

Registration Agreement for CD-R High Capacity Disc Manufacturers in a Non- Patent Country

Koninklijke Philips Electronics N.V.

and

[Registered Manufacturer]

PHILIPS

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Initial Philips _____

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REGISTRATION AGREEMENT FOR CD-R HIGH CAPACITY DISC MANUFACTURERS IN A NON-PATENT COUNTRY

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

Effective Date: _____

Registered Manufacturer: _____

Registered Manufacturer's Registered Office Address:

Registered Manufacturer'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)

Specifications:

- Registered Manufacturer requests a copy of the specifications
- Registered Manufacturer does not request a copy of the specifications

The Agreed Percentage: %, or such other percentage as Registered Manufacturer and Philips shall from time to time agree in writing.

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REGISTRATION AGREEMENT FOR CD-R HIGH CAPACITY DISC MANUFACTURERS IN A NON-PATENT COUNTRY

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 MANUFACTURER, having its registered office at Registered Manufacturer’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 High Capacity System and to the manufacture of CD-R HC Discs in certain countries, but not in others;

WHEREAS, Philips has created a batch-based licensing system based on registration by manufacturers of CD-R HC Discs, under which Other Registered Manufacturers registered in a Patent Country can register with Philips, enabling such Other Registered Manufacturers 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, Registered Manufacturer has its Registered Office Address in a Non-Patent Country, wishes to manufacture CD-R HC Discs in the same Non-Patent Country, and wishes to sell or otherwise dispose of such CD-R HC Discs either:

- (a) itself in a Patent Country; or
- (b) to third parties with the intention that those third parties shall be free to sell or otherwise dispose of such CD-R HC Discs in a Patent Country, either through direct sale, or indirectly through sale to other customers for subsequent resale into a Patent Country;

WHEREAS, Registered Manufacturer and Philips enter into this Registration Agreement to confirm the terms and conditions under which Registered Manufacturer 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

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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 HC Discs;

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

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 Manufacturer 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:

- (c) owned or controlled by that party;
- (d) owning or controlling that party; or
- (e) 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 Manufacturer to request and accept Per-Batch Licenses on behalf of Registered Manufacturer.

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“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, as made available under Clause 8.3 (hereinafter collectively referred to as the **“CD Standard Specifications”**), and modified or extended by Philips from time to time in accordance with Clause 8.4.

“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 in accordance with the provisions of Clause 8.4.

“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 to 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 Manufacturer confirming that all Shipments in the preceding calendar year were 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 HC Disc.

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“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 Manufacturer to process Per-Batch Licenses, LSCDs, and other matters relevant to this Registration Agreement.

“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 HC 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 HC Discs, prior to any Shipment of those CD-R HC Discs, from one location to another within a single country, in which Registered Manufacturer had full ownership and control over the CD-R HC 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 HC Discs by Registered Manufacturer:

- (a) to an Associated Company of Registered Manufacturer (even within the same country);
- (b) to Registered Manufacturer’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 HC Discs; and
- (d) to any place or in any manner in which the CD-R HC 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 HC Discs, or that is otherwise licensed by Philips in relation to CD-R HC Discs, but excluding Registered Manufacturer, Other Registered Manufacturers, Registered Traders 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 Manufacturer, Other Registered Manufacturers, Registered Traders, Web-Registered Traders and Licensees in relation to CD-R HC Discs identified in an application, for the purpose of confirming that the relevant Shipment of those CD-R HC 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.

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“Manufacturing Equipment List” shall mean the list of manufacturing equipment required to be submitted by Registered Manufacturer under Clause 13, the current form of which is attached hereto as Annex E, as amended by Philips from time to time.

“Master Carton” shall mean the outer packaging unit of CD-R HC 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 HC Discs.

“Non-Patent Country” shall mean a country in which no Essential Patents subsist.

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

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

“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 Manufacturer’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 have the meaning set out at the head of this Registration Agreement.

“Registered Trader” shall mean a company, not being a manufacturer of CD-R HC Discs, that is engaged in the acquisition and sale of CD-R HC Discs and that has entered into a “Registration Agreement for CD-R HC Disc Traders” with Philips, where that agreement remains binding and in force.

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

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“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 Registered Manufacturer, an Other Registered Manufacturer or a Licensee for the purpose of identifying one unique production location of Registered Manufacturer, such Other Registered Manufacturer or such Licensee.

“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.

“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.

“Shipment” shall mean:

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

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

- (a) a transfer to an Associated Company of Registered Manufacturer (even within the same country);
- (b) a transfer to Registered Manufacturer’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 HC Discs.

A Shipment shall exclude an Internal Transfer.

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

“System Breach” shall mean any of the following:

- (a) Registered Manufacturer commences a Shipment in breach of Clause 4.2;
- (b) Registered Manufacturer manufactures CD-R HC Discs in breach of Clause 4.3(a);
- (c) Registered Manufacturer acquires CD-R HC Discs in breach of Clause 4.4;
- (d) Registered Manufacturer acquires CD-R HC Discs in breach of Clause 4.5, where the relevant inaccuracies or inconsistencies are material and are not reported by Registered Manufacturer to Philips within 14 Days of Registered Manufacturer becoming aware of them;
- (e) Registered Manufacturer includes a CD-R HC Disc in a Shipment in breach of Clause 4.6;
- (f) Registered Manufacturer is in breach of Clause 5.8;

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- (g) Registered Manufacturer manufactures CD-R HC Discs in breach of Clauses 6.1 or 6.3;
- (h) Registered Manufacturer acquires CD-R HC Discs in breach of Clause 6.4;
- (i) Registered Manufacturer includes a CD-R HC Disc in a Shipment in breach of Clause 6.5;
- (j) Registered Manufacturer obtains or uses a Registration Number on false pretences, sells or offers to sell a CD-R HC 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 HC Discs using such Registration Number;
- (k) Registered Manufacturer manufactures CD-R HC Discs without having full ownership or control of them;
- (l) Registered Manufacturer commences a Shipment in breach of Clause 7.1;
- (m) Registered Manufacturer re-sells or otherwise disposes of a stamper for use in the manufacture of CD-R HC Discs to a third party;
- (n) an Application by Registered Manufacturer covers a CD-R HC Disc:
 - (i) not manufactured by Registered Manufacturer and not the subject of a license previously granted by Philips;
 - (ii) manufactured by Registered Manufacturer where such manufacture is a breach of Clause 6.1 or 6.3 of this Registration Agreement; or
 - (iii) in respect of which Registered Manufacturer does not have full ownership and control;
- (o) an Associated Company of Registered Manufacturer holds itself out as registered or licensed by virtue of its relationship with Registered Manufacturer or by virtue of this Registration Agreement;
- (p) Registered Manufacturer is in breach of Clauses 2.1, 2.3, 9.13, 12.2, 13.1, 13.2 or 13.3;
- (q) a third party (including an Associated Company of Registered Manufacturer) manufactures CD-R HC Discs using equipment located at Registered Manufacturer's facilities, and/or appearing on the Manufacturing Equipment List;
- (r) Registered Manufacturer fails promptly to notify Philips of the destruction, loss, theft, confiscation or other cessation of its control over CD-R HC Discs formerly controlled by Registered Manufacturer;
- (s) Registered Manufacturer engages in any activity that is designed to assist, or has the effect of assisting, Registered Manufacturer or any other entity in:
 - (i) the sale or other disposal of CD-R HC 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 HC 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 Manufacturer or any of its Associated Companies, having as its object or effect the assistance of the circulation of CD-R HC 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 Manufacturer or any of its Associated Companies that is the subject of a Notice from Philips to Registered Manufacturer under Clause 11.7 and that has not been the subject of a Notice by Registered Manufacturer 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.

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“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 a Registered Trader or a Web-Registered Trader for the purpose of identifying that 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 HC 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 HC Discs.

“Website” shall mean 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 Manufacturer’s Associated Companies

- 2.1** Registered Manufacturer 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 HC Discs and the address of the relevant facilities. Where Registered Manufacturer has provided such information to Philips pursuant to such a request, Registered Manufacturer shall thereafter inform Philips of any changes (whether or not material) relating to the information as provided.

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- 2.2** Registered Manufacturer 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 HC Disc Manufacturers” or a “Registration Agreement for CD-R HC Disc Traders” with its obligations under the relevant agreement. Accordingly, where:
- (a)** an Associated Company of Registered Manufacturer has committed a breach of its “Registration Agreement for CD-R HC Disc Manufacturers” or its “Registration Agreement for CD-R HC 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 Manufacturer has committed a breach of its “Registration Agreement for CD-R HC Disc Manufacturers” or its “Registration Agreement for CD-R HC 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 Manufacturer shall guarantee the payment of the relevant amounts specified in the notice to that Associated Company.
- 2.3** Registered Manufacturer shall procure that each of its Associated Companies that is engaged in the manufacture or sale of CD-R HC Discs, or commences the manufacture or sale of CD-R HC Discs, but that has not entered into a “Registration Agreement for CD-R HC Disc Manufacturers” or a “Registration Agreement for CD-R HC Disc Traders” (as appropriate) with Philips, shall:
- (a)** keep records of its manufacture and sale of CD-R HC Discs sufficient for an independent auditor to determine the number of CD-R HC 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 HC 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 Manufacturer is engaged in any activity that is designed to assist, or has the effect of assisting, Registered Manufacturer, the relevant Associated Company or any other entity in:
 - (i)** the sale or other disposal of CD-R HC 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 HC 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 SPARE

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3 No License Granted

- 3.1** Registered Manufacturer acknowledges and agrees that no licenses or non-assert undertakings (other than the license to use the System Logo granted in Clause 17 and the non-assert undertakings given in Clause 3.4) are granted under this Registration Agreement for the manufacture, importation, sale or other disposal of CD-R HC Discs and that any such licenses can only be granted by means of separate contracts in the form of Per-Batch Licenses. Registered Manufacturer 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 and the non-assert undertakings given by it in Clause 3.4, be entitled to take action for infringement of its patent rights, trademarks and copyrights, in relation to CD-R HC Discs manufactured, acquired, sold or otherwise disposed of by Registered Manufacturer in infringement of Philips' intellectual property rights.
- 3.2** Registered Manufacturer acknowledges and agrees that:
- (a) Philips may deny the grant of a Per-Batch License and/or the issue of an LSCD to Registered Manufacturer if Registered Manufacturer 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
 - (b) in relation to an Application for a Per-Batch License that identifies a Registered Trader as the recipient, even where that 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 if that Registered Trader is not, at the time of the relevant Application, in full compliance with its registration agreement with Philips.
- 3.3** Registered Manufacturer acknowledges and agrees that Philips has not granted and will not grant Registered Manufacturer any license to use the Registration Logo in relation to CD-R HC Discs other than by granting a Per-Batch License for those CD-R HC Discs pursuant to an Application, and therefore that Registered Manufacturer's use of the Registration Logo on such CD-R HC Discs will be done without Philips' consent and will remain without Philips' consent unless and until such CD-R HC Discs have become the subject of a duly and properly granted Per-Batch License.
- 3.4** For the duration of this Registration Agreement and subject to Registered Manufacturer's full and timely compliance with all of its undertakings and obligations under this Registration Agreement, Philips undertakes to hold off, until the relevant CD-R HC Discs are included in a Shipment, from taking action for infringement of its trademarks and copyrights in relation to use of the Registration Logo on CD-R HC Discs manufactured by Registered Manufacturer in the Country of Registration.
- 3.5** Registered Manufacturer 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 HC 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.

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4 Per-Batch Licenses and LSCDs

CD-R HC Discs manufactured by Registered Manufacturer

- 4.1** Registered Manufacturer shall request, by making an Application using the DISP, a Per-Batch License for all CD-R HC Discs manufactured by Registered Manufacturer that it proposes to include in a Shipment. Notwithstanding the provisions of the PBL Standard Terms and Conditions, where Registered Manufacturer requests a Per-Batch License for a Shipment of CD-R HC Discs to a country of destination that is a Non Patent Country, the provisions of the PBL Standard Terms and Conditions that purport to grant a license under any Essential Patent shall not apply (on the basis that no such patent license is required).
- 4.2** Prior to commencing a proposed Shipment including CD-R HC Discs manufactured by Registered Manufacturer, Registered Manufacturer shall have obtained from Philips a Per-Batch License for such Shipment.
- 4.3** Registered Manufacturer shall not:
- (a)** manufacture CD-R HC Discs in a country in respect of which it has not entered into a “Registration Agreement for CD-R HC Disc Manufacturers” with Philips; or
 - (b)** permit any third party (including an Associated Company of Registered Manufacturer) to manufacture CD-R HC Discs using equipment located at Registered Manufacturer’s facilities, and/or appearing on the Manufacturing Equipment List.

CD-R HC Discs sourced from third parties

- 4.4** Registered Manufacturer shall not acquire any CD-R HC 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 Manufacturer as the recipient of such CD-R HC Discs.
- 4.5** Registered Manufacturer shall not acquire any CD-R HC Discs without first verifying the existence of, and the accuracy of the information in, an LSCD that identifies Registered Manufacturer as the recipient of those CD-R HC Discs, and that evidences the grant of the license of the Essential Patents (to the extent that such rights subsist in the country of manufacture or the country in which the Shipment originated) and the Registration Logo in relation to those CD-R HC Discs. Registered Manufacturer shall promptly report to Philips any inaccuracies on the LSCD, or any inconsistencies between the LSCD and the actual dealings in the CD-R HC Discs to which the LSCD relates.
- 4.6** Prior to including any CD-R HC Discs acquired from a third party in a Shipment, Registered Manufacturer shall verify the territorial scope of the licenses under the Essential Patents (if any) and the Registration Logo with respect to such CD-R HC Discs.

If the Shipment by Registered Manufacturer 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 Manufacturer shall request and obtain an LSCD for such Shipment, where such LSCD identifies Registered Manufacturer as the applicant, prior to including such CD-R HC Discs in a Shipment;

If the Shipment by Registered Manufacturer 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

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Registration Logo, Registered Manufacturer shall request and obtain a Per-Batch License for such Shipment prior to including such CD-R HC Discs in a Shipment.

Limited territorial Grant

- 4.7 Any Per-Batch License granted by Philips to Registered Manufacturer 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 Manufacturer submitted an Application for a Per-Batch License, upon Registered Manufacturer 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 Manufacturer:
- (a) the LSCD and any Per-Batch License that was granted therewith shall be void ab initio; and
 - (b) if Registered Manufacturer proves to Philips' reasonable satisfaction that the misrepresentation was attributable to Registered Manufacturer's inadvertent error and that Registered Manufacturer promptly gave Philips Notice of the misrepresentation upon its discovery, Philips may by Notice offer Registered Manufacturer 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 Manufacturer implements general or specified measures to prevent the occurrence of similar misrepresentations; and
 - (iii) provisions for Registered Manufacturer to make a payment to Philips to cover Philips' losses and expenses caused by the misrepresentation.

5 Methods and Information Required for Making an Application

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

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5.2 Automatic Processing

- (a) Philips shall make available at least one computer-to-computer interface on the DISP on which Registered Manufacturer may submit Applications automatically using Registered Manufacturer's logistics system. Philips shall provide Registered Manufacturer with technical specifications for the use of such interface. Registered Manufacturer and Philips shall agree on the number of Registered Manufacturer's computers that may be connected to the DISP.
- (b) Upon receipt of an Application, Philips shall send an electronic confirmation to Registered Manufacturer 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 Manufacturer. Registered Manufacturer 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 Manufacturer 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 Manufacturer shall create a binding contract, on the conditions set out in the Per-Batch License, for the Shipment of the CD-R HC Discs by Registered Manufacturer in, or to, the Grant Country(ies). Registered Manufacturer may not cancel an Application once Philips has issued an LSCD to Registered Manufacturer.

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 Manufacturer 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 Manufacturer 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, 5.12 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 Manufacturer. Upon an affirmative act of acceptance (by clicking an "I Accept" button or such other instrument as designated by Philips), Registered Manufacturer 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 HC Discs by Registered Manufacturer in the Grant Country(ies).

5.4 Registered Manufacturer 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.

5.5 Registered Manufacturer 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 Manufacturer shall include the following information:

- (a) the Registration Number(s) embedded in the CD-R HC Discs in the proposed Shipment, and the quantity and type of CD-R HC Discs relating to each Registration Number;

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- (b) the country of manufacture of the CD-R HC Discs;
- (c) the country in which the proposed Shipment will originate;
- (d) the country of destination of the proposed Shipment;
- (e) where CD-R HC Discs are accompanied by a printed label, the brand name printed on that label;
- (f) where CD-R HC 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 Manufacturer in relation to the proposed Shipment;
- (i) whether the CD-R HC 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 HC Discs acquired by Registered Manufacturer 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 HC Discs to Registered Manufacturer.

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 Manufacturer to provide any one or more of the following documents or information in relation to an Application or a Shipment by Registered Manufacturer:

- (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 Manufacturer from its customer;
- (e) the invoice issued by Registered Manufacturer 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 Manufacturer as the recipient of any CD-R HC 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 Manufacturer, Registered Manufacturer’s suppliers, and Registered Manufacturer’s customers, with their respective contractual obligations.

5.8 Where Philips has required the provision by Registered Manufacturer of a document or information under Clause 5.7, upon Philips notifying Registered Manufacturer of such requirement, Registered Manufacturer shall provide the relevant document or information as soon as possible.

5.9 Where any information provided by Registered Manufacturer 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 Manufacturer in relation to the relevant Shipment.

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- 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 Manufacturer 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 Manufacturer providing a waybill and/or a container number for the relevant Shipment. Where Philips considers that Registered Manufacturer 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 Manufacturer 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 Registered Manufacturer submits an Application for a Per-Batch License identifying a Registered Trader as the recipient of CD-R HC Discs contained within the proposed Shipment, Philips may request such Registered Trader to confirm that:
- (a)** it shall be the recipient of such CD-R HC Discs; and
 - (b)** it shall be liable for all royalties due for such CD-R HC Discs.
- Philips shall not request such confirmation in relation to CD-R Discs for which an LSCD has previously been issued.
- Philips may refuse to grant a Per-Batch License or issue an LSCD to Registered Manufacturer where such 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 Manufacturer 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 HC Discs.
- 5.14** Philips may refuse to grant a Per-Batch License or issue an LSCD to Registered Manufacturer where:
- (a)** the information provided by Registered Manufacturer in an Application pursuant to Clause 5.6, or additional information provided pursuant to Clause 5.7, is incomplete or incorrect;
 - (b)** Registered Manufacturer 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 HC Discs acquired by Registered Manufacturer 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 HC Discs have fallen due and payable but have not been paid.
- 5.15** Registered Manufacturer 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 HC Discs. Registered Manufacturer further acknowledges that the sale of CD-R HC Discs without an LSCD may lead to claims against Registered Manufacturer, or against recipients of such CD-R HC Discs, for damages and/or injunctions on the basis of patent, trade mark and/or copyright infringement.

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- 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 Manufacturer shall assign, by giving Notice to Philips, one of its full-time employees as a local administrator for accessing the DISP. Registered Manufacturer represents that this person shall have the authority to appoint Authorised Employees on behalf of Registered Manufacturer. Registered Manufacturer 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** Registered Manufacturer shall, in each CD-R HC Disc that it manufactures, embed the Registration Logo in accordance with the Registration Logo Guide.
- 6.2** Registered Manufacturer shall obtain from Philips a Registration Number for each of Registered Manufacturer's manufacturing plants.
- 6.3** Registered Manufacturer shall, in each CD-R HC Disc that it manufactures and in accordance with the Registration Logo Guide, embed the Registration Number assigned to the manufacturing plant at which the CD-R HC Disc was manufactured.
- 6.4** Registered Manufacturer shall not acquire any CD-R HC Disc unless it:
- (a)** bears the Registration Logo and the Registration Number assigned to the plant at which the CD-R HC Disc was manufactured; and
 - (b)** was enclosed, upon acquisition by Registered Manufacturer, in a Master Carton on which a unique Serial-Number Label had been placed in accordance with the Serial Number Guide.
- 6.5** Registered Manufacturer shall not include in any Shipment a CD-R HC Disc that does not bear the Registration Logo and the Registration Number assigned to the plant at which the CD-R HC Discs were manufactured (each displayed in accordance with the Registration Logo Guide), whether that Registration Number was allocated to Registered Manufacturer, to an Other Registered Manufacturer or to a Licensee.
- 6.6** Registered Manufacturer acknowledges and agrees that:
- (a)** the proper placement of the Registration Logo and the appropriate Registration Number on CD-R HC 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 HC Discs;
 - (b)** Philips will rely on Registered Manufacturer's representation and undertaking in Clause 6.6(a) when considering whether to grant a Per-Batch License or issue an LSCD to Registered Manufacturer;

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- (c) CD-R HC Discs that Registered Manufacturer:
 - (i) manufactures in breach of Clause 6.1 or 6.3;
 - (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 HC Discs will be void ab initio.

- 6.7 Registered Manufacturer acknowledges and agrees that all rights in the Registration Logo are, and shall remain, proprietary rights of Philips. Registered Manufacturer further acknowledges and agrees that any Shipment that includes CD-R HC 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 Manufacturer shall promptly inform Philips of any claim of infringement relating to the Registration Logo received by Registered Manufacturer or any of its Associated Companies.
- 6.9 Philips may instruct Registered Manufacturer to discontinue use of the Registration Logo permanently or until further notice, or to use such other logo as Philips may specify. Registered Manufacturer 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 Manufacturer acknowledges and agrees that, except as expressly provided in Clause 3.4, no right to use the Registration Logo is granted under this Registration Agreement. Unless otherwise granted by Philips to a supplier of Registered Manufacturer, as evidenced by an LSCD issued by Philips to such supplier, Registered Manufacturer may only use the Registration Logo on CD-R HC Discs, and on retail packaging in which such CD-R HC Discs are packaged, pursuant to a Per-Batch License relating to the CD-R HC Discs concerned.

7 Serial Number Labels

- 7.1 Registered Manufacturer shall not commence a Shipment in relation to which Registered Manufacturer is required to obtain a Per Batch License pursuant to Clause 4.6(a) unless and until all CD-R HC 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 Manufacturer 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 HC Discs;
 - (b) Philips will rely on Registered Manufacturer's representation and undertaking in Clause 7.2(a) when considering whether to grant a Per-Batch License or issue an LSCD to Registered Manufacturer; and
 - (c) CD-R HC 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 HC Discs shall be void ab initio.

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- 7.3** Within 5 Business Days after the end of each calendar month, Registered Manufacturer shall report to Philips the numbers on the Serial Number Labels placed on all Master Cartons in which CD-R HC Discs have been packed by Registered Manufacturer in the preceding calendar month. In providing Philips with such report, Registered Manufacturer shall also inform Philips, in relation to each reported Serial Number Label, of:
- (a) the quantity and type of CD-R HC Discs in the associated Master Carton;
 - (b) the Registration Number/s embedded in such CD-R HC Discs;
 - (c) where such CD-R HC 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 HC Discs that are packaged in retail packaging.
- 7.4** Where CD-R HC 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 Manufacturer to repackage them.
- 7.5** Registered Manufacturer 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 Manufacturer’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 Manufacturer in a timely manner, as specified in Annex I, Registered Manufacturer 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 Manufacturer 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 Manufacturer shall, upon execution of this Registration Agreement, pay Philips a registration fee of US \$10,000.
- 8.2** If at the head of this Registration Agreement the box “Requests copy of specification” is ticked, Registered Manufacturer shall be deemed to have requested a copy of the CD-R HC Standard Specifications and the CD Standard Specifications and in consideration thereof shall pay Philips US \$5,000 upon execution of this Registration Agreement.

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- 8.3** Where Registered Manufacturer has requested a copy of the CD-R HC Standard Specifications and the CD Standard Specifications under Clause 8.2, and upon receipt of the payment referred to in Clause 8.2, Philips shall provide to Registered Manufacturer, for use by Registered Manufacturer in accordance with this Registration Agreement, one current copy of each of the CD-R HC Standard Specifications and the CD Standard Specifications, together with such other information as Philips considers necessary for the interpretation and correct application of the CD-R HC Standard Specifications and the CD Standard Specifications (including the Compact Disc Logo Guide).
- 8.4** Where Registered Manufacturer has requested a copy of the CD-R HC Standard Specifications and the CD Standard Specifications under Clause 8.2, and any additions or modifications are made to the versions so requested, Philips shall give Registered Manufacturer Notice of any such addition or modification and shall provide Registered Manufacturer with all information relating to such addition or modification that Philips considers necessary for the interpretation and correct application of the CD-R HC Standard Specifications or the CD Standard Specifications.

9 Royalty Payments, Invoicing and Reporting

- 9.1** If and when a Per-Batch License is granted by Philips to Registered Manufacturer, the following payment terms and invoicing processes shall apply. For the avoidance of doubt, Registered Manufacturer's liability to pay royalties accrues under a Per-Batch License in consideration of the rights granted therein, 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 HC Disc covered by a Per-Batch License for which royalties are payable by Registered Manufacturer shall either be the Standard Rate or the Compliance Rate, depending on whether Registered Manufacturer meets the requirements for the Compliance Rate as specified in the PBL Standard Terms and Conditions.
- 9.3** Registered Manufacturer shall pay a royalty for each CD-R HC Disc that it:
- (a)** manufactures and includes in a Shipment, except for any CD-R HC Discs for which a Registered Trader has provided the confirmation required in Clause 5.12;
 - (b)** acquires from a third party and includes in a Shipment, except for any CD-R HC Discs for which Registered Manufacturer, in its Application relating to such CD-R HC Discs, has identified an LSCD specifying Registered Manufacturer as the recipient of the CD-R HC Discs concerned.
- 9.4** The parties acknowledge and agree that it can be difficult to establish the exact number of CD-R HC Discs imported into, or sold or otherwise disposed of in, Patent Countries and Non-Patent Countries respectively. On the basis of information provided by Registered Manufacturer, the parties agree that, unless demonstrated to the contrary by Registered Manufacturer to Philips' satisfaction, at least The Agreed Percentage of the CD-R HC Discs manufactured by Registered Manufacturer in the Country of Registration are imported into, sold or otherwise disposed of in Patent Countries and covered by one or more Valid Claims in those Patent Countries. Accordingly, the royalties that shall be due under a Per-Batch License shall be The Agreed Percentage of the royalties that would be payable but for this Clause 9.4.

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- 9.5** Upon the request of either party, the parties shall review from time to time the appropriate value of The Agreed Percentage. The value of The Agreed Percentage shall not be changed without the prior written agreement of both parties. Philips shall have the right to terminate this Registration Agreement by Notice to Registered Manufacturer if:
- (a)** Philips has notified Registered Manufacturer that, based on objective market information, it has reason to believe that the value of The Agreed Percentage is no longer appropriate; and
 - (b)** the parties fail to agree on a revised percentage within 60 Days from said Notice.
- 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 Manufacturer shall give Notice to Philips identifying such difference.
- 9.8** After the end of each calendar month, Philips may invoice Registered Manufacturer for royalties that have fallen due under Clause 9.3 in the previous calendar month or earlier. Philips may invoice Registered Manufacturer for payments under this Agreement other than royalties as and when such payments become payable. Except as otherwise provided in this Registration Agreement, Registered Manufacturer 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 Manufacturer 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.
- 9.10** All payments to be made by Registered Manufacturer 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.

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- 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 Manufacturer. If the government of any country imposes any taxes on payments made by Registered Manufacturer to Philips under this Registration Agreement or under any Per-Batch License, and requires Registered Manufacturer to withhold such tax from such payments, Registered Manufacturer may deduct such tax from such payments. In such event, Registered Manufacturer 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 Manufacturer shall submit to Philips, within 90 Days after the end of each calendar year, irrespective of whether any sales of CD-R HC 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 Manufacturer.
- 9.13** Registered Manufacturer shall submit to Philips, within 90 Days after the end of each calendar year, irrespective of whether any sales of CD-R HC 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 Manufacturer in the preceding calendar year;
 - (b)** all royalty payments made by Registered Manufacturer 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 Manufacturer 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 Manufacturer, Philips reserves the right to inspect the books and records of Registered Manufacturer from time to time in accordance with Clause 12.

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

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- 10.3** Where Registered Manufacturer 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 HC Discs shall be changed from the Compliance Rate (if such rate was applicable to such CD-R HC 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 Manufacturer 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 Manufacturer 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 Manufacturer 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 Manufacturer. Such security shall be held in an interest-bearing account and, subject to this Clause 10.5, for the benefit of Registered Manufacturer. Philips may draw funds from the said account for the payment of royalties due by Registered Manufacturer under this Registration Agreement and shall account to Registered Manufacturer 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 Manufacturer.

11 Liquidated Damages

11.1 Registered Manufacturer:

- (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 HC 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 Manufacturers, Registered Traders and Licensees pay royalties in return for the right to use those Essential Patents; and

Initial Philips _____

Initial Registered Manufacturer _____

- (c) recognises that Philips incurs substantial costs in investigating, detecting and acting against System Breaches.

11.2 Registered Manufacturer 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 Manufacturer 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 HC Disc the subject of a System Breach, less any royalties already paid for such CD-R HC Discs.

Registered Manufacturer 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 Manufacturer.

11.4 Registered Manufacturer may, immediately upon receipt of a Notice under Clause 11.3, give Notice to Philips that Registered Manufacturer has committed a further System Breach or System Breaches, specifying the nature of the System Breach or System Breaches, the number of CD-R HC 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 Manufacturer 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 Manufacturer could not have anticipated the System Breach;
- (b) Registered Manufacturer 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.

For the avoidance of doubt, where Registered Manufacturer proves each of these elements to Philips' reasonable satisfaction, any royalties payable by Registered Manufacturer for CD-R HC 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 Manufacturer 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 Manufacturer 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 Manufacturer commits an act or omission described in the Notice, that act or omission shall be deemed to be a System Breach unless:

- (a) Registered Manufacturer 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 Manufacturer considers that it would be inappropriate to regard such act or omission as a System Breach; and

Initial Philips _____

Initial Registered Manufacturer _____

- (b) it would be unreasonable for Philips not to accept the explanation set out in a Notice provided by Registered Manufacturer 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 HC Discs included in Shipments by Registered Manufacturer 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 HC Discs on which royalties are or have been payable by Registered Manufacturer; and
- (c) Registered Manufacturer's compliance with other provisions of this Registration Agreement,

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

12.2 Registered Manufacturer 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 Manufacturer 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 Manufacturer Notice of such inspection at least 7 Days prior to the inspection. Registered Manufacturer 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 Manufacturer's premises (or any other premises at which the documents are held by Registered Manufacturer) to enable the auditor to prepare and support its audit report.

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 Manufacturer where the inspection determines that:

- (a) Registered Manufacturer 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.

Initial Philips _____

Initial Registered Manufacturer _____

- 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 Manufacturer, Registered Manufacturer shall be liable for royalties at the Standard Rate for each CD-R HC 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 HC Disc in relation to which the Compliance Rate was paid. Registered Manufacturer 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 Manufacturing Equipment List

- 13.1** Upon execution of this Registration Agreement, Registered Manufacturer shall submit to Philips a Manufacturing Equipment List, listing all of Registered Manufacturer's equipment which is used, or which is technically capable of being used, for the manufacture of CD-R HC Discs, and the facilities at which such equipment is or may be located, as at the Effective Date.
- 13.2** Registered Manufacturer shall submit to Philips all details of any acquisition, transfer, movement or disposal of any manufacturing equipment used or which is technically capable of being used for the manufacture of CD-R HC Discs upon such acquisition, transfer, movement or disposal occurring. Registered Manufacturer shall also, on a yearly basis and simultaneously with the submission of an Audit Statement pursuant to Clause 9.13, submit to Philips a revised Manufacturing Equipment List, together with a list containing all adjustments made to the manufacturing equipment during the preceding calendar year. The Manufacturing Equipment List shall be in the form set out at Annex E, as amended from time to time by Philips, and signed by a duly authorised officer on behalf of Registered Manufacturer.
- 13.3** Registered Manufacturer shall manufacture CD-R HC Discs only using equipment properly identified in the Manufacturing Equipment List.
- 13.4** If Registered Manufacturer ceases manufacture of CD-R HC Discs, Registered Manufacturer shall immediately inform Philips of such cessation.

Initial Philips _____

Initial Registered Manufacturer _____

14 Samples

14.1 Simultaneously with its submission of an Audit Statement pursuant to Clause 9.13, Registered Manufacturer shall submit to Philips, at the address specified in Clause 14.2 (or such other address as Philips may advise from time to time), 5 sample CD-R HC Discs made from each mould used in each production line identified on the Manufacturing Equipment List. Each such sample CD-R HC Disc must:

- (a) incorporate the Registration Logo and the appropriate Registration Number; and
- (b) be clearly marked on its outer diameter with the appropriate system number and mould number, as indicated on the Manufacturing Equipment List.

14.2 Upon the acquisition of manufacturing equipment used, or which is technically capable of being used, for the manufacture of CD-R HC Discs, Registered Manufacturer shall submit to Philips 5 sample CD-R HC Discs made from each mould for each item of equipment so acquired. Each such sample CD-R HC Disc must:

- (a) incorporate the Registration Logo and the appropriate Registration Number; and
- (b) be clearly marked on its outer diameter with the appropriate system number and mould number, as indicated on the Manufacturing Equipment List.

These additional sample CD-R HC Discs shall be sent, together with a copy of the Manufacturing Equipment List current as at the date that the additional sample CD-R HC Discs are sent, by recognised international courier such as TNT, Fedex or UPS, to the following address:

Philips Intellectual Property & Standards
Business Support Department
Building WAH
Prof. Holstlaan 6
5656 AA Eindhoven
The Netherlands

or such other address as Philips may advise from time to time.

15 Access to Facilities

Registered Manufacturer shall, upon request from Philips, give Philips' representatives immediate and unfettered access to, and allow Philips' representatives to take samples of CD-R HC Discs from, any and all of its facilities at which CD-R HC Discs are manufactured or held, or at which equipment capable of manufacturing CD-R HC Discs is present, for the purpose of determining whether Registered Manufacturer is in full compliance with its obligations under this Registration Agreement. Registered Manufacturer 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 HC Discs from:

- (a) the facilities of any company that stores CD-R HC Discs on behalf of Registered Manufacturer; and
- (b) any warehouses at which Registered Manufacturer holds CD-R HC Discs,

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

Initial Philips _____

Initial Registered Manufacturer _____

16 Destruction, Theft and Confiscation

- 16.1** Registered Manufacturer acknowledges and agrees that the appearance on the market of any stolen, confiscated or lost CD-R HC Discs will undermine Philips' ability to track the movement of CD-R HC Discs and to determine whether royalties have been paid on CD-R HC Discs, and accordingly agrees that it shall be liable to pay damages to Philips for any such theft, confiscation or loss.
- 16.2** Where CD-R HC Discs manufactured or acquired by Registered Manufacturer are stolen, confiscated or lost to Registered Manufacturer, Registered Manufacturer shall report such theft, confiscation or loss to Philips within 7 Days of becoming aware of such theft, confiscation or loss.
- 16.3** The amount of damages payable by Registered Manufacturer for CD-R HC Discs manufactured or acquired by it that are stolen, confiscated or lost shall be:
- (a) the Standard Rate if there has been no previous Shipment of any CD-R HC Discs by Registered Manufacturer;
 - (b) the royalty rate that would have been payable by Registered Manufacturer if the relevant CD-R HC Discs had been contained in a Shipment immediately before such theft, confiscation or loss, provided that Registered Manufacturer reports such theft, confiscation or loss to Philips in full compliance with Clause 16.2; and
 - (c) the Standard Rate in all other circumstances.

Such damages may be invoiced by Philips in accordance with Clause 9.8.

- 16.4** Philips undertakes that it shall not take action against Registered Manufacturer for any theft, confiscation or other loss of CD-R HC Discs manufactured or acquired by Registered Manufacturer, provided that:
- (a) the event in question was not in any way attributable to Registered Manufacturer's negligence, recklessness or intentional fault;
 - (b) Registered Manufacturer reports such theft, confiscation or loss in full compliance with Clause 16.2;
 - (c) Registered Manufacturer pays all damages payable for such theft, confiscation or loss pursuant to Clause 16.3; and
 - (d) Registered Manufacturer fully cooperates with Philips or its Associated Companies in any subsequent investigations or actions in respect of any theft, confiscation or loss of CD-R HC Discs.
- 16.5** Where CD-R HC Discs manufactured or acquired by Registered Manufacturer are destroyed, they shall be deemed to be lost for the purposes of this Clause 16 unless Registered Manufacturer provides evidence to Philips' reasonable satisfaction of such destruction within 7 Days of its occurrence. Where Registered Manufacturer does provide such evidence, Philips undertakes that it shall not take any action against Registered Manufacturer in respect of such CD-R HC Discs, and no royalties shall be payable by Registered Manufacturer in respect of CD-R HC Discs the subject of such destruction.

Initial Philips _____

Initial Registered Manufacturer _____

17 System Logo

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

18 RAND Grant-Back

- 18.1** Registered Manufacturer acknowledges that blocking patents will, unless licensed, prevent the manufacture and/or trade in CD-R HC Discs, that the attractiveness of the CD-R HC Disc system which Registered Manufacturer 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 Manufacturer shall not unreasonably refuse to grant (and, in relation to rights licensable by Registered Manufacturer'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 High Capacity Disc Manufacturers in a Non-Patent Country", or any other registration or license agreement for CD-R HC 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 HC Discs under any and all present and future Patents:
- (a) for which Registered Manufacturer 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 Manufacturer 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 High Capacity Disc Manufacturers in a Non-Patent Country" or under other registration or license agreements with Philips for CD-R HC 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.
- 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 Manufacturer or to Registered Manufacturer'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 HC 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

Initial Philips _____

Initial Registered Manufacturer _____

- (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 High Capacity Disc Manufacturers in a Non-Patent Country", or to any other registration or license agreement for CD-R HC Discs with Philips in which such company accepts or has accepted an undertaking equivalent to the undertaking given by Registered Manufacturer in Clause 18.1.

19 No Warranty; Indemnity

- 19.1** While Philips has made efforts to ensure that the information contained in the CD-R Standard Specifications and the CD Standard Specifications is complete and accurate in all material respects, Philips makes no representation or warranty as to the completeness or accuracy of such information, nor as to the ability of Registered Manufacturer to achieve interchangeability of CD-R HC Discs through the use of such information.
- 19.2** Registered Manufacturer acknowledges and agrees that third parties may own intellectual property rights relating to CD-R HC Discs. Philips makes no representation or warranty that the manufacture, importation, use, offering for sale, or sale of CD-R HC Discs does not infringe or will not infringe any intellectual property right of any third party. Registered Manufacturer 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 HC Discs manufactured, acquired, used, sold, offered for sale or otherwise disposed of by Registered Manufacturer.
- 19.3** Registered Manufacturer 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 Manufacturer (or to third parties from whom Registered Manufacturer acquires CD-R HC Discs) by Philips (other than where such failure, refusal or delay is a breach of this Registration Agreement);
 - (b) claims made by customers of Registered Manufacturer relating to CD-R HC Discs being delayed at customs, seized or destroyed;
 - (c) any interruption or deficiency in the supply of Serial Number Labels for which Registered Manufacturer did not provide immediate Notice to Philips in accordance with Clause 7.5;

Initial Philips _____

Initial Registered Manufacturer _____

- (d) any interruption or deficiency in the supply of Serial Number Labels, for which Registered Manufacturer 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 Manufacturer 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 Manufacturer 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 Manufacturer 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** Registered Manufacturer shall at all times maintain strict confidentiality in relation to the CD-R Standard Specifications and the CD Standard Specifications and shall not disclose any part of such documents to any third party without the prior written consent of Philips.
- 20.2** Without prejudice to the provisions of Clause 20.1, Registered Manufacturer 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 manufacture, acquisition, sale or other disposal of CD-R HC 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, 12, and 13 for any purpose other than:
- (a) to verify the accuracy of information provided in Applications made by Registered Manufacturer;
 - (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 HC 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
 - (f) otherwise for the operation of Philips' licensing programmes and the monitoring and enforcement of its rights thereunder.

Initial Philips _____

Initial Registered Manufacturer _____

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 Manufacturer in Clauses 20.1 and 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 Manufacturer 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 Manufacturer 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.

Initial Philips _____

Initial Registered Manufacturer _____

21 System Changes

- 21.1** Registered Manufacturer 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 HC Discs and to open and fair competition in the market for CD-R HC Discs and the market for licensing intellectual property rights relevant to CD-R HC Discs. Accordingly, Registered Manufacturer 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 Manufacturer 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 Manufacturing Equipment List and/or 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 Manufacturer 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 Manufacturer shall be entitled to update its processes to ensure compliance with such changes.

- 21.2** Registered Manufacturer 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 Manufacturers and shall not charge Registered Manufacturer 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 HC Discs).

Initial Philips _____

Initial Registered Manufacturer _____

- 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 Manufacturer 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 HC 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 HC 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 Manufacturer 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 HC Disc for which Philips has previously granted a license.

- 22.4** Philips and Registered Manufacturer 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 Manufacturer on the date of issue of any Per-Batch License shall determine the Patents for which rights are granted to Registered Manufacturer under the relevant Per-Batch License. Philips and Registered Manufacturer 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.

Initial Philips _____

Initial Registered Manufacturer _____

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 Manufacturer 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 an Essential Patent comes into existence in the Country of Registration, whichever comes first.
- 24.2** Registered Manufacturer 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 24.12, 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 Manufacturer 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 Manufacturer, or Registered Manufacturer 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 Manufacturer 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 Manufacturer's representations in or under this Registration Agreement proves to be false in any manner; or
 - (f) a Notice has been issued by Philips under Clause 10.3 specifying non-payment or late payment of royalties, and Registered Manufacturer does not remedy such non-payment or late payment within 30 Days of such Notice being issued.

Initial Philips _____

Initial Registered Manufacturer _____

- 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 Manufacturer 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 Manufacturer shall immediately cease:
- (a) manufacturing, acquiring, offering for sale, selling or otherwise disposing of CD-R HC Discs in which any one or more of the Essential Patents are used where such act would infringe an Essential Patent;
 - (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; and
 - (c) manufacturing CD-R HC Discs incorporating the Registration 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 Manufacturer 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, 24.10, 24.11, 24.12 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 Manufacturer shall submit to Philips a report certified by its external auditors specifying the number of CD-R HC Discs owned or controlled by Registered Manufacturer 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 HC Discs remaining in stock to be sold under a Per-Batch License and the payment of royalties by Registered Manufacturer), any such CD-R HC Discs shall be destroyed, and the destruction proven to Philips' reasonable satisfaction.
- 24.10** When an Essential Patent comes into existence in the Country of Registration, or when the manufacture of a CD-R HC Disc infringes a Valid Claim in the Country of Registration:
- (a) this Registration Agreement shall automatically terminate;
 - (b) Registered Manufacturer shall immediately submit to Philips a report certified by its external auditors:
 - (i) specifying the number of CD-R HC Discs owned or controlled by Registered Manufacturer that remain in stock at such date; and
 - (ii) identifying the nature and location of all warehouses or other storage facilities at which such CD-R HC Discs are stored; and
 - (c) Philips shall then invite Registered Manufacturer to enter into a "Registration Agreement for CD-R HC Disc Manufacturers" where the country of registration is a Patent Country.

Initial Philips _____

Initial Registered Manufacturer _____

24.11 Where the offer by Philips to enter into an agreement pursuant to Clause 24.10(c) is not accepted by Registered Manufacturer, then subject to any agreement to the contrary permitting the CD-R HC Discs remaining in stock to be sold under a Per-Batch License, Registered Manufacturer shall, in accordance with Philips' directions, destroy the CD-R HC Discs mentioned in Clause 24.10 and any components bearing the Registration Logo, including without limitation stampers used in the manufacture of CD-R HC Discs, and keep sufficient evidence of their destruction, or deliver the CD-R HC Discs and any such equipment to Philips anywhere in the world in accordance with Philips' directions.

24.12 Philips shall not unreasonably withhold or delay its agreement under Clauses 24.9 or 24.11 to permit CD-R HC Discs remaining in stock on termination to be sold under a Per-Batch License.

24.13 SPARE

24.14 SPARE

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 Manufacturer to manufacture, dispose of or import a CD-R HC Disc not bearing the Registration Logo, where such manufacture, disposal or importation does not infringe a Valid Claim.

25.2 Registered Manufacturer 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 Manufacturer 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 Manufacturer, including, without limitation, goodwill, shall inure to the benefit of Philips.

25.3 Registered Manufacturer 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 Manufacturer in connection with Registered Manufacturer's use of the Essential Patents, the Registration Logo, or the System Logo, Registered Manufacturer 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 Manufacturer shall provide Philips with all such assistance as Philips may reasonably require from time to time in respect of such proceedings.

Initial Philips _____

Initial Registered Manufacturer _____

25.4 Registered Manufacturer acknowledges and agrees that Philips may modify the wording of the standard version of the “Registration Agreement for CD-R High Capacity Disc Manufacturers in a Non-Patent Country” at any time. Registered Manufacturer shall at all times have the option of entering into the most recent version of the “Registration Agreement for CD-R High Capacity Disc Manufacturers in a Non-Patent Country”, as published by Philips on the Website or otherwise communicated by Philips to Registered Manufacturer after the Effective Date. No modification of the standard version of the “Registration Agreement for CD-R High Capacity Disc Manufacturers in a Non-Patent Country” shall be effective between Registered Manufacturer and Philips unless and until Registered Manufacturer and Philips have entered into the version of the “Registration Agreement for CD-R High Capacity Disc Manufacturers in a Non-Patent Country” containing such modification.

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 Manufacturer, to:

Registered Manufacturer’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);
- (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; or
- (f) as being intended to prevent Registered Manufacturer from taking action against a third party using a Registration Number assigned by Philips to Registered Manufacturer.

Initial Philips _____

Initial Registered Manufacturer _____

- 25.8** Registered Manufacturer 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 Manufacturer 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.
- 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 Manufacturer.
- 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 Manufacturer's registered office is located, or to the competent courts in any country where Registered Manufacturer or its Associated Companies are otherwise located or have manufacturing facilities, or, for claims arising in relation to a Shipment by Registered Manufacturer or its Associated Companies, to any of the competent courts in the country of destination of the Shipment. Registered Manufacturer 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 Manufacturer refers a dispute to any court other than the Court/s with Primary Jurisdiction and Philips alleges that Registered Manufacturer has done so in breach of Clause 25.13; and
 - (b)** a dispute arises between the parties as to
 - (i)** whether Registered Manufacturer 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 Manufacturer arising from such breach,
- Philips may refer the dispute under (b) to arbitration by giving to Registered Manufacturer 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

Initial Philips _____

Initial Registered Manufacturer _____

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. 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.

Initial Philips _____

Initial Registered Manufacturer _____

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 MANUFACTURER]

Name:
Title:
Date:

Name:
Title:
Date:

reference copy

Initial Philips _____

Initial Registered Manufacturer _____

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

reference copy

Initial Philips _____

Initial Registered Manufacturer _____

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

Initial Philips _____

Initial Registered Manufacturer _____

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.

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.

Initial Philips _____

Initial Registered Manufacturer _____

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.

Initial Philips _____

Initial Registered Manufacturer _____

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.

Initial Philips _____

Initial Registered Manufacturer _____

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

Initial Philips _____

Initial Registered Manufacturer _____

ANNEX E

Manufacturing Equipment List

Name of Registered Manufacturer: _____

Date: _____

Initial for identification purposes only: _____

This Manufacturing Equipment List contains _____ pages specifying:

The number of production systems: _____

The number of moulds: _____

_____ samples of discs are submitted, together with a copy of this Manufacturing Equipment List, to the Philips Intellectual Property & Standards Business Support Department.

Date of sample collection: _____

I hereby represent that the information provided in this Manufacturing Equipment List is true, complete and accurate in every respect.

Signed for and on behalf of

[REGISTERED MANUFACTURER]

Name:

Title:

Initial Philips _____

Initial Registered Manufacturer _____

Manufacturing Equipment List - CD-R HC Disc

Name of Registered Manufacturer: _____

Date: _____

System number:	Type:																																			
Date of installation/commissioning:	Supplier:																																			
	Serial number:																																			
This production system is suitable for <i>Please tick as appropriate</i> <i>(multiple selections possible)</i>																																				
<input type="checkbox"/> "12 cm CD-R" <input type="checkbox"/> "8 cm CD-R"																																				
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Initial Philips _____

Initial Registered Manufacturer _____

ANNEX F

Confirmation Letter

Date: _____

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

Except as set out in the Exceptions Report below:

All CD-R HC Discs acquired by Registered Manufacturer were properly covered by an LSCD;
All CD-R HC Discs included by Registered Manufacturer in a Shipment were properly covered by an LSCD;
All information provided by Registered Manufacturer in each Application, and all other information provided by Registered Manufacturer 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 HC Discs that have been stolen, confiscated, lost, or destroyed, are reported in the Exceptions Report below.

Signed

Authorised Officer of Registered Manufacturer

Exceptions Report

[•]

Initial Philips _____

Initial Registered Manufacturer _____

ANNEX G

Audit Guide

This Audit Guide lays down the conditions under which audits are to be performed and audit statements generated by Registered Manufacturer's external auditors pursuant to Clause 12 of the "Registration Agreement for CD-R High Capacity Disc Manufacturers in a Non-Patent Country" between Registered Manufacturer and Philips. This Audit Guide may be amended by Philips from time to time.

1. Auditor's Qualifications

The auditor appointed by Registered Manufacturer to issue an audit statement on the Confirmation Letter shall, where Registered Manufacturer appoints an auditor on a regular basis to issue an auditor's opinion on the financial statements of Registered Manufacturer, 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 Manufacturer _____

ANNEX G - Schedule 1

Independent Audit Statement

Independent Audit Statement to the Directors and/or Management of [Registered Manufacturer]

We have audited the attached report (the **Confirmation Letter**) relating to the Shipments of CD-R HC Discs by Registered Manufacturer, as reported by Registered Manufacturer to Koninklijke Philips Electronics N.V. (**Philips**) under the "Registration Agreement for CD-R High Capacity Disc Manufacturers in a Non-Patent Country" 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 the licenses granted by Philips to [Registered Manufacturer] 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 Manufacturer's] books and records and other aspects of its manufacturing and distribution operations.

This audit statement is intended solely for use by the board of directors and management of [Registered Manufacturer] for the purpose of its reporting requirements under the Registration Agreement and therefore may only be made available by [Registered Manufacturer] 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 Manufacturer] 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 Manufacturer]; and

Initial Philips _____

Initial Registered Manufacturer _____

(d) evaluate the overall presentation of the Confirmation Letter.

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 Manufacturer*] under the Registration Agreement for the calendar year ending [dd/mm/yyyy] and the amount of royalties payable by [*Registered Manufacturer*] to Philips under licenses granted by Philips.

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

Attachment: Confirmation Letter (___ pages)

Initial Philips _____

Initial Registered Manufacturer _____

ANNEX H

Transitional Periods for System Changes

Change	Transitional period
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

Initial Philips _____

Initial Registered Manufacturer _____

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

Initial Philips _____

Initial Registered Manufacturer _____

- (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.

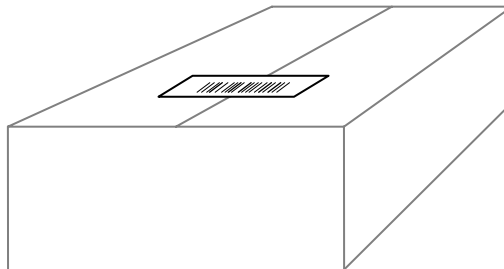


Figure: application of the Serial Number Label on a Master Carton

Initial Philips _____

Initial Registered Manufacturer _____

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

Initial Philips _____

Initial Registered Manufacturer _____

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 Manufacturer _____