

WEBSITE AFFILIATE AGREEMENT

THIS AGREEMENT (the "Website Affiliate Agreement") is entered at the time of sign-up and participation in the MP3tunes Affiliate Program. This agreement is a binding, legal contract between you, the Affiliate, and MP3tunes, Inc. – hereafter referred to as the Company – located at 5960 Cornerstone Ct., Suite 100, San Diego, CA, 92121.

WHEREAS Affiliate wishes to utilize MP3tunes code on their site and possibly include certain materials promoting Company, and to include a link to Company's website within those materials on Affiliate's website;

NOW THEREFORE, in consideration of the mutual promises, covenants, warranties, and other good and valuable consideration set forth herein, the Parties agree as follows:

1. Code Implementation. Company provides code, links and instructions on its website which may be used by the Affiliate to implement functionality to interact with the Company's Locker service on the Affiliate's site. Affiliate is responsible for verifying with Company that the code has been properly implemented for the purposes of accurate tracking and credit of referred sales.

2. Promotional Materials. Company may make available to Affiliate certain banner advertisements, button links, text links, and/or other graphic or textual or audio material for display and use on the Affiliate website (the "Promotional Materials") and/or email lists. Affiliate shall display the Promotional Materials on Affiliate's website and/or email lists prominently and as Affiliate sees fit, provided that the manner of display shall be subject to the terms and conditions of this Agreement. Affiliate shall also include a link from the Promotional Materials to Company's website, as specified by Company.

3. Use of Promotional Materials. The Affiliate's use and display of the Promotional Materials on the Affiliate's site shall conform to the following terms, conditions and specifications:

a. Affiliate may not use any graphic, textual or other materials to promote Company's website, products or services other than the Promotional Materials, unless Company agrees to such other materials in writing prior to their display.

b. Affiliate may only use the Promotional Materials for the purpose of promoting Company's website (and the products and services available thereon), and for linking to Company's website.

c. The Promotional Materials will be used to link only to Company's website, to the specific page and address as specified by Company.

d. Affiliate will not alter, add to, subtract from, or otherwise modify the Promotional Materials as they are prepared by Company. If Affiliate wishes to alter or otherwise modify the Promotional Materials, Affiliate must obtain prior written consent from Company for such alteration of modification.

4. License. Company hereby grants to Affiliate a nonexclusive, nontransferable license (the "License") to use the Promotional Materials as specified under the terms and conditions of this Agreement. The term of the License shall expire upon the expiration or termination of this Agreement.

5. Intellectual Property. Company retains all right, ownership, and interest in the code and Promotional Materials, and in any copyright, trademark, or other intellectual property in the Promotional Materials. Nothing in this Agreement shall be construed to grant Affiliate any rights, ownership or interest in the Promotional Materials, or in the underlying intellectual property, other than the rights to use the Promotional Materials granted under the License, as set forth in Section 2.

6. Relationship of Parties. This Agreement shall not be construed to create any employment relationship, agency relationship, or partnership between Company and Affiliate. Affiliate shall provide services for Company as an independent contractor. Affiliate shall have no authority to bind Company into any agreement, nor shall Affiliate be considered to be an agent of Company in any respect.

7. Commissions.

a. In exchange for Affiliate's use of Company code for the purpose of implementing Company functionality, and for Affiliate's compliance with and performance of the terms and conditions of this Agreement, Company shall pay Affiliate a commission (the "Commission"). The Affiliate Commission shall be based solely upon the number of sales of Premium Lockers that result from Affiliate referrals, with the Commission rate to be determined by the Company at the time of Affiliate application for this program. This Commission rate will be determined in part based on the quality and volume of referrals. Company reserves the right to change the price of Company's products and commission percentages for products without notice. Commissions are based on the percentage of sale in effect at the time of sale.

b. Company shall keep accurate and up-to-date records of the data used to determine the total amount of Commissions owed to Affiliate. Affiliate shall be given reasonable access to these records upon request to Company. Any discrepancy between the amount of Commissions owed according to these records, and the actual amount of Commissions paid to Affiliate in any period or periods shall be rectified jointly by the Company and the Affiliate.

c. For the purposes of this Agreement, a "Valid Premium Locker Referral" shall be defined as any paid signup of a MP3tunes Premium Locker resulting from a visitor clicking through MP3tunes code implemented on Affiliate website. Company shall

have sole discretion to determine whether any particular signups or class of signups shall qualify as a Valid Premium Locker Referral. Affiliate shall not attempt to: (i) artificially attempt to generate click-throughs or signups to Company's website by use of deception or misrepresentation; (ii) manipulate, incentivize, or otherwise encourage Affiliate's employees, agents, customers, or other persons to click the link to the Company's website for any purpose other than the promotion of the services and/or products offered through Company's website; or (iii) create or employ any mechanism designed to artificially or automatically generate click-throughs to Company's website.

d. The Affiliate Program is administered the Company. Affiliate will be paid commissions by check on a quarterly basis. Company reserves the right to change the price of Company's products and commission percentages for products without notice. Commissions are based on the percentage of sale in effect at the time of sale.

e. In the event that Affiliate materially breaches this Agreement and Company terminates this Agreement within 30 days of such breach, then any accrued and payable Commissions owing to Affiliate shall be forfeited, and Company shall not be obligated to pay such Commissions to Affiliate.

8. Affiliate's Representations and Warranties. Affiliate represents and warrants the following:

a. Affiliate has the legal authority to enter into this Agreement and to be bound to the promises, covenants, and other duties set forth in this Agreement.

b. Affiliate's website does not contain any materials that are:

- i. Sexually explicit, obscene, or pornographic;
- ii. Offensive, profane, hateful, threatening, harmful, defamatory, libelous, harassing, or discriminatory (whether based on race, ethnicity, creed, religion, gender, sexual orientation, physical disability, or otherwise);
- iii. Graphically violent, including any violent video game images; or
- iv. Solicitous of any unlawful behavior

c. Affiliate has obtained any necessary clearances, licenses, or other permission for any intellectual property used on Affiliate's website. Nothing on Affiliate's website infringes upon the intellectual property rights of any person or entity. No person or entity has brought or threatened an action claiming such infringement, nor does Affiliate have any reason to believe that any person or entity will bring or threaten such a claim in the future.

d. Affiliate will not use the Promotional Materials in any manner other than those set forth in Section 3 above.

e. Affiliate will not make any claim to ownership of the Promotional Materials, or of the copyright, trademark, or other intellectual property therein.

f. Affiliate will not publish or otherwise distribute any advertising materials for Affiliate's website that reference Company or Company's website unless Company gives prior written consent to the distribution of such materials. Affiliate will not use Company's name (or any name that is confusingly similar to Company's name) for any purpose on its website, in its promotional materials, or in any other context except to promote Company's website as specified in this Agreement. Affiliate will not register any domain name that incorporates Company's name, or that is confusingly similar to Company's name.

g. Affiliate will not engage in the distribution of any unsolicited bulk emails (spam) in any way mentioning or referencing Company or Company's website.

9. Indemnification. Affiliate shall indemnify Company and hold harmless Company from any claim, damage, lawsuit, action, complaint, or other costs arising out of any breach of Affiliate's warranties set forth in Section 7 above. Affiliate shall also indemnify and hold harmless Company for any damage, loss or other cost arising out of the use or misuse by Affiliate of the Promotional Materials.

10. Confidentiality. Any information that Affiliate is exposed to by virtue of its relationship with Company under this Agreement, which information is not available to the general public, shall be considered to be "Confidential Company Information." Affiliate may not disclose any Confidential Company Information to any person or entity, except where compelled by law, unless Affiliate obtains prior written consent for such disclosure from Company.

11. Term.

a. This Agreement shall take effect immediately upon Company consent to Affiliate participation in this program, and shall remain in full force and effect indefinitely, or until terminated pursuant to this Section 11.

b. Either Party shall have the right to terminate this Agreement at any time and for any cause. The terminating Party must give written notice to the other Party at least 30 days prior to the intended date of termination.

12. Taxes. Company shall not be responsible for any taxes owed by Affiliate arising out of Affiliate's relationship with Company as set forth in this Agreement. Company shall not withhold any taxes from the Commissions paid to Affiliate.

13. Limitation of Liability. Company shall not be liable for any loss of profits or costs, or for any direct, indirect, special, incidental or consequential damages, including costs associated with the procurement of substitute goods or services (whether Company was or should have been aware or advised of the possibility of such damage), arising out of or associated with any loss, suspension or interruption

of service, termination of this Agreement, use or misuse of code or Promotional Materials, or other performance of services under this Agreement.

14. Governing Law. This Agreement shall be construed in accordance with, and governed in all respects by, the laws of the State of California, without regard to conflicts of law principles.

15. Counterparts. This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

16. Severability. If any part or parts of this Agreement shall be held unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect. If any provision of this Agreement is deemed invalid or unenforceable by any court of competent jurisdiction, and if limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.

17. Headings. The headings for section herein are for convenience only and shall not affect the meaning of the provisions of this Agreement.

18. Dispute Resolution. The Affiliate shall notify The Company in writing immediately upon the belief that there may be a contract dispute or claim or other complaint pertaining to the administration of the Affiliate Program. The Company, at its discretion, will in a reasonable amount of time, contact The Affiliate and attempt to resolve said dispute, claim or complaint. It is understood that in the event of civil litigation The Affiliate may be responsible for all costs of court, civil service, attorney's fees, and all other costs of such litigation incurred by The Company, its owners, its representatives, its successors, and/or its assignees.

19. Entire Agreement. This Agreement constitutes the entire agreement between Company and Affiliate, and supersedes any prior understanding or representation of any kind preceding the date of this Agreement. There are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Agreement.

Company reserves all rights not expressly granted here.

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MP3tunes, Inc.
5960 Cornerstone Court
Suite 100
San Diego, CA 92121
858-202-1600
<http://www.mp3tunes.com>

WEBSITE AFFILIATE AGREEMENT – Signature form.

To initiate the Affiliate application process, please submit this signed page to MP3tunes by either:

Fax: 858-731-8187

OR

Email: affiliates@mp3tunes.com (attach a scan to your email)

I agree to the terms of this agreement:

Signed

Date:

Name:

Phone:

Website: