

**PAST USE AGREEMENT FOR
BD PLAYER AND/OR BD RECORDER RESELLER**

This Past Use Agreement for BD Player and/or BD Recorder Reseller is dated [x of x 20xx] (“Past Use Agreement”) and is between [insert Reseller company] (“Reseller”) and One-Blue, LLC (“Licensing Company”).

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

Effective Date: _____

Reseller: _____

Reseller’s Registered Office Address:

Reseller’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 an 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 essential to implementation of BD, DVD and CD optical disc formats in BD Players and/or BD Recorders 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;

NOW, THEREFORE, Reseller 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 Decoding Functions” means the ability of a product to convert data from a data format that is specified in the BD Standard but not in the DVD Standard or CD Standard, to a data format that is not specified in the BD Standard).

“BD Player” means a product capable of playing back BD Discs, regardless of whether the product is a game console. "BD Player(s)" do not include products capable of playing back UHD ROM Discs, products having BD Recording Functions or UHD Recording Functions, nor do they include BD-PC or UHD-PC Drives.

“BD Player/Recorder Product(s)” means BD Player(s) and/or BD Recorder(s).

“BD-PC Drive” means a non-virtual disc drive product that (a) is capable of playing back BD Discs or BD Recording Functions and is not capable of playing back UHD ROM Discs or UHD

Recording Functions, (b) is specifically designed, and intended by its manufacturer, to be incorporated as a drive in, or used as an external drive with, a personal computer device where such device permits the execution of software applications, (c) is not designed, or intended by its manufacturer to be used, to provide data to any other device unless the data is first conveyed through a personal computer, and (d) is not capable of performing BD Decoding Functions or UHD Decoding Functions.

“BD Recorder” means a product capable of BD Recording Functions but not UHD Recording Functions, regardless of whether the product has non-BD Recording Functions. A BD Recorder does not include a BD-PC Drive or UHD-PC Drive.

“BD Recording Functions” means the ability of a product to read and to record in the BD-RE Format, BD-R Format, BDXL-RE Format, BDXL-R Format or AVCREC Format.

“BD-R Format” means the specifications, identified in subsections (k), (l), (o) and (r) of the definition of BD Standard(s) set out below.

“BD-RE Format” means the specifications, identified in subsections (a) through (g), (o) and (r) of the definition of BD Standard(s) set out below.

“BDXL-R Format” means the specifications, identified in subsections (m), (n) and (j) of the definition of BD Standard(s) set out below.

“BDXL-RE Format” means the specifications, identified in subsections (h) through (j) of the definition of BD Standard(s) set out below.

“BD Disc” means a single, dual, triple or quad layer optical read-only disc with a capacity of no more than 34 GBytes per layer, designed and manufactured for recording thereon digital information, and which conforms to the BD Standards, and is not a UHD ROM Disc.

“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 exclusion, "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.

"CD Standard(s)" means any one or more of the following standard specifications, which may be modified or updated from time to time by Sony Corporation and Koninklijke Philips N.V.:

- (a) Compact Disc Digital Audio System Description (Red Book).
- (b) CD-DA System description, Subcode Channels R-W.
- (c) CD-DA System description, CD TEXT Mode.
- (d) Compact Disc Read-Only Memory System Description (Yellow Book).
- (e) CD-ROM XA System Description.
- (f) Multisession CD Specification.
- (g) CD EXTRA (Enhanced Music CD) specification (Blue Book).
- (h) Compact Disc Interactive Full Functional Specification (Green Book).
- (i) Video CD Specification (White Book).
- (j) Super Video CD Specifications.
- (k) Recordable Compact Disc Systems (Orange Book), Part II: CD-R Volume 1.
- (l) Recordable Compact Disc Systems (Orange Book), Part II: CD-R Volume 2 Multi Speed.

- (m) Recordable Compact Disc Systems (Orange Book), Part III: CD-RW, Volume 1 (1x, 2x and 4x).
- (n) Recordable Compact Disc Systems (Orange Book), Part III: CD-RW, Volume 2 High Speed.
- (o) Recordable Compact Disc Systems (Orange Book), Part III: CD-RW, Volume 3 Ultra Speed.
- (p) High Capacity Recordable Disc System.

For the avoidance of doubt, CD Standard(s) includes references within any one of (a) – (p) above to another CD specification (listed in (a) to (p) above), but excludes any other standard that is merely referred to in one of subsections of this definition of CD Standard(s).

