

ArtisTech Media License & Distribution Agreement (Legal Agreement for Signature)

This AGREEMENT (the "Agreement") is entered into by and between ArtisTech Media, LLC ("ArtisTech"), and {Artist Legal Name(s)} also known as {ccMixer user name}.

Effective as of {opt-in date}_(the "Effective Date").

PURPOSE

1. ArtisTech is a next generation music company that seeks innovative ways to re-license music under Creative Commons ("CC") license through its ccPlus commercial licensing platform and programs, also referred to as TuneTrack Plus. ArtisTech operates ccMixer.org, a nonprofit site dedicated to original, CC licensed media, enabling users to "Download, Sample, Cut-Up, Share" – freely as long as each CC license is complied with (Attribution, proper commercial use, etc.). This Agreement sets forth an arrangement in which Net Revenues (as outlined in Section 4.2) generated through a program called "TuneTrack Commercial Licensing" are shared between ArtisTech and the Artist. This Agreement also addresses how the Net Revenues will be split among Remixing Artists and Sampled Artists, as defined in this Agreement.

2. The Artist(s) named above, who warrants that the Artist(s) named above is (or are) not bound to an exclusive and/or conflicting agreement with any record label and/or PRO (Performing Rights Organization), or warrants that Artist(s) has had such exclusivity and/or agreement(s) specifically waived to enter into this Agreement, wishes to enter into a non-exclusive agreement with ArtisTech to license, copy, market, distribute and sell the Artist's Work(s) named in Exhibit One to users and partners under the terms and conditions of this 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. **"Artist"** means either Remixing Artist or Sampled Artist, named in this agreement.
2. **"Remixing Artist"** means the Artist that has the full rights and ownership for their contribution to the Work(s) identified as "Work Title by Remixing Artist" in Exhibit One.

1.3 **"Creative Commons License"** means either of two licenses created by Creative Commons. One is the "Attribution-NonCommercial" or "CC-BY-NC" license whose

terms are available free of charge at <http://creativecommons.org/licenses/by-nc/3.0/legalcode>. 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; and ii. their works can not be used for commercial purposes without permission or a ccPlus commercial license. The other is the “Attribution” or “CC-BY” license whose terms are available free of charge at <http://creativecommons.org/licenses/by/3.0/us/legalcode>. 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; and ii. their works can be used for commercial purposes. The term shall also mean earlier and later versions of the CC-BY-NC license and the CC-BY license. The terms of these Creative Commons Licenses are hereby incorporated by reference into this Agreement.

1.4 "**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, remix, edit, or any other form in which the Work may be recast, transformed, or adapted.

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

1.6 "**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.

1.7 "**Distribution**" means electronic, digital, promotional, and any other form of distributing, selling, licensing, releasing or sharing the Work(s) with the world, paid or unpaid.

1.8 "**Formats**" means all electronic, digital and other media formats including, but not limited to, the following: MP3, MP2, MP4, CD-ROM, Windows Media WMA, RealAudio, OGG Vorbis, Samples, AIFF, WAV, Flash, MIDI, Cubase, Sequencer file, FLAC, ALAC, ACC, MOV, PDF, JPG, PNG, SampleCell, .OGG, etc. The parties recognizes that additional electronic, digital and other media formats not enumerated in this listing (and, in some cases, not yet created or envisioned) may exist or come to exist, and the term Formats is intended to include those formats we well.

1.9 "**Platforms**" means all electronic, digital and other media platforms including, but not limited to, "Windows Media Player", "RealPlayer", "YouTube", "Facebook", "My Space", Internet radio, podcasts, playlists, and other MP3 players and services (Winamp, MusicMatch, Amarok, Spotify, Pandora, etc.). The parties recognize that additional electronic, digital, and other media platforms not enumerated in this listing (and, in some

cases, not yet created or envisioned) may exist or come to exist and the term Platforms in intended to include those platforms as well.

1.10 "**Sale**" means the situation in which money is paid and actually received by ArtisTech for the occurrence of any of the following: i. ccPlus licensing through TuneTrack Plus, sublicensing, selling and/or distributing of the Artist's Work, in whole or part, for commercial purposes, including but not limited to, compilations, features, CDs, releases, partner and other licensing, etc.; and ii. Digital and non-digital sale of Artist's Work. "Sale" shall not include promotional activities by ArtisTech where no monetary sale has occurred, without generating revenue for ArtisTech, nor situations in which ArtisTech does not actually receive payment or other revenue.

13. "**Sampled Artist**" means the Artist that has the full rights and ownership of the Work(s) that may be included in Artist's Work, as sample, a capella, remix, or otherwise, submitted to ccMixter.org, TuneTrack.net or ArtisTech and may be identified as "Work Title by Sampled Artist".

