

TRIPLEX DISC CORPORATION

Non-Disclosure and Indemnity Agreement

This agreement is by and between **Triplex Disc Corporation** (hereinafter "Triplex Disc Corporation"), and (hereinafter "Customer").

WHEREAS: Customer wishes to transmit to **Triplex Disc Corporation** certain information and computer software deemed proprietary by Customer which relates to software product planning, design, development, marketing and/or merchandising, and **Triplex Disc Corporation** desires Customer's information in order to assist

Customer in the ordinary course of business, and whereas full statutory protection has not yet been obtained, and

WHEREAS: **Triplex Disc Corporation** is unable to realistically ascertain Customer's rights to possess, use, duplicate or distribute said information and computer software.

NOW, THEREFORE, in consideration of these mutual covenants and other good consideration, **Triplex Disc Corporation** agrees that during the term of this Agreement they shall not disclose any proprietary information received from Customer, whether verbal, written, or in machine-readable code to any other person, firm, or corporation, or use it for their own benefit except as provided herein, and shall use the same degree of care to avoid disclosure or use of such information as **Triplex Disc Corporation** employees with respect to their own proprietary information of like importance.

The parties hereto agree that information shall not be deemed proprietary and **Triplex Disc Corporation** shall have no obligation with respect to information which:

1. is or becomes publicly known through no act of **Triplex Disc Corporation**; or
2. is rightfully received from a third party without similar restriction and without breach of this Agreement; or
3. is independently developed by **Triplex Disc Corporation** without breach of this Agreement; or
4. is furnished to a third party by Customer without a similar restriction on the third party's rights; or

5. is approved for release by written authorization of Customer.

All written information and physical media delivered by Customer to **Triplex Disc Corporation** pursuant to this Agreement shall be and remain the property of Customer, and shall be promptly returned to Customer, and destroyed, upon written request of Customer.

Customer represents and warrants that it has the legal right to possess the software in question, that it has the legal right to duplicate it, encrypt it and package it in the manner requested of **Triplex Disc Corporation**.

Customer hereby warrants to **Triplex Disc Corporation** that the duplication, formatting, and/or encryption of such materials by **Triplex Disc Corporation** will not infringe upon or violate any copyright, contract, or other property right owned by any third party.

The parties hereto acknowledge that third parties may from time to time allege that either or both of the parties to this Agreement have violated or misappropriated said third parties' copyright, patent, trademark, service mark or trade secret. Accordingly, if any claim is made or action filed arising out of the duplication or software protection services provided hereunder by **Triplex Disc Corporation** at Customer's request, Customer agrees upon receipt of notification of claim to promptly indemnify, defend, and hold **Triplex Disc Corporation** and its agents harmless from and against any charges, damages, penalties, fines, claims, suits, actions, attorney or expert fees, costs and Non-expenses incurred by **Triplex Disc Corporation** in defense of alleged violations of the above, by reason of the duplication, use or sale of any goods furnished according to the Customer's specifications, or from any of Customer's actions which occur after such products leave **Triplex Disc Corporation's** control.

Nothing in this Agreement shall be construed as granting or conferring any right to **Triplex Disc Corporation** by license or otherwise expressly implied, or otherwise for any invention, discovery or improvement made, conceived, or acquired by Customer prior to or after the date of this Agreement.

This Agreement may be terminated at any time with the written consent of both parties. The subject matter of this Agreement pertains to (fill in titles):

This Agreement shall be binding upon and inure to the benefit of the parties' heirs, devisees, legatees and personal representatives. This Agreement shall not

be assignable by any party hereto without the written consent of the other party hereto and any purported assignment not permitted hereunder shall be void. This document constitutes the entire Agreement between the parties with respect to the subject matter hereof, except for the actual business arrangements between them for duplication and protection purposes, and shall supersede all previous communications, representations, understandings and agreements between the parties.

IN WITNESS HEREOF, the parties hereto agree that the effective date of this Agreement shall be as below and shall remain in effect for four (4) years thereafter.

Triplex Disc Corporation CUSTOMER

TITLE _____

DATE _____

STANDARD TERMS AND CONDITIONS FOR REPLICATION OF CD's and DVD's

This Purchase Agreement contains the entire agreement between Triplex Disc Corporation and its subsidiaries ("Triplex Disc Corporation") and Customer concerning the replication of compact discs from master media supplied by Customer and any other services and products provided by Triplex Disc Corporation to Customer hereunder. This Purchase Agreement shall supersede any prior oral or written understandings, representations and warranties (including any terms and conditions which may appear on Customer's order form) between Triplex Disc Corporation and Customer, and may not be amended except pursuant to a written document signed by both parties.

1. **Acceptance.** This Purchase Agreement will be accepted only at Triplex Disc Corporation' offices in Canonsburg and New Holland, Pennsylvania by: (1) written confirmation from an authorized representative of Triplex Disc Corporation or (2) shipment of goods in accordance with the terms set forth herein. Triplex Disc Corporation reserves the right to refuse to accept any Purchase Order for any reason. This Purchase Agreement is subject to and Customer agrees to be bound by all terms and conditions set forth herein and on the reverse side hereof and Customer waives any objections thereto.

2. **Prices, Orders and Shipments.** All orders are subject to the terms and conditions detailed on any and all of the following Triplex Disc Corporation documents: customer quotation, order form, credit application. Prices to be charged for services and materials provided to Customer hereunder shall be as agreed upon at order placement. Orders may not be canceled after Triplex Disc Corporation has begun processing or manufacturing. Scheduled ship dates are subject to change. All shipments to Customer will be F.O.B. Triplex Disc Corporation' facility, and shipping charges and risk of loss in transit shall be Customer's sole responsibility unless otherwise noted. Triplex Disc Corporation reserves the right to make partial shipments when necessary. Unless otherwise noted, Triplex Disc Corporation reserves the right to fulfill Customer's order quantity within a range equal to +/- 10%. Return authorizations must be furnished in writing by a Triplex Disc Corporation customer service representative prior to return of any finished product. Return authorization number and/or form, including requirements of requested returned product must accompany return authorization information.

3. **Payment Terms.** Invoices will be issued upon shipment of products, unless shipment is delayed by Customer, in which case a partial invoice will be issued upon the completion of manufacturing. Charges for services performed by Triplex Disc Corporation hereunder shall be invoiced upon completion of those services. Customer shall be responsible for all local, state, federal or other governmental charges for sales, use, manufacturing, excise and similar taxes associated with the production of products and performance of services hereunder (other than taxes on Triplex Disc Corporation net income) in addition to other charges hereunder. Unless otherwise noted, payment is due within thirty (30) days of invoice date. Claims for adjustments in amounts due Triplex Disc Corporation must be presented to Triplex Disc Corporation in writing within five (5) days from the date of invoice. A late charge at the rate of one and one-half percent (1 1/2%) per month (18% annually) will be charged for all amounts past due at Triplex Disc Corporation option. Any credit on Customer's account must be claimed or used within 12 months from the shipping date of the goods to which the credit relates. Triplex Disc Corporation shall have a security interest in materials and compact discs produced for Customer until all amounts due hereunder are paid in full. Triplex Disc Corporation reserves the right to delay or withhold shipment of any order if payment in full has not been received on any prior order. Customer agrees to pay Triplex Disc Corporation all costs of collection, whether or not suit is instituted, including attorneys' fees and court costs.

4. **License.** Customer grants Triplex Disc Corporation a royalty-free, non-transferable license to reproduce and distribute copies of Materials (as hereinafter defined) to the extent necessary for Triplex Disc Corporation, Inc. to perform its obligations under this Purchase Agreement.

5. **Warranty, Disclaimer and Limitation of Liability.** Triplex Disc Corporation warrants that compact discs manufactured under this Purchase Agreement will be free from manufacturing defects in accordance with general industry standards for a period of one year from the date of shipment by Triplex Disc Corporation. As Customer's sole remedy, and as Triplex Disc Corporation sole liability, for breach of this warranty, Triplex Disc Corporation will, at its option, replace, or refund the amount paid by Customer to Triplex Disc Corporation for any compact disc that is returned to and found defective by Triplex Disc Corporation. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS PARAGRAPH, TRIPLEX DISC CORPORATION DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY AS TO PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL TRIPLEX DISC CORPORATION BE LIABLE FOR, AND CUSTOMER EXPRESSLY WAIVES ANY CLAIM FOR, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST DATA, PROGRAMS, OR OTHER INFORMATION OR LOST PROFITS. Notwithstanding any other provision of this Purchase Agreement and in no event, including lost data, programs, or other information, damage for business interruption or, without limitation delay or failure of delivery, shall Triplex Disc Corporation liability to Customer under any theory exceed the amount paid by Customer to Triplex Disc Corporation pursuant to Triplex Disc Corporation invoice(s) for the related services or materials. No action, regardless of form, arising out of any claimed breach of this Purchase Agreement or transactions under this Purchase Agreement may be brought by either party more than one (1) year after the cause of action has accrued.

