

TERMS OF USE AGREEMENT
Blu-ray Test Tools

This Terms of Use Agreement ("Agreement") governs Company's use of the BD Test Tools provided hereunder by Buena Vista Home Entertainment, Inc. ("Disney"), and Company agrees to abide by all applicable laws, and to this Agreement.

1. **DEFINITIONS:**

Capitalized terms shall have the respective meanings ascribed thereto below, or if not defined herein, shall refer to the definition under the BDA Bylaws:

- a. **"Authorized Purpose"** shall mean to test and verify the compliance with any BD Format Specifications of:
 - i. Company's Blu-ray Disc Products; and/or
 - ii. any Blu-ray Disc Product for Company's internal purposes, without disclosure of Confidential Information (as defined below) to third parties other than to the manufacturer(s) of the Blu-ray Disc Product(s) that is/are the subject of the test; and/or
 - iii. any Blu-ray Disc Product within the scope of activities organized by the BDA, with disclosure of the Confidential Information to the manufacturer(s) of the Blu-ray Disc Product(s) that is/are the subject of the test, or as otherwise permitted herein.
- b. **"Associated Company"** shall mean any legal entity (i) owned or controlled by a Party, (ii) owning or controlling a Party or (iii) owned or controlled by a legal entity owning or controlling a Party. For the purpose of this definition, a legal entity shall be deemed to own and/or control another legal entity if more than fifty percent (50%), or the maximum amount allowed by law if less than or equal to fifty percent (50%), of the voting stock of the latter legal entity (or if there is no such stock, more than fifty percent (50%), or the maximum amount allowed by law if less than or equal to fifty percent (50%) of the ownership of or control in the latter legal entity) is held, directly or indirectly, by the owning and/or controlling legal entity.
- c. **"BDA"** shall mean Blu-ray Disc Association. Further identification and information on the BDA are available at <http://www.blu-raydisc.com>.
- d. **"BDA Bylaws"** shall mean the Amended & Restated Bylaws of Blu-ray Disc Association, the latest version of which is available at <http://www.blu-raydisc.com>.
- e. **"BD Format Specifications"** shall mean a complete specification (i) which comprises specifications for the physical format, file systems and audiovisual functionalities (Parts 1, 2 and 3), (ii) which is available through a license program prepared by the BDA and (iii) with which compliance of Blu-ray Disc Products is to be tested and verified by BD Test Tools.
- f. **"BD Test Tools"** shall mean test discs and verifier software officially designated by BDA as official test tools to test the compliance of Blu-ray Disc Products with BD Format Specifications. BD Test Tools are listed in each Test Specification to which such BD Test Tools are applicable.
- g. **"Confidential Information"** shall mean any information that is either marked "confidential" or "proprietary" when disclosed in written form, or indicated as "confidential" or "proprietary" when disclosed orally and confirmed in writing within thirty (30) calendar days after such disclosure. Notwithstanding the foregoing, Test Results and Amended Test Results (as defined below) generated from the activities under Authorized Purpose, this section (a) (ii) or (a) (iii) as described above, shall always be deemed Confidential Information.

- h. **“Party”** shall mean a party agreeing to and being bound by these terms and conditions hereunder.
- i. **“Test Results”** shall mean any test results generated by utilizing BD Test Tools.
- j. **“Test Specifications”** shall mean test specifications for compliance with BD Format Specifications which are available through a license program prepared by the BDA.

2. **Covenants of Agreement:**

This Agreement is conditioned upon Company’s agreement to and compliance with the following:

- a. The BD Test Tools only available to business entities worldwide that are BD-ROM hardware manufacturers (including BD-ROM PC application software manufacturers and BD-ROM game console manufacturers) (“Content Users”).
- b. Company shall not make any other reproduction or use of the BD Test Tools whatsoever in whole or in part.
- c. Promptly upon the expiration of this Agreement, Company shall, at Company’s expense, return to Disney or destroy, at Disney’s option, the Test Disc and Manual.
- d. Except as expressly permitted herein, Company shall not use the name or logo of Disney for any other purposes without the prior written consent of Disney.
- e. Company acknowledges Disney's continued and separate Copyright ownership of BD Test Tools, and Company represents and warrants that its use of the BD Test Tools will not adversely affect Disney's Copyright ownership of such BD Test Tools. Disney represents warrants and agrees that it is the Copyright proprietor of the BD Test Tools. Disney hereby reserves all of its respective rights in the BD Test Tools. Disney shall at all times, anywhere in the world and whether or not in conflict or competition with the Company, have the right to use or authorize others to use the BD Test Tools in any way Disney may desire.
- f. This is a sublicense agreement and not an agreement for sale, transfer or assignment. Disney grants you, a non-exclusive and non-assignable sublicense to use the BD Test Tools for the Authorized Purpose only.
- g. As a condition of Company’s use of the BD Test Tools, Company warrants to Disney that it will not use the BD Test Tools for any purpose that is unlawful or prohibited by these terms, conditions, and notices. You may not use the BD Test Tools in any manner which could damage, disable, or impair the BD Test Tools.

3. **CONFIDENTIALITY:**

- a. Subject to Paragraph 3(c) below, the receiving Party shall:
 - i. not use Confidential Information disclosed by the disclosing Party for any purpose other than the Authorized Purpose; and
 - ii. not disclose any Confidential Information disclosed by the disclosing Party to any third party and shall protect such Confidential Information against any unauthorized disclosure in the same manner and with the same degree of care, but not less than a reasonable degree of care, with which it protects confidential information of its own; and
 - iii. not alter, decompile, disassemble, attempt to decipher or otherwise reverse engineer any software or any part thereof, nor allow others to do so.

By way of exception to the provisions of the preceding paragraph, each Party may disclose Confidential Information to those of its Associated Companies who have a strict need to know in connection with the Authorized Purpose; provided that each such Associated Company shall similarly be bound by and comply with the obligations concerning confidentiality as set out in this Agreement. Any breach by any Associated Company of either Party of such obligation pursuant to this Agreement shall be deemed a breach of that Party.

- b. The confidentiality obligations under this Agreement shall not apply to that Confidential Information of which the receiving Party can demonstrate, to the satisfaction of the disclosing Party that such Confidential Information:
 - i. was known and on record with the receiving Party prior to the disclosure by the disclosing Party;
 - ii. is or becomes a part of the public domain without violation of this Agreement;
 - iii. is lawfully obtained by the receiving Party from a third party without any breach of confidentiality or violation of law by such third party;
 - iv. is developed by the receiving Party independent of any disclosure by the disclosing Party under this Agreement,

save that the foregoing shall not prevent the receiving Party from complying with an order of an competent court or administrative authority in a judicial or administrative action; provided that such receiving Party shall use commercially reasonable efforts to maintain the confidentiality of the Confidential Information (e.g. by asserting in such action any applicable privileges), and shall, immediately after gaining knowledge or receiving notice of such action, notify the disclosing Party thereof and give such disclosing Party the opportunity to seek any legal remedies so as to maintain the confidentiality thereof.

- c. Notwithstanding the foregoing, Company may disclose Test Results to the manufacturer(s) of the Blu-ray Disc Product(s) that is/are the subject of the test and after such disclosure to such manufacturer (i) Test Results to License Officer of the BDA or to Enforcement Officer of the BDA or (ii) Amended Test Results (being Test Result excluding any identity name of the manufacturer and any model number of the Blu-ray Disc Product from which such Test Results are derived) simultaneously to the Secretary of the BDA and to the BD compliance and BD Test Tools related Task Forces or Committees in which Company participates and which reasonably require such information; provided, however, that Company shall designate such Test Results and Amended Test Results as confidential.

4. **DISCLAIMER AND INDEMNIFICATION:**

The Test Disc and Manual and all Confidential Information disclosed hereunder is provided on an “AS IS” basis, without any warranty whatsoever, express or implied or otherwise, regarding its accuracy, completeness, performance, fitness of the Confidential Information for a particular purpose, non-infringement of third party rights, or otherwise. The disclosing Party shall not be liable for any direct, special, incidental, consequential or other damages as may result from the use of Confidential Information by the receiving Party.

5. **REPRESENTATIONS AND WARRANTIES:**

Company hereby represents and warrants that it:

- a. has executed and is a party to an Information Agreement and/or a Format and Logo License Agreement and/or a Content Participant Agreement,
- b. is a General Member or a Contributor Member of the BDA, or
- c. is explicitly authorized by the BDA to obtain BD Test Tools.

6. **TERMINATION:**

- a. Either Party may terminate this Agreement by sending a 30 day prior written notice to the other Party.
- b. Notwithstanding the foregoing provision, 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 each Party may terminate this Agreement at any time by means of a written notice to the other Party. 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 obligations under this Agreement accrued prior to such termination.
- c. In the event of termination or expiration, each receiving Party shall immediately return or at the discretion of disclosing Party, destroy, with a written representation of such destruction by receiving Party to disclosing Party, all Confidential Information received from the disclosing Party and shall not retain any copies, or extracts of any such material unless otherwise requested by the disclosing Party.
- d. Paragraph 1, 2, 3, 4 and this 6(d) shall survive the termination or expiration of this Agreement.

7. **LIMITATION OF LIABILITY:**

NEITHER PARTY SHALL BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, HOWEVER ARISING, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. **GENERAL:**

- a. **Governing Law:** This Agreement, and all matters arising out of or relating to this License Agreement, shall be governed by the laws of the State of California excluding choice of law principles, and the United States of America.
- b. **Jurisdiction:** Any legal action or proceeding relating to this License Agreement shall be instituted in a state or federal court in Los Angeles County, California. Company and Disney agree to submit to this jurisdiction, and agree that venue is proper in these courts in any such legal action or proceeding.
- c. **Severability:** In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

By signing in the space provided below, Company agrees to all of the terms and conditions of this Agreement.

("Company")

Signed: _____

Printed Name: _____

Title: _____

Date: _____