“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 Standards, the DVD Standards, or the CD Standards.

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

“DVD Standard(s)” means any one or more of the following standard specifications, including any supplements or revisions, which may be modified or updated from time to time by the DVD Format/Logo Licensing Corporation, based in Minato-ku, Tokyo, Japan or by the DVD+RW Alliance:

- (a) DVD Specifications for Read-Only Disc, version 1.0 (parts 1 and 2).
- (b) DVD Specifications for Read-Only Disc, version 1.0 (part 3).
- (c) DVD+RW 4.7 Gbytes Basic Format Specifications, version 1.0.
- (d) DVD+RW 4.7 Gbytes Basic Format Specifications part 1, volume 2 (High Speed), version 1.0.
- (e) DVD+RW 8.5 Gbytes Basic Format Specifications part 2, volume 1 (Dual Layer), version 1.0.
- (f) DVD+RW Video Format System Description, version 1.0.
- (g) DVD+RW Video Format System Description, version 2.0.

- (h) DVD+RW Video Format System Description, version 3.0.
- (i) DVD+R 4.7 Gbytes Basic Format Specifications, version 1.0.
- (j) DVD+R 8.5 Gbytes Basic Format Specifications, part 2 (Dual Layer), version 1.0.
- (k) DVD+R Video Format System Description, version 1.0.
- (l) DVD+R Video Format System Description, version 2.0.
- (m) DVD+R Video Format System Description, version 3.0.
- (n) DVD Specifications for Read-Only Disc, version 1.0 (part 4).
- (o) DVD Specifications for Recordable Disc, version 1.0 (parts 1 and 2).
- (p) DVD Specifications for Recordable Disc, version 2.0 (parts 1 and 2).
- (q) DVD Specifications for Recordable Disc, version 3.0 (parts 1 and 2).
- (r) DVD Specifications for Re-recordable Disc, version 1.0 (parts 1 and 2).
- (s) DVD Specifications for Re-recordable Disc, version 2.0 (parts 1 and 2).
- (t) DVD Specifications for Rewritable Disc, version 1.0 (parts 1 and 2).
- (u) DVD Specifications for Rewritable Disc, version 2.0 (parts 1 and 2).
- (v) DVD Specifications for DVD-RAM/ DVD-RW/ DVD-R for General Discs, version 1.0 (parts 3, 4 and 5).

For the avoidance of doubt, DVD Standard(s) includes references within any one of (a) – (v) above to another DVD specification (listed in (a) to (v) above), but excludes any other standard that is merely referred to in one of subsections contained in the definition of DVD Standard(s).

“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.

“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.

“Registered Affiliate” means one or more of the Affiliates of Reseller listed in Appendix B. If an entity listed in Appendix B ceases to be an Affiliate of Reseller (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 Reseller (regardless of whether the entity continues to be listed in Appendix B).

“Shipment”, “Shipping” and variants thereof means the initial transfer of BD Player/Recorder Products by a manufacturer or its affiliate from the original manufacturing location of the BD Player/Recorder Products (therefore not including subsequent transfers) to any party, 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:

for Shipments prior to April 1, 2017, the standard royalty rate of:

- (a) US\$9.00 (nine US Dollars) per each BD Player; and
- (b) US\$12.00 (twelve US Dollars) per each BD Recorder, and

for Shipments on and after April 1, 2017, the standard royalty rate of:

- (c) US\$7.20 (seven US Dollars and twenty US Dollar cents) per each BD Player; and
- (d) US\$9.60 (nine US Dollars and sixty US Dollar cents) per each BD Recorder.

“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 Standards, the DVD Standards or the CD 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.

“UHD Decoding Functions” means the ability of a product to convert data from a data format that is specified in the UHD Standard but not in the BD Standard, DVD Standard or CD Standard, to a data format that is not specified in the UHD Standard).

“UHD-PC Drive” means a non-virtual disc drive product that (a) is capable of playing back UHD ROM Discs, (b) is specifically designed, and intended by its manufacturer, to be

incorporated as a drive in, or used as an external drive with, a personal computer device where such device permits the execution of software applications, (c) is not designed, or intended by its manufacturer to be used, to provide data to any other device unless the data is first conveyed through a personal computer, and (d) is not capable of performing UHD Decoding Functions.

