

**PAST USE AGREEMENT**  
**FOR BD-ROM MOVIE DISC AND/OR BD-ROM DATA DISC**  
**MANUFACTURER AND BRAND OWNER**

This *Past Use Agreement for BD-ROM Movie Disc and/or BD-ROM Data Disc Manufacturer and Brand Owner* is dated [insert Date] (“Past Use Agreement”) and is between [insert Brand Owner Name] (“Brand Owner”) and One-Blue, LLC (“Licensing Company”) on the other hand.

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

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

**Brand Owner Party:** \_\_\_\_\_

**Brand Owner’s Registered Office Address:**

**Brand Owner’s Notice Address and Fax Number:**

Address:

  
  
  
  

Fax Number:

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

## RECITALS

**WHEREAS**, members of the Blu-ray Disc Association, a California non-profit mutual benefit corporation, have developed a new optical disc format, which has been presented under the name Blu-ray Disc (“BD”);

**WHEREAS**, the Licensors are prepared to grant a release for the use of their Licensed Patents on the terms set forth in this Past Use Agreement;

**WHEREAS**, each Licensor has granted Licensing Company the right to conclude this Past Use Agreement in accordance with the terms of this Past Use Agreement;

**WHEREAS**, Licensing Company has created a batch-based licensing system based on registration by manufacturers of Brand Owner Products, enabling those manufacturers who have registered with Licensing Company to apply for licenses on a per-batch basis and to apply for LSCDs;

**WHEREAS**, such manufacturers, listed in Appendix A have manufactured previously Brand Owner Products for the account of Brand Owner and Brand Owner wishes to report and pay for such Brand Owner Products that have been manufactured for its account by such manufacturers (“Manufacturer”);

**NOW, THEREFORE**, Brand Owner and Licensing Company agree as follows:

### 1 DEFINITIONS

“*Affiliate*” means, in relation to any party hereto, a legal entity which now, or at any time during the term of this Past Use Agreement, directly or indirectly, controls, is controlled by, or is under common control with that party, but only for as long as such control exists. The term “control” as used in this definition means ownership of more than fifty percent (50%) of the outstanding shares representing the right to vote for directors or other managing officers of such legal entity; or, for a legal entity which does not have outstanding shares, more than fifty percent (50%) of the ownership interest representing the right to appoint directors or other managing officers of such legal entity. The term *Affiliate* also includes any entity in which a party has, directly or indirectly, a majority of the beneficial ownership of such entity.

“*AVCREC Format*” means the specifications identified in sub-sections (s) through (u) of the definition of BD Standard(s) set out below.

“*BD-ROM Data Disc*” means a single or dual layer optical read-only disc with a capacity of no more than 27 Gbytes per layer, designed and manufactured for recording thereon digital information, and which substantially conforms and is intended to be consistent with the BD-ROM Format, excluding

the specifications identified in subsections (r), (v) and (w) of the definition of BD Standard(s) set out below.

“*BD-ROM Disc Standard(s)*” means any one or more of the following BD Standards, which may be modified or updated from time to time by the Blu-ray Disc Association:

- (a) System Description Blu-ray Disc Read-Only Part 1: Basic Format Specifications, Version 1.0.
- (b) System Description Blu-ray Disc Read-Only Part 2: File System Specifications, Version 1.0.
- (c) System Description Blu-ray Disc Read-Only Part 3: Audio Visual Basic Specifications, Version 2.0.
- (d) System Description Blu-ray Disc Hybrid Format, Version 1.0.

For the avoidance of doubt, “BD-ROM Disc Standard(s)” includes references within any one of (a) – (d) above to another BD specification (listed in (a) to (d) above), but excludes any other standard (by way of example, MPEG-2 Video, VC1 or AC-3) that is merely referred to in one of the above subsections or which is made mandatory by a “Format and Logo License Agreement” issued by the Blu-ray Disc Association. Notwithstanding the foregoing exclusions, “BD-ROM Disc Standard(s)” includes:

- (e) System Description Blu-ray Disc Read-Only Format Security Virtual Machine (BD+) (which may be modified or updated from time to time by BD+ Technologies LLC); and
- (f) DVB GEM [ETSI TS 102 819 V1.3.1 (2005-10) – Digital Video Broadcasting (DVB); Globally Executable MHP version 1.0.2 (GEM 1.0.2; A095; Errata (1) to Globally Executable MHP (TS 102 819 V1.3.1)] as referenced in Blu-ray Disc Read-Only Format, Part 3.

“*BD-ROM Format*” means the specifications identified in sub-sections (p), (q), (r), (v) and (w) of the definition of BD Standard(s) set out below.

“*BD-ROM Movie Disc*” means a single or dual layer optical read-only disc with a capacity of no more than 27 GBytes per layer, designed and manufactured for recording thereon digital information, and which substantially conforms and is intended to be consistent with the BD-ROM Format.

“*BD Standard(s)*” (also known as Blu-ray Disc Standard(s)) means any one or more of the following standard specifications, which may be modified or updated from time to time by the Blu-ray Disc Association:

- (a) System Description Blu-ray Disc Rewritable – Part 1: Basic Format Specifications, Version 1.0.
- (b) System Description Blu-ray Disc Rewritable – Part 2: File System Specifications, Version 1.0.
- (c) System Description Blu-ray Disc Rewritable – Part 3: Audio Visual Basic Specifications, Version 1.0.
- (d) System Description Blu-ray Disc Rewritable – Part 1: Basic Format Specifications, Version 2.0.
- (e) System Description Blu-ray Disc Rewritable – Part 2: File System Specifications, Version 2.0.
- (f) System Description Blu-ray Disc Rewritable – Part 3: Audio Visual Basic Specifications, Version 2.0.
- (g) System Description Blu-ray Disc Rewritable – Part 3: Audio Visual Basic Specifications, Version 3.0.
- (h) System Description Blu-ray Disc Rewritable – Part 1: Basic Format Specifications, Version 3.0.
- (i) System Description Blu-ray Disc Rewritable – Part 2: File System Specifications, Version 3.0.
- (j) System Description Blu-ray Disc Rewritable – Part 3: Audio Visual Basic Specifications, Version 4.0.
- (k) System Description Blu-ray Disc Recordable – Part 1: Basic Format Specifications, Version 1.0.
- (l) System Description Blu-ray Disc Recordable – Part 2: File System Specifications, Version 1.0.
- (m) System Description Blu-ray Disc Recordable – Part 1: Basic Format Specifications, Version 2.0.
- (n) System Description Blu-ray Disc Recordable – Part 2: File System Specifications, Version 2.0.

- (o) System Description Blu-ray Disc Hybrid Format, Version 1.0.
- (p) System Description Blu-ray Disc Read-Only – Part 1: Basic Format Specifications, Version 1.0.
- (q) System Description Blu-ray Disc Read-Only – Part 2: File System Specifications, Version 1.0.
- (r) System Description Blu-ray Disc Read-Only – Part 3: Audio Visual Basic Specifications, Version 2.0.
- (s) System Description AVCREC Recordable Format – Part 2: File System Specifications (UDF®), Version 1.0.
- (t) System Description AVCREC Rewritable Format – Part 2: File System Specifications (UDF®), Version 1.0.
- (u) System Description AVCREC Rewritable Format – Part 3: Audio Visual Basic Specifications, Version 1.0.

For the avoidance of doubt, “BD Standard(s)” includes references within any one of (a) – (u) above to another BD specification (listed in (a) to (u) above), but excludes any other standard (by way of example, MPEG-2 Video, VC1 or AC-3) that is merely referred to in one of the above subsections or which is made mandatory by a “Format and Logo License Agreement” issued by the Blu-ray Disc Association. Notwithstanding the foregoing exclusions, “BD Standard(s)” includes:

- (v) System Description Blu-ray Disc Read-Only Format Security Virtual Machine (BD+) (which may be modified or updated from time to time by BD+ Technologies LLC); and
- (w) DVB GEM [ETSI TS 102 819 V1.3.1 (2005-10) – Digital Video Broadcasting (DVB); Globally Executable MHP Version 1.0.2 (GEM 1.0.2; A095; Errata (1) to Globally Executable MHP (TS 102 819 V1.3.1)] as referenced in Blu-ray Disc Read-Only Format, Part 3.

“*Brand Owner Product*” means a BD-ROM Movie Disc or BD-ROM Data Disc that: (i) bears a brand that is owned by, or licensed to, Brand Owner or an Affiliate of Brand Owner; and (ii) is manufactured for, and at, the direction of Brand Owner. Notwithstanding the foregoing, a permitted amount of up to 10% of the total number of BD-ROM Movie Disc or BD-ROM Data Disc units which satisfy (i) and (ii) above, which are BD-ROM Movie Disc or BD-ROM Data Disc units which do not satisfy (i) above but do satisfy (ii), above, shall, at the request in advance of Brand Owner to Licensing Company, be

considered Brand Owner Products, subject to Brand Owner submitting additional confirmations with respect to any applicable bilateral agreements, as required by Section 4.3 of this Past Use Agreement.

“Commercially Essential Patent(s)” means any Patent: (a) either (i) owned, at any time on or after the Effective Date, by a Licensor or its Affiliates, or (ii) in respect of which Licensor or its Affiliates have or acquire, at any time on or after the Effective Date, the right to license without payment of compensation to a third party other than its Affiliates, agents or employees, and (b) that contains one or more claims that is/are necessary as a practical matter on the basis that there are no economically viable substitutes to implement the relevant BD-ROM Disc Standards.

“Country of Registration” has the meaning set forth on the cover page of this Past Use Agreement.

“Effective Date” shall have the meaning set forth on the cover page of this Past Use Agreement.

“Essential Licensor Patent(s)” means a Commercially Essential Patent, a Technically Essential Patent or both, regardless of whether the Patent is listed in the Essential Licensor Patent List.

“Essential Licensor Patent List” means the Essential Licensor Patent(s) listed on the Website. The omission of a particular Patent from the Essential Licensor Patent List is not a representation or warranty that the omitted Patent is not essential.

“Licensed Patent(s)” means Essential Licensor Patents.

“Licensed Status Confirmation Document” or “LSCD” means a document that may be issued by Licensing Company in relation to Brand Owner Products identified in an application, for the purpose of confirming that the relevant Shipment of such Brand Owner Products is licensed (as specified in the relevant application) under the Licensed Patents and the Registration Logo.

“Licensor(s)” means each entity listed on the list entitled “Licensors” which can be accessed on the Website and which may be amended from time to time by Licensing Company; provided, however, that “Licensors” for the purposes of this Agreement shall only include those entities that are listed on the list entitled “Licensors” during the Term.

“Patent(s)” means any issued patent(s) in any country, including reexaminations, reissues, continuations, divisionals and continuations-in-part.

“Per-Batch License” means Brand Owner’s and Licensing Company’s rights and obligations under a license, granted by Licensing Company in respect of an application, under the Licensed Patents and the Registration Logo. A Per-Batch License will be a separate contract, distinct from a Registration Agreement. A Per-Batch License shall consist of the application that is accepted by Licensing Company and the PBL Standard Terms and Conditions. Where the context so requires, “Per-Batch

License” shall also mean any license granted by Licensing Company to any other party substantially incorporating the PBL Standard Terms and Conditions.

“*Registered Affiliate*” means one or more of the Affiliates of Brand Owner listed in Appendix B. If an entity listed in Appendix B ceases to be an Affiliate of Brand Owner (by way of example, due to a change in control), such entity shall lose its status as a Registered Affiliate the same moment it ceased to be an Affiliate of Brand Owner (regardless of whether the entity continues to be listed in Appendix B).

“*Shipment*”, “*Shipping*”, and variants thereof means the initial transfer of Brand Owner Products by Manufacturer or its Registered Affiliate from the original manufacturing location of the Brand Owner Products (therefore not including subsequent transfers) to any party (including a Brand Owner or its Registered Affiliate), involving either: (a) a transfer of title or (b) a physical transfer beyond the area of the manufacturing location’s address, or both.

“*Standard Rate*” means the standard royalty rate of:

- (a) US\$ 0.0975 per each BD-ROM Movie Disc; and
- (b) US\$ 0.0725 per each BD-ROM Data Disc.

“*Technically Essential Patent(s)*” means any Patent (a) either (i) owned, at any time on or after the Effective Date by a Licensor and its Affiliates, or (ii) in respect of which Licensor and its Affiliates have, or acquire, at any time on or after the Effective Date, the right to license without payment of compensation to a third party other than its Affiliates, agents or employees; and (b) containing one or more claims that is/are necessarily infringed in an implementation of the relevant BD-ROM Disc Standards.

“*Term*” means the period beginning on the Effective Date and ending when this Past Use Agreement expires or is terminated in accordance with the provisions hereof.

“*Website*” means [www.one-blue.com](http://www.one-blue.com) or any other website designated by Licensing Company from time to time in connection with this Past Use Agreement.

## **2 BRAND OWNER’S MANUFACTURERS AND AFFILIATES**

2.1 *Identification of Affiliates and Manufacturers.* Brand Owner shall complete and amend Appendices A and B to include the corporate name, principal place of business and registered office of each and every Registered Affiliate and Manufacturer that it has engaged in the manufacture of any Brand Owner Product and for which it intends to report and pay for Brand Owner Products Shipped by or for Brand

Owner or its Registered Affiliates prior to the Effective Date (hereafter, "Previously-Shipped Products").

### **3 REGISTRATION FEE**

- 3.1 *Payment of Registration Fee.* Brand Owner shall, within thirty (30) days of the execution of this Past Use Agreement, pay Licensing Company a non-refundable, non-recoupable registration fee of US\$ 25,000 (twenty-five thousand US Dollars). Brand Owner shall not be obligated to pay such registration fee if Brand Owner already paid a registration fee of at least \$25,000 to Licensing Company in connection with a *Registration Agreement for BD-ROM Movie Disc and/or BD-ROM Data Disc Manufacturer*, or *Registration Agreement for BD-ROM Movie Disc and/or BD-ROM Data Disc Manufacturer and Brand Owner*.

