

**AMENDED & RESTATED BYLAWS  
OF  
BLU-RAY DISC ASSOCIATION,  
formerly known as BDA Administration Corp.  
(A California Nonprofit Mutual Benefit Corporation)**

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## Chapter 0. Definitions

**“Affiliated Company”** means any legal entity that is: (i) owned or controlled by a Member; (ii) owning or controlling a Member; or (iii) owned or controlled by any legal entity owning or controlling a Member. For the purpose of this definition, “own or control” shall mean holding more than fifty percent (50%) of the outstanding voting stock or other voting rights entitled to elect members to the board of directors or comparable managing authority of such legal entity, or having the power to direct or cause the direction of the management or policies of the legal entity in any form. For the avoidance of doubt, an Affiliated Company may or may not be a Subsidiary.

**“Alternate”** means an individual who serves in the capacity of a Director in the event of the absence, removal, resignation or death of the Director. For the avoidance of doubt, when serving in the capacity of a Director, an Alternate shall have all rights, privileges and responsibilities of the Director, including but not limited to rights to vote during a BOD meeting.

**“Articles”** means the Articles of Incorporation of BDAAC, filed with the California Secretary of State on September 20, 2004.

**“BDA”** means Blu-ray Disc Association, a California nonprofit mutual benefit corporation, formerly known as BDAAC. For the avoidance of doubt, the BDA shall not mean the Disappeared Entity.

**“BDAAC”** means BDA Administration Corp., a California nonprofit mutual benefit corporation, which is the surviving corporation under Section 5074 of the Code through the Merger. BDAAC changed its name to “Blu-ray Disc Association” on April 5, 2007.

**“BDA Charter”** means the Charter of the Disappeared Entity.

**“BDF”** means a voluntary group of companies, each of which has an interest or is engaged in the development, manufacture and/or sale of products complying with Blu-ray Disc Formats and has executed the Blu-ray Disc Founders Charter effective as of March 15, 2004.

**“Blu-ray Disc Format”** means any written optical disc system format standard adopted by the BDF, Disappeared Entity, BDA or their respective successors. The Blu-ray Disc Formats include without limitation Blu-ray Disc Rewritable format, Blu-ray Disc ROM format and Blu-ray Disc Recordable format.

**“Blu-ray Disc Trademark Rights”** mean any rights in and to the trademarks (including but not limited to logos) and domain names owned or licensed by the BDA. For the avoidance of doubt, Blu-ray Disc Trademark Rights are not included in the definition of “Non-Patent IPRs”.

**“BOD”** means the Board of Directors as described in Clause 9.

**“Bylaws”** means these Amended and Restated Bylaws of the BDA, as they may be further amended from time to time.

**“Chair”** means a Member or an employee of a Member, as the case may be, that has the role of conducting the proceeding of a meeting in the activities of the BDA.

**“Chief Financial Officer”** means the Chief Financial Officer as described in Clause 7 (4) hereof.

**“Code”** means the California Corporation Code.

**“Confidential Information”** means both Confidential Information for General Members and Confidential Information for Contributor Members.

**“Confidential Information for Contributor Members”** is defined in Clause 22.

**“Confidential Information for General Members”** is defined in Clause 22.

**“Consultant/Contractor”** means a non-employee advisor or consultant, or otherwise any person or company without a formal employment relationship with a Member that assists such Member in its participation in the BDA (including the BDA’s subordinate organizations).

**“Contribution Statement”** means a statement of an Entity applying for Contributor Membership in which such Entity sets forth the potential contribution it can make to the development, improvement, technical support of, compliance with or promotion of the Blu-ray Disc Format. The form of the Contribution statement shall be made available by the Secretary to such Entity.

**“Contributor Member”** means a Member with a then effective Contributor Membership as described in Clause 5 (2)(a).

**“Covered Person”** means those entities described in Clause 24.

**“Director”** means a director of the BOD.

**“Disappeared Entity”** means Blu-ray Disc Association, which disappeared as a result of the Merger. For the avoidance of doubt, the Disappeared Entity shall not mean the BDA.

**“Enforcement Officer”** means the Enforcement Officer as described in Clause 7(6) hereof.

**“Entity”** means any corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or governmental body or other legal entity having interest in participating in one of the activities of the BDA as described in Clause 3 of the Bylaws.

**“Essential Patents”** means those claims of an issued patent or patent application that (a) are owned or controlled by a Member (or its Affiliated Company) now or at any future time, (b) would be necessarily infringed by implementing a Blu-ray Disc Format (*i.e.*, when there is no technically plausible non-infringing alternative for implementing the normative requirements of such Format) and (c) cover or read on technology that is described with particularity in such Blu-ray Disc Format.

**“Ex-FC Member”** means any Entity which used to be an FC Member but whose Membership as a Contributor Member was ended for any reason whatsoever.

**“Ex-Member”** means any Entity which used to be a Member but whose Membership was ended for any reason whatsoever.

**“Facilitator”** means the Director designated by the BOD to facilitate the BOD meetings as a BOD Chair or co-Chair and fulfill the Facilitator duties specified in Clauses 8 and 9.

**“FC Member”** means any Contributor Member who has contributed to the development of one or more Blu-ray Disc Format(s). “FC” is an abbreviation of “Format Creating”. For the avoidance of doubt, it shall be deemed that any Contributor Member has contributed to the development of a Blu-ray Disc Format if (i) such Contributor Member was eligible to vote in a TEG on the Blu-ray Disc Format to be presented to the BOD (via the JTC) for approval or (ii) such Contributor Member was not eligible to vote in a TEG on the Blu-ray Disc Format to be presented to the BOD (via the JTC) for approval but has received a decision of the TEG Chair and TEG Vice Chairs based on their sole discretion that such Contributor Member has contributed to the development of the Blu-ray Disc Format after such Contributor Member demonstrated its contribution on the Blu-ray Disc Format to the TEG Chair and TEG Vice Chairs.

**“Former BOD Member”** means a member of the Disappeared Entity with a then effective BOD Membership under the BDA Charter Clause 5(2) (a) and Clause 10 at the time of the Merger.

**“Former Contributor Member”** means a member of the Disappeared Entity with a then effective Contributor Membership under the BDA Charter Clause 5 (2)(b) at the time of the Merger.

**“Former General Member”** means a member of the Disappeared Entity with a then effective General Membership under the BDA Charter Clause 5(2)(c) at the time of the Merger.

**“General Meetings”** mean the meetings as described in Clause 8.

**“General Member”** means a Member having then effective General Membership as described in Clause 5 (2)(b). Notwithstanding anything to the contrary set forth in the Articles or the Bylaws, a General Member shall not be deemed as a member of the BDA within the meaning of Section 5056 of the Code.

**“Initiator”** means the Facilitator or other individual of a Contributor Member designated by a Facilitator that initiates an e-mail voting procedure as described in Clause 9(7).

**“Interested Members”** mean Members having reasonable interest in an enforcement action set forth in Clause 6.

**“JTC”** means the Joint Technical Committee as defined in separate internal rules of the BDA.

**“License Officer”** means the License Officer as described in Clause 7(5) hereof.

**“Majority Vote”** means an affirmative vote of more than 50% of the total number of Members (regardless of Membership class) entitled to vote on such matter and participating in such vote (telephonically, electronically or physically, as applicable); provided that the following numbers shall not be counted in the denominator in the calculation of 50% above; (1) number of abstain vote, and (2) number of Members who did not vote.

**“Member”** means an Entity having then effective Membership in the BDA.

**“Membership”** means the state of being a Member with rights to participate in the activities of the BDA. Accordingly, Contributor Membership means the state of being a Contributor Member and General Membership means the state of being a General Member, pursuant to Clause 5 hereunder.

**“Membership Fee”** means the annual membership fees as set forth in Clause 5(4), as may be amended by the BOD annually.

**“Merger”** means a statutory merger under the Code between BDAAC and the Disappeared Entity, in which the BDA was the surviving corporation under Section 5074 of the Code and the Disappeared Entity was the disappearing corporation under Section 5048 of the Code.

**“Moderator”** means the individual designated by a Facilitator to moderate discussions for a given BOD meeting or meetings on behalf of that Facilitator pursuant to Clause 9(6).

**“Non-Patent IPRs”** mean technical information, know-how, trade secrets and other intellectual property rights except Patent IPRs, copyrights and Blu-ray Disc Trademark Rights.

