+RW/+R Recorders, but in no event more than eight million U.S. Dollars (\$8,000,000). In any Third Party Beneficiary action, the court shall allocate said damages equitably among the Third Party Beneficiaries participating in the action. The parties hereto acknowledge and agree that it is in the interest of Adopter, Philips and all Content Participants that Adopter be notified promptly if any Content Participant knows of or suspects any breach by Adopter and/or any of its Associated Companies of the Content Protection Requirements. Accordingly, notwithstanding the foregoing, if a Third Party Beneficiary has knowledge of or suspects a breach by Adopter and/or any of its Associated Companies of the Content Protection Requirements and fails to provide prompt written notice to such Adopter, any Third Party Beneficiary with such knowledge or suspicion shall not be entitled to recover damages accruing after it obtained such knowledge or suspicion and the total recovery available to all Third Party Beneficiaries for such breach shall be reduced accordingly.

Article 5 - Indemnification and Limitation of Liability

- 5.01 Adopter shall indemnify and hold Philips, Sony, HP, Mitsubishi, Yamaha, Ricoh and their respective Associated Companies, officers, members, representatives, agents, directors, equivalent corporate officers, and employees harmless from and against any and all losses, deficiencies, damages, liabilities, costs and expenses including without limitation, reasonable attorney's fees and all related costs and expenses, to be paid or otherwise incurred in connection with the defense of any claim, action, suit, proceeding or litigation, which result from any breach of any obligation contained, herein, whether willful, inadvertent or negligent, and whether committed by Adopter, its Associated Companies or its employees or agents.
- 5.02 IN NO EVENT SHALL PHILIPS, SONY, HP, MITSUBISHI, YAMAHA, RICOH OR THEIR RESPECTIVE OFFICERS, MEMBERS, REPRESENTATIVES, AGENTS, DIRECTORS, EQUIVALENT CORPORATE OFFICERS AND EMPLOYEES BE LIABLE TO ADOPTER OR ANY OF ADOPTER'S ASSOCIATED COMPANIES FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, LOSSES, COSTS OR EXPENSES ARISING UNDER OR RELATING TO (1) ANY

CLAIM BY A CONTENT PARTICIPANT AGAINST ADOPTER OR ANY OF ITS ASSOCIATED COMPANIES, WHETHER CONTEMPLATED HEREUNDER OR NOT, (2) ANY CLAIM THAT THE USE BY ADOPTER OR ANY OF ITS ASSOCIATED COMPANIES OF ANY OF THE TECHNOLOGIES IDENTIFIED IN THE COPY PROTECTION REQUIREMENTS INFRINGES ANY INTELLECTUAL PROPERTY RIGHT OR OTHER RIGHT OF ANY THIRD PARTY, OR (3) ANY OTHER CLAIM OTHERWISE RELATED TO OR ARISING UNDER THIS AGREEMENT OR TO THE COMPLIANCE WITH THE CONTENT PROTECTION REQUIREMENTS.

- 5.03 IF, FOR ANY REASON, ARTICLE 5.02 IS FOUND TO BE UNENFORCEABLE, IN NO EVENT SHALL PHILIPS, SONY, HP, MITSUBISHI, YAMAHA OR RICOH BE LIABLE TO ADOPTER OR ANY OF ITS ASSOCIATED COMPANIES UNDER ANY CAUSE OF ACTION ARISING UNDER OR RELATED TO THIS AGREEMENT OR TO THE COMPLIANCE BY ADOPTER OR ANY OF ITS ASSOCIATED COMPANIES WITH THE CONTENT PROTECTION REQUIREMENTS FOR ANY AMOUNT GREATER THAN THE TOTAL ROYALTIES PAID BY ADOPTER UNDER THE DVD+RW/+R RECORDER PATENT LICENSE AGREEMENT FOR THE IMMEDIATE PRECEDING CALENDAR YEAR.

Article 6 – Term and Termination

- 6.01 This Agreement shall enter into force on the Effective Date, as defined in the DVD+RW/+R Recorder Patent License Agreement and shall automatically terminate upon the expiry or termination of the DVD+RW/+R Recorder Patent License Agreement, unless terminated earlier in accordance with the provisions of this Article 6.
- 6.02 Without prejudice to Article 6.01, Philips may terminate this Agreement and the DVD+RW/+R Recorder Patent License Agreement at any time by means of written notice to Adopter in the event that Adopter fails to perform any of its obligations 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 Philips may be lawfully entitled, and all such remedies shall be cumulative.
- 6.03 Termination of this Agreement for whatever reason shall not affect Adopter's liability for breaches by Adopter of this Agreement that occurred prior to termination.

Article 7- Miscellaneous

- 7.01 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.
- 7.02 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 written notice to Adopter.
- 7.03 This Agreement shall be governed by and construed in accordance with the laws of The State of New York.

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 courts in New York, New York, provided always that, in case Philips is the plaintiff, Philips may, at its sole discretion, elect to submit such dispute to the competent courts in the venue of Adopter's registered office or in the territory where the non-compliant DVD+RW/+R Recorders are manufactured or sold or otherwise distributed.

Adopter hereby irrevocably waives any objection to the jurisdiction, process and venue of any such court and to the effectiveness, execution and enforcement of any order or judgement (including, but not limited to, a default judgement) of any such court in relation to this Agreement, to the maximum extent permitted by the law of any place whose law might be claimed to be applicable regarding the effectiveness, enforcement or execution of such order or judgement.

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

KONINKLIJKE PHILIPS ELECTRONICS [ADOPTER]
N.V.

Name:
Title:

Name:
Title:

Reference copy

Filename: ROW-USA-DVD+RW+R-
RecorderContentProtectionAgreement-12-2002
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DOCUMENTS\DVD+RW+R recorder (joint)\Current Versions
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