

Adopter's Agreement for iVDR Hard Disk Drive

iVDR Hard Disk Drive Consortium

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Adopter's Agreement for iVDR Hard Disk Drive

This Agreement made and entered into by and between the Representative (as defined below) and _____ (“Adopting Party”), and effective as of the _____ day of _____, _____ (the “Effective Date”),

WITNESSES:

WHEREAS:

- A. Promoters (as defined below) have been engaged in the research and development of certain removable hard disk drives and their application systems, and have obtained valuable know-how and experience thereby;
- B. Promoters have defined a standard of the aforesaid removable hard disk drives and their application systems, which provides for the interoperability of media complying with the standard, and Promoters have described such standard as “iVDR Hard Disk Drive Specification Ver. 1.0”;
- C. Promoters have established the so-called “iVDR Hard Disk Drive Consortium” (the "Consortium") for the purpose of the popularization of iVDR Products (as defined below) and the definition, revision, and improvement of the iVDR Specification (as defined below); and
- D. Adopting Party has an interest in the popularization of iVDR Products and wishes to engage in the definition, revision, and improvement of the iVDR Specification together with the Promoters by entering the Consortium, and the Representative has agreed, for and on behalf of the Consortium, to accept Adopting Party as a member of the Consortium, subject to Adopting Party entering into this Agreement.

Now, therefore, the Representative agrees that the Adopting Party shall be admitted as a member of the Consortium and Adopting Party shall abide by the following terms and conditions:

Article 1. Definitions

1.1. In this Agreement, the following words and phrases shall have the following respective meanings, unless otherwise specified herein:

- (a) "Adopter" means the Adopting Party and any other corporation, firm, partnership, or other form of business entity that has entered into or will enter into an Adopter's Agreement with the Representative;
- (b) "Adopter's Agreement" means this Agreement or any other agreement which

has the same terms and conditions as those provided in this Agreement, and has been or will be entered into between the Representative and an Adopter;

- (c) "Confidential Information" means the (i) iVDR Specification, and (ii) any technical information which is necessary for the definition, revision, or improvement of the iVDR Specification, and which is proprietary and confidential and is disclosed by any member of the Consortium, including but not limited to any Promoter (the "Disclosing Member") to another member (the "Receiving Member") thereof either orally, visually, or in writing or other tangible form (including graphic materials), before, during and after any kind of meeting of the Consortium, with confidential designation. When disclosed in writing or any other tangible form, the Confidential Information shall be clearly marked or labeled "CONFIDENTIAL". When disclosed orally or visually, the Confidential Information shall be identified as confidential at the time of disclosure, with subsequent confirmation in writing by the Disclosing Member to the Receiving Member within thirty (30) days after the disclosure, referencing the date and description of such Confidential Information disclosed. Confidential Information shall also include any documents prepared by the Receiving Member or its Subsidiaries (including representatives, officers, directors, employees or agents of such Receiving Member or its Subsidiaries) which summarize any such Confidential Information of the Disclosing Member;
- (d) "Consortium Code" means the "iVDR Hard Disk Drive Consortium Code" which sets forth rules for structure, operation and management of the Consortium, and attached hereto as Schedule A, the terms of which are incorporated herein by reference pursuant to Article 2 hereof;
- (e) "iVDR Products" means removable hard disk drives and their application systems which fully comply with the iVDR Specification;
- (f) "iVDR Specification" means the "iVDR Hard Disk Drive Specification Ver. 1.0" and any defined, revised or improved versions thereof, and any other specification derived therefrom, which are developed by any of the members of the Consortium and approved by the Consortium;
- (g) "Necessary Patent" means any claims of patent and utility model:
 - (i) which a member of the Consortium solely or jointly with any member of the Consortium owns or controls or may hereafter own or control and as to which and to the extent to which such member has the right to grant licenses without payment of compensation to any third parties (except for a member of the Consortium); and
 - (ii) which is necessarily infringed when implementing the iVDR Specification;