**“Objectives”** mean the activities as set forth in Clause 3 hereof.

**“Officers”** mean the officers as described in Clause 7 hereof.

**“Patent IPRs”** mean patent rights, utility model rights, rights deriving from inventor’s certificates and other equivalent rights under any laws or international treaties or conventions.

**“Potential Licensee Affiliated Company”** means any legal entity that is (i) owned or controlled by a Potential Licensee (as defined in Clause 16), (ii) owning or controlling a Potential Licensee or (iii) owned or controlled by any legal entity owning or controlling a Potential Licensee. For the purpose of this definition, “own or control” shall mean holding more than 50% of the outstanding voting stock or other voting rights entitled to elect members to the board of directors or comparable managing authority of such legal entity, or having the power to direct or cause the direction of the management or policies of the legal entity in any form.

**“President”** means the President as described in Clause 7(1) hereof.

**“Proxy”** shall mean the authority given to an individual satisfying the qualifications as a Director as provided in Clause 9(3) to attend BOD meetings on behalf of such Director pursuant to the Bylaws; provided, however, that Proxy does not include any right to vote on behalf of such Director.

**“Quasi-Unanimous Decision”** means (1) a decision on a matter with affirmative votes of more than eighty percent (80 %) of the total number of all Members (regardless of Membership class) entitled to vote on such matter, or (2) a decision on a matter with affirmative votes of more than eighty percent (80 %) of the total number of all Directors. For the avoidance of doubt, the following numbers shall be counted in the denominator in the calculation of eighty percent (80 %) above; (1) the number of abstain vote, and (2) the number of such entitled Members or Directors who did not vote.

**“Secretary”** means the Secretary as described in Clause 7(3) hereof.

**“Secretary Office”** means the Secretary Office managed and administered by the Secretary in order to perform the duties of the Secretary.

**“Special Super Majority Vote”** means, in a voting procedure on a matter, (1) affirmative votes of at least sixty-six and seven-tenth percent (66.7%) of the total number of Members (regardless of Membership class) entitled to vote on such matter, or (2) affirmative votes of at least sixty-six and seven-tenth percent (66.7%) of the total number of Directors. For the avoidance of doubt, the following numbers shall be counted in the denominator in the calculation of sixty-six and seven-tenth percent (66.7%) above; (1) the number of abstain vote, and (2) the number of such entitled Members who did not vote or the number of Directors who did not vote.

**“Subsidiary”** means an Affiliated Company that is owned or controlled, directly or indirectly, by a Member, so long as such ownership or control exists. For purposes of this definition, “own or control” shall have the meaning as defined in the definition of “Affiliated Company”.

**“Super Majority Vote”** means, in a voting procedure on a matter, (1) affirmative votes of at least sixty-six and seven-tenth percent (66.7%) of the total number of Members (regardless of Membership class) entitled to vote on such matter and participating in such vote (telephonically,



electronically or physically, as applicable), or (2) affirmative votes of at least sixty-six and seven-tenth percent (66.7%) of the total number of Directors participating in such vote (telephonically, electronically or physically, as applicable); provided that the following numbers shall not be counted in the denominator in the calculation of sixty-six and seven-tenth percent (66.7%) above; (1) the number of abstain vote, and (2) the number of such Members or such Directors who did not vote.

**“TEG”** means the Technical Expert Group as described in separate internal rules of BDA.

**“Transitional Term”** means the period beginning on the Merger and ending on December 31, 2008.

**“Unanimous Consensus”** means affirmative votes on a voting item of all then-current Directors, excluding any Director/Alternate who is required to abstain from voting on such item pursuant to the Conflict of Interest Policy, regardless of any quorum requirement hereunder.

**“Undertaking”** means a written undertaking in a form made available by the Secretary to any Former BOD Member, Former Contributor Member or Former General Member. The Undertaking shall include, without limitation, provisions that require all Members to agree to the Bylaws and, if any, other rules and policies to be determined by the BOD.

**“Vice President”** means the Vice President as described in Clause 7(2) hereof.

## **Chapter I. Introduction**

### **Clause 1. Purpose of the Bylaws**

The purpose of the Bylaws is to provide the structure and rules for governance and operation of the BDA.

### **Clause 2. Duration**

The BDA commenced its existence upon filing of the Articles on September 20, 2004 and shall continue its existence until dissolved: (i) at the option of the BOD by a vote pursuant to the provisions of the Bylaws; or (ii) pursuant to Section 6510 et seq. of the Code.

### **Clause 3. Objectives**

The BDA is a voluntary association of hardware manufacturers, software firms, media manufacturers, content providers and other Entities having an interest in Blu-ray Disc Formats.

The Objectives are to conduct the following activities:

- (1) to establish Blu-ray Disc Formats for those applications that would be in the best interests of consumers and users, including revisions, improvements and enhancements thereto;
- (2) to organize activities to verify compliance with the Blu-ray Disc Formats to enable the broad acceptance of the Blu-ray Disc Formats;
- (3) to promote the Blu-ray Disc Formats for the recording, playback, storage and distribution of large volume content including high definition content;
- (4) to license the Blu-ray Disc Formats (not including Patent IPRs) and Blu-ray Disc Trademark Rights ;
- (5) to enforce such licenses for the benefit and success of the Blu-ray Disc Formats;
- (6) to maintain and enforce the copyrights in and to the Blu-ray Disc Formats and the Blu-ray Disc Trademark Rights; and
- (7) to provide useful information to those who are interested in supporting the Blu-ray Disc Formats.

For the avoidance of doubt, the Objectives do not prevent or obstruct any Member in any way from participating in or from supporting any research or development for any format standard which might be viewed as a competitive standard format to Blu-ray Disc Formats; provided, however, that such participation or support of research and development shall not violate any confidentiality obligations hereunder.

**Clause 4. Compliance with the Bylaws and laws**

All Members shall comply at all times with these Bylaws and applicable laws and regulations relevant to the activities of the BDA, including without limitation applicable antitrust laws.

Detailed antitrust guidelines may be issued by the BDA to Members from time to time and shall be observed by all then-current Members.

## **Chapter II. Membership**

### **Clause 5. Membership**

#### **(1) Membership**

Membership in the BDA is open to any Entity that demonstrates interest and engages in developing, improving or otherwise supporting the Blu-ray Disc Formats in accordance with the Objectives. Members shall not be required to support the Blu-ray Disc Formats to the exclusion of other formats.

#### **(2) Classes of Membership**

The BDA shall have two (2) classes of Membership: (i) Contributor Membership; and (ii) General Membership. Subject to Sections (6) and (7), the annual Membership shall be automatically renewed at the end of each fiscal year as defined in Clause 19.

##### **(a) Contributor Membership**

All Former BOD Members and Former Contributor Members shall acquire Contributor Membership as of the date of the Merger; provided, however, that such Former BOD Member or Former Contributor Member shall have completed its payment of the applicable Membership Fee for the fiscal year of which the Merger is made effective. Such Former BOD Member or Former Contributor Member shall not participate in any of the activities set forth in the next paragraph unless and until such Former BOD Member and Former Contributor Member has signed the Undertaking.

The Contributor Membership is open to any Entity that has sent to the BOD via the Secretary a fully filled out and signed Contribution Statement together with other necessary application documents to be designated by the Secretary and has been approved by the BOD on the basis of such Entity's potential beneficial contribution to the Blu-ray Disc Format. A Contributor Member shall be entitled to: (i) participate in format-development activities; (ii) access to the technical specifications of the Blu-ray Disc Format developed through the format development activities for such format development purposes only; (iii) attend all General Meetings and specific activities of the committees as designated by BOD; and (iv) nominate a candidate to serve on the BOD.

##### **(b) General Membership**

All Former General Members shall acquire General Membership as of the date of the Merger; provided, however, that such Former General Member shall have completed its payment of the applicable Membership Fee for the fiscal year of which the Merger is made effective. Such Former General Member shall not participate in any of the activities set forth in the next paragraph unless and until such Former General Member has signed the Undertaking.

The General Membership is open to any Entity that wishes to obtain access to certain technical information developed as part of the format-development activities as well as general information released by the BDA and such Entity will obtain its General Membership upon (i) signing necessary documents designated by the Secretary and (ii) completing the payment of the applicable Membership Fee pursuant to the procedural instructions provided by the Secretary. General Members shall be entitled to attend the General Meetings and specific activities of the committees as designated by BOD. General Members shall not be entitled to vote in any meeting related to the BDA. Notwithstanding anything to the contrary set forth in the Articles or the Bylaws, a General Member shall not be deemed as a member of BDA within the meaning of Section 5056 of the Code.

