

Non-Assert Agreement for CD-R Disc Stamper Manufacturers

Koninklijke Philips Electronics N.V.

and

[Stamper Manufacturer]

PHILIPS

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Initial Philips _____

Initial Stamper Manufacturer _____

NON-ASSERT AGREEMENT FOR CD-R DISC STAMPER MANUFACTURERS

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

Effective Date: _____

Stamper Manufacturer: _____

Stamper Manufacturer's Registered Office Address:

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Stamper Manufacturer's Notice Address and Fax Number

Address:

Fax Number:

--

Country of Registration: _____

Jurisdiction of Governing Law: The Netherlands

Court/s with Primary Jurisdiction: The courts of The Hague, The Netherlands

Initial Philips _____

Initial Stamper Manufacturer _____

NON-ASSERT AGREEMENT FOR CD-R DISC STAMPER MANUFACTURERS

This 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

STAMPER MANUFACTURER, having its registered office at Stamper 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 System and to the manufacture of CD-R Discs;

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

WHEREAS, in order to obtain a license or an LSCD, Registered Manufacturers must embed the Registration Logo and an appropriate Registration Number in each CD-R Disc that is the subject of a license or an LSCD;

WHEREAS, Stamper Manufacturer manufactures and supplies stampers used in the manufacture of CD-R Discs to manufacturers of CD-R Discs, and wishes to supply such CD-R Disc Stampers bearing the Registration Logo and a Registration Number to Registered Manufacturers;

WHEREAS, Stamper Manufacturer and Philips enter into this Agreement to confirm the terms and conditions under which Stamper Manufacturer may include the Registration Logo on CD-R Disc Stampers, the requirements that a CD-R Disc Stamper must satisfy before it may be sold to a Registered Manufacturer, the effects of a failure to comply with this Agreement and the conditions under which Philips may revise various aspects of the batch-based licensing system;

Initial Philips _____

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

1 Interpretation

1.1 Definitions

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

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

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

at the relevant time.

For the purposes of this 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.

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

“CD-R Disc Stamper” shall mean a stamper used in the manufacture of a CD-R Disc.

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

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

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

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

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

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

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“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.

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

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

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

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

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

“Notice” shall mean a notice served in accordance with the requirements set out in Clause 11.4.

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

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

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

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

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

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

“Stamper Manufacturer” shall have the meaning set out at the head of this Agreement.

“System Breach” shall mean any of the following:

- (a) Stamper Manufacturer applies the Registration Logo or a Registration Number to a CD-R Disc Stamper other than in material accordance with the Registration Logo Guide;
- (b) Stamper Manufacturer supplies a CD-R Disc Stamper in breach of Clause 3.2;
- (c) Stamper Manufacturer manufactures a CD-R Disc Stamper in breach of Clauses 3.3 or 3.4;

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“**System Change**” shall mean a revision to any aspect of the system made in accordance with Clause 8.

“**Website**” shall mean www.licensing.philips.com or any other website designated by Philips from time to time in connection with this Agreement.

- 1.2** Unless the context otherwise requires, any agreement with Philips that is referred to in this 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.

2 Non-Assert Undertaking

For the duration of this Agreement and subject to the full and timely compliance by Stamper Manufacturer with all of its undertakings and obligations under this Agreement, Philips undertakes to hold off, until:

- (a) the relevant CD-R Disc Stamper is sold to or used by a third party who is not a Registered Manufacturer; or
- (b) Stamper Manufacturer procures or consents to such sale or use, from taking action against Stamper Manufacturer for infringement of its trademark and copyrights in the Registration Logo in relation to Stamper Manufacturer’s application of the Registration Logo to a CD-R Disc Stamper.

3 Registration Logo and Registration Numbers

- 3.1** Where Stamper Manufacturer applies the Registration Logo and/or a Registration Number to a CD-R Disc Stamper, it shall always do so in accordance with the Registration Logo Guide.
- 3.2** Stamper Manufacturer shall not sell or otherwise dispose of a CD-R Disc Stamper to which it has applied the Registration Logo except by way of sale to the Registered Manufacturer whose Registration Number appears on the CD-R Disc Stamper and only on the condition that the Registered Manufacturer shall not re-sell such CD-R Disc Stamper to, or permit its use by, any other person or entity (including an Associated Company of such Registered Manufacturer).
- 3.3** Stamper Manufacturer shall not manufacture a CD-R Disc Stamper including the Registration Logo except where it does so pursuant to an order from a Registered Manufacturer.
- 3.4** Stamper Manufacturer shall not include the Registration Logo on any CD-R Disc Stamper except where Stamper Manufacturer also includes on such CD-R Disc Stamper the Registration Number assigned to the Registered Manufacturer who ordered the CD-R Disc Stamper. Philips shall make available on the Website a list of all Registration Numbers assigned to Registered Manufacturers to enable Stamper Manufacturer to verify that a particular Registration Number belongs to a particular Registered Manufacturer.