“UHD Recording Functions” means the ability of a product to read in to record in any future UHD recordable or rewritable disc format standard developed by the Blu-ray Disc Association.

“UHD ROM Disc” means a dual or triple layer optical read-only disc with a capacity of no more than 34 GBytes per layer, designed and manufactured for recording thereon digital information, and which conforms to the UHD Standards.

“UHD Standard(s)” (also known as Ultra HD 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 Read-Only (Ultra HD Blu-ray) Part 1: Basic Format Specifications Version 2.0.
- (b) System Description Blu-ray Disc Read-Only (Ultra HD Blu-ray) Part 2: File System Specifications Version 3.0.
- (c) System Description Blu-ray Disc Read-Only (Ultra HD Blu-ray) Part 3: Audio Visual Basic Specifications Version 3.0.

For the avoidance of doubt, UHD Standard(s) includes references within any one of (a) – (c) above to another UHD specification (listed in (a) to (c) 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.

“Website” means www.one-blue.com or any other website designated by Licensing Company from time to time in connection with this Past Use Agreement.

2 RELEASED PRODUCTS

- 2.1 Itemization of Released Products. Reseller represents and warrants that Appendix A attached hereto is a complete itemization of all unlicensed BD Player/Recorder Products Shipped to, or for Reseller or its Registered Affiliates prior to the Effective Date and/or presently in stock at Reseller’s premises, by product type, model number, brand, country of manufacture, manufacturer if known, and months and year Shipped to Reseller, the party who supplied the BD Player/Recorder Products to Reseller, and the month and year when sold by Reseller if not in stock (collectively “Released Products”).

3 REGISTRATION FEE

- 3.1 Payment of Registration Fee. Reseller shall pay Licensing Company a non-refundable, non-recoupable registration fee of US\$ 25,000 (twenty five thousand US Dollars) within thirty (30) days of its receipt of an invoice therefor, which invoice shall be sent by Licensing Company no sooner than five (5) days after the Effective Date. Notwithstanding the foregoing, Reseller shall not be obligated to pay such registration fee if Reseller already paid a registration fee of at least \$25,000 to Licensing Company in connection with a Registration Agreement for BD Player and/or BD Recorder Manufacturer, or Registration Agreement for BD Player and/or BD Recorder Manufacturer and Brand Owner.

4 ROYALTY PAYMENTS AND INVOICING

- 4.1 Invoicing. No sooner than five (5) days after the Effective Date, Licensing Company shall send an invoice to Reseller for the royalties due (the "Release Amount") for the Released Products set forth in Appendix A calculated based on the Standard Rate, subject to any Royalty Offsetting pursuant to Section 4.3.
- 4.2 Payment Due Date. Reseller shall pay to Licensing Company the sum stated to be due in the invoice sent pursuant to Sec. 4.1 no later than thirty (30) days from the date of the invoice.
- 4.3 Royalty Offsetting. If Reseller 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 Released Products are separately licensed, the Reseller 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 Released Products on account of those Licensed Patents that are separately licensed under the Bilateral Agreement. If given, Reseller 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 Reseller 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. The Confirmation of Bilateral Agreement form that is submitted to Licensing Company by or for Reseller, and the existence and applicability of the bilateral agreement between the

Reseller and the Bilateral Licensor shall constitute confidential information of the Reseller and the Bilateral Licensor.

- 4.4 Release. Subject to full and timely payment of the registration fee and Release Amount fee pursuant to Sections 3.1 and 4, respectively, 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, Reseller and its Registered Affiliates, their respective successors and assigns, under any patent infringement arising under the Licensed Patents due to transfer, sale, offer for sale, manufacture import or other disposition of the Released Products prior to the Effective Date of this Past Use Agreement or after the effective date of this Past Use Agreement solely with respect to any of the Released Products in stock at Reseller's premises on the Effective Date and identified in Appendix A. The release conferred pursuant to this Section 4.4 applies only to the extent the structure, features and functions of a Released Product are used to practice the BD Standards, DVD Standards, CD Standards applicable to that Released Product, and said release does not extend to any structure, features of functions of a Released Product not used to practice the BD Standards, DVD Standards or CD Standards. For greater certainty, the release in this Section 4.4 does not operate with respect to acquisitions of any sort by Reseller during the Term.
- 4.5 Payments in U.S. Dollars. The payment to be made by Reseller to Licensing Company under this Past Use Agreement shall be made in US Dollars.
- 4.6 Wire Information for Payments. The payment to be made by Reseller to Licensing Company under this Agreement shall be made without any deduction whatsoever (except for the tax deduction specified in Section 4.7), 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.
- 4.7 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 Reseller. If the

government of any country imposes any income taxes to be withheld from payments made by Reseller under this Past Use Agreement, and requires Reseller to withhold such tax from such payments, Reseller may deduct such tax from such payments. In such event, Reseller 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 un-documented deductions as unpaid royalties due which will become subject to the provisions of this Past Use Agreement. Reseller shall inform Licensing Company if the withholding tax rates on an invoice issued by Licensing Company are incorrect. Reseller shall inform Licensing Company of such error prior to paying the subject invoice.

- 4.8 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.

5 LIMITATION OF LIABILITY

- 5.1 Limitation of Liability. In no event shall Licensing Company be liable to Reseller 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 Reseller 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 Reseller 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 PRODUCTS OF RESELLER 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, for a period of five (5) years from the Effective Date, not disclose to any third party or use any confidential information of Reseller 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 Reseller with notice of such request, requirement or order and, if available, assist Reseller (at Reseller '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 Reseller. 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 Reseller'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 Reseller'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 Reseller or which has been disclosed under an express statement from Reseller 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 Reseller and such information was not protected by confidentiality protections.

6.3 The Existence Of This Past Use Agreement Is Not Confidential. For the avoidance of doubt, the existence of this Past Use Agreement is not subject to any confidentiality obligation.

7 ASSIGNMENT

- 7.1 Reseller'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 Reseller 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 Reseller, 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 Reseller with at least fourteen (14) days notice.

8 TERMINATION

- 8.1 Either Party May Terminate If Other Party Breaches. Either party may terminate this Settlement Agreement if the other party fails to perform any obligation under this Settlement Agreement and such failure is not remedied within thirty (30) days after receipt of a notice specifying the nature of such failure and requiring it to be remedied. Such right of termination shall be without prejudice to any other remedy to which the non-defaulting party may be lawfully entitled and all such remedies shall be cumulative.
- 8.2 Termination Upon All Patents Expiring or Non-Infringement. Upon (i) the expiration of the last to expire Essential Licensor Patent; or (ii) the final adjudication by a court of competent jurisdiction of invalidity or unenforceability of the last of the unexpired Licensed Patents, from which adjudication no appeal is taken or allowed; or (iii) the issuance of a written opinion by a Patent Expert concluding that the last subsisting

Licensed Patent released by this Past Use Agreement does not qualify as a Licensed Patent, this Past Use Agreement shall automatically terminate.

9 MISCELLANEOUS

- 9.1 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 Reseller or its Registered Affiliate, to:

[Reseller's Address, Fax Number and 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

Tel: +1 (212) 223-3190

E-mail: info@one-blue.com

Attn: Legal Department

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 Reseller shall constitute the proper sending of notice to any and all of its Registered Affiliates.

- 9.2 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.
- 9.3 Independent Counsel. Reseller, 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 Reseller, on behalf of itself and its Registered Affiliates, acknowledges and confirms that it freely enters into this Past Use Agreement.

- 9.4 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.
- 9.5 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.
- 9.6 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.
- 9.7 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.
- 9.8 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 Reseller’s registered office is located, or to the competent courts in any country where Reseller 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 9.8 will be deemed to have been validly served on a party if they are served by mail to the addresses indicated in Section 9.1 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. Reseller 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

[RESELLER]

Name:

Name:

Title:

Title:

Date:

Date:

APPENDIX A

ITEMIZATION OF RELEASED PRODUCTS

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 Player and/or BD Recorder Reseller” 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 Reseller’s BD Player/Recorder 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 Player and/or BD Recorder Reseller”.)

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

- BD Players (regardless of whether the BD Player is a game console)
- BD Recorders
- other (write 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 Standards for the products marked above.
- all Licensed Patents with respect to DVD Standards for the products marked above.

- all Licensed Patents with respect to CD Standards for the products marked above.
- other (write descriptions here _____)

(iii) The term of Bilateral Agreement.

From [insert date] – to [insert date]

Yours sincerely,

[Name of signatory]

[Title, etc.]

[Name of Reseller]

Acknowledged and Agreed:

By (sign): _____

Name (print): _____

Title: _____

Company: _____

Date: _____

Reference Copy