

HAPI SKRATCH RECORDS / P&D DIGITAL DISTRIBUTION AGREEMENT

This Agreement, when agreed to by you as set forth below, constitutes an agreement between you (an individual, representing yourself, or if applicable, acting as legal representative for a band, group, company or corporation), ("you"), whose address is _____

_____ and Hapi Skratch Records, Inc. (collectively with our licensees and assignees referred to in this Agreement as "Hapi Skratch") the owner and operator of the web pages at www.hapiskratch.com (the "Hapi Skratch Site"), a Colorado corporation with offices at 5449 Ferryboat Court, Loveland, CO. Please read this document carefully. By this agreement you will become a party to, and will be bound by this Agreement. If you do not agree with any of the terms and conditions of this Agreement, do not sign it. We may modify this Agreement from time to time as further described in Section 8 below. The "Effective Date" of this Agreement is the date on which you sign it.

1. Definitions.

The following terms shall have the following meanings for purposes of this Agreement:

- a. "Digital Master" or "Digital Masters" means copies of Your Content in digital form, which Hapi Skratch may sell or authorize Distributors to sell via permanent digital download, streams or burns, as individual tracks or as a whole album, pursuant to the terms and conditions of this Agreement.
- b. "Distributor" means any third party, such as Rhapsody, iTunes, eMusic, Napster, AOL's MusicNet, MusicMatch, Starbucks, MSN, Sony Connect, that Hapi Skratch may authorize to carry out the marketing, distribution and sale or other use of the Digital Masters pursuant to the terms of this Agreement.
- c. "Term" means the period beginning on the Effective Date of this Agreement and ending on the first day of the second calendar quarter following the first anniversary of the Effective Date, after which such Term shall automatically renew for successive one-year periods. You may terminate this Agreement at any time by providing Hapi Skratch with thirty (30) days' written notice of your intention to terminate.
- d. "Territory" means the Universe.
- e. "Your Content" means sound recordings and underlying musical compositions that you have made available to Hapi Skratch either before or during the Term for sale on the Hapi Skratch Site that Artist has designated for digital distribution in accordance with this Agreement. Any sound recordings and the underlying musical compositions that are provided by you or on your behalf to Hapi Skratch must be owned or controlled by you and/or have been cleared by you.
- f. "Hapi Skratch Site" means the retail website owned by Hapi Skratch at www.hapiskratch.com where you have registered to sell CDs through Hapi Skratch according to the terms thereon. By agreeing to this Agreement, any sound recordings made available on the Hapi Skratch Site that Artist designates will be made available for digital distribution by Hapi Skratch and its Distributors according to the terms of this Agreement.
- g. "Artwork" means album cover artwork and any other artwork relating to Your Content that you provide to Hapi Skratch. Any artwork that is provided by you or on your behalf to Hapi Skratch before or during the Term will be deemed to have been cleared by you unless you promptly notify Hapi Skratch in writing to the contrary.

2. Authorization.

Subject to the terms of this Agreement, you hereby appoint Hapi Scratch as your exclusive authorized representative for the sale and other distribution of Digital Masters. Accordingly, you hereby grant an exclusive right to Hapi Scratch, during the Term, to:

- (i) reproduce and convert Your Content delivered by you into Digital Masters;
- (ii) perform and make thirty (30) second clips of the your Content available by streaming ("Clips") to promote the sale and distribution of applicable Digital Masters;
- (iii) promote, sell, distribute, and electronically fulfill and deliver Digital Masters, as individual tracks or entire albums, and associated metadata to purchasers who may use such Digital Masters in accordance with usage rules similar to those set forth by the music services.
- (iv) display and electronically fulfill and deliver Artwork for personal use solely in conjunction with the applicable purchased Digital Master;
- (v) use Your Content, Artwork and metadata as may be reasonably necessary or desirable for Hapi Scratch to exercise its rights under the terms of this Agreement; and
- (vi) authorize or appoint any Distributors to perform the activities in (i)-(v) above.

Hapi Scratch shall also be authorized, if required by a Distributor, to provide one compact disc of Your Content to Distributors free of charge, and no payment to you shall be required for such free of charge records. Hapi Scratch and its Distributors shall not be authorized to exploit Your Content or Artwork in any manner or form not expressly authorized herein. Nothing herein shall obligate Hapi Scratch or any Distributor to actually exercise any rights granted under this Agreement.

3. Your Obligations.

You shall obtain and pay for any necessary clearances and licenses in the Territory for all Your Content and Artwork. Specifically, you shall be responsible for and timely pay (i) any record royalties, mechanical and other income due to artists, authors, co-authors, copyright owners, co-copyright owners, producers and other record royalty participants from sales or other uses of Digital Masters, (ii) all mechanical royalties payable to publishers and/or authors or co-authors of copyrighted musical compositions embodied in Digital Masters from sales or other uses of Digital Masters, (iii) all payments that may be required under collective bargaining agreements applicable to your or third parties other than Hapi Scratch, and (iv) any other royalties, fees and/or sums payable with respect to the Your Content, Artwork, metadata and other materials provided by you to Hapi Scratch.

If there is a change of circumstance during the Term as a result of which you reasonably believe that it does not have, or no longer has, the rights necessary to authorize Hapi Scratch and any Distributors to use any Your Content or Artwork as provided for herein, or You reasonably believe that Hapi Scratch's or its Distributors' continued sale or other use of any Your Content or Artwork will substantially harm your relations, or violates the terms of any of your agreements, with any applicable copyright owner, artist, producer or distributor, then you shall have the right to withdraw, upon written notice to Hapi Scratch, authorization for the sale or other use of such Your Content or Artwork. Following such withdrawal, Hapi Scratch shall cease to offer such Your Content or Artwork for sale or other use or cause such cessation as soon as is commercially feasible after Hapi Scratch's receipt of such notice of withdrawal, and you shall use commercially reasonable efforts to clear such withdrawn Your Content or Artwork and shall promptly notify Hapi Scratch if and when such Your Content has been cleared and is again authorized for use or sale by Hapi Scratch and its Distributors.

You shall pay a one-time setup fee for each title of \$25 and also provide an electronic copy of the 'Hapi Skratch Digital Music Profile' title sheet. This sheet will tell us all necessary information to include in your title profile that gets delivered to various distribution points.

4. Payment.

Hapi Skratch shall pay you eighty-five percent (85%) of the amount that Hapi Skratch receives from Distributors for the sale or other use of your Digital Masters. Hapi Skratch will compute amounts payable to you after the end of each calendar month during the Term, unless Hapi Skratch is delayed or prevented from doing so because of an event beyond Hapi Skratch's control, i.e., a force majeure event, in which case Hapi Skratch will do so as soon as it is able after such event. Hapi Skratch shall make payment to you only at such times that amounts owed to you exceed \$20. Such payment shall constitute full consideration for all rights granted and obligations undertaken by you hereunder.

5. Parental Advisory.

If you provide a parental advisory warning about a particular sound recording in Your Content, Hapi Skratch shall use or forward such parental advisory information to Distributors. You shall be responsible for determining parental advisory warning status.

6. Names and Likenesses; Promotional Use and Opportunities.

Hapi Skratch may use and authorize its Distributors to use the names and likenesses of, and biographical material concerning, any Digital Master, artists, bands, producers and/or songwriters, as well as track and/or album name, and 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.

Hapi Skratch and any of its Distributors shall have the unrestricted right to market, promote and advertise the Digital Masters available for purchase as it determines in its discretion. Without limiting the foregoing, Hapi Skratch and any of its Distributors shall have the right to determine which sound recordings, irrespective of any particular artist, record company or label affiliation, would best further their commercial purposes, and to promote such sound recordings more than others.

7. Ownership.

As between the Parties, all right, title and interest in and to (i) the Content, (ii) the Digital Masters, (iii) the Clips, (iv) all copyrights and equivalent rights embodied therein, and (v) all materials furnished by you, except as to any rights of Hapi Skratch (whether pre-existing or under this Agreement), shall remain your property.

8. Modification, Termination and Effect of Termination.

Hapi Skratch reserves the right, in its sole discretion, to change, modify, add or remove all or part of this Agreement. Notice of any amendments and/or modifications shall be sent to you by email prior to their effective date. In the event that you do not consent to any such amendments and/or modifications, your sole recourse shall be to terminate this Agreement.

Either party shall have the right to terminate this Agreement prior to the expiration of the Term in the event that the other party breaches any material representation, obligation or covenant contained herein, unless such breach is cured prospectively, no later than thirty (30) days from the date of receipt of written notice of such breach, or if not able to be so cured, then resolved to the other party's satisfaction, not to be unreasonably withheld.

Paragraphs 1, 3, 7, 8, 9, 10 and 11 shall remain in full force and effect following the expiration or earlier termination of this Agreement. The expiration or earlier termination of this Agreement shall not relieve you or Hapi Skratch of their respective obligations to make any payments with respect to the sale or other use of Digital Masters in the periods prior to such expiration or termination (and the associated accounting) in accordance with this Agreement.

9. Indemnification and Limitation of Liability.

You indemnify and hold harmless, and upon Hapi Skratch's request, defend Hapi Skratch and its Distributors and affiliates (and their respective directors, officers and employees) from and against any and all losses, liabilities, damages, costs or expenses (including reasonable attorneys' fees and costs) arising out of a claim by a third party by reason of: (i) a breach of any warranty, representation, covenant or obligation of you under this Agreement; or (ii) any claim that any Digital Master, sound recording or Your Content, Artwork, metadata or any other materials provided or authorized by you or on your behalf hereunder or Hapi Skratch's or its Distributors' use thereof violates or infringes the rights of another party. You will reimburse Hapi Skratch and its Distributors and affiliates on demand for any actual payments made in resolution of any liability or claim that is subject to indemnification under this Paragraph 9, provided that Hapi Skratch obtains your written consent prior to making such payments, such consent not to be unreasonably withheld. Hapi Skratch shall promptly notify you of any such claim, and you may assume control of the defense of such claim. Hapi Skratch shall have the right, at its expense, to participate in the defense thereof under your direction.

EXCEPT PURSUANT TO AN EXPRESS INDEMNITY OBLIGATION, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING LOSS OF PROFITS OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THEIR POSSIBILITY.

10. Additional Representations and Warranties of the Parties.

You warrant and represent that you have the full authority to act on behalf of any and all owners of any right, title and interest in and to the Your Content.

Each party represents and warrants that it has full authority to enter into this Agreement and to fully perform its obligations hereunder and has obtained all necessary third-party consents, licenses and permissions necessary to enter into and fully perform its obligations herein.

Each party represents and warrants that it owns or controls 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 the other party hereto shall not violate or infringe the rights of any third party.

Each party represents and warrants that it shall not act in any manner which conflicts or interferes with any existing commitment or obligation of such party, and that no agreement previously entered into by such party will interfere with such party's performance of its obligations under this Agreement.

Each party represents and warrants that it shall perform in compliance with any applicable laws, rules and regulations of any governmental authority.

11. General Provisions.

The parties agree and acknowledge that the relationship between the parties 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, employee, or representative.

This Agreement, including any annexes, schedules and exhibits hereto, contains the entire understanding of the parties relating to the subject matter hereof, and supersedes all previous agreements or arrangements between the parties relating to the subject matter hereof. This Agreement cannot be changed or modified except by a writing signed by the parties. A waiver by either party of any term or condition of this Agreement in any instance shall not be deemed or construed as a waiver of such term or condition for the future, 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.

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

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 Hapi Skratch Site, or as properly updated.

This Agreement shall be governed and interpreted in accordance with the internal laws of the State of Colorado applicable to agreements entered into and wholly to be performed therein, without regard to principles of conflict of laws.

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

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.

Artist name - title of CD - UPC # - Catalog #

Artist Signature

Date

Hapi Skratch Representative Signature

Date