

ZirconTrax – Licensing Agreement

1. License Grant and Performance Rights.

1.1 License Grant. In consideration of the terms, conditions, covenants and warranties herein, the Seller grants to the Buyer a non-exclusive and non-assignable license to use the Tracks and the approved name and likeness and biography of Artist and producer, writer and composer of the Tracks ("the Materials") in connection with the Use only, limited to the Territory, and during the Term hereof (as each of the foregoing are defined in Schedule "A" and Schedule "B") ("the License").

1.2 Performance Rights. Any public performance of the Project is subject to the clearance of the applicable public performance rights in force from time to time applied by the performing rights society in each part of the Territory in accordance with their respective prevailing terms and conditions.

1.3 License for Use on Buyer's Website. Where Buyer shall designate the Seller to collect Internet Performance Royalties, then Seller hereby grants the Buyer a license to publicly perform the Tracks in connection with the exhibition of the Project on Buyer's web site only (as set forth on Schedule "A"). Such license shall be limited to the Tracks only and Buyer shall obtain separate Internet Performance licenses for all Tracks not licensed hereunder from the applicable performing rights society in accordance with their customary terms and conditions.

2. License Fee and Payment Terms.

2.1 License Fee. In consideration of the License, Buyer shall pay the Seller the License Fee set forth in Schedule "A".

2.2 Payment Terms. Buyer shall pay the License Fee in full at the time of execution of this Agreement. Buyer expressly agrees that the terms of the License granted under this Agreement shall be valid only AFTER Buyer has made payment in full for the License Fee to the Seller and such payment has cleared. Any use by Buyer of the License granted under Section 1 without completing full payment of the License Fee shall constitute a material breach of this Agreement, entitling the Seller all available remedies under the laws of Seller's State or Country.

2.3 Taxes. The buyer shall pay and be responsible for all taxes and levies.

3. Attribution of Tracks.

3.1 The Buyer shall attribute and credit the Tracks in all promotion, exhibition and exploitation of the Project in a substantially similar form to that set forth in Schedule "A".

4. Alteration of the Tracks.

4.1 The Buyer shall be permitted to shorten the length of the Tracks or remix the Tracks, or any part thereof, as necessary for its use in the Project provided that the Buyer complies with the warranties stated in Section 6.

5. Reserved Rights.

5.1 The Buyer acknowledges and agrees that all rights in and to the Tracks, whether now known or hereafter in existence, that are not licensed hereunder are specifically reserved by the Seller.

6. Licensee's Warranties and Indemnity.

The Buyer represents and warrants to the Seller that:

6.1 Accuracy of information. All information provided by the Buyer herein and during the Term hereof shall be accurate, complete and not misleading in any material respect.

6.2 Limited Use of Tracks and Materials. The Buyer shall only use the Tracks and the Materials for the Use and only in connection with the Project as defined in Schedule "A" and shall not use, exploit or in any way attempt to obtain any benefit there from, except in strict accordance with the terms of this Agreement.

6.3 Safeguards for Use of Tracks. The Buyer shall maintain strict controls and safeguards in connection with the Tracks and the Materials to prevent any unauthorized use or distribution thereof and shall use its best efforts to ensure that any transmission thereof is undertaken in a safe manner so as to prevent unauthorized copying or retransmission by any third party.

6.4 No Duplication. The Buyer shall not, except to the extent allowed by the Seller hereunder and solely in connection with its authorized use of the Site, copy or otherwise duplicate directly or indirectly any portion of the Site including without limitation, any of the media, information, trademarks, logos, designs, graphics, systems, Tracks or otherwise contained therein ("Seller Protected Materials") for any purpose and shall not use any software that enables the copying or duplication of Seller's Protected Materials for later off line viewing ("Web Copying").

6.5 Copyright Notices. The Buyer shall abide by all copyright notices, information, or restrictions applicable to any Seller Protected Materials and the Tracks and the Materials or otherwise published by the Seller.

