

VIDEO CD PLAYER PATENT LICENSE AGREEMENT

This Agreement is entered into this _____ day of _____, 2003 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, the Philips' group of companies has for many years been engaged in research and development of systems, in which signals encoded in digital form and stored on a disc are read and reproduced by means of devices using an optical read-out beam, and has acquired valuable know-how and expertise therein;

WHEREAS, one of the achievements of such research and development efforts has been a revolutionary high-fidelity sound storage and reproduction system, of which the specifications have been further defined in a joint research and development co-operation with Sony Corporation ("Sony") and which has been presented under the name "Compact Disc Digital Audio System" (CD-Audio System);

WHEREAS, on the basis of the CD-Audio System Philips and Sony have developed a further system, which has been presented under the name "Compact Disc Data System" (CD-ROM System) (the CD-Audio System and the CD-ROM System are collectively referred to as "the CD Systems");

WHEREAS, Philips owns certain patents relating to the CD Systems;

WHEREAS, Philips, France Télécom R&D ("France Télécom") and Institut für Rundfunktechnik GmbH ("IRT") have co-operated in the field of subband-coding for digitally encoding and decoding audio signals and have developed valuable technologies in this field;

WHEREAS, Philips owns certain patents in the field of subband-coding for digitally encoding and decoding audio signals;

WHEREAS, on the basis of the CD Systems, Philips, Sony, Matsushita Electric Industrial Co. Ltd. ("MEI") and Victor Company of Japan, Ltd. ("JVC") have defined an additional

CD System which has been presented under the name "Video CD System" (as hereinafter defined);

WHEREAS, Philips owns certain patents relating to the Video CD System;

WHEREAS, Licensee has requested from Philips a license under Philips' patents relating to Video CD Players (as hereinafter defined) and wishes such Video CD Players to be compatible with Video CD Discs (as hereinafter defined) conforming to the Video CD Standard Specifications (as hereinafter defined);

WHEREAS, Philips is willing to grant Licensee a license under its patents and to make available certain basic information relating to the Video CD System, 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:

1. Definitions

The following terms used in this Agreement shall have the respective meanings ascribed thereto below:

- 1.1 "Disc" shall mean a non-recordable reflective disc-shaped information carrier comprising any kind of information including, but not limited to, audio, video, text and/or data-related information, which is irreversibly stored in a layer during and as an integral part of the manufacturing process of the disc in a form which is optically readable by playback devices using a laser-beam.
- 1.2 "Player" shall mean a single spindle playback device for optically reading information stored on a Disc and converting such information into electrical signals for reproduction purposes.
- 1.3 "CD-Audio Disc" shall mean a Disc comprising audio information encoded in digital form, which is optically readable by a CD-Audio Player (as hereinafter defined) and which conforms to the CD-Audio Standard Specifications (as hereinafter defined).
- 1.4 "CD-Audio Player" shall mean a Player solely capable of reproducing information stored on a CD-Audio Disc and converting such information into electrical signals, in accordance with the CD-Audio Standard Specifications, which electrical signals are directly capable of and intended to be used for sound reproduction through amplifiers and loudspeakers.

