

## TRESÓNA LICENSING EXCHANGE USER AGREEMENT

Tresóna Multimedia, LLC (“Tresóna”) is the owner and operator of the service referred to as the “Licensing Exchange” located at TresónaMusic.com, which service assists music organizations and music arrangers in obtaining certain licenses for the use of available musical compositions, including, without limitation, to arrange, to prepare derivative works, to reprint, to synchronize, to issue grand rights, and/or to create adaptations of musical compositions.

This end-user agreement (“Agreement”) is made this day between Tresóna and the User (“User” or “Licensee”) who has accepted the terms of this Agreement by clicking the acceptance button located at the Universal Record Locator address of <https://www.tresonamusic.com/create-account.php>. User acknowledges that they are not a third party agency and are the actual individual creating this account.

### 1. **Definitions:**

- a. **“Arranger”** shall mean a person who creates the Custom Arrangement.
- b. **“Composition”** means a musical composition in which the rights that are the subject of this Agreement are owned or controlled by a music publisher, in whole or in part, solely to the extent of such publisher’s ownership or control thereof in the Territory, and subject to any restrictions or limitations thereon imposed pursuant to songwriter agreements or other applicable license, administration or similar agreements with rights holders, societies or a similar organization that administers rights in compositions.
- c. **“Copyright Use Licenses”** shall include all copyright licenses associated with musical compositions including, but not limited to, Custom Arrangement Licenses, Digital Derivative Visual Representation Licenses, Reprint Licenses, Synchronization Licenses, Grand Rights Licenses and Adaptive Dramatic Rights License.
- d. **“Custom Arrangement License(s)”** shall mean the license for the creation of sheet music for a specific ensemble or an arrangement of a Copyrighted Composition in any physical or digital form.
- e. **“Custom Arrangement”** shall mean musical notation of a Copyrighted Composition, in physical or digital form, created under the terms of a Work Made for Hire agreement.
- f. **“Digital Derivative Visual Representation License”** or **“DDVR”** is a license to create a musical arrangement and to create digital sheet music that contains the arrangement. To remove all doubt, the issuance of an Arrangement License and/or a DDVR does not grant the Licensee the right to perform the music publicly. Ensembles that obtain Arrangement Licenses and/or DDVRs must obtain Public Performance Licenses to publicly perform the Copyrighted Composition.
- g. **“Grand Rights License”** or **“Adaptive Dramatic Right License”** is a license granted to allow for dramatic performances of copyrighted musical compositions that are used to propel a drama or narrative.
- h. **“License Fee(s)”** include all fees and charges paid to Tresóna associated with Copyright Use Licenses.
- i. **“Packager”** shall mean a person or company that prepares and/or rents Custom Arrangements to symphony orchestras.
- j. **“Publisher”** shall mean the owner of the Copyrighted Composition or any entity with a

beneficial licensing right in the copyright.

- k. **“Rental License”** shall mean the license issued to a specific symphony orchestra establishing the terms of use of a Custom Arrangement License(s) or DDVR issued to a specific Arranger, Packager, or symphony Orchestra for the privilege of creating a Custom Arrangement (or musical arrangement of a musical composition) for use by symphony orchestras.
- l. **“Rental Fees”** shall mean the fees charged for the Rental License.
- m. **“Reprint License”** is a license granted to allow creation of a physical or digital reproduction of any part of a previously produced musical composition in any form (paper or digital).
- n. **“Synchronization License”** is a license granted to allow the synchronization of a particular musical composition with visual