6.6 Indemnity. Buyer shall indemnify, hold harmless and defend the Seller from and against any and all claims, demands, suits, damages, liabilities and all reasonable expenses connected thereto, including attorneys' fees, against or suffered by the Seller with respect to any matter that arises from or is a result of a breach or attempted breach of this Agreement by the Buyer.

6.7 Performance Rights Societies. The Buyer will comply with all requirements of the applicable performing rights societies as set forth in Section 1 above.

7.0 Seller's Warranty, Indemnity, Disclaimer and Limitations of Liability.

7.1 Warranties. Seller warrants that it has the right to grant the License. Seller agrees to indemnify and hold harmless the Buyer from and against any and all claims, costs, losses, expenses, damages, judgments and liability (including reasonable attorney's fees) which may arise as a result of or in connection with a breach of Seller's warranty herein provided, however, that in no event shall Seller's total liability exceed the License Fee paid by Licensee hereunder.

7.2 Disclaimer. Seller (as copyright owner) disclaims in connection with any Tracks(s) or Materials offered any merchantability or fitness for any purpose, application or condition of whatsoever nature without limitation.

7.3 Limitation of Liability. Seller shall not be liable for any indirect, special or consequential damages including but not limited to loss of anticipated profits, in connection with or arising from this Agreement and shall not be liable for any loss, damage, claim or liability arising from or related to any software program, data errors, digital transmission errors, failures, interruptions or delays, regardless of cause.

8.0 Additional Restrictions and Rights.

The Buyer acknowledges and agrees to the following restrictions and rights concerning use of the Buyer conferred under this Agreement:

8.1 No Use Encouraging Illegal Activities. No uses encouraging or associated with illegal or illicit activities allowed.

8.2 Licensing Terms. See attached Schedule "A" for a complete list of the licensing terms covered by this agreement and Schedule "B" for a description of those terms.

9.0 General.

9.1 Notices. All notices permitted or required under this Agreement shall be in writing and shall be delivered as follows (i) by email, (ii) by Mail (iii) by facsimile transmission, or (iv) by certified or registered mail, return receipt requested, five days after deposit in the mail.

9.2 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.

9.3 Arbitration and Controlling Law. Any and all disputes that may arise between the Parties under or in connection with this Agreement 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 the Seller's state or country. 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 Seller's state or country.

9.4 No Agency. The relationship between the Seller and the Buyer is that of independent contractors. Nothing contained herein shall be construed as creating any 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.

9.5 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.

9.6 Assignment. Seller 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.

9.7 Termination. Seller shall have the right to terminate this Agreement forthwith upon a material breach or attempted breach by Buyer of any of the terms and conditions hereof unless such breach is cured within thirty (30) days following written notice to Buyer thereof, except that Buyer's failure to pay the License Fee as required under the terms of Section 2 shall be deemed a material breach. Upon expiration or termination, Buyer shall have no further right to use the Tracks or the Materials and any further use thereof whatsoever shall represent an act of copyright infringement.

9.8 The Seller reserves the right, at its sole discretion, to change, modify, add or remove portions of the Site and/or to vary, suspend or discontinue any aspect thereof at any time. The Site is protected by copyright as a collective work and/or compilation, pursuant to copyright law and Buyer may not modify, publish, transmit, participate in the transfer or sale of, reproduce (except as provided herein), create derivative works from, distribute, perform, display, or in any way exploit any Seller Protected Materials in whole or in part.

9.9 Seller's Protected Materials. Seller Protected Materials and all rights therein, are protected by all applicable copyright laws, and are owned and/or controlled by Seller or the party credited by Seller as the provider thereof.

9.10 Entire Agreement. This Agreement is the entire agreement between the Seller and Buyer, which supersedes any prior or contemporaneous agreement or understanding, whether written or oral, and any other communications between the Seller and Buyer 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.

9.11 Survival. The provisions of Sections 2, 5, and 9 shall survive termination of this Agreement.

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