### **4 ROYALTY PAYMENTS, INVOICING AND REPORTING**

- 4.1 The provisions of this Section 4 shall apply to any Previously-Shipped Products.
- 4.2 *Standard Rate.* Subject to the provisions of Sections 4.3 and 4.4, the royalty rate payable in respect of each Previously-Shipped Product shall be the Standard Rate.
- 4.3 *Royalty Offsetting.* If Brand Owner is also a party to a license agreement or covenant not to sue or assert ("Bilateral Agreement"), other than this Past Use Agreement or any other agreement with Licensing Company, wherein one or more of a Licensor's ("Bilateral Licensor") Licensed Patents that cover a Previously-Shipped Product are separately licensed, the Brand Owner may direct Licensing Company to adjust the royalties payable under this Past Use Agreement (as calculated on the basis of the Standard Rate, or discounted Standard Rate to the extent Section 4.4 applies), by deducting therefrom the royalty portion that would otherwise be due to such Bilateral Licensor pursuant to this Past Use Agreement for the applicable Shipments of Previously-Shipped Product on account of those Licensed Patents that are separately licensed under the Bilateral Agreement. If given, Brand Owner shall give such instruction by submitting to Licensing Company a Confirmation of Bilateral Agreement form, a template of which is provided as Appendix C to this Past Use Agreement, duly completed and signed by Brand Owner and the Bilateral Licensor concerned, to confirm that such Bilateral Agreement has been executed and that the Bilateral Licensor agrees to such adjustment in accordance with the provisions hereof. In the event, Brand Owner Products include, a permitted amount that do not bear a brand that is owned by, or licensed to, Brand Owner or an Affiliate of Brand Owner ("Non-Compliant Brand Owner Products"); then Brand Owner shall submit further confirmations to Licensing Company from all applicable Bilateral Licensors that the Confirmation of Bilateral documents apply to such Non-Compliant Brand Owner Products. The Confirmation of Bilateral Agreement form that is submitted to



Licensing Company by or for Brand Owner, and the existence and applicability of the bilateral agreement between the Brand Owner and the Bilateral Licensor shall constitute confidential information of the Brand Owner and the Bilateral Licensor.

4.4 Past Use. Except as set forth in subsections (a)-(c) of this Section 4.4, the provisions of Section 4 (Royalty Payments, Invoicing and Reporting) shall apply to Previously-Shipped Products.

- (a) Discount. Provided that Brand Owner (irrespective of its Registered Affiliates) has entered into this Past Use Agreement by 31 December 2011, and further provided that Brand Owner and all of its Registered Affiliates are in full compliance with their obligations under this Past Use Agreement as confirmed by Licensing Company to its knowledge in writing, Brand Owner and its Registered Affiliates will be entitled to a discount of fifty percent (50%) of the royalties payable (after giving effect to the offsetting mechanism, if any, set out in Section 4.3) for Brand Owner Products Shipped by or for Brand Owner or a Registered Affiliate prior to April 1, 2010. Such discount shall not apply to any Brand Owner Products that were shipped by or for a Registered Affiliate before the Registered Affiliate was an Affiliate of Brand Owner.
- (b) Release. Upon full payment of the amounts and reports required for Previously-Shipped Products, Licensing Company, on behalf of itself and the Licensors, its and their respective successors and assigns, hereby releases, to the extent of its right to do so, Brand Owner and its Registered Affiliates, their respective successors and assigns, under any patent infringement arising prior to the Effective Date of this Past Use Agreement for which the rights and licenses expressly granted under a Registration Agreement or a Per-Batch License to Brand Owner would be a complete defense had such Registration Agreement and Per-Batch License been in effect at the time such patent infringement arose and as if the Previously-Shipped Product was manufactured and Shipped in compliance with the remaining provisions of such Registration Agreement (by way of example only and not limitation, as if the Previously-Shipped Product was Shipped with Serial Number Labels). For greater certainty, the release in this Section 4.4(b) does not operate with respect to acquisitions of any sort by Brand Owner during the Term.
- (c) Reporting.
  - (1) Estimated Past Use Report. As a condition precedent to the entry into force of this Past Use Agreement, Brand Owner shall submit to Licensing Company an Estimated Past Use Report that includes the following information for all Previously-Shipped Products, provided, however, that Brand Owner may use commercially reasonable efforts to estimate such information if Brand Owner cannot reasonably obtain more reliable information:

- (i) the type of Brand Owner Product (by way of example, a description sufficient to determine whether a Brand Owner Product is either a BD-ROM Movie Disc or BD-ROM Data Disc);
  - (ii) the quantity of Brand Owner Product by type; and
  - (iii) the title(s) of Brand Owner Products in the Shipment (if available).
- (2) Official Past Use Report. Within sixty (60) days after the Effective Date, Brand Owner shall submit to Licensing Company a report that includes the following information for all Previously-Shipped Products provided, however, that Brand Owner may use commercially reasonable efforts to estimate such information if Brand Owner cannot reasonably obtain more reliable information:
- (i) the type of Brand Owner Product (by way of example, a description sufficient to determine whether a Brand Owner Product is either a BD-ROM Movie Disc or BD-ROM Data Disc);
  - (ii) the quantity of Brand Owner Product by type;
  - (iii) the title(s) of Brand Owner Products in the Shipment (if available);
  - (iv) in the case of a Shipment due to a physical transfer, the country in which the Shipment originated;
  - (v) in the case of a Shipment due to a physical transfer, the country of destination of the Shipment;
  - (vi) to the extent known to Brand Owner, the country in which the Brand Owner Products were ultimately sold to end-users;
  - (vii) in the case of a Shipment due to a transfer of title (without physical transfer), the country of the location of the Brand Owner Products at the time of Shipment;
  - (viii) if Brand Owner Product was packaged in retail packaging, the “Global Trade Item Number” (GTIN), “Universal Product Code” (UPC), “European Article Numbering” (EAN) code, or their equivalent (as reasonably required by Licensing Company) of that retail packaging.

Brand Owner shall also provide an explanation of any material differences between the Official Past Use Report and the Estimated Past Use Report.

- (3) No Waiver. Notwithstanding that Licensing Company may execute the Past Use Agreement with knowledge of the Estimated Past Use Report and/or may invoice Brand Owner based on the Official Past Use Report, it shall not be considered that Licensing Company has accepted the Estimated Past Use Report and/or the Official Past Use Report, or waived any of its rights with respect to past use, including but not limited to the right to request an audit statement pursuant to Section 4.11.

- 4.5 Invoicing and Payment Due Date. Within thirty (30) days after receipt of the Official Past Use Report referred to in Section 4.4(c)(2), Licensing Company shall send an invoice to Brand Owner for the royalties that have so accrued. Brand Owner shall pay to Licensing Company the sum stated to be due in each such invoice no later than forty-five (45) days from the date of the invoice.

Notwithstanding anything to the contrary, during the twelve-month period after July 1, 2011, the following exceptions with respect to invoicing shall apply, provided that Brand Owner directs Licensing Company to adjust its royalties payable pursuant to Section 4.3:

- (i) Past Use Royalties. Licensing Company shall invoice Brand Owner within thirty (30) days after January 1, 2012 for any report delivered to Licensing Company before January 1, 2012 pursuant to Section 4.4 (Past Use) based on the patents listed on the Commercially Essential Patent List and Technically Essential Patent List by Licensing Company on its website as of January 1, 2012; and
- (ii) One-time Adjustment. Licensing Company shall conduct a one-time adjustment of all royalties invoiced prior to July 1, 2012 based on the patents listed on the Commercially Essential Patent List and Technically Essential Patent List by Licensing Company on its website as of July 1, 2012.

- 4.6 Payments in U.S. Dollars. The payment to be made by Brand Owner to Licensing Company under this Past Use Agreement shall be made in US Dollars.

- 4.7 Wire Information for Payments. The payment to be made by Brand Owner to Licensing Company under this Agreement shall be made without any deduction whatsoever (except for the tax deduction specified in Section 4.8), whether for bank transmission charges or otherwise, by wire transfer to:

**Bank Account No.:** 936717636

**Name:** One-Blue, LLC Royalties

**Bank:** JP Morgan Chase  
270 Park Avenue  
New York, NY 10017

**SWIFTCODE:** CHASUS33 (International Customers Only)

**ABA Number:** 021000021

or such other bank account as Licensing Company may designate in writing from time to time.

- 4.8 Stamp Duties, Taxes and Other Levies. All stamp duties, taxes (including but not limited to business taxes, values added taxes, income taxes) and other similar levies arising from or in connection with this Past Use Agreement shall be borne by Brand Owner. If the government of any country imposes any income taxes to be withheld from payments made by Brand Owner under this Past Use Agreement, and requires Brand Owner to withhold such tax from such payments, Brand Owner may deduct such tax from such payments. In such event, Brand Owner shall promptly provide Licensing Company with all tax receipts issued by the relevant tax authorities that Licensing Company may require to enable Licensing Company to document, if necessary, its compliance with tax obligations in any country. If such tax receipts are not provided promptly, Licensing Company reserves the right to treat the undocumented deductions as unpaid royalties due which will become subject to the provisions of this Past Use Agreement. Brand Owner shall inform Licensing Company if the withholding tax rates on an invoice issued by Licensing Company are incorrect. Brand Owner shall inform Licensing Company of such error prior to paying the subject invoice.
- 4.9 Interest Due for Late Payments. Any payment that becomes due under this Past Use Agreement and that is not made in full when due, accrues interest at the rate of one percent (1%) per month (or part thereof) or at the maximum rate permitted by law, whichever is lower.
- 4.10 Licensing Company's Rights. If Late Payment. For any non-payment or late payment of royalties, Brand Owner acknowledges and agrees that Licensing Company, without waiving any other remedy, shall be entitled to suspend granting any Per-Batch Licenses and issuing any LSCDs under Registration Agreements until Brand Owner is in full compliance with its obligations under this Past Use Agreement. If Licensing Company provides Brand Owner with a notice specifying non-payment or late payment of the amount due and Brand Owner remedies such non-payment or late payment within thirty (30) days from the date of issuance of such notice, Licensing Company shall end the suspension imposed under this Section 4.10 from the date of such remedy.
- 4.11 Audit Statement to Confirm Official Past Use Report. If Licensing Company reasonably suspects that Brand Owner has submitted an inaccurate Official Past Use Report of Previously-Shipped Products pursuant to Section 4.4(c)(2), Licensing Company may request Brand Owner to submit to Licensing Company, within sixty (60) days after the notice by Licensing Company informing Brand Owner of the reasonable suspicion, an audit statement prepared by its external independent auditors confirming

that the Official Past Use Report of Previously-Shipped Products provided by Brand Owner to Licensing Company under Section 4.4(c)(2), is true, accurate and complete in all material respects. The auditor and audit statement must meet the requirements set out in Appendix D (Audit Guide). Licensing Company shall reimburse Brand Owner for the cost of such audit, to the extent the cost is customary and reasonable, if Brand Owner's external independent auditor certifies that the total discrepancy or error by way of underreporting of quantities is less than five percent (5%) of the quantities set forth in the Official Past Use Report of Previously-Shipped Products.

