



## ONLINE MUSIC DISTRIBUTION AGREEMENT

*Here are our comments to the distribution agreement (our comments are in red-italic type). If you are not a lawyer, you may find our comments helpful in explaining what you're reading. Please note, however, that this is not a substitute for legal advice, nor a complete summary of each provision in the agreement. We recommend that you consult with an attorney for review of the 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").

*Put your name and today's date above.*

### 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.

*Background information on the 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.

*The Creative Commons License is the legal document that gets attached to the music so we can give it away for free (for example, on our radio station). What it allows is for normal people to legally listen to your music on their computer, and pass it on to others. Normal copyright does not allow this. Listeners are not allowed to make money off your music (for example, feature it in a commercial) without permission (which, of course, is when we charge them money, and split it with you). The Creative Commons license lets you get the widest possible marketing exposure, while protecting your ability to make money from your music. The Creative Commons (<http://creativecommons.org>) is also a worthy cause, which works to expand the ways in which creative work can flourish -- we recommend you check their web site out and publicly support them. Magnatune has been working with the folks at Creative Commons, as we share similar goals and ethics.*

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.

*A "derivative work" can be when someone does a cover version of a song of yours.*

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

1.5 "**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.

1.6 "**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.

*Wherever possible, we would like to also distribute your music in many useable formats. For example, if you use a sequencer, we would like to distribute your MIDI files. If you make your own samples, we'd like to distribute those. The reason is, we think there is a market for all the components of your music: not just the final mix. For example, a film may like a song, but want to remove the vocal track because it clashes with the on-screen action. Or, the film may be crazy about a guitar riff. By allowing us to distribute the components of your music, you enable us to find money for it. Of course, the final decision is up to you: you are under no obligation in this contact to give us the separate*

*components to your music (the final mix is fine). So if you are uncomfortable with the idea of allowing others to license your music components, you don't need to do it.*

1.7 “**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.

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

1.9 “**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.

*We think that services such as Kazaa and Napster prove that people want to share music. Unfortunately, due to how copyright law works, it's usually illegal to do so.*

*That's one reason we work with the Creative*

*Commons: they give us the legal tools to work with file trading networks while still preserving the artist's core rights (specifically, their right to try to make a living!)*

*With Magnatune, we plan on capitalizing on the huge popularity of file trading to get a wide distribution for your music, so that a lot more people hear you than otherwise would. Of course, the vast majority of those people will not buy your music, but some will, and probably a lot more than if your music got very little distribution.*

1.10 “**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.

*We define the term Sale here to let you know what triggers a Royalty Fee to you.*

1.12 “**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.

*The "Attachment A" is a page where you will list all the songs that you are licensing to us. You are under no obligation to license us any music in the future, and this agreement only covers the songs you explicitly name.*

## **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.

*This is your promise that you only license to us music that you 100% own. That means no cover songs, borrowed lyrics, or samples you didn't personally create. We wish this weren't so, but the copyright laws surrounding music basically keep Internet Music from moving forward, which is why we created Magnatune. But, that means Magnatune can only work with 100% free-and-clear music.*

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.**

*If you've signed a contract with a record company, chances are there are nasty restrictions in there that you need to pay attention to. This is your promise that you are not currently bound by some other exclusive agreement, and that you don't have to ask anyone else for the right to sign this agreement. Your contract with Magnatune is non-exclusive (meaning you can sign with other companies) but if you've signed a record contract with another company that is exclusive, then that means they own you, and you can't sign with anybody else--at least not until your lawyer says you can.*

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. *Here, we're covering your butt and ours -- if you've signed with another record label, we think you should talk to a lawyer before signing this agreement. Neither of us wants to be in a lawsuit with your record label.*

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.

*Contract law is weird this way: it's hard to have agreements with groups of people. So, if you're in a band, we need your band to appoint a single person as your band's representative to sign this agreement.*

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. *See our comments above: this is so that people can legally listen to your music off our web site.*

### 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”);

*You're giving us the non-exclusive right to play your music for people, distribute it, and otherwise get you better known.*

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;

*You're giving us the non-exclusive right to find people who want to pay for the right to use (or listen to) your music.*

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

*We are going to try to get people to cover your songs, license your lyrics for their use, remix, etc. Basically, we want to find other ways to make money off your music.*

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.

*We go out and do PR for you, as well as to try to sell T-Shirts, Posters, Mugs and other stuff with your face on it. You'll get your 50% cut as described below.*

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.

*As explained above, you give us the right to get your music heard through a variety of different formats (see our comments above under the Format definition).*

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

*As explained above, this lets people legally listen to your music (such as on our web site) and pass it on to their friends. Without the Creative Commons license, those people would be breaking the law.*

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

*Boy, we do repeat ourselves, don't we!*

##### 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”).

*You give us these rights for 5 year (remember, they're non-exclusive rights, so you're not giving anything up) and the right to renew for one year periods.*

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.

*If either of us do something which violates this agreement, we have 30 days to fix it, otherwise the other side can end the agreement.*

**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.

*In many cases, we'll have a DJ announce your band and the song title directly over the music. That way, when people pass the song around, everyone knows where it came from and what the band is. In other cases, we may shorten the song so that people only hear a sample of it for free.*

**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.

*We can't give anyone more rights than you're giving us (for example, through sublicensing for an advertisement). Furthermore, this agreement will never apply to any music you don't specifically name in Attachment A, and you have no obligation to us in the future to give us your new music. Finally, you keep all copyrights to your music. We're not a big, bad, evil record company: we just want to distribute your music on the Internet, and you keep all the ownership and do whatever you want with your music.*

#### **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").

*We'll pay you 50% of what we charge (not the "profits" which is what most record companies sneak in, in order to avoid ever paying their artists).*

**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.

*Note that above, there is no mention of marketing expenses, bandwidth fees, or any tricky legalese to weasel out of paying you your money. In most cases, if*

*someone buys your album from us for \$10, you get \$5. It's that simple. The only exceptions are above, for things like when people use a fake credit card, or if the government decides to start taxing this stuff in some strange way. Basically, we see ourselves as a distributor: we have a fixed cost (your 50% royalty) and it's up to us to distribute your music and pay the rent with the sale portion that remains.*

**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.

*Companies such as the RIAA, ASCAP, BMI and SESAC may come in and claim a cut on the money we collect (and share with you). Our advisors tell us that if the artist says so, these companies don't have the right to collect from the people you designate. Since this agreement is between you and Magnatune--you make the music, we find the money--we don't think those companies should take their cut. This paragraph above helps ensure that.*

**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.

*Merchandise is a little different from downloaded music: it costs money to make, sometimes the majority of the purchase price is the cost to create it. So, with merchandise, we'll split the money with you after the cost to create the merchandise is subtracted.*

**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.

*We will not be paying a royalty to you or the RIAA for playing your music on the Internet. Also, when we pay you your royalties, you have a year to complain to us if you think they're not fair.*

**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.

*We are going to pay you twice a year. This may not sound very frequent, but most record companies don't pay any royalties at all for 2 years. If you haven't made royalties of \$100 yet, we'll wait until you do. Whenever possible, we prefer to pay you using Paypal, since it's free for you, very low cost, works internationally, and there's no chance of a check lost in the mail.*

## **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.

*Magnatune's radio stations rotate all the songs on your album into the mix. This means, for example, that the brilliant 3 minute ambient intro you did, would get mixed in as a 'song' on our radio station. This wouldn't be too good, so we might need to remove some songs from the album on Magnatune. Also, we're trying to make a good impression on our visitors, so we may cut some of the songs we're so-so on, so that we can feature your best work more frequently.*

**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.

*We'll put your music on our web site, but we can't promise that we'll do more than that (we probably will, but we can't promise)*

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

*We don't know how much (or how little) to charge for Internet music sales (hey, no-one has done this before).*

*But, since we split the money with you, you can be sure we'll do our best to make the total amount of money collected as large as possible.*

### **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.

*We're a web site: that's it. We may do other stuff, but we won't promise.*

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.

*We pay you as stated above (that 50% stuff), but that's it. You don't get any more money out of us than that.*

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.

*Sometimes we need to change the work (for example, shorten it, or have a DJ talk over it). Also, if people just aren't into your music, despite how much we love it, we can take it off the web site.*

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.

*If ASCAP, BMI or SESAC come asking for royalties (and we're pretty sure they won't, as our advisers say they don't have a leg to stand on) we've already paid you for your music, so you'll have to talk to them. This is us covering our butts, and we're pretty sure this isn't an issue. It's especially not an issue if you're not a member of one of these organizations.*

### **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.

*You need to give us photos and other promotional stuff, so we can do PR for you.*

## **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.

*If you're not being truthful in signing this (for example, if you've covered someone else's song and are including it in this agreement) and someone comes along to sue us, it's your problem.*

**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.

*Lawyers always say this. It's in every software agreement I've ever seen.*

**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.

*If we make a mistake on our web site (maybe we misspell your name or there is a temporary glitch with the website) -- we're sorry, we'll try to fix it as soon as we can, but we're not legally liable for the mistake.*

## **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.

*Bottom line: we can email it each other.*

**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.

*If one of us does not enforce one of the terms from the Agreement or if a court finds one of the terms unenforceable, then the rest of the agreement still holds and is binding.*

**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.

*We don't like nasty lawsuits, and neither should you. If we ever have to fight, let's do it with a low-cost arbitrator.*

**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.

*We're not hiring you as an employee: we're totally independent contractors.*

**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.

*We can each sign our own copy, fax it to each other, and it'll still be valid. We don't have to meet face to face to sign this thing.*

**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.

*If someone, someday, buys Magnatune, this contract will go to the buyer. Otherwise, neither of us can transfer this agreement to someone else.*

**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.

*This agreement is it: whatever was said by email between us is superseded by 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.

*This means that the titles of each section is just a title, and doesn't have legal meaning -- read the sentences in the sections for legal meaning.*



**Performing Rights,  
Internet Broadcast Rights Fee Waiver  
and Digital Distribution Option**

This letter shall set forth all work submitted by Artist, including one or more songs and/or music scores  
Artist’s Work shall comprise of the following tracks, songs and/or music scores:

**TRACK TITLES**

**Digital Distribution Option**

Optional: artists gives Magnatune permission to be the exclusive digital distributor to 3rd party stores (including, without limitation iTunes, Amazon, eMusic and Napster) to the Artist’s Work listed herein. Artist retains the right to revoke this permission at any time for any reason, with 90 days written notice to Magnatune.

*If you want Magnatune to put your music on iTunes, and other stores, then put your initials in the line below. We will split all revenue we receive from these other stores using the same 50/50 formula we do with music we sell from our own site. You absolutely do not need to let us do this if you don’t want to. However, we do recommend that every musician of ours be on iTunes in some way or another, so if you don’t let us put your music on iTunes, we recommend you make other arrangements to get your music on iTunes.*

Write your initials here if you want this “Digital Distribution Option”: \_\_\_\_\_

Artist certifies that if he/she currently is, or previously was, affiliated or a member of a performing rights licensing organization (including, without limitation BMI, ASCAP, PRS or SESAC) that Artist hereby grants Magnatune a waiver of performing rights royalties and Internet Broadcast royalties arising from performance or broadcast of these works.

*We include the language above (which also is stated in the main Agreement) (i) to confirm that we can distribute your music as widely as possible through the Creative Commons License, and (ii) if ASCAP/BMI/SESAC ever show up at our door to seek royalty fees, we will give them just this one page, which demonstrates that they do not have*

*any right to a cut of the money you and we have made. Also, by restating the language in this Attachment, we don't have to give them the entire contract for their lawyers to nit-pick.*

Artist hereby agrees to the foregoing terms of this Agreement.

Artist:

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

Date: \_\_\_\_\_