

## CD PLAYER PATENT LICENSE AGREEMENT

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 2005 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 collectively hereinafter referred to as "the CD Systems");

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

WHEREAS, Licensee has requested Philips a license under Philips' patents relating to CD-Players and wishes such playback devices to be interchangeable with playback devices conforming to the Standard Specifications for any of the relevant CD Systems; and

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

### Article 1 - Definitions

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

- 1.01 **"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.

- 1.02 **“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).
- 1.03 **“CD-Audio Maxi-Single”** shall mean a CD-Audio Disc which, in addition, conforms to the CD-Audio Maxi-Single Standard Specifications.
- 1.04 **“CD-ROM Disc”** shall mean a Disc comprising information encoded in digital form, which is optically readable by a CD-ROM Player (as hereinafter defined) and which conforms to the CD-ROM Standard Specifications (as hereinafter defined).
- 1.05 **“CD-Audio Standard Specifications”** shall mean the specifications for the CD-Audio System, including 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.
- 1.06 **“CD-Audio Maxi-Single Standard Specifications”** shall mean the specifications for the CD-Audio Maxi-Single system, specifying among other things a maximum playing time of 30 minutes, as made available, modified or extended from time to time. For the purpose of this Agreement, the CD-Audio Maxi-Single Standard Specifications shall be considered to form part of the CD-Audio Standard Specifications.
- 1.07 **“CD-ROM Standard Specifications”** shall mean the specifications for the CD-ROM System as made available, modified or extended from time to time.

The CD-Audio, CD-Audio Maxi-Single and CD-ROM Standard Specifications together referred to as the “CD Standard Specifications”.

- 1.08 **“Player”** shall mean a playback device for optically reading information stored on a Disc and converting such information into electrical signals for reproduction purposes.
- 1.09 **“CD-Audio Player”** shall mean a Player solely capable of reproducing information stored on a CD-Audio Disc or CD-Audio Maxi-Single and converting such information into electrical signals, in accordance with the CD-Audio Standard Specifications, which electrical signals are directly capable and intended to be used for sound reproduction through amplifiers and loudspeakers.
- 1.10 **“CD-ROM Player”** shall mean a Player solely capable of reproducing information stored on a CD-ROM Disc and converting such information into electrical signals, in accordance with the CD-ROM Standard Specifications, which electrical signals are directly capable and intended to be used for reproduction of computer related data through data handling and/or data processing equipment.
- 1.11 **“Combi-Player”** shall mean a Player which is any combination of a CD-Audio Player and a CD-ROM Player.

A CD-Audio Player, a CD-ROM Player and a Combi-Player together referred to as “CD-Players”.

- 1.12 **“CD-Audio Text Module”** shall mean a signal processing function (including stand-alone units, plug-in printed circuit boards and/or software implementations) capable of co-operating directly or indirectly with a CD-Audio Player and/or a CD-ROM Player, which comprises at least those dedicated signal processing means, which are commonly prescribed in the respective CD Standard Specifications and having a digital processing function and a control input interface function. Said digital processing function is capable of converting text display information read out by a CD-Audio Player and/or CD-ROM Player from a CD-Audio Disc with CD Text information into electrical display signals, by means as prescribed in Chapter 5.8 of the CD-Audio Standard Specifications, which display signals are directly capable and intended to be used for reproduction of such display information.
- 1.13 **“Licensed Product”** shall mean (i) a CD-Audio Player, (ii) a CD-ROM Player, (iii) a Combi-Player, such players being in complete ready-to-use form, whether as a stand-alone unit or as a combination of separate interfaceable units or as part of an extended system, and/or (iv) a CD-Audio Text Module, as correspond with the Licensed Patents selected by Licensee pursuant to Article 1.14, manufactured and/or sold in accordance with the provisions hereof, which has been duly reported and on which the royalties due hereunder are paid in accordance with the provisions of this Agreement.

A CD-Audio Player may comprise signal processing means for the reproduction of sound related video picture information encoded in the subcode for user definable data of a CD-Audio Disc.

Any Player in ready-to-use form referred to in this Article 1.13 (i), (ii) and (iii) shall, in addition to the dedicated signal processing means necessary for reproducing the signals as prescribed in the respective CD Standard Specifications, as a minimum requirement, include power supply and control means, either incorporated in, or connected to a Player.

