

Non-Disclosure and Indemnity Agreement

This agreement is by and between **Chicago Digital Post** (hereinafter "Chicago Digital Post"), and (hereinafter "Customer").

WHEREAS: Customer wishes to transmit to **Chicago Digital Post** certain information and computer software deemed proprietary by Customer which relates to software product planning, design, development, marketing and/or merchandising, and **Chicago Digital Post** 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: **Chicago Digital Post** 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, **Chicago Digital Post** 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 **Chicago Digital Post** employees with respect to their own proprietary information of like importance.

The parties hereto agree that information shall not be deemed proprietary and **Chicago Digital Post** shall have no obligation with respect to information which:

1. is or becomes publicly known through no act of **Chicago Digital Post**; or
2. is rightfully received from a third party without similar restriction and without breach of this Agreement; or
3. is independently developed by **Chicago Digital Post** 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 **Chicago Digital Post** 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 **Chicago Digital Post**.

Customer hereby warrants to **Chicago Digital Post** that the duplication, formatting, and/or encryption of such materials by **Chicago Digital Post** 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 **Chicago Digital Post** at Customer's request, Customer agrees upon receipt of notification of claim to promptly indemnify, defend, and hold **Chicago Digital Post** 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 **Chicago Digital Post** 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 **Chicago Digital Post's** control.

Nothing in this Agreement shall be construed as granting or conferring any right to **Chicago Digital Post** 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.

Chicago Digital Post CUSTOMER

TITLE _____

DATE _____

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

This Purchase Agreement contains the entire agreement between Chicago Digital Post and its subsidiaries ("Chicago Digital Post") and Customer concerning the replication of compact discs from master media supplied by Customer and any other services and products provided by Chicago Digital Post 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 Chicago Digital Post 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 Chicago Digital Post' offices in the city of Lockport, the county of Will, Illinois by: (1) written confirmation from an authorized representative of Chicago Digital Post or (2) shipment of goods in accordance with the terms set forth herein. Chicago Digital Post 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 Chicago Digital Post 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 Chicago Digital Post has begun processing or manufacturing. Scheduled ship dates are subject to change. All shipments to Customer will be F.O.B. Chicago Digital Post' facility, and shipping charges and risk of loss in transit shall be Customer's sole responsibility unless otherwise noted. Chicago Digital Post reserves the right to make partial shipments when necessary. Unless otherwise noted, Chicago Digital Post reserves the right to fulfill Customer's order quantity within a range equal to +/- 10%. Return authorizations must be furnished in writing by a Chicago Digital Post 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 Chicago Digital Post 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 Chicago Digital Post 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 Chicago Digital Post must be presented to Chicago Digital Post 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 Chicago Digital Post 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. Chicago Digital Post shall have a security interest in materials and compact discs produced for Customer until all amounts due hereunder are paid in full. Chicago Digital Post 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 Chicago Digital Post all costs of collection, whether or not suit is instituted, including attorneys' fees and court costs.
- 4. License.** Customer grants Chicago Digital Post a royalty-free, non-transferable license to reproduce and distribute copies of Materials (as hereinafter defined) to the extent necessary for Chicago Digital Post to perform its obligations under this Purchase Agreement.
- 5. Warranty, Disclaimer and Limitation of Liability.** Chicago Digital Post 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 Chicago Digital Post As Customer's sole remedy, and as Chicago Digital Post sole liability, for breach of this warranty, Chicago Digital Post will, at its option, replace, or refund the amount paid by Customer to Chicago Digital Post for any compact disc that is returned to and found defective by Chicago Digital Post. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS PARAGRAPH, CHICAGO DIGITAL POST 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 CHICAGO DIGITAL POST 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 Chicago Digital Post liability to Customer under any theory exceed the amount paid by Customer to Chicago Digital Post pursuant to Chicago Digital Post 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 Chicago Digital Post 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 Chicago Digital Post. 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 Chicago Digital Post 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 Chicago Digital Post 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 Chicago Digital Post 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 Chicago Digital Post in connection with the production of disc label printing or packaging of compact discs hereunder, such artwork must be received by Chicago Digital Post prior to the commencement of work by Chicago Digital Post. If Customer is to provide Materials for label printing or the final packaging of compact discs produced hereunder, such Materials must be received by Chicago Digital Post 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 Chicago Digital Post hereunder. At Customer's request and sole risk, Chicago Digital Post will store Materials as long as Chicago Digital Post is providing services hereunder, at any place that Chicago Digital Post 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 Chicago Digital Post. Customer is responsible for removal of all Materials within thirty (30) days of notification by Chicago Digital Post. If Customer fails to remove Materials as requested, Chicago Digital Post shall have the right to destroy, erase, or make any other disposition of such Materials without liability to Customer or any other person.
- 7. Chicago Digital Post' Rights in Tooling, Programs, Specifications and Data.** Chicago Digital Post shall retain title to all tooling, including masters, stampers, and other tooling, produced by Chicago Digital Post. Chicago Digital Post shall also retain all rights in computer programs, specifications, or data developed by Chicago Digital Post in or for the performance of this Purchase Agreement, notwithstanding whether such computer programs, specifications or data were developed by Chicago Digital Post for Customer or otherwise.

8. Export. Customer agrees not to export any product manufactured for it by Chicago Digital Post in violation of any export control laws, rules or regulations.

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

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

11. Force Majeure. Chicago Digital Post 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 Chicago Digital Post 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 State of Illinois. Any suit or action by Customer against Chicago Digital Post shall be brought exclusively in the state or federal courts in Illinois.