

# Registration Agreement for CD-R Disc Traders

Koninklijke Philips Electronics N.V.

and

[Registered Trader]

**PHILIPS**

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# REGISTRATION AGREEMENT FOR CD-R DISC TRADERS

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

**Effective Date:** \_\_\_\_\_

**Registered Trader:** \_\_\_\_\_

**Registered Trader's Registered Office Address:**

**Registered Trader's Notice Address and Fax Number**

Address:

Fax Number:

**Country of Registration:** \_\_\_\_\_

**Jurisdiction of Governing Law:**

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

**Court/s with Primary Jurisdiction:**

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

**Arbitration in the Hong Kong SAR**

(when the Country of Registration is the People's Republic of China)

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# REGISTRATION AGREEMENT FOR CD-R DISC TRADERS

This Registration Agreement is entered into on the Effective Date by and between

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

and

**REGISTERED TRADER**, having its registered office at Registered Trader’s Registered Office Address.

WHEREAS, Philips and Sony Corporation have developed a recordable disc system known as the “Compact Disc Recordable System” or “CD-R System”;

WHEREAS, Philips owns certain patents essential to the CD-R System and to the manufacture of CD-R Discs;

WHEREAS, Philips has created a batch-based licensing system based on registration by manufacturers and traders of CD-R Discs, enabling those manufacturers and traders who have registered with Philips to apply for licenses on a per-batch basis and to apply for LSCDs, as further detailed in the “Philips CD-R Disc Batch-Based Licensing System Guide” attached hereto as Annex A;

WHEREAS, registration under the batch-based licensing system also enables traders in CD-R Discs to assume responsibility for the payment of royalties on Per-Batch Licenses granted to registered manufacturers, where the LSCD identifies the registered trader as the recipient of the relevant batch of CD-R Discs;

WHEREAS, Registered Trader and Philips enter into this Registration Agreement to confirm the terms and conditions under which Registered Trader may request and may obtain Per-Batch Licenses and LSCDs, the current form of the PBL Standard Terms and Conditions and an LSCD, the effects of a failure to comply with this Registration Agreement, and the conditions under which Philips may revise various aspects of the batch-based licensing system so as to maintain or improve the integrity of the system for manufacturers, traders and consumers of CD-R Discs;

WHEREAS, this Registration Agreement is not intended to cover CD-R HC Discs and CD-R MS Discs, in relation to which Registered Trader may separately enter into a registration agreement with Philips in order to request and obtain Per-Batch Licenses and LSCDs;

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WHEREAS, to simplify cross-referencing with other agreements, there are some paragraph numbers in this Registration Agreement that are not used and that have accordingly been marked "SPARE".

NOW, THEREFORE, in consideration of the mutual obligations and covenants set forth in this Registration Agreement, the parties have agreed as follows:

# 1 Interpretation

## 1.1 Definitions

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

**"Application"** shall mean a set of information relating to the matters listed in Clause 5.6, and submitted by Registered Trader to Philips when applying for a Per-Batch License or an LSCD.

**"Application Number"** shall mean a unique set of identification characters assigned by Philips to each Application.

**"Associated Company"**, in relation to either party, shall mean any one or more business entities:

- (a) owned or controlled by that party;
- (b) owning or controlling that party; or
- (c) owned or controlled by the business entity owning or controlling that party,

at the relevant time.

For the purposes of this Registration Agreement, a business entity shall be deemed to own or to control another business entity if more than 50% 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% of the ownership of or control in the latter business entity) is directly or indirectly held by the owning and/or controlling business entity.

**"Audit Guide"** shall mean the document entitled "Audit Guide", the current form of which is attached hereto as Annex G, as amended by Philips from time to time.

**"Authorised Employee"** shall mean a person authorised by Registered Trader to request and accept Per-Batch Licenses on behalf of Registered Trader.

**"Business Day"** shall mean a Day that is:

- (a) not a Saturday or Sunday in The Netherlands; and
- (b) not a public holiday in The Netherlands; and
- (c) not on the same date as a public holiday in Hong Kong.

**"CD-Audio Standard Specifications and CD-ROM Standard Specifications"** shall mean the specifications for the CD-Audio system and the CD-ROM system respectively (hereinafter collectively referred to as the **"CD Standard Specifications"**), as modified or extended by Philips from time to time.

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“**CD-R Disc**” shall mean a reflective disc-shaped information carrier conforming to the CD-R Standard Specifications.

“**CD-R HC Disc**” shall mean a reflective disc-shaped information carrier conforming to the CD-R HC Standard Specifications.

“**CD-R HC Standard Specifications**” shall mean the specifications “High Capacity Recordable Disc System”, as modified or extended by Philips from time to time.

“**CD-R High Capacity System**” shall mean the extension of the Compact Disc Recordable System, which is capable of recording, irreversibly storing on, and subsequently reproducing signals in, digital form from CD-R HC Discs.

“**CD-R MS Disc**” shall mean a reflective disc-shaped information carrier conforming to the CD-R MS Standard Specifications.

“**CD-R MS Standard Specifications**” shall mean the specifications for the Recordable Compact Disc Systems, Part II : CD-R, Volume 2, Multi Speed, as modified or extended by Philips from time.

“**CD-R Multispeed System**” shall mean the extension of the Compact Disc Recordable System, which is capable of recording, irreversibly storing on, and subsequently reproducing signals in, digital form from CD-R MS Discs.

“**CD-R Standard Specifications**” shall mean the specifications for the CD-R System, Part II CD-R, as modified or extended by Philips from time to time.

“**CD-R System**” shall mean the Compact Disc Recordable System, which is capable of recording, irreversibly storing on, and subsequently reproducing signals in, digital form from CD-R Discs, compatible with one of the CD systems.

“**Confirmation Letter**” shall mean the annual letter written by Registered Trader confirming that all Shipments in the preceding calendar year where covered by an LSCD. The current form of the Confirmation Letter is attached hereto as Annex F, and may be amended by Philips from time to time in accordance with the provisions of Clause 21.1(f).

“**Compact Disc Logo Guide**” shall mean the document entitled “Compact Disc Logo Guide”, as published by Philips on the Website and as amended by Philips from time to time.

“**Compliance Rate**” shall mean the compliance royalty rate of US \$0.025 per CD-R Disc.

“**Country of Registration**” shall have the meaning set out at the head of this Registration Agreement.

“**Court/s with Primary Jurisdiction**” shall have the meaning set out at the head of this Registration Agreement.

“**Day**” shall mean, unless expressly provided otherwise, a calendar day in The Netherlands.

“**Designated Internet Service Portal**” or “**DISP**” shall mean the Internet service portal designated by Philips for communicating with Registered Trader to process Per-Batch Licenses, LSCDs, and other matters relevant to this Registration Agreement.

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**“Effective Date”** shall have the meaning set out at the head of this Registration Agreement.

**“Essential Patent(s)”** shall mean any one or more of the Patents of which Philips, or any of Philips’ Associated Companies, is the registered proprietor (but excluding patents acquired by Philips on or after 1 January 2006), the use of which is necessary, either directly or as a practical matter, for compliance with the CD-R Standard Specifications, as specified in Annex B. The expiry dates of the Essential Patents on a country-by-country basis are as specified in Annex B.

**“Grant Country(ies)”** shall mean the country or countries specified as such in an application for a Per-Batch License or an LSCD.

**“Internal Transfer”** shall mean a physical transfer of CD-R Discs, prior to any Shipment of those CD-R Discs, from one location to another within a single country, in which Registered Trader had full ownership and control over the CD-R Discs prior to such physical transfer, and retains full ownership and control after such physical transfer. An Internal Transfer shall exclude a transfer of CD-R Discs by Registered Trader:

- (a) to an Associated Company of Registered Trader (even within the same country);
- (b) to Registered Trader’s facilities in another country;
- (c) to any third party for the purpose of consignment, distribution or otherwise, where this third party exercises any control over the further distribution of the CD-R Discs; and
- (d) to any place or in any manner in which the CD-R Discs cannot be inspected upon request by Philips under Clause 15.

**“Jurisdiction of Governing Law”** shall have the meaning set out at the head of this Registration Agreement.

**“Licensee”** shall mean an entity that has entered into a license agreement or a non-assert arrangement with Philips in relation to CD-R Discs, or that is otherwise licensed by Philips in relation to CD-R Discs, but excluding Registered Trader, Other Registered Traders, Registered Manufacturers and Web-Registered Traders.

**“Licensed Status Confirmation Document”** or **“LSCD”** shall mean a valid document entitled “Licensed Status Confirmation Document” or “LSCD”, or referring to itself in those terms, the current form of which is set out in Annex C, as amended from time to time by Philips, that may be issued by Philips to Registered Trader, Other Registered Traders, Registered Manufacturers, Web-Registered Traders and Licensees in relation to CD-R Discs identified in an application, for the purpose of confirming that the relevant Shipment of those CD-R Discs is licensed in the Grant Country(ies) (as specified in the relevant application) under (a) the Essential Patents and/or (b) the Registration Logo.

**“Master Carton”** shall mean the outer packaging unit of CD-R Discs, as used for transport and storage in accordance with normal industry practice. At the Effective Date, normal industry practice is based on use of one Master Carton for packing between 100 and 600 CD-R Discs.

**“Minimum Annual Royalties”** shall be US \$125,000.

**“Notice”** shall mean a notice served in accordance with the requirements set out in Clause 25.5.

**“Other Registered Trader(s)”** shall mean a CD-R Disc trader, other than Registered Trader, that has entered into a “Registration Agreement for CD-R Disc Traders” with Philips, where that agreement remains binding and in force.

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**“Patent Country”** shall mean a country in which any one or more of Philips’ Essential Patents subsists.

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

**“PBL Standard Terms and Conditions”** shall mean the standard terms and conditions of a Per-Batch License current as at the date of grant of the Per-Batch License. The PBL Standard Terms and Conditions current as at the date of this Registration Agreement are attached hereto as Annex D and may be amended by Philips from time to time.

**“Per-Batch License”** shall mean Registered Trader’s and Philips’ rights and obligations under a license, granted by Philips in respect of an Application, under the Essential Patents and/or the Registration Logo in the Grant Country(ies). While any Per-Batch License that may be granted will be a separate contract, distinct from this Registration Agreement, it may incorporate terms from this Registration Agreement (and Annexes hereto) by reference to this Registration Agreement, and vice versa. A Per-Batch License shall consist of the Application that is accepted by Philips and the PBL Standard Terms and Conditions. Where the context so requires, “Per-Batch License” shall also mean any analogous license granted by Philips to any other party under, or substantially incorporating, the PBL Standard Terms and Conditions.

**“Philips”** shall have the meaning set out at the head of this Registration Agreement.

**“Philips CD-R Batch-Based Licensing System Guide”** shall mean the document entitled “Philips CD-R Batch-Based Licensing System Guide”, as amended by Philips from time to time, the edition current as at the Effective Date being attached hereto as Annex A.

**“Registered Manufacturer”** shall mean a company that is engaged in the manufacture of CD-R Discs and that has entered into a “Registration Agreement for CD-R Disc Manufacturers” with Philips, where that agreement remains binding and in force.

**“Registered Trader”** shall have the meaning set out at the head of this Registration Agreement.

**“Registration Logo”** shall mean the unique symbol depicted in the Registration Logo Guide.

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

**“Registration Number”** shall mean a set of identification characters issued by Philips to a Registered Manufacturer or a Licensee for the purpose of identifying one unique production location of such Registered Manufacturer or such Licensee.

**“Retail Sale”** shall mean a sale by Registered Trader that takes place in the following circumstances:

- (a) the relevant offer for sale is not made to a specific individual, but is a public offering;
- (b) the quantity and price is commensurate with sales to the individual end user; and
- (c) no credit is given by Registered Trader.

**“Serial Number Label”** shall mean a label with a unique number that is affixed to an individual Master Carton for the purpose of identifying that Master Carton.

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**“Serial Number Guide”** shall mean the document entitled “Serial Number Guide”, as published by Philips on the Website and as amended by Philips from time to time, the current form of which is attached hereto as Annex I. For the purposes of the Serial Number Guide, Registered Trader shall be deemed a Registered Company.

**“Shipment”** shall mean:

- (a) a transfer of CD-R Discs from Registered Trader to any third party (including an Associated Company of Registered Trader), in which Registered Trader had full control over such CD-R Discs prior to such transfer, and the relevant third party can exercise control over such CD-R Discs after such transfer (irrespective of whether the transfer involves a transfer of title);
- (b) a transfer of title (in whole or in part) in CD-R Discs from Registered Trader to any third party (including an Associated Company of Registered Trader);
- (c) a transfer by Registered Trader of CD-R Discs to any place or in any manner in which the CD-R Discs cannot be inspected upon request by Philips under Clause 15; and/or;
- (d) a transfer by Registered Trader of CD-R Discs across national borders.

Without limiting the foregoing, the following transfers of CD-R Discs by Registered Trader are examples of a Shipment:

- (a) a transfer to an Associated Company of Registered Trader (even within the same country);
- (b) a transfer to Registered Trader’s facilities in another country; and/or
- (c) a transfer to any third party for the purpose of consignment, distribution or otherwise, where such third party exercises control over the further distribution of the CD-R Discs.

A Shipment shall exclude:

- (a) an Internal Transfer; and
- (b) a Retail Sale of CD-R Discs.

**“Standard Rate”** shall mean the standard royalty rate of US \$0.06 per CD-R Disc.

**“System Breach”** shall mean any of the following:

- (a) SPARE;
- (b) SPARE;
- (c) Registered Trader acquires CD-R Discs in breach of Clause 4.4;
- (d) Registered Trader acquires CD-R Discs in breach of Clause 4.5, where the relevant inaccuracies or inconsistencies are material and are not reported by Registered Trader to Philips within 14 Days of Registered Trader becoming aware of them;
- (e) Registered Trader includes a CD-R Disc in a Shipment in breach of Clause 4.6;
- (f) Registered Trader is in breach of Clause 5.8;
- (g) SPARE;
- (h) Registered Trader acquires CD-R Discs in breach of Clause 6.4;
- (i) Registered Trader includes a CD-R Disc in a Shipment in breach of Clause 6.5;
- (j) Registered Trader uses a Registration Number on false pretences, sells or offers to sell a CD-R Disc under a false, suspended or discontinued Registration Number, or uses a Registration Number after Notice from Philips to stop trading in such CD-R Discs using such Registration Number;
- (k) SPARE;
- (l) Registered Trader commences a Shipment in breach of Clause 7.1;

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- (m) SPARE;
- (n) an Application by Registered Trader covers a CD-R Disc:
  - (i) not the subject of a license previously granted by Philips;
  - (ii) SPARE; or
  - (iii) in respect of which Registered Trader does not have full ownership and control;
- (o) an Associated Company of Registered Trader holds itself out as registered or licensed by virtue of its relationship with Registered Trader or by virtue of this Registration Agreement;
- (p) Registered Trader is in breach of Clauses 2.1, 2.3, or 12.2;
- (q) SPARE;
- (r) Registered Trader fails promptly to notify Philips of the destruction, loss, theft, confiscation or other cessation of its control over CD-R Discs formerly controlled by Registered Trader;
- (s) Registered Trader engages in any activity that is designed to assist, or has the effect of assisting, Registered Trader or any other entity in:
  - (i) the sale or other disposal of CD-R Discs that are not covered by an LSCD issued by Philips and that infringe any of the Essential Patents or Philips' rights in the Registration Logo; or
  - (ii) the non-payment or reduced payment of royalties relating to CD-R Discs, where such royalties would have been payable if the activities had been conducted in a bona fide commercial manner and at arm's length;
- (t) any other act or omission attributable to Registered Trader or any of its Associated Companies, having as its object or effect the assistance of the circulation of CD-R Discs not licensed by Philips, where such circulation infringes, or would infringe, any of the Essential Patents;
- (u) any other act or omission attributable to Registered Trader or any of its Associated Companies that is the subject of a Notice from Philips to Registered Trader under Clause 11.7 and that has not been the subject of a Notice by Registered Trader that satisfies both (a) and (b) in Clause 11.7.

**“System Change”** shall mean a revision to any aspect of the system made in accordance with Clause 21.

**“System Logo”** shall mean the unique symbol depicted in the “Compact Disc Logo Guide” which is used to indicate compatibility with the CD-R System.

**“Trader Number”** shall mean a set of identification characters issued by Philips to Registered Trader, an Other Registered Trader or a Web-Registered Trader for the purpose of identifying Registered Trader, that Other Registered Trader or Web-Registered Trader.

**“Valid Claim”** shall mean any claim of an issued and unexpired Patent within the Essential Patents that:

- (a) has not been held unenforceable, unpatentable or invalid by a decision of a court or governmental agency of competent jurisdiction, where such decision is either unappealable or unappealed within the time limits allowed for appeal; or
- (b) has not been expressly admitted by Philips to be invalid or unenforceable.

**“Web-Registered Trader”** shall mean a person or entity that purchases or sells CD-R Discs and that is registered on the Website pursuant to a “Registration Agreement for Web-Registered Traders” in order to be identified in an LSCD as a recipient of CD-R Discs.

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

- 1.2** Unless the context otherwise requires, any agreement with Philips that is referred to in this Registration Agreement by a phrase in quotation marks means an agreement to which Philips is a party, the title of which is or includes that phrase.
- 1.3** Where there is any inconsistency between the definitions set out in this Clause 1 and the definitions set out in any Annex, then:
  - (a)** for the purposes of construing this Registration Agreement, the definitions in this Clause 1 shall prevail; and
  - (b)** for the purposes of construing such Annex, the definitions set out in such Annex shall prevail.
- 1.4** Any Annex to this Registration Agreement shall take effect as if set out in this Registration Agreement and references to this Registration Agreement shall include its Annexes.

## 2 Registered Trader’s Business and Associated Companies

- 2.1** Registered Trader shall, promptly upon Philips’ request, inform Philips of the names of all of its Associated Companies that are engaged in the manufacture or sale of CD-R Discs and the address of the relevant facilities. Where Registered Trader has provided such information to Philips pursuant to such a request, Registered Trader shall thereafter inform Philips of any changes (whether or not material) relating to the information as provided.
- 2.2** Registered Trader acknowledges and agrees that the successful operation of the batch-based licensing system depends on the full compliance of each entity that has entered into a “Registration Agreement for CD-R Disc Manufacturers” or a “Registration Agreement for CD-R Disc Traders” with its obligations under the relevant agreement. Accordingly, where:
  - (a)** an Associated Company of Registered Trader has committed a breach of its “Registration Agreement for CD-R Disc Manufacturers” or its “Registration Agreement for CD-R Disc Traders” (as appropriate) with Philips, and Philips terminates that agreement pursuant to any provision of that agreement that corresponds to any provision of Clause 24.4 (other than Clause 24.4(f)) hereof, Philips shall have the right to terminate this Registration Agreement; and
  - (b)** an Associated Company of Registered Trader has committed a breach of its “Registration Agreement for CD-R Disc Manufacturers” or its “Registration Agreement for CD-R Disc Traders” (as appropriate) with Philips, and such breach gives Philips a right to terminate under any provision of that agreement that corresponds to Clause 24.4(f) hereof, Registered Trader shall guarantee the payment of the relevant amounts specified in the notice to that Associated Company.

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- 2.3** Registered Trader shall procure that each of its Associated Companies that is engaged in the manufacture or sale of CD-R Discs, or commences the manufacture or sale of CD-R Discs, but that has not entered into a “Registration Agreement for CD-R Disc Manufacturers” or a “Registration Agreement for CD-R Disc Traders” (as appropriate) with Philips, shall:
- (a)** keep records of its manufacture and sale of CD-R Discs sufficient for an independent auditor to determine the number of CD-R Discs that such Associated Company has manufactured and/or sold, in which country/ies such manufacture and/or sale has occurred, and which of those CD-R Discs would infringe an Essential Patent without a license from Philips; and
  - (b)** within 14 Days from a Notice by Philips, give a legally binding undertaking to Philips, that it shall cooperate as fully and willingly as Philips or its auditors may reasonably require for the purpose of confirming that neither it nor Registered Trader is engaged in any activity that is designed to assist, or has the effect of assisting, Registered Trader, the relevant Associated Company or any other entity in:
    - (i)** the sale or other disposal of CD-R Discs that are not covered by an LSCD issued by Philips and that infringe any of the Essential Patents or Philips’ rights in the Registration Logo; or
    - (ii)** the non-payment or reduced payment of royalties relating to CD-R Discs, where such royalties would have been payable under an agreement with Philips if the activities had been conducted in a bona fide commercial manner and at arm’s length,and for the purpose of assessing and collecting damages from such Associated Company for any infringement.
- 2.4** Registered Trader represents that it is not engaged in the manufacture of CD-R Discs and undertakes to give Notice to Philips in advance of this representation becoming untrue.

## 3 No License Granted

- 3.1** Registered Trader acknowledges and agrees that no licenses or non-assert undertakings (other than the license to use the System Logo granted in Clause 17) are granted under this Registration Agreement for the importation, sale or other disposal of CD-R Discs and that any such licenses can only be granted by means of separate contracts in the form of Per-Batch Licenses. Registered Trader acknowledges and agrees that Philips shall, subject to any Per-Batch Licenses that it may grant, and to the license to use the System Logo granted in Clause 17, be entitled to take action for infringement of its patent rights, trademarks and copyrights, in relation to CD-R Discs acquired, sold or otherwise disposed of by Registered Trader in infringement of Philips’ intellectual property rights.
- 3.2** Registered Trader acknowledges and agrees that:
- (a)** Philips may deny the grant of a Per-Batch License and/or the issue of an LSCD to Registered Trader if Registered Trader is not, at the time the relevant Application is made, in full compliance with its obligations under this Registration Agreement and/or any Per-Batch License previously concluded with Philips; and

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- (b) even where Registered Trader has provided the appropriate confirmation under Clause 5.12, Philips may deny the grant of a Per-Batch License and/or the issue of an LSCD to the Registered Manufacturer that identified Registered Trader as the recipient of the relevant CD-R Discs if Registered Trader is not, at the time that the Registered Manufacturer makes the relevant application, in full compliance with this Registration Agreement and/or any Per-Batch License previously concluded between Registered Trader and Philips.
- 3.3 Registered Trader acknowledges and agrees that Philips has not granted and will not grant Registered Trader any license to use the Registration Logo in relation to CD-R Discs other than by granting a Per-Batch License for those CD-R Discs pursuant to an Application.
- 3.4 SPARE
- 3.5 Registered Trader acknowledges and agrees that nothing in this Registration Agreement nor in any Per-Batch License that may be granted by Philips shall grant any rights in relation to:
  - (a) master recording machines, equipment or methods for the manufacture of CD-R Discs; or
  - (b) the manufacture or sale of materials or reproduction rights for information (including audio, video, text or other data) contained on discs to be played back or recorded on a player or a recorder.

## 4 Per-Batch Licenses and LSCDs

- 4.1 SPARE
- 4.2 SPARE
- 4.3 SPARE

### CD-R Discs sourced from third parties

- 4.4 Registered Trader shall not acquire any CD-R Discs in relation to which Philips has not granted rights under the Essential Patents and the Registration Logo. Such rights may be evidenced only by an LSCD that identifies Registered Trader as the recipient of such CD-R Discs.
- 4.5 Registered Trader shall not acquire any CD-R Discs without first verifying the existence of, and the accuracy of the information in, an LSCD that identifies Registered Trader as the recipient of those CD-R Discs, and that evidences the grant of the license of the Essential Patents and the Registration Logo in relation to those CD-R Discs. Registered Trader shall promptly report to Philips any inaccuracies on the LSCD, or any inconsistencies between the LSCD and the actual dealings in the CD-R Discs to which the LSCD relates.

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- 4.6** Prior to including any CD-R Discs acquired from a third party in a Shipment, Registered Trader shall verify the territorial scope of the licenses under the Essential Patents (if any) and the Registration Logo with respect to such CD-R Discs.

If the Shipment by Registered Trader to the country of destination without the grant of an additional license for such country would not infringe an Essential Patent or Philips' rights in the Registration Logo, Registered Trader shall request and obtain an LSCD for such Shipment, where such LSCD identifies Registered Trader as the applicant, prior to including such CD-R Discs in a Shipment;

If the Shipment by Registered Trader to the country of destination without the grant of an additional license for such country would infringe an Essential Patent or Philips' rights in the Registration Logo, Registered Trader shall request and obtain a Per-Batch License for such Shipment prior to including such CD-R Discs in a Shipment.

### Limited territorial Grant

- 4.7** Any Per-Batch License granted by Philips to Registered Trader shall be restricted to:
- (a) the Country of Registration; and
  - (b) the country of destination of the Shipment the subject of the relevant Application.

Philips may, in its sole discretion, grant a Per-Batch License for intermediate countries of transport in connection with a Shipment for which Registered Trader submitted an Application for a Per-Batch License, upon Registered Trader requesting, and demonstrating to Philips a commercial necessity for, such grant.

### Misrepresentations

- 4.8** Where an LSCD was issued following a misrepresentation to Philips by Registered Trader:
- (a) the LSCD and any Per-Batch License that was granted therewith shall be void ab initio; and
  - (b) if Registered Trader proves to Philips' reasonable satisfaction that the misrepresentation was attributable to Registered Trader's inadvertent error and that Registered Trader promptly gave Philips Notice of the misrepresentation upon its discovery, Philips may by Notice offer Registered Trader the opportunity to make a replacement Application. Philips shall not unreasonably withhold or delay making such an offer.  
In any offer under this Clause 4.8(b), Philips may specify reasonable conditions applying to that offer, which may include, without limitation:
    - (i) a reasonable time during which the offer must be accepted;
    - (ii) a requirement that Registered Trader implements general or specified measures to prevent the occurrence of similar misrepresentations; and
    - (iii) provisions for Registered Trader to make a payment to Philips to cover Philips' losses and expenses caused by the misrepresentation.

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## 5 Methods and Information Required for Making an Application

- 5.1** Registered Trader may submit Applications using either:
- (a) a computer-to-computer interface between Registered Trader's logistics system and the DISP, pursuant to Clause 5.2; or
  - (b) manual processing by Authorised Employees of Registered Trader using electronic forms available on the DISP, in accordance with Clause 5.3.

### 5.2 Automatic Processing

- (a) Philips shall make available at least one computer-to-computer interface on the DISP on which Registered Trader may submit Applications automatically using Registered Trader's logistics system. Philips shall provide Registered Trader with technical specifications for the use of such interface. Registered Trader and Philips shall agree on the number of Registered Trader's computers that may be connected to the DISP.
- (b) Upon receipt of an Application, Philips shall send an electronic confirmation to Registered Trader confirming the content of the Application, assigning an Application Number, and advising of a scheduled acceptance date.
- (c) Upon acceptance of an Application, Philips shall issue an LSCD to Registered Trader. Registered Trader acknowledges and agrees that its submission of an Application for a Per-Batch License to Philips using a computer-to-computer interface constitutes an offer to Philips to enter into a Per-Batch License, and Philips' acceptance of the Application by issuing an LSCD to Registered Trader constitutes an acceptance of the offer. Where an Application for a Per-Batch License has been made, Philips' acceptance of the offer by issuing an LSCD to Registered Trader shall create a binding contract, on the conditions set out in the Per-Batch License, for the Shipment of the CD-R Discs by Registered Trader in, or to, the Grant Country(ies). Registered Trader may not cancel an Application once Philips has issued an LSCD to Registered Trader.

### 5.3 Manual Processing

- (a) Philips shall provide access to a manual interface on the DISP to no more than ten (or such higher number as Philips and Registered Trader may agree) Authorised Employees to enable such Authorised Employees to submit Applications using a limited number of computers, as agreed pursuant to Clause 5.2(a).
- (b) Upon receipt of an Application, Philips shall send an electronic confirmation to Registered Trader confirming the contents of the Application, assigning an Application Number, and advising of a scheduled offer date.
- (c) Upon reviewing an Application for a Per-Batch License, and without prejudice to its right to refuse to grant a Per-Batch License pursuant to Clauses 3.2(a) and 5.14, or its right to request additional documents pursuant to Clause 5.7, Philips shall make an offer to enter into a Per-Batch License with Registered Trader. Upon an affirmative act of acceptance (by clicking an "I Accept" button or such other instrument as designated by Philips), Registered Trader shall be deemed to have accepted the offer, creating a binding contract on the conditions set out in the Per-Batch License, for the Shipment of the CD-R Discs in the Grant Country(ies).

- 5.4** Registered Trader shall use the highest degree of care to ensure the accuracy of all information submitted to Philips pursuant to Clauses 5.6 and 5.7.

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- 5.5** Registered Trader shall be liable to pay all royalties due under Clause 9.3 for all Per-Batch Licenses:
- (a) issued through the computer-to-computer interface on the DISP; and
  - (b) accepted through the manual interface on the DISP.
- 5.6** Each Application submitted by Registered Trader shall include the following information:
- (a) the Registration Number(s) embedded in the CD-R Discs in the proposed Shipment, and the quantity and type of CD-R Discs relating to each Registration Number;
  - (b) the country of manufacture of the CD-R Discs;
  - (c) the country in which the proposed Shipment will originate;
  - (d) the country of destination of the proposed Shipment;
  - (e) where CD-R Discs are accompanied by a printed label, the brand name printed on that label;
  - (f) where CD-R Discs are packaged in retail packaging, the “Global Trade Item Number” (**GTIN**), “Universal Product Code” (**UPC**) or “European Article Numbering” (**EAN**) code of that retail packaging;
  - (g) the name and address of the recipient of the proposed Shipment;
  - (h) the number and date of any invoice issued, or to be issued, by Registered Trader in relation to the proposed Shipment;
  - (i) whether the CD-R Discs will be transferred by way of ship, road, rail or air and, if transferred by one of these methods, whether they will be packed in a container; and
  - (j) for CD-R Discs acquired by Registered Trader from a third party, the name and address of that third party, and the number of the LSCD granted to that third party in relation to its transfer of the relevant CD-R Discs to Registered Trader.
- 5.7** Philips may at any time, irrespective of whether a Per-Batch License has been granted or whether an LSCD has been issued, require Registered Trader to provide any one or more of the following documents or information in relation to an Application or a Shipment by Registered Trader:
- (a) the bill of lading containing the shipping details, including but not limited to the port of lading and the name of the vessel;
  - (b) the air waybill containing the flight number and the airport of departure and arrival;
  - (c) the CMR or other truck waybill;
  - (d) the purchase order received by Registered Trader from its customer;
  - (e) the invoice issued by Registered Trader to its customer;
  - (f) proof of the country of origin, which may include a “Form A Certificate of Origin” in those countries where such form is required;
  - (g) the packing list;
  - (h) the identification number of the LSCD identifying Registered Trader as the recipient of any CD-R Discs sourced from a third party and included in the Shipment; and
  - (i) all other information that Philips may reasonably require to:
    - (i) prevent the fraudulent use of LSCDs;
    - (ii) prevent the evasion of royalty payments; or
    - (iii) verify the compliance of Registered Trader, Registered Trader’s suppliers, and Registered Trader’s customers, with their respective contractual obligations.
- 5.8** Where Philips has required the provision by Registered Trader of a document or information under Clause 5.7, upon Philips notifying Registered Trader of such requirement, Registered Trader shall provide the relevant document or information as soon as possible.

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- 5.9** Where any information provided by Registered Trader under Clause 5.7 is materially inconsistent with the information contained in the relevant Application, Philips may revoke any Per-Batch License or LSCD granted to Registered Trader in relation to the relevant Shipment.
- 5.10** Philips shall use commercially reasonable efforts to review and process an Application and, subject to the provisions of this Registration Agreement, to grant a Per-Batch License and/or issue an LSCD in relation to such Application, within 5 Business Days of receipt of such Application by Philips. For the purposes of this Clause 5.10, any receipt of an Application by Philips after 5 p.m. in The Netherlands will be deemed to have been received by Philips on the following Business Day.
- 5.11** Philips may notify Registered Trader in relation to an Application that Philips shall grant a Per-Batch License or issue an LSCD only upon the fulfilment of a specific requirement. Such requirement may include, by means of example and without limitation, Registered Trader providing a waybill and/or a container number for the relevant Shipment. Where Philips considers that Registered Trader has satisfied the specific requirement and all other requirements, Philips shall immediately issue an LSCD. Notwithstanding the confirmation of receipt of such Application by Philips, Registered Trader shall not be entitled to commence the proposed Shipment the subject of the Application unless and until Philips has issued the LSCD.
- 5.12** Where a Registered Manufacturer submits an application for a Per-Batch License identifying Registered Trader as the recipient of CD-R Discs contained within the proposed shipment, Philips may request Registered Trader to confirm that:
- (a) it shall be the recipient of such CD-R Discs; and
  - (b) it shall be liable for all royalties due for such CD-R Discs.
- Philips shall not request such confirmation in relation to CD-R Discs for which an LSCD has previously been issued.
- Registered Trader shall, within one Day of receipt of such request by Philips, confirm whether or not (a) and (b) are correct. Registered Trader acknowledges and agrees that Philips may refuse to grant a Per-Batch License or issue an LSCD to the Registered Manufacturer that has identified Registered Trader in its application where Registered Trader denies the correctness of (a) or (b), does not provide Philips with such confirmation within one Day of it being requested by Philips, or provides Philips with incomplete or incorrect information.
- 5.13** Registered Trader acknowledges and agrees that Philips may make available Internet-based tools for third parties to verify the authenticity of LSCDs (or documents that purport to be LSCDs), or otherwise to determine the licensed status of Shipments of CD-R Discs.
- 5.14** Philips may refuse to grant a Per-Batch License or issue an LSCD to Registered Trader where:
- (a) the information provided by Registered Trader in an Application pursuant to Clause 5.6, or additional information provided pursuant to Clause 5.7, is incomplete or incorrect;
  - (b) Registered Trader is not in full compliance with its obligations under this Registration Agreement at the time when the Application is received by Philips; or
  - (c) the Application covers CD-R Discs acquired by Registered Trader from a third party in relation to which an LSCD has been issued to that third party, and where royalties to Philips for those CD-R Discs have fallen due and payable but have not been paid.

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- 5.15** Registered Trader acknowledges that the customs authorities of various countries may detain Shipments not accompanied by an LSCD, and that Applications that are submitted late, are incomplete, or that include incorrect information, are likely to cause Philips to delay or refuse granting a Per-Batch License and/or issuing an LSCD, and may therefore lead to delays at customs, or seizure and/or destruction of CD-R Discs. Registered Trader further acknowledges that the sale of CD-R Discs without an LSCD may lead to claims against Registered Trader, or against recipients of such CD-R Discs, for damages and/or injunctions on the basis of patent, trade mark and/or copyright infringement.
- 5.16** While Philips shall use commercially reasonable efforts to make the DISP available 24 hours per day and 7 days per week, it shall be entitled to take the DISP off-line for 3 hours per week for maintenance and for as many hours as is reasonably required in order to address unforeseen disruptions in the operation of the DISP.
- 5.17** Registered Trader shall assign, by giving Notice to Philips, one of its full-time employees as a local administrator for accessing the DISP. Registered Trader represents that this person shall have the authority to appoint Authorised Employees on behalf of Registered Trader. Registered Trader may at any time during the duration of this Registration Agreement assign another of its full-time employees as a replacement local administrator by giving Notice of such appointment in writing to Philips. Any Notice under this Clause 5.17 shall specify the local administrator's name, e-mail address, postal address, and fax and telephone number.

## 6 Registration Logo and Registration Number

- 6.1** SPARE
- 6.2** Upon request by Registered Trader, Philips shall allocate a unique Trader Number to Registered Trader.
- 6.3** SPARE
- 6.4** Registered Trader shall not acquire any CD-R Disc unless it:
- (a)** bears the Registration Logo and the Registration Number assigned to the plant at which the CD-R Disc was manufactured; and
  - (b)** was enclosed, upon acquisition by Registered Trader, in a Master Carton on which a unique Serial Number Label had been placed in accordance with the Serial Number Guide.
- 6.5** Registered Trader shall not include in any Shipment a CD-R Disc that does not bear the Registration Logo and the Registration Number assigned to the plant at which the CD-R Discs were manufactured (each displayed in accordance with the Registration Logo Guide).
- 6.6** Registered Trader acknowledges and agrees that:
- (a)** the proper placement of the Registration Logo and the appropriate Registration Number on CD-R Discs shall be a condition precedent to the grant of a Per-Batch License and/or the issue of an LSCD in relation to such CD-R Discs;

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- (b) Philips will rely on Registered Trader's representation and undertaking in Clause 6.6(a) when considering whether to grant a Per-Batch License or issue an LSCD to Registered Trader;
- (c) CD-R Discs that Registered Trader:
  - (i) SPARE;
  - (ii) acquires in breach of Clause 6.4; or
  - (iii) includes in a Shipment in breach of Clause 6.5,are not licensed, and any Per-Batch License granted or LSCD issued by Philips in relation to such CD-R Discs will be void ab initio.

- 6.7** Registered Trader acknowledges and agrees that all rights in the Registration Logo are, and shall remain, proprietary rights of Philips. Registered Trader further acknowledges and agrees that any Shipment that includes CD-R Discs in which the Registration Logo has been embedded other than in accordance with the Registration Logo Guide will have occurred without Philips' consent (irrespective of whether a Per-Batch License has been granted) and may constitute an infringement of Philips' intellectual property rights.
- 6.8** Registered Trader shall promptly inform Philips of any claim of infringement relating to the Registration Logo received by Registered Trader or any of its Associated Companies.
- 6.9** Philips may instruct Registered Trader to discontinue use of the Registration Logo permanently or until further notice, or to use such other logo as Philips may specify. Registered Trader shall implement such instructions promptly. Philips will only issue such instructions in response to a risk, assertion or claim of infringement in respect of the Registration Logo, and will not issue any instructions that are unreasonable.
- 6.10** Registered Trader acknowledges and agrees that no right to use the Registration Logo is granted under this Registration Agreement. Unless otherwise granted by Philips to a supplier of Registered Trader, as evidenced by an LSCD issued by Philips to such supplier, Registered Trader may only use the Registration Logo on CD-R Discs, and on retail packaging in which such CD-R Discs are packaged, pursuant to a Per-Batch License relating to the CD-R Discs concerned.

## 7 Serial Number Labels

- 7.1** Registered Trader shall not commence a Shipment in relation to which Registered Trader is required to obtain a Per Batch License pursuant to Clause 4.6(a) unless and until all CD-R Discs included in that Shipment are enclosed in a Master Carton on which a Serial Number Label has been placed in accordance with the Serial Number Guide.
- 7.2** Registered Trader acknowledges and agrees that:
- (a) the proper placement of the appropriate Serial Number Label on a Master Carton in accordance with Clause 7.1 shall be a condition precedent to the grant of a Per-Batch License and the issue of an LSCD in relation to such CD-R Discs;
  - (b) Philips will rely on Registered Trader's representation and undertaking in Clause 7.2(a) when considering whether to grant a Per-Batch License or issue an LSCD to Registered Trader; and

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- (c) CD-R Discs included in a Shipment in breach of Clause 7.1 are not licensed, and any Per-Batch License granted or LSCD issued by Philips in relation to a Shipment of such CD-R Discs shall be void ab initio.

