

# airtist

## LICENSING AGREEMENT

THIS AGREEMENT between

**AIRTIST Ltd**, with offices at 5 bis, rue du Pont de Lattes, 34070 Montpellier, FRANCE and represented by Mr Olivier REYNAUD. Registered in France, N° 483 927 620 00011 with a capital of €53 000. (hereinafter the **COMPANY**)

and

Company or Association Name:.....

principal offices at:.....

represented by .....

Registered in ..... N°.....

with a capital of (specify currency):.....(hereinafter the **PRODUCER**)

(hereinafter collectively the "*Parties*") is for the legal distribution of audio and audiovisual recordings via the world-wide web, in accordance with the terms and conditions stated in this Agreement and any subsequent attachments to this Agreement.

### RECITALS:

The PRODUCER is an association or a company who's activity involves the promotion and/or making of audio and/or audiovisual recordings, and/or audio and/or video graphic editing. The ARTIST represented by the PRODUCER will be free to choose whether he/she is registered with any Collective Society (e.g: SACEM) or not, or whether he/she is covered by a free licence such as 'Creative Commons'.

The COMPANY has created a website and offers the use of said site for the legal downloading, whether free or fee-paying, of audio and audiovisual recordings by the General Public with a remuneration in the free downloading and in the fee-paying downloading. For each work or recording downloaded by the General Public, the COMPANY will subsidise all Legal Claimants by means of the Public Performance Rights and Reproduction Rights to editors, authors and composers represented by any Collective Societies as well as a previously calculated royalty to the PRODUCER of the recordings or their licence holders.

The parties hereby agree as follows.

### ARTICLE 1 - DEFINITIONS

- 1.01. 'recording' or 'to record' means the performance or interpretation by the ARTIST of any musical work, with or without lyrics, and/or any audiovisual work aimed at illustrating the images related to one of the ARTIST's performances. This is regardless of the aim or reason for its original recording or production other than distribution to the General Public via broadcasting or transmission.
- 1.02. 'broadcasting' means that one or more recordings will be provided, wired or not, and via all means of teletransmission or electronic media such as the Internet Network, Television, mobile and/or landline telephones, or any other form currently in existence or in the future. This broadcasting will enable each individual to have access from any given place and at any chosen time, whether this access be immediate or deferred.
- 1.03. 'transmission' means the transmission of one or more recordings or presentations, wired or not, via all means of teletransmission or electronic media such as the Internet Network, Television, mobile and/or landline telephones, or any other form currently in existence or in the future towards the General Public – who will be able to decide on the format of each recording or production, as well as the order in which they are transmitted.
- 1.04. 'available catalogue' means all audio and audiovisual recordings produced, co-produced or directed by the PRODUCER before or after the signing of this contract and throughout all of its term, and for which they hold the Public Performance Rights and Reproduction Rights. It is hence extended to all audio and audiovisual recordings produced by a third party but whereby the PRODUCER holds the aforementioned rights within the territory as defined below.
- 1.05. 'ARTIST' means any artist performer and/or musician and/or group, registered individually or collectively, whose recordings appear in the aforementioned 'available catalogue'.
- 1.06. 'website' means a multimedia site available on the world wide web, made up of several pages with HTML PHP 'link' tags or established images. This automatically includes all distant access services enabling an interactive consultation through sound, image and text as well as, without limitation, those services offering mobile phone operators content for their videophone, interactive television customers, etc.

### ARTICLE 2 – ADMINISTRATION OF THE PLAN

- 2.01 The PRODUCER grants the COMPANY the Public Performance Rights and Reproduction Rights for all recordings included in the available catalogue and guarantees possession of these rights for all uploaded recordings interpreted by the ARTIST. These distribution rights involve the right to reproduce and broadcast to the general public all recordings within the available catalogue via every existing or future form of teletransmission and electronic media, whether free or fee-paying.
- 2.02 The PRODUCER is free to decide on the number of recordings included in the available catalogue (recognised hereafter as 'the recordings'), while respecting a minimum of one recording.

### ARTICLE 3 - TERM AND TERMINATION

This Agreement is non-exclusive and will commence on the Effective Date (of signature) and continue for one calendar year with tacit annual renewal.

The PRODUCER may add or remove recordings from the available catalogue at any time via their 'back office' and also suspend his account freely.

### ARTICLE 4 – LICENSED TERRITORIES

The territory covered by the present contract are all world countries, which will be referred to henceforth as 'the territory'.

## **ARTICLE 5 – DELIVERY REQUIREMENTS**

- 5.01** The PRODUCER will provide the COMPANY with their recordings, in the digital format required for the web site. 'Provide' means that the PRODUCER will put the recordings 'on-line' on their attributed web pages, by means of their 'back office'. Once the recordings are 'on-line', each one will be considered as part of the available catalogue.
- 5.02** The PRODUCER is responsible for providing, via his/her 'back office', the following information concerning the recordings: all the Copyright protection data; the ISRC code; the names of the ARTIST, Composer, Editor, and all Legal Claimants; as well as any other facts that should or need to be placed on the COMPANY's website(s).  
Furthermore, it is understood that the COMPANY will have its own coding system for the recordings adapted to the website's organisational system and which will enable the COMPANY to easily trace the distribution of the available catalogue. This will involve, primarily, the Internet user's 'tag' at each download.

