

## LICENSE AGREEMENT

This License Agreement ("agreement") is entered into effective as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, between the parties hereto, who agree as follows in consideration of the mutual promises contained herein:

### 1. PARTIES

1.1 The Texas Music Educators Association (hereinafter referred to as TMEA) has its principal office at P.O. Box 140465, Austin, Texas 78714-0465.

1.2 \_\_\_\_\_ (hereinafter referred to as LICENSEE) has a principal place of business at \_\_\_\_\_

1.3 TMEA and LICENSEE are the parties to this agreement.

### 2. BACKGROUND

2.1 TMEA owns rights in certain marks now and identified in Attachment A hereto, and has acquired public recognition and goodwill through the use of such marks.

2.2 LICENSEE recognizes the goodwill appurtenant to use of the marks and desires to obtain a nonexclusive license to utilize such marks. TMEA is willing to grant such a license under the terms and conditions of this agreement.

### 3. DEFINITIONS

3.1 MARKS includes trademarks and service marks.

3.2 LICENSED MARKS means those marks listed in Attachment A, including common law rights, as well as any applications for registration which may be filed by TMEA or registrations which may be issued to TMEA covering such marks, whether state or federal.

3.3 LICENSED PRODUCTS means those products specified in Attachment B hereto on or in connection with which any of the LICENSED MARKS are used.

3.4 TERRITORY means the United States of America and its territories and possessions.

3.5 GROSS SALES PRICE means LICENSEE'S actual billing price to customers.

3.6 EFFECTIVE DATE means the date specified in the first paragraph of this agreement.

3.7 SOLD (or SALE) means that a LICENSED PRODUCT is shipped, distributed, paid for, or billed or invoiced (whichever occurs first).

3.8 TERM means the effective period of this agreement, which shall commence on the EFFECTIVE DATE and which shall terminate, unless sooner terminated pursuant to the provisions of this agreement, on \_\_\_\_\_.

3.9 QUALITY means an acceptable level of quality to TMEA. QUALITY for LICENSED PRODUCTS is more specifically defined in paragraph 11.1 hereof.

3.10 CONTRACT YEAR shall mean the consecutive twelve month period commencing each January 1 and terminating the following December 31, except that the first CONTRACT YEAR may be less than twelve months, commencing on the EFFECTIVE DATE and terminating the next December 31.

### 4. LICENSE GRANT

Subject to the terms and conditions of this agreement, TMEA grants to LICENSEE the

nonexclusive right and license to utilize the LICENSED MARKS in the TERRITORY solely on and in connection with the LICENSED PRODUCTS of QUALITY during the TERM hereof.

5. PAYMENTS TO TMEA

5.1 On or before the EFFECTIVE DATE, LICENSEE shall pay to TMEA a License Issue Fee of \$ 25.00 . Said Issue Fee is not an advance toward royalties that may become due during any calendar quarter of the TERM and LICENSEE shall not deduct the amount of the License Issue Fee from any royalties that may become due from the sale of LICENSED PRODUCTS.

5.2 In addition to the License Issue Fee, LICENSEE shall pay to TMEA a continuing royalty of ten percent (10%) of the GROSS SALES PRICE of all LICENSED PRODUCTS SOLD by LICENSEE or any of its subsidiaries, divisions, or affiliates. There shall be no deduction from the royalties owed for uncollectible accounts or for advertising or other expenses of any kind which may be incurred or paid by LICENSEE.

6. STATEMENTS AND BOOKS OF ACCOUNT

6.1 LICENSEE shall submit quarterly statements to TMEA in substantially the same format as specified in Attachment C hereto. Such statements shall be submitted to TMEA within thirty (30) days after the end of each calendar quarter and shall be accompanied by payment of continuing royalties payable pursuant to paragraph 5.2 above for that calendar quarter.

6.2 All delinquent amounts not paid when due pursuant to paragraph 6.1 above shall be charged the maximum rate of interest permitted under applicable state law, not to exceed one and one-half percent (1½ %) per month of any portion thereof during which said amounts remain delinquent.

6.3 LICENSEE agrees to keep accurate books of account and records covering all transactions relating to the LICENSED PRODUCTS, and to maintain such records for a period of at least four (4) years from the termination and/or expiration of this agreement. TMEA and its authorized representative shall have the right at all reasonable hours of the day at LICENSEE'S usual place of business, upon reasonable notice, to examine and copy said books of account and records and all other documents and material in the possession or under the control of LICENSEE, insofar as they relate to the LICENSED PRODUCTS, in order to determine the accuracy of the statements delivered by LICENSEE to TMEA. If any such examination shall reveal an error in royalties paid or payable hereunder of more than five percent (5%), or if such examination is made because of the LICENSEE'S failure to pay any amounts due hereunder, then LICENSEE shall bear all costs incurred by TMEA in connection with the examination, and shall pay an additional sum equal to twenty percent (20%) of gross royalties due for the accounting period in question.

7. DEFAULT. TERMINATION

7.1 In the event LICENSEE fails to submit timely statements and payments to TMEA as provided in this agreement, or in the event LICENSEE becomes insolvent, makes any assignment for the benefit of creditors, or is subject to any bankruptcy or receivership proceedings, TMEA may immediately terminate this agreement by serving notice on LICENSEE.

7.2 LICENSEE may terminate this agreement at any time without cause after serving upon TMEA two (2) months' Notice of Intent to Terminate. In such event, this agreement shall be automatically terminated two (2) months after service by LICENSEE of said Notice of Intent to Terminate.

8. EFFECT OF EXPIRATION OR TERMINATION

8.1 Upon expiration or termination of the agreement, all rights granted to LICENSEE hereunder shall cease, and LICENSEE will refrain from further use of the LICENSED MARKS, or any mark or name reasonably deemed by TMEA to be similar to the LICENSED MARKS, in connection with the manufacture, sale, distribution, or promotion of products or services. LICENSEE acknowledges that failure to comply with this provision will result in immediate and irreparable harm affording injunctive and any and all other appropriate relief to TMEA.

8.2 Upon expiration or termination of this agreement, LICENSEE shall not operate its business in any manner which would falsely suggest to the public that this agreement is still in force or that any relationship exists between LICENSEE and TMEA. LICENSEE shall have the right, after expiration or termination of this agreement, to ship and distribute those LICENSED PRODUCTS of QUALITY which were manufactured and in LICENSEE'S inventory prior to expiration or termination, provided that no such products shall be shipped more than one hundred twenty (120) days after date of expiration or termination.

8.3 Expiration or termination of the agreement shall not relieve LICENSEE from the obligation to pay TMEA any payments due and owing at the time of termination.

9. PERSONAL LICENSE

9.1 The license granted to LICENSEE is personal, and no rights hereunder may be transferred by LICENSEE without the express written approval of TMEA. LICENSEE shall immediately notify TMEA of any change or proposed change in ownership or control of LICENSEE during the TERM hereof.

9.2 LICENSEE shall grant no sublicenses under this agreement, but this shall not prevent LICENSEE from having products made for it to its specifications, provided all provisions of the agreement are satisfied.

10. GOOD WILL IN LICENSED MARKS

10.1 LICENSEE agrees that the essence of this agreement is founded on the good will associated with the LICENSED MARKS and the value of that good will in the minds of the consuming public. LICENSEE agrees that it is critical that such good will be protected and enhanced and, toward this end, LICENSEE shall not during the TERM or thereafter:

- (a) attack the title or any rights of TMEA in or to the LICENSED MARKS;
- (b) apply to register or maintain any application or registration of the LICENSED MARKS or any other mark confusingly similar thereto in any jurisdiction, domestic or foreign;
- (c) use any colorable imitation of any of the LICENSED MARKS, or any variant form (including variant design forms, logos, colors, or type styles) of the LICENSED MARKS not specifically approved by TMEA;
- (d) misuse the LICENSED MARKS;
- (e) take any action that would bring the LICENSED MARKS into public disrepute;
- (f) use the LICENSED MARKS, or any mark or name confusingly similar thereto, in its corporate or trade name; or
- (g) take any action that tends to destroy or diminish the good will in the LICENSED MARKS.

10.2 All use by LICENSEE of the LICENSED MARKS inures to the benefit of TMEA.

10.3 In order to facilitate enhanced protection by registration of the LICENSED MARKS,

LICENSEE agrees, if requested, to provide TMEA after initial SALE by LICENSEE one of each different type of LICENSED PRODUCT within one (1) month after requested in writing by TMEA:

- (a) one (1) original of each label, tag, container, and advertising or promotional piece bearing a LICENSE MARK (or, if the LICENSED MARK does not appear on a label or tag, one (1) copy of a photograph showing appearance of the LICENSED MARK on the LICENSED PRODUCT); and
- (b) a copy of the invoice or shipping ticket indicating the first SALE of that LICENSED PRODUCT.

Within ten (10) days after the first SALE by LICENSEE of said LICENSED PRODUCT in a state other than Texas [or in Texas, if the sale evidenced by item (b) above was to a state other than Texas], LICENSEE shall provide to TMEA a copy of the invoice or shipping ticket indicating said first sale.

The items required in paragraph 10.3 shall be provided to TMEA by mailing or shipping them, postage or shipping costs prepaid, to:

Texas Music Educators Association  
P. O. Box 140465  
Austin, Texas 78714-0465

10.4 LICENSEE agrees to cooperate fully with TMEA in securing and maintaining the good will of TMEA in the LICENSED MARKS.

#### 11. QUALITY CONTROL: PACKAGING AND ADVERTISING APPROVAL

11.1 All LICENSED PRODUCTS shall be QUALITY goods. LICENSEE acknowledges that if LICENSED PRODUCTS manufactured and sold by it were of inferior quality in design, material or workmanship, the substantial good will which TMEA possesses in MARKS would be impaired. Accordingly, LICENSEE agrees that all LICENSED PRODUCTS shall be of high quality. To this end, LICENSEE shall, before it sells or distributes any of the LICENSED PRODUCTS, furnish to TMEA, free of cost, for its approval, a sample of each LICENSED PRODUCT, together with any carton or container, packaging or wrapping material. Each new design, of or on a product, incorporating any of the LICENSED MARKS shall constitute a newly proposed LICENSED PRODUCT which must be approved prior to sale or distribution. TMEA shall have two (2) weeks from receipt of each LICENSED PRODUCT in which to reject the sample. In absence of rejection, or upon earlier written acceptance the sample shall be deemed as accepted as an example of the quality for that LICENSED PRODUCT. The LICENSED MARKS may be applied by LICENSEE only to such LICENSED PRODUCTS as are manufactured in accordance with the corresponding samples accepted hereunder and which have substantially the same relative quality position in the marketplace as do the samples thereof; provided, however, that LICENSEE may furnish to TMEA a further sample of any LICENSED PRODUCT of which it desires to change the quality, style and/or appearance and TMEA shall have two (2) weeks from receipt thereof in which to reject in writing said further sample. Failure to reject shall be deemed as approval thereof as an example of quality for that LICENSED PRODUCT. TMEA shall have the right through its employee(s) or designated representative(s) during normal business hours to inspect the facilities and product inventory of LICENSEE to assure itself that QUALITY is being maintained at all times.

11.2 All packaging and advertising bearing the LICENSED MARKS shall be subject to the approval of TMEA. LICENSEE shall furnish packaging and promotional materials to TMEA in

accordance with paragraph 10.3. In addition, LICENSEE shall furnish to TMEA one (1) copy of any advertisement of LICENSED PRODUCT used by LICENSEE. TMEA shall have two (2) weeks from receipt thereof in which to reject in writing the packaging or advertising materials. In the absence of rejection, or upon earlier written acceptance, the packaging and advertising materials will be deemed as accepted. LICENSEE shall furnish to TMEA a further sample of packaging and advertising if it desires to change the packaging or advertising. TMEA will have two (2) weeks to reject the packaging and advertising. Failure to reject will be deemed acceptance.

12. MARKING

LICENSEE agrees that it will designate the LICENSED PRODUCTS in a manner as specified from time to time in writing by TMEA to indicate the rights of TMEA in the LICENSED MARKS, including registration status of the LICENSED MARKS and that the products are manufactured pursuant to license.

13. INDEMNITY/HOLD HARMLESS

13.1 LICENSEE agrees that it is wholly responsible for all products manufactured or SOLD by it, including all LICENSED PRODUCTS, and that TMEA shall have no liability related to any item, including any LICENSED PRODUCT, manufactured or SOLD by LICENSEE.

13.2 **LICENSEE shall indemnify and hold harmless TMEA and the officers, employees, and agents thereof, from any claims, demands, causes of action, and/or damages, including, without limitation, reasonable attorney's fees, caused by or arising out of LICENSEE'S use of any LICENSED MARK, or the workmanship, material or design of any LICENSED PRODUCT, including without limitation, claims or actions for product liability, patent infringement, trademark infringement and/or copyright infringement.**

14. NOTICES

All notices or demand required to be made or permitted under this agreement shall be in writing and shall be deemed served when deposited in the United States mail, first class postage prepaid, certified or registered mail, return receipt requested, addressed as provided in paragraphs 10.3 and 1.2 of this agreement, or to such other address as either party may from time to time designate in writing.

15. STATUS OF PARTIES

This agreement is not intended to create, and shall not be interpreted or construed as creating, a partnership, joint venture, agency, employment, master and servant, or similar relationship between TMEA and LICENSEE, and no representation to the contrary shall be binding upon TMEA.

16. BINDING EFFECT

This agreement shall be binding upon and inure to the benefit of TMEA and LICENSEE and, subject to paragraph 9.1 above, their respective successors, assigns, executors, heirs, and personal representatives.

17. LAW GOVERNING

This agreement shall for all purposes be governed by and interpreted and enforced in accordance with the laws of the state of Texas. LICENSEE hereby agrees that any action arising out

of this agreement shall be litigated under the laws of the state of Texas in a court of competent jurisdiction in Travis County, Texas, and LICENSEE hereby agrees to submit to the jurisdiction of the courts of the state of Texas, and that service of process by certified mail, return receipt requested, shall be sufficient to confer in personam jurisdiction over LICENSEE.

18. MISCELLANEOUS

18.1 The provisions of this agreement are severable, and if any provision shall be held illegal, invalid, or unenforceable, such holding shall not affect the legality, validity, or enforceability of any other provision. Any such illegal, invalid, or unenforceable provision shall be deemed stricken here from as if it had never been contained herein, but all other provisions shall continue in full force and effect.

18.2 As used herein, the term LICENSEE shall include the plural as well as the singular, the masculine and feminine genders, and corporations, partnerships, and other business entities as well as individuals.

18.3 This agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreements between the parties, written or oral, with respect to such subject matter.

18.4 This agreement may not be amended, modified, or rescinded except by a written agreement executed by TMEA and LICENSEE.

18.5 The failure or delay in the enforcement of the rights detailed herein by TMEA shall not constitute a waiver of said rights or be considered as a basis for estoppel. TMEA may exercise its rights herein despite said delay or failure to enforce said rights.

18.6 If any party hereto is a legal entity (partnership, corporation and/or trust), such party represents unto the other that this agreement, the transaction contemplated herein, and the execution and delivery hereof, have been duly authorized by all necessary partnership, corporate or trust proceedings and actions, including without limitation, the action on the part of the directors, if the party is a corporation. Certified copies of such corporate or other resolutions authorizing this transaction shall be delivered at execution.

18.7 Time is of the essence in this agreement and accordingly all time limits shall be strictly construed and rigidly enforced.

18.8 Dispute or Contest. In the unlikely event that a dispute occurs or an action in law or equity arises out of the operation, construction or interpretation of this agreement, LICENSEE shall bear the cost of the attorney's fees and costs of said action, which are incurred by TMEA.

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18.9 The paragraph headings used herein are descriptive only and shall have no legal force or effect whatever.

EXECUTED by TMEA and LICENSEE on the day and year first above written, in duplicate copies, each of which shall be deemed an original.

TEXAS MUSIC EDUCATORS ASSOCIATION

LICENSEE

BY: \_\_\_\_\_  
(Type or print name)

\_\_\_\_\_  
(Name of firm or individual)

SIGNATURE: \_\_\_\_\_

BY: \_\_\_\_\_  
(Type or print name)

TITLE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_


TITLE: \_\_\_\_\_

EMAIL: \_\_\_\_\_

WEBSITE: \_\_\_\_\_

PHONE: \_\_\_\_\_

LICENSED MARKS ARE:

(1) The TMEA logo..... 

(2) The letters..... “TMEA”

(3) The name..... “Texas Music Educators Association”

EXAMPLES OF ROYALTY PAYMENTS  
DUE ON PRODUCTS RELATING TO TMEA ACTIVITIES  
(Including But Not Limited to the Following:)

- All-State Band
- All-State Orchestra
- All-State Choir
- All-State Jazz Ensemble
- Area Band
- Area Orchestra
- Area Choir
- All-Region Band
- All-Region Orchestra
- All-Region Choir
- All-Region Jazz Ensemble
- All-Region JHS/MS Band
- All-Region JHS/MS Orchestra
- All-Region JHS/MS Choir
- All-Region Freshman Band
- All-Region Freshman Choir
- Zone or District Band
- Zone or District Orchestra
- Zone or District Choir
- Elementary Band
- Elementary Orchestra
- Elementary Choir

ATTACHMENT A



LIST OF PRODUCTS TO BE LICENSED:

ATTACHMENT B

**- SAMPLE -**

QUARTERLY ROYALTY REPORT  
 (Report must be filed even  
 if no royalties are due)

LICENSOR:  
 Texas Music Educators Association  
 P.O. Box 140465  
 Austin, TX 78714-0465

\_\_\_\_\_  
 Date of Report

LICENSEE:  
  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 For Quarter Ending

(LICENSEE may use an alternate form providing it contains all information specified in Agreement)

Date of Invoice	Invoice Number	Product Description	Quantity	Price Per Unit	Gross Sales Licensed Products

TOTAL GROSS SALES OF LICENSED PRODUCTS	\$	_____
LESS: returns and/or transportation charges on returns:	-	_____
TOTAL "NET" GROSS SALES OF LICENSED PRODUCTS subject to royalties:	\$	_____
ROYALTY PERCENTAGE:	X	10.00 %
ROYALTIES DUE FOR THIS QUARTER: (and payment enclosed with report)	\$	_____
PREPARED BY:	_____	_____

Complete and Return within thirty (30) days after each calendar quarter.

ATTACHMENT C