### **(3) Application**

All applications for Membership shall be submitted to the Secretary pursuant to the procedural instructions provided by the Secretary. The Secretary shall be entitled to make inquiries to any applying Entity as to any vague statement on the application from the Entity, its legal status, its contact information, its organizational background, actual activities in the past and/or constituting members of the Entity only to the extent that the Secretary can clarify the intention stated on the application or confirm that the applying Entity has standing to comply with and fulfill the rules and obligations, including but not limited to confidentiality obligation, under the Bylaws. The Secretary shall be entitled to reject an application from an Entity if: (i) the Secretary reasonably believes that the Entity does not have standing to comply with and fulfill the rules and obligations under the Bylaws; or (ii) the applying Entity consistently fails to provide adequate responses or does not respond within reasonable period of time to the above inquiries from the Secretary.

With respect to those applications for Membership requiring approval of the BOD pursuant to the Bylaws, such applications shall be sent to the Secretary and submitted by the Secretary to the BOD. In order for such approval to be effective, such approval must be made by a Super Majority Vote of the BOD. The BOD shall use reasonable efforts to vote on such applications within one (1) month following the BOD's receipt of the applicable application.

### **(4) Membership Fees**

The Membership Fee shall be: (i) Fifty Thousand United States Dollars (US \$50,000.00) for a Contributor Member whose representative serves on the BOD; (ii) Twenty Thousand United States Dollars (US \$20,000.00) for a Contributor Member whose representative does not serve on the BOD; and (iii) Three Thousand United States Dollars (\$3,000.00) for a General Member. The BOD may review and adjust the Membership Fee, if necessary, on an annual basis. The Membership Fee for existing (and renewing) Members shall be paid within sixty (60) days from January 1st of each fiscal year commencing on January 1st and ending on December 31st. The Membership Fee for a new Member shall be paid within sixty (60) days from the issuance date of an invoice from the Secretary. The Membership Fee shall cover one (1) fiscal year; provided, however, that any applicable Membership Fee for a particular fiscal year will be reduced to half if an Entity receives an acceptance to a Membership after June 30th in such fiscal year. Any fees or dues payable hereunder shall be paid net of any present or future tax, assessment, or government or

bank charge. Any paying Entity or Member shall gross up the fees or dues, if necessary, so that after deducting or withholding any applicable tax, assessment or charge, a party or organization duly authorized by the BOD and designated in an invoice issued by the Secretary can receive the full amount of the fees which would have been received if no deduction or withholding had been required.

**(5) Subsidiaries**

Any Subsidiary of a parent Member shall possess the same rights to participate in BDA meetings as such parent Member, so long as such parent Member shall remain a Member; however, no Subsidiary shall enjoy any voting rights by virtue of its being a Subsidiary of a Member. A Subsidiary can only vote on behalf of its parent Member. Any Subsidiary is bound by the same rules and obligations hereunder as the parent Member and the parent Member will be jointly and severally responsible with its Subsidiaries for all legal and other consequences in the event of any breaches of the Bylaws by one of its Subsidiaries.

Any Subsidiary that wishes to enjoy the rights and benefits (subject to the applicable restrictions) of the Membership shall send in its Membership application to the BOD via the Secretary and state therein the reasons for its wish to enjoy a Membership in the BDA, whether as a Contributor Member or General Member. Approval of such application by the BOD shall be subject to a Super Majority Vote of the BOD.

If and when an application from a Subsidiary is duly approved by the BOD as set forth above, and such Subsidiary has paid the applicable Membership Fee, the Subsidiary shall enjoy voting rights in accordance with the Bylaws; provided that such Subsidiary shall only have voting rights at the General Meetings and other meetings as approved by the BOD in advance and in writing. For the avoidance of doubt, even after a Subsidiary obtains a Membership, the Subsidiary can maintain its status and rights hereunder as a Subsidiary.

**(6) Resignation**

Any Member may resign from Membership in the BDA at any time upon thirty (30) days' prior written notice to the Secretary. Such resignation shall be effective thirty (30) days after the date of receipt of such notice of resignation by the Secretary; provided, however, that any obligation of such Ex-Member, which has accrued before such resignation is effective, shall survive resignation and shall stay in force.

**(7) Termination of Membership**

Membership in the BDA may be suspended or terminated by the BOD in the event such Member:

- (a) is more than sixty (60) days in default of payment of the applicable Membership Fee;
- (b) has breached any of its obligations under these Bylaws and other applicable internal rules of the BDA approved by the BOD; or

(c) has failed to duly execute and deliver to the Secretary the Undertaking within sixty (60) days from the date of the Merger.

The BOD shall follow the following procedures to suspend or terminate a Membership in the BDA:

(a) The BOD shall give the Member at least fifteen (15) days' prior written notice of the proposed suspension or termination and the reasons for the proposed suspension or termination. Such notice shall be given by any method reasonably calculated to provide actual notice. Such notice given by mail shall be sent by first-class or registered mail to such Member's last address as shown on the BDA's records.

(b) Such Member shall be given an opportunity to be heard, either orally or in writing, at least five (5) days before the effective date of the proposed suspension or termination. The hearing shall be held, or the written statement considered, by the BOD to determine whether the proposed suspension or termination should occur.

(c) The BOD shall decide whether the Membership should be suspended or terminated.

(d) Any action challenging a suspension or termination of a Membership, including a claim against defective notice, must be commenced within one (1) year after the date of the suspension or termination.

In addition to the foregoing provisions of this Clause 5(7), in the event that a Member uses any company name, commercial name, trademark and/or domain name, that may, in the reasonable opinion of the BOD, cause confusion adverse to the Blu-ray Disc Format or constitute misuse of the Blu-ray Disc Format-related trademarks, and such Member does not comply with the request of the BOD to assign or transfer all of its rights in such company name, commercial name, trademark and/or domain name to an entity designated by the BOD, or to withdraw or waive all of its rights to use such company name, commercial name, trademark and/or domain name, such Member's Membership in the BDA may be terminated by the BOD upon written notice to such Member of such termination.

**(8) Effect of Resignation or Termination of Membership**

A Member whose Membership is terminated by the BOD or who resigns from the BDA shall no longer have the right to participate in any of the activities of the BDA and/or receive information, as applicable. Any Ex-Member shall not be permitted to reapply for Membership in the BDA unless the BOD consents to such reapplication by its Super Majority Vote.

No resignation, termination or suspension of any Membership shall relieve any Member from full payment of any and all dues and other fees and assessments remaining unpaid on the date of such resignation, suspension or termination. Upon resignation, suspension or termination of Membership, a Member shall not be entitled to a refund of any amounts paid during Membership.

Suspension of any Membership shall not relieve a Member from any obligation under this Chapter.

**(9) Transition to another level**

In the event of transition to a different level of Membership, the Member shall have to pay the additional applicable Membership Fee, however in the event the Membership Fee for the new level of Membership would be lower than the fee already paid, there will be no refund of any amounts already paid.

**(10) Transfer of Membership**

No Member may assign or otherwise transfer its Membership to any entity without the prior written consent of the BOD, except in the event of a change of control or by operation of law. Any such assignment or transfer shall be effective only upon the agreement in writing by Member's intended assignee to: (i) be bound by the terms and conditions of the Bylaws; and (ii) assume all the obligations and liabilities of such Member under the Bylaws. Any attempted assignment or transfer contrary to the terms of this section shall be null and void and have no effect.

**(11) Use of Names**

Each Member agrees and consents to the use of its corporate name in membership lists on the BDA website and membership lists in BDA promotional materials; provided that each name listed shall be of equal prominence with all other names listed. Any other public use of Member's name by the BDA shall require each Member's prior written consent.

**Clause 6. Enforcement**

Unless otherwise determined by the BOD, and subject to third party beneficiary rights or other enforcement rights in contracts to which BDA is a party, each Member agrees and consents that the BDA shall solely, subject to the approval of the BOD and to the extent permitted by law, initiate legal proceedings or make a claim against any Member, Ex-Member or any third party on reasonable legal grounds in relation to the (i) copyrights in and to any Blu-ray Disc Format, (ii) Blu-ray Disc Trademark Rights, (iii) license of the Blu-ray Disc Format (excluding Patent IPRs) and (iv) other activities of the BDA .

Any decision by the BDA to initiate legal proceedings or make a claim against any Member, Ex-Member or any third party on reasonable legal grounds in relation to the activities of the BDA shall be made by a Super Majority Vote of the BOD, after expending reasonable efforts to amicably settle such dispute as required under Clause 28 below.

In the event the BDA or an entity designated by the BOD will be asked to represent the Interested Members in such proceedings or claims and the BDA or such entity accepts such representation,



the Interested Members agree to execute the necessary authorization documents and provide full cooperation to the BDA or such entity.

All Members agree that, in accordance with the foregoing enforcement rule, the BDA may make a claim or initiate a legal proceeding against a Member when such Member breaches any term or condition of the Bylaws, the Undertaking, any agreement, application, Contribution Statement or other commitment duly prepared by the BDA and executed by Members in connection with the activities of the BDA and further agree not to contend or argue that the foregoing enforcement rule is irrelevant, inapplicable or void under any applicable law or legal theory.

## **Chapter III. Organization**

### **Clause 7. Officers**

The BOD shall elect, via secret voting, and appoint the President, Secretary and Chief Financial Officer, and if necessary, may appoint the other officers such as those set forth herein. The BOD shall appoint a witness who shall initiate a secret voting procedure to elect the Officers.

#### **(1) President**

Subject to the control of the BOD, the President shall be the general manager and chief executive officer of the BDA. The details of the roles and responsibilities of the President shall be determined by the BOD. The President shall have such other powers and duties as the BOD or the Bylaws may require.

#### **(2) Vice President**

If the President is absent or disabled, the Vice Presidents, if any, in order of their ranks as fixed by the BOD, or, if not ranked, a Vice President designated by the BOD, shall perform all duties of the President. When so acting, the Vice President shall have all powers of and be subject to all restrictions on the President. The Vice President shall have such other powers and perform such other duties as the BOD or the Bylaws may require.

#### **(3) Secretary**

The Secretary shall handle general administrative arrangements for the activities of the BDA and shall handle Membership applications and collect and administer Membership Fees and shall administer the day-to-day financial accounting pursuant to CFO's direction.

The Secretary shall make arrangements for the General Meetings and BOD meetings, provide and distribute the agenda for each meeting to the relevant Directors or Members and maintain, at the BDA's principal office or such other place as the BOD may designate, an archive of relevant documents such as minutes (including but not limited to minutes of BOD meetings and General Meetings), reports, agreements, press releases, presentation materials, etc. In addition, the Secretary shall keep updated information of Members (name, address and class of Membership) and mailing list of all Members.

The Secretary shall maintain a register which includes, but is not limited to, guidelines, agreements and policies generated in the course of BDA activities. The Secretary shall update the register from time to time and shall make the register available to General Members and Contributor Members as appropriate, subject to Clause 22.

In addition, the Secretary shall be responsible for distributing to the General Members all information that the Secretary is instructed by the BOD or any other organization of the BDA to

share with the General Members and maintaining copies of such batches of information, together with a list of addressees that received such information.

Subject to the approval of the BOD, the Secretary may form, manage and administer the Secretary Office in order to perform the aforementioned tasks.

The Secretary shall have such other powers and perform such duties as the BOD or the Bylaws may require.

**(4) Chief Financial Officer**

The Chief Financial Officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and accounts of the BDA's properties and transactions. The Chief Financial Officer shall send or cause to be given to the Members such financial statements and reports as are required to be given by law, by the Bylaws, or by the BOD. The books of account shall be open to inspection by any Director at all reasonable times.

The Chief Financial Officer shall: (i) deposit, or cause to be deposited, all money and other valuables in the name and to the credit of the BDA with such depositories as the BOD may designate; (ii) disburse the BDA's funds as the BOD or any Contributor Member duly designated by the BOD may order; (iii) render to the President and the BOD, when requested, an account of all transactions and of the financial condition of the BDA; and (iv) have such other powers and perform such other duties as the BOD or the Bylaws may require.

**(5) License Officer**

At the sole discretion of the BOD, the BOD may appoint a License Officer who is in charge of license administration on Blu-ray Disc Formats and Blu-ray Disc Trademark Rights. Unless otherwise determined by the BOD, the duties of the License Officer include (i) executing or causing an entity appointed by the BOD to execute license-related agreements, including but not limited to format and logo license agreements, information agreements and content participant agreements, on behalf of the BDA, (ii) exercising and performing or causing such entity to exercise and perform rights and obligations of the BDA under such agreements, and (iii) performing other tasks inextricably related to the foregoing (i) and (ii) or assigned by the BOD from time to time.

**(6) Enforcement Officer**

At the sole discretion of the BOD, the BOD may appoint an Enforcement Officer who is in charge of enforcement administration on BDA's rights in and to Blu-ray Disc Formats and Blu-ray Disc Trademark Rights. Unless otherwise determined by the BOD, the duties of the Enforcement Officer include (i) recommending the BOD the enforcement plans, which may be made upon instruction from the BOD and/or President, (ii) organizing a group of experts for studying and making enforcement plans upon instruction from the BOD and/or President on a case-by-case basis, (iii) implementing enforcement plans that have been approved by the BOD, and (iv)

performing other tasks inextricably related to the foregoing (i), (ii) and (iii) or assigned by the BOD from time to time.

**(7) Other Officers**

The BOD may appoint other officers, as may be necessary. The details of the roles and responsibilities of such officers shall be determined by the BOD.

**(8) Term**

The term of office of an Officer is two (2) years from the date such Officer is appointed by the BOD.

**Clause 8. General Meeting**

**(1) Objectives and Activities**

A General Meeting shall be held once a year upon the call of the BOD. Such meeting shall be notified by the Secretary in writing to all Members at least thirty (30) days prior to the scheduled meeting date.

At each General Meeting, the BOD shall report a summary of the activities of the BDA during the past year (including adoption of Blu-ray Disc Formats), as well as the plan for the next year's activities.

**(2) Participants**

All Members shall be entitled to attend and participate in discussions at the General Meetings.

**(3) Organization**

The General Meeting shall be presided by one or more of the Facilitators, who may be subject to rotation by and amongst themselves.

**(4) Decisions by General Meeting**

At a General Meeting, the presence in person or by a proxy of at least fifty percent (50%) of all Contributor Members shall be required to constitute a quorum. Decisions may only be made at a General Meeting if such quorum is established.

Only Contributor Members who reached such status as of thirty (30) days prior to such General Meeting shall be entitled to vote at such General Meeting and shall be counted in the denominator for the purpose of determining the existence of a quorum. Each such Contributor Member shall have one (1) vote in each General Meeting, which vote may be made in person, by a proxy or in writing, the manner of which shall be designated by the BOD.

The General Meeting shall approve or make decisions on the following:

- (a) annual Membership Fees proposed by the BOD;

(b) annual statement of accounts for BDA submitted by the BOD; and

(c) annual budget of the BDA prepared by the BOD.

Provided that the quorum has been reached, decisions taken at the General Meeting shall require a Majority Vote of all those present and entitled to vote at such meeting.

## **Clause 9. Board of Directors (“BOD”)**

### **(1) Objectives**

The BOD shall serve as the executive body of the BDA and exclusively shall have the ultimate authority to approve a completion and establishment of any Blu-ray Disc Format and other matters to be decided as the BDA.

### **(2) Activities**

The BOD shall have BOD meetings no less than once per year in which it may discuss activities of the BDA and make decisions on, including but not limited to, proposals submitted by the internal organizations of the BDA, Membership applications for Contributor Membership, and applications of Ex-Members, Ex-FC Members or Subsidiaries, and budget and enforcement issues.

### **(3) Qualifications**

A Director and an Alternate must be at least eighteen (18) years of age and must not have any felony convictions. Each of a Director and an Alternate shall be a director, an officer, an employee, or an individual acting in the capacity of a Consultant/Contractor of the Contributor Member that nominated such Director, or of one of such Contributor Member’s Affiliated Companies.

### **(4) Nomination and Appointment**

During the Transitional Term, each Contributor Member who was a Former BOD Member shall: (i) select its representative to serve as a Director; and (ii) fill any vacancy created by a resignation or removal of its representative as a Director.

After the Transitional Term, all Directors, together with corresponding Alternates for each Director, shall be elected at each election of the Directors to be held biannually, together with the corresponding Alternates. The detailed procedures for the election and the number of the Directors to be elected shall be determined by the BOD that conducts the election. Only Contributor Members may nominate candidates to serve as the Directors and Alternates. Such nomination is limited to one (1) nominee for a Director, together with up to two (2) corresponding Alternates, per each Contributor Member.

Additional obligations shall be undertaken by a Contributor Member whose representative serves as Director. The details of these obligations are available upon request to any General Member that has applied to become a Contributor Member or to any Contributor Member, in each case under a non-disclosure agreement separately provided by the Secretary Office.

**(5) Term and Replacement**

The effective term of a Director immediately shall cease upon (i) the Director failing to fulfill the qualifications of a Director hereunder, (ii) the resignation or termination of Membership of the Contributor Member designating such Director or (iii) the change of membership class of the Contributor Member designating such Director from a Contributor Member to a non-Contributor Member.

After the Transitional Term, the term of office of Directors, except as otherwise indicated in this paragraph, shall be two (2) years from January 1<sup>st</sup> of the year immediately after the year in which such Directors were elected (“Term”). Any vacancy created by termination of a Director from the BOD pursuant to the Clause 9(5)(i) shall be filled by one (1) of the corresponding Alternates for such terminated Director (“Replacement Director”). The term of a Replacement Director or a Director additionally elected or appointed pursuant to this Bylaws shall conclude concurrently with the Term of the other Directors then serving on the BOD.

After the Transitional Term, if a corresponding Alternate for any Director resigns, dies, becomes incompetent, or otherwise becomes unavailable, then such Contributor Member may appoint such Alternate’s replacement provided, however, that the appointment of such replacement Alternate shall be effective after BOD approval of the appointment based on his/her qualification and one (1) calendar week after the date when all then-current Contributor Members are informed of the appointment unless the Secretary receives written objections to the appointment from twenty percent (20%) or more of such informed Contributor Members within the one (1) calendar week period, in which case, the appointment of such replacement Alternate shall be deemed rejected and the appointment shall not be effective. If the replacement Alternate is rejected, the Contributor Member may seek to appoint another replacement Alternate until a replacement Alternate is successfully appointed by such Contributor Member pursuant to the above procedure.

The BOD can adjust the number of the Directors. Such adjustments to the number of the Directors can only be made by a Special Super Majority Vote of the BOD. In any event the total number of the Directors shall not exceed twenty-five (25).

The BOD can initiate an election to elect additional Directors (and after the Transitional Term, together with the corresponding Alternates) from any Contributor Member whose representative does not serve on the BOD to the extent that the number of the Directors including such additional Directors does not exceed the number of the Directors as duly adjusted or determined by the BOD in accordance with the Bylaws. Under due consideration of equal treatment among the Contributor Members sending their representative as Directors including such Contributor

Member sending its representative as the additional Director, the BOD shall employ procedures, criteria, terms and conditions for the election that are reasonably equivalent to those for the election in which the then-current Directors were elected. Notwithstanding the foregoing, only by a Quasi-Unanimous Decision of the BOD under an urgent and critical situation where the BOD reasonably believes the acceptance of a Director from a specific Contributor Member whose representative does not serve on the BOD will significantly enrich the then-current status of the BDA or uncommonly advance the realization of the Objectives of the BDA, the BOD may appoint the Director nominated by such Contributor Member (and after the Transitional Term, together with the corresponding Alternates) without any election; provided, however, that the appointment of the additional Director shall be effective one (1) calendar week after the date when all then-current Contributor Members are informed of the appointment unless the Secretary receives written objections to the appointment from twenty percent (20%) or more of such informed Contributor Members within the one (1) calendar week period. For the avoidance of doubt, the provisions set forth in the third paragraph of Clause 9 (4) shall also apply.

#### **(6) Organization**

BOD shall designate one or more Facilitators, and each BOD meeting shall be presided by one of the Facilitators or the Moderator, if one is designated.

Each Director shall be notified by the Secretary in advance of any BOD meeting so that each Director can reasonably prepare for and attend such BOD meeting. Each Director has a right to attend and shall make a reasonable effort to attend each BOD meeting.

Regular or special BOD meetings shall be held at a place proposed by any of the Directors and accepted by other Directors or at a place designated by the Secretary in proper consultation with the Directors.

The BOD meeting shall be hosted by a Contributor Member who nominated the hosting Director on a rotating basis. Any excess costs incurred over the amount attributed in the BDA budget to the organization of a BOD meeting shall be paid by the Contributor Member who nominated the hosting Director incurring such excess costs.

One or more of the Facilitators shall arrange the meetings by preparing the agenda, setting meeting places, organizing the schedule, taking minutes and distributing minutes and other related documents among the Directors, in co-operation with the Secretary.

The current Facilitator may, with prior notice to BOD, appoint an individual to act as the Moderator of the BOD meeting, provided that the Moderator shall meet the qualifications of a Director as set forth in Clause 9(3) and be affiliated with the same Contributor Member as the Facilitator who appoints such Moderator.

#### **(7) Decisions by BOD**

Any decision of the BOD will enter into force on the date specified in such decision or on the date when such decision is made if no effective date is specified in such decision.

Except for those BOD decisions that are subject to special voting rules specifically set forth in the Bylaws, the BOD shall make all decisions in accordance with the voting rules below.

(a) The Directors shall decide by Unanimous Consensus.

(b) If Unanimous Consensus cannot be reached, a decision shall be made by a Super Majority Vote of the Directors; provided, however, that such Super Majority Vote provision is subject to, and shall be superseded by, the voting rules for specific issues as set forth in any BOD resolution(s) approved by its Unanimous Consensus that expressly require a unanimous decision of the BOD prior to the adoption and/or approval of any subsequent contradictory and/or inconsistent BOD resolutions.

(c) During the Transitional Term, a Director that cannot be physically present at a BOD meeting due to any event beyond the reasonable control of such Director, including but not limited to acts of God, strikes, lockouts, accidents in transportation and/or any other causes of similar effect (“Absent Director”), can participate in the BOD meeting and the voting during such BOD meeting by telephone or video conference; provided that such Absent Director may grant Proxy to an individual who is designated by the Contributor Member selecting such Absent Director (provided, however, such individual shall meet the qualifications set forth in Clause 9(3) hereof). While such individual under relevant Proxy is not entitled to cast any vote on behalf of the Absent Director granting such Proxy during any BOD meeting, such individual may express affirmation or negation on any voted items, which may be considered as reference information by then-attending Directors, in the same manner as taken by then-attending Directors during the BOD meeting in which such individual participates. For the avoidance of doubt, the foregoing rules on Proxy shall apply to the Facilitator.

After the Transitional Term, any Absent Director may designate an Alternate with whom such Director was elected or whom an applicable Contributor Member appointed pursuant to Clause 9 (5) hereof to serve in the capacity of such Director only during the absence of such Director. Such Director shall notify in advance the Secretary and all other Directors in writing of the designated Alternate and the period during which the Alternate will serve in the capacity of the Director.

(d) Abstention shall be considered as a waiver of voting right and shall not be counted either for or against the proposal being voted on.

(e) A quorum shall be present at any meeting of the BOD if no less than two-thirds (2/3) of all Directors and Alternates entitled to vote are present at the meeting in person (including via telephone or video conference); provided, however, that presence of any individual under



relevant Proxy at any BOD meeting shall not be deemed presence of any Director granting such Proxy. If such quorum shall not be established at any BOD meeting, the Directors and Alternates present in person at such meeting can adjourn the BOD meeting from time to time, without notice other than announcement at the meeting, until such quorum is established.

(f) If and when a decision should be made by the BOD before a next BOD meeting, then the BOD may make the decision in accordance with the e-mail voting rules below.

(i) INITIATION: The Initiator may initiate an e-mail voting procedure by submitting to all Directors by an e-mail clear and succinct written description of matters to be considered and voted by the Directors and, if the Initiator deems necessary, the Secretary with materials to be referred to, if any. If such materials are attached to the e-mail from the Initiator, the Initiator is expected to paste the text of such attached materials in the message space of the e-mail to the extent it is technically not difficult for the Initiator. If the e-mail voting procedure is initiated by the Initiator on a matter within seven (7) days to a scheduled BOD meeting, the Directors shall discuss and, if necessary and possible, vote on the matter during the BOD meeting.

(ii) VOTING SCHEDULE: As a principle, the Initiator shall set a time limit for casting a vote in an initiated e-mail voting procedure ten (10) or more calendar days after initiating such e-mail voting procedure; provided that the Initiator can request that each Director cast a vote within a shorter time frame.

(iii) VOTING COUNT: Each Director will cast a vote 'yes/yea' or 'no/nay' to a proposed matter by sending an e-mail clearly so stating to the Initiator. Other indications made by any Director will not be deemed as a vote. 'Yes/yea' votes indicate a vote in favor of a proposal. 'No/nay' votes indicate a vote against a proposal. If a Director does not cast 'yes' or 'no' ('yea' or 'nay') vote on a proposal, the Initiator will record that such Director did not vote on the proposal.

A failure of any Director to vote within the time frame set by the Initiator shall be recorded as 'not voting.' A record of 'not voting' shall not be counted towards establishing a quorum. At a Director's request, such Director's vote may be recorded as an "abstention." An "abstention" vote shall be counted towards reaching a quorum but shall not be counted either for or against the proposal being voted on. The Initiator shall acknowledge the receipt of a vote by replying to the voting Director's email in which the Director voted. In acknowledging the Director's vote, the Initiator shall confirm such Director's 'yes' ('yea'), 'no' ('nay') or 'abstention' vote.

At any time prior to the time limit set by the Initiator for a voting procedure, if both quorum and the minimum number of 'yes/yea' votes required to approve a proposed matter have been met, or if the minimum number of 'no/nay' votes required to reject a

proposed matter has been met, the proposed matter shall be deemed decided at that earlier time.

For purposes of each e-mail voting procedure, a quorum is reached when no less than four-fifth (4/5) of the Directors vote 'yes/yea' or 'no/nay', or request to count its vote as "abstention". If a quorum is not reached, the Initiator shall report it to the BOD and reinstate an e-mail voting procedure for a proposed matter that has not been decided due to the non-establishment of the quorum until such quorum is established.

Within twenty-four (24) hours of the end of the voting period, the vote tally shall be reported to all Directors specifying the number of 'yes'/'yea' votes, 'no'/'nay' votes, 'abstention' votes and 'not voting' Directors.

A proposal brought in an e-mail voting procedure is approved/passed with a Super Majority Vote of the Directors.

(iv) ALTERNATE: After the Transitional Term, any Director may designate an Alternate with whom such Director was elected or whom an applicable Contributor Member appointed pursuant to Clause 9 (5) hereof to participate in an e-mail vote by sending a prior written notice of such designation to the Initiator and/or the Secretary, subject to either of the following circumstances: (a) if such Director cannot cast an e-mail vote due to any event beyond the reasonable control of such Director, including but not limited to acts of God, strikes, lockouts, accidents in transportation and/or any other causes of similar effect; or (b) if such Director is taking a leave for a certain period (for example, more than two (2) weeks) and such Director is unable to access e-mail during such period. For the avoidance of doubt, the foregoing rules shall apply to the Facilitator.

#### **(8) Consultation of Third Parties**

The BOD can decide to consult third parties for obtaining advice from such third parties in relation to the development of the Blu-ray Disc Formats and other activities of the BDA (such third parties: "Advisors"). In principle such consultation shall be conducted only with non-confidential information to be exchanged with the Advisors. If the BOD has determined that it is necessary to disclose confidential information of the BOD to such Advisors, the BDA shall enter into a relevant confidentiality agreement with the Advisors and disclose such confidential information as is reasonably necessary to be disclosed to the Advisors to obtain advice on specific issues.

Clauses 10, 11 and 12 are intentionally left blank.

## **Chapter IV. Intellectual Property Rights**

### **Clause 13. Copyrights**

#### **(1) Ownership**

As a general principle and subject to Clause 13(2) below, each FC Member shall remain the owner of copyrights it owns, generates or acquires and has made available for the development of any Blu-ray Disc Format through the activities of the BDA.

#### **(2) Co-Ownership**

Any FC Member that claims the ownership of the copyrights in and to any Blu-ray Disc Format, or any portion thereof, that such FC Member has contributed to the development of a Blu-ray Disc Format shall share such ownership of the copyrights with other FC Members, if any, that have contributed as well to develop such Blu-ray Disc Format, and also with the BDA. The names of all FC Members and/or the name of the BDA sharing the copyrights on a Blu-ray Disc Format may appear on such Blu-ray Disc Format books.

#### **(3) Authorization**

All FC Members hereby grant an irrevocable, perpetual, worldwide, exclusive and royalty-free right to the BDA or an entity appointed by the BOD to grant licenses under FC Members' copyrights on any Blu-ray Disc Format pursuant to the terms and conditions determined by the BOD on a reasonable and non-discriminatory basis to all interested parties to: (i) develop and promote any such Blu-ray Disc Format; (ii) internally evaluate any Blu-ray Format to explore the feasibility of future development and/or manufacture of products in compliance with the Blu-ray Disc Format or any other commercial activity that would benefit from the utilization of the Blu-ray Disc Format; and/or (iii) use, develop, manufacture, have manufactured, sell, offer for sale, export, import or otherwise dispose of products that are in full compliance with any Blu-ray Disc Format.

### **Clause 14. Blu-ray Disc Trademark Rights**

#### **(1) Ownership**

As a general principle, BDA shall own the Blu-ray Disc Trademark Rights.

### **Clause 15. Non-Patent IPRs**

#### **(1) Ownership**

As a general principle, each FC Member shall remain the owner of Non-Patent IPRs it owns, generates or acquires and has made available for the development of any Blu-ray Disc Format through the activities of the BDA and the BDF.

**(2) Authorization**

All FC Members hereby grant an irrevocable, perpetual, worldwide, non-exclusive and royalty-free right to the BDA or to an entity appointed by the BOD, as the case may be, to grant licenses under FC Members' Non-Patent IPR as part of any Blu-ray Disc Format to all interested parties pursuant to the terms and conditions determined by the BOD on a reasonable and non-discriminatory basis solely for the purpose of: (i) developing and promoting any Blu-ray Disc Format; (ii) internally evaluating any Blu-ray Format to explore the feasibility of future development and/or manufacture of products in compliance with the Blu-ray Disc Format or any other commercial activity that would benefit from the utilization of the Blu-ray Disc Format; and/or (iii) developing, manufacturing, having manufactured, selling, offering for sale, exporting, importing or otherwise disposing of products that is in full compliance with any such Blu-ray Disc Format; provided, however, that in consideration of the Non-Patent IPR which any FC Member has owned and made available for the development of certain Blu-ray Disc Format through the activities of the BDA and the BDF, the terms and conditions of the Non-Patent IPR licenses under such Blu-ray Disc Format for such FC Member may be reasonably differentiated from those of the Non-Patent IPR licenses for (a) a Member that has not owned or not made available any of its Non-Patent IPR for the development of such Blu-ray Disc Format or (b) third party licensees of such Blu-ray Disc Format.

**Clause 16. Patent IPRs**

In order to expedite the standardization process by the BDA, all Members commit themselves to the following policy in respect of the Patent IPRs.

(1) Each Member hereby agrees, on its behalf and on behalf of its Affiliated Companies, that it is willing to grant, or cause its Affiliated Companies to grant, to any interested party ("Potential Licensee") a non-exclusive, non-transferable, world-wide licenses on fair, reasonable and non-discriminatory terms and conditions under any of the Essential Patents which the Member and its Affiliated Companies have the right to license and/or sublicense without obtaining approval from or paying compensation to a third party ("Full License Rights") at the time of such Member's accession to the BDA or thereafter, to use, sell, offer for sale, develop, manufacture, have manufactured, import or export or otherwise dispose of products that are in full compliance with any Blu-ray Disc Format, which has been adopted by the BDF or the BDA and has been made available to the public, provided that, if such Potential Licensee is not a Member, such Potential Licensee agrees, and agrees to cause Potential Licensee Affiliated Company(ies) in writing to offer equivalent licensing terms and conditions with respect to any claim of an issued patent or patent application, directly or indirectly owned or controlled by Potential Licensee and/or Potential Licensee Affiliated Company(ies) at the material time or at any time thereafter, which in connection such Blu-ray Disc Format (i) would be necessarily infringed by implementing a Blu-ray Disc Format (i.e. when there is no technically plausible non-infringing alternative for

implementing the normative requirements of such Format) and/or (ii) would cover or read on technology that is described with particularity in such Blu-ray Disc Format.

