

ARTIST DIGITAL DISTRIBUTION AGREEMENT

Welcome to the CD Baby Artist Digital Distribution Agreement ("Agreement"). This Agreement contains the terms and conditions under which CD Baby offers the "Digital Download and Distribution Service". Use of the Digital Download and Distribution Service constitutes your agreement to and acceptance of this Agreement.

CD Baby (a division of Audio & Video Labs, Inc., along with our licensees and assignees collectively referred to in this Agreement as "us," "we," and "CD Baby") reserves the right to add, delete and/or modify any of the terms and conditions contained in this Agreement, at any time and in its sole discretion, by posting a change notice or a new agreement on the Site. In the event of substantive changes to the terms of this Agreement, you will be notified by email. If any modification is unacceptable to you, your only recourse is to discontinue use of the Consignment Service. Your continued use of the Consignment Service, following posting of a change notice or new agreement on the Site (as more fully described below in Paragraph 8), will constitute your binding acceptance of the changes.

The following, when accepted by you (whether as an individual, or as the authorized representative for an artist, band, group, or corporation) and us shall be a binding contract. Please read this Agreement carefully. By entering your name and clicking on the "I AGREE" button below, you will become a party to, and will be bound by this Agreement, which may be modified as further described in Section 8 below. The "Effective Date" of this Agreement is the date on which you click the "I AGREE" button below.

1. Authorization:

(a) You hereby appoint us as your authorized representative for the sale and other distribution of Your Authorized Content as described below. While selling your music on cdbaby.com is non-exclusive, the rights granted by you to us under this Artist Digital Distribution Agreement are exclusive, because online retailers do not want to receive the same content delivered by multiple companies. Accordingly, you hereby grant to us the exclusive right, and to our licensees (herein each a "Licensee") the non-exclusive right, during the Term and throughout the Territory, to:

- (i) Reproduce and convert Your Authorized Content into Digital Masters;
- (ii) Perform and make available, for promotional purposes and without remuneration to the artist, portions of Your Authorized Content ("Clips") by "streaming" to promote the license, sale and distribution of Digital Masters;
- (iii) Promote, sell, distribute, and deliver Digital Masters (as individual tracks or entire albums) and associated metadata to purchasers and resellers who may use such Digital Masters in accordance with usage rules approved by us;
- (iv) Use and authorize others to license the use of and sale of Your Authorized Content in connection with all manner of phone services, such as, but not

limited to, sales or licenses of Digital Masters as downloads (including, without limitation, downloads to cell phones) and for use as ringtones and ringback tones;

(v) Use so-called “kiosks” to distribute, market and promote Digital Masters, including, without limitation, by allowing the burning of compact disc copies of any Digital Master or by allowing a copy of a Digital Master to be transferred to personal devices;

(vi) Use and authorize others to allow copies of a Digital Master to be distributed as so-called “conditional” downloads, whether tethered to a device, time limited, play limited or otherwise;

(vii) “Stream” and authorize others to “stream” Your Authorized Content, either on-demand or as part of an internet radio service;

(viii) Use and distribute Copyright Management Information as embodied in a Digital Master;

(ix) Display and electronically fulfill and deliver Authorized Artwork used in connection with Your Authorized Content for personal use, solely in conjunction with the applicable Digital Master;

(x) Use Your Authorized Content, Authorized Artwork, and metadata as may be reasonably necessary or desirable for us to exercise our rights under this Agreement; and

(xi) Authorize our Licensees to perform any one or more of the activities specified above.

(b) While you are free to pursue other avenues to distribute your Content online, you hereby agree to grant CD Baby the exclusive right to digitally distribute your Authorized Content to our partners in accordance with the grant of rights chosen in your digital distribution service option (e.g., to prevent multiple parties delivering the same content multiple times to the same partners), for as long as you are signed up to deliver to those partners through CD Baby. Furthermore, you grant CD Baby the exclusive right to digitally distribute your content to future partners that naturally fit within your chosen distribution option, unless specified otherwise by way of set restrictions in your member site.