6. **Materials Provided By Customer.** For purposes of this Section 5, "Materials" means all items delivered to Triplex Disc Corporation by or for Customer for use in connection with the production, printing and/or packaging of compact discs hereunder, including, without limitation, master media, artwork and packaging materials. a. Customer shall retain title to all Materials, including the content of such Materials. Customer warrants that it owns all Materials and has the right to deliver all Materials to Triplex Disc Corporation. Customer also warrants that it owns all copyrights in the contents of Material (including without limitation any computer code embedded therein) or has the unrestricted right to permit Triplex Disc Corporation to perform the services requested hereunder. Customer warrants that the Materials do not contain any obscene or objectionable matter. Customer agrees to indemnify, defend and hold Triplex Disc Corporation harmless from and against any and all actions, suits, claims, liabilities, damages, losses and expenses (including attorneys' fees) arising directly or indirectly out of or in connection with any claim that the services rendered or product manufactured for Customer by Triplex Disc Corporation violate any local, state, or federal law, rule or regulation or violate any rights (including copyrights) of third parties, including without limitation, any liability for slander, defamation, invasion of privacy, or infringement of any patent, copyright, trademark, or other proprietary right of third party. b. If Customer is to provide artwork to Triplex Disc Corporation in connection with the production of disc label printing or packaging of compact discs hereunder, such artwork must be received by Triplex Disc Corporation prior to the commencement of work by Triplex Disc Corporation. If Customer is to provide Materials for label printing or the final packaging of compact discs produced hereunder, such Materials must be received by Triplex Disc Corporation not more than one (1) week after the delivery of the applicable master media to Triplex Disc Corporation. c. Customer is solely responsible for delivering Materials to and retrieving Materials from Triplex Disc Corporation hereunder. At Customer's request and sole risk, Triplex Disc Corporation will store Materials as long as Triplex Disc Corporation is providing services hereunder, at any place that Triplex Disc Corporation deems appropriate. During such period, a storage charge may be assessed. After such period, a storage charge will be assessed until Customer retrieves such Materials from Triplex Disc Corporation. Customer is responsible for removal of all Materials within thirty (30) days of notification by Triplex Disc Corporation. If Customer fails to remove Materials as requested, Triplex Disc Corporation shall have the right to destroy, erase, or make any other disposition of such Materials without liability to Customer or any other person.

7. **Triplex Disc Corporation' Rights in Tooling, Programs, Specifications and Data.** Triplex Disc Corporation shall retain title to all tooling, including masters, stampers, and other tooling, produced by Triplex Disc Corporation, Inc.. Triplex Disc Corporation shall also retain all rights in computer programs, specifications, or data developed by Triplex Disc Corporation in or for the performance of this Purchase Agreement, notwithstanding whether such computer programs, specifications or data were developed by Triplex Disc Corporation for Customer or otherwise.

8. Export. Customer agrees not to export any product manufactured for it by Triplex Disc Corporation in violation of any export control laws, rules or regulations.

9. Risk of Loss. Products manufactured by Triplex Disc Corporation for Customer shall remain the property of Triplex Disc Corporation until shipment to Customer pursuant to Paragraph 1. Finished products held by Triplex Disc Corporation at Customer's request shall be held at the Customer's sole risk.

10. Confidentiality. If Client discloses confidential information to Triplex Disc Corporation and clearly identifies such information in writing as "confidential," Triplex Disc Corporation shall use reasonable care to ensure that such information is disclosed only to Triplex Disc Corporation employees requiring access to such information to render the services or manufacture product requested by Customer. Nothing herein shall limit Triplex Disc Corporation's right to use or disclose information that (a) becomes available to the public without fault of Triplex Disc Corporation; (b) is lawfully acquired by Triplex Disc Corporation from a third party; (c) is in the possession of Triplex Disc Corporation at the time of disclosure by Customer; or (d) is developed by or on behalf of Triplex Disc Corporation by persons who have not received Customer's confidential information.

11. Force Majeure. Triplex Disc Corporation will not be responsible for failure to fulfill its obligations under any Purchase Agreement if such failure is caused by circumstances beyond the reasonable control of Triplex Disc Corporation or its suppliers or contractors, including but not limited to acts of God, unavailability of materials, equipment failures, bad weather, strikes or other labor disturbances.

12. Severability. If any provision in this Purchase Agreement is found to be invalid, unenforceable or void by a court of competent jurisdiction, such provisions shall be deemed to be severed from this Purchase Agreement, and the remaining provisions will remain in full force and effect.

13. Governing Law. This Purchase Agreement shall be governed by and constructed in accordance with the laws of the Commonwealth of Pennsylvania. Any suit or action by Customer against Triplex Disc Corporation shall be brought exclusively in the state or federal courts in Washington, Pennsylvania.