(2) With respect to the Essential Patents which a Member or its Affiliated Companies own but do not have Full License Rights, each Member hereby commits, on its behalf and on behalf of its Affiliated Companies, to use reasonable efforts either to grant a non-exclusive, non-transferable, worldwide non-assertion or to cause the grant of licenses by any eligible and authorized entity to any Potential Licensee on a non-exclusive, non-transferable, world-wide basis and on fair, reasonable and non-discriminatory terms and conditions under any of such Essential Patents to use, sell, offer for sale, develop, manufacture, have manufactured, import or export or otherwise dispose of products that are in full compliance with any Blu-ray Disc Format, which has been adopted by the BDF or the BDA and has been made available to the public, provided that, if such Potential Licensee is not a member, such Potential Licensee agrees, and agrees to cause Potential Licensee Affiliated Company(ies), in writing to offer equivalent licensing terms and conditions with respect to any claim of an issued patent or patent application, directly or indirectly owned or controlled by such Potential Licensee and/or Potential Licensee Affiliated Company(ies) at the material time or at any time thereafter, which in connection such Blu-ray Disc Format (i) would be necessarily infringed by implementing a Blu-ray Disc Format (i.e. when there is no technically plausible non-infringing alternative for implementing the normative requirements of such Format) and/or (ii) would cover or read on technology that is described with particularity in such Blu-ray Disc Format.

(3) For the avoidance of doubt, this Clause 16 does not cover the Patent IPRs arising from or relating to any standard that has not been developed through the activities of the BDF or BDA but has been only referred to in any Blu-ray Disc Format, such as MPEG2 etc.

(4) All Members, regardless of whether they do or do not join any established joint licensing program for the Essential Patents, agree that the aggregate of terms and conditions of all licenses necessary under the Members' Essential Patents shall not block, frustrate or harm acceptance of any Blu-ray Disc Format as a worldwide standard or development of products complying with any Blu-ray Disc Format or commercialization of the same.

(5) Any dispute between a Member and another Member over whether the Member is offering a license under its Essential Patent(s) on fair, reasonable and non-discriminatory terms and conditions within the context of the provision of 16(4) shall be decided by a single neutral arbitrator appointed under the International Rules of the American Arbitration Association (the "Arbitrator") and will be conducted under the rules of that Association in New York City. The arbitration hearing shall take place no later than ninety days after the arbitrator is selected and a decision shall be rendered within thirty days of the completion of the hearing. In evaluating the reasonableness of the disputed terms and conditions, the Arbitrator shall take into account, among other things, terms and conditions (including but not limited to applicable license fees) of joint license programs and individual license programs within the area of licensing essential patents for optical disc systems, where:

- (i) such terms and conditions; and
  - (ii) such optical disc systems
- are generally accepted by the optical disc systems industry.

#### **Clause 17. Non-Assertion against Format Creation**

Solely for the purpose of development work on any of the Blu-ray Disc Formats, each Contributor Member shall not assert any of its intellectual property rights (including, without limitation, Patent-IPRs, copyrights, and Non-Patent IPRs) against any Contributor Member participating in such activities. The non-assertion set out in the preceding sentence shall not be construed as a license under any intellectual property rights for commercially manufacturing, having manufactured, selling, using, importing, exporting or otherwise disposing of products whether or not in compliance with any Blu-ray Disc Format.

#### **Clause 18. Waiver and IP related Obligations of Ex-FC Members**

All Ex-FC Members agree to and comply with the following rules in respect of intellectual property rights;

- (1) Each Ex-FC Member shall waive its right to use Non-Patent IPR and copyrights of the BDA or remaining FC Members to or in any Blu-ray Disc Format, unless such Ex-FC Member has obtained a license under Non-Patent IPR and/or copyrights from one or more FC Members under an agreement outside the scope of the BDA or from the BDA or a relevant license agent for any Blu-ray Disc Format; in such event, the Ex-FC Member may continue to use the Non-Patent IPR and/or copyrights for which such Ex-FC Member is licensed pursuant to such agreement.
- (2) Against the Contributor Members, each Ex-FC Member shall not assert its Non-Patent IPR and copyrights existing at the time such Ex-FC Member loses its Membership as a Contributor Member with respect to developing any Blu-ray Disc Format and granting licenses to third parties to develop, manufacture, have manufactured, sell, use, import, export or otherwise dispose of products in compliance with such Blu-ray Disc Format.
- (3) Against the Contributor Members, adopters of any Blu-ray Disc Format which was adopted or studied through the activities of the BDA while an Ex-FC Member was a Contributor Member, and their respective customers, such Ex-FC Member shall not assert its Non-Patent IPR and copyrights existing at the time such Ex-FC Member loses its Membership as a Contributor Member with respect to developing, manufacturing, having manufactured, selling, using, importing, exporting or otherwise disposing of products in compliance with such Blu-ray Disc Format.
- (4) To the Contributor Members, adopters of any Blu-ray Disc Format which was adopted or studied through the activities of the BDA while an Ex-FC Member was a Contributor Member, and their respective customers, such Ex-FC Member shall grant a license under reasonable and non-discriminatory conditions for the use of such Ex-FC Member's



## **Chapter V. General Provisions**

### **Clause 19. Accounting**

The fiscal year of the BDA for accounting purposes shall be from January 1 to December 31 unless otherwise determined by the BOD.

The Chief Financial Officer shall keep accurate, full and complete books and accounts showing income, operations, transactions and the financial conditions of the BDA. Any Member shall have access to such books and accounts at any reasonable time during regular business hours and shall have the right to copy said records at its expense; provided that the information contained in said books and accounts shall be kept confidential.

An auditor shall be appointed by the BOD to audit the annual balance sheet and statement of accounts of the BDA.

The Chief Financial Officer shall prepare and submit to the BOD an audited balance sheet of the BDA as of the end of each fiscal year and the related statements of operations, within sixty (60) days after the end of such fiscal year.

### **Clause 20. Language**

The official language of the BDA shall be English.

### **Clause 21. No Agency or Partnership, Indemnification**

The Bylaws shall not be construed to create an agency, joint venture or partnership between or among the Members. No Member shall have the authority to conclude agreements or enter into any obligation on behalf of the BDA without the prior written consent or authorization from the BOD. No Member shall be liable for any loss or damages whatsoever resulting from any act performed by another Member(s) on behalf of the BDA, for which act such Member had not obtained prior written consent or authorization from the BOD. Each Member which has acted on behalf of the BDA without authorization or approval from the BOD for such act, agrees to indemnify the other Members from all liabilities, losses or damages resulting from such unauthorized acts.



## **Clause 22. Confidentiality**

A General Member shall keep the “Confidential Information for General Members” (as defined below) confidential and shall not disclose or disseminate the same to any third party without written approval from the BOD or any party duly authorized by the BOD to approve such disclosure.

“Confidential Information for General Members” shall mean all information contained in the documents, materials and data marked or designated as confidential that are obtained by a General Member from the Secretary Office of the BDA, during a General Meeting, from a web page to which the General Member is entitled to access, or under any applicable non-disclosure agreement in connection with any activities of the BDA which the General Member is duly admitted to attend or participate in.

A General Member shall not use the Confidential Information for General Members for any purpose other than to enjoy its rights or perform its obligations under the Bylaws or other BDA-related agreement, application or other related commitment duly prepared by the BDA and executed by each General Member.

Each Contributor Member shall keep the Confidential Information for Contributor Members (as defined below) confidential and not disclose or disseminate the same to any third party without prior written approval from the BOD or any party duly authorized by the BOD to approve.

“Confidential Information for Contributor Members”:

- (i) Confidential Information for General Members that is obtained by Contributor Members; and
- (ii) all information disclosed, discussed and/or exchanged during any activity of the BDA in which Contributor Member has participated and which information is marked or designated as confidential in any tangible form or by any means.

No Contributor Member shall use the Confidential Information for Contributor Members for any purpose other than to enjoy its rights or perform its obligations under the Bylaws or other BDA-related agreement, application, acknowledgment or other related commitment duly prepared by the BDA and executed by each Contributor Member.

Notwithstanding the foregoing, the above confidentiality obligations shall not extend to any information a Member, who has received such information (“Recipient”), can prove with documentary evidence, satisfactory to the BOD, that the information;

- (a) was in the public domain at the time it was disclosed or becomes part of the public domain after its disclosure without violation of the Bylaws by the Recipient;

- (b) was lawfully obtained without restriction by the Recipient from a third party who is not bound by similar confidentiality obligations; or
- (c) was independently developed by the Recipient.

Obligations under the Bylaws shall not be construed to restrict or prevent any Member from receiving or having access to any information whatsoever, including but not limited to any information with respect to any other formats than the Blu-ray Disc Formats.

In the event of resignation or termination of Membership, the affected Ex-Member shall immediately (i) return all tangible Confidential Information it has obtained during its Membership to the Secretary, without retaining any copies thereof, or (ii) destroy all tangible Confidential Information pursuant to the instructions of the Secretary.

### **Clause 23. Consultant/Contractor**

In the event a Member wishes to engage a Consultant/Contractor, such Member (“Contracting Member”) must enter into a written agreement with such Consultant/Contractor prior to any involvement of the Consultant/Contractor in any BDA activities including, without limitation, participation in or attendance at any BDA meeting or telephone conference. Such written agreement shall contain terms and condition no less restrictive than the following:

- (1) The Consultant/Contractor must irrevocably agree to comply with the obligations that are equivalent to those the Contracting Member bears under the latest version of the Bylaws and other BDA related documents with legal effect except payment obligations and the Contracting Member shall have the written, legal right to enforce such obligations against such Consultant/Contractor;
- (2) Other Members must not be precluded from enforcing obligations against the Consultant/Contractor under any applicable third party beneficiary theory;
- (3) Should the Consultant/Contractor participate in any voting procedure in connection with the activities of the BDA, the Consultant/Contractor shall participate in the voting procedure on behalf of the Contracting Member; and
- (4) Nothing contained in the terms and conditions stated in (1), (2) and (3) above shall be superseded, limited or invalidated by any agreement between the Contracting Member and the Consultant/Contractor.

All actions by the Consultant/Contractor shall be deemed as the action by the Contracting Member. Any act or omission by the Consultant/Contractor that, if performed or omitted by the Contracting Member, would be a breach of the Bylaws and/or any other legally effective BDA related document shall be deemed a breach of the Bylaws and/or such document by the Contracting Member.

**Clause 24. No Warranty**

All information disclosed during the activities of the BDA by the Members, the Secretary, the BOD, the Directors, the Officers or other officers or organizations duly established pursuant to the Bylaws and other applicable internal rules of the BDA are provided on an “as is” basis, without any warranty of any kind, express or implied, including without limitation any warranty in connection with accuracy, completeness, performance, fitness for any particular purpose, any requested quality of the disclosed information or non-infringement.

Notwithstanding the foregoing, each Contributor Member represents and warrants that it has sufficient rights to provide its technical contributions to the development or improvement of the Blu-ray Disc Formats.

To the fullest extent permitted by applicable law, no Member, Affiliate of Member or their respective shareholders, officers, directors, employees, representatives and agents (each a “Covered Person”) shall be liable to the BDA or any Member for any act or omission taken or suffered by such Covered Person in good faith and in the reasonable belief that such act or omission is in or is not contrary to the best interest of the BDA and is within the scope of authority granted to such Covered Person by the Bylaws; provided that such act or omission does not constitute willful misfeasance, bad faith, gross negligence or reckless disregard of the duty in conduct of such Covered Person. Without limiting the foregoing, no Member shall be liable to the BDA or any other Member for any action taken hereunder by any other Member.

**Clause 25. Obligations of Ex-Members**

All obligations which accrued for an Ex-Member before it loses its Membership shall survive its losing the Membership and accordingly, Ex-Member shall fulfill such obligations even after it loses its Membership. For the avoidance of doubt, such obligations shall include but not be limited to confidentiality obligations and payment obligations under the Bylaws.

**Clause 26. Effective Date**

The Bylaws shall be effective as of April 5, 2007.

**Clause 27. Amendments**

Each of the Blu-ray Disc Format specifications, and its associated license agreement format(s), can only be amended or repealed by a decision of the BOD by a Super Majority Vote.

Except Clause 13 (1), Clause 14(1), Clause 15 (1), Clause 16, Clause 18 and this Clause 27 of the Bylaws, the Bylaws can only be amended or repealed by a decision of the BOD by its Special Super Majority Vote. Clause 13 (1), Clause 14(1), Clause 15 (1), Clause 16, Clause 18 and/or this Clause 27 of the Bylaws can be only amended or repealed by a decision of the BOD by its Unanimous Consensus. Notwithstanding anything contrary set forth in the Bylaws, subject to the quorum set forth in Clause 8 (4) of the Bylaws, a Majority Vote of the Contributor Members is required for any amendment hereof that would: (1) materially and adversely affect the rights of Contributor Members as to voting, dissolution, redemption, or transfer; (2) increase or decrease the number of Contributor Members authorized in total or for any class; (3) effect an exchange, reclassification or cancellation of all or part of the Memberships; or (4) authorize a new class of Membership.

### **Clause 28. Settlement of Disputes**

In the event of any disputes between or among Members, Ex-Members, and any third party(ies) arising from or related to the Bylaws or the activities of the BDA, the Members and Ex-Members concerned shall make reasonable effort to amicably settle such disputes. Notwithstanding the foregoing and the mandatory arbitration addressing licensing terms and conditions set forth in Clause 16(5) hereof, nothing in the Bylaws shall preclude any Member at any time from seeking an injunction, damages, or any other legal relief available under applicable laws against any other Member or Ex-Member or third party for intellectual property infringement.

### **Clause 29. Indemnification.**

To the fullest extent permitted by law, the BDA shall indemnify its Members, Directors, Officers, employees, and other persons described in Section 7237(a) of the Code, including persons formerly occupying any such positions, against all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by them in connection with any “proceeding” as that term is used in Section 7237(a) of the Code, and including an action by or in the right of the BDA, by reason of the fact that the person is or was a person described in Section 7237(a) of the Code. “Expenses”, as used in the Bylaws, shall have the same meaning as in Section 7237(a) of the Code. On written request to the BOD by any person seeking indemnification under Section 7237(b) of the Code, the BOD shall promptly decide under Section 7237(e) of the Code whether the applicable standard of conduct set forth in Section 7237(b) of the Code has been met and, if so, the BOD shall authorize indemnification.

If the BOD cannot authorize indemnification, because the number of Directors who are parties to the proceeding with respect to which indemnification is sought prevents the formation of a quorum of Directors who are not parties to that proceeding, the BOD shall promptly call a meeting of Contributor Members. At that meeting, the Contributor Members shall determine under Code

section 7237(e) whether the applicable standard of conduct has been met and, if so, the Contributor Members present at the meeting in person or by proxy shall authorize indemnification.

To the fullest extent permitted by law and except as otherwise determined by the BOD in a specific instance, expenses incurred by a person seeking indemnification under this Clause 29 of the Bylaws in defending any proceeding covered by this Clause 29 shall be advanced by the BDA before final disposition of the proceeding, on receipt by the BDA of an undertaking by or on behalf of that person that the advance will be repaid unless it is ultimately found that the person is entitled to be indemnified by the BDA for those expenses.

The rights conferred on any person by this Clause 29 will not be exclusive of any other right which such person may have or hereafter acquire under any statute, provision of the Articles of Incorporation, Bylaws, agreement, vote of Contributor Members or otherwise. The BDA is specifically authorized to enter into individual contracts with any or all of its Members, Directors, Officers, employees, agents other persons described in Section 7237(a) of the Code with respect to indemnification and advances to the fullest extent not prohibited by the Code.

Any repeal or modification of this Clause 29 will only be prospective and will not affect the rights under this Clause 29 in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding.

**Clause 30. Insurance.**

The BDA shall have the right, and shall use its best efforts, to purchase and maintain insurance to the full extent permitted by law on behalf of its Members, Directors, Officers, employees, and other persons described in Section 7237(a) of the Code to cover any liability asserted against or incurred by its Members, Directors, Officers, employees, and other persons described in Section 7237(a) of the Code in such capacity or arising from its Members, Directors, Officers, employees, and other persons described in Section 7237(a) of the Code status as such