- 1.5 “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.
- 1.6 “CD-ROM Standard Specifications” shall mean the specifications for the CD-ROM System as made available, modified or extended from time to time.
- 1.7 “CD-ROM-XA Specifications” shall mean the specifications of the System Description CD-ROM XA as made available, modified or extended from time to time.
- 1.8 “CD-I Bridge Specification” shall mean the specifications of the CD-I Bridge system as made available, modified or extended from time to time, specifying among other things the data retrieval structure of a CD-I Bridge disc, in addition to the CD-ROM-XA Specifications.
- The CD-Audio Standard Specifications, the CD-ROM Standard Specifications, the CD-ROM-XA Specifications and the CD-I Bridge Specification are collectively referred to as the “CD Standard Specifications”.
- 1.9 “Video CD Disc” shall mean a Disc comprising audio and video information, both encoded in digital form, which is optically readable by a Video CD Player and which conforms to the Video CD Standard Specifications.
- 1.10 “Video CD Player” shall mean a Player capable of reproducing information stored on a Video CD Disc and converting such information into electrical signals, in accordance with the Video CD Standard Specifications, which electrical signals are directly capable of and intended to be used for the audio-visual reproduction through television receivers and/or video monitors and audio equipment. A Video CD Player is, in addition to reproducing information stored on a Video CD Disc, capable of reproducing information stored on a CD-Audio Disc.
- 1.11 “Video CD System” shall mean the Video Compact Disc System which is capable of storing and reproducing audio and video signals in digital form from Video CD Discs, making use of video compression and decompression technology and subband-coding and subband-decoding technology.
- 1.12 “Video CD Standard Specifications” shall mean the specifications for the Video CD System as made available, modified or extended from time to time.
- 1.13 “Licensed Product(s)” shall mean Video CD Players, manufactured and/or sold in accordance with the provisions hereof, which are duly reported and for which the

royalties due hereunder are paid in accordance with the provisions of this Agreement.

- 1.14 “Licensed Patents” shall mean any one or more of the essential patents for the manufacture and/or sale of Video CD Players, as listed in Annex A. Licensed Patents shall not include the Non-Asserted Patents (as hereinafter defined) (if any) identified as such in Annex A.

From said Annex the expiration dates of the relevant patents can be derived, on a country-by-country basis.

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 compliance with the Video CD Standard Specifications.

Philips commissions an independent patent expert to review the European, Japanese and US patents listed as essential in Annex 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 Annex A 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.

In the event that Philips or any of its Associated Companies (as hereinafter defined) would have additional patents relevant to Video CD Players (other than patents acquired from third parties after the date of May 1, 1995) in its patent portfolio which are essential to the manufacture, sale or other disposal of Video CD Players and which have a filing date or are entitled to a priority date prior to May 1, 1995, but which have not been listed as essential patents in Annex A 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 Annex A hereto, will similarly be subject to the review by the independent patent expert 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 (www.licensing.philips.com) 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.

- 1.15 “Non-Asserted Patents” shall mean the patents essential for the manufacture, sale or other disposal of Video CD Players, which are jointly owned by Philips and other companies and identified as such in Annex A.
- 1.16 “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 held by the owning and/or controlling business entity.
- 1.17 “Territory” shall mean the geographic area known as the United States of America, its territories and possessions.

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 Patents (listed in Annex A) to manufacture Licensed Products within the Territory in accordance with the Video CD Standard Specifications and to sell or otherwise dispose of such Licensed Products so manufactured in all countries of the world.
- 2.2 Subject to the full and unconditional compliance by Licensee with all provisions hereof, Philips undertakes that it shall not, during the term of this Agreement assert any of the Non-Asserted Patents against the manufacture, sale or other disposal of Licensed Products by Licensee in accordance with the provisions of this Agreement. This undertaking shall be without prejudice to the position of the other co-owners as regards these jointly owned patents. Licensee agrees that, to the extent that it may already have obtained a license or an undertaking not to assert from another company under such jointly owned patents, this circumstance shall not affect the obligation of Licensee to pay the royalty as specified in Clause 5.2.
- 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, a non-exclusive, non-transferable license, on reasonable, non-discriminatory conditions, to manufacture Licensed Products in the Territory and to sell or otherwise dispose of Licensed Products so manufactured in all countries of the world under any patents not yet licensed hereunder and which are essential to the manufacture, sale or other disposal of Licensed Products, for

which Philips and/or its Associated Companies may hereafter acquire from third parties the right to grant licenses. It is acknowledged and agreed that in respect of the patents as may be licensed pursuant to this Clause 2.3, additional royalties may have to be paid over and above the royalties specified in Clause 5.2.