- (h) "Promoters" means and consists of CANON INC., FUJITSU LIMITED, HITACHI GLOBAL STORAGE TECHNOLOGIES JAPAN, LTD., PHOENIX TECHNOLOGIES LTD., PIONEER CORPORATION, SANYO ELECTRIC CO., LTD., SHARP CORPORATION AND VICTOR COMPANY OF JAPAN, LIMITED, each of which is a member of the Consortium as of the date of establishment of the Consortium and has been engaged in the development of the iVDR Hard Disk Drive Specification Ver. 1.0;
- (i) "Representative" means the Representative of the Consortium elected pursuant to the Consortium Code, and has the right to make and enter into this Agreement with the Adopting Party for and on behalf of all members of the Consortium;
- (j) "Subsidiary" shall mean a corporation, firm, partnership, or other form of business entity controlled, directly or indirectly, by a member of the Consortium. "Control" as used in this clause shall mean holding of shares entitled to elect directors or a comparable managing authority, or having the power to direct or cause the direction of the management or policies of the controlled entity in any form.

1.2 In this Agreement, unless otherwise expressly provided:

- (a) a reference to a "party" or "parties" shall be deemed as a reference to a party or parties to this Agreement;
- (b) a reference to an Article or a Section is a reference to an Article or Section of this Agreement;
- (c) words importing the singular number include the plural and vice versa;
- (d) references to this Agreement are references to this Agreement and Schedules hereto;
- (e) headings are for convenience only and shall not in any way affect the interpretation or construction hereof.

Article 2. Agreement to be Bound by the Consortium Code

By entering into this Agreement, Adopting Party hereby acknowledges and agrees to be bound by the Consortium Code, the terms and conditions of which shall be deemed to be incorporated into this Agreement by reference.

Article 3. Confidentiality

- 3.1 To the extent that the Adopting Party is a Disclosing Member, the Adopting Party shall disclose its confidential and proprietary information to the Receiving Member pursuant to disclosing procedures set forth in Section 1.1(c).
- 3.2 To the extent that the Adopting Party is a Receiving Member, the Adopting Party hereby undertakes and agrees as follows:

Adopting Party agrees, on behalf of itself, its Subsidiaries, and their officers, directors, agents and employees, that it will keep in confidence all Confidential Information received from the Disclosing Member and that it will not directly or indirectly disclose such Confidential Information to any third party (except for a member of the Consortium) other than its Subsidiaries, and it will use the Confidential Information only for the purpose of defining, revising, or improving the iVDR Specification.

If Adopting Party is to disclose any Confidential Information which Adopting Party had received from a Disclosing Member to any other member of the Consortium, Adopting Party must inform such other member, in the same manner as set forth pursuant to Article 1.1(c) hereof, that such information is Confidential Information.

- 3.3 The Adopting Party agrees to pay the same degree of care to protect the Confidential Information as it employs with respect to its own confidential information of like importance which it does not desire to be published or disseminated, but no less than a standard of reasonable care. The Confidential Information may be disclosed only to such other members in the Consortium and representatives, officers, directors, employees and agents of the Adopting Party and its Subsidiaries as reasonably require access to such Confidential Information for the purpose(s) of defining, revising, or improving the iVDR Specification.

Article 4. Limitation on Confidentiality/Disclosure by Law

- 4.1 The obligations of confidentiality set out in the foregoing Article 3 shall not apply to any information which is:
- (a) publicly known or available at the time of disclosure, or thereafter made publicly known or available without any breach of the Adopter's Agreement by the Receiving Member;
 - (b) rightfully received by the Receiving Member from a third party, who is not a member of the Consortium, without a duty of confidentiality;
 - (c) already known to the Receiving Member at the time of disclosure without accompanying a duty of confidentiality;

- (d) independently developed by the Receiving Member without use of or reference to any Confidential Information of Disclosing Member as shown by Receiving Member's written records; or
- (e) approved in writing by the Disclosing Member for release.

4.2 In the event that Adopting Party is faced with a legal action and is required to disclose the Confidential Information received hereunder, the Adopting Party shall promptly notify the Disclosing Member and the Consortium, and upon the Disclosing Member's request, shall cooperate with the Disclosing Member in contesting or minimizing the scope of such disclosure.

Article 5. Return of Documents

All Confidential Information furnished to the Adopting Party hereunder shall remain the property of the Disclosing Member or the original Disclosing Member if the Confidential Information has passed through one or more Disclosing Members. Upon the Disclosing Member's written request, or the expiration or termination of this Agreement, the Adopting Party shall promptly deliver to the Disclosing Member or destroy all Confidential Information together with all copies thereof. Upon reasonable request of the Disclosing Member, the Adopting Party shall deliver to the Disclosing Member a destruction certificate.

Article 6. Remedy

Adopting Party acknowledges that its obligations provided in this Agreement with respect to the Confidential Information are necessary and reasonable in order to protect the Disclosing Member and its business. Adopting Party expressly agrees that monetary damages would be inadequate to compensate the Disclosing Member for any breach by the Adopting Party of its covenants and agreements set forth in this Agreement with respect to the Confidential Information.

Accordingly the Adopting Party agrees and acknowledges that any such breach will cause irreparable injury to the Disclosing Member. In addition to any other remedies that may be available in law, in equity or otherwise, the Disclosing Member shall be entitled to obtain injunctive relief against the breach of this Agreement or the continuation of any such breach by the Adopting Party without proving actual damages.

Article 7. Obligation to Grant License for Necessary Patents

7.1 Adopting Party hereby agrees to grant a license under its Necessary Patents to any member of the Consortium on reasonable terms and conditions for the iVDR

Products, provided that such member agrees to grant a reciprocal license for the iVDR Products under its own Necessary Patents to the Adopting Party on reasonable terms and conditions, it being understood that the Adopting Party may withhold or withdraw the grant of license to such other Consortium member in the event that the grant of such reciprocal license as aforesaid is refused.

- 7.2 The obligation to grant a license on reasonable terms as set out in Section 7.1 shall survive the termination or expiration of this Agreement; to the extent such Necessary Patents are indispensable for iVDR Specifications which are approved by the Consortium prior to such termination or expiration. The expiration or termination of this Agreement shall not affect the validity of any Necessary Patents licensed hereunder that is granted prior to such expiration or termination. Adopting Party agrees that the above Section 7.1 shall apply, with respect to any portion of the iVDR Specification defined prior to the expiration or termination of this Agreement, not only to Necessary Patents which have been registered prior to the expiration or termination of this Agreement but also to Necessary Patents of which applications therefor have been filed before the expiration or termination of this Agreement and registered after the expiration or termination of this Agreement.

Article 8. No License

- 8.1 Except as expressly provided herein, no right or license whatsoever, either expressed or implied, is granted to the Adopting Party by any member of the Consortium pursuant to this Agreement under any trade secret, know-how, patent, patent application, trademark, copyright, or other proprietary right now or hereafter owned or controlled by such member of the Consortium.
- 8.2 In the event that the Adopting Party intends to manufacture, sell, use or otherwise dispose of the iVDR Products, the Adopting Party acknowledges the need to obtain licenses under the Necessary Patents from the owner(s) of such Necessary Patents or its agent.

Article 9. No Inducement

The disclosure of Confidential Information or any other information hereunder from a member to any other member of the Consortium does not constitute any representation, warranty, assurance, guaranty or inducement by the disclosing member to any other member of the Consortium with respect to non-infringement of patent or other proprietary right of others.

