

SMARTMUSIC® CLASSIC LICENSE & SUBSCRIBER AGREEMENT

LAST UPDATED ON June 15, 2016.

THE TERMS OF THIS SMARTMUSIC® CLASSIC LICENSE & SUBSCRIBER AGREEMENT ARE LEGALLY BINDING. IF YOU ACCESS OR USE THE SMARTMUSIC PROGRAM IN ANY MANNER, YOU AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS POLICY. IF YOU DO NOT AGREE TO BE BOUND, YOU MAY NOT USE THE SMARTMUSIC PROGRAM.

This SmartMusic® License & Subscriber Agreement ("Agreement") governs the terms of use of the SmartMusic® music education program and all related features/services ("SmartMusic program"). This Agreement becomes effective when you click the "I Accept" button and when you access or use any part of the SmartMusic program.

- 1. Definition.** In the context of this Agreement, "SmartMusic" refers to the classic SmartMusic software program that must be installed on a user's computer. This Agreement does not apply to the new web-based SmartMusic service offered to users beginning in the fall of 2016.
- 2. Background & Purpose of this Agreement.** MakeMusic, Inc. ("MakeMusic" or "we" or "us") provides the SmartMusic program and electronic services to end users, who include individuals, schools, students, educators and others. This Agreement is intended to protect MakeMusic's rights in its proprietary software and related services and features. It also sets forth the restrictions and permissible uses of the SmartMusic program by others. MakeMusic is providing you with access to the SmartMusic program and services only in accordance with the terms and conditions of this Agreement.
- 3. Revisions.** From time to time, MakeMusic, Inc. may change the terms of this Agreement. If we make a change to this Agreement, we will post a notice on the login or homepage of the SmartMusic program. Changes will also appear in this document, which you can access at any time via: www.makemusic.com/terms-conditions.
- 4. Ownership Rights & Confidentiality.** MakeMusic and, as applicable, its licensors, own all right, title and interest in and to the SmartMusic program and services, as well as in any related intellectual property rights. MakeMusic also owns all right to, title to and interest in any output or materials created through the SmartMusic program. MakeMusic reserves all rights that are not expressly granted herein. The SmartMusic

program is considered confidential and proprietary to MakeMusic, and is provided only to authorized licensees/users.

5. **License Grant.** MakeMusic grants you a non-exclusive, revocable, limited license to access and use the SmartMusic program on a computer, mobile device, and other compatible devices ("Device") solely for the purpose of using the SmartMusic program as it is intended (for music education purposes). You may use the SmartMusic program on one Device at a time.
6. **Access.** MakeMusic provides the SmartMusic program in two ways: (a) through downloadable software and applications; and (b) through a web-based program, accessible at www.makemusic.com. This agreement governs access of the SmartMusic program via downloadable software.
7. **Trial Access.** If you access or use any version of the SmartMusic program designated by MakeMusic as "trial", "evaluation", "not for resale", or other similar designation ("**Evaluation Versions**"), you may install and use the Evaluation Version only during the evaluation period and only for evaluation purposes. You may not use any materials, features or data provided in or through the Evaluation Version for anything other than non-commercial purposes.
8. **GRADEBOOK™.** Educator subscribers/users of the SmartMusic program may elect to use MakeMusic's SMARTMUSIC GRADEBOOK™ services. Only one individual educator is authorized to use the SMARTMUSIC GRADEBOOK™ service per purchased subscription license of the SmartMusic program. Educators responsible for grading individual students must obtain their own subscription license to the SmartMusic program. Classes that are taught by multiple educators can share access to the SMARTMUSIC GRADEBOOK™ service.
9. **Updates.** MakeMusic may implement and/or install updates to the SmartMusic program. These updates may be automatically downloaded and installed. Updates are designed to improve, enhance, and further develop the SmartMusic program and may take the form of bug fixes, enhanced functions, new software modules, and completely new versions. You agree to receive such updates (and permit MakeMusic to deliver these to you with or without your knowledge) unless you turn off update delivery feature within the SmartMusic program. If you wish to turn off automatic updates, you may do so in the SmartMusic program via the "Help" menu. Select "Check for Updates..." and uncheck the box labeled "Automatically download and apply updates" in the subsequent dialog box. In the Finale Software, you can turn off automatic updates via

the “Finale” Menu by unchecking the item “Check for Updates Automatically”. In mobile applications, this functionality is managed from within the mobile device’s settings. Please see the manufacturer’s website for more information.