**7.3** Within 5 Business Days after the end of each calendar month, Registered Trader shall report to Philips the numbers on the Serial Number Labels placed on all Master Cartons in which CD-R Discs have been packed by Registered Trader in the preceding calendar month. In providing Philips with such report, Registered Trader shall also inform Philips, in relation to each reported Serial Number Label, of:

- (a) the quantity and type of CD-R Discs in the associated Master Carton;
- (b) the Registration Number/s embedded in such CD-R Discs;
- (c) where such CD-R Discs are accompanied by a printed label, the brand name printed on those labels;
- (d) the “Global Trade Item Number” (**GTIN**), “Universal Product Code” (**UPC**) or “European Article Numbering” (**EAN**) code of the retail packaging for any CD-R Discs that are packaged in retail packaging.

**7.4** Where CD-R Discs are already packed in Master Cartons with Serial Number Labels, in full compliance with the requirements of this Clause 7, nothing in this Clause 7 shall oblige Registered Trader to repackage them.

**7.5** Registered Trader acknowledges and agrees that, in order to meet the requirement to place Serial Number Labels on Master Cartons as set out in Clause 7.1, it shall be Registered Trader’s own responsibility to ensure that it has sufficient quantities of Serial Number Labels in stock to meet with the requirement to place Serial Number Labels on all Master Cartons and cope with disruptions in the supply of Serial Number Labels, as may occur in the normal course of business.

Where the entity engaged by Philips to supply Serial Numbers Labels fails to supply Serial Number Labels to Registered Trader in a timely manner, as specified in Annex I, Registered Trader shall give Notice to Philips. Upon receiving such Notice, Philips may temporarily waive the requirement to place Serial Number Labels on Master Cartons as set out in Clause 7.1, provided that Registered Trader demonstrates to Philips’ satisfaction that it has taken reasonable care to order such Serial Number Labels in a timely manner, that it has kept Serial Number Labels in stock in sufficient quantities, and that it is in full compliance with its obligations under the agreement with the supplier concerning the supply of Serial Number Labels.

## 8 Registration Fee and Standard Specifications

**8.1** Registered Trader shall, upon execution of this Registration Agreement, pay Philips a registration fee of US \$10,000.

**8.2** SPARE

**8.3** SPARE

**8.4** SPARE

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## 9 Royalty Payments, Invoicing and Reporting

- 9.1** If and when a Per-Batch License is granted by Philips to a Registered Manufacturer, and Registered Trader has provided the relevant confirmation under Clause 5.12, the following payment terms and invoicing processes shall apply. For the avoidance of doubt, Registered Trader's liability to pay royalties accrues under a Per-Batch License granted by Philips to a Registered Manufacturer (where Registered Trader is liable to pay royalties on the relevant CD-R Discs) in consideration of Registered Trader's ability to acquire such CD-R Discs from such Registered Manufacturer, and any payment terms and invoicing processes set out in this Registration Agreement, insofar as they relate to Per-Batch Licenses, are specified in this Registration Agreement rather than in each Per-Batch License only for convenience.
- 9.2** The royalty rate payable in respect of each CD-R Disc covered by a Per-Batch License for which royalties are payable by Registered Trader shall either be the Standard Rate or the Compliance Rate, depending on whether Registered Trader meets the requirements for the Compliance Rate as specified in the PBL Standard Terms and Conditions.
- 9.3** Registered Trader shall pay a royalty for each CD-R Disc that it acquires under a Per-Batch License from a Registered Manufacturer where Registered Trader has provided the confirmation required in Clause 5.12.
- 9.4** SPARE
- 9.5** SPARE
- 9.6** For the avoidance of doubt, no royalties shall accrue solely as a result of an Internal Transfer.
- 9.7** Royalties shall become due immediately upon the grant of a Per-Batch License, irrespective of whether the proposed Shipment actually takes place as contemplated by the relevant Application, or whether it takes place at all. If a Shipment the subject of a Per-Batch License actually takes place in a manner that differs in any respect from the Shipment as contemplated in the relevant Application, Registered Trader shall give Notice to Philips identifying such difference.
- 9.8** After the end of each calendar month, Philips may invoice Registered Trader for royalties that have fallen due under Clause 9.3 in the previous calendar month or earlier. Philips may invoice Registered Trader for payments under this Agreement other than royalties as and when such payments become payable. Except as otherwise provided in this Registration Agreement, Registered Trader shall pay to Philips the sum stated to be due in such invoice no later than 30 Days from the date of the invoice.
- 9.9** All payments to be made by Registered Trader to Philips under this Registration Agreement or under any Per-Batch License shall be made in US Dollars or in such other currency as may be designated by Philips from time to time. The rate of exchange for converting currency (if other than US Dollars) shall be the telegraphic transfer selling rate of the designated currency, as officially quoted in the Country of Registration by the officially authorised foreign exchange bank for payment of currency transactions on the Day that the amount is paid.

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**9.10** All payments to be made by Registered Trader to Philips under this Registration Agreement or under any Per-Batch License shall be made without any deduction whatsoever (except for the tax deduction specified in Clause 9.11), whether for bank transmission charges or otherwise, by wire transfer to:

Bank Account No.: 4067-1001  
Account Name: Koninklijke Philips Electronics N.V. – Licenses  
Bank: Citibank N.A., New York  
Swiftcode: CITIUS33, ABA 021000089  
Reference: "Invoice Number \_\_\_\_\_"

or such other bank account as Philips may designate from time to time.

**9.11** All costs, stamp duties, taxes and other similar levies arising from or in connection with this Registration Agreement or any Per-Batch License shall be borne by Registered Trader. If the government of any country imposes any taxes on payments made by Registered Trader to Philips under this Registration Agreement or under any Per-Batch License, and requires Registered Trader to withhold such tax from such payments, Registered Trader may deduct such tax from such payments. In such event, Registered Trader shall promptly provide Philips with all tax receipts issued by the relevant tax authorities that Philips may require to support a claim for credit against income taxes which may be payable in The Netherlands by Philips and/or its Associated Companies, and to enable Philips to document, if necessary, its compliance with tax obligations in any country outside The Netherlands.

**9.12** Registered Trader shall submit to Philips, within 90 Days after the end of each calendar year, irrespective of whether any sales of CD-R Discs have occurred, a Confirmation Letter for the preceding calendar year in the form set out in Annex F, and signed by a duly authorised officer on behalf of Registered Trader. Where the total royalties paid by Registered Trader in the preceding calendar year is less than the Minimum Annual Royalties, Philips shall invoice Registered Trader for the difference between the two amounts. Registered Trader shall pay to Philips the sum stated to be due in such invoice no later than 90 Days from the date of the invoice.

**9.13** Registered Trader shall submit to Philips, within 90 Days after the end of each calendar year, irrespective of whether any sales of CD-R Discs have occurred, an audit statement prepared by its external auditors confirming that:

- (a) the Per-Batch Licenses granted and LSCDs issued for the preceding calendar year correspond accurately with all Shipments made by Registered Trader in the preceding calendar year;
- (b) all royalty payments made by Registered Trader in the preceding calendar year correspond accurately with the royalty payments which have fallen due under this Registration Agreement in the preceding calendar year; and
- (c) the Confirmation Letters provided by Registered Trader under Clause 9.12 are true, accurate and complete in all material respects.

The audit statement must meet the requirements set out in the Audit Guide. Notwithstanding any audit statement provided by Registered Trader, Philips reserves the right to inspect the books and records of Registered Trader from time to time in accordance with Clause 12.

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## 10 Remedies for Non-Payment and Late Payment of Royalties

- 10.1** Any payment that becomes due, either under this Registration Agreement or under any Per-Batch License that may be granted, and that is not made in full when due, shall accrue interest at the rate of 2% per month (or part thereof) or at the maximum rate permitted by law, whichever is lower.
- 10.2** SPARE
- 10.3** Where Registered Trader has failed to pay all or any part of the royalties by the date they fall due, Philips may give Notice (so long as full payment has not been received by Philips at the date of the Notice), specifying that, where all royalties (plus interest that has accrued up to the date of such Notice) due are not paid within 30 Days of the Notice, the royalty rate applicable to such CD-R Discs shall be changed from the Compliance Rate (if such rate was applicable to such CD-R Discs at the date royalties fell due) to the Standard Rate, with effect from the end of that 30-Day period.
- 10.4** For any non-payment or late payment of royalties, Registered Trader acknowledges and agrees that Philips, without waiving any other remedy, shall be entitled to:
- (a) suspend granting any Per-Batch Licenses or issuing any LSCDs until Registered Trader is in full compliance with its obligations under this Registration Agreement;
  - (b) serve a Notice specifying such non-payment or late payment and requiring it to be remedied within 30 Days; and/or
  - (c) if the royalty rate has been changed in accordance with Clause 10.3, issue a further invoice for the difference between the Standard Rate and the Compliance Rate.
- 10.5** If a Notice has been issued by Philips specifying non-payment or late payment of royalties, and Registered Trader remedies such non-payment or late payment within 30 Days from the date of issue of such Notice, Philips shall end the suspension imposed under Clause 10.4(a) from the date of such remedy. Notwithstanding the foregoing, from the date of the issue of such Notice by Philips, Philips may at any time require security for the payment of royalties as a condition to the grant of Per-Batch Licenses and/or issue of LSCDs (irrespective of whether the Notice has been complied with). Any security required by Philips shall be given in a manner and in an amount as specified by Notice from Philips to Registered Trader. Such security shall be held in an interest-bearing account and, subject to this Clause 10.5, for the benefit of Registered Trader. Philips may draw funds from the said account for the payment of royalties due by Registered Trader under this Registration Agreement and shall account to Registered Trader for any interest that accumulates. Philips may account for interest by crediting the said interest to the said account. When the giving of security is considered by Philips to be no longer appropriate, Philips shall return control over the funds in the interest-bearing account to Registered Trader.

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# 11 Liquidated Damages

## 11.1 Registered Trader:

- (a) acknowledges and agrees that any System Breach by it can:
  - (i) contribute to competitive distortions or concerns of unfair competition;
  - (ii) erode confidence in Philips' batch-based licensing system; and/or
  - (iii) encourage System Breaches and discourage compliance with Philips' batch-based licensing system

among manufacturers, traders and purchasers of CD-R Discs, causing substantial direct and indirect loss to Philips, which loss is impossible to quantify accurately;

- (b) recognises the value of the licenses under the Essential Patents which are granted by Philips under Per-Batch Licenses, and recognises that Other Registered Traders, Registered Manufacturers and Licensees pay royalties in return for the right to use those Essential Patents; and
- (c) recognises that Philips incurs substantial costs in investigating, detecting and acting against System Breaches.

## 11.2 Registered Trader shall take all measures necessary to avoid the occurrence of a System Breach.

## 11.3 In the event of a System Breach, and subject to Clause 11.6, Registered Trader shall, immediately upon receipt of Notice from Philips alleging a System Breach, be liable to pay Philips:

- (a) a non-refundable sum of US \$100,000 per event constituting a System Breach; and
- (b) US \$0.12 per CD-R Disc the subject of a System Breach, less any royalties already paid for such CD-R Discs.

Registered Trader acknowledges and agrees that said payments represent a fair assessment of the damage Philips is likely to suffer as a result of any System Breach by Registered Trader.

## 11.4 Registered Trader may, immediately upon receipt of a Notice under Clause 11.3, give Notice to Philips that Registered Trader has committed a further System Breach or System Breaches, specifying the nature of the System Breach or System Breaches, the number of CD-R Discs concerned, and any other parties involved. Each System Breach that is the subject of such Notice shall be considered to be part of the same single System Breach for the purpose of Clause 11.3.

## 11.5 Any payments made pursuant to Clause 11.3 shall not prejudice Philips' rights to terminate this Registration Agreement immediately, in accordance with the provisions of Clause 24.4.

## 11.6 No damages shall be payable under Clause 11.3 if Registered Trader can prove each of the following elements to Philips' reasonable satisfaction within 30 Days after receipt of a Notice under Clause 11.3:

- (a) Registered Trader could not have anticipated the System Breach;
- (b) Registered Trader made all reasonable endeavours to avoid the occurrence of the System Breach;
- (c) the System Breach has not resulted, and will not result, in any substantial loss to Philips;
- (d) the System Breach was not a breach of such a nature that it will give rise to a loss of confidence in Philips' batch-based licensing system; and
- (e) the circumstances giving rise to the System Breach no longer exist.

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For the avoidance of doubt, where Registered Trader proves each of these elements to Philips' reasonable satisfaction, any royalties payable by Registered Trader for CD-R Discs in relation to which the System Breach was committed shall remain payable in accordance with the provisions of Clause 9. Where a number of System Breaches are the subject of a Notice under Clause 11.4, Registered Trader shall be required to prove each of the elements in this Clause 11.6 in relation to each System Breach the subject of such Notice.

- 11.7** Philips may provide Notice to Registered Trader from time to time that it considers that certain acts or omissions (in addition to those set out in Clause 1.1) fall within the definition of a System Breach. Where, following the issue of such a Notice, Registered Trader commits an act or omission described in the Notice, that act or omission shall be deemed to be a System Breach unless:
- (a) Registered Trader provides Notice to Philips within 30 Days of the date of Philips' Notice, setting out circumstances in which that act or omission could legitimately occur and explaining why Registered Trader considers that it would be inappropriate to regard such act or omission as a System Breach; and
  - (b) it would be unreasonable for Philips not to accept the explanation set out in a Notice provided by Registered Trader under Clause 11.7(a).

## 12 Right to Audit

**12.1** In order to verify:

- (a) the completeness and accuracy of the number of CD-R Discs included in Shipments by Registered Trader and reported to Philips by means of Applications for Per-Batch Licenses and LSCDs;
- (b) the completeness and accuracy of the number of CD-R Discs on which royalties are or have been payable by Registered Trader; and
- (c) Registered Trader's compliance with other provisions of this Registration Agreement,

Registered Trader shall permit Philips to inspect all books and records of Registered Trader in accordance with this Clause 12 upon Notice from Philips requiring such inspection.

**12.2** Registered Trader shall maintain complete and accurate books and records and shall keep such books and records available for inspection by Philips for a period of 5 years following each Shipment to which the books or records relate. Registered Trader shall ensure that a full copy of such books and records remains available for inspection by Philips at all times notwithstanding any seizure, removal or destruction or other event concerning them. Any inspection under this Clause 12 shall be initiated by Philips no more than once per calendar year and shall be conducted by a certified public auditor appointed by Philips. Philips shall give Registered Trader Notice of such inspection at least 7 Days prior to the inspection. Registered Trader shall promptly and fully co-operate and provide unfettered access to its books and records and provide all assistance that Philips and/or its auditor may require in connection with such inspection, including allowing auditors to make copies of all documents, and to remove such documents from Registered Trader's premises (or any other premises at which the documents are held by Registered Trader) to enable the auditor to prepare and support its audit report.

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- 12.3** The inspection referred to in this Clause 12 shall be conducted at Philips' own expense, except that such expense shall be borne by Registered Trader where the inspection determines that:
- (a)** Registered Trader has failed to:
    - (i)** pay all, or any part of, the royalties due by the date due; or
    - (ii)** submit a yearly written statement by its external auditors, as provided for in Clause 9.13, in respect of any part of the period to which the inspection relates; or
    - (iii)** comply with its obligations under Clause 12.2; or
  - (b)** the auditor certifies that there is a discrepancy or error by way of underpayment of at least US \$5,000 and at least 3% of the monies actually due during the period under inspection.
- 12.4** If the inspection determines that an underpayment of at least US \$5,000 and at least 3% of the monies actually due occurred during the period under inspection, and Philips gives Notice of such underpayment to Registered Trader, Registered Trader shall be liable for royalties at the Standard Rate for each CD-R Disc for which royalties have not been previously paid, and also be liable for a sum equal to the difference between the Standard Rate and the Compliance Rate for each CD-R Disc in relation to which the Compliance Rate was paid. Registered Trader shall also be liable for interest calculated in accordance with the provisions of Clause 10.1.
- 12.5** Payment of the cost of inspection and of additional royalties pursuant to this Clause 12 shall be without prejudice to any other claim or remedy that Philips may have under this Registration Agreement, including, without limitation, Philips' right to terminate this Registration Agreement, or under any applicable law.

## 13 Spare

## 14 Spare

## 15 Access to Facilities

- 15.1** Registered Trader shall, upon request from Philips, give Philips' representatives immediate and unfettered access to, and allow Philips' representatives to take samples of CD-R Discs from, any and all of its facilities at which CD-R Discs are held, for the purpose of determining whether Registered Trader is in full compliance with its obligations under this Registration Agreement. Registered Trader shall also procure that, upon request from Philips, Philips' representatives shall have immediate and unfettered access to, and Philips' representatives shall be allowed to take samples of CD-R Discs from:
- (a)** the facilities of any company that stores CD-R Discs on behalf of Registered Trader; and
  - (b)** any warehouses at which Registered Trader holds CD-R Discs,

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for the purpose of determining whether Registered Trader is in full compliance with its obligations under this Registration Agreement.

## 16 Spare

## 17 System Logo

Registered Trader shall be entitled to use the System Logo on or in relation to CD-R Discs, in accordance with the Compact Disc Logo Guide.

## 18 RAND Grant-Back

- 18.1** Registered Trader acknowledges that blocking patents will, unless licensed, prevent the manufacture and/or trade in CD-R Discs, that the attractiveness of the CD-R Disc system which Registered Trader wishes to use depends upon the ability of purchasers to approach multiple suppliers, and at the same time that the holders of blocking patents are entitled to receive fair and reasonable royalties for access to their technology. Accordingly, Registered Trader shall not unreasonably refuse to grant (and, in relation to rights licensable by Registered Trader's Associated Companies, shall procure that the relevant Associated Company does not unreasonably refuse to grant) to Philips, to Philips' Associated Companies, or to other third parties who have entered or will enter into a "Registration Agreement for CD-R Disc Traders", or any other registration or license agreement for CD-R Discs with Philips that includes undertakings equivalent to the undertaking in this Clause 18.1, such non-exclusive, non-transferable rights (by way of license or otherwise), on reasonable, non-discriminatory conditions, as are necessary for the normal commercial activities of manufacturers of and traders in CD-R Discs under any and all present and future Patents:
- (a) for which Registered Trader or its Associated Companies have, or may acquire, the right to grant licenses;
  - (b) which are necessary, either directly or as a practical matter, for compliance with the CD-R Standard Specifications; and
  - (c) which are first filed, or are entitled to a priority date in any country, prior to the expiry date of this Registration Agreement.
- 18.2** The undertaking given by Registered Trader in Clause 18.1 is given in consideration of the benefits set forth in this Registration Agreement, including the undertaking given in Clause 18.3, and the benefit of equivalent undertakings given by other companies under a "Registration Agreement for CD-R Disc Traders" or under other registration or license agreements with Philips for CD-R Discs that include undertakings equivalent to the undertaking in Clause 18.1, and without prejudice to the provisions of Clause 24 of this Registration Agreement.

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- 18.3** Philips shall not unreasonably refuse to grant (and, in relation to rights licensable by Philips' Associated Companies, shall procure that the relevant Associated Company does not unreasonably refuse to grant) to Registered Trader or to Registered Trader's Associated Companies, a non-exclusive, non-transferable license or licenses, on reasonable, non-discriminatory conditions, of such rights as are necessary for the normal commercial activities of manufacturers of and traders in CD-R Discs under any and all present and future Patents:
- (a) for which Philips or its Associated Companies may acquire the right to grant licenses;
  - (b) which are necessary, either directly or as a practical matter, for compliance with the CD-R Standard Specifications; and
  - (c) which are first filed, or are entitled to a priority date in any country, prior to the expiry date of this Registration Agreement.

It is acknowledged and agreed by the parties that, for any Patents licensed pursuant to this Clause 18.3, royalties may be required to be paid in addition to the royalties specified in this Registration Agreement.

- 18.4** Any license made available under Clause 18.1 or Clause 18.3 shall be available for a period ending on the expiry date of the grantor's last relevant subsisting patent. For the avoidance of doubt, where a patent for which a license has been granted pursuant to Clause 18.1 or Clause 18.3 has expired, it shall be removed from such license, which shall continue to run only in relation to still subsisting patent(s).
- 18.5** The benefit of the undertakings set out in this Clause 18 shall only apply in relation to any company which is a party to a "Registration Agreement for CD-R Disc Traders", or to any other registration or license agreement for CD-R Discs with Philips in which such company accepts or has accepted an undertaking equivalent to the undertaking given by Registered Trader in Clause 18.1.

## 19 No Warranty; Indemnity

### 19.1 SPARE

**19.2** Registered Trader acknowledges and agrees that third parties may own intellectual property rights relating to CD-R Discs. Philips makes no representation or warranty that the importation, use, sale or offering for sale of CD-R Discs does not infringe or will not infringe any intellectual property right of any third party. Registered Trader shall indemnify and hold harmless Philips and its Associated Companies from and against any and all third party claims made in connection with CD-R Discs acquired, used, sold, offered for sale or otherwise disposed of by Registered Trader in breach of any of its obligations, undertakings or representations under this Registration Agreement or under any Per-Batch License.

**19.3** Registered Trader hereby waives all rights and hereby forever releases from liability, or in respect of matters that cannot be released from liability, shall indemnify and hold harmless, Philips and its Associated Companies from and against any and all liabilities as may arise in relation to:

- (a) the grant, failure or refusal to grant, or delay in granting, Per-Batch Licenses, and/or the issue, failure or refusal to issue, or delay in issuing, LSCDs, to Registered Trader (or to third parties from whom Registered Trader acquires CD-R Discs) by Philips (other than where such failure, refusal or delay is a breach of this Registration Agreement);

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- (b) claims made by customers of Registered Trader relating to CD-R Discs being delayed at customs, seized or destroyed;
  - (c) any interruption or deficiency in the supply of Serial Number Labels for which Registered Trader did not provide immediate Notice to Philips in accordance with Clause 7.5;
  - (d) any interruption or deficiency in the supply of Serial Number Labels, for which Registered Trader has given Notice to Philips in accordance with Clause 7.5 and where Philips has subsequently waived the requirement to place Serial Number Labels on Master Cartons as set out in Clause 7.1; or
  - (e) any interruption or deficiency in the supply of Serial Number Labels where Registered Trader had not taken reasonable care to order such Serial Number Labels in a timely manner, did not keep Serial Number Labels in stock in sufficient quantities to be able to cope with disruptions in the supply, or was not in full compliance with its obligations under its agreement with the supplier concerning the supply of Serial Number Labels.
- 19.4** Registered Trader acknowledges and agrees that Philips makes no representation or warranty that any use of the System Logo does not infringe or will not infringe any third party intellectual property rights.
- 19.5** In no event shall Philips be liable to Registered Trader under any cause of action arising under or related to this Registration Agreement for any amount greater than one million US Dollars.

## 20 Confidentiality

### 20.1 SPARE

**20.2** Registered Trader shall, for the duration of this Registration Agreement 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 Registration Agreement, or use such information for any purpose other than the acquisition, sale or other disposal of CD-R Discs in accordance with the provisions of this Registration Agreement.

**20.3** Philips shall, during the term of this Registration Agreement and for a period of 3 years thereafter, not disclose to any third party or use any confidential information obtained in connection with Clauses 5.6, 5.7, 9.12, and 12 for any purpose other than:

- (a) to verify the accuracy of information provided in Applications made by Registered Trader;
- (b) to ensure compliance with any royalty or other payment obligations in this Registration Agreement or any Per-Batch Licenses;
- (c) to confirm the licensed status of any CD-R Discs with interested third parties, including exercising its rights under Clause 5.13;
- (d) to disclose the information to an auditor for any purpose contemplated by this Registration Agreement;
- (e) to enforce Philips' rights under this Registration Agreement and other related agreements; and

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- (f) otherwise for the operation of Philips' licensing programmes and the monitoring and enforcement of its rights thereunder.

**20.4** Without limiting the provisions of Clause 20.3, Philips shall not disclose confidential information obtained in connection with the clauses referred to in Clause 20.3 to any employee of its Associated Companies or any other individual other than those engaged in Philips' licensing activities.

**20.5** The obligations of Registered Trader in Clause 20.2, and of Philips in Clauses 20.3 and 20.4, shall not apply to either party to the extent that such information:

- (a) has, after the date of this Registration Agreement, been published or otherwise generally made available to the public, except in consequence of a wilful or negligent act or omission by the other party to this Registration Agreement in breach of its confidentiality obligations under this Clause 20;
- (b) has been made available to the recipient party by a third party who is entitled to divulge such information and who is not under any obligation of confidentiality in respect of such information to the other party or which has been disclosed under an express statement that it is not confidential;
- (c) has been independently developed by the recipient party other than in the course of the exercise of that party's rights under this Registration Agreement or the implementation of this Registration Agreement;
- (d) SPARE;
- (e) is disclosed by either party in order to perform its obligations under or pursuant to this Registration Agreement; or
- (f) is information which the recipient party can prove was already known to it before, or was developed independently of, its receipt from the disclosing party,

provided that nothing in this Clause 20 shall prevent either party from disclosing such information:

- (a) pursuant to any applicable law which requires such disclosure, or to any recognised stock exchange or governmental or other regulatory or supervisory body or authority of competent jurisdiction to whose rules the party making the disclosure is subject, whether or not having the force of law, provided that the party disclosing the information shall notify the other party of the information to be disclosed (and of the circumstances in which the disclosure is alleged to be required) as early as reasonably possible before such disclosure must be made and shall take all reasonable action to avoid and limit such disclosure; or
- (b) to any applicable tax authority to the extent required by a legal obligation.

**20.6** In maintaining the confidentiality of information acquired from Philips or any of Philips' Associated Companies, Registered Trader shall:

- (a) take all necessary precautions, including but not limited to measures requiring that its employees give suitable undertakings of secrecy, both for the period of their employment and thereafter; and
- (b) protect such information in the same manner and with the same degree of care (but no less than a reasonable degree of care) as Registered Trader applies to its own confidential information.

**20.7** For the avoidance of doubt, the provisions of this Registration Agreement are not subject to any confidentiality obligation.

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## 21 System Changes

**21.1** Registered Trader acknowledges and agrees that the integrity of Philips' batch-based licensing system, as generally described in the Philips CD-R Batch-Based Licensing System Guide is important to the equitable treatment of manufacturers and traders of CD-R Discs and to open and fair competition in the market for CD-R Discs and the market for licensing intellectual property rights relevant to CD-R Discs. Accordingly, Registered Trader acknowledges and agrees that Philips may, in its sole discretion, make such revisions to aspects of the system as it considers necessary or conducive to achieve these purposes. In particular, and without limitation, Registered Trader acknowledges and agrees that Philips may do the following:

- (a) revise the PBL Standard Terms and Conditions;
- (b) revise the Serial Number Guide, the Registration Logo Guide, the Compact Disc Logo Guide, and/or the Philips CD-R Batch-Based Licensing System Guide;
- (c) revise the Audit Guide;
- (d) revise the Standard Rate and/or the Compliance Rate;
- (e) revise the list of Essential Patents in accordance with Clause 22;
- (f) revise the form of the Confirmation Letter;
- (g) revise the content of the table entitled "Transitional Periods for System Changes", as set out at Annex H;
- (h) require the provision of the lowest and highest number on the Serial Number Labels, or the full list of such numbers, included in the proposed Shipment, as part of the information provided in an Application pursuant to Clause 5.6;
- (i) select a suitable method for assigning and applying Serial Number Labels to Master Cartons from all alternatives which may hereafter become commercially feasible;
- (j) extend the use of Serial Number Labels or other markings to units of packaging smaller than Master Cartons (e.g. per spindle or per disc); and/or
- (k) revise the definition of System Breach in accordance with Clause 11.7.

Registered Trader acknowledges and agrees that any such revision, extension, selection or other change shall be deemed to be incorporated into this Registration Agreement with effect 30 Days from such Notice and in accordance with such Notice. Philips shall ensure that such Notice provides for a transitional period (such period to start on the date on which the revision, extension, selection or other change is deemed to be incorporated into this Registration Agreement) at least as long as that specified for the relevant revision, extension, selection or other change in the table entitled "Transitional Periods for System Changes" attached at Annex H, during which period Registered Trader shall be entitled to update its processes to ensure compliance with such changes.

**21.2** Registered Trader shall be entitled to refuse to comply with a System Change the subject of a Notice under Clause 21.1 and shall terminate this Registration Agreement upon such refusal by means of Notice to Philips.

**21.3** Notwithstanding the provisions of Clauses 21.1(h), 21.1(i) and 21.1(j), Philips confirms that it shall apply the same procedures for Serial Number Labels to Other Registered Traders and shall not charge Registered Trader more than US \$0.50 per Serial Number Label (or if applied to smaller packaging units, not more than the equivalent of US \$0.50 per Master Carton based on a Master Carton containing 400 CD-R Discs).

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**21.4** Philips undertakes that it will not:

- (a) increase the Standard Rate and the Compliance Rate above the rates specified in this Registration Agreement;
- (b) act unreasonably in making any System Change; or
- (c) restrict the scope of any license or non-assert undertaking that has been granted in a Per-Batch License.

## 22 Essential Patents

**22.1** Philips and Registered Trader agree that Annex B is, as at the Effective Date, an accurate record of the Patents of which Philips, or any of Philips' Associated Companies, is the registered proprietor, the use of which is necessary, either directly or as a practical matter, for compliance with the CD-R Standard Specifications.

**22.2** Philips confirms that it has commissioned independent patent experts to review its Essential Patents in the EU, Japan and the United States in order to confirm that such Patents should remain classified as "essential" to the manufacture of CD-R Discs. If one of these independent patent experts determines that any of the Essential Patents no longer qualifies as "essential", Philips shall delete such Patent (as well as corresponding Patents in other jurisdictions) from Annex B and such Patent shall be moved onto a list of "non-essential" Patents.

**22.3** If Philips or any of its Associated Companies are the registered proprietors of Patents which:

- (a) are determined by an independent patent expert mentioned in Clause 22.2 to be essential to CD-R Discs (and are not Patents acquired from third parties on or after 1 January 2006);
- (b) have a filing date or are entitled to a priority date prior to 1 July 1991; and
- (c) have not been listed as Essential Patents in Annex B,

Philips shall notify Registered Trader of the existence of such additional "essential" Patents, and such additional "essential" Patents shall be deemed to be Essential Patents. Philips shall not assert any patent added to the list of Essential Patents in relation to any CD-R Disc for which Philips has previously granted a license.

**22.4** Philips and Registered Trader acknowledge and agree that the list of Essential Patents is subject to continual revision and that the list of Essential Patents published by Philips on the Website or otherwise communicated by Philips to Registered Trader on the date of issue of any Per-Batch License shall determine the Patents for which rights are granted to Registered Trader under the relevant Per-Batch License. Philips and Registered Trader further acknowledge and agree that any changes to the list of Essential Patents shall not affect the royalties payable for any relevant Per-Batch License and shall not lead to any refund of royalties.

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## 23 No Assignment

This Registration Agreement shall inure to the benefit of and be binding upon each of the parties hereto and their respective successors and permitted assignees. It may not be assigned by Registered Trader in whole or in part except with the prior consent of Philips, given in writing and executed by a duly authorised representative of Philips.

## 24 Term and Termination

- 24.1** This Registration Agreement shall commence on the Effective Date. Unless and until terminated earlier in accordance with the provisions of this Clause 24, this Registration Agreement shall remain in force for a period of 5 years from the Effective Date or until the expiry date of the Essential Patent last subsisting in the Country of Registration, whichever comes first.
- 24.2** Registered Trader may terminate this Registration Agreement upon giving Philips 45 Days' Notice of its intention to terminate.
- 24.3** Without prejudice to the provisions of Clause 24.4 through to Clause 24.10, either party may terminate this Registration Agreement if the other party fails to perform any obligation under this Registration 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 be without prejudice to any other remedy 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 Registration Agreement or under any Per-Batch License that have accrued prior to such termination.
- 24.4** Philips may terminate this Registration Agreement if:
- (a) Registered Trader commits a System Breach and does not prove each of the elements set out in Clause 11.6, within the time limit stipulated in Clause 11.6, to Philips' reasonable satisfaction;
  - (b) Philips terminates the registration agreement of an Associated Company of Registered Manufacturer in accordance with any provision of that agreement that corresponds to any provision of Clause 24 hereof;
  - (c) a creditor or other claimant takes possession of, or a receiver, administrator or similar officer is appointed over, any of the assets of Registered Trader, or Registered Trader makes any voluntary arrangement with its creditors or becomes subject to any court or administration order pursuant to any bankruptcy or insolvency law;
  - (d) Registered Trader is found by a competent court or administrative authority to have engaged in an intellectual property infringement which Philips reasonably regards as an act of counterfeiting or piracy;
  - (e) any of Registered Trader's representations in or under this Registration Agreement proves to be false in any manner
  - (f) a Notice has been issued by Philips under Clause 10.3 specifying non-payment or late payment of royalties, and Registered Trader does not remedy such non-payment or late payment within 30 Days of such Notice being issued;

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- (g) Registered Trader fails to pay (by the date due or at all) the difference between the total royalties paid by Registered Trader in a calendar year and the Minimum Annual Royalties, pursuant to an invoice issued by Philips under Clause 9.12; or
- (h) Registered Trader becomes a Registered Manufacturer or becomes engaged in the manufacture of CD-R Discs.

**24.5** In each instance where Philips has a right to terminate pursuant to Clause 24.4, Philips may only exercise such termination right by giving Notice to Registered Trader specifying the reason for such termination. Any termination so effected shall be effective immediately upon such Notice.

**24.6** Upon termination of this Registration Agreement by Philips for any reason pursuant to Clause 24.4, Registered Trader shall immediately cease:

- (a) acquiring, offering for sale, selling or otherwise disposing of CD-R Discs in which any one or more of the Essential Patents are used where such act would infringe an Essential Patent; and
- (b) using the Registration Logo and the System Logo where such use would infringe Philips' rights in the Registration Logo and/or the System Logo.

**24.7** Upon termination of this Registration Agreement by Philips for any reason pursuant to Clause 24.4, any and all amounts outstanding under this Registration Agreement or under any Per-Batch License shall become immediately due and payable. Rights already accrued shall survive termination.

**24.8** All acknowledgements by Registered Trader under this Registration Agreement, and the following provisions of this Registration Agreement, shall survive the expiry or termination of this Registration Agreement indefinitely: Clauses 1, 5.5, 9.9, 9.10, 9.11, 10.1, 10.3, 11.3, 11.4, 11.6, 19, 20, 23, 24.4, 24.6, 24.8, 24.9, and 25. The following provisions of this Registration Agreement shall survive the expiry or termination of this Registration Agreement for the periods listed below:

- (a) Clauses 5.7 and 5.8 – for 1 year following such expiry or termination;
- (b) Clause 12 - for 1 year following such expiry or termination; and
- (c) Clause 15 - for 2 years following such expiry or termination.

**24.9** Within 30 Days following the termination of this Registration Agreement, Registered Trader shall submit to Philips a report certified by its external auditors specifying the number of CD-R Discs owned or controlled by Registered Trader that remain in stock at such date of termination. Subject to any agreement with Philips to the contrary (which may involve Philips permitting the CD-R Discs remaining in stock to be sold under a Per-Batch License and the payment of royalties by Registered Trader), any such CD-R Discs shall be destroyed, and the destruction proven to Philips' reasonable satisfaction.

**24.10** Upon the expiry of the last subsisting Essential Patent in the Country of Registration, or when the manufacture of a CD-R Disc no longer infringes a Valid Claim in the Country of Registration, this Registration Agreement shall automatically terminate.

**24.11** SPARE

**24.12** SPARE

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- 24.13** Where Registered Trader has proven to Philips' reasonable satisfaction that more than 20% of the CD-R Discs that Registered Trader acquires are manufactured by a specific Registered Manufacturer, and that Registered Manufacturer has its "Registration Agreement for CD-R Manufacturers" terminated by Philips, Registered Trader may issue a Notice to Philips requesting that Philips offers to enter into an "Registration Agreement for CD-R Manufacturers – Limited Extension" with such Registered Manufacturer to enable such Registered Manufacturer to continue supplying CD-R Discs to Registered Trader only for a period of 90 Days.
- 24.14** Upon receiving a Notice referred to in Clause 24.13, Philips shall offer to enter into a "Registration Agreement for CD-R Manufacturers – Limited Extension" with the Registered Manufacturer the subject of the Notice. Except where that Registered Manufacturer accepts the offer as made by Philips, Philips shall have no obligation to enter into the "Registration Agreement for CD-R Manufacturers – Limited Extension" with such Registered Manufacturer and Philips shall not be liable for any disruption caused to Registered Trader's dealings in CD-R Discs if the "Registration Agreement for CD-R Manufacturers – Limited Extension" is not in fact entered into.

## 25 Miscellaneous

- 25.1** Notwithstanding anything to the contrary contained in this Registration Agreement, it shall not be a breach of this Registration Agreement, nor shall it give rise to any royalty payment or other obligations under this Registration Agreement, for Registered Trader to dispose of or import a CD-R Disc not bearing the Registration Logo, where such disposal or importation does not infringe a Valid Claim.
- 25.2** Registered Trader acknowledges that all right, title and interest in and to the Essential Patents, the Registration Logo and the System Logo are owned by Philips and all rights relating thereto shall remain solely with Philips. Registered Trader shall not acquire any rights of ownership in any of the Essential Patents, the Registration Logo, or the System Logo, whether by implication, use, registration or otherwise. All rights relating to or resulting from the use of the Registration Logo or the System Logo by Registered Trader, including, without limitation, goodwill, shall inure to the benefit of Philips.
- 25.3** Registered Trader shall have no right to instigate any action against a third party for infringement of any of the Essential Patents or the Registration Logo. If a claim is made against Registered Trader in connection with Registered Trader's use of the Essential Patents, the Registration Logo, or the System Logo, Registered Trader shall notify Philips and Philips shall have the right (but shall have no obligation) to defend such claim at Philips' own cost. If Philips institutes legal proceedings against a third party for alleged infringement of the Essential Patents, the Registration Logo, or the System Logo, Registered Trader shall provide Philips with all such assistance as Philips may reasonably require from time to time in respect of such proceedings.
- 25.4** Registered Trader acknowledges and agrees that Philips may modify the wording of the standard version of the "Registration Agreement for CD-R Disc Traders" at any time. Registered Trader shall at all times have the option of entering into the most recent version of the "Registration Agreement for CD-R Disc Traders", as published by Philips on the Website or otherwise communicated by Philips to Registered Trader after the Effective Date. No modification of the standard version of the "Registration Agreement for CD-R Disc Traders" shall be effective between Registered Trader and Philips unless and until Registered Trader and Philips have entered into the version of the "Registration Agreement for CD-R Disc Traders" containing such modification.