- 2.4 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 Video CD Discs and to sell or otherwise dispose of such Video CD Discs 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 such Video CD Discs, for which Philips and/or its Associated Companies have or may hereafter acquire the right to grant licenses.
- 2.5 In consideration of the undertakings set forth in Clauses 2.1, 2.2, 2.3 and 2.4 and similar undertakings by third party licensees of Philips or any of its Associated Companies and without prejudice to the provisions of Clause 11, 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 Video CD Players, non-exclusive, non-transferable licenses, on reasonable, non-discriminatory conditions comparable to those set forth herein, to manufacture, sell or otherwise dispose of Video CD 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 Video CD 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 Video CD Players. For the avoidance of doubt, the undertaking set out in this Clause 2.5 shall only apply to those companies which accept or have accepted a similar undertaking as given by Licensee in this Clause 2.5.
- 2.6 In addition, in consideration of the undertakings set forth in Clauses 2.1, 2.2, 2.3 and 2.4 and similar undertakings by third party licensees of Philips or any of its Associated Companies and without prejudice to the provisions of Clause 11, 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 Video CD Discs, non-exclusive, non-transferable licenses on reasonable, non-discriminatory conditions, to manufacture, sell or otherwise dispose of Video CD Discs, 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 Video CD Discs 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 Video CD Discs. For the avoidance of doubt, the undertaking set out in this Clause 2.6 shall only apply to those companies which accept or have accepted a similar undertaking as given by Licensee in this Clause 2.6.

2.7 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 Video CD Players.

2.8 IT IS EXPRESSLY ACKNOWLEDGED AND AGREED THAT:

- (I) THE LICENSES AND LICENSE UNDERTAKINGS HEREIN CONTAINED WITH RESPECT TO THE MANUFACTURE OF LICENSED PRODUCTS DO NOT EXTEND TO THE MANUFACTURE OF COMPONENTS FOR LICENSED PRODUCTS (INCLUDING BUT NOT LIMITED TO SEMICONDUCTOR DEVICES, INTEGRATED CIRCUITS, LASERS, MOTORS AND LENSES), EXCEPT FOR CIRCUITRY AND/OR SYSTEM ASPECTS SPECIFIC TO THE VIDEO CD SYSTEM (AND SIMILAR OPTICAL READ-OUT SYSTEMS), NOR DO THE LICENSE UNDERTAKINGS WITH RESPECT TO THE MANUFACTURE OF DISCS EXTEND TO MASTER RECORDING MACHINES, EQUIPMENT OR METHODS FOR THE REPLICATION OF DISCS, 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 LICENSED PRODUCT; AND
- (II) THE RIGHTS AND LICENSES GRANTED UNDER THIS AGREEMENT DO NOT EXTEND TO ANY COMBINATION OF ONE OR MORE LICENSED PRODUCTS OR DISCS WITH ANY OTHER ELEMENTS, PRODUCTS, SYSTEMS, EQUIPMENT OR SOFTWARE OTHER THAN THE COMBINATION OF A LICENSED PRODUCT AND A VIDEO CD DISC OR A CD-AUDIO DISC.

3. Standard Specifications, Technical Information and Support

3.1 Upon receipt of the payment provided for in Clause 5.1 and the payment provided for in Clause 5.12, Philips shall make available to Licensee for use by Licensee in

accordance with the provisions hereof, a copy of the then current version of the Video CD Standard Specifications and the CD Standard Specifications, together with such other information and support as Philips considers necessary for the interpretation and/or the correct application of the Video CD Standard Specifications.

- 3.2 Licensee shall be notified in writing of any addition or modification to the Video CD Standard Specifications and the CD Standard Specifications and shall be provided with relevant information in connection therewith.
- 3.3 Philips and Licensee undertake to keep each other generally informed of developments or initiatives which may have an impact on the Video CD Standard Specifications and the CD Standard Specifications.

4. Procurement from other Licensed Manufacturers

- 4.1 The rights granted to Licensee pursuant to Clause 2 and the right to use the information pursuant to Clause 3, include the right for Licensee to have third parties manufacture for Licensee's use and account, in accordance with the provisions hereof, such components as Licensee requires in connection with the manufacture of Licensed Products. Licensee shall ensure that such third parties use the information obtained by Licensee pursuant to Clause 3 only for the manufacture of such components for Licensed Products ordered by Licensee and further that such third party supplier has agreed in writing to comply with the confidentiality obligations of Clause 8 with respect to the use of the information supplied by Philips pursuant to Clause 3. Licensee shall notify Philips of the name of such third party supplier(s).
- 4.2 The rights granted to Licensee pursuant to Clause 2 and the right to use the information pursuant to Clause 3, include the right for Licensee to have Licensed Products made for it by third party manufacturers, duly licensed by Philips under an agreement similar to this Agreement, provided that Licensee will properly identify such third party manufacturer in the royalty reporting forms to be submitted to Philips hereunder, together with the quantities of Licensed Products so purchased. Conversely, Licensee shall refrain from purchasing or selling Video CD Players manufactured by any third party not licensed by Philips, where such purchase or sale would constitute an act of infringement of any of the Licensed Patents or Non-Asserted Patents.

5. Royalties, Reports and Payments

- 5.1 In consideration of the rights granted by Philips and the information to be provided by Philips hereunder, Licensee shall, upon execution of this Agreement, make a non-

refundable, non-recoupable payment of US\$ 25,000 (twenty-five thousand US Dollars) to Philips.

- 5.2 In further consideration of the rights granted hereunder by Philips to Licensee, Licensee shall pay to Philips a royalty for each Video CD Player 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 or Non-Asserted Patents relating to Video CD Players exists.

This royalty shall amount to US\$ 2.00 (two US Dollars) for each Video CD Player sold before July 1, 2003.

This royalty shall amount to US\$ 1.00 (one US Dollar) for each Video CD Player sold on or after July 1, 2003.

With respect to Video CD Players sold on or after July 1, 2003, provided that Licensee is in full compliance with its obligations under this Agreement, Licensee may apply a royalty rate of US\$ 0.60 (sixty US Dollar cents) for each Video CD Player.

In the event that Licensee fails to comply at any time with any of its obligations under this Agreement, the royalty rate of US\$ 1.00 (one US Dollar) shall apply to Licensee's manufacture and sale of Video CD Players instead of the royalty rate of US\$ 0.60 (sixty US Dollar cents), with immediate effect from the first day of the reporting period to which the occurrence of non-compliance relates until such moment that Philips confirms in writing to Licensee that Licensee's non-compliance has been remedied in full.

A Video CD Player shall be considered sold when invoiced or, if not invoiced, when delivered to a party other than Licensee.

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

No royalties shall be payable for Video CD Players purchased by Licensee on a "have made" basis in accordance with Clause 4 from third party manufacturers, duly licensed by Philips, provided that Licensee can demonstrate to Philips' satisfaction,

that such third party manufacturer has paid to Philips the royalties due in respect of such Video CD Players.

For the avoidance of doubt, in the event that the manufacture by Licensee of Video CD Players within the Territory would not infringe any of the Licensed Patents nor any of the Non-Asserted Patents, Licensee shall have no obligation to report and pay royalties in respect of Video CD Players 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 or Non-Asserted Patents exist, for final use in such country.

5.3 Within 30 days following 31 March, 30 June, 30 September and 31 December 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 written statement in the form as attached hereto as Annex B1 (“Royalty Reporting Form”) (or in such other form as may be subsequently communicated by Philips to Licensee) signed by a duly authorized officer on behalf of Licensee, setting forth with respect to the preceding quarterly period:

- (1) the quantities of Video CD Players manufactured by Licensee;
- (2) the quantities of Video CD Players purchased from other licensed manufacturers in accordance with the provisions of Clause 4, specified per such third party manufacturer who shall be named in the Royalty Reporting Form;
- (3) on a per-country basis:
 - (a) the quantities of Video CD Players sold or otherwise disposed of, specifying the identity of the buyers and the trademarks used on or in connection with the Video CD Players;
 - (b) the quantities of Video CD Players sold to other manufacturers, duly licensed by Philips, specifying the identity of such other manufacturers and the trademarks used on or in connection with the Video CD Players;
- (4) a computation of the royalties due under this Agreement.

Licensee shall pay the royalties due to Philips within 30 days after the end of each quarterly period in US Dollars to a bank account, as specified by Philips.

- 5.4 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 5.3, Licensee shall be obliged to pay to Philips within 30 days after the end of the relevant quarterly period for which the Royalty Reporting Form was not submitted, 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. 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, 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).
- 5.5 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 quarterly royalty statements as submitted by Licensee to Philips for the last four quarterly periods, 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 5.10.
- 5.6 Within 30 days following the expiration or termination of this Agreement, Licensee shall submit to Philips a certified report on the number of Video CD Players in

stock at the time of expiration or termination of this Agreement. Royalties, calculated in accordance with Clause 5.2 and Clause 5.12, shall be due and payable for all Video CD Players manufactured prior to, but remaining in stock with Licensee on the date of expiration or termination of this Agreement. For the avoidance of doubt, this Clause 5.6 shall be without prejudice to the provisions of Clause 11.6.

- 5.7 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.
- 5.8 All payments to Philips under this Agreement shall be made by transfer in US Dollar 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 US Dollar) 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.
- 5.9 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 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.
- 5.10 In order that the royalty statements provided for in this Clause 5 may be verified, Licensee shall keep complete and accurate books and records and shall keep such books and records available for inspection for a period of 5 years following the manufacture, sale or other disposal of each Video CD Player.

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 statements. 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 provide all such assistance in connection with such inspection as Philips and/or the auditor may require. The inspection shall be conducted at Philips' own expense, provided that in the event that Licensee has

failed to submit royalty statements and/or yearly written statement(s) by its external auditors, as provided for in Clause 5.3 and Clause 5.5, 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 make up for 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.

Philips' right of inspection as set out in this Clause 5.10 shall survive termination or expiration of this Agreement.

5.11 Without prejudice to the provisions of Clause 5.10, 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.

5.12 **OPTIONAL:**
CHOOSE BETWEEN OPTIONS A AND B

DELETE WORDING IN BOLD AND CLAUSE WHICH IS NOT APPLICABLE

Option A: from joint agreement to Philips only

As a condition precedent to the entry into force of this Agreement, Licensee shall pay to Philips the total amount of royalties due for the use of Philips', Sony's, MEI's, JVC's, France Télécom's and IRT's patents in respect of its production and sale of Video CD Players for which no royalties have been paid to Philips under a patent license agreement covering the use of the patents of Philips, Sony, MEI, JVC, France Télécom and IRT, prior to the date of execution of this Agreement.

The aforementioned amount shall be calculated by Philips on the basis of the number of Video CD Players manufactured and sold by Licensee prior to the date of execution hereof, by applying the royalty rates of:

- (a) 2.5% (two and a half per cent) of the Net Selling Price (as hereinafter defined) of each Video CD Player or US\$ 5.00 (five US Dollars), whichever amount is higher, for each Video CD Player sold before July 1, 2003; and
- (b) US\$ 1.25 (one US Dollar and twenty-five US Dollar cents) for each Video CD Player sold on or after July 1, 2003.

Philips will determine the number of Video CD Players manufactured and sold by Licensee prior to the date of execution hereof on the basis of Licensee's Royalty

Reporting Forms and, where available, the external auditor's statement submitted under the aforementioned patent license agreement. Where such reports are not available, Philips will determine the number of Video CD Players on the basis of information contained in Licensee's annual reports, or, where annual reports are not available, Philips will make said determination on the basis of market information obtained from independent market intelligence sources.