2. Term: The Term of this Agreement will commence on the Effective Date and will continue, unless and until terminated by either you or us, upon thirty (30) days written notice.

3. Payments to You:

(a) **Wholesale rates:** For content resold through our distribution partner network Licensees (including iTunes, Amazon.com, eMusic, Rhapsody, and other partners) we will pay you an amount equal to ninety-one percent (91%) of the net wholesale price that we receive from Licensees for the sale or other licensed uses of your Digital Masters (“License Fee”).

(b) **Retail sales rates:** For content sold at retail prices directly through our retail store <http://cdbaby.com> we will pay you an amount equal to seventy-five percent (75%) of the retail price that we receive from the customer for the sale or other licensed uses of Your Authorized Content.

(c) All accounting details will be available and updated daily in the secure members' login area at <https://members.cdbaby.com>. We will make payments to you when the amounts credited to you exceed the threshold amount set by you initially upon your registration with CD Baby, or as subsequently modified by you. Payments will occur within 7 business days from the date that your account balance exceeds the threshold amount. Such payment will constitute full and adequate consideration for all rights granted, and all obligations undertaken, by you in this Agreement. For the avoidance of doubt, you have the right to affiliate with a performance rights society and Sound Exchange or other entity to collect monies that may be payable to you for the public performance of Your Authorized Content.

(d) We will maintain books and records which report the sale or other licensed uses of your Digital Masters. You may, but not more than once a year, at your own expense, examine those books and records, as provided in this Section 3(b), only. You may make those examinations only for the purpose of verifying the accuracy of the statements sent to you. All such examinations will be in accordance with GAAP procedures and regulations. You may make such an examination for a particular statement only once, and only within one (1) year after the date we send you that statement. You may make such an examination only during our usual business hours, and at the place where we keep the books and records to be examined. If you wish to make an examination, you will be required to notify us at least thirty (30) days before the date when you plan to begin it. We may postpone the commencement of your examination by notice given to you not later than five (5) days before the commencement date specified in your notice; if we do so, the running of the time within which the examination may be made will be suspended during the postponement. If your examination has not been completed within one (1) month from the time you begin it, we may require you to terminate it on seven (7) days' notice to you at any time; we will not be required to permit you to continue the examination after the end of that seven (7) day period. You will not be entitled to examine any other records that do not specifically report sales or other licensed uses of the Digital Masters. You may engage a certified public accountant to make such an examination for you, but not if (s)he or his/her firm has begun an examination of our books and records for anyone else, unless the examination has been concluded and any applicable audit issues have been resolved. Such certified public accountant will act only under an acceptable confidentiality agreement, which provides that any information derived from such audit or examination will not be knowingly released, divulged or published to any person, firm or corporation, other than to you or to a judicial or administrative body in connection with any proceeding relating to this Agreement.

(e) If you have any objections to a statement, you will give us specific notice of that objection and your reasons for it within one (1) year after the date when we are required to send you that statement. Each statement will become conclusively binding on you at the end of that one (1) year period, and you will no longer have any right to make any other objections to it. You will not have the right to sue us in connection with any statement, or to sue us for License Fees on sales and licenses during the period a statement covers, unless you commence the suit within that one (1) year period. If you commence suit on any controversy or claim concerning statements rendered to you under this Agreement in a court of competent jurisdiction, the scope of the proceeding will be limited to determination of the amount of the License Fees due for the accounting periods concerned, and the court will have no authority to

consider any other issues or award any relief except recovery of any License Fees found owing. Your recovery of any such royalties will be the sole remedy available to you by reason of any claim related to our statements.

