

## Disc Duplicator License

### DVDR COPY CONTROL SOFTWARE OEM LICENCE AGREEMENT

**DATE:** August 1st 2008

#### PARTIES

- (1) **INSTITUTE OF VIDEOGRAPHY**, whose registered office is at PO Box 625 Loughton IG10 3GZ (“**the Supplier**”); and
- (2) [ ] a company registered in England and Wales registered number [ ], whose registered office is (“referred to as the **Company**”).

#### RECITALS

- (A) The Supplier is the Developer of copy control technologies and owns the rights in the Software (as defined below)
- (B) The Company is engaged as a duplicator of DVDR discs. The Company wishes to license the Software for the purposes of applying copy control protection software on duplicated DVDR discs for its customers.
- (C) The Supplier has agreed to grant the Company the non-exclusive right to license the software, with certain provisions, to provide copy control products and services to Customers in the Territory (as defined below) subject to the terms set out in this Agreement.
- (D) The Supplier and Company agree that this Agreement constitutes the entire agreement and understanding of the parties, and supersedes any and all previous license agreements, arrangements and/or understandings (whether written or oral) between the parties.

#### TERMS AGREED:

##### 1. Definitions and Interpretation

###### 1.1 Definitions

In this Agreement, (unless the context requires otherwise):

“**Breach of Duty**” means the breach of any (i) obligation arising from the express or implied terms of a contract to take reasonable care or exercise reasonable skill in the performance of the contract; (ii) common law duty to take reasonable care or exercise reasonable skill (but no any stricter duty);

“**Change of Control**” means in relation to either party, either (i) 50% or more of the total votes attaching to the share capital as issued at that time by that party or its Holding Company is acquired by or transferred, whether directly or indirectly, to a person, Company or group or (ii) where that party becomes a Subsidiary of a corporate body which is a Subsidiary of the current Holding Company of that party;

“**Copy Control Technology**” means the machine readable version of the software produced by processing the Patronus Software as described in Schedule 1;

“**Customer**” means any company, firm or business involved in creating, marketing, producing or reproducing music, video or film content;

**“Customized Software”** means the Supplier’s licensed software which the Company shall customize under the Company’s own name and brand for a particular application which may also include a particular set of features as agreed between the parties.

**“Discs”** means DVDs or similar media.

**“Documentation”** means the documentation produced to assist the Company’s use of the Software;

**“Dongle”** means the hardware keys and software programs to monitor the use of the Software

**“Existing Customers”** means any company, firm or business which has used the Software prior to the date of this Agreement;

**“Intellectual Property Rights”** means (i) rights in patents, registered designs, design rights, trade marks, copyright, databases, moral rights, topography rights, trade and business names including the benefit of all registrations and applications to register any of the aforesaid; (ii) rights in the nature of unfair competition rights and rights to sue in passing off; and (iii) all trade secret confidentiality and other proprietary rights including all rights to know-how and other technical information;

**“Liability”** means liability in or for breach of contract, Breach of Duty, misrepresentation, restitution or any other cause of action whatsoever relating or arising under or in connection with this Agreement, including liability expressly provided for under this Agreement or arising by reason of the invalidity or unenforceability of any term of this Agreement (and for the purposes of this definition, all references to “this Agreement” shall be deemed to include any collateral contract);

**“Market Rates”** means historical pricing levels for the licensing of the Software to customers which are historical or at the average mean level in the market place for the prior 12 month period;

**“Minimum Amounts”** means the minimum revenue secured by the Company for the Supplier from licensing and sub licensing the copy control technology on media during the relevant time period as set out in Schedule 2;

**“New Customers”** shall mean customers who are targeted to use the Software for the first time on a commercial basis.;

**“OEM”** means original equipment manufacturer referring to the relationship as between the Supplier and the Company. Whereas the Supplier licenses the original software and the Company shall customize the Supplier’s licensed software under the Company’s own name and brand for a particular application and license its application to its customers and in addition the Company shall have full responsibility for providing first line customer support to its customers for its applications containing the Supplier’s licensed software.

**“Permitted Purpose”**: means for the purposes of processing the Software, either directly or together with the Company’s own licensed Software, and applying the Copy Control Technology for producing and distributing protected image files and burning copy controlled DVDR discs.

**“Revenue Targets”** means the minimum royalty expected to be paid by the Company to the Supplier each year of this Agreement;

**“Software”** means the Patronus Software (brief details of which is set out in Schedule 1 and which may be referred to by different product names) which applies Copy Control Software on original Image files so that DVD discs burnt from the original Image Files are copy controlled for the purposes of helping Content Owners prevent unauthorized copying of their content.

**“Software Products”** means the copy protected image files and copy controlled discs produced by the use of the Software

**“Subsidiary” and “Holding Company”** have the meanings given to them in s.736 Companies Act 1985;

**“Support Services”** means research and development, delivery of upgrades, bug fixing, general technical support and maintenance in respect of the Software to the Company by the Supplier according to an agreed support plan to be agreed between the parties;

**“Territory”** means the Country where the Company is located;

**“Working Days”** means Monday to Friday excluding public and bank holidays in United Kingdom

## 1.2 Interpretation

In this Agreement:

- 1.2.1 clause headings do not form part of or affect the interpretation;
- 1.2.2 references to any legislation shall include any statutory or other re-enactment or modification thereof (whether before or after the date of this Agreement);
- 1.2.3 where the context requires, words denoting the singular include the plural and vice versa and words denoting any gender shall include all genders;
- 1.2.4 references to Clause and Schedule numbers are to Clauses and Schedules in this Agreement so numbered;
- 1.2.5 references to parties include references to their respective successors in title, permitted assigns and novatees;
- 1.2.6 in the case of any conflict or ambiguity between any provision contained in the body of this Agreement and any provision contained in any Schedule to it, the provisions of this Agreement shall prevail; and
- 1.2.7 subject to Clauses 1.2.5, no term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

## 2. Licence

- 2.1 The Supplier grants the Company a non-exclusive, non-assignable licence for the duration of this Agreement to use the Software for the Permitted Purpose and to promote market and sub-licence Customers to use the Software Products and the Documentation for the Permitted Purpose in the Territory subject to the terms contained in this Agreement.
- 2.2 The Supplier grants the Company a free 30 day trial period from the date of this Agreement to test the Software and the Software Products with its customers, however any charge made to a third party for the Software shall not be counted as free and the license fee shall become payable to the Supplier.

## 3. Sub-Licensing

- 3.1 The Company shall not sub-licence the Software to other companies unless by prior written agreement by the Supplier
- 3.2 The Supplier grants the Company the right to sub-licence the Software Products, produced by the user of the Software, to Customers and End Users
- 3.3 The Company may market, promote or sub-licence the Software Products under the Company's own product names or rebrand the Software under a new name and promote as its own product, applying its own proprietary notices to the Software and the Documentation, but the Company shall include a prominent notice that the Software and Software Products are “Powered By Patronus Software”.
- 3.4 The Company shall sub-licence only the latest versions of the Software Products and Documentation which have been provided to it by the Supplier from time to time.
- 3.5 The Company shall pay the Supplier the Licence Fees due in accordance with clause 5.
- 3.6 The Company acknowledges that the Supplier shall have no liability to any end-user to whom the Company grants a sub-licence of the Software Products and that the Company shall have no claim against the Supplier in respect of any claim which is brought against the Company by any sub-licensee in respect of the Software or the Software Products. Furthermore the Company shall indemnify the

#### **4. Support and Maintenance of the Software**

- 4.1 The Company shall provide first line customer support to its Customers to include but not be limited to the following:
- (a) Information about the Software Products
  - (b) Technical support and maintenance
  - (c) Provide information and advice by telephone and email on general support issues and forthcoming upgrades or new releases of the Software; and
  - (d) Upon request by the customer use its best endeavors to diagnose faults.
- 4.2 The Company shall agree in advance with the Supplier a defined customer support plan so that first line support by the Company and second line support by the Supplier may be carried out in a structured way. For the avoidance of doubt the Supplier shall have no accountability for providing first line customer support to Customers.

#### **5. Company's Obligation to Protect the Software**

- 5.1 If the Company sells any of the equipment referred to in Schedule 2, it will ensure that all copies of the Software have been previously deleted.
- 5.2 The Company shall not decompile, reverse engineer, disassemble or otherwise reduce any part of the Software to human-readable form nor permit any third party to do so. The interface information necessary to achieve interoperability of the Software with independently created computer programs will be provided by the Supplier on request and where as a result of a requested amendment on payment of the Supplier's reasonable costs and expenses for procuring and supplying such information.
- 5.3 Save as otherwise provided, the Company shall not, and shall not permit any third party, to copy, make error corrections to or otherwise modify or adapt the Software nor create derivative works based upon the Software
- 5.4 At all reasonable times and upon reasonable advance notice, the Company shall permit the Supplier's representative to inspect and have access to the Company's computer equipment and any records kept pursuant to this Agreement to ensure that the Company is complying with its obligations under this Agreement.
- 5.5 In accordance with clauses 15.2 and 15.3 the Company acknowledges that the Supplier shall request that the Supplier's Dongle software be incorporated with the use of the Software, for the purposes of monitoring and control. If required at the end of each month, and where individually requested within 48 hours where practical or within a reasonably prompt time period thereafter, the Company must send to the Supplier information contained within the Software by email for the purposes of fault diagnosis and monitoring.
- 5.6 The Company shall ensure that the Software is only used at the Authorised Locations (as set out in Schedule 2) or at locations subsequently agreed in writing between the parties.
- 5.7 Use of the Software outside the Territory or for purposes other than for the Permitted Purposes or at locations other than the Authorised Locations shall only be permitted with the Supplier's prior written consent and the Company acknowledges that the Supplier's applicable upgrade or other additional fees may be payable.

## 6. Responsibilities of the Supplier:

- 6.1 The Supplier shall continue to support the various versions of the Software and this shall include the Supplier delivering commercial upgrades for as long as there is a general market requirement for the Software subject to clause 2, 7 and 17 of the Agreement.
- 6.2 If Supplier ceases supporting the Software in accordance with clause 7.2 of this Agreement, the Company may continue to license the Software for the duration of the term of their license agreement with their existing Customers provided that the Company makes payments to the Supplier for use of the software and for any support requested.

## 7. Licence Fee and Payment

- 7.1 In consideration for the rights granted to the Company by the Supplier and the obligations accepted by the Company, the Company shall pay the license fees, ("the Licence Fees"). The Licence Fees (subject to the "Minimum Price" provisions (contained in Schedule 3) shall be calculated by reference to the licence fees invoiced by the Company to Customers and the costs reimbursable under clause 7.4.
- 7.2 All sums payable under this Agreement are exclusive of any tax and any other sales or similar taxes, customs, duties or similar charges, for which the Company shall be responsible.
- 7.3 The Company shall within fourteen (14) days of the end of each Month submit to the Supplier an account setting out in reasonable detail the amount of Licence Fees accruing during such Month and the calculation thereof (a "**Monthly Account**"). A Licence Fee shall accrue on the date on which the Company invoices the Customer.
- 7.4 The Supplier shall submit a monthly invoice to the Company for the Licence Fees together with the costs payable by the Company pursuant to clause 7.5.
- 7.5 Payment by the Company of the Supplier's invoices shall be made monthly to the Supplier and no later than thirty (30) days after the end of the month to which the Licence Fees and other costs relate or, if later, within 14 days of receipt of invoice..
- 7.6 All sums payable in respect of sales within Europe shall be paid in UK Pounds and where the situation arose outside Europe sales shall be paid in currency agreed between the parties.
- 7.7 If any sum due from the Company to the Supplier under this Agreement is not paid within seven days of its due date then (without prejudice to any other rights and remedies available to the Supplier) the Supplier reserves the right to charge, and the Company agrees to pay, interest on such sum on a day to day basis at the annual rate of 4% above the prevailing base rate of HSBC plc from time to time from the date when payment became due until the date on which payment has been received together with any interest which has accrued.
- 7.8 All amounts payable under this Agreement shall be paid in full without set-off, deduction or other withholding of any amount which may be due to the Company other than if the Company be required by any law or regulation to make any deduction on account of tax or otherwise on any sum payable under this Agreement.
- 7.9 The Company shall have no right to any refund of the fees payable under this Agreement including, without limitation, on the termination of this Agreement.

## 8. Warranty

- 8.1 The Company acknowledges that the Software it currently uses performs in accordance with the terms of the Permitted Purpose and as detailed in Schedule 2. The Supplier warrants that for 90 days from delivery to the Company new versions of the Software will perform substantially in accordance with the

functions described in the Documentation when operated properly in accordance with the terms of the Permitted Purpose and as detailed in Schedule 2 and in the manner specified in the Documentation and as provided in the initial training sessions by the Supplier's trained staff to the Company;

- 8.2 The Company accepts all responsibility for the selection of the Software to meet its requirements. The Supplier does not warrant that the Software and/or the Documentation will be suitable for such requirements nor that any use will be uninterrupted or error free. The Supplier warrants that the Software Products have been independently tested to confirm that no active programs are loaded on a PC operating system from the Software Products in order for the copy control on to become effective. The independent test report has been submitted to the Company and the Supplier agrees that the Company may make the report available to customers upon request but shall not make it available as a freely available public document.
- 8.3 The warranties and conditions stated in this Agreement are in lieu of all other conditions, warranties or other terms concerning the supply or purported supply of, failure to supply or delay in supplying the Software or the Documentation which might but for this Clause 8.3 have effect between the Supplier and the Company or would otherwise be implied into or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, all of which are hereby excluded (including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or as to the use of reasonable skill and care).
- 8.4 The Company's sole remedy for breach of the warranties in Clauses 8.1 shall be to require the Supplier to repair or replace (at the Supplier's option) the defective item so that it complies with the warranties which has been breached within a reasonable time at no charge to the Company provided any such breach of warranty is notified to the Supplier in writing during the applicable warranty period (and, for the avoidance of doubt, the Supplier's right to provide that remedy shall not be affected if the Company fails to provide notice in accordance with the terms of this Clause 8.4). The Company shall provide all information as may be reasonably necessary to assist the Supplier in resolving the defect including, without limitation, sufficient information to enable the Supplier to re-create the defect.
- 8.5 The warranty in Clause 8.1 shall not apply if:
- 8.5.1 the Company makes or causes to be made any modifications to the Software without the Supplier's consent;
- 8.5.2 the Software is used in combination with any software or materials not approved by the Supplier; whose approval will not be unreasonably withheld
- 8.5.3 the Software is used in an manner for which it was not intended; or
- 8.5.4 the Software is used other than as permitted under this Agreement.

## **9. Liability**

- 9.1 This Clause 9 prevails over all other Clauses and sets forth the entire liability of the Supplier, and the sole and exclusive remedies of the Company in respect of:
- 9.1.1 the performance, non-performance or purported performance of this Agreement; or
- 9.1.2 otherwise in relation to this Agreement or the entering into or performance of this Agreement.
- 9.2 Nothing in this Agreement shall exclude or limit the Supplier's Liability for:
- 9.2.1 the tort of deceit
- 9.2.2 death or personal injury caused by its Breach of Duty or
- 9.2.3 any Liability which cannot be excluded by law.
- 9.3 Save as provided in Clause 9.2, the Supplier does not accept and hereby excludes any liability for loss

of or damage to the Company's or any third party's property other than that caused by its negligence

- 9.4 Save as provided in Clauses 9.2 and 9.3, the Supplier does not accept and hereby excludes any Liability in negligence other than any such liability arising pursuant to the terms of this Agreement.
- 9.5 Save as provided in Clause 9.2, the Supplier shall have no Liability for any special, indirect or consequential loss or damage howsoever caused including (without limitation) any of the following (whether such losses or damage were foreseen, foreseeable, known or otherwise): loss of revenue; loss of profits; loss of anticipated savings; loss of goodwill; loss of reputation; or loss of, damage to or corruption of data.
- 9.6 Save as provided in Clause 9.2, the total liability of the Supplier shall in no circumstances exceed a sum equal to the Licence Fees received by the Supplier during the 12 months immediately preceding the event giving rise to the liability; The limitation of Liability under this Clause 9.6 has effect in relation both to any Liability expressly provided for under this Agreement and to any Liability arising by reason of the invalidity or unenforceability of any term of this Agreement.

## **10. Misrepresentation**

- 10.1 Save as provided in Clauses 10.2 and 10.3, the Company shall have no remedy in respect of any untrue statement (whether written or oral) made to it upon which it relied in entering into this Agreement ("Misrepresentation") and the Supplier shall have no Liability to the Company other than pursuant to the express terms of this Agreement.
- 10.2 Nothing in this Agreement shall exclude or limit the Supplier's Liability for any Misrepresentation made by the Supplier knowing that it was untrue.
- 10.3 Nothing in this Agreement shall exclude the Supplier's Liability for any fundamental misrepresentation, including any misrepresentation as to a matter fundamental to the maker's ability to perform its obligations under this Agreement, but such Liability shall be subject to the limit set out in Clause 9.6.
- 10.4 The Company acknowledges and agrees that no representations were made prior to the entering into of this Agreement and that, in entering into this Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement.

## **11. Indemnity**

- 11.1 The Company shall indemnify the Supplier from and against all claims, Liabilities, proceedings, costs, damages, losses, or expenses incurred by the Supplier whether within the Territory or outside the Territory caused by, or in any way connected with the authorised use of Software and Software Products by Customers, or with the unauthorised use of the Software by any third party whether through the Company's use of the Software, breach of this Agreement or any other negligent or wrongful act of the Company.
- 11.2 The Company shall use best endeavours to adequately protect itself in its representations and indemnities and warranties in its license agreements with its customers.
- 11.3 The Company shall at its discretion use best endeavours to maintain ongoing insurance against any third party claims including (without limitation) professional indemnity insurance at all times.

## **12. Intellectual Property**

- 12.1 The Company acknowledges that any and all Intellectual Property Rights which subsist in or arise in connection with the Software or the Documentation anywhere in the world belong to the Supplier (or its licensors) and that the Company shall have no right in or to the Software or the Documentation save the right to use it as permitted by this Agreement.

- 12.2 Without prejudice to Clause 9.4 the Supplier shall, at its own expense, defend or, as its option, settle any action brought against the Company resulting from any third party claim or suit alleging that the use or possession of the Software or the Documentation by the Company (as contemplated by this Agreement) infringes any Intellectual Property Rights belonging to a third party and agrees to be responsible for any reasonable costs (including lawyers' fees) involved and pay any damages finally awarded against the Company in any such claim provided that the Company:
- 12.2.1 promptly notifies the Supplier in writing of any such claim or suit;
  - 12.2.2 makes no admissions or settlements without the Supplier's prior written consent;
  - 12.2.3 at the Supplier's request and expense, allows the Supplier complete control over any litigation relating to or settlement of such claim or suit; and
  - 12.2.4 gives the Supplier all information and assistance as the Supplier may reasonably require at the Supplier's cost.
- 12.3 The Supplier shall have no obligation under Clause 12.2 to the extent that any alleged infringement arises from:
- 12.3.1 use of non-current release of the Software;
  - 12.3.2 modifications made to the Software without the Supplier's consent;
  - 12.3.3 use of the Software in combination with any other software;
  - 12.3.4 use of the Software other than as directed or approved by the Supplier in writing or otherwise in any manner not contemplated by this Agreement;
  - 12.3.5 any breach of any of the terms of this Agreement or any negligent, willful or fraudulent act or omission of or by the Company, its officers, employees, agents or contractors.
- 12.4 Without prejudice to Clause 12.2, in the event that the use or possession of the Software or the Documentation by the Company (as contemplated by this Agreement) infringes or, in the Supplier's opinion, may be held to infringe any Intellectual Property Rights belonging to a third party, the Supplier may at its option and expense:
- 12.4.1 procure for the Company the right to continue using the Software free from any liability for such infringement;
  - 12.4.2 modify or replace the Software so as to avoid the infringement; or
  - 12.4.3 terminate the Agreement immediately on written notice and refund the Licence Fee less a reasonable charge for use to the date of termination.
- 12.5 This Clause 12 states the entire obligation and Liability of the Supplier and the sole remedy of the Company in respect of any infringement or alleged infringement of any intellectual property rights arising from its acquisition, possession or use of the Software. All other obligations of the Supplier in relation to infringement or alleged infringement of the intellectual property rights of any person but for this Clause 12.5 would have effect are hereby excluded. The Company acknowledges that the parties shall follow the stated procedures in clause 12 and that it shall have no claim against the Supplier in respect of an Intellectual Property Rights infringement claim.

### **13. Confidentiality of the Software and Documentation**

- 13.1 The Company undertakes to treat as confidential and keep secret all information contained or embodied in or relating to the Software, Documentation, Licence Fee and the specification of the Software and all information conveyed to the Company by training (hereinafter collectively referred to as 'the Information').

- 13.2 The Company shall not without the prior written consent of the Supplier divulge any part of the Information to any person except:
- 13.2.1 the Company's own employees and then only to those employees who need to know the same;
  - 13.2.2 the Company's auditors, Tax Authorities, Inspector of Taxes, and Customs & Excise and any other persons or bodies having a right duty or obligation to know the business of the Company and then only in pursuance of such right duty or obligation;
  - 13.2.3 any person who is from time to time appointed by the Company to maintain any equipment on which the Software is being used (in accordance with the terms of this Agreement) and then only to the extent necessary to enable such person properly to maintain such equipment.
- 13.3 The Company undertakes to ensure that the persons and bodies mentioned in Clauses 13.2.1 to 13.2.3 are made aware prior to the disclosure of any part of the Information that the same is confidential and that they owe a duty of confidence to the Supplier. The Company shall indemnify the Supplier against any loss or damage which the Supplier may sustain or incur as a result of the Company failing to comply with such undertaking
- 13.4 The Company shall promptly notify the Supplier if it becomes aware of any breach of confidence by any person to whom the Company divulges all or any part of the Information and shall give the Supplier all reasonable assistance in connection with any proceedings which the Supplier may institute against such person for breach of confidence.
- 13.5 The Supplier shall treat as confidential all information supplied by the Company under this Agreement which is designated as confidential by the Company or which is by its nature clearly confidential provided that this Clause 13.5 shall not extend to any information which was rightfully in the possession of the Supplier prior to the commencement of the negotiations leading to this Agreement or which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Clause). The Supplier shall not divulge any confidential information to any person except to its own employees and then only to those employees who need to know the same. The Supplier shall ensure that its employees are aware of and comply with the provisions of this Clause. The Supplier shall not use any information it has received to design, create or procure a competing copy control software program.
- 13.6 The foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any termination of the Licence or this Agreement.

#### **14. Copying**

The Company may make only so many copies of the Software and Documentation as are reasonably necessary to supply to sub-licensees of the Software and for the Company's operational security and use. The Licence shall apply to all such copies as it applies to the Software.

#### **15. Security and control**

- 15.1 The Company shall both during the continuance of the Agreement and following its expiry or termination:
- 15.1.1 effect and maintain adequate security measures to safeguard the Software and Documentation from access or use by any unauthorised person;
  - 15.1.2 retain the Software and Documentation and all copies thereof under the Company's effective control and not provide access to or distribute any version of the Software until it is incorporated into the Pre-Release discs;
  - 15.1.3 maintain a full and accurate record of the Company's copying and disclosure of the Software and shall produce such record to the Supplier on request from time to time; and

- 15.1.4 include in its agreements with users of the Software Products incorporating the Copy Control Technology appropriate terms limiting the liability of both the Company and the Supplier in respect of the provision of the Copy Control Technology.
- 15.2 The Software shall include various security devices designed to render the software ineffective after certain time periods have elapsed. The Company acknowledges this and the Supplier shall use all reasonable endeavors to provide the Company with up to date versions of the Software as necessary and the Company shall do the same to the sub licencees of the Software.
- 15.3 Where individually requested The Company shall deliver to the Supplier at the end of each month, and within 48 hours if required, the automated report contained within the Software by email for the purposes of fault diagnosis and monitoring of the Software. where practical and/or when such data is available.

## **16. Marketing and Sales**

- 16.1 Any public announcement, communication, circular or other publicity concerning the transactions referred to in this Agreement shall made only by prior mutual agreement in writing.
- 16.2 The Company will use its best efforts to actively and properly market and promote the use of the Software. Such efforts shall include promotion through the Company's press releases, brochures, catalogues, website(s), and other appropriate advertising and marketing media calculated to increase the sales of Software Products.
- 16.3 The Company shall keep the Supplier fully informed of the conditions of the marketplace relating to the use of the Software (including new customers) and shall promptly inform the Supplier of any facts or opinions of which it becomes aware which are likely to be relevant in relation to the commercial exploitation of the Software Products by the Company.
- 16.4 The Company shall provide the Supplier with regular market information about customers and pricing such that the Supplier use that information to make financial forecasts.
- 16.5 The Company warrants that it currently has and shall maintain an adequate level of staff consistent with the market expectations and shall ensure that their staffs are properly trained and the Supplier will make recommendations to Company to accomplish this. The Company shall make available adequate demonstration libraries, equipment and facilities for the marketing of the Software.
- 16.6 The Company acknowledges that the Supplier retains the right to require the Company to acknowledge Supplier as the developer of the Software in press releases and with customers if the Supplier should so require.

## **17. Term and Termination**

- 17.1 This Agreement shall commence on the date hereof and shall unless terminated in accordance with clause 17 continue for a period of twelve months. Thereafter and if by mutual agreement the license may renew for a second twelve month period until terminated by service of not less than 90 days prior written notice served by either party on the other to expire.
- 17.2 Upon termination the Company agrees to immediately cease using the Software and to return or destroy all software components and documentation provided to it by the Supplier.
- 17.3 Either party may terminate this Agreement at any time immediately upon 7 days notice to the other if the other:
- 17.3.1 commits a material breach of this Agreement which (in the case of a breach capable of remedy) it fails to remedy within 30 days of receiving notice requiring it to do so;

- 17.3.2 ceases to do business, becomes unable to pay its debts when the fall due, becomes or is deemed insolvent, has a receiver, manager, administrator, administrative receiver or similar officer appointed in respect of the whole or any part of its assets or business, makes a composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt, an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) or enters into liquidation whether compulsorily or voluntarily.
- 17.3.3 either party undergoes a Change of Control and as a result the Change of Control creates a conflict of interest for the other party or
- 17.3.4 either party sells all or substantially all of its assets and as a result the change of status creates a conflict of interest for the other party
- 17.4 The Supplier may terminate this Agreement by service of written notice on the Company if the Company (or any other member of the same group of companies):
- 17.4.1 alters the nature and focus of its business activities such that it has or will have an adverse effect on its ability or willingness to market promote or sub-licence the Software; or
- 17.5 Termination shall be without prejudice to the rights of either party which have accrued prior to termination and shall not affect the rights of any of the Company's Customers who have been granted a sub-licence to use the Software Products.
- 17.6 Upon termination for any reason and subject to clause 17.2:
- 17.6.1 all rights granted to the Company under this Agreement shall cease including (without limitation) the licences granted to the Company under clause 2;
- 17.6.2 the Company shall cease all activities authorised by this Agreement ;
- 17.6.3 the Company shall immediately pay to the Supplier any sums due to the Supplier under this Agreement;
- 17.6.4 within 30 days of such termination, the Company shall destroy or return (at the Supplier's option) to the Supplier all copies of the Software, the Documentation and the Information then in its possession, custody or control and, in the case of destruction, certify to the Supplier that it has done so.

## **18. Assignment and Sub-Licensing**

- 18.1 The Company may not assign, sub-contract, mortgage or otherwise transfer or dispose of this Agreement or any of its rights or obligations under it (including, without limitation, for facilities management or outsourcing purposes) without the prior written consent of the Supplier.
- 18.2 To the extent that either party sub-licenses or sub-contracts any of its rights or obligations under this Agreement, it acknowledges that it shall remain fully responsible for the proper and complete discharge of all such obligations.

## **19. Notices**

Any notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be delivered or transmitted to the intended recipient's address as specified above or such other address as either party may notify to the other from time to time in accordance with this Clause. Any notice shall be treated as having been served on delivery if delivered by hand, four Working Days after posting if sent by pre-paid first class airmail post and on completion of transmission if sent by facsimile, provided the recipient facsimile machine sends an acknowledgement of its receipt of the facsimile to the machine operated by the sender of the facsimile.

## **20. Force Majeure**

- 20.1 The Supplier shall not be liable for any delay or failure to perform its obligations under this Agreement to the extent that and for so long as such delay or failure results from circumstances beyond the Supplier's control (an "event of force majeure") provided that party notifies the other within two Working Days of becoming aware of such event. If such event of force majeure continues for a period exceeding two months, the Supplier shall have a right to terminate this Agreement immediately on written notice to the Company.
- 20.2 For the avoidance of doubt, nothing in this Clause 20 shall excuse the Company from any payment obligations under this Agreement.

## **21. Governing Law and Jurisdiction**

The construction, validity and performance of this Agreement shall be governed by English law and the parties irrevocably submit to the non-exclusive jurisdiction of the English courts.

## **22. Wavier**

The failure of either party to enforce or to exercise any term of this Agreement does not constitute a wavier of such term and shall in no way affect the party's right later to enforce or to exercise it.

## **23. Severability**

The invalidity or unenforceability of any term or any part of any term of, or any right arising pursuant to, this Agreement shall not affect the validity or enforceability of any other terms or rights or the remainder of any such term or right which will continue in full force and effect except for any such invalid or unenforceable provision or part thereof.

## **24. Entire Agreement**

Further to Clause 8 and without prejudice to Clauses [7.2] and [7.3], this Agreement constitutes the entire agreement and understanding of the parties, and supersedes any and all previous agreements, arrangements and/or understandings (whether written or oral) between the parties regarding the Supplier's obligations and liabilities in respect of the supply or purported supply of, the failure to supply or any delay in supplying the Software and the Documentation.

## **25. Employees**

Both parties agree not to solicit staff of the other company for reasons of employment for the duration of this Agreement and for a period of six months thereafter, without the prior written consent of the other party.

## **26. Survival**

The terms of Clauses [5,6, 7, 8, 9, 10, 11 and 15, 16] shall survive expiry, variation or termination of this Agreement. Any other terms of this Agreement which are either expressed so as to survive (or are capable of surviving) expiry, variation or termination of this Agreement or from their nature or context it is contemplated that they are to survive expiry, variation or termination, shall remain in full force and effect notwithstanding expiry, variation or termination.

## **27. Variation**

No variation of, or amendment to, this Agreement shall bind either party unless made in writing and signed by authorised representatives of both parties.

## **28. Independent Contractors**

The relationship of the parties is that of independent contractors dealing at arms' length and except as expressly provided in this Agreement nothing in this Agreement shall be construed so as to constitute the parties as partners, joint ventures or co-owners or empower either party to act for, bind or

otherwise create or assume any obligation on behalf of the other and neither party shall hold itself as entitled to do the same. Nothing in this Agreement shall create or be deemed to create the relationship of employer and employee.

**SIGNED BY:** )

for and on behalf of the Supplier )

in the presence of: )

**SIGNED BY:** )

for and on behalf of the Company )

in the presence of: )

DATE

## Schedule 1

### The Patronus Software (The Software)

The Software shall comprise the most recent versions of the products listed below which have been released by the Supplier and supplied to the Company.

#### 1. Product Description

Patronus DVD copy control technology helps film studios and production companies to protect their assets. It is a passive software solution that encapsulates data files on a DVD disc causing access to the content by common ripping programs to be controlled. The original media content is not modified and play-back quality remains unaffected. This is achieved by introducing copy control encapsulation in areas of the disc that are not read by DVD players during playback. Copy controlled discs are designed to provide effective speed bump protection from unauthorised casual copying. Copy controlled discs have full playability designed to match playability levels in DVD players of unprotected DVDRs.

Copy control is applied through the Patronus software authoring program which adds protection to the ISO image file prior to burning discs. Once protected the ISO files can be processed in the normal way for PC playback, burning to DVDR, distribution or for mastering and manufacturing. Content that is protected in this way can be burnt to disc using standard burn engines.

Independent external testing carried out on the Patronus protected DVDRs confirms reliable levels of protection from mass market ripping programs as well as full playability on DVD players tested. Additional independent security tests carried out by NGS Software also confirm that discs burnt with the passive Patronus authoring software do not load any software onto PC operating systems.

**Schedule 2**

**Authorised Locations and Equipment**

**The Premises owned or leased by:**

**The Computer Equipment in which the Software is installed:**

### **Schedule 3**

#### **Licence Fees**

##### **For use of the Patronus Software for the purpose of producing DVDRs with copy control**

The cost to supply dongle software equipment and documentation to operate the Software @ £50 /\$100 per dongle per instance of the Software

##### **Pre Payment License Fees:**

As per agreed pricing matrix to be supplied separately