For the purpose of this Agreement, "Net Selling Price" shall mean the invoice price for the Video CD Player sold by Licensee to any third party on an arm's length basis during the term of this Agreement. Such price shall be exclusive of normal discounts actually granted, insurance fees, packing and transportation charges as invoiced to customers, and duties and sales taxes actually incurred and paid by Licensee in connection with the supply of such Video CD Player. In respect of sales by Licensee other than on an arm's length basis to or for resale by customers, the Net Selling Price shall be the average Net Selling Price of the preceding three months as defined above for similar Video CD Players sold on an arm's length basis to third party customers over the preceding three months.

Option B: from unlicensed to Philips only

As a condition precedent to the entry into force of this Agreement, Licensee shall submit to Philips a royalty statement in respect of Video CD Players manufactured and sold or otherwise disposed of by Licensee before the Effective Date (as hereinafter defined) of this Agreement in accordance with the provisions of Clause 5.3.

Within 7 days following the execution of this Agreement, Licensee shall pay to Philips the royalties for such Video CD Players, calculated by applying the royalty rates of:

- (a) US\$ 2.00 (two US Dollars) for each Video CD Player sold before July 1, 2003; and
- (b) US\$ 1.00 (one US Dollar) for each Video CD Player sold on or after July 1, 2003.

The royalty statement shall similarly be subject to Philips' right of audit as set out in Clause 5.10. 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 royalty statement is true, complete and accurate in every respect. Such statement must meet the requirements as specified in the Audit Guidelines.

6. Most Favourable Rate

- 6.1 In the event that licenses under the patents referred to in Clause 2 are granted by Philips for Video CD Players to a third party under substantially similar conditions, but at a royalty rate more favourable 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.

7. No Warranty and Indemnification

- 7.1 Whereas Philips has made efforts to ensure that the information to be supplied by it hereunder is complete and accurate, Philips makes no representation or warranty as to the completeness or accuracy of such information, nor with respect to the ability of Licensee to achieve interchangeability with respect to Video CD Players through the use of such information.
- 7.2 It is acknowledged by Licensee that third parties may own industrial and/or intellectual property rights in the field of Video CD Players. Philips makes no warranty whatsoever that the manufacture, sale or other disposal of Video CD Players or the use of information supplied by Philips hereunder, 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 Video CD Players manufactured, sold or otherwise disposed of by Licensee.

8. Confidentiality

- 8.1 Licensee shall at all times maintain strict confidentiality with regard to the Video CD Standard Specifications and the CD Standard Specifications, except for the CD-Audio Standard Specifications and the CD-ROM Standard Specifications, and shall not disclose same to any third party without the prior written consent of Philips.
- 8.2 Without prejudice to Clause 8.1, Licensee shall, during the term of this Agreement as specified in Clause 11.1 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 Video CD Players 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;
- (b) is or has become available to the public through no fault of Licensee;
- (c) was or is received from a third party who was under no confidentiality obligation in respect of such information.

In protecting information acquired from Philips or any of Philips' Associated Companies, Licensee shall take all necessary measures and precautions, including but not limited to measures requiring its present and future employees to give suitable undertakings of secrecy both for the period of their employment and thereafter, and shall protect such information in the same manner and with the same degree of care (but no less than a reasonable degree of care) as Licensee applies to its own information of a confidential nature.

- 8.3 The obligations concerning confidentiality contained in Clause 8.1 and Clause 8.2 shall survive termination of this Agreement.
- 8.4 Philips shall, during the term of this Agreement as specified in Clause 11.1 and for a period of 3 years thereafter, not disclose to any third party any confidential information obtained by Philips in connection with Clause 5.3, Clause 5.5, Clause 5.6 and/or Clause 5.12, 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 information referred to in sections (a), (b) and/or (c) of Clause 8.2.