4. Your Obligations: You or a licensee, e.g. Rightsflow, (on your behalf) will obtain and pay for any and all clearances or licenses required in the Territory (or any portion thereof) for the use of Your Authorized Content, and Authorized Artwork and metadata as intended by this Agreement. By way of example, you will be responsible for the payment of mechanical royalties in territories where such royalties are not collected by a rights society. Specifically, and without limiting the generality of the foregoing, you or a licensee on your behalf will be responsible for and shall pay (i) any royalties and other sums due to artists, authors, co-authors, copyright owners and co-owners, producers and any other record royalty participants from sales or other uses of Digital Masters, (ii) all mechanical royalties or other sums payable to publishers and/or authors or co-authors of musical compositions embodied in Digital Masters from sales or other uses of Digital Masters [Please see the information at cdbaby.net/dd-covers with regard to publishing issues.], (iii) all payments that may be required under any collective bargaining agreements applicable to you or any third party, and (iv) any other royalties, fees and/or sums payable with respect to Your Authorized Content, and Authorized Artwork, metadata or other materials provided by you to us. You agree that the amount payable to you is inclusive of any so-called "artist royalties" that might otherwise be required to be paid for sales or exploitations pursuant to the applicable laws of any jurisdiction.

5. Right to Withdraw Material: You have the right, at any time during the Term, to withdraw your permission for the sale or other uses of Your Authorized Content and Authorized Artwork, upon written notice to us ("Withdrawal"). Within 5 business days following our receipt of your notice of Withdrawal, we will advise our Licensees that they are no longer authorized to offer the sale or other use of Your Authorized Content or Authorized Artwork. Sending of your notice of Withdrawal will not limit your responsibility for sales and other uses of Your Authorized Content and/or Authorized Artwork that occurred prior to the implementation of such Withdrawal and will not limit in any way the rights of end users who have acquired Your Authorized Content or Authorized Artwork. CD Baby is not responsible for any delays of our Licensees in removing Your Authorized Content and Authorized Artwork.

6. Names and Likenesses; Promotional Use and Opportunities:

(a) You hereby grant to us, during the Term, the right to use and to authorize our Licensees to use the names and approved likenesses of, and biographical material concerning any artists, bands, producers and/or songwriters, as well as track and/or album name, and Authorized Artwork, in any marketing materials for the sale, promotion and advertising of the applicable Digital Master, which is offered for sale or other use under the terms of this Agreement (e.g., an artist or band name and likeness may be used in an informational fashion, such as by textual displays or other informational passages, to identify and represent authorship, production credits, and performances of the applicable artist or band in connection with the exploitation of applicable Digital Masters).

(b) You hereby grant to us and our Licensees the right to market, promote and advertise the Digital Masters as available for purchase or license, as we and they determine in our and their discretion.

7. Ownership: Subject to our rights hereunder or under any prior agreement between you and us, as between you and us, all right, title and interest in and to (i) Your

Authorized Content and Authorized Artwork, (ii) the Digital Masters, (iii) the Clips, (iv) all copyrights and equivalent rights embodied therein, and (v) all materials furnished by you, will be yours.

8. Modification, Termination and Effect of Termination:

(a) We reserve the right to change, modify, add to, or remove all or part of this Agreement, in our sole discretion. Notice of any such change will be sent to you by email at least seven (7) days prior to its effective date. In the event that you do not consent to any such proposed changes, your sole recourse shall be to terminate the Term of this Agreement, by notice to us as provided above, and your failure to do so within ten (10) days of the date of any such email from us to you shall constitute your acceptance of such changes.

(b) The expiration or termination of the Term will not relieve either you or us from our respective obligations incurred prior to or during the Term. Accordingly, applicable provisions of this Agreement will continue to apply even after the expiration of the Term.

9. Indemnification: You hereby indemnify, save, and hold us harmless from any and all damages, liabilities, costs, losses and expenses (including, but not limited to, legal costs and attorneys' fees) arising out of or connected with any claim, demand, or action which is inconsistent with any of the warranties, representations, covenants or agreements made by you in this Agreement, including, but not limited to, your representations and warranties regarding copyrights or any other rights in and to any other forms of intellectual property. You will reimburse us, on demand, for any payment made by us at any time with respect to any damage, liability, cost, loss or expense to which the foregoing indemnity applies. Pending the determination of any claim, demand, or action, we may, at our election, withhold payment of any monies otherwise payable to you hereunder in an amount which does not exceed your potential liability to us pursuant to this paragraph.

10. Additional Representations and Warranties of the Parties:

(a) You represent and warrant that you have the full authority to act on behalf of any and all owners of any right, title or interest in and to Your Authorized Content or Authorized Artwork, or metadata.

(b) You represent and warrant that you own or control the necessary rights in order to make the grant of rights, licenses and permissions herein, and that the exercise of such rights, licenses and permissions by us and our Licensees shall not violate or infringe the rights of any third party.

(c) You and we represent and warrant that we will not act in any manner which conflicts or interferes with any existing commitment or obligation of the other party, and that no agreement previously entered into by you or us will interfere with our performance of our obligations under this Agreement.

(d) Each party represents and warrants that it shall perform its obligations hereunder in full compliance with any applicable laws, rules and regulations of any governmental authority having jurisdiction over such performance.

(e) We make no guarantees whatsoever about there being any minimum sales or uses of any Digital Master.

11. General Provisions:

(a) The parties hereto agree and acknowledge that the relationship between them is that of independent contractors. This Agreement shall not be deemed to create a partnership or joint venture, and neither party is the other's agent, partner, or employee.

(b) This Agreement contains the entire understanding of the parties relating to the subject matter hereof. This Agreement supersedes all previous agreements or arrangements between us pertaining to the digital distribution of content, provided that if you previously entered into a digital distribution agreement with us in the past, and elected any options, those options will remain in place under this Agreement. This Agreement cannot be changed or modified except as provided herein. A waiver by either party of any term or condition of this Agreement will not be deemed or construed as a waiver of such term or condition, or of any subsequent breach thereof. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable, such determination shall not affect any other provision hereof, and the unenforceable provision shall be replaced by an enforceable provision that most closely meets the commercial intent of the parties.

(c) This Agreement will be binding on the assigns, heirs, executors, affiliates, agents, personal representatives, administrators, and successors (whether through merger, operation of law, or otherwise) of each of the parties.

(d) Any notice, approval, request, authorization, direction or other communication under this Agreement shall be given in writing and shall be deemed to have been delivered and given for all purposes on the delivery date if sent by electronic mail to the addresses provided to and by you upon registration with the CD Baby Site, or as properly updated.

(e) This Agreement will be governed and interpreted in accordance with the laws of the State of California applicable to agreements entered into and to be wholly performed in California, without regard to conflict of laws principles.

(f) To the extent permitted by applicable law, the rights and remedies of the parties provided under this Agreement are cumulative and are in addition to any other rights and remedies of the parties at law or equity.

(g) The titles used in this Agreement are for convenience only and are not to be considered in construing or interpreting this Agreement.

(h) This Agreement is for the sole benefit of the parties hereto and their authorized successors and permitted assigns. Nothing herein, express or implied, is intended to or shall confer upon any person or entity, other than the parties hereto and their authorized successors and permitted assigns, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

12. Certain Definitions: The following capitalized terms shall have the following meanings for purposes of this Agreement:

(a) "Authorized Artwork" means album cover artwork and any other artwork relating to Your Authorized Content that you provide to us. All such artwork will be deemed to have been properly cleared and/or licensed by you for all purposes, unless you provide us with written notice to the contrary.

(b) "Authorized Territory" means the Universe, or more limited territories, if you so choose, in the registration process.

(c) "Copyright Management Information" means the digital information conveying information regarding a Digital Master, such as your name, the title of the applicable album, the name of the song and the record company name, and same shall be subject to the protection of Title 17, Section 1202 of the United States Copyright Law.

(d) "Digital Master" or "Digital Masters" means a copy or copies of Your Authorized Content in digital form.

(e) "Licensee" means any third party licensee, by way of example, Apple iTunes, MediaNet, Rhapsody, Napster or others that we may authorize to carry out the marketing, distribution and sale or other use of Your Authorized Content and Authorized Artwork pursuant to the terms of this Agreement.

(f) "Your Authorized Content" means sound recordings and underlying musical compositions that you have designated for digital distribution by us. Any such sound recordings and the underlying musical compositions must be owned or controlled by you and/or have been cleared by you for all purposes and rights granted and authorized hereunder by you.