Initial Philips _____

Initial Stamper Manufacturer _____

3.5 Stamper Manufacturer acknowledges and agrees that all rights in the Registration Logo are, and shall remain, proprietary rights of Philips. Any use of the Registration Logo by Stamper Manufacturer other than as authorised in this Agreement, or other than in accordance with the Registration Logo Guide, will have occurred:

- (a) without Philips' consent; and
- (b) in circumstances in which no non-assert undertakings shall apply,

and may constitute an infringement of Philips' intellectual property rights.

4 No Royalties

No royalties shall be payable by Stamper Manufacturer under this Agreement.

5 Reporting

At Philips' request and irrespective of whether any sales of CD-R Disc Stampers have occurred, Stamper Manufacturer shall provide to Philips, within 30 Days of Notice from Philips making such a request, a report identifying:

- (a) the names and addresses of all customers to whom it has sold or otherwise provided a CD-R Disc Stamper to which it has applied the Registration Logo; and
- (b) the number of such CD-R Disc Stampers supplied to each customer identified in (a) in the preceding 24 months.

6 System Breach

6.1 Stamper 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 the batch-based licensing system; and/or
 - (iii) encourage System Breaches and discourage compliance with Philips' batch-based licensing system

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

- (b) recognises that Registered Manufacturers, CD-R Disc traders who have registered with Philips, and other CD-R Disc licensees of Philips, pay royalties in return for the right to use the Registration Logo; and
- (c) recognises that Philips incurs substantial costs in investigating, detecting and acting against System Breaches.

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6.2 Stamper Manufacturer shall take all measures necessary to avoid the occurrence of a System Breach.

6.3 In the event of a System Breach, and subject to Clause 6.4:

- (a) Stamper Manufacturer shall, immediately upon receipt of Notice from Philips alleging a System Breach, be liable to pay Philips a non-refundable sum of US \$20,000 per CD-R Disc Stamper that is the subject of an event constituting a System Breach; and
- (b) Philips shall have the right to terminate this Agreement by giving Notice to Stamper Manufacturer specifying the reason for such termination.

Any termination effected in accordance with Clause 6.3(b) shall be effective immediately upon such Notice being issued.

6.4 Stamper Manufacturer acknowledges and agrees that the payment provided for in Clause 6.3(a) represents a fair assessment of the damage Philips is likely to suffer as a result of any System Breach by Stamper Manufacturer.

6.5 Stamper Manufacturer may, immediately upon receipt of a Notice under Clause 6.3(a), give Notice to Philips that Stamper 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 Disc Stampers 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 6.3.

6.6 No damages shall be payable under Clause 6.3 if Stamper Manufacturer can prove each of the following elements to Philips' reasonable satisfaction within 30 Days after receipt of a Notice under Clause 6.3(a):

- (a) Stamper Manufacturer could not have anticipated the System Breach;
- (b) Stamper 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.

Where a number of System Breaches are the subject of a Notice under Clause 6.5, Stamper Manufacturer shall be required to prove each of the elements in this Clause 6.6 in relation to each System Breach the subject of such Notice.

6.7 Philips may provide Notice to Stamper 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, Stamper Manufacturer commits an act or omission described in the Notice, that act or omission shall be deemed to be a System Breach unless:

- (a) Stamper 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 Stamper Manufacturer considers that it would be inappropriate to regard such act or omission as a System Breach; and
- (b) it would be unreasonable for Philips not to accept the explanation set out in a Notice provided by Stamper Manufacturer under Clause 6.7(a).

Initial Philips _____

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7 Confidentiality

- 7.1** Philips shall, during the term of this Agreement and for a period of 3 years thereafter, not disclose to any third party information acquired from Stamper Manufacturer in connection with Clause 5.
- 7.2** Without limiting the provisions of Clause 7.3, Philips shall not disclose confidential information obtained in connection with Clause 5 to any employee of its Associated Companies or any other individual other than those engaged in Philips' licensing activities.
- 7.3** The obligations of Philips in Clauses 7.1 and 7.2 shall not apply to Philips to the extent that such information:
- (a) has after the date of this Agreement, been published or otherwise generally made available to the public, except in consequence of a wilful or negligent act or omission by Philips in breach of its confidentiality obligations under this Clause 7;
 - (b) has been made available to Philips 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 Stamper Manufacturer or which has been disclosed under an express statement that it is not confidential;
 - (c) has been independently developed by Philips otherwise than in the course of the exercise of Philips' rights under this Agreement or the implementation of this Agreement;
 - (d) is required to be disclosed by any applicable law or by any recognised stock exchange or governmental or other regulatory or supervisory body or authority of competent jurisdiction to whose rules Philips is subject, whether or not having the force of law, provided that Philips shall notify Stamper Manufacturer 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;
 - (e) is disclosed by Philips in order to perform its obligations under or pursuant to this Agreement; or
 - (f) is information which Philips can prove was already known to it before, or was developed independently of, its receipt from Stamper Manufacturer,
- provided that nothing in this Clause 7 shall prevent Philips 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 Philips is subject, whether or not having the force of law, provided that Philips shall notify Stamper Manufacturer 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.
- 7.4** For the avoidance of doubt, the provisions of this Agreement are not subject to any confidentiality obligation.

Initial Philips _____

Initial Stamper Manufacturer _____

8 System Changes

8.1 Stamper Manufacturer acknowledges and agrees that the integrity of Philips' batch-based licensing system, as generally described in the Philips CD-R Disc Batch-Based Licensing System Guide, is important to the equitable treatment of manufacturers and traders of CD-R Discs and to open and fair competition in the market for CD-R Discs and the market for licensing intellectual property rights relevant to CD-R Discs. Accordingly, Stamper 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, Stamper Manufacturer acknowledges and agrees that Philips may do the following:

- (a) revise the Registration Logo Guide; and/or
- (b) revise the Philips CD-R Disc Batch-Based Licensing System Guide.

Stamper Manufacturer acknowledges and agrees that any such revision shall be deemed to be incorporated into this 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 (which period Philips may also change on like terms) of at least 60 Days following the date on which the revision is deemed to be incorporated into this Agreement, during which period Stamper Manufacturer shall be entitled to update its processes to ensure compliance with such changes.

8.2 Stamper Manufacturer shall be entitled to refuse to comply with a System Change the subject of a Notice under Clause 8.1 and shall terminate this Agreement upon such refusal by means of Notice to Philips.

8.3 Philips undertakes that it shall not act unreasonably in making any System Change.

9 No Assignment

This 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 Stamper 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.

10 Term and Termination

10.1 This Agreement shall commence on the Effective Date. Unless and until terminated earlier in accordance with the provisions of this Clause 10, this Agreement shall remain in force for a period of 5 years from the Effective Date.

10.2 Stamper Manufacturer may terminate this Agreement upon giving Philips 30 Days' Notice of its intention to terminate.

Initial Philips _____

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- 10.3** Without prejudice to the provisions of Clause 10.4 through to Clause 10.7, either party may terminate this Agreement if the other party fails to perform any obligation under this Agreement and such failure is not remedied within 30 Days after receipt of a Notice specifying the nature of such failure and requiring it to be remedied. Such right of termination shall 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 payment obligations under this Agreement that have accrued prior to such termination.
- 10.4** Philips may terminate this Agreement if:
- (a) Stamper Manufacturer commits a System Breach and does not prove each of the elements set out in Clause 6.6, within the time limit stipulated in Clause 6.6, to Philips' reasonable satisfaction;
 - (b) a creditor or other claimant takes possession of, or a receiver, administrator or similar officer is appointed over, any of the assets of Stamper Manufacturer, or Stamper Manufacturer makes any voluntary arrangement with its creditors or becomes subject to any court or administration order pursuant to any bankruptcy or insolvency law;
 - (c) Stamper 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; ; or
 - (d) any of Stamper Manufacturer's representations in or under this Agreement proves to be false in any manner
- 10.5** In each instance where Philips has a right to terminate pursuant to Clause 10.4, Philips may only exercise such termination right by giving Notice to Stamper Manufacturer specifying the reason for such termination. Any termination so effected shall be effective immediately upon such Notice.
- 10.6** Upon termination of this Agreement by Philips for any reason pursuant to Clause 10.4, Stamper Manufacturer shall immediately cease:
- (a) manufacturing, offering for sale, selling or otherwise disposing of CD-R Disc Stampers to which the Registration Logo has been applied; and
 - (b) otherwise using the Registration Logo.
- Clauses 1, 6.3, 6.4, 6.5, 9, 10.4, 10.6, 10.7 and 11 of this Agreement and all acknowledgements by Stamper Manufacturer shall survive the expiry or termination of this Agreement indefinitely. Rights already accrued shall survive termination.
- 10.7** Upon the termination of this Agreement, Stamper Manufacturer shall, subject to any agreement with Philips to the contrary (which may involve payment of fees by Stamper Manufacturer), destroy all CD-R Disc Stampers it holds bearing the Registration Logo.

11 Miscellaneous

- 11.1** Stamper Manufacturer acknowledges that all right, title and interest in and to the Registration Logo is owned by Philips and all rights relating thereto shall remain solely with Philips. Stamper Manufacturer shall not acquire any rights of ownership in the Registration Logo, whether by implication, use, registration or otherwise. All rights relating to or resulting from the use of the Registration Logo by Stamper Manufacturer, including, without limitation, goodwill, shall inure to the benefit of Philips.

Initial Philips _____

Initial Stamper Manufacturer _____

- 11.2** Stamper Manufacturer shall have no right to instigate any action against a third party for infringement of the Registration Logo. If a claim is made against Stamper Manufacturer in connection with Stamper Manufacturer's use of the Registration Logo, Stamper Manufacturer shall notify Philips and Philips shall have the right (but shall not be obliged) to defend such claim at Philips' own cost. If Philips institutes legal proceedings against a third party for alleged infringement of the Registration Logo, Stamper Manufacturer shall provide Philips with all such assistance as Philips may reasonably require from time to time in respect of such proceedings.
- 11.3** Stamper Manufacturer acknowledges and agrees that Philips may modify the wording of the standard version of the "Non-Assert Agreement for CD-R Disc Stamper Manufacturers" at any time. Stamper Manufacturer shall at all times have the option of entering into the most recent version of the "Non-Assert Agreement for CD-R Disc Stamper Manufacturers", as published by Philips on the Website or otherwise communicated by Philips to Stamper Manufacturer after the Effective Date. No modification of the standard version of the "Non-Assert Agreement for CD-R Disc Stamper Manufacturers" shall be effective between Stamper Manufacturer and Philips unless and until Stamper Manufacturer and Philips have entered into the version of the "Non-Assert Agreement for CD-R Disc Stamper Manufacturers" containing such modification.
- 11.4** Any notice required to be given by either party under this Agreement shall, unless explicitly specified in this Agreement otherwise, be given in writing in the English language by means of a letter or facsimile directed:
- in respect of Stamper Manufacturer, to:
Stamper 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.
- 11.5** This 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 Agreement shall be binding upon either party unless made in writing and signed by an authorised representative of each of the parties.
- 11.6** Nothing contained in this Agreement shall be construed:
- (a) as imposing on either party any obligation to instigate any action for infringement of the Registration Logo, or to defend any action brought by a third party which challenges or relates to the validity of the Registration Logo;
 - (b) as imposing any obligation to file any trademark or copyright applications, to secure any trademark or copyright registrations, or to maintain any subsisting 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;

Initial Philips _____

Initial Stamper Manufacturer _____

- (d) as being intended to prevent or restrict the free movement of goods in breach of Articles 28 and 30 of the Treaty of Rome Establishing the European Economic Community (1957); or
- (e) as conferring any license to manufacture, sell or otherwise dispose of any product or device, or as transferring any title to any product or device.

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

11.8 Should any provision of this 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 Agreement, provided that, in such event, Philips shall have the right to terminate this Agreement by Notice to Stamper Manufacturer.

11.9 This Agreement shall be governed by and construed in accordance with the laws of the Jurisdiction of Governing Law.

11.10 Other than as provided for in Clause 11.11, any dispute between the parties in connection with this 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, at its sole discretion, submit such dispute either to the competent courts in the country where Stamper Manufacturer's registered office is located, or to the competent courts in any country where Stamper Manufacturer or its Associated Companies are otherwise located or have manufacturing facilities, or, for claims arising in relation to a supply of CD-R Stampers by Stamper Manufacturer or its Associated Companies to recipients in another country, to any of the competent courts in that country. Stamper 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 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.

11.11 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 11.10 are to be dealt with expeditiously and accordingly if:

- (a) Stamper Manufacturer refers a dispute to any court other than the Court/s with Primary Jurisdiction and Philips alleges that Stamper Manufacturer has done so in breach of Clause 11.10; and
- (b) a dispute arises between the parties as to
 - (i) whether Stamper Manufacturer has referred a dispute to a court (other than the Court/s with Primary Jurisdiction) that, under Clause 11.10, lacks jurisdiction; and/or
 - (ii) the appropriate remedy by way of injunction and/or damages or otherwise due to Philips from Stamper Manufacturer arising from such breach,

Philips may refer the dispute under (b) to arbitration by giving to Stamper Manufacturer a Notice, including a reference to this Clause 11.11, specifying the dispute that Philips has referred to arbitration. The question for arbitration is a simple one, the answer to which will generally be very clear. Consequently, the arbitration shall be conducted by one arbitrator appointed by the Deken of the Nederlandse Orde van Advocaten (the "**Deken**") at Philips' request. The arbitrator shall be a lawyer qualified under the laws of, and engaged in private practice in, The Netherlands. Before his

Initial Philips _____

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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 11.11, 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.

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

KONINKLIJKE PHILIPS
ELECTRONICS N.V.

[STAMPER MANUFACTURER]

Name:
Title:
Date:

Name:
Title:
Date:

Initial Philips _____

Initial Stamper Manufacturer _____

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

reference copy

Initial Philips _____

Initial Stamper Manufacturer _____