9. Patent Markings

- 9.1 If requested by Philips, Licensee shall place appropriate patent markings on an exposed surface of the Licensed Products made, used, sold or otherwise disposed of hereunder. The content, form, location and language used in such markings shall be in accordance with the laws and practices of the country, where such markings are used.

10. No Assignment

- 10.1 This Agreement shall inure to the benefit of and be binding upon each of the parties hereto and their respective assignees. It may not be assigned in whole or in part by Licensee without the prior written consent of Philips.

11. Term and Termination

- 11.1 This Agreement shall enter into force on the "Effective Date", being the date first written above. 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 11, this Agreement shall remain in force until the expiration of a ten-year period from the Effective Date or until the expiration date of the last to expire Licensed Patent or Non-Asserted Patent in the Territory relating to Video CD Players, whichever comes first.

Upon the expiration of all Licensed Patents and Non-Asserted Patents in the Territory relating to Video CD Players, Philips shall not assert any of the Licensed Patents nor any of the Non-Asserted Patents against Licensee or Licensee's customers, provided that Licensee has entered into a contractual arrangement with Philips providing for the situation that, although the Video CD Players manufactured by Licensee are no longer covered by any of the Licensed Patents nor any of the Non-Asserted Patents in the Territory, such Video CD Players are being imported by Licensee or a third party into one or more other countries in which one or more of the Licensed Patents or one or more of the Non-Asserted Patents subsist.

- 11.2 Without prejudice to the provisions of Clause 11.3 through Clause 11.6, 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.
- 11.3 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.

- 11.4 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.
- 11.5 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 Video CD Players or Video CD Discs against Philips or any of its Associated Companies and Licensee refuses to license such patents on fair and reasonable conditions.
- 11.6 Upon the termination of this Agreement by Philips for any reason pursuant to Clause 11.2 through Clause 11.5, Licensee shall immediately cease the manufacture, sale or other disposal of Video CD Players in which any one or more of the Licensed Patents are used. Further, upon such termination, any and all amounts outstanding hereunder shall become immediately due and payable.
- 11.7 All provisions of this Agreement which are intended to survive (whether express or implied) the expiry or termination of this Agreement, shall so survive.

12. Miscellaneous

- 12.1 Licensee acknowledges that Philips may make modifications to the wording of the standard version of the Video CD Player Patent License Agreement in future. Licensee shall at all times have the option of entering into the latest version of the Video CD Player Patent License Agreement as published by Philips on its website or otherwise communicated by Philips to Licensee after the Effective Date of this Agreement.
- 12.2 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 International B.V.
 Intellectual Property & Standards - Legal Department
 Building WAH-2
 P.O. Box 220
 5600 AE Eindhoven
 The Netherlands
 Fax: +31 40 2743489
 with a copy to:

Philips Intellectual Property & Standards
 345 Scarborough Road
 Briarcliff Manor, NY 10510-8001

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

- 12.3 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.
- 12.4 Nothing contained in this Agreement shall be construed:
- (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 of 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 Licensed Product. This sub-clause (d) shall however not be considered a prohibition for Licensee to manufacture Licensed Products as part of and incorporated in combination products.

12.5 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.

12.6 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.

12.7 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 any state or federal courts in The State of New York, provided always that, in case Philips is the plaintiff, Philips may, at its sole discretion, submit any such dispute either to the state or federal courts in the venue of Licensee's registered office, or to any of the state or federal courts in the Territory having jurisdiction. Licensee 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 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, the laws of which might be claimed to be applicable regarding the effectiveness, enforcement or execution of such order or judgment.

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

Filename: USA-VCDPlayer-PH-09-2003
Directory: L:\licensing\IP&S WEBSITE LICENSE
DOCUMENTS\Video CD Player (Philips ONLY)\Current version
Template: C:\Documents and Settings\nlv10480\Application
Data\Microsoft\Templates\normal.dot
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