



## Magnatune Online Distribution Agreement

### *Instructions:*

- 1) on the first page (first paragraph), put your name where it says "< > (hereafter "**you or Artist**)" and today's date where it says "< >" (the "**Effective Date**")
- 2) on the last page, sign your name at the bottom where it says "**Artist**"
- 3) fill out "**Attachment A**" with the songs you are including in this agreement. Sign and date the page at the bottom in the provided space.
- 4) Fill out a W9 (if you are a US Citizen) or W8BEN (if you are not a US citizen)
- 5) Fax everything (every page, not just the ones you signed) to 1 (510) 217-6374 or postal mail it to Magnatune, 2070 Allston Way, Suite 102, Berkeley, CA 94704 USA.



## ONLINE MUSIC DISTRIBUTION AGREEMENT

This ONLINE MUSIC DISTRIBUTION AGREEMENT (the "Agreement") is entered into by and between Redwood, Inc., dba Magnatune (hereafter "Magnatune"), and < > (hereafter "you" or "Artist") effective as of < >, (the "Effective Date").

### PURPOSE

1. Magnatune is an Internet record label that sells music by encouraging MP3 file trading and Internet radio. Magnatune allows consumers to freely download and listen to music. When consumers pay for access to CD-quality online music, Magnatune will pay Artist 50% of all net revenue collected.
2. Artist, who has not signed an exclusive agreement with any record label, wishes to enter into a non-exclusive agreement with Magnatune to reproduce, publish, market, distribute and sell the Artist's Work to consumers under the terms and conditions of this Agreement.

**NOW THEREFORE**, the parties hereto, intending to be legally bound, hereby agree as follows:

### Section 1. DEFINITIONS

For purposes of this Agreement, the following capitalized terms are defined as follows:

- 1.1 **"Creative Commons License"** means the "Attribution-NonCommercial-ShareAlike" license created by Creative Commons, a nonprofit dedicated to promoting the creative reuse of musical and other works, and available free of charge at [www.creativecommons.org/licenses/by-nc-sa/1.0](http://www.creativecommons.org/licenses/by-nc-sa/1.0). This is the license that allows copyright holders to easily inform others that their works are free for copying under the conditions that i. credit for their works is provided; ii. their works can not be used for commercial purposes without permission; and iii. Derivative Works can be distributed only under an identical license. The Creative Commons License is hereby incorporated by reference into this Agreement.
- 1.2 **"Derivative Works"** means a work based upon the Work or upon the Work and other pre-existing works, such as a translation, musical arrangement, sound recording, reproduction, abridgment, condensation, or any other form in which the Work may be recast, transformed, or adapted.

1.3 **"Digital Audio Transmission"** means a transmission that embodies a sound recording including the performance thereof.

1.4 **"Digital Phonorecord Delivery"** means each individual delivery of a phonorecord by digital transmission of a sound recording, or part thereof, which results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording.

1.5 **"Formats"** means all electronic media formats including, but not limited to, the following: MP3, MP2, CD-ROM, Windows Media WMA, RealAudio, OGG Vorbis, Samples, AIFF, WAV, Flash, MIDI, Cubase, Sequencer file, and SampleCell.

1.6 **"Merchandise"** means certain items with Artist's likeness, including but not limited to, music t-shirts, mugs, posters, CDs, (both one-off and bulk-created) and other items that the parties may designate.

1.7 **"Platforms"** means all electronic media platforms including, but not limited to, "Windows Media Player", "RealPlayer", Internet radio, and MP3 player (Winamp, MusicMatch),

1.8 **"Peer-to-Peer Technology"**: means all peer-to-peer software clients, technologies and networks including but not limited to Kazaa, Napster, Gnutella, Aimster, Rockster, LimeWire, Alluvium, PeerCast, AllCast, and Streamer.

1.9 **"Sale"** means where money is paid and received by Magnatune for the occurrence of any of the following: i. a consumer requests to download a CD-quality copy of Artist's Work; ii. sublicensing of the Artist's Work, in whole or part, for commercial purposes; and iii. non-digital sale of Artist's Work and Merchandise. "Sale" shall not include promotional activities by Magnatune (where no cash sale has occurred), including distribution of high-quality copies of the Work (such as to DJs, A&R, barters, low-budget films), and any subscription service that allows listeners access to entire genres or a mix of music.

1.10 **"Work"** means all forms of sound, music, rhythm and lyrics that Artist intends to provide to Magnatune including, but not limited to: sound recordings, compositions, song lyrics, written prose, musical recordings, vocal recordings, vocal solos, samples, field recordings and ambiences. All Work submitted by Artist, which shall include one or more songs or music scores, shall be set forth in **Attachment "A"**, which shall be incorporated into this Agreement. Each subsequent submission of Artist's Work shall be set forth by Attachment and will be incorporated into this Agreement.

### Section 2. WARRANTIES OF NON-EXCLUSIVITY, ORIGINALITY AND OWNERSHIP

2.1. **Artist Warranties:** By offering the Work for release under this Agreement, Artist represents and warrants the following:

a. Artist is the sole author of the Work and/or has secured all rights in the Work necessary to grant the license rights hereunder and to permit the lawful exercise of the rights hereunder, including all cover songs, samples, excerpts, recordings, lyrics, rhythms and melodies, without Artist or Magnatune having to pay any royalties, compulsory license fees, residuals or any other payments.

b. The Work does not infringe the copyright, trademark, publicity rights, common law rights, or any other right of any third party or is otherwise illegal or constitute defamation, invasion of privacy, pornography or any tort injury to any third party.

c. **ARTIST CURRENTLY IS NOT BOUND BY AN EXCLUSIVE AGREEMENT WITH ANY RECORD COMPANY AND ARTIST DOES NOT REQUIRE THE PERMISSION OF ANY OTHER PARTY TO ENTER INTO THIS AGREEMENT.**

Artist shall provide Magnatune immediate notice if it enters into an exclusive agreement with any record label or for the distribution of Merchandise.

d. If Artist has entered into an agreement with any record label ("Prior Agreement"), Artist has had an attorney review the Prior Agreement who has determined that Artist has the legal right to enter into this Agreement and assume the duties hereunder and that Magnatune has the right to use the Work as provided herein. Artist shall provide Magnatune with a copy of any Prior Agreement.

e. Artist is at least 18 years old and has the right and authority to enter into this Agreement on his/her behalf or, if Artist is more than one person, Artist has the right and authority to enter into this Agreement on behalf of such group.

f. Artist has reviewed the Creative Commons License and hereby confirms that Artist's Work may be licensed by and through the Creative Commons License.

### **Section 3. NON-EXCLUSIVE LICENSE GRANT TO MAGNATUNE**

#### **3.1. Non-exclusive License Grant.**

a. Subject to the terms and conditions of this Agreement, Artist hereby grants Magnatune a non-exclusive right and license throughout the universe to freely and without restriction use and exercise the rights in the Work identified in Attachment A, in whole or in part, as stated below:

i. to use reproduce, publish, duplicate, publicly or privately perform and display, distribute and transfer the Work, or cause to do the same, including Digital Audio Transmissions and Digital Phonorecord Deliveries of the Work, and the right to couple any of the Work with

recordings other than Artist's licensed Work ("Electronic Distribution");

ii. to use, market, license, sublicense, distribute and sell the Work, including individual tracks, MIDI, lyrics, samples music score and other constituent parts from the Works;

iii. to create and reproduce Derivative Works, or cause to do the same;

iv. to use, reproduce, distribute, display, deliver and transmit, publicly and privately, by any means now known or hereafter devised, the lyrics of the musical compositions embodied in the Work, for the purpose of promoting the Work or facilitating the exercise of the rights of Electronic Distribution of the Work; and

v. to use the Work to promote Artist, the Work and Magnatune (and its products and services) and to use the name and likeness biographical material, logos, trademarks photographs, symbols, emblems, designs, and any other visual representations of the Artist, and any other individuals performing or otherwise represented in the Work.

The above rights may be exercised in all Formats, Platforms and Peer-to-Peer Technology, both presently known or to be developed, without any payment or royalty obligation to Artist, except for as specifically provided under Section 4.

b. Artist agrees that its Work shall be released or distributed under the terms of the Creative Commons License.

c. Artist also grants Magnatune the right to sell, or cause to sell, or sublicense Merchandise subject to Section 4.4.

#### **3.2. Term and Termination.**

a. This Agreement will commence on the Effective Date and continue for a period of five (5) years from the Effective Date (the "Initial Term"). This Agreement will automatically renew for successive one-year terms in perpetuity, if not terminated in writing thirty (30) days or more prior to the expiration of the term (the Initial Term and any period thereafter, if any, collectively are referred to as the "**Term**").

b. This Agreement may be terminated if either Party breaches any of the provisions of this Agreement, which breach has not been remedied within thirty (30) days of written notice of the breach, and without prejudice to any remedies available to the non-breaching Party.

3.3. **Abridge and Adapt.** Artist grants Magnatune the right, in its sole discretion, to abridge and/or adapt the Work in order to conform to the requirements of the Formats, Platforms and Peer-to-Peer Technology utilized by Magnatune.

3.5. **Artist's Reservation of Rights.** Magnatune shall not grant rights that are greater than the rights granted under this Agreement. All other rights are reserved to Artist. Other than the Work identified by Attachment

hereto, Artist shall have no obligation to license any other work or music. Subject to the nonexclusive license grant conferred to Magnatune herein, Artist shall retain all rights to the copyright interests in the Work.

#### **Section 4.**

##### **PAYMENT AND ROYALTY FEE**

4.1. **Royalty Fee.** In full consideration of all Royalty Fees due to Artist, Magnatune shall pay Artist fifty percent (50%) of all Net Revenues actually received by Magnatune from a Sale, in whole or in part, ("Royalty Fee").

4.2. **Net Revenues.** For purposes of computing royalties, the term "Net Revenues" means gross revenue actually received by Magnatune from all Sales of the Work, adjusted for returns, mechanical royalty (if any), allowances, refunds, bad debt, overhead, shipping and handling, taxes of any kind and union guild or other third party fees that may be required by contract or the Copyright Act, if any.

4.3 **Waiver of Additional Royalties:** The Royalty Fee payable to Artist shall include all compensation, including mechanical and performance royalties for underlying musical works due Artist, individual producers, the performers, engineers, and any other persons engaged in connection with the Work. Artist hereby waives any right to any compensation, other than the Royalty Fee, including without limitation, mechanical and/or performance royalties in connection with Electronic Distributions hereunder. Artist will be solely responsible for payment of all above stated royalties and will indemnify Magnatune and hold Magnatune harmless against any and all losses, damages, costs or claims made by any parties resulting from Electronic Distributions hereunder.

4.4 **Merchandise:** Magnatune shall pay Artist fifty percent (50%) of all Net Profits of Merchandise. "Net Profits" means gross revenue actually received by Magnatune from all Merchandise sold, adjusted for all costs to create and purchase the Merchandise, returns, allowances, refunds, bad debt, overhead, shipping and handling, and taxes of any kind.

4.5 **Limitations and Taxes.** There shall be no Royalty Fee for digital performances for Internet or satellite radio stations or other digital transmissions. Artist shall be solely responsible for any and all taxes, fees and assessments that may be imposed against the Royalty Fee by any governmental entity, which shall not be a part of, or an offset against, such fees. All objections concerning a Royalty Fee shall be submitted by Artist within one (1) year after the date of payment of Royalty Fee and/or Royalty Fee, after which time all objections shall be waived.

4.6 **Payment Terms.** Magnatune shall provide payment of the Royalty Fee in U.S. dollars to Artist at least two (2) times per year, on or before June 30 and December

31<sup>st</sup>. Unless other payment arrangements are made between Magnatune and Artist, and if Paypal offers receipt of payments to the Artist's primary country of residence, artist shall create a Paypal account and maintain it in good standing. All payments from Magnatune will be made to Artist's Paypal account. Magnatune reserves the right, in its sole discretion, to select an alternative payment service other than Paypal. Payment shall be made to Artist after the Royalty Fees amount to at least \$100; Magnatune shall hold the Royalty Fees until such time.

#### **Section 5.**

##### **OPERATIONAL DUTIES**

5.1. **Selection of Music.** Magnatune shall, at its sole discretion, select whether the Work, in whole or in part, is acceptable for use under this Agreement.

5.2 **Marketing of the Work.** Work that has been accepted by Magnatune shall be posted and available for Magnatune listeners and categorized by Artist's name and genre. Magnatune shall have no further duties concerning the marketing or promotion of the Work or Artist. Notwithstanding the foregoing, Magnatune, in its sole discretion, shall be permitted to promote, market, and advertise the Work and Artist without limitation.

5.3 **Pricing.** Magnatune shall decide, in its sole discretion, the price plan of all Sales of the Work and Merchandise.

5.4 **Limitations.**

a. Notwithstanding any of the foregoing, Magnatune shall have no obligation whatsoever to provide services, payment or resources toward marketing, promotion or advertising for Artist or the Work.

b. Other than the Royalty Fees stated herein, Magnatune shall have no obligation to provide to Artist any kind of payment, including an advance, license fees, residuals, Internet radio fees or any other form of compensation.

c. Magnatune shall be permitted, in its sole discretion, to remove or edit the Work, or any portion thereof, from the Magnatune website at anytime and without notice to Artist. Magnatune shall have no duty to post the Work or Artist on the Magnatune website.

d. As further provided below under Section 6.1, Artist shall be solely liable for any claim for any royalty fees or charges that might be brought against Magnatune by a performing rights licensing organization including, without limitation, ASCAP, BMI, or SESAC, arising from all uses and sublicensing of the Work contemplated under this Agreement.

5.5 **Artist's Promotion Information and Merchandise.** Upon request, Artist shall provide to Magnatune its biographical material including the following: i. Four substantially different group photographs (high quality suitable for posters and press kits); ii. Bio's for each

band member; iii. Close up photographs of each band member; and iv. High quality digital copies of album artwork. Items ii. and iii. shall not be required for bands composed of more than 6 people.

### **Section 6. INDEMNITY, DISCLAIMER AND LIMITATION OF LIABILITY**

6.1 **Artist's Indemnity.** Artist shall indemnify and defend Magnatune and hold Magnatune harmless from and against any and all costs, liabilities, losses, damages and expenses arising out of any claims, actions, suits, or proceedings of any kind from any third party claim relating to (i) a breach of Artist's warranties and/or duties under this Agreement, (ii) any claim for royalties and/or infringement of copyright, trademark, patent or other intellectual property rights or (iii) any third party claims arising out of Artist's conduct or representations under this Agreement. Further, in the event that a third party infringement claim is brought, Magnatune shall have no obligation hereunder to defend or protect Artist's copyright interests.

6.2 **Disclaimer.** MAGNATUNE MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6.3 **Limitations on Liability.** Magnatune makes no warranty with respect to the accuracy or effectiveness of the Magnatune website, including content contained therein, nor any errors or problems of any kind that may arise from the website. Magnatune shall not be responsible for losses, damages, costs, or expenses of any kind resulting from the use or distribution of the Work by Magnatune or use by any consumer or end-user. This includes, without limitation, any liability for business expenses or damages experienced by Artist or any third persons as a result of any deficiency, defect, error, or malfunction with the Website or the transfer or distribution of the Work. Magnatune shall not be liable for any indirect, special, incidental, or consequential damages relating to or arising out of the subject matter of this Agreement.

### **Section 7. General.**

7.1 **Notices.** All notices permitted or required under this Agreement shall be in writing and shall be delivered as follows (i) by email, (ii) by U.S. Mail (iii) by facsimile transmission, or (iv) by certified or registered mail, return receipt requested, five days after deposit in the mail.

7.2 **Waiver and Severability.** The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the

waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself. In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such provisions within the limits of applicable law or applicable court decisions.

7.3 **Arbitration and Controlling Law.** Any and all disputes that may arise between the Parties under or in connection with this Agreement shall be submitted (together with any counterclaims and disputes under or in connection with other agreements between the parties) to final and binding arbitration heard by a single arbitrator in accordance with the then-current Commercial Arbitration Rules of the American Arbitration Association (the "AAA"). The arbitration shall be conducted in San Francisco, California. All questions concerning the validity, operation, interpretation, and construction of this Agreement will be governed by and determined in accordance with the laws of the State of California.

7.4 **No Agency.** The relationship between Magnatune and Artist is that of independent contractors. Nothing contained herein shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties or to allow either party to bind the other or incur any obligation on its behalf.

7.5 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.

7.6 **Assignment.** Magnatune may assign this Agreement to any entity to which it transfers all or substantially all of its ownership interest, whether through merger, acquisition or sale of assets. Otherwise, neither party may assign, voluntarily, by operation of law, or otherwise, this Agreement without the other party's prior written consent, and any attempt to do so without that consent will be void. This Agreement will bind and inure to the benefit of the parties and their respective successors and permitted assigns.

7.7 **Entire Agreement.** This Agreement is the entire agreement between Artist and Magnatune which supersedes any prior or contemporaneous agreement or understanding, whether written or oral, and any other communications between Artist and Magnatune relating to the subject matter of this Agreement. This Agreement may not be changed orally, but only by a writing signed by both parties which specifically references this Agreement.

7.8 **Survival:** The provisions of Sections 1, 4, 5.4, 6, and 7 shall survive termination of this Agreement.

7.9 **Headings.** The headings herein are for convenience only and are not intended by the parties of or to affect the meaning or interpretation of this Agreement.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be duly executed by their Authorized representatives below as of the date first above written.

**Artist:**

**By:** \_\_\_\_\_,

**Magnatune:**

**By:**

**Title:** \_\_CEO, \_Magnatune\_\_\_\_\_,