- 1.14 **“Licensed Patents”** shall mean the patents listed in the relevant Exhibits (with the exception of the Non-Asserted Patents (as hereinafter defined) identified as such in Exhibits E1 and E2) as selected by Licensee pursuant to the Options below.

**Option A1:** Licensee chooses the essential patents listed in Exhibit E1, for the use of any one or more of these patents, exclusively for the manufacture and/or sale of CD-Audio Players, which conform to the CD-Audio Standard Specifications.

**Option A2:** Licensee chooses the essential patents listed in Exhibit E1 and Exhibit E2, for the use of any one or more of these patents, exclusively for the manufacture and/or sale of CD-ROM Players, which conform to the CD-ROM Standard Specifications.

**Option A3:** Licensee chooses the essential patents listed in Exhibit E1 and/or Exhibit E2, for the use of any one or more of these patents, exclusively for the manufacture and/or sale of Combi-Players, which conform to any of the relevant CD Standard Specifications.

**Option A4:** Licensee chooses, in addition to Option A1, A2 and/or A3, the essential patents listed in Exhibit E3, for the use of any one or more of these patents, exclusively for the manufacture and/or sale of CD-Players capable of reading CD Text information and/or CD-Audio Text Modules.

**Option A5:** Licensee chooses the non-essential patents relevant to CD-Players as shown on, but not limited to the patents on, Exhibit E4, which non-essential patents have a filing date or are entitled to a so-called priority date prior to January 1, 1983, for the use of any one or more of these patents, exclusively for the manufacture and/or sale of CD-Players, which conform to any of the relevant CD Standard Specifications.

Option(s):     A1             A2             A3             A4             A5

(please tick any combination as appropriate)

Initial: \_\_\_\_\_

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 Standard Specifications defining the relevant CD System(s).

Philips will commission an independent patent expert to review the European, Japanese and US patents listed as essential in Exhibits E1, E2 and E3 in order to confirm the essentiality of such patents. In the event that such independent expert would find that any of the patents would not qualify as essential as defined in this Agreement, Philips shall delete such patent (as well as the equivalent national patents) from the relevant Exhibit and such patent will be put on the relevant Exhibit of non-essential patents. Any such finding and deletion however, shall not affect the obligation of Licensee to pay the royalty on each Licensed Product as specified in Article 5.02, provided that, in the event that the manufacture by Licensee of Licensed Products within the Territory would not infringe any of the Licensed Patents nor any of the Non-Asserted Patents, Licensee shall have no obligation to pay royalties in respect of Licensed Products manufactured within the Territory and which are directly sold for final use within the Territory or directly exported for final use to a country in which no such patents subsist. Notwithstanding such deletion, Licensee shall retain the right to continue the use of such deleted patent(s) in accordance with 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 CD-Audio Players (except for CD Text functionality and other than patents acquired from third parties after the date of January 1, 1983), CD-ROM Players (other than patents acquired from third parties after the date of January 1, 1985) or CD Text functionality of CD-Players and/or CD-Audio Text Modules (other than patents acquired from third parties after the date of October 1, 1996) in its patent portfolio which are essential to the manufacture, sale or other disposal of Licensed Products and which have a filing date or are entitled to a so-called priority date prior to either January 1, 1983 for CD-Audio Players, January 1, 1985 for CD-ROM Players or October 1, 1996 for CD Text functionality of CD-Players and/or CD-Audio Text Modules, but which have not been listed as essential patents in the respective Exhibits hereto, Philips will notify Licensee accordingly and such additional patents will be added to the Licensed Patents. Any patents as may be added as essential patents to any of the respective Exhibits 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 the 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](http://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 execution of this Agreement.

- 1.15 **“Non-Asserted Patents”** shall mean the patents essential for the manufacture, sale or other disposal of CD-Players, which are jointly owned by Philips and other companies and identified as such in Exhibit E1 and E2.
- 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.

#### Article 2 – Grant of Rights

Subject to the conditions of this Agreement:

- 2.01 For the term of this Agreement, Philips hereby grants to Licensee a non-exclusive, non-transferable license under the Licensed Patents selected by Licensee pursuant to Article 1.14 to manufacture Licensed Products within the Territory in accordance with the relevant CD Standard Specifications and to sell or otherwise dispose of Licensed Products so manufactured in all countries of the world.
- 2.02 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, subject to the full and unconditional compliance by Licensee with all provisions hereof. 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 Article 5.02.
- 2.03 Philips further agrees, for as long as this Agreement is in force and effect and Licensee is in full compliance with its obligations hereunder, 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 has or may hereafter acquire from third parties the free right to grant licenses. It is acknowledged and agreed that in respect

of the patents as may be licensed pursuant to this Article 2.03, additional royalties may have to be paid over and above the royalties specified in Article 5.02.

- 2.04 Philips further agrees, for as long as this Agreement is in force and effect and Licensee is in full compliance with its obligations hereunder, to grant Licensee upon Licensee's request, on reasonable, non-discriminatory conditions, a non-exclusive, non-transferable license to manufacture CD-Audio Discs, CD-Audio Maxi-Singles and CD-ROM Discs in accordance with the relevant CD Standard Specifications and to sell or otherwise dispose of such 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 Discs, for which Philips and its Associated Companies have or may hereafter acquire the free right to grant licenses.
- 2.05 In consideration of the undertakings set forth in Articles 2.01, 2.02, 2.03 and 2.04 and similar undertakings by third party licensees of Philips and without prejudice to the provisions of Article 11, for a period of ten years from the Effective Date (as hereinafter defined) 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 or an Associated Company of Philips concerning CD-Players and/or CD-Audio Text Modules, non-exclusive, non-transferable licenses, on reasonable, non-discriminatory conditions comparable to those set forth herein, to manufacture, sell or otherwise dispose of CD-Players and/or CD-Audio Text Modules, under any and all present and future patents, for which Licensee has or may hereafter acquire the right to grant licenses and which are essential to the manufacture, sale or other disposal of such CD-Players and/or CD-Audio Text Modules as correspond with the Licensed Patents selected by Licensee pursuant to Article 1.14 and which patents were first filed in any country of the world prior to the date of termination of this Agreement. For the avoidance of doubt, the undertaking set out in the preceding sentence shall only apply to those companies which have made the same selection pursuant to Article 1.14 as Licensee and which in that respect accept or have accepted a similar undertaking as contained in this Article 2.05.
- 2.06 In addition, in consideration of the undertakings set forth in Articles 2.01, 2.02 and 2.04 and similar undertakings by third party licensees of Philips or any of its Associated Companies and without prejudice to the provisions of Article 11, for a period of ten years from the Effective Date, Licensee agrees to grant to Philips and to other third parties who have entered or will enter into a license agreement with Philips concerning Discs, non-exclusive, non-transferable licenses on reasonable, non-discriminatory conditions, to manufacture, sell or otherwise dispose of CD-Audio Discs, CD-Audio Maxi-Singles and CD-ROM 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 such Discs and which patents were first filed in any country of the world prior to the date of termination of this Agreement. For the avoidance of doubt, the undertaking set out in the preceding sentence shall only apply to those companies which accept or have accepted a similar undertaking as contained in this Article 2.06.
- 2.07 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 CD-Players and/or CD-Audio Text Modules.

In consideration of Philips' undertaking as set out in the preceding paragraph, Licensee undertakes that all of its Associated Companies which have or may hereafter acquire patents essential to the manufacture, sale or other disposal of CD-Players and/or CD-Audio Text Modules and which patents were first filed in any country of the world prior to the date of termination of this Agreement, shall make available licenses under such patents, on reasonable, non-discriminatory conditions comparable to those set forth herein to Philips, any of Philips' Associated Companies and to other third parties who have entered or will enter into a license agreement with Philips or an Associated Company of Philips in respect of CD-Players and/or CD-Audio Text Modules.

2.08 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 PATENTS RELATING TO CIRCUITRY AND/OR SYSTEM ASPECTS SPECIFIC TO THE CD SYSTEMS (AND SIMILAR OPTICAL READ-OUT SYSTEMS), NOR DO THE LICENSE UNDERTAKINGS WITH RESPECT TO THE MANUFACTURE OF DISCS EXTEND TO 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 APPLY ONLY TO SUCH PART OF A COMBINATION OF ONE OR MORE LICENSED PRODUCTS OR DISCS WITH ANY OTHER ELEMENTS, PRODUCTS, SYSTEMS, EQUIPMENT OR SOFTWARE WHICH IS IN COMPLIANCE WITH THE CD STANDARD SPECIFICATIONS.

**Article 3 - Standard Specifications,  
Technical Information and Support**

- 3.01 Upon receipt of the payment provided for in Article 5.01 and the payment provided for in Article 5.13, Philips shall make available to Licensee for use by Licensee a copy of the then current version of the respective CD Standard Specifications, as correspond with the Licensed Patents selected by Licensee pursuant to Article 1.14, together with such other information and support as Philips considers necessary for the interpretation and/or correct application of the relevant CD Standard Specifications.
- 3.02 Licensee shall be notified in writing of any addition or modification to any of the relevant CD Standard Specifications and shall be provided with relevant information in connection therewith.

- 3.03 Both Philips and Licensee undertake to keep each other generally informed of developments or initiatives, which may have an impact on the relevant CD Standard Specifications.

#### **Article 4 - Have Made**

- 4.01 The rights granted to Licensee pursuant to Article 2 and the right to use the information pursuant to Article 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 Article 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 the restrictions concerning the use of the information supplied by Philips pursuant to Article 3. Licensee shall notify Philips of the name of such third party supplier(s).
- 4.02 The rights granted to Licensee pursuant to Article 2 and the right to use the information pursuant to Article 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 CD-Players and/or CD-Audio Text Modules 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.

#### **Article 5 - Royalties, Reports and Payments**

- 5.01 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\$ 5,000 (five thousand US Dollars) to Philips.
- 5.02 In further consideration of the rights granted hereunder by Philips to Licensee pursuant to the Options A1, A2, A3 and A4 (as selected by Licensee), Licensee agrees to pay to Philips a royalty on each Licensed Product sold by Licensee, in which any one or more of the Licensed Patents or any one or more of the Non-Asserted Patents is (are) used, irrespective of whether such patent(s) is (are) used in the country of manufacture, sale or other disposal.

The royalty shall amount to 1.5% (one and a half per cent) of the Net Selling Price (as hereinafter defined) of each Licensed Product.

In the event that Licensee selects Option A5, then, in further consideration of the rights granted under said Option, Licensee shall, in addition to the royalty specified in the preceding paragraph, pay to Philips a fixed quarterly fee. The level of said quarterly fee shall correspond with Licensee's turnover in respect of CD-Players and CD-Audio Text Modules realised during each relevant calendar quarter as per the schedule below:



Turn over per quarter	Fixed additional royalty per quarter
< US\$ 0.5 million	US\$ 1,000
< US\$ 2 million	US\$ 2,000
< US\$ 5 million	US\$ 5,000
≥ US\$ 5 million	US\$ 10,000

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

No royalties shall be payable on Licensed Products purchased by Licensee on a "have made" basis in accordance with Article 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 Licensed Products.

For the avoidance of doubt, in the event that the manufacture by Licensee of Licensed Products within the Territory would not infringe any of the Licensed Patents nor any of the Non-Asserted Patents, Licensee shall have no obligation to pay royalties in respect of Licensed Products manufactured within the Territory and which are directly sold for final use within the Territory or directly exported for final use to a country in which no such patents subsist.

- 5.03 For the purpose of this Agreement, "Net Selling Price" shall mean the invoice price for the Licensed Products 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 Licensed Products. 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 as defined above for similar Licensed Products sold on an arm's length basis to third party customers over the preceding three months.
- 5.04 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 Exhibit C2 (Royalty Reporting Form) signed by a duly authorized officer on behalf of Licensee, setting forth with respect to the preceding quarterly period:
- (1) the quantities of CD-Players and CD-Audio Text Modules manufactured by Licensee, specified per individual type;
  - (2) the quantities of CD-Players and CD-Audio Text Modules purchased from other licensed manufacturers in accordance with the provisions of Article 4, specified per individual type;
  - (3) on a per-country basis, specifying for each individual type of CD-Player and CD-Audio Text Module:

- (a) the quantities of CD-Players and CD-Audio Text Modules sold or otherwise disposed of, specifying the identity of the buyers and the trademarks used on or in connection with the CD-Players and CD-Audio Text Modules;
  - (b) where applicable, the Net Selling Price of the CD-Players and CD-Audio Text Modules sold or otherwise disposed of, expressed in the currency as used in the transaction(s);
  - (c) the quantities of CD-Players and CD-Audio Text Modules 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 CD-Players and CD-Audio Text Modules;
- (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.