10. Subscription. To access most of the functionality of the SmartMusic program, you must subscribe to the SmartMusic electronic service by completing the subscriber registration process at www.makemusic.com.

- a. Fees and Payments. The fees for your subscription(s) will be billed to you via your authorized credit card or via an invoice. You agree to pay or have paid all fees and charges, including any applicable taxes incurred in connection with your account for the SmartMusic program subscription you select, at the rates in effect when you subscribed. MakeMusic may change the fees and charges then in effect, or add new fees or charges, by giving you notice in advance. You are solely responsible for any fees or charges incurred to access the SmartMusic program through an Internet access provider, mobile service provider, or other third party service.
- b. Subscription Terms. A subscription applies to an individual person only. Subscriptions cannot be transferred and allows the individual user to use the SmartMusic program only on one device at a time, and only after the user has been authenticated by MakeMusic. Notwithstanding the foregoing, a "School Practice Room Subscription" applies to a specified number of school-owned devices and can only be accessed and used on such devices. Subscription term length and renewal depends on the type of subscription, user, or MAKEMUSIC-specified subscription attributes:
 - i. "Educator Subscriptions" must be purchased by educators who are using the SmartMusic program for the purpose of teaching students. Educators may choose a term end date during the subscription process that is at least six (6) months from the order date. At the time of order, and at any time prior to the end date of the subscription, the educator can choose to have educator subscriptions renew automatically each year until cancelled.
 - ii. "Student Subscriptions" must be purchased by students who are using the SmartMusic program. Student Subscriptions may not be used to educate others. Student Subscriptions may be purchased by the teacher on behalf of the student or directly by the student or the student’s parent or guardian. Student Subscriptions have a term of one (1) year from the order date. At the time of order, the student or the student’s parent or

guardian can choose to have the Student Subscription renew automatically each year until cancelled.

iii. "School Practice Room Subscriptions" may be used by educational institutions for students to access the SmartMusic program and content library at school, but only if that institution also has an Educator Subscription. School Practice Room Subscriptions are at least six (6) months and educators can select the term at the time of ordering. At the time of order, and at any time prior to the end date of the subscription, the educational institution ordering the subscription can choose to have School Practice Room Subscriptions renew automatically each year until cancelled.

c. Termination of Subscription. MakeMusic may discontinue or change your subscription at any time, and you may terminate your subscription at any time. If you wish to terminate your subscription, please contact MakeMusic via one of the methods listed at the bottom of this document. If you terminate your subscription prior to the end of its term, you will not receive a refund for any reason. Your subscription may terminate without notice if you breach the applicable use limitations for any of the subscriptions described above or any other term of this Agreement.

d. Suspension. Payment terms are by default, due within thirty (30) days of initial order, unless specifically negotiated prior to sale. If payment is not timely received, MakeMusic may terminate or suspend services until payment is made.

e. Account Name. MakeMusic may refuse to grant you an account name that impersonates someone else, is protected by trademark or other proprietary right law, or is vulgar or otherwise offensive, as determined by MakeMusic.

11. Account Information & Access. You are responsible for maintaining the confidentiality of your user name, password, and other account information and for all activities that occur under your user name or account. You agree to provide accurate information and to update your account as necessary to keep it accurate. We will use your information in accordance with our Privacy Policy, available at <http://www.makemusic.com/privacy>. You agree that you will not allow others to access and use your account. You agree to notify us immediately of any unauthorized use of your account.

12. Content. The content available through the SmartMusic program is the property of MakeMusic or its licensors and is protected by copyright and other intellectual property laws. Content licenses may change or be terminated and if this occurs, MakeMusic reserves the right to modify and/or remove content from the SmartMusic program at any time without notice to its subscribers. CONTENT AVAILABLE TO YOU THROUGH THE SMARTMUSIC PROGRAM MAY BE USED ONLY FOR YOUR PERSONAL, NON-COMMERCIAL USE. YOU MAY NOT SELL THE PROPERTY OBTAINED THROUGH SMARTMUSIC.

13. Noninfringement. You agree that you will not use the SmartMusic program to infringe the copyrights or other intellectual property rights of others in any way. Without limiting the foregoing, you agree not to reproduce, retransmit, distribute, disseminate, sell, publish, broadcast, or circulate the content received or generated through the SmartMusic program to anyone, including (without limitation) to others in the same company or organization, without the express prior written consent of the copyright holder(s) and MakeMusic; provided, however, that subject to the Limitation of Liability and Indemnification sections below, you may distribute copies of your recorded performances along with SmartMusic accompaniments to your teachers, your family members or friends, but only for (1) noncommercial and (2) educational or evaluation purposes, and provided that you include all copyright and other proprietary rights notices with any portion of the content in the same form in which the notices appear in the SmartMusic program, original source attribution, and the phrase "Used with permission from MakeMusic, Inc." ANY OTHER DISTRIBUTION IS PROHIBITED. UNDER NO CIRCUMSTANCES MAY RECORDED PERFORMANCES OF SMARTMUSIC ACCOMPANIMENTS WITHOUT A SOLOIST PERFORMING BE MADE FOR THE PURPOSE OF USING SMARTMUSIC WITHOUT A SUBSCRIPTION. To request consent for other matters, please contact MakeMusic via one of the methods listed at the end of this document.

14. Geographic Scope. MakeMusic makes no representation or warranty that the contents of the SmartMusic programs are appropriate or permitted by the laws and regulations of countries other than the U.S.A. If you choose to access the SmartMusic program from other countries, you do so at your own risk and are responsible for compliance with applicable local laws. By accepting this Agreement, you understand and agree that such information is sent to and processed by a United States entity and that your information is stored on computers in the United States or other countries.

15. User-Created Content or Third-Party Content. MakeMusic is not responsible or liable in any manner for any user-created content or content received from a third party

used in connection with the SmartMusic program. You are responsible for determining that content you create or acquire from a third party for use with the SmartMusic program does not infringe on any works under copyright. You agree to hold MakeMusic harmless from and against any loss, damage, or expense, including court costs and attorneys' fees arising out of or in connection with any user-created or third party content you use or distribute for use in the SmartMusic program.

16. Use & Disclosure of Data. MakeMusic and its agents may collect, maintain, process, use and disclose various types of data through the SmartMusic program. You hereby grant MakeMusic permission, at its option and whenever you are using the SmartMusic program, to access, review, analyze, gather, and otherwise use and disclose any information relating to your use of the SmartMusic program (herein, "Data Collection"). You agree not to use any program, routine, device, code, or instructions or other feature on your machine which would block or otherwise not allow MakeMusic to perform Data Collection. The MakeMusic Privacy Policy governs our Data Collection and is incorporated into the terms of this Agreement. It is your responsibility to read the MakeMusic Privacy Policy and understand how we collect and use information about Districts, Schools, Educators, and Students. You can view our Privacy Statement here: <http://www.makemusic.com/privacy>.

17. Children's Online Privacy and Protection. We care about protecting the online privacy of children. To view our complete policy, see the MakeMusic Privacy Policy at <http://www.makemusic.com/privacy>. We may collect certain information about children ONLY for the purpose of providing our educational services through the SmartMusic program.

- a. Verifiable Consent. MakeMusic does not knowingly collect any information from children under the age of 13 unless the school or teacher working with the student has obtained appropriate, verifiable consent directly from the parent or legal guardian for the student to use the SmartMusic program. **IF YOU ARE A SCHOOL, EDUCATOR OR OTHER PERSON/ENTITY WORKING WITH AN INDIVIDUAL UNDER THE AGE OF 13 THROUGH THE SMARTMUSIC PROGRAM, IT IS YOUR RESPONSIBILITY TO OBTAIN AND VERIFY CONSENT FROM A PARENT OR LEGAL GUARDIAN BEFORE ANY CHILD UNDER 13 YEARS OF AGE MAY USE THE SMARTMUSIC PROGRAM.**
- b. Notification. While it is the responsibility of the school or educator to obtain verifiable consent for its students under the age of 13, MakeMusic will send a notification to the parent or guardian identified during the enrollment process to inform the parent/guardian of the enrollment and to provide the

parent/guardian with information regarding their right to cancel the enrollment and to access and manage the enrollment information.

- c. Providing or Withdrawing Consent. MakeMusic allows parents and legal guardians to review information submitted by their children, and to request the removal of any information. Details on these procedures can be found in our Privacy Policy at <http://www.makemusic.com/privacy>.
- d. Schools that Act as the Parent's Agent. Schools that contract with MakeMusic to provide the SmartMusic service for legitimate educational purposes only may consent to the collection of student information on the parent's behalf (see "Verifiable Consent" above) and may also request to review and/or delete a student's personal information. Schools should consider making these same notices available to parents. As a best practice, the school or school district should make the decision to contract with MakeMusic rather than placing that responsibility upon individual teachers.

18. Restrictions. Except as otherwise expressly permitted under this Agreement, Customer shall not, either directly or indirectly:

- a. copy the SmartMusic program, in whole or in part;
- b. modify, correct, adapt, translate, enhance or otherwise prepare derivative works or improvements of the SmartMusic program;
- c. rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the SmartMusic program to any person or entity, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service;
- d. reverse engineer, disassemble, decompile, decode or adapt the SmartMusic program, or otherwise attempt to derive or gain access to the source code of the SmartMusic program, in whole or in part;
- e. access or attempt to access the SmartMusic program by any means other than the interface provided or authorized by MakeMusic;
- f. bypass or breach any security device or feature on used for or contained in the SmartMusic program;

- g. remove, alter, or obscure any warranties, disclaimers, intellectual property notices or other symbols, notices, marks or serial numbers on or relating to the SmartMusic program;
- h. use the SmartMusic program in any manner or for any purpose that infringes, misappropriates or otherwise violates any intellectual property right or other right of any person or entity, or that violates any applicable law;
- i. use the SmartMusic program for purposes of: (i) benchmarking or competitive analysis of the SmartMusic program; (ii) developing, using or providing a competing software product or service; or (iii) any other purpose that is to MakeMusic's detriment or commercial disadvantage;
- j. use any data mining or similar data gathering and extraction methods in connection with the SmartMusic program;
- k. use the SmartMusic program in any manner that is not expressly permitted by this Agreement; or
- l. violate applicable law.

19. Customer Representations. You expressly represent that: (a) you will adhere to the terms of this Agreement, MakeMusic's Privacy Policy available at <http://www.makemusic.com/privacy>, and any other terms provided by MakeMusic when you download or access the SmartMusic program; and (b) you will maintain the confidentiality of the SmartMusic program.

20. Termination. This Agreement will terminate automatically without notice from MakeMusic if you fail to comply with any of the terms or limitations of this Agreement. Upon termination, MakeMusic may require that you delete all copies of and cease all use and access to the SmartMusic program.

21. Mobile Software from the Apple App Store. THIS PARAGRAPH APPLIES ONLY IF YOU DOWNLOAD THE SMARTMUSIC PROGRAM APPLICATION THROUGH THE APPLE APP STORE. To the extent that the terms and conditions of this Agreement are less restrictive than, or otherwise conflict with, the terms and conditions of this paragraph, the more restrictive or conflicting terms and conditions in this paragraph apply, but solely with respect to any software or applications downloaded from the Apple App

Store. You acknowledge and agree that this Agreement is solely between you and MakeMusic, not Apple, and that Apple has no responsibility for the SmartMusic program or content thereof. Your use of the SmartMusic program, if downloaded from the Apple App Store, must comply with the App Store Terms of Service. You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the SmartMusic program. In the event of any failure of the SmartMusic program from the Apple App Store to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price of the SmartMusic program (if any) to you; and, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the SmartMusic program, and any other claims, losses, liabilities, damages, costs, or expenses attributable to any failure to conform to any warranty will be solely governed by the terms of this Agreement. You and MakeMusic acknowledge that Apple is not responsible for addressing any claims by you or any third party relating to the SmartMusic program or your possession and/or use of the SmartMusic program, including, but not limited to: (i) product liability claims; (ii) any claim that the SmartMusic program fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation. You and MakeMusic acknowledge that, in the event of any third party claim that the SmartMusic program or your possession and use of the SmartMusic program infringes that third party's intellectual property rights, MakeMusic, not Apple, will be solely responsible for the investigation, defense, settlement, and discharge of any such intellectual property infringement claim to the extent required by this Agreement. You represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties. You and MakeMusic acknowledge and agree that Apple, and Apple's subsidiaries, are third party beneficiaries of the Agreement, and that, upon your acceptance of the terms of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement against you as a third party beneficiary thereof.

22. DISCLAIMER OF WARRANTIES. MAKEMUSIC MAKES NO WARRANTIES REGARDING THE SMARTMUSIC PROGRAM, DOCUMENTATION MATERIALS, OR MEDIA, EITHER EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ALL WARRANTIES, INCLUDING (WITHOUT LIMITATION) WARRANTIES RELATING TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND SECURITY. THE SMARTMUSIC PROGRAM AND RELATED MATERIALS ARE PROVIDED SOLELY ON AN "AS IS" BASIS, WITHOUT WARRANTY OF ANY KIND. THE ENTIRE RISK AS TO THE

QUALITY AND PERFORMANCE OF THE SOFTWARE AND ANY ACCOMPANYING DOCUMENTATION MATERIALS IS WITH YOU. YOU ASSUME ALL RESPONSIBILITY FOR SELECTION OF THE SOFTWARE, FEATURES AND ACCOMPANYING DOCUMENTATION MATERIALS TO ACHIEVE YOUR INTENDED RESULTS, AND FOR THE INSTALLATION, USE, AND RESULTS OF THE SMARTMUSIC PROGRAM. NO ORAL OR WRITTEN INFORMATION OR ADVICE PROVIDED BY MAKEMUSIC, ITS DEALERS, DISTRIBUTORS, AGENTS, OR EMPLOYEES SHALL CREATE ANY OTHER WARRANTY, AND YOU MAY NOT RELY ON SUCH INFORMATION OR ADVICE.

23. EXCLUSION OF CONSEQUENTIAL DAMAGES. NEITHER MAKEMUSIC NOR ANYONE ELSE INVOLVED IN THE CREATION, PRODUCTION, LICENSING, OR DELIVERY OF THE SOFTWARE AND DOCUMENTATION MATERIALS SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES (INCLUDING DAMAGES FOR LOST PROFITS OR THE LIKE) RESULTING FROM THE ACCESS, PAYMENT, USE OR INABILITY TO USE THE SOFTWARE, EVEN IF MAKEMUSIC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. MAKEMUSIC SHALL NOT BE LIABLE FOR CHANGES TO ANY FINALE FAMILY NOTATION FILES THAT MAY OCCUR UPON CONVERSION TO THE SOFTWARE.

24. CAP ON LIABILITY. YOU AGREE THAT THE LIABILITY OF MAKEMUSIC, ITS AFFILIATES, AGENTS, AND LICENSORS, IF ANY, ARISING OUT OF ANY KIND OF LEGAL CLAIM (WHETHER IN CONTRACT, TORT, OR OTHERWISE) IN ANY WAY CONNECTED WITH THE SMARTMUSIC PROGRAM OR THE CONTENT IN THE SMARTMUSIC PROGRAM SHALL NOT EXCEED THE AMOUNT YOU PAID TO MAKEMUSIC FOR THE USE OF THE SMARTMUSIC PROGRAM IN THE 12 MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.

25. Indemnification. You agree to indemnify, defend and hold harmless MakeMusic and its subsidiaries, affiliates, officers, directors, employees, agents, successors and assigns from and against all losses (including attorneys' fees) incurred by MakeMusic in connection with any claim or threatened claim by a third party if such losses arise out of or relate to any allegation that would constitute a breach by you of any representation, warranty, covenant or obligation under this Agreement.

26. Entire Agreement. This Agreement, as well as the MakeMusic Privacy Policy available at <http://www.makemusic.com/privacy> and any subscription terms provided to you at the time of enrollment, make up the complete and exclusive agreement between you and MakeMusic relating to the SmartMusic program.

27. **Governing Law.** This Agreement, your rights and obligations, and all actions contemplated by this Agreement shall be governed by the laws of the United States of America and the State of Colorado, as if the Agreement was a contract wholly entered into and wholly performed within the State of Colorado. Any disputes arising out of this Agreement shall be venued in the state or federal courts sitting in the State of Colorado.

28. **Assignment.** This Agreement is personal to you. You may not assign your rights or obligations to anyone. A subscription may be used on any computer, mobile device or other compatible device, but not on more than one device at a time.

29. **Severability.** If any provision in this Agreement is invalid or unenforceable under applicable law, the remaining provisions will continue in full force and effect.

30. **CONSENT TO RECEIVE ELECTRONIC NOTICES.** By clicking to agree to this Agreement, you expressly agree and consent to receiving all notices from MakeMusic relating to your privacy, your personal information, or any license or relationship that you have with MakeMusic via electronic mail via the address you have provided to MakeMusic as your e-mail address. You have the right to revoke consent to receive such notices via electronic mail, but until such consent is revoked, your consent to receive notices via electronic mail will remain in full force and effect.

31. **Contact Us / Notices.** If you have questions or comments about this Agreement, please contact MakeMusic directly:

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- Visit us on-line at <http://support.makemusic.com>
 - Email us at team@makemusic.com,
 - Call us Toll Free (for the U.S.A.): 1-800-843-2066
 - Send us a letter addressed by First Class Postage Prepaid U.S. Mail or overnight courier to the following address:
 - Customer SuccessMakeMusic, Inc.
7007 Winchester Circle, Suite 140
Boulder, CO 80301
USA
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