## **5 LIMITATION OF LIABILITY**

- 5.1 *Limitation of Liability.* In no event shall Licensing Company be liable to Brand Owner under any cause of action arising under or related to this Past Use Agreement for any amount greater than US\$20,000 (twenty thousand US Dollars).
- 5.2 *No Representation.* Notwithstanding anything to the contrary in this Past Use Agreement, Licensing Company makes no representation or warranty about the validity or enforceability of any of the Licensed Patents and specifically excludes and disclaims any liability for any damages that Brand Owner may suffer under any cause of action due to the invalidity or unenforceability of any of the Licensed Patents.
- 5.3 *Representations and Warranties.* Licensing Company and Brand Owner each represent and warrant that: (a) it is a duly organized and validly existing legal entity; (b) it has all requisite power and authority to execute this Past Use Agreement and to perform its obligations hereunder; (c) this Past Use Agreement has been duly executed by an officer or representative of such party authorized to act on its behalf; and (d) its obligations under this Past Use Agreement do not conflict with its bylaws, certificate of incorporation or equivalent charter documents.
- 5.4 *No Special Damages.* TO THE GREATEST EXTENT PERMITTED BY LAW, LICENSING COMPANY SHALL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS OR BUSINESS INTERRUPTION, RELATING TO THE BRAND OWNER PRODUCTS OR ARISING OUT OF THIS AGREEMENT, EVEN IF LICENSING COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCLUDING THE EXPRESS WARRANTIES SET FORTH HEREIN, LICENSING COMPANY MAKES NO EXPRESS OR IMPLIED WARRANTIES.

## **6 CONFIDENTIALITY**

6.1 Licensing Company shall, during the term of this Past Use Agreement and for a period of five (5) years thereafter, not disclose to any third party or use any confidential information obtained in connection with Sections 4.3 and 4.4 for any purpose other than:

- (a) if required by any judicial or governmental request, requirement or order, or by operation of law, provided however, that Licensing Company shall provide Brand Owner with notice of such request, requirement or order and, if available, assist Brand Owner (at Brand Owner's expense) with obtaining a protective order against such disclosure;
- (b) to disclose the information under an obligation of confidence to an auditor for any purpose contemplated by this Past Use Agreement;
- (c) to disclose the information under an obligation of confidence to a subcontractor of the Licensing Company; or
- (d) to enforce Licensing Company's rights under this Past Use Agreement in the event of a breach by Brand Owner. The disclosure of confidential information pursuant to this subsection "(d)" may include disclosure under an obligation of confidence to Licensors in order for Licensing Company to: (i) inform Licensors of Brand Owner's breach of this Past Use Agreement or Licensing Company's plan to terminate this Past Use Agreement due to such a breach; or (ii) seek Licensors' approval to enforce this Past Use Agreement using legal or governmental institution(s). Notwithstanding the foregoing, in no event shall Licensing Company disclose Brand Owner's competitively sensitive information to Licensors.

6.2 Circumstances When Not Obligated to Keep Information Confidential. The obligations of Licensing Company in Section 6.1 shall not apply to the extent that the Licensing Company can prove, by written evidence, that such information:

- (a) has, after the date of this Past Use Agreement, been published or otherwise generally made available to the public, except in consequence of a willful or negligent act or omission by Licensing Company in breach of its confidentiality obligations under this Section 6;
- (b) has been made available to Licensing Company 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 Brand Owner or which has been disclosed under an express statement from Brand Owner that it is not confidential;
- (c) has been independently developed by Licensing Company other than in the course of the exercise of Licensing Company's rights under this Past Use Agreement or the implementation of this Past Use Agreement; or

- (d) is information already known to Licensing Company before its receipt from Brand Owner and such information was not protected by confidentiality protections.

6.3 *This Past Use Agreement Is Not Confidential.* For the avoidance of doubt, the contents of this Past Use Agreement are not subject to any confidentiality obligation.

## 7 NO ASSIGNMENT

7.1 *Brand Owner's Assignment.* This Past Use 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 Brand Owner in whole or in part except with the prior consent of Licensing Company, which consent shall not be unreasonably withheld when assigned in whole to an Affiliate of the Brand Owner, given in writing and executed by a duly authorized representative of Licensing Company.

7.2 *Licensing Company's Assignment.* Licensing Company may assign this Past Use Agreement in whole to a successor of Licensing Company after providing Brand Owner with at least fourteen (14) days notice.

## 8 MISCELLANEOUS

8.1 *Notices.* Any notice required to be given by one party to another party under this Past Use Agreement shall, unless explicitly specified in this Past Use Agreement otherwise, be given in writing in the English language by means of a letter, facsimile or e-mail directed:

*in respect of Brand Owner or its Registered Affiliate to:* **[insert Brand Owner Name]**

**Address:** [insert Brand Owner Address]  
**Attn:** [insert Brand Owner Contact Name]  
**Fax:** [insert Brand Owner Fax Number]  
**E-mail:** [insert Brand Owner E-mail Address]

for notice purposes.