## **ARTICLE 6 – REPRESENTATIONS AND WARRANTIES**

- 6.01** The PRODUCER declares to be the sole owner of all Public Performance Rights and Reproduction Rights for the recordings referred to in the present contract and guarantees against all possible appeals towards the COMPANY with respect to these Rights.
- 6.02** The PRODUCER confirms that a legally-binding contract, as specified in article 7, has been signed with the ARTIST (under the CPA). Furthermore, the PRODUCER guarantees that all the artists and/or musicians who take part in a recording have given written consent for their work to be reproduced, presented and communicated to the public in the manner specified in this contract. The PRODUCER declares that all dues payable directly or indirectly to any Legal Claimant have been or will be settled, and the COMPANY will not be solicited for said fees.
- 6.03** The PRODUCER will inform the COMPANY of any extract, sampling, or use of an existing work or sound recording within the recordings present in the available catalogue. Any legal claims with regards to the use of these extracts, samplings, etc must be payable by the PRODUCER, thus exempting the COMPANY from any third party requests. The COMPANY reserves the right to exclude a recording from the available catalogue if they feel that the necessary legal requirements have not been met.
- 6.04** By virtue of the present, the PRODUCER guarantees the COMPANY against any third-party appeal with regards to the works and presentations reproduced in the recordings. The PRODUCER guarantees that the ARTIST's performances in no way: infringe the laws and requirements at the time of distribution; nor violate the rights of any social group or individual; nor resort to plagiarism, pirating, unfair competition or civil responsibilities. The PRODUCER guarantees the COMPANY against any complaints with regards to these areas.

## **ARTICLE 7 – ADVERTISING PROMOTION**

- 7.01** The COMPANY has free use, directly or indirectly, of the ARTIST's name, pseudonym, photos and images (frozen or animated) for commercial or promotional needs with the aim of distributing the recordings of the ARTIST and this for the duration of their inclusion in the available catalogue. The COMPANY has free use, directly or indirectly, of extracts from the audio or audiovisual recordings for sound purposes or in order to create publicity spots (TV, Radio, Internet, etc) which will promote the recordings and/or the ARTIST and/or the COMPANY's website in general. The PRODUCER will choose to participate or not to these operations in his 'Back Office'.
- 7.02** The COMPANY will put the necessary number of web page space at the PRODUCER's disposal for their ARTIST's recordings. This dedicated space will be limited to 500 (five hundred) Mo (mega-octets) at the beginning, but may be enlarged on demand when deemed necessary. The PRODUCER will have free and secure access to the 'Back Office', in order to update the information on each ARTIST's page as they wish.  
The COMPANY reserves the right to exclude any information and/or images and/or documents and/or recordings that are seen to offend accepted morals (any examples of pornography, racism or calls for violence or animosity, but this list will not be restrictive)
- 7.03** The PRODUCER is responsible for the upkeep of their web space. They will be able to do this via the 'Back Office'. The PRODUCER accepts that the COMPANY cannot be held responsible for any damages suffered by the PRODUCER due to a problem with their attributed web space.

## **ARTICLE 8 – COMPENSATION**

- 8.01** In return for this cooperative service, and to cover the cost of granting the rights mentioned herewith; for each recording distributed by the means described in the present contract, the COMPANY will pay the PRODUCER royalties as follows:

### Scenario n°1: for a recording sold online:

70% of each individual sale price (VAT not included), after deduction of a flat-base amount equal to 8% or a minimum of 0,07 euros (VAT not included), whatsoever the sale price, to cover Legal Claimants on the Reproduction Rights. The amount deducted will be for the highest possible price.

The sale price for the recordings will be set by the PRODUCER and/or, by default, the COMPANY and at a minimum of 0,20 euros (twenty centimes, including VAT) per recording.

### Scenario n°2: for a recording known as a 'free-download' at no financial cost to the Internet user:

0,05 euros (VAT not included) per recording downloaded will be paid to the PRODUCER by the COMPANY.

Furthermore, the COMPANY will pay the Legal Claimants on the Reproduction Rights, equivalent to 0,07 euros (VAT not included), excepting the conditions outlined in article 8.02 below.

- 8.02** The promotional use of the recordings by teletransmission (such as listening to a 'taster' online) will not involve any direct compensation to the PRODUCER by the COMPANY. The PRODUCER will be able to receive adequate payment from their own Collective Society (e.g SCPP, SPPF, etc.).

Promotional use through teletransmission means the broadcasting of an extract or the whole of a recording with its promotion in mind and an initial playback and/or viewing whereby the public has no payment or debt towards the COMPANY. The COMPANY's conditional publicity for the website is not considered to equate to any form of specific payment in this case.

- 8.03** In the event that one or more recordings in the available catalogue are not registered with a Collective Society; the PRODUCER is obliged to have written authorisation from all the Legal Claimants concerned (writer-composers, mixers, and, where applicable, artist-composers, etc) to the best of their ability and on the COMPANY's behalf. The COMPANY reserves the right to exclude a recording from the available catalogue if this authorisation cannot be presented by the PRODUCER, and without further consultation.  
In the event that a Collective Society changes the cost of Public Performance and Reproduction Rights for the works in their repertoire, the new scale in practice will be immediately applied between the Parties involved in the present Agreement with regards to any recordings in the available catalogue on the website.

The aforementioned deductible amount of 0,07 euros (VAT not included) or 8% of the sale price (VAT not included) will therefore be reviewed - increased or decreased - automatically by the COMPANY and without former notification to the PRODUCER.

8.04 In the event of one or more recordings being registered under the 'Creative Commons' Licence, the PRODUCER authorises the clause stating 'no commercial use' to be lifted once these recordings are included in the available catalogue and covered by the present Agreement.

In the event that one or more recordings in the available catalogue are not registered with a Collective Society the payment of the royalties equal to 8% or a minimum of 0,07 euros (VAT not included) of the sale price will be paid to the PRODUCER by the COMPANY.

8.05 For administrative fees of the management of royalties the COMPANY will done a deduction of 15% of the royalties payment. The payment will be sent only when the SACEM will have validated that the recordings are not registered at a Collective Society the payment of the royalties

## **ARTICLE 9 - ACCOUNTINGS**

9.01 The royalties mentioned herewith are applicable to all (100%) of the recordings broadcast and transmitted.

9.02 A royalty statement will be established on the demand of the PRODUCER in his Back Office constantly. The minimum amount billed is set at 10 (ten) euros (VAT not included). All sums due will be paid on presentation of a Bill of Payment from the COMPANY via the PRODUCER's 'Back Office'.

The bank charges (paypal fee etc.) will be automatically deducted from the royalty statement. Bank charges are variable depending the choice for payment, payment charges can be consult in the Back Office of the PRODUCER

9.03 The royalties paid to the PRODUCER, as described above, cover all fees due to the ensemble of the artists (and, in particular but not restrictively, the ARTIST) and other Legal Claimants. Hence, it is the PRODUCER's responsibility to guarantee the distribution of these fees as required and protect the COMPANY from any appeal by a third-party.

## **ARTICLE 10 – REGISTRATION AND ADMINISTRATIVE CHARGES**

The PRODUCER is subject to a yearly registration fee of 1 euro, for each space on the COMPANY website attributed to an ARTIST.

The PRODUCER has the possibility to deduct these charges from the most recent royalty statement provided by the COMPANY; in so far as the Total sum is superior to 1 euro. All charges paid by the PRODUCER may only be reclaimed if done so in writing before the end of that year.

The COMPANY can delete PRODUCERS Back Office which has an inactivity since more than six months.

## **ARTICLE 11 – REMEDIES**

On termination of the present Agreement, following the conditions described in article 3, the COMPANY will cease all broadcasting and teletransmission of the recordings included in the available catalogue. The PRODUCER will have in his charge the desactivation of his account and of his tracks (by using his Back Office) in the delay of inactive account (cf art.10)

## **ARTICLE 12 – GENERAL**

No legal changes within the structure of the COMPANY - such as a moral or physical fusion or transformation, a takeover, a sale or end of activity - can terminate the present contract. The Agreement will continue between the PRODUCER and the physical or moral person responsible for the COMPANY until the end of the current year.

In the event that a clause in the present Agreement was to be made void, this would not entail the nullity of the Agreement but effect only the clause in question.

If the contract is modified and replace the last one by the COMPANY, the PRODUCER will be informed. The PRODUCER will be able to accept or refuse the new terms, in consequence continue the digital distribution or suspend or turn off his account.

## **ARTICLE 13 – GEOGRAPHICAL SITUATION**

In order to carry out the Agreement outlined above, and for any further communications, both Parties will be based at their respective headquarters. Any change in the geographical situation of either Party, during the term of the contract, must be communicated to the other Party without delay. In the case of the COMPANY, notice will be given via the website message board, whereas the PRODUCER will communicate their new contact details via their 'Back Office'.

## **ARTICLE 14 – INDEMNIFICATION**

The present Agreement is subject to French Laws and Regulations applicable to all Agreements passed and implemented in France. In case of a dispute with regards to the content of this Agreement or during its implementation, the Parties give exclusive jurisdiction to the Tribunal Courts of MONTPELLIER.

**SIEGE SOCIAL:** AIRTIST SARL 5 bis rue du pont de Lattes 34070 Montpellier, au capital de 53.000 €  
**RCS :** Montpellier **SIRET :** 483 927 620 00011 **NAF :** 513F **REF :** CL20080205EN [www.airtist.com](http://www.airtist.com)