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**25.5** Any notice required to be given by either party under this Registration Agreement shall, unless explicitly specified in this Registration Agreement otherwise, be given in writing in the English language by means of a letter or facsimile directed:

in respect of Registered Trader, to:

Registered Trader's Notice Address and Fax Number

in respect of Philips, to:

Koninklijke Philips Electronics N.V.  
c/o Philips Intellectual Property & Standards - Legal Department  
Building WAH-2  
P.O. Box 220  
5600 AE Eindhoven  
The Netherlands  
Fax +31 40 2743489

or such other address as may have been previously specified, for any particular purpose or for all purposes, by either party to the other.

**25.6** This Registration Agreement sets forth the entire understanding and agreement between the parties as to the subject matter to which it refers, and supersedes and replaces all prior arrangements, discussions and understandings between the parties relating to such subject matter. No variation to this Registration Agreement shall be binding upon either party unless made in writing and signed by an authorised representative of each of the parties.

**25.7** Nothing contained in this Registration Agreement shall be construed:

- (a) as imposing on either party any obligation to instigate any action for infringement of any of the Essential Patents, the Registration Logo, or the System Logo, or to defend any action brought by a third party which challenges or relates to the validity of any of these intellectual property rights;
- (b) as imposing any obligation to file any patent, trademark or copyright applications, to secure any patent, trademark or copyright registrations, or to maintain any subsisting patent, trademark or copyright registrations;
- (c) as conferring any license or right to copy or imitate the appearance or design of any product of Philips or any of its Associated Companies;
- (d) as being intended to prevent or restrict the free movement of goods in breach of Articles 28 and 30 of the Treaty of Rome Establishing the European Economic Community (1957); or
- (e) as conferring any license to manufacture, sell or otherwise dispose of any product or device, or as transferring any title to any product or device.

**25.8** Registered Trader acknowledges and confirms that it has had ample time to engage legal counsel of its choice to review the structure, contents and implications of the batch-based licensing system and of this Registration Agreement, and Registered Trader acknowledges and confirms that it freely enters into this Registration Agreement.

**25.9** Neither the failure nor the delay of either party to enforce any provision of this Registration Agreement shall constitute a waiver of such provision or of the right of either party to enforce each provision of this Registration Agreement.

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- 25.10** Should any provision of this Registration Agreement be finally determined to be void or unenforceable in any judicial proceeding, such determination shall not affect the operation of the remaining provisions of this Registration Agreement, provided that, in such event, Philips shall have the right to terminate this Registration Agreement by Notice to Registered Trader.
- 25.11** This Registration Agreement shall be governed by and construed in accordance with the laws of the Jurisdiction of Governing Law.
- 25.12** Clauses 25.13 and 25.14 shall apply unless at the head of this Registration Agreement the box “Arbitration in the Hong Kong SAR” is ticked.
- 25.13** Other than as provided in Clause 25.14, any dispute between the parties in connection with this Registration Agreement (including any question regarding its existence, validity or termination) shall be submitted to the Court/s with Primary Jurisdiction, provided always that, where Philips is the plaintiff, it may, alternatively and at its sole discretion, submit such dispute either to the competent courts in the country where Registered Trader’s registered office is located, or to the competent courts in any country where Registered Trader or its Associated Companies are otherwise located or have manufacturing facilities, or, for claims arising in relation to a Shipment by Registered Trader or its Associated Companies, to any of the competent courts in the country of destination of the Shipment. Registered Trader irrevocably waives any rights it may have to object to the jurisdiction, process and venue of any such court and to the effectiveness, execution and enforcement of any order or judgement (including, but not limited to, a default judgement) of any such court in relation to this Registration Agreement, to the maximum extent permitted by the law of any jurisdiction, or to the laws which might be claimed to be applicable regarding the effectiveness, enforcement or execution of such order or judgement.
- 25.14 Arbitration solely for disputes concerning jurisdiction.** The parties acknowledge and agree that any effort to defeat or circumvent the appropriate jurisdiction or jurisdictions for disputes as set out in Clause 25.13 are to be dealt with expeditiously and accordingly if:
- (a) Registered Trader refers a dispute to any court other than the Court/s with Primary Jurisdiction and Philips alleges that Registered Trader has done so in breach of Clause 25.13; and
  - (b) a dispute arises between the parties as to
    - (i) whether Registered Trader has referred a dispute to a court (other than the Court/s with Primary Jurisdiction) that, under Clause 25.13, lacks jurisdiction; and/or
    - (ii) the appropriate remedy by way of injunction and/or damages or otherwise due to Philips from Registered Trader arising from such breach,

Philips may refer the dispute under (b) to arbitration by giving to Registered Trader a Notice, including a reference to this Clause 25.14, specifying the dispute that Philips has referred to arbitration. The question for arbitration is a simple one, the answer to which will generally be very clear. Consequently, the arbitration shall be conducted by one arbitrator appointed by the Deken of the Nederlandse Orde van Advocaten (the “**Deken**”) at Philips’ request. The arbitrator shall be a lawyer qualified under the laws of, and engaged in private practice in, The Netherlands. Before his appointment he shall have given an assurance (either on oath or binding as a matter of professional conduct) to discharge the office of arbitrator impartially. The arbitration shall be conducted in the Dutch language at The Hague, The Netherlands. If the arbitrator dies, resigns, refuses to arbitrate or becomes incapable of arbitrating, Philips shall request the Deken to appoint a new arbitrator. If an arbitration had already commenced prior to the new arbitrator being appointed, it shall continue as if the new arbitrator had been acting from the beginning. The arbitrator shall use his best endeavours to issue a final award within 20 Days of his appointment. Procedural matters not specified in this Clause 25.14, including costs of the arbitration, shall be determined by the arbitrator.

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Initial Registered Trader \_\_\_\_\_

Neither party may apply to a Court to determine any question of law arising in the course of, or otherwise in relation to, the arbitration, or appeal to a Court on a question of law relating to an award.

**25.15 Arbitration in the Hong Kong SAR.** This Clause 25.15 shall apply if at the head of this Registration Agreement the box "Arbitration in the Hong Kong SAR" is ticked. Any dispute between the parties in connection with this Registration Agreement (including any question regarding its existence, validity or termination) shall be settled by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce ("**ICC**") in effect at the time of applying for arbitration and as may be amended by the rest of this Clause 25.15. The arbitral award shall be final and binding upon the parties. The arbitration shall be conducted as follows:

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

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

Any arbitrator appointed to act in an arbitration under this Clause 25.15 shall be a lawyer in private practice, qualified to practise in one or more of the Hong Kong SAR, the United States of America, Germany or the United Kingdom, shall be fluent in the English language, and shall not be a national of either the Country of Registration or of The Netherlands.

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

KONINKLIJKE PHILIPS  
ELECTRONICS N.V.

[REGISTERED TRADER]

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

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

reference copy

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ANNEX A  
Philips CD-R Disc Batch-Based Licensing System  
Guide

reference copy

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# ANNEX B

## Essential Patents

The current list of Essential Patents, including the expiry dates of the Essential Patents on a country-by-country basis, is published on the Website.

reference copy

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# ANNEX C

## Licensed Status Confirmation Document (LSCD)

### KONINKLIJKE PHILIPS ELECTRONICS N.V. LICENSED STATUS CONFIRMATION DOCUMENT

Issue Date: \_\_\_\_\_

Issue Number: \_\_\_\_\_

#### TO WHOM IT MAY CONCERN

This Licensed Status Confirmation Document (LSCD), whether in hard copy or in electronic form, confirms that the transfer to the Recipient specified below, of the specific Products identified below, is licensed by Koninklijke Philips Electronics N.V. (Philips) under Philips' essential patents (where such patents subsist) as well as the trademark and copyrights in the Registration Logo, in the Country of Manufacture, the Country in which the Shipment Originated (if different to the Country of Manufacture) and the Country of Destination as specified below (and no other countries).

Product:  
Applicant:  
Registration Number/s:  
Brand Name and Label (if any):  
Quantity:  
Country of Manufacture:  
Country in which Shipment Originated:  
Country of Destination:  
Method of Transfer:  
Container Number (if any):  
Recipient Name and Address:  
Invoice Number/s:  
GTIN /UPC /EAN:  
Estimated Time of Arrival:  
Additional Information:

Philips has issued this LSCD based on Applicant's representation to Philips that the above information is accurate, complete and true. Applicant remains fully responsible for the continued correctness, accuracy and completeness thereof. Philips expressly reserves the right to revoke this LSCD in the event that any information provided to Philips in connection with this LSCD is inaccurate, incomplete or untrue. This LSCD shall only be valid if issued prior to the Shipment.

If you have any doubts concerning the authenticity of this LSCD, please contact Philips at [info.licensing@philips.com](mailto:info.licensing@philips.com).

Koninklijke Philips Electronics N.V.

© Koninklijke Philips Electronics N.V., 2006. The contents of this LSCD are protected by copyright owned by Philips. You may download or copy this LSCD only for the purpose of confirming the licensed status of the transfer of the Products specified above. Any modification of this document or the offering for sale in any form is strictly prohibited and will render this document void.

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# ANNEX D

## PBL Standard Terms and Conditions

Except as expressly agreed to the contrary, the provisions of any Per-Batch License concluded between The Applicant and Philips while these PBL Standard Terms and Conditions are current shall be as follows.

Philips and The Applicant have previously entered into a “Registration Agreement for CD-R Disc Manufacturers”, a “Registration Agreement for CD-R High Capacity Disc Manufacturers”, a “Registration Agreement for CD-R Multispeed Disc Manufacturers”, a “Registration Agreement for CD-R Disc Traders”, a “Registration Agreement for CD-R High Capacity Disc Traders”, a “Registration Agreement for CD-R Multispeed Disc Traders”, or a “Click-Through Agreement for Web-Registered Traders” (each of the aforementioned agreements hereinafter referred to as a “**Registration Agreement**”). The Applicant has submitted The Application for a Per-Batch License for the Grant Country(ies).

Philips and The Applicant hereby agree as follows:

### 1 Definitions

- 1.1 All capitalised terms used in this Per-Batch License shall have the meaning ascribed thereto in the Registration Agreement.
- 1.2 “**The Application**” shall mean the Application for this Per-Batch License submitted by The Applicant.
- 1.3 “**The Applicant**” shall mean the entity that submitted The Application, being a Licensee, Registered Manufacturer, Registered Trader or a Web-Registered Trader.
- 1.4 “**Product**” shall mean a CD-R Disc, CD-R HC Disc, or CD-R MS Disc.

### 2 Grant of License

- 2.1 **Essential Patents.** Subject to the provisions of this Per-Batch License and the Registration Agreement, Philips hereby grants to The Applicant a non-transferable, non-exclusive license, under the Essential Patents subsisting in the Grant Country(ies), to import into and sell within the Grant Country(ies) in accordance with The Application, the Products identified in The Application.
- 2.2 **Registration Logo.** Subject to the provisions of this Per-Batch License and the Registration Agreement, Philips hereby grants to The Applicant a non-transferable, non-exclusive license, under Philips’ intellectual property rights in the Registration Logo subsisting in the Grant Country(ies), to import into and sell within the Grant Country(ies) in accordance with The Application, the Products identified in The Application.

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### 3 Issuance of LSCDs and Per-Batch Licenses to Recipients

Where the entity identified in The Application as the recipient (“Recipient”) proposes to transfer the Products identified in The Application to a country other than the country of destination specified in The Application, Recipient may, by using the DISP and providing all appropriate information, request Philips to issue an LSCD for the transfer of these Products to such country. Upon such request, and provided that the Recipient adheres to the procedures of Philips' CD-R batch based licensing system, Philips shall issue an LSCD and/or grant a Per-Batch License to the Recipient, without charging any further royalty to the Recipient. It is acknowledged that said procedures may require the Recipient to register with Philips as a Registered Trader or a Web-Registered Trader.

### 4 Retail Packaging

The Applicant may use the Registration Logo on retail packaging containing Products identified in The Application provided that:

- (a) all Products included in such retail packaging bear the Registration Logo;
- (b) such retail packaging also displays a Registration Number assigned to The Applicant (where The Applicant is a Registered Manufacturer or a Licensee), or a Trader Number assigned to The Applicant (where The Applicant is a Registered Trader or a Web-Registered Trader) which is identified in the relevant LSCD as the recipient of the Products; and
- (c) the Registration Logo is reproduced on such retail packaging in accordance with the Registration Logo Guide.

### 5 Limitation on License

No licenses are granted under Clauses 2.1, 2.2 or 4 for:

- (a) the benefit of any entity other than The Applicant;
- (b) any country other than the Grant Country(ies);
- (c) any product other than the Products specified in The Application;
- (d) any intellectual property right other than the Essential Patents and the Registration Logo;
- (e) any act that is not in accordance with The Application;
- (f) any Product on which, at the time of the relevant importation or sale, the Registration Logo or the Registration Number was not applied in accordance with the Registration Logo Guide, or the packaging of which breaches the Registration Logo Guide; or
- (g) any Product, the packaging of which, at the time of the relevant importation or sale, breaches the Serial Number Guide or the Compact Disc Logo Guide.

### 6 Royalty Rate and Payment

6.1 The royalty rate for each Product covered by this Per-Batch License shall be the Compliant Rate unless the party responsible for the payment of royalties under this Per-Batch License:

- (a) was in breach of its Registration Agreement at the time The Application was made; or
- (b) is liable to pay the Standard Rate for this Per-Batch Licenses under its Registration Agreement;

in which event the royalty rate for each Product covered by this Per-Batch License shall be the Standard Rate.

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**6.2** The royalties shall be paid in accordance with the provisions of Clause 9 of the Registration Agreement.

**7 Miscellaneous**

Clauses 25.10 to 25.15 of the Registration Agreement shall apply mutatis mutandis to this Per-Batch License.

reference copy

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ANNEX E  
SPARE

reference copy

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# ANNEX F

## Confirmation Letter

Date: \_\_\_\_\_

The Registered Trader represents and confirms that, for the calendar year [ ]:

Except as set out in the Exceptions Report below:

All CD-R Discs acquired by Registered Trader were properly covered by an LSCD;  
All CD-R Discs included by Registered Trader in a Shipment were properly covered by an LSCD;  
All information provided by Registered Trader in each Application, and all other information provided by Registered Trader in connection with all Per-Batch Licenses and LSCDs, was and is true, accurate and complete in every respect;  
The change in stock levels, the number of CD-R Discs that have been stolen, confiscated, lost, destroyed, or the subject of a Retail Sale, are reported in the Exceptions Report below.

**Signed**

\_\_\_\_\_  
**Authorised Officer of Registered Trader**

**Exceptions Report**

[•]

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# ANNEX G

## Audit Guide

This Audit Guide lays down the conditions under which audits are to be performed and audit statements generated by Registered Trader's external auditors pursuant to Clause 12 of the "Registration Agreement for CD-R Disc Traders" between Registered Trader and Philips. This Audit Guide may be amended by Philips from time to time.

### 1. Auditor's Qualifications

The auditor appointed by Registered Trader to issue an audit statement on the Confirmation Letter shall, where Registered Trader appoints an auditor on a regular basis to issue an auditor's opinion on the financial statements of Registered Trader, be the same auditor; and, in any event, the auditor shall be:

- (a) a certified public auditor, chartered accountant or registered accountant (as these terms are generally known in the United States, the United Kingdom and The Netherlands respectively) or holding an equivalent professional qualification in the country in which the auditor practices;
- (b) a member of a well-respected firm, preferably one of KPMG, PricewaterhouseCoopers, Deloitte Touche Tohmatsu and Ernst & Young (or any of their successors); and/or
- (c) a member of the American Institute of Certified Public Accountants (**AICPA**), the Institute of Chartered Accountants in England & Wales (**ICAEW**), or Koninklijk Nederlands Instituut van Registeraccountants (**NIVRA**) (whichever of these associations governs accounting in the country in which the auditor practices), or a member of a professional body of similar standing where this is not practicable.

### 2. Opinion

The audit statement on the Confirmation Letter, as described below, shall be in the form of the Independent Audit Statement set out in Schedule 1.

Initial Philips \_\_\_\_\_

Initial Registered Trader \_\_\_\_\_

# ANNEX G - Schedule 1

## Independent Audit Statement

### **Independent Audit Statement to the Directors and/or Management of [Registered Trader]**

We have audited the attached report (the **Confirmation Letter**) relating to the Shipments of CD-R Discs by Registered Trader, as reported by Registered Trader to Koninklijke Philips Electronics N.V. (**Philips**) under the "Registration Agreement for CD-R Disc Traders" between them dated [●] (the **Registration Agreement**). The Confirmation Letter has been duly initialed by us for identification purposes and relates to the period starting [dd/mm/yyyy] and ending [dd/mm/yyyy].

#### **1. Respective Responsibilities of Directors, Management and Auditors**

The directors and/or management are responsible for preparing the Confirmation Letter in accordance with the terms of the Registration Agreement, so as to set out fairly, completely and accurately the information required to be reported under the Registration Agreement for the calendar year ending [dd/mm/yyyy], and the amount of royalties payable for that period under licenses granted by Philips for which [Registered Trader] has accepted liability for royalties under the Registration Agreement.

Our responsibility is to express an opinion on the completeness and accuracy of the Confirmation Letter based on our audit of [Registered Trader's] books and records and other aspects of its distribution operations.

This audit statement is intended solely for use by the board of directors and management of [Registered Trader] for the purpose of its reporting requirements under the Registration Agreement and therefore may only be made available by [Registered Trader] to Philips and its Associated Companies (as defined in the Registration Agreement). We consent to such distribution on the understanding that under no circumstances shall we accept any liability or responsibility to Philips or its Associated Companies, or to any other party to whom our report is made available (whether or not intentionally and whether or not by [Registered Trader] or Philips or either of their Associated Companies). This audit statement may not be made available to any other party without our prior written consent.

#### **2. Basis of Audit Opinion**

We have conducted our audit in accordance with those elements of generally accepted international standards on auditing that are relevant for the purposes of forming an opinion on the completeness and accuracy of the Confirmation Letter. These standards require that we:

- (a) plan and perform the audit in order to make ourselves satisfied that the Confirmation Letter is free of material mistakes, misstatements or other inaccuracies;
- (b) examine, on a test basis, evidence supporting the monetary amounts listed, and the disclosures made, in the Confirmation Letter;
- (c) assess the appropriateness of the accounting principles adopted in preparing the Confirmation Letter and the accuracy of significant estimates made in the Confirmation Letter by the management of [Registered Trader]; and
- (d) evaluate the overall presentation of the Confirmation Letter.

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We believe that the method adopted in our audit provides a reasonable basis for issuing our statement.

**3. Statement**

In our opinion, the Confirmation Letter sets out fairly, completely and accurately (in all material respects) the information required to be reported by [Registered Trader] under the Registration Agreement for the calendar year ending [dd/mm/yyyy] and the amount of royalties payable by [Registered Trader] to Philips under licenses granted by Philips.

\_\_\_\_\_  
(signed)  
[Name of Audit Firm]  
[City]  
[Date]

**Attachment: Confirmation Letter (\_\_\_ pages)**

reference copy

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# ANNEX H

## Transitional Periods for System Changes

<b>Change</b>	<b>Transitional period</b>
PBL Standard Terms and Conditions	7 Days
Serial Number Guide	60 Days
Registration Logo Guide	60 Days
Compact Disc Logo Guide	60 Days
Audit Guide	60 Days
Method for assigning and applying Serial Number Labels to Master Cartons	60 Days
Extension of use of Serial Number Labels	90 Days
Requirement of reporting Serial Number Labels in a Shipment	90 Days
Definition of System Breach	90 Days from Notice provided under Clause 11.7

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# ANNEX I

## Serial Number Guide

### 1 Introduction

Philips has created a batch-based patent licensing system for CD-R Discs, CD-R HC Discs, and CD-R MS Discs, as described in the document “Philips CD-R Batch-Based Licensing System”.

The terms and conditions under which manufacturers of such discs, and traders in such discs, may request and obtain per-batch licenses are described in registration agreements. Manufacturers who have entered into such registration agreement with Philips are called “Registered Company” in this Annex I.

As one of the conditions for obtaining a per-batch license, a Registered Company must apply unique Serial Number Labels on the Master Cartons in which discs are packed. This “Serial Number Guide” specifies the rules for procuring and applying Serial Number Labels.

### 2 Rules for procuring Serial Number Labels

Serial Number Labels for use in the Philips CD-R Disc Batch-Based Licensing System can only be obtained from a supplier that has been authorized by Philips (an “Authorized Supplier”).

The Authorized Supplier is:

Opsec Security Inc.  
21132 Old York Road  
Parkton, MD 21120-0700  
USA  
<http://www.opsecsecurity.com/>  
phone number: +1 - 410 - 357 - 4491  
fax number: +1 - 410 - 357 - 4495  
customer service contact: Branddy  
customer service e-mail: BSpence@opsecsecurity.com

### 3 Terms & Conditions for the supply of Serial Number Labels

The terms and conditions to apply between a registered manufacturer and the Authorized Supplier for the supply of Serial Number Labels shall be substantially similar to the terms and conditions set out in Schedule 1 attached hereto.

### 4 Rules for applying Serial Number Labels on master cartons

A Master Carton shall be correctly labelled with a Serial Number Label when all of the following conditions are met:

- (a) the Serial Number Label was obtained from an Authorized Supplier;
- (b) the Serial Number Label is applied directly on the Master Carton, without an intermediate layer;
- (c) the Serial Number Label cannot be removed from the Master Carton without damaging the Serial Number Label; and

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- (d) the Serial Number Label is applied as a seal across the opening of the Master Carton, as illustrated in the figure below, such that the Serial Number Label must be cut in two pieces when the discs are removed from the Master Carton.

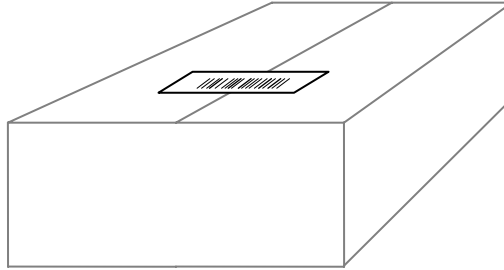


Figure: application of the Serial Number Label on a Master Carton

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# ANNEX I - SCHEDULE 1

## Terms and Conditions for the Supply of Serial Number Labels

### **1 Purchase Orders for the Products.**

Registered Company shall order the Veeza Serial Number Labels ("Products") from OpSec pursuant to written purchase orders specifying the quantities ordered, shipping instructions and place of delivery.

### **2 Distribution of Products.**

For as long as Registered Company has a binding and valid registration agreement in place with Philips and subject to the full and unconditional compliance by Registered Company with its obligations under said registration agreement, OpSec shall fulfill all orders from Registered Company for Products, making commercially reasonable efforts to ensure that all orders for Products are processed within a 48-hour time period. OpSec shall only ship to addresses of Registered Company that have been approved by Philips, and shall only ship those types of Products that have been approved by Philips for Registered Company. OpSec shall not be required to fulfill orders from Registered Company if (a) Registered Company is in breach of any of its obligations to OpSec in relation to the supply of Products or (b) if Registered Company becomes insolvent or seeks protection, voluntarily or involuntarily, under any bankruptcy or insolvency law or analogous governmental rules or procedures or ceases to carry on its business, unless OpSec receives adequate assurance that it shall receive payment for Products shipped to Registered Company. OpSec may notify Philips when declining to fulfill any order from Registered Company.

### **3 Shipment, Risk of Loss and Title.**

OpSec shall ship the Products to Registered Company at Registered Company's cost, FOB OpSec's warehouse in Parkton, MD U.S.A. or Lancaster, PA, U.S.A. and Registered Company shall assume all risk of loss thereafter. Title and right in any Products shall not pass from OpSec to Registered Company until the purchase price for such Products has been paid for in full.

### **4 Price and Payment Terms.**

The maximum purchase price for the Products shall be as set forth below, and as modified from time to time by Philips by means of a change in the Serial Number Guide in accordance with the provisions of the registration agreement between Registered Company and Philips. Full payment of the purchase price plus any and all applicable shipping charges for the Products purchased by Registered Company hereunder shall be due and payable no later than 30 days from date of invoice or date of shipment for such Products by OpSec, whichever is earlier. Registered Company shall be solely responsible for payment of Products ordered by Registered Company. Registered Company shall be solely responsible for payment of all import duties or taxes related to shipments of Products to Registered Company. Upon first notifying Philips, OpSec reserves the right to deny future

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shipments to Registered Company if Registered Company does not make payment within standard terms or if Registered Company has reached its credit limit.

Maximum Price: US\$0.03949 per label FOB OpSec Warehouse in Parkton, MD or Lancaster, PA, U.S.A.

## **5 Inspections, Rejection and Return of Products.**

Registered Company shall inspect all Products shipped by OpSec within 10 calendar days of receipt. Based upon such inspection, Registered Company shall have the right to reject Products having defects in materials or workmanship.

In the event of any rejection by Registered Company of any of the Products, Registered Company shall notify OpSec promptly, specifying in reasonable detail the reasons therefor, and a list of serial numbers of the Products rejected. OpSec shall, within 10 calendar days after receipt of such notice from Registered Company, provide a written response to Registered Company concurring with or disputing the rejection or revocation. If OpSec accepts such rejection, OpSec shall either reimburse the price paid or supply replacement Products. If OpSec disputes the rejection, the parties shall attempt to resolve the dispute by senior management discussion before resorting to any of the remedies provided by this Agreement or by law.

## **6 Liability.**

In no event shall OpSec be liable to Registered Company for any damages however arising, including without limitation, damages resulting from business interruption as a result of OpSec's refusal or failure to supply the Products in accordance with the provisions hereof.

Initial Philips \_\_\_\_\_

Initial Registered Trader \_\_\_\_\_