Article 10. No Warranty

ADOPTING PARTY AGREES THAT THE PROMOTERS MAKE NO WARRANTY

OF ANY KIND IN RESPECT OF THE iVDR SPECIFICATION AND DISCLAIM ALL LIABILITY BASED ON OR IN CONNECTION WITH THE ADOPTING PARTY'S USE OF THE iVDR SPECIFICATION, AND THAT THE PROMOTERS WILL NOT BE LIABLE FOR ANY DAMAGES, WHETHER DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR OTHERWISE (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, INVESTMENT, GOODWILL, BUSINESS OR BUSINESS OPPORTUNITY) BASED ON OR IN CONNECTION WITH THE USE OF THE iVDR SPECIFICATION.

Article 11. Improvement of iVDR Specification

In the event that the Adopting Party solely or jointly with another member of the Consortium takes charge of defining, revising, or improving some part of the iVDR Specification under the approval of the Consortium, the Adopting Party solely or jointly with such member may own the copyright derived from such definition, revision, or improvement, and shall allow the Consortium or its agent to copy and distribute the iVDR Specification including such defined, revised, or improved parts to all members of the Consortium without any compensation to the Adopting Party.

Article 12. Adherence to Laws

Adopting Party shall adhere and be subject to the applicable laws, rules and regulations of its own country, including, but not limited to, laws of copyright, anti-trust and trade practices, and export control. Adopting Party agrees that no Confidential Information disclosed hereunder shall be exported or re-exported, directly or indirectly, to any destination restricted or prohibited by governmental authorities without obtaining authorization from such authorities.

Article 13. Deprivation of Membership of Consortium

In the event of material breach by the Adopting Party of a provision of this Agreement that is not cured within thirty (30) days of a written notice from the Consortium (through its Representative) to the Adopting Party demanding remedy of such breach, the Consortium may deprive Adopting Party of its membership in the Consortium and Representative may terminate this Agreement by written notice to the Adopting Party. Any expiration or termination of this Agreement shall not relieve the Adopting Party of its obligations surviving hereunder.

Article 14. Warranty as to Agreement by Promoters

The Representative hereby represents and warrants to the Adopting Party that Promoters have already agreed in writing to be subject to the same terms and conditions as those applied to the Adopting Party pursuant to this Agreement.

Article 15. Term

15.1 This Agreement shall commence on the Effective Date, and unless terminated according to Article 13 hereof, shall continue in effect until the Adopting Party withdraws from the Consortium, or the Consortium is dissolved pursuant to the Consortium Code.

15.2 Notwithstanding the above Section 15.1, it is agreed that Article 3 and Article 4 shall survive for five (5) years from the expiration or termination of this Agreement, and Articles 1, 5, 6, 7, 8, 9, 10, 11, 14, 16, 17, 18 and 19 shall survive the expiration or termination of this Agreement.

Article 16. Severability

In the event that any provision of this Agreement is proved to be invalid or illegal, such invalidity or illegality shall in no way affect, impair or invalidate any other provision hereof and all other provisions of this Agreement shall remain in full force and effect. In such event, the invalid or illegal provision shall be deemed modified to the extent required to permit its validity or legality in a manner most closely representing the intention as expressed in such invalid or illegal provision.

Article 17. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of Japan.

Article 18. Jurisdiction

The Tokyo District Court of Japan shall have exclusive jurisdiction over any dispute arising in relation to this Agreement.

Article 19. Language

This Agreement shall be made and executed in English and the English version shall be legally binding on both parties, despite of any translations into languages other than English.

Article 20. Entire Agreement

20.1 This Agreement, including the Consortium Code that is deemed to be incorporated

into this Agreement by reference pursuant to Article 2 hereof, constitutes the entire and only agreement between the parties hereto in respect of the subject matter hereof and supersedes and cancels any prior agreements, oral or written, in respect hereto.

20.2 No amendment or change hereof or addition hereto (except as permitted pursuant to a provision of the Consortium Code) shall be effective or binding upon the parties unless reduced to writing and executed by the respective duly authorized representatives of both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicates as of the date first above written, by their duly authorized representatives.

Representative

Adopting Party

_____ SANYO Electric Co., Ltd. _____

Name: Toshiaki Hioki

Name:

Title: Senior Manager

Title:

Date:

Date: