

# **FINALE<sup>®</sup> SHOWCASE<sup>™</sup> TERMS AND CONDITIONS**

## **MAKEMUSIC INC. MUSIC PUBLICATION AGREEMENT**

This Music Publishing Agreement ("Agreement") is by and between any person (referred to herein as "Author" or "you") who displays their music compositions and arrangements ("Work" or "Works") on the MakeMusic Finale Showcase<sup>™</sup> Website, and MakeMusic, Inc. ("MAKEMUSIC"), 7615 Golden Triangle Drive Suite M, Eden Prairie, MN 55344, United States of America (Author and MAKEMUSIC are sometimes referred to herein as the "Parties"). Please read this Agreement carefully.

By checking the "I accept the legal terms and conditions" box on the previous page, you are indicating that you agree to be bound by all of the terms and conditions of this Agreement. Further, by transmitting any Works to us, you indicate your agreement to be bound by this Agreement.

### **RECITALS**

WHEREAS, Author is the exclusive holder of all of the intellectual property rights in the Works;

WHEREAS, Author wishes to grant MAKEMUSIC the rights to play back, display, print, publish, or digitize copies of the Works in digital file format, according to the terms and conditions set forth in this Agreement;

WHEREAS, MAKEMUSIC desires to make available the MakeMusic Finale Showcase Website to Author to display the Works pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth herein and intending to be legally bound, the Parties hereby agree as follows:

1. **Grant of Rights.** Author hereby grants to MAKEMUSIC the nonexclusive right to play back, display, print, publish, or digitize electronically on the MakeMusic Finale Showcase Website the Works transmitted to MAKEMUSIC by Author as Finale<sup>®</sup>, Finale Allegro<sup>®</sup>, Finale Guitar<sup>™</sup>, Finale PrintMusic!<sup>®</sup>, Finale NotePad<sup>®</sup> or Finale NotePad Plus<sup>™</sup> music notation files. In connection with its exercise of the aforementioned nonexclusive rights, Author hereby authorizes and grants MAKEMUSIC a license to make the Works available to the public and to use the Works in any advertising and promotional materials created or distributed by MAKEMUSIC.

2. **Reservation of Rights.** All rights in and uses of the Works not granted by Author to MAKEMUSIC herein are expressly reserved by Author. The rights granted by Author herein shall not confer in MAKEMUSIC any rights of copyright ownership in the Works.

3. **Methods of Exploitation.** The publication and display rights granted by Author to MAKEMUSIC herein may be exercised with respect to and by way of any and all media and devices, whether now known or later devised, including any public and private digital and telecommunications networks and the Internet. The Works may be published and displayed on any of MAKEMUSIC's websites.

4. **Adaptation/Synchronization/Arrangement Rights.** The rights granted by Author to MAKEMUSIC herein includes the right to adapt the Works at MAKEMUSIC's discretion to .mus files, or any other type of file, to the extent it is necessary to display the Works on any MAKEMUSIC website.

5. **Related Rights.** The rights granted by Author to MAKEMUSIC herein necessarily include the rights to reconfigure and dispose of in any manner, the files transmitted by Author to MAKEMUSIC in connection with the Works.

**6. Promotion/Publicity.** In connection with the rights granted by Author to MAKEMUSIC herein, MAKEMUSIC may create and distribute by any means banner ads or any other types of advertisements or promotions using the Author's name and likeness for the purpose of advertising or otherwise exploiting the Works. Author agrees that MAKEMUSIC has the right to run any banner ads or any other types of advertisements or promotions without compensation to Author. The timing, frequency, placement and extent of advertising by MAKEMUSIC within the pages comprising any of MAKEMUSIC's websites is subject to change and shall be determined by MAKEMUSIC in its sole discretion.

**7. Attribution.** In connection with its publication and display of the Works, MAKEMUSIC! will incorporate into and display on the MakeMusic! Finale Showcase Website the name of Author, the name of the composer of the Works (if different from the Author), and the name of the Works as defined by Author.

## **8. Representations and Warranties; Indemnification**

### **8.1 Author's Representations**

Author is familiar with and understands the digital publishing and display methods of MAKEMUSIC. Author recognizes that any Work for which the Author does not own all relevant exclusive rights may give rise to copyright and author's rights infringement liability on the part of Author. Author represents and warrants to MAKEMUSIC that Author is the lawful owner of all rights, including all intellectual property rights, in the Works necessary for MAKEMUSIC to fulfill its duties as contemplated herein and that MAKEMUSIC shall not be responsible for the separate acquisition of any such rights from any third-party. Author warrants that Author will provide MAKEMUSIC information about the Works and about Author that is true and will be true, correct and accurate in all respects, and Author agrees to update such information as necessary to keep it true, correct and accurate in all respects. If Author provides any information that is not true, correct and accurate in all respects, or MAKEMUSIC has reasonable grounds to suspect that such information is not true, correct and accurate in all respects, MAKEMUSIC reserves the right to suspend or terminate this Agreement. Author shall comply with all laws and regulations applicable to Author's use of the MakeMusic Finale Showcase Website.

### **8.2 Author's Indemnification.**

Notwithstanding the termination of the contract for any reason, Author shall, at Author's own expense, indemnify, defend, and hold harmless MAKEMUSIC and MAKEMUSIC's subsidiaries, affiliates, officers, agents, co-branders or other partners, and employees, for any and all costs, claims, liabilities, judgments, expenses, or damages (including reasonable attorneys' fees) arising out of any claim or allegation that the Works infringe any third-party proprietary rights under the laws of any jurisdiction where the Works have been published by MAKEMUSIC. If MAKEMUSIC becomes aware of any claim or demand that will interfere in any way with the rights licensed herein, notwithstanding the termination for breach provided herein, MAKEMUSIC may terminate this Agreement, without any prior notice, by sending Author, at the electronic mail address that Author provides to MAKEMUSIC, an electronic mail message (email) that cites this Section, regardless of whether the claim or demand is justified.

### **8.3 MAKEMUSIC's Limitation on Liability**

MAKEMUSIC will not be liable for damages of any kind, including incidental or consequential damages, on account of MAKEMUSIC's termination or the expiration of this Agreement. MAKEMUSIC is not responsible for infringing activities by any third parties vis-à-vis the Works that take place after the publication, performance, display or distribution of the Works by MAKEMUSIC.

## **9. Notice of Infringement**

### **9.1 Infringement of the Works**

Each Party agrees to notify the other Party promptly by email and/or in writing of any suspected infringement of the Works of which the party becomes aware. Each Party also agrees to notify the other Party promptly by email and/or in writing of any claim made against the Party which is adverse to or conflicting with the Party's use of the Works.

## **9.2 Third-Party Claims**

Author agrees to use all reasonable means, including taking any legal action necessary, to prevent or pursue any infringement or challenges to the rights granted by Author to MAKEMUSIC by this Agreement.

**10. Access; Interruptions in Service.** MAKEMUSIC SHALL USE REASONABLE COMMERCIAL EFFORTS TO MAINTAIN AND MAKE ACCESSIBLE ITS WEBSITES. AUTHOR UNDERSTANDS AND EXPRESSLY AGREES THAT THE MAKEMUSIC FINALE SHOWCASE WEBSITE AND ANY OTHER MAKEMUSIC WEBSITES ARE BEING MADE AVAILABLE TO AUTHOR "AS IS" AND "AS AVAILABLE." AUTHOR ASSUMES THE RISK OF ANY AND ALL DAMAGE OR LOSS FROM USE OF, OR INABILITY TO USE, THE MAKEMUSIC FINALE SHOWCASE WEBSITE OR ANY OTHER MAKEMUSIC WEBSITE. MAKEMUSIC MAKES NO REPRESENTATION OR WARRANTY, AND DISCLAIMS ALL IMPLIED REPRESENTATIONS AND WARRANTIES, THAT THE MAKEMUSIC FINALE SHOWCASE WEBSITE OR ANY OTHER MAKEMUSIC WEBSITE WILL PERFORM IN THE MANNER EXPECTED WITHOUT INTERRUPTION, ERROR OR DEFECT.

WITHOUT LIMITING THE FOREGOING, ALL REPRESENTATIONS, CONDITIONS, WARRANTIES AND GUARANTEES, WHETHER STATUTORY OR OTHERWISE (INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OR RESPECTING SATISFACTORY QUALITY) ARE HEREBY DISCLAIMED BY MAKEMUSIC TO THE FULLEST EXTENT PERMITTED BY LAW. MAKEMUSIC SHALL NOT BE LIABLE TO AUTHOR OR ANY THIRD PARTY FOR OR WITH RESPECT TO ANY DIRECT, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL LIABILITY, LOSS OR DAMAGE ARISING DIRECTLY OR INDIRECTLY FROM THE USE OF THE MAKEMUSIC FINALE SHOWCASE WEBSITE OR ANY OTHER MAKEMUSIC WEBSITE, FOR ANY LOSS OF DATA, LOSS OF PROGRAMS, PROFIT, REVENUE OR BUSINESS, HOWEVER CAUSED (WHETHER ARISING OUT OF ANY NEGLIGENCE OR BREACH OF THESE TERMS, CONDITIONS OR OTHERWISE), EVEN IF THE SAME WAS FORESEEABLE BY, OR THE POSSIBILITY THEREOF IS OR HAS BEEN BROUGHT TO THE ATTENTION OF MAKEMUSIC.

MAKEMUSIC SHALL NOT BE RESPONSIBLE FOR ANY THIRD-PARTY INABILITY TO ACCESS THE WORKS AS PUBLISHED BY MAKEMUSIC CAUSED BY THE INADEQUACY OR INCOMPATIBILITY OF THIRD-PARTY EQUIPMENT. IN ADDITION, MAKEMUSIC SHALL NOT BE RESPONSIBLE FOR INTERRUPTIONS IN PUBLICATION CAUSED BY CIRCUMSTANCES BEYOND ITS CONTROL, INCLUDING INTERRUPTIONS CAUSED BY ANY THIRD-PARTY SUPPLIER OR SERVICE PROVIDER, ACTS OF GOD OR GOVERNMENTAL AUTHORITY, STRIKES OR LABOR DISPUTES, FIRE, OR ACTS OF WAR.

## **11. Acceptance and Term.**

### **11.1 Acceptance by MAKEMUSIC**

MAKEMUSIC will only be bound by the terms of this Agreement upon its display of the Author's works on the MakeMusic Finale Showcase Website.

### **11.2 Term**

The term of this Agreement will commence on the day the Works are displayed on the MakeMusic Finale Showcase Website and will continue for a period of one (1) year. This Agreement shall automatically

renew for one (1) year periods, unless notified of termination in writing or by email by either Party at least three (3) days in advance of the stated date of termination. The date of termination is not restricted to the annual term of the agreement. The right to terminate can be exercised by either party at any time. The notice of termination provided in this Section shall apply to this Section only, and shall not apply to any notice provisions in Section 8.2 herein.

**12. Miscellaneous.** This Agreement shall be governed by and construed according to the laws of the State of Minnesota as applied to transactions taking place wholly within Minnesota between Minnesota residents. Exclusive jurisdiction and venue for all matters relating to this Agreement shall be in courts and for a located in the State of Minnesota and Author consents to such jurisdiction and venue. All notices, requests and other communications under this Agreement must be in writing (email messages shall be deemed writings). All notices other than email shall be made upon Author via certified U.S. mail at the address Author provides to MAKEMUSIC. All notices other than email shall be made upon MAKEMUSIC via certified U.S. mail at the address at the beginning of this Agreement. This Agreement sets forth the entire understanding and agreement of the Parties as to this Agreement's subject matter and supersedes all prior proposals, discussions or agreements with respect to such subject matter. MAKEMUSIC may assign its rights and delegate its obligations under this Agreement to any third party. MAKEMUSIC will give Author reasonable notice of any such assignment or delegation. Author may not assign its rights and obligations under this Agreement, in whole or in part, without prior written consent of MAKEMUSIC. Any attempt to assign this Agreement without such consent shall be void and of no effect. This Agreement may be amended only in a writing, signed (in a non-electronic form) by both Parties.