*in respect of Licensing Company, to:* **One-Blue, LLC**

**Address:** 520 White Plains Road, Suite 500  
Tarrytown, New York, 10591, USA

Attn: Legal Department

**Tel:** +1 (212) 223-3190

**E-mail:** [info@one-blue.com](mailto:info@one-blue.com)

or such other address as may be thereafter specified by the party for the purpose of receiving notice. Notice shall be deemed to have been given on the day that it is so delivered personally or sent by facsimile transmission or e-mail and the appropriate answer back or confirmation of successful transmission or e-mail is received or, if sent by courier, shall be deemed to have been given two (2) business days after delivery by the courier company, or if mailed, ten (10) business days following the date on which such notice was so mailed. The proper sending of notice to Brand Owner shall constitute the proper sending of notice to any and all of its Registered Affiliates.

- 8.2 Entire Agreement. This Past Use 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 Past Use Agreement shall be binding upon any party hereto unless made in writing and signed by an authorized representative of each of the parties.
- 8.3 Independent Counsel. Brand Owner, on behalf of itself and its Registered Affiliates, acknowledges and confirms that it has had sufficient opportunity to engage legal counsel of its choice to review the structure, contents and implications of this Past Use Agreement, and Brand Owner, on behalf of itself and its Registered Affiliates, acknowledges and confirms that it freely enters into this Past Use Agreement.
- 8.4 No Waiver. Neither the failure nor the delay of any party hereto to enforce any provision of this Past Use Agreement shall constitute a waiver of such provision or of the right of any party hereto to enforce each provision of this Past Use Agreement.
- 8.5 Severability. Should any provision of this Past Use 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 Past Use Agreement, provided that, in such event, any party hereto shall have the right to terminate this Past Use Agreement by notice to the other two parties.
- 8.6 Interpretation. The Section headings contained in this Past Use Agreement are for reference purposes only and do not in any way control the meaning or interpretation of this Past Use Agreement. Explicit references to a particular section shall be deemed to include a reference to its subsections, if any. The terms "for the avoidance of doubt," "including," "such as," "by way of example" or any variation thereof means "including the following by way of example only, without limitation" and shall not be construed to limit any general statement that it follows to the specific or similar items immediately following it. This Past Use Agreement shall be fairly interpreted in accordance with its terms and without any presumption in favor of or against any party hereto regardless of the drafter.



- 8.7 Governing Law. If the Country of Registration is the People's Republic of China, this Past Use Agreement is governed by the laws of the Hong Kong Special Administrative Region. If the Country of Registration is not the People's Republic of China, this Past Use Agreement is governed by the laws of the State of New York, United States of America.
- 8.8 Dispute Resolution. Any dispute between the parties in connection with this Past Use Agreement (including any question regarding its existence, validity or termination) shall be submitted to and finally resolved by (a) if the Country of Registration is the People's Republic of China, arbitration administered by the Hong Kong International Arbitration Centre under the Hong Kong International Arbitration Centre Administered Arbitration Rules in force when the Notice of Arbitration is submitted, the seat of arbitration being the Hong Kong Special Administrative Region, the number of arbitrators being one, and the arbitration proceedings being conducted in English, provided for the avoidance of doubt that Licensing Company retains the right to apply to any court of competent jurisdiction for provisional and/or conservatory relief, including but not limited to pre-arbitral attachments or injunctions, or (b) if the Country of Registration is not the People's Republic of China, the Supreme Court of the State of New York, located in the County of New York, New York State, United States of America or the United States District Court for the Southern District of New York, United States of America, provided always that, where the Country of Registration is not the People's Republic of China and Licensing Company is the plaintiff, it may, alternatively and at its sole discretion, submit such dispute either to the competent courts in the country where either Brand Owner's registered office is located, or to the competent courts in any country where Brand Owner or its Affiliates are otherwise located or have manufacturing facilities. The service of any process and any other documents connected with any proceedings in connection with this Section 8.8 will be deemed to have been validly served on a party if they are served by mail to the addresses indicated in Section 8.1 or by any other method of service authorized by law applicable to the jurisdiction where service is made, and service shall be deemed to have been completed upon receipt by the party being served. Brand Owner irrevocably waives any rights it may have to object to the jurisdiction, process and venue of any such arbitration tribunal or court and to the effectiveness, execution and enforcement of any order or judgment (including, but not limited to, a default judgment) of any such arbitration tribunal or court in relation to this Past Use 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 judgment.

**AS WITNESS**, the parties hereto have caused this Past Use Agreement to be executed in duplicate on the date first written above by their duly authorized representatives.

**ONE-BLUE, LLC**

**[insert BRAND OWNER NAME]**

---

Name:

---

Name:

Title:

Title:

Date:

Date:

Reference Copy

**APPENDIX A**

**MANUFACTURERS**

Reference Copy

**APPENDIX B**

**REGISTERED AFFILIATES**

Reference Copy

**APPENDIX C**

**CONFIRMATION OF BILATERAL AGREEMENT**

**[insert Date]**

One-Blue, LLC  
520 White Plains Road, Suite 500  
Tarrytown, NY 10591  
USA  
Attn: Royalty Offsetting Administration

Dear Sirs:

We hereby request you to make the royalty adjustment of the “*Past Use Agreement for BD-ROM Movie Disc and/or BD-ROM Data Disc Manufacturer and Brand Owner*” reflecting the Bilateral Agreement between **[insert Licensor of the Bilateral License Arrangement]** and our company dated **[insert Effective Date of the License Arrangement]**, the relevant terms and conditions of which are provided below.

Our request for royalty adjustment and confirmation of the existence of the Bilateral Agreement covering Brand Owner Products, between **[insert Licensor of the Bilateral License Arrangement]** and our company, was acknowledged and agreed by **[insert Licensor of the Bilateral License Arrangement]**, a duly authorized signature of which is indicated below. (The terms used herein shall have the meaning set forth in the “*Past Use Agreement for BD-ROM Movie Disc and/or BD-ROM Data Disc Manufacturer and Brand Owner*”.)

(i) Scope of Products. Please mark the relevant boxes which are subject to the Bilateral Agreement:

- BD-ROM Movie Disc
- BD-ROM Data Disc
- other *[insert Descriptions here]* ]

(ii) Scope of Patents. Please mark the relevant boxes which are subject to the Bilateral Agreement:

- all Licensed Patents with respect to BD-ROM Disc Standards for the products marked above.
- other *[insert Descriptions here]* ]

(iii) *The term of Bilateral Agreement.*

from [insert Date] to [insert Date]

Yours sincerely,

---

[insert Name of Signatory]  
[insert Title, etc.]  
[insert Name of Brand Owner]

**Acknowledged and Agreed:**

**By (sign):** \_\_\_\_\_

**Name (print):** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Company:** \_\_\_\_\_

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

Reference Copy

## **APPENDIX D**

### **AUDIT GUIDE**

This Audit Guide lays down the conditions under which audits are to be performed and audit statements generated by Brand Owner's external auditors on the Official Past Use Report pursuant to Section 4.11, respectively, of the "*Past Use Agreement for BD-ROM Movie Disc and/or BD-ROM Data Disc Manufacturer and Brand Owner*" between Brand Owner and Licensing Company. This Audit Guide may be amended by Licensing Company from time to time.

#### **1. Auditor's Qualifications**

The auditor appointed by Brand Owner to issue an audit statement on the Official Past Use Report shall, where Brand Owner appoints an auditor on a regular basis to issue an auditor's opinion on the financial statements of Brand Owner, be the same auditor, unless reasonable explanation to the contrary; 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 Official Past Use Report shall be in the form of the Independent Audit Statement set out in Schedule 1.

**Schedule 1**  
**Independent Audit Statement**

Independent Audit Statement to the Directors and/or Management of  
**[insert Brand Owner Name]**, *The Brand Owner*

We have audited the attached report (the *Official Past Use Report*) relating to the Shipments of Brand Owner Products to or by Brand Owner and its Registered Affiliates, as reported by Brand Owner to Licensing Company under the “*Past Use Agreement for BD-ROM Movie Disc and/or BD-ROM Data Disc Manufacturer and Brand Owner*” between them dated **[insert Date]** (the *Past Use Agreement*). The Official Past Use Report has been duly initialed by us for identification purposes and relates to the period starting **[insert Date]** and ending **[insert Date]**.

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

The directors and/or management are responsible for preparing the Official Past Use Report in accordance with the terms of the Past Use Agreement, so as to set out completely and accurately the information required to be reported under the Past Use Agreement for the period **[insert Date]** through **[insert Date]**.

Our responsibility is to express an opinion on the completeness and accuracy of the Official Past Use Report based on our audit of Brand Owner’s (and/or its Registered Affiliates’) books and records and other aspects of its manufacturing and distribution operations.

This audit statement is intended for use by the board of directors and management of Brand Owner for the purpose of its reporting requirements under the Past Use Agreement, and therefore may only be made available by Brand Owner to Licensing Company (and its Affiliates) as defined in the Past Use Agreement. We consent to such distribution on the understanding that under no circumstances shall we accept any liability or responsibility to Licensing Company (or its Affiliates), or to any other party to whom our report is made available, whether or not intentionally and whether or not by Brand Owner or Licensing Company (or either of their Affiliates). 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 Official Past Use Report is free of material mistakes, misstatements or other inaccuracies;
- (b) examine, on a test basis, evidence supporting the statements made in the Official Past Use Report;
- (c) assess the appropriateness of the accounting principles adopted in preparing the Official Past Use Report and the accuracy of significant estimates made in the Official Past Use Report by the management of Brand Owner; and
- (d) evaluate the overall presentation of the Official Past Use Report.

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

### 3. Statement

In our opinion, the *Official Past Use Report* sets out completely and accurately (in all material respects) the information required to be reported by Brand Owner under the Past Use Agreement for the period **[insert Date]** through **[insert Date]**.

---

(signed)

**[insert Name of Audit Firm]**

**[insert City]**

**[insert Date]**

**Attachment: *Official Past Use Report* (\_\_\_ pages)**