14. "**Work(s)**" means all forms of sound, music, rhythm, samples, a capellas, remixes, artwork, photos, graphics and lyrics that Artist herein or subsequently uploads and/or submits to ccMixter.org, TuneTrack.net and/or provides to ArtisTech including, but not limited to: sound recordings, compositions, song lyrics, written prose, musical recordings, vocal recordings, vocal solos, a capellas, samples, stems, source tracks, mixes, remixes, field recordings, ambiences, albums, cover art, album art, liner notes, artist photographs and likeness, live recordings, videos, films, interviews, podcasts, mash-ups, edits, tags, titles, etc. The term Work shall be broadly construed to include, without limitation, all creative expression and all intellectual property associated with individual works herein or subsequently provided by Artist to ArtisTech directly or via upload to ccMixter.org or TuneTrack.net. Subsequent submission of Artist's Work shall be automatically incorporated into this Agreement.

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 his/her Work(s) and/or has secured all rights in the Work(s) 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 ArtisTech having to pay any royalties, compulsory license fees, residuals or any other payments, above the Artist revenue share payable to Artist outlined in this agreement.

b. The Work does not infringe the copyright, moral rights, trademark, publicity rights, common law rights, or any other right of any kind of any third party. The work is not otherwise illegal nor does the Work 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, PRO OR OTHER ENTITY, AND/OR HAS OBTAINED EXPRESS WAIVER FROM ANY SUCH AGREEMENTS FOR PURPOSES OF THIS AGREEMENT, AND ARTIST DOES NOT REQUIRE THE PERMISSION OF ANY OTHER PARTY TO ENTER INTO THIS AGREEMENT. Artist shall, upon request, sign a short-form statement of this waiver on a form created bby ArtisTech.

Artist shall provide ArtisTech immediate notice if he/she enters into an exclusive agreement with any record label, PRO or other entity for the distribution of Work or Merchandise, with the understanding any Works signed under this Agreement will be excluded from any such exclusivity or agreement.

d. If Artist has entered into an agreement with any record label or PRO ("Exclusive Agreement"), Artist has had an attorney review the Exclusive Agreement and has determined that Artist has the legal right to enter into this Agreement and assume the duties hereunder, and that ArtisTech has the right to use the Work as provided herein. Artist shall provide ArtisTech with a copy of any Prior Agreement.

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.

f. Artist has reviewed the Creative Commons License terms and hereby confirms that Artist's Work may be licensed by and through the Creative Commons License and/or ccPlus, which is itself defined by this Agreement.

Section 3. NON-EXCLUSIVE LICENSE GRANT TO ARTISTECH

3.1. Non-exclusive License Grant.

a. Subject to the terms and conditions of this Agreement, Artist hereby grants ArtisTech a non-exclusive right and license throughout the world and universe to freely, and without restriction, use and exercise the rights of the Work(s) and catalog that the Artist has uploaded to ccMixter.org and TuneTrack.net, or will upload to ccMixter.org and TuneTrack.net, or has submitted to ArtisTech by some other means (including upload, demo submissions via CD, thumbdrive, shared-drive etc.), past, present and future, in whole or in part, as stated below:

- i. to license under ccPlus or TuneTrack Plus, to reproduce, publish, duplicate, publicly or privately perform and display, distribute and transfer the Work(s), or cause to do the same, including Digital Audio Transmissions, Digital Phonorecord Deliveries of the Work, and the right to couple any of the Work with recordings other than Artist's licensed Work ("Distribution") for these purposes;
- ii. to use, market, license, sublicense, distribute and sell the Work, including without limitation to license to third parties for the length of the Artist's copyright and other rights in the Work, the individual tracks, MIDI, lyrics, samples, music score, artwork, video, biography, photos, stems, liner notes, and other constituent parts from the Works;
- iii. to create and reproduce Derivative Works, or cause to do the same;
- 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 and related artwork and credits embodied in the Work, for the purpose of promoting the Work or facilitating the exercise of the rights of electronic distribution and/or traditional distribution of the Work; and
- v. to use the Work to promote Artist, the Work and ArtisTech and its products, services partners, and partner services and to use the name and likeness of 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.

The above rights may be exercised in all Formats and Platforms, both presently known or to be developed, without payment or royalty obligation to Artist if no revenue is generated, as specifically provided under Section 4.

b. Artist agrees that its Work shall be released or distributed under the terms of the Creative Commons License. Artist shall take no step inconsistent with the Creative Commons license in the Work. Artist shall ensure that neither Artist nor anyone asserting a contract right derived from Artist asserts a claim inconsistent with the Creative Commons license, such as, for example and without limitation, interposing a Digital Millennium Copyright Act takedown notice regarding a use of the Work consistent with the Creative Commons license or this Agreement.

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**"). Should ArtisTech enter into a perpetual license for a Work during the term of this Agreement, termination of this Agreement will not affect ArtisTech's right to issue an existing license, or diminish or change that license (for example, any film, podcast or DVD needs an outright license until the end of time.). Licenses entered into by ArtisTech

with third parties, including without limitation perpetual licenses, shall survive termination of this Agreement, and ArtisTech shall retain after termination a limited license in the Work to the extent necessary to permit ArtisTech to perpetually license the Work under such third party licenses.

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.

c. Termination of this Agreement does not affect licenses already in place prior to the termination, and any CC and/or ccPlus licenses already agreed to and complied with prior to termination shall continue under this Agreement.

3.3. Abridge and Adapt. Artist grants ArtisTech the right, in its sole discretion, to abridge, transcode, modify, and/or adapt the Work in order to conform to the requirements of the Formats and Platforms utilized by ArtisTech.

3.5. Artist's Reservation of Rights. ArtisTech 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 in Exhibit One hereto, Artist shall have no obligation to license any other Work or music. Subject to the nonexclusive license grant conferred to ArtisTech herein, Artist shall retain all rights to the copyright interests in the Work. The parties recognize that one purpose of this Agreement is to permit ArtisTech to enter into long-term and perpetual licenses of the Work, and nothing in this section shall be interpreted to permit the Artist to terminate or limit the license rights of any licensee from ArtisTech.

Section 4. PAYMENT AND ROYALTY FEE

4.1. Royalty Fee. In full consideration of all Royalty Fees due to Artist(s), ArtisTech shall pay Artist(s) seventy-five percent (75%) of all Net Revenues actually received by ArtisTech from a Sale, in whole or in part, ("Royalty Fee").

The Artist(s) agree herein agrees to split its 75% share of Net Revenues as follows: 50% (37.5% of Net Revenues) to Remixing Artist, with an equal share of the remaining 50% (37.5% of Net Revenues) to be split equally between all Sampled Artists. Payments to Artist and Sampled Artists shall be managed by ArtisTech as outlined in section 4.5 Payment Terms, below.

4.2. Net Revenues. For purposes of computing royalties, the term "Net Revenues" means gross revenue actually received by ArtisTech from all Sales of the Work, adjusted for returns, mechanical royalty (if any), celebrity percentage allocation, if any, (up to but not to exceed 20%) 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, and any charitable/nonprofit donations, if any.

4.3 Waiver of PRO and Additional Royalties: The Royalty Fee payable to the Artist(s) shall include all compensation, including mechanical and performance royalties for underlying musical works due both Remixing and Sampled Artist(s), individual producers, the performers, engineers, and any other persons or contributing Artists engaged in connection with the Work. Artist(s) hereby waive any right to any compensation, other than the Royalty Fee, including without limitation, mechanical and/or performance royalties in connection with Distributions hereunder. Artist(s) will be solely responsible for payment of any and all above stated royalties obligated under separate agreement(s) and will indemnify ArtisTech and hold ArtisTech harmless against any and all losses, damages, costs or claims made by any parties resulting from Distributions hereunder. 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, GEMA, SOCAN, SESAC, etc) that Artist hereby grants ArtisTech a waiver of any and all performing rights royalties and Internet Broadcast royalties arising from performance or broadcast of the Works included in this agreement, and shall sign a short-form written waiver on a form created by ArtisTech to confirm this waiver.

4.4 Limitations and Taxes. There shall be no Royalty Fee for Internet digital performances, and ArtisTech is not responsible for any other Royalty Fees that may arise through internet streaming, download, or otherwise. Artist(s) shall be 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(s) within six (6) months after the date of payment of Royalty Fee and/or Royalty Fee, after which time all objections shall be waived.

4.5 Payment Terms. Royalty Fees owed to Artist(s) shall be tracked and accounted for in Media Credits ("MCs"), wherein One Hundred (100) MCs equal One U.S. Dollar (\$1.00), and for clarification, one (1) MC equals One U.S. Cent (\$.01). ArtisTech shall provide Artist(s) a personal account at TuneTrack.net, a website operated by ArtisTech, wherein all Royalty Fees due to Artist(s) will be tracked, allocated, distributed and accounted for in the Artist's Media Credit Account via TuneTrack.net's MC Distribution and Allocation Tool (MC Tool). Artist may request withdrawal of MCs as often as once per quarter, but only if the Artist's MC Account Balance is a minimum of Ten Thousand (10,000) MCs, or One Hundred U.S. Dollars (\$100.00). Artist may request withdrawal of MC Account Balance once per year, on December 31, if MC Account Balance is not at the Ten Thousand (10,000) MC minimum, but at least Two Thousand (2,000) MCs, or Twenty U.S. Dollars (\$20.00). Artist(s) acknowledges full responsibility to make any payments it may owe under separate agreement (manager, producer, etc.)

Unless other payment arrangements are made between ArtisTech 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 withdrawal payments from Artist's Media Credit Account will be made to Artist's Paypal account. ArtisTech reserves the right, in its sole discretion, to select an alternative payment service other than Paypal.

Section 5. OPERATIONAL DUTIES

5.1. Selection of Music. ArtisTech shall, at its sole discretion, select whether the Work, in whole or in part, is acceptable for use under this Agreement. ArtisTech has no duty, express or implied, to accept any particular Work for inclusion under this Agreement, and may reject a Work for inclusion under this Agreement in its sole subjective discretion.

5.2 Marketing of the Work. ArtisTech shall have no obligation to market or promote the Artist's Work or the Artist(s). Notwithstanding the foregoing, ArtisTech, in its sole discretion, shall be permitted to promote, market, and advertise the Work and Artist without limitation.

5.3 Pricing. ArtisTech shall determine, via its automated licensing system, membership programs and sole discretion, the price plan of all Sales of the Work.

5.4 Limitations.

a. Notwithstanding any of the foregoing, ArtisTech shall have no obligation whatsoever to provide services, payment or resources toward marketing, promotion or advertising for Artist or the Work.

b. Other than the Royalty Fees stated herein, ArtisTech shall have no obligation to provide to Artist any kind of payment, including an advance, license fees, residuals, Internet radio fees, traditional radio fees, public performance fees, or any other form of compensation.

c. ArtisTech shall be permitted, in its sole discretion, to remove or edit the Work, or any portion thereof, from ArtisTech website(s) at anytime and without notice to Artist. ArtisTech shall have no duty to post the Work or Artist on the ArtisTech website(s).

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 ArtisTech by a performing rights licensing organization including, without limitation, ASCAP, BMI, SESAC, SOCAN, SACD, SACEM, GEMA, PRS, etc. or any media company or record label including, without limitation, EMI, Warner Music, SONY, or BMI, arising from all uses and sublicensing of the Work contemplated under this Agreement. Artist shall have the affirmative duty to ensure that if a claim or takedown notice is issued by Artist or any record label, performing rights association, media company or other person or entity, then

Artist shall take steps to advise the claimant (or the recipient of a takedown notice) that Artist has licensed the Work to ArtisTech.

Section 6. INDEMNITY, DISCLAIMER AND LIMITATION OF LIABILITY

6.1 Artist's Indemnity. Artist shall indemnify and defend ArtisTech and hold ArtisTech 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, ArtisTech shall have no obligation hereunder to defend or protect Artist's copyright interests.

6.2 Disclaimer. ARTISTECH MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AND SPECIFICALLY, TO THE GREATEST EXTENT PERMITTED BY LAW DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, PROVISION OF GOOD AND WORKMANLIKE SERVICES, AND FITNESS FOR A PARTICULAR PURPOSE. ARTISTECH MAKES NO PROMISE OR REPRESENTATION OTHER THAN THOSE SET FORTH EXPRESSLY IN THIS AGREEMENT.

6.3 Limitations on Liability. ArtisTech makes no warranty with respect to the accuracy or effectiveness of the ArtisTech Website(s) ("Websites"), including content contained therein, nor any errors or problems of any kind that may arise from the Websites. ArtisTech shall not be responsible for losses, damages, costs, or expenses of any kind resulting from the use or distribution of the Work by ArtisTech 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 Websites or the transfer or distribution of the Work. ArtisTech shall not be liable for any indirect, special, incidental, or consequential damages relating to or arising out of the subject matter of this Agreement.

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, which certified or registered mail will be assumed to have been received either upon the day of actual receipt, or ten days after deposit in the mail, whichever is earlier.

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.

7.3. Arbitration and Controlling Law. Any and all disputes that may arise between the Parties under or in connection with this Agreement, including disputes arising in contract, in tort, in statutory claim or otherwise, 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 Diego, California, U.S.A. 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. Judgment may be entered upon an arbitration award by a court of competent jurisdiction. The parties consent to the jurisdiction of the courts of San Diego, California as to any proceedings to confirm any arbitration award.

7.4. No Agency. The relationship between ArtisTech and Artist is that of independent contractors. Nothing contained herein shall be construed as creating any entity, 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.

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.

7.6 Assignment. ArtisTech 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.

7.7 Entire Agreement. This Agreement is the entire agreement between Artist and ArtisTech, which supersedes any prior or contemporaneous agreement or understanding, whether written or oral, and any other communications between Artist and ArtisTech 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.

7.8 Survival: The provisions of Sections 1, 4, 5.4, 6, and 7 shall survive termination of this Agreement.

7.9 Summary and Headings. The Summary and headings herein are for convenience only and are not intended by the parties of or to affect the meaning or interpretation of this Agreement.

Artist(s) hereby agrees to the foregoing terms of this Agreement, by clicking the accept link with this agreement.