- 5.05 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 Article 5.04, 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 (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 Article 5.04); the payment by Licensee of an Advance shall not affect Licensee's obligation to submit a Royalty Reporting Form; the payment by Licensee of an Advance shall be without prejudice to any other rights or remedies of Philips, including, without limitation, Philips' right to charge 2% 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).

- 5.06 Licensee shall submit to Philips, once per calendar year, an audit statement by its external auditors, who shall be public certified auditors, 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 Philips' requirements as specified in the Audit Guidelines attached hereto as Exhibit C1 and shall be submitted to Philips within 90 days following the end of Licensee's financial year. The correctness of this audit statement shall be verified by Philips by means of a work paper review, conducted by one of the public certified auditors selected by Philips. Notwithstanding this audit statement, Philips reserves the right to inspect the books and records of Licensee from time to time in accordance with Article 5.11.
- 5.07 Within 30 days following the expiration or termination of this Agreement, Licensee shall submit to Philips a certified report on the number of Licensed Products in stock at the time of expiration or termination of this Agreement. Royalties, calculated in accordance with Article 5.02 and Article 5.13, shall be due and payable on all Licensed Products manufactured prior to, but remaining in stock with Licensee on the date of expiration or termination of this Agreement and shall be calculated on the Fair Market Value (as hereinafter defined) of each such Licensed Product remaining in stock. For each such Licensed Products still in stock "Fair Market Value" shall, for the purpose of this Agreement, mean the average Net Selling Price of the Licensed Products which are identical or substantially similar to such Licensed Products still in stock, sold during the 3 months prior to the expiration or termination of this Agreement. For the purpose of royalty computation all Licensed Products in stock will be deemed to have been sold or otherwise disposed of in the same countries and in proportionally the same quantities as in the last two full reporting quarters during the term of this Agreement. For the avoidance of doubt, this Article 5.07 shall be without prejudice to the provisions of Article 11.06.
- 5.08 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.
- 5.09 All payments to Philips under this Agreement shall be made by transfer in such 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 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.
- 5.10 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. However, in the event that the government of a country imposes any income 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.

- 5.11 In order that the royalty statements provided for in this Article 5 may be verified, Licensee shall keep complete and accurate books and records and shall keep the books and records available for a period of 5 years following the manufacture, sale or other disposal of each Licensed Product.

In order to verify the correctness of the aforementioned royalty statements, Philips shall have the right to inspect the books and records of Licensee from time to time. Any such inspection shall take place no more than once per calendar year and shall be conducted by a public certified 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 Article 5.04 and Article 5.06, 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, 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 Article 5.11 shall survive termination or expiration of this Agreement.

- 5.12 Without prejudice to the provisions of Article 5.11, 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.

- 5.13 **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' and Sony's patents in respect of its production and sale of CD-Players and CD-Audio Text Modules for which no royalties have been paid to Philips under a patent license agreement covering the use of the patents of Philips and Sony, prior to the date of execution of this Agreement.

The aforementioned amount shall be calculated by Philips on the basis of the number of CD-Players and CD-Audio Text Modules manufactured and sold by Licensee prior to the date of execution hereof, by applying the royalty rate of 2% of the Net Selling Price of each such CD-Player and CD-Audio Text Module. Philips will determine the number of CD-Players and CD-Audio Text Modules 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 CD-Players and CD-Audio Text Modules 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.

**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 CD-Players and CD-Audio Text Modules manufactured and sold or otherwise disposed of by Licensee before the Effective Date of this Agreement in accordance with the provisions of Article 5.04. Within 7 days following the execution of this Agreement, Licensee shall pay to Philips the royalties on such CD-Players and CD-Audio Text Modules, calculated in accordance with the provisions of Article 5.02. The royalty statement shall similarly be subject to Philips' right of audit as set out in Article 5.11. Within 45 days following the execution of this Agreement, Licensee shall submit to Philips an audit statement by its external auditors, who shall be public certified auditors, confirming that this royalty statement is true, complete and accurate in every respect.

**Article 6 - Most Favourable Conditions**

- 6.01 In the event that licenses under the patents referred to in Article 2 are granted by Philips for Licensed Products 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 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.

**Article 7 – No Warranty and Indemnification**

- 7.01 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 accuracy or completeness of such information, nor with respect to the ability of Licensee to achieve interchangeability with respect to Licensed Products through the use of such information. Philips makes no warranty whatsoever that the use of information supplied by Philips does not infringe or may not cause infringement of any industrial or intellectual property rights owned or controlled by third parties, or any industrial or intellectual property rights owned or controlled by Philips or its Associated Companies not licensed pursuant to Article 2.
- 7.02 It is acknowledged by Licensee that third parties may own industrial and/or intellectual property rights in the field of CD-Players and/or CD-Audio Text Modules. Licensee acknowledges and agrees that Philips makes no warranty whatsoever that the manufacture, sale or other disposal of any Licensed Product does not infringe or will not cause infringement of any industrial and/or intellectual property rights other than 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 CD-Players and/or CD-Audio Text Modules manufactured, sold or otherwise disposed of by Licensee.

### **Article 8 - Confidentiality**

- 8.01 Licensee shall, during the term of this Agreement as specified in Article 11.01 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 other purpose than the manufacture or disposal of Licensed Products in accordance with 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) with which Licensee protects its own information of a confidential nature.

- 8.02 Philips shall, during the term of this Agreement as specified in Article 11.01 and for a period of 3 years thereafter, not disclose to any third party any confidential information obtained by Philips in connection with Article 5.04 and/or Article 5.06, 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 Article 8.01.

### **Article 9 - Patent Markings**

- 9.01 If requested by Philips, Licensee shall place appropriate patent markings on an exposed surface of the Licensed Products made, 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.

### **Article 10 – No Assignment**

- 10.01 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.

### **Article 11 - Term and Termination**

- 11.01 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. This Agreement shall remain in force for a period of 10 years from the Effective Date unless terminated earlier in accordance with the provisions of this Article 11.
- 11.02 Without prejudice to the provisions of Article 11.03 through 11.06, each party may terminate this Agreement at any time by means of 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.
- 11.03 Philips may terminate this Agreement forthwith by means of notice in writing 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.
- 11.04 Additionally, insofar as legally permitted, Philips may terminate this Agreement at any time by means of 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 a serious act of piracy with respect to copyrights of third parties.
- 11.05 Philips shall have the right to terminate this Agreement forthwith or to revoke the license granted under any of Philips’ patents in the event that Licensee brings a claim for infringement of any of Licensee’s essential patents relating to CD-Players and/or CD-Audio Text Modules or Discs against Philips or any of its Associated Companies and Licensee refuses to license such patents on fair and reasonable conditions.
- 11.06 Upon the termination of this Agreement by Philips for any reason pursuant to Article 11.02 through 11.05, Licensee shall immediately cease the manufacture, sale or other disposal of CD-Players and/or CD-Audio Text Modules 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.
- 11.07 All provisions of this Agreement which are intended to survive (whether express or implied) the expiry or termination of this Agreement, shall so survive.

**Article 12 - Miscellaneous**

12.01 Any notice required under this Agreement to be sent by either party shall be given in writing by means of a letter or facsimile 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  
 P.O. Box 80002, Building SFF-8  
 5600 JB Eindhoven  
 The Netherlands  
 Fax: +31 40 2734131

with a copy to:

U.S. Philips Corporation  
 580 White Plains Road  
 Tarrytown, New York 10591

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

12.02 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. Neither party shall be bound by any obligation, warranty, waiver, release or representation except as expressly provided herein, or as may subsequently be agreed in writing between the parties.

12.03 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 or 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.

12.04 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.

12.05 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 Licensee.

12.06 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: