

CD-RW DISC PATENT LICENSE AGREEMENT

This Agreement is entered into this _____ day of _____, 2004 by and between

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

and

[_____], having its registered office in [_____] (hereinafter referred to as "Licensee").

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

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

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

WHEREAS, Philips and Sony each own certain patents relating to the CD Systems;

WHEREAS, in addition to the CD Systems, Philips and Sony have developed a new recordable system, which has been presented under the name CD-R System (as hereinafter defined);

WHEREAS, Philips and Sony each own certain patents relating to the CD-R System;

WHEREAS, in addition to the CD-R System, Philips, Sony and Ricoh Company Ltd. ("Ricoh") have developed a new rewritable system, which has been presented under the name CD-RW System (as hereinafter defined);

WHEREAS, Philips, Sony and Ricoh each own certain patents relating to the CD-RW System;

WHEREAS, Philips has been authorized by Sony and Ricoh to grant licenses under certain patents relating to the CD-RW System, which are owned or controlled by Sony, Ricoh and their respective Associated Companies (as hereinafter defined), as well as under such patents relating to the CD-RW System as are jointly owned by Philips, Sony and/or Ricoh;

WHEREAS, Philips, Sony and Ricoh have each retained their rights to license their respective patents separately and to give non-assertion undertakings with regard to jointly owned patents, whether within or outside the standard specifications of the CD-RW System, so that interested manufacturers may opt to take out separate licenses under the relevant patents of each of Philips, Sony and Ricoh, instead of a combined license;

WHEREAS, Licensee has requested from Philips a license under the relevant patents of Philips, Sony and Ricoh relating to CD-RW Discs (as hereinafter defined) and wishes such CD-RW Discs to be compatible with devices capable of recording discs conforming to the CD-RW Standard Specifications (as hereinafter defined) and the CD Standard Specifications (as hereinafter defined);

WHEREAS, Philips is willing to grant Licensee a license under the relevant patents and to make available certain basic information relating to the CD-RW System and the CD Systems, on the conditions set forth herein;

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

1. Definitions

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

- 1.1 "Disc" shall mean a reflective disc-shaped information carrier, on which any kind of information including but not limited to, audio, video, text and/or data-related information can be recorded, such information being stored in a layer of such disc which is optically readable by playback devices using a laser-beam.
- 1.2 "CD-R Disc" shall mean a recordable Disc, designed and manufactured for recording and irreversibly storing thereon digital information, and which conforms to the CD-R Standard Specifications (as hereinafter defined).
- 1.3 "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, compatible with one of the CD Systems, from CD-R Discs.
- 1.4 "CD-R Standard Specifications" shall mean the specifications for the CD-R System, Part II CD-R.
- 1.5 "CD-RW Disc" shall mean a recordable Disc designed and manufactured for recording, erasing and rewriting thereon digital information and which conforms to the CD-RW Standard Specifications.
- 1.6 "CD-RW System" shall mean the Compact Disc Rewritable System which is capable of recording, erasing, rewriting and subsequently reproducing signals in digital form, compatible with one of the CD Systems, from CD-RW Discs.
- 1.7 "CD-RW Standard Specifications" shall mean the specifications for the CD-RW System, Part III CD-RW, as made available, modified or extended from time to time in accordance with the provisions of Clause 3.

- 1.8 “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, modified or extended from time to time in accordance with the provisions of Clause 3 (hereinafter collectively referred to as the “CD Standard Specifications”).
- 1.9 “CD-RW Audio Recorder” shall mean a single spindle recording device for recording and rewriting on CD-RW Discs digital audio information for the subsequent optical reading of such information from such Discs, in accordance with the CD-Audio Standard Specifications. A CD-RW Audio Recorder may, in addition to its ability to record, erase and reproduce digital audio information from CD-RW Discs, be capable of recording and reproducing digital audio information from CD-R Discs.
- 1.10 “CD-RW Data Recorder” shall mean a single spindle recording device for data recording purposes and/or PC use for recording and rewriting on CD-RW Discs digital information for the subsequent optical reading of such information from such Discs, in accordance with the relevant CD Standard Specifications. A CD-RW Data Recorder may, in addition to its ability to record, erase and reproduce digital information from CD-RW Discs, be capable of recording and reproducing information from CD-R Discs.

The CD-RW Audio Recorder and CD-RW Data Recorder are collectively referred to as “CD-RW Recorders”.

- 1.11 “Licensed Product(s)” shall mean CD-RW Discs, manufactured and/or sold in accordance with the provisions hereof, which are duly reported and for which the royalties due hereunder are paid in accordance with the provisions of this Agreement.
- 1.12 “Licensed Patent(s)” shall mean any one or more of the essential patents relating to CD-RW Discs, as listed in Annex A.

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

The term “essential” as used in relation to patents in this Agreement shall refer to patents, the use of which is necessary (either directly or as a practical matter) for compliance with the CD-RW Standard Specifications.

Philips commissions an independent patent expert to review the European, Japanese and US patents listed as essential in Annex A in order to confirm the essentiality of such patents. In the event that such independent patent expert would find that any of the patents does not qualify as essential as defined in this Agreement, Philips will delete such patent (as well as the equivalent corresponding patents) from Annex A and such patent will be put on a list of non-essential patents. Notwithstanding such deletion, Licensee shall retain the right to continue the use of such deleted patent(s) in accordance with the provisions of this Agreement, without any additional payment, unless Licensee explicitly notifies Philips in writing of its decision to waive such right.

In the event that Philips, Sony or Ricoh (or any of their respective Associated Companies) would have additional patents relevant to CD-RW Discs (other than patents acquired from third parties after the date of July 1, 1997) in their respective patent portfolios which are essential to the manufacture, sale or other disposal of CD-RW Discs and which have a filing date or are entitled to a priority date prior to July 1, 1997 for CD-RW Discs, but

which have not been listed as essential patents in Annex A hereto, Philips will notify Licensee accordingly and such additional patents will be added to the Licensed Patents and such addition shall not affect the provisions of this Agreement. Any patents as may be added as essential patents to Annex A hereto, will similarly be subject to the review by the independent patent expert in accordance with the preceding paragraph.

The patent lists provided to Licensee upon execution of this Agreement are subject to change in accordance with the provisions of this Agreement. With regard to the rights granted to Licensee hereunder, the patent lists published by Philips on its website (www.licensing.philips.com) or otherwise communicated by Philips to Licensee after the date of execution hereof shall prevail over the lists provided to Licensee upon the execution of this Agreement.

- 1.13 “SCMS Patents” shall mean the patents and patent applications relevant to the “Serial Copy Management System” (hereinafter referred to as “SCMS”) with respect to the Licensed Products which patents and patent applications are or will be owned or controlled by Philips, Sony, Licensee or their respective Associated Companies for which Philips, Sony, Licensee or their respective Associated Companies have the right to grant licenses and which patents and patent applications were first filed in any country of the world prior to the expiry or termination date of this Agreement.
- 1.14 “Associated Company” shall mean any one or more business entities (1) owned or controlled by Philips, Sony, Ricoh or Licensee, (2) owning or controlling Philips, Sony, Ricoh or Licensee, or (3) owned or controlled by the business entity owning or controlling Philips, Sony, Ricoh or Licensee at the material time. For the purposes of this definition a business entity shall be deemed to own and/or to control another business entity if more than 50% (fifty per cent) of the voting stock of the latter business entity, ordinarily entitled to vote in the election of directors (or, if there is no such stock, more than 50% (fifty per cent) of the ownership of or control in the latter business entity) is held by the owning and/or controlling business entity.
- 1.15 “Territory” shall mean the geographic area known as the United States of America, its territories and possessions.

2. Grant of rights

- 2.1 For the term of this Agreement and subject to the provisions hereof, Philips hereby grants to Licensee a non-exclusive, non-transferable license under the Licensed Patents (listed in Annex A) to manufacture Licensed Products within the Territory in accordance with the CD-RW Standard Specifications and to sell or otherwise dispose of such Licensed Products so manufactured in all countries of the world.
- 2.2 Subject to the full and unconditional compliance by Licensee with all provisions hereof, Philips further undertakes that it and Sony shall not, during the term of this Agreement assert any of the SCMS Patents owned or controlled by Philips and/or Sony against the manufacture, sale and other disposal of Licensed Products by Licensee in accordance with the provisions of the CD-RW Disc Patent License Agreement.

- 2.3 Philips, also on behalf of Sony and Ricoh, further agrees, for as long as this Agreement is in force and effect and Licensee is in full compliance with its obligations under this Agreement, to grant Licensee upon Licensee's request, a non-exclusive, non-transferable license, either by means of a sub-license arrangement or by means of individual licenses from Philips, Sony and/or Ricoh respectively, on reasonable, non-discriminatory conditions, to manufacture Licensed Products in the Territory and to sell or otherwise dispose of Licensed Products so manufactured in all countries of the world, under any patents not yet licensed hereunder and which are essential to the manufacture, sale or other disposal of Licensed Products, for which Philips, Sony, Ricoh and/or their respective Associated Companies may hereafter acquire from third parties the right to grant licenses. It is acknowledged and agreed by the parties that in respect of the patents as may be licensed pursuant to this Clause 2.3, additional royalties may have to be paid over and above the royalties specified in Clause 5.2.
- 2.4 Philips, also on behalf of Sony and Ricoh, further agrees, for as long as this Agreement is in force and effect and Licensee is in full compliance with its obligations under this Agreement, to grant Licensee upon Licensee's request as well as to those of Licensee's Associated Companies who so request, a non-exclusive, non-transferable license, on reasonable, non-discriminatory conditions, either by means of a sub-license arrangement or by means of individual licenses from Philips, Sony and/or Ricoh respectively, to manufacture CD-RW Recorders and to sell or otherwise dispose of such CD-RW Recorders so manufactured in all countries of the world under any and all present and future patents essential to the manufacture, sale or other disposal of CD-RW Recorders for which Philips, Sony, Ricoh and/or their respective Associated Companies have or may hereafter acquire the right to grant licenses.
- 2.5 In consideration of the undertaking set forth in Clause 2.2, Licensee undertakes and represents that it shall not during the term of this Agreement assert any of the SCMS Patents owned or controlled by Licensee against the manufacture, sale and other disposal of CD-RW Discs or CD-RW Recorders by Philips, Sony or their respective Associated Companies nor against any third party who has entered or will enter into a license agreement with Philips concerning CD-RW Discs and who has accepted or will accept a similar undertaking as contained in this Clause 2.5.
- 2.6 In consideration of the undertakings set forth in Clauses 2.1, 2.3 and 2.4 and similar undertakings by third party licensees of Philips or any of its Associated Companies and without prejudice to the provisions of Clause 12, Licensee agrees to grant to Philips, Sony, Ricoh and their respective Associated Companies and to other third parties who have entered or will enter into a license agreement with Philips concerning CD-RW Discs, non-exclusive, non-transferable licenses, on reasonable, non-discriminatory conditions comparable to those set forth herein, to manufacture, sell or otherwise dispose of CD-RW Discs, under any and all present and future patents, for which Licensee or its Associated Companies have or may hereafter acquire the right to grant licenses and which are essential to the manufacture, sale or other disposal of CD-RW Discs and which patents were first filed or are entitled to a priority date in any country of the world prior to the date of termination of this Agreement. The duration of such licenses shall be a period ending at the expiration date of the last to expire patent of Licensee or the relevant Associated Company of Licensee, essential to CD-RW Discs. For the avoidance of doubt, the undertaking set out in this Clause 2.6 shall only apply to those companies which accept or have accepted a similar undertaking as given by Licensee in this Clause 2.6.

- 2.7 In addition, in consideration of the undertakings set forth in Clauses 2.1, 2.3 and 2.4 and similar undertakings by third party licensees of Philips or any of its Associated Companies and without prejudice to the provisions of Clause 12, Licensee agrees to grant to Philips, Sony, Ricoh and their respective Associated Companies and to other third parties who have entered or will enter into a license agreement with Philips concerning CD-RW Recorders, non-exclusive, non-transferable licenses, on reasonable, non-discriminatory conditions, to manufacture, sell or otherwise dispose of CD-RW Recorders, under any and all present and future patents, for which Licensee or its Associated Companies have or may hereafter acquire the right to grant licenses and which are essential to the manufacture, sale or other disposal of CD-RW Recorders and which patents were first filed or are entitled to a priority date in any country of the world prior to the date of termination of this Agreement. The duration of such licenses shall be a period ending at the expiration date of the last to expire patent of Licensee or the relevant Associated Company of Licensee, essential to CD-RW Recorders. For the avoidance of doubt, the undertaking set out in this Clause 2.7 shall only apply to those companies which accept or have accepted a similar undertaking as given by Licensee in this Clause 2.7.
- 2.8 Philips undertakes that it will offer, at the request of any of Licensee's Associated Companies to any such Associated Company, a non-exclusive and non-transferable license under the Licensed Patents on reasonable and non-discriminatory conditions comparable to those set forth herein, to manufacture, sell or otherwise dispose of CD-RW Discs.
- 2.9 IT IS EXPRESSLY ACKNOWLEDGED AND AGREED THAT:
- (I) THE LICENSES AND LICENSE UNDERTAKINGS HEREIN CONTAINED WITH RESPECT TO THE MANUFACTURE OF LICENSED PRODUCTS DO NOT EXTEND TO MASTER RECORDING MACHINES, EQUIPMENT OR METHODS FOR THE REPLICATION OF DISCS, NOR TO THE MANUFACTURE OF MATERIALS OR REPRODUCTION RIGHTS FOR INFORMATION (SUCH AS AUDIO, VIDEO, TEXT AND/OR DATA-RELATED INFORMATION), CONTAINED ON DISCS TO BE PLAYED BACK/RECORDED ON A PLAYER/RECORDER. FURTHER, THE LICENSE UNDERTAKINGS WITH RESPECT TO THE MANUFACTURE OF PLAYERS/RECORDERS DO NOT EXTEND TO THE MANUFACTURE OF COMPONENTS FOR PLAYERS/RECORDERS (INCLUDING BUT NOT LIMITED TO SEMICONDUCTOR DEVICES, INTEGRATED CIRCUITS, LASERS, MOTORS AND LENSES), EXCEPT FOR CIRCUITRY AND/OR SYSTEM ASPECTS SPECIFIC TO THE CD-RW SYSTEM;
- (II) THE RIGHTS AND LICENSES GRANTED UNDER THIS AGREEMENT DO NOT EXTEND TO ANY COMBINATION OF ONE OR MORE LICENSED PRODUCTS OR PLAYERS/RECORDERS WITH ANY OTHER ELEMENTS, PRODUCTS, SYSTEMS, EQUIPMENT OR SOFTWARE OTHER THAN THE COMBINATION OF A LICENSED PRODUCT AND A CD-RW RECORDER.

3. Standard Specifications, Technical Information and Support

- 3.1 Upon receipt of the payment provided for in Clause 5.1 and the payment provided for in Clause 5.13, Philips shall make available to Licensee for use by Licensee in accordance with the provisions hereof, a copy of the then current version of the CD-RW Standard Specifications and the CD Standard Specifications, together with such other information and support as Philips considers necessary for the interpretation and/or the correct application of the CD-RW Standard Specifications and the CD Standard Specifications.
- 3.2 Licensee shall be notified in writing of any addition or modification to the CD-RW Standard Specifications and shall be provided with relevant information in connection therewith.
- 3.3 Philips and Licensee undertake to keep each other generally informed of developments or initiatives which may have an impact on the CD-RW Standard Specifications.

4. Procurement from other Licensed Manufacturers

- 4.1 The rights granted to Licensee pursuant to Clause 2 and the right to use the information pursuant to Clause 3, include the right for Licensee to have Licensed Products made for it by third party manufacturers, duly licensed by Philips under an agreement similar to this Agreement, provided that Licensee will properly identify such third party manufacturer in the royalty reporting forms to be submitted to Philips hereunder, together with the quantities of Licensed Products so purchased.
Conversely, Licensee shall refrain from purchasing or selling CD-RW Discs manufactured by any third party not licensed by Philips, where such purchase or sale would constitute an act of infringement of any of the Licensed Patents.

5. Royalties, Reports and Payments

- 5.1 In consideration of the rights granted by Philips and the information to be provided by Philips hereunder, Licensee shall, upon execution of this Agreement, make a non-refundable, non-recoupable payment of US\$ 25,000 (twenty-five thousand US Dollars) to Philips.
- 5.2 In further consideration of the rights granted hereunder by Philips to Licensee, Licensee shall pay to Philips a royalty for each CD-RW Disc sold or otherwise disposed of by Licensee, any of Licensee's Associated Companies or an agent of Licensee, in any country where at least one of the Licensed Patents exists.

With respect to CD-RW Discs sold before January 1, 2000 this royalty shall amount to 3% (three per cent) of the Net Selling Price (as hereinafter defined) of each such CD-RW Disc or US\$ 0.15 (fifteen US Dollar cents), whichever amount is higher.

With respect to CD-RW Discs sold on or after January 1, 2000 this royalty shall amount to 3% (three per cent) of the Net Selling Price of each such CD-RW Disc or US\$ 0.10 (ten US Dollar cents), whichever amount is higher.

With respect to CD-RW Discs sold on or after January 1, 2001 this royalty shall amount to US\$ 0.10 (ten US Dollar cents) for each CD-RW Disc.

With respect to CD-RW Discs sold on or after the Effective Date of this Agreement, provided that:

- a) Licensee is in full compliance with its obligations under this Agreement; and
- b) Licensee has submitted an audit statement by its external auditors, who shall be certified public auditors as specified in the Audit Guidelines attached hereto as Annex B2, confirming that the quarterly royalty statements as submitted by Licensee to Philips for the last twelve quarterly periods, are true, complete and accurate in every respect; and such statement must meet the requirements as specified in the Audit Guidelines;

and subject to the provisions of Clause 6, Licensee may apply a royalty rate of US\$ 0.075 (seven and a half US Dollar cents) for each CD-RW Disc.

In the event that Licensee fails to comply at any time with any of its obligations under this Agreement, the royalty rate of US\$ 0.10 (ten US Dollar cents) shall apply to Licensee's manufacture and sale of CD-RW Discs instead of the royalty rate of US\$ 0.075 (seven and a half US Dollar cents), with immediate effect from the first day of the reporting period to which the occurrence of non-compliance relates until such moment that Philips confirms in writing to Licensee that Licensee's non-compliance has been remedied in full.

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

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

No royalties shall be payable for CD-RW Discs purchased by Licensee on a "have made" basis in accordance with Clause 4 from third party manufacturers, duly licensed by Philips, provided that Licensee can demonstrate to Philips' satisfaction, that such third party manufacturer has paid to Philips the royalties due in respect of such CD-RW Discs.

For the avoidance of doubt, in the event that the manufacture by Licensee of CD-RW Discs within the Territory would not infringe any of the Licensed Patents, Licensee shall have no obligation to report and pay royalties due on the basis of this Agreement in respect of CD-RW Discs manufactured within the Territory and which are sold for final use within the Territory or imported (either by Licensee or by a third party) into a country where no Licensed Patents exist, for final use in such country.

- 5.3 For the purpose of this Agreement, "Net Selling Price" shall mean the invoice price for the CD-RW Discs sold by Licensee to any third party on an arm's length basis during the term of this Agreement. Such price shall be exclusive of normal discounts actually granted,

insurance fees, packing and transportation charges as invoiced to customers, and duties and sales taxes actually incurred and paid by Licensee in connection with the supply of such CD-RW Discs. In respect of sales by Licensee other than on an arm's length basis to or for resale by customers, the Net Selling Price shall be the average Net Selling Price as defined above for similar CD-RW Discs sold on an arm's length basis to third party customers over the preceding three months.

- 5.4 Within 30 days following 31 March, 30 June, 30 September and 31 December of each year during the term of this Agreement, Licensee shall submit to Philips (even in the event that no sales have been made) a written statement in the form as attached hereto as Annex B1 ("Royalty Reporting Form") (or in such other form as may be subsequently communicated by Philips to Licensee), signed by a duly authorized officer on behalf of Licensee, setting forth with respect to the preceding quarterly period:
- (1) the quantities of CD-RW Discs manufactured by Licensee;
 - (2) the quantities of CD-RW Discs purchased from other licensed manufacturers in accordance with the provisions of Clause 4, specified per such third party manufacturer who shall be named in the Royalty Reporting Form;
 - (3) on a per-country basis:
 - (a) the quantities of CD-RW Discs sold or otherwise disposed of, specifying the identity of the buyers and the trademarks used on or in connection with the CD-RW Discs;
 - (b) where applicable, the Net Selling Price of the CD-RW Discs sold or otherwise disposed of, expressed in the currency as used in the transaction(s);
 - (c) the quantities of CD-RW Discs sold to other manufacturers, duly licensed by Philips, specifying the identity of such other manufacturers and the trademarks used on or in connection with the CD-RW Discs;
 - (4) a computation of the royalties due under this Agreement.

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

- 5.5 In the event that Licensee fails to submit to Philips a Royalty Reporting Form for any royalty reporting period within 30 days from the end of the relevant reporting period in accordance with the provisions of Clause 5.4, Licensee shall be obliged to pay to Philips within 30 days after the end of the relevant quarterly period for which the Royalty Reporting Form was not submitted, an estimated royalty (hereinafter referred to as an "Advance"), being an amount equal to the highest amount of royalties due for any royalty reporting period over the preceding eight royalty reporting periods (or over all preceding royalty reporting periods if fewer than eight). Such payment shall be treated as a non-refundable advance, primarily against the royalties and interest for the relevant royalty reporting period and then, if any sum remains, against any future royalties or other payments payable by Licensee hereunder. Licensee acknowledges and agrees that any Advance shall not be due by way of penalty, but that such payment shall constitute a non-

refundable advance as aforesaid. For the avoidance of doubt, such payment shall be payable without any further notice or action by Philips, legal or otherwise, and shall take effect by virtue of the failure to submit a Royalty Reporting Form on time. The payment by Licensee of an Advance shall not affect Licensee's obligation to submit a Royalty Reporting Form and shall be without prejudice to any other rights or remedies of Philips, including, without limitation, Philips' right to charge 2% (two per cent) interest per month on overdue payments (including overdue payments of the Advance), and Philips' right to terminate this Agreement in accordance with its provisions. The Advance will not be set off against other sums due to Philips until a Royalty Reporting Form has been submitted in respect of the relevant royalty reporting period. In respect of any royalty reporting period for which an Advance has been paid and the Royalty Reporting Form subsequently submitted, Philips will first set off against the Advance all royalties and interest due for that period. Any remaining sum from the Advance will be set off against further royalty, interest or Advance payments due to Philips hereunder (if any).

- 5.6 Licensee shall submit to Philips, once per calendar year, an audit statement by its external auditors, who shall be certified public auditors as specified in the Audit Guidelines attached hereto as Annex B2, confirming that the quarterly royalty statements as submitted by Licensee to Philips for the last four quarterly periods, are true, complete and accurate in every respect. Such statement must meet the requirements as specified in the Audit Guidelines and shall be submitted to Philips within 90 days following the end of Licensee's financial year. The correctness of this audit statement may be verified by Philips by means of a work paper review, conducted by one of the certified public auditors selected by Philips. Licensee shall procure that its auditors provide full cooperation with said work paper review. Notwithstanding this audit statement, Philips reserves the right to inspect the books and records of Licensee from time to time in accordance with Clause 5.11.
- 5.7 Within 30 days following the expiration or termination of this Agreement, Licensee shall submit to Philips a certified report on the number of CD-RW Discs in stock at the time of expiration or termination of this Agreement. Royalties, calculated in accordance with Clause 5.2 and 5.13, shall be due and payable for all CD-RW Discs manufactured prior to, but remaining in stock with Licensee on the date of expiration or termination of this Agreement and shall be calculated on the basis of the Fair Market Value (as hereinafter defined) of each such CD-RW Disc remaining in stock. For each such CD-RW Disc still in stock, "Fair Market Value" shall, for the purpose of this Agreement, mean the average Net Selling Price of the CD-RW Discs which are identical or substantially similar to such CD-RW Discs still in stock, sold during the 3 months prior to the expiration or termination of this Agreement. For the avoidance of doubt, this Clause 5.7 shall be without prejudice to the provisions of Clause 12.6.
- 5.8 Any payment under this Agreement which is not made on the date(s) specified herein, shall accrue interest at the rate of 2% (two per cent) per month (or part thereof) or the maximum amount permitted by law, whichever is lower.
- 5.9 All payments to Philips under this Agreement shall be made by transfer in US Dollar or in such other currency, convertible in the sense of Articles VIII and XIX of the Articles of Agreement of the International Monetary Fund, as designated by Philips. The rate of exchange for converting the currency (if other than US Dollar) of the Territory shall be the telegraphic transfer selling rate of the designated currency as officially quoted in the

Territory by the officially authorized foreign exchange bank for payment of currency transactions on the day that the amount is due and payable.

5.10 All costs, stamp duties, taxes and other similar levies arising from or in connection with the conclusion of this Agreement shall be borne by Licensee. In the event that the government of a country imposes any taxes on payments made by Licensee to Philips hereunder and requires Licensee to withhold such tax from such payments, Licensee may deduct such tax from such payments. In such event, Licensee shall promptly provide Philips with tax receipts issued by the relevant tax authorities so as to enable Philips to support a claim for credit against income taxes which may be payable by Philips and/or its Associated Companies in The Netherlands and to enable Philips to document, if necessary, its compliance with tax obligations in any jurisdiction outside The Netherlands.

5.11 In order that the royalty statements provided for in this Clause 5 may be verified, Licensee shall keep complete and accurate books and records and shall keep such books and records available for inspection for a period of 5 years following the sale or other disposal of each CD-RW Disc.

Philips shall have the right to inspect the books and records of Licensee from time to time, in order to verify the correctness of the aforementioned royalty statements. Any such inspection shall take place no more than once per calendar year and shall be conducted by a certified public auditor appointed by Philips. Philips shall give Licensee written notice of such inspection at least 7 days prior to the inspection. Licensee shall willingly co-operate and provide all such assistance in connection with such inspection as Philips and/or the auditor may require. The inspection shall be conducted at Philips' own expense, provided that in the event that Licensee has failed to submit royalty statements and/or yearly written statement(s) by its external auditors, as provided for in Clause 5.4 and Clause 5.6, in respect of the period to which the inspection relates or in the event that any discrepancy or error exceeding 3% (three per cent) of the monies actually due is established, in addition to Licensee's obligation promptly to make up for such underpayment, the cost of the inspection shall be borne by Licensee, without prejudice to any other claim or remedy as Philips may have under this Agreement or under applicable law.

Philips' right of inspection as set out in this Clause 5.11 shall survive termination or expiration of this Agreement.

5.12 Without prejudice to the provisions of Clause 5.11, Licensee shall provide all relevant additional information as Philips may reasonably request from time to time, so as to enable Philips to ascertain which products manufactured, sold or otherwise disposed of by Licensee are subject to the payment of royalties to Philips hereunder, the patents which have been used in connection with such products, and the amount of royalties payable.

5.13 As a condition precedent to the entry into force of this Agreement, Licensee shall submit to Philips a royalty statement in respect of CD-RW Discs manufactured and sold or otherwise disposed of by Licensee before the Effective Date (as hereinafter defined) of this Agreement in accordance with the provisions of Clause 5.4. Licensee shall clearly indicate on such royalty statement the starting date of production of such CD-RW Discs.

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

- (a) 3% (three per cent) of the Net Selling Price of each CD-RW Disc or US\$ 0.15 (fifteen US Dollar cents), whichever amount is higher, with respect to CD-RW Discs sold before January 1, 2000;
- (b) 3% (three per cent) of the Net Selling Price of each CD-RW Disc or US\$ 0.10 (ten US Dollar cents), whichever amount is higher, with respect to CD-RW Discs sold on or after January 1, 2000; and
- (c) US\$ 0.10 (ten US Dollar cents) for each CD-RW Disc sold on or after January 1, 2001.

The royalty statement shall similarly be subject to Philips' right of audit as set out in Clause 5.11. Within 45 days following the execution of this Agreement, Licensee shall submit to Philips an audit statement by its external auditors, who shall be certified public auditors, confirming that this royalty statement is true, complete and accurate in every respect. Such statement must meet the requirements as specified in the Audit Guidelines.

6. Manufacturing Equipment Identification System and Sample Discs

- 6.1 Upon signing of this Agreement, Licensee shall submit to Philips an overview of its manufacturing equipment currently used, or which is technically capable of being used for the manufacture of CD-RW Discs. Further, upon any acquisition, transfer or disposal of manufacturing equipment used, or which is technically capable of being used for the manufacture of CD-RW Discs, Licensee shall submit to Philips details of any such adjustment(s) to its manufacturing equipment. Further, Licensee shall submit to Philips an overview containing all adjustments to its manufacturing equipment during the preceding year, together with and confirmed by the audit statement referred to in Clause 5.6. Such overview shall be in the form as attached hereto as Annex B3 ("Manufacturing Equipment List"), signed by a duly authorized officer on behalf of Licensee.
- 6.2 Simultaneous with the submission of the Manufacturing Equipment List, Licensee shall submit to Philips at the address specified below one sample CD-RW Disc of each mould used in each production line identified on the Manufacturing Equipment List. The corresponding system number and mould number indicated on the Manufacturing Equipment List shall be clearly marked on the outer diameter of each such sample Disc. Further, upon any acquisition of manufacturing equipment used, or which is technically capable of being used for the manufacture of CD-RW Discs, Licensee shall similarly submit to Philips one sample CD-RW Disc of each mould from each production line subsequently acquired. The samples will be used by Philips for the purpose only of verifying whether CD-RW Discs found in the market correspond with the samples submitted by Licensee, thereby enabling Philips to verify the declared source of such CD-RW Discs (as mentioned in shipping documents, invoices or otherwise). The sample CD-RW Discs are to be submitted together with a copy of the Manufacturing Equipment List to the following address:

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

- 6.3 The royalty rate of US\$ 0.075 (seven and a half US Dollar cents) referred to in Clause 5.2 shall only apply to CD-RW Discs manufactured by Licensee using manufacturing equipment properly identified in the Manufacturing Equipment List and shall be conditional upon Licensee submitting to Philips the audit statement meeting the requirements as set out in the Audit Guidelines, in accordance with the provisions in Clause 5.6. In the event that Licensee puts into use newly acquired manufacturing equipment which has been used, or which was technically capable of being used for the manufacture of CD-RW Discs prior to the acquisition by Licensee, the royalty rate of US\$ 0.075 (seven and a half US Dollar cents) shall only apply if Licensee confirms to Philips that the newly acquired manufacturing equipment originates from and has been used, or was technically capable of being used by a company which was properly licensed by Philips for the manufacture of CD-RW Discs at the time of the acquisition of the newly acquired manufacturing equipment by Licensee or that the equipment concerned has not been used by any other entity or person directly or indirectly under the same ultimate control as Licensee. In the event that Licensee is unable to comply with the requirements under this Clause 6, the royalty rate of US\$ 0.10 (ten US Dollar cents) shall apply to Licensee's manufacture and sale of CD-RW Discs instead of the royalty rate of 0.075 (seven and a half US Dollar cents).

7. Most Favourable Rate

- 7.1 In the event that licenses under the patents referred to in Clause 2 are granted by Philips for CD-RW Discs to a third party under substantially similar conditions, but at a royalty rate more favourable than the rate payable by Licensee under this Agreement, Licensee shall be entitled to the same royalty rate as applicable to such third party, provided always that this right of Licensee shall not apply in respect of cross-license agreements or other agreements providing for a consideration which is not exclusively based on the payment of royalties and further provided that this right of Licensee shall not apply in respect of licenses or other arrangements made pursuant to a court decision or the settlement of a dispute between Philips and a third party, irrespective of the nature of such dispute, the terms of the court decision or the settlement terms.

8. No Warranty and Indemnification

- 8.1 Whereas Philips has made efforts to ensure that the information to be supplied by it hereunder is complete and accurate, Philips makes no representation or warranty as to the completeness or accuracy of such information, nor with respect to the ability of Licensee to achieve interchangeability with respect to CD-RW Discs through the use of such information.
- 8.2 It is acknowledged by Licensee that third parties may own industrial and/or intellectual property rights in the field of CD-RW Discs. Philips, Sony and Ricoh make no warranty whatsoever that the manufacture, sale or other disposal of CD-RW Discs or the use of information supplied by Philips hereunder, does not infringe or will not cause infringement of any industrial and/or intellectual property rights other than the Licensed Patents. Philips, Sony, Ricoh and their respective Associated Companies shall be fully indemnified and held harmless by Licensee from and against any and all third party claims in connection with CD-RW Discs manufactured, sold or otherwise disposed of by Licensee.

9. Confidentiality

- 9.1 Licensee shall at all times maintain strict confidentiality with regard to the CD-RW Standard Specifications and shall not disclose same to any third party without the prior written consent of Philips.
- 9.2 Without prejudice to Clause 9.1, Licensee shall, during the term of this Agreement as specified in Clause 12.1 and for a period of 3 years thereafter, not disclose to any third party any information acquired from Philips or any of Philips' Associated Companies in connection with this Agreement, or use such information for any purpose other than the manufacture and disposal of CD-RW Discs in accordance with the provisions of this Agreement. This obligation shall not apply to the extent information so acquired:
- (a) was known to Licensee prior to the date on which such information was acquired from Philips or any of Philips' Associated Companies, as shown by records of Licensee or otherwise demonstrated to Philips' satisfaction;
 - (b) is or has become available to the public through no fault of Licensee;
 - (c) was or is received from a third party who was under no confidentiality obligation in respect of such information.

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

- 9.3 The obligations concerning confidentiality contained in Clause 9.1 and Clause 9.2 shall survive termination of this Agreement.
- 9.4 Philips shall, during the term of this Agreement as specified in Clause 12.1 and for a period of 3 years thereafter, not disclose to any third party any confidential information obtained in connection with Clause 5.4, Clause 5.6, Clause 5.7, Clause 5.13 and/or Clause 6, except that Philips may disclose such information to its external auditors, legal representatives and to the competent courts to the extent this is necessary for Philips in connection with the enforcement of its rights hereunder. Further, Philips shall not use such information for other purposes than to verify Licensee's compliance with its royalty reporting and payment obligations as provided in this Agreement and to enforce Philips' rights hereunder. Philips' obligations set out in this paragraph shall not apply to information referred to in sections (a), (b) and/or (c) of Clause 9.2.

10. Logo

- 10.1 For the term of this Agreement and subject to the full and timely performance and observance by Licensee of all its undertakings and obligations hereunder, Licensee shall be entitled to use on the Licensed Products as well as in advertisements and sales literature with respect to Licensed Products sold by Licensee, a logo (hereinafter referred to as "the

Logo”) in accordance with the instructions laid down in the Compact Disc Logo Guide which shall be made available to Licensee together with the CD-RW Standard Specifications.

- 10.2 Licensee acknowledges and agrees that Philips makes no warranty whatsoever that any use of the Logo does not infringe or will not cause infringement of any third party intellectual property rights.

11. No Assignment

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

12. Term and Termination

- 12.1 This Agreement shall enter into force on the “Effective Date”, being the date first written above. In the event that validation of this Agreement is required by the competent governmental authorities, the Effective Date shall be the date of such validation. Unless terminated earlier in accordance with the provisions of this Clause 12, this Agreement shall remain in force until the expiration of a ten-year period from the Effective Date or until the expiration date of the last to expire Licensed Patent in the Territory, whichever comes first.

Upon the expiration of all Licensed Patents in the Territory, Philips shall not assert any of the Licensed Patents against Licensee or Licensee’s customers, provided that Licensee has entered into a contractual arrangement with Philips providing for the situation that, although the CD-RW Discs manufactured by Licensee are no longer covered by any of the Licensed Patents in the Territory, such CD-RW Discs are being imported by Licensee or a third party into one or more other countries in which one or more of the Licensed Patents subsist.

- 12.2 Without prejudice to the provisions of Clause 12.3 through Clause 12.6, each party may terminate this Agreement at any time by means of a written notice to the other party in the event that the other party fails to perform any obligation under this Agreement and such failure is not remedied within 30 days after receipt of a notice specifying the nature of such failure and requiring it to be remedied. Such right of termination shall not be exclusive of any other remedies or means of redress to which the non-defaulting party may be lawfully entitled and all such remedies shall be cumulative. Any such termination shall not affect any royalties or other payment obligations under this Agreement accrued prior to such termination.
- 12.3 Philips may terminate this Agreement forthwith by means of a written notice to Licensee in the event that a creditor or other claimant takes possession of, or a receiver, administrator or similar officer is appointed over any of the assets of Licensee, or in the event that Licensee makes any voluntary arrangement with its creditors or becomes subject to any court or administration order pursuant to any bankruptcy or insolvency law.

- 12.4 Additionally, insofar as legally permitted, Philips may terminate this Agreement at any time by means of a written notice to Licensee in case Licensee or an Associated Company of Licensee has been found liable by a competent court or administrative authority to have committed an act of copyright piracy.
- 12.5 Philips shall have the right to terminate this Agreement forthwith or to revoke the license granted under any of Philips', Sony's, Ricoh's or any of their respective Associated Companies' patents in the event that Licensee or any of its Associated Companies brings a claim of infringement of any of Licensee's or any of Licensee's Associated Companies' essential patents relating to CD-RW Discs or CD-RW Recorders against Philips, Sony, Ricoh or any of their respective Associated Companies and Licensee refuses to license such patents on fair and reasonable conditions.
- 12.6 Upon the termination of this Agreement by Philips for any reason pursuant to Clause 12.2 through Clause 12.5, Licensee shall immediately cease the manufacture, sale or other disposal of CD-RW Discs in which any one or more of the Licensed Patents are used. Further, upon such termination, any and all amounts outstanding hereunder shall become immediately due and payable.
- 12.7 All provisions of this Agreement which are intended to survive (whether express or implied) the expiry or termination of this Agreement, shall so survive.

13. Miscellaneous

- 13.1 Licensee acknowledges that Philips may make modifications to the wording of the standard version of the CD-RW Disc Patent License Agreement in future. Licensee shall at all times have the option of entering into the latest version of the CD-RW Disc Patent License Agreement as published by Philips on its website or otherwise communicated by Philips to Licensee after the Effective Date of this Agreement.
- 13.2 Any notice required under this Agreement to be sent by either party shall be given in writing by means of a letter, facsimile or electronic mail directed:

in respect of Licensee, to:

in respect of Philips, to:

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

with a copy to:

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

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

- 13.3 This Agreement sets forth the entire understanding and agreement between the parties as to the subject matter hereof and supersedes and replaces all prior arrangements, discussions and understandings between the parties relating thereto. No variation of this Agreement shall be binding upon either party unless made in writing and signed by an authorized representative of each of the parties hereto.
- 13.4 Nothing contained in this Agreement shall be construed:
- (a) as imposing on either party any obligation to instigate any suit or action for infringement of any of the patents licensed hereunder or to defend any suit or action brought by a third party which challenges or relates to the validity of any such patents. Licensee shall have no right to instigate any such suit or action for infringement of any of the patents licensed by Philips hereunder, nor the right to defend any such suit or action which challenges or relates to the validity of any such patent licensed by Philips hereunder;
 - (b) as imposing any obligation to file any patent application, to secure any patent or to maintain any patent in force;
 - (c) as conferring any license or right to copy or imitate the appearance and/or design of any product of Philips, Sony, Ricoh or any of their respective Associated Companies;
 - (d) as conferring any license to manufacture, sell or otherwise dispose of any product or device other than a Licensed Product.
- 13.5 Neither the failure nor the delay of either party to enforce any provision of this Agreement shall constitute a waiver of such provision or of the right of either party to enforce each and every provision of this Agreement.
- 13.6 Should any provision of this Agreement be finally determined void or unenforceable in any judicial proceeding, such determination shall not affect the operation of the remaining provisions hereof, provided that, in such event, Philips shall have the right to terminate this Agreement by means of a written notice to Licensee.
- 13.7 This Agreement shall be governed by and construed in accordance with the laws of The State of New York.

Any dispute between the parties hereto in connection with this Agreement (including any question regarding its existence, validity or termination) shall be submitted to any state or federal courts in The State of New York, provided always that, in case Philips is the

plaintiff, Philips may, at its sole discretion, submit any such dispute either to the state or federal courts in the venue of Licensee's registered office, or to any of the state or federal courts in the Territory having jurisdiction. Licensee hereby irrevocably waives any objection to the jurisdiction, process and venue of any such court and to the effectiveness, execution and enforcement of any order or judgment (including, but not limited to, a default judgment) of any such court in relation to this Agreement, to the maximum extent permitted by the law of any jurisdiction, the laws of which might be claimed to be applicable regarding the effectiveness, enforcement or execution of such order or judgment.

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

KONINKLIJKE PHILIPS ELECTRONICS
N.V.

[LICENSEE]

Name:
Title:

Name:
Title:

Reference copy