

# BLiveNow (Broadway Live Island GP) Digital Distribution Agreement v1.2

The following, when accepted by you (whether as an individual, or if applicable, acting as the authorized legal representative for an artist, band, group, company or corporation) and us (i.e. BLiveNow, Broadway Live Island GP and collectively with our licensees and assignees referred to in this Agreement as “us” and “we”) shall constitute our Agreement. We are a New York General Partnership with offices located at 100 West 94<sup>th</sup> Street Suite 17C, New York, NY 10025 and are the owner and operator of the web pages at [www.broadwayliveisland.com](http://www.broadwayliveisland.com) (the “BLiveNow Site”). Please read this Agreement carefully.

1. **Authorization:** You hereby appoint us as your authorized representative for the sale and other distribution of Your Authorized Content as provided herein. The rights that are granted by you to us are non-exclusive. Accordingly, you hereby grant to us and our licensees (herein each a “Licensee”) the non-exclusive right, during the Term and throughout the Authorized Territory, to:
  - a. Reproduce and convert Your Authorized Content into Digital Masters;
  - b. Perform and make available for promotional purposes, portions of Your Authorized Content (“Clips”) by “streaming” to promote the license, sale and distribution of Digital Masters;
  - c. Promote, sell, distribute, 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 agreed by us;
  - d. 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;
  - e. 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;
  - f. “Stream” and authorize others to “stream” Your Authorized Content, either on-demand or as part of an internet radio service;

- g. Use and distribute Copyright Management Information as embodied in a Digital Master;
  - h. Display and electronically fulfill and deliver Authorized Artwork used in connection with the Your Authorized Content for personal use solely in conjunction with the applicable Digital Master as provided herein;
  - i. Use Your Authorized Content, and Authorized Artwork and metadata as may be reasonably necessary or desirable for us to exercise our rights under and in furtherance of this Agreement; and
  - j. Authorize our Licensees to perform any one or more of the activities specified above.
2. **Term:** The Term of our Agreement shall commence on the Effective Date and shall continue unless and until terminated by either party upon no less than thirty (30) days notice to the other party.
3. **Payments to You:** We shall pay you the net wholesale price (which is the sales price minus customary transaction fees charged by credit cards and/or paypal) that we receive from Licensees for the sale or other licensed uses of your Digital Masters minus the BLiveNow fee of fifteen (15%) of the wholesale selling price. We shall make payments to you at such times that amounts credited to you exceed the threshold amount set from time to time by BLiveNow. Such payment obligation shall constitute full consideration for all rights granted and all obligations undertaken by you hereunder. You will have the right to affiliate with a performance rights society or other entity to collect monies that may be payable to you for the public performance of Your Authorized Content.
4. **Your Obligations:** You shall obtain and pay for any and all clearances and licenses as may be required in the Authorized Territory or any portion thereof for uses of Your Authorized Content, and Authorized Artwork and metadata. Specifically, and without limiting the generality of the foregoing, you shall 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, (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 and 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. **Rights to Withdraw Material:** You shall have the right at any time during the Term hereof upon written notice to us to withdraw further authorization for the sale or other uses of Your Authorized Content and Authorized Artwork. Promptly following our receipt of your written notice to us hereunder of your requested withdrawal, we shall advise our Licensees that they are no longer authorized to offer the sale or other use of such of Your Authorized Content or Authorized Artwork as you shall provide us with a written withdrawal notice concerning. The foregoing shall not limit your responsibility for sales and other uses of Your Authorized Content and/or Authorized Artwork occurring prior to the implementation of such withdrawal and shall not limit in any way the rights of end users who have acquired Your Authorized Content or Authorized Artwork.
6. **Names and Likenesses; Promotional Use and Opportunities:**
  - a. We may use and 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. We and any of our Licensees shall have 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 and that we make no guarantees whatsoever about there being any minimum sales or uses of any Digital Master.
7. **Ownership:** Subject to our rights hereunder or under any prior agreement between you and us, insofar as we are concerned, 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, shall be and remain your property.
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. Notice of any such changes shall be sent to you by email at least seven (7) days prior to their 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 written 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 of the Term of this Agreement shall not relieve either party from their respective obligations incurred prior to or during the Term. Accordingly, provisions of this Agreement will continue to apply even after the expiration of the Term.

9. **Indemnification:** If we receive a claim that the use of Your Authorized Content or Authorized Artwork or any other materials provided or authorized by you is in violation of any third party rights, you agree to fully indemnify and hold us harmless, and upon our request, defend us and our Licensees 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) concerning any such claim. Accordingly, you agree to reimburse us and our Licensees and our affiliates on demand for any payments made in resolution of any liability or claim that is subject to indemnification under this Section 9, provided that we obtain your written consent prior to making any such payments. You agree that your consent will not to be unreasonably withheld, delayed or conditioned. We shall promptly notify you of any such claim, and by obtaining and posting and maintaining an appropriate bond for our benefit you may assume control of the defense of such claim, provided that we shall have the right in all events to participate in the defense thereof.

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

- e. Each party represents and warrants that it shall perform their obligations hereunder in compliance with any applicable laws, rules and regulations of any governmental authority having jurisdiction over such performance.

**11. General Provisions:**

- a. 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, or employee.
- b. This Agreement 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, provided that if you previously entered into a digital distribution agreement with us in the past, and elected any options, those options shall 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 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.
- c. This Agreement shall be binding on the assigns, heirs, executors, 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 BLIVENOW, or as properly updated.
- e. This Agreement shall be governed and interpreted in accordance with the internal laws of the State of New York applicable to agreements entered into and to be wholly performed therein, without regard to principles of conflict of laws.

- 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 shall be deemed to have been cleared by you for all purposes unless you shall have provided us with written notice to the contrary.
- b. “Authorized Territory” means the Universe or such other more limited territories as you shall elect and provide in writing.
- 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, such as but not limited to, Apple iTunes, MusicNet, Real, Rhapsody, Napster and 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.

- g. "Term" is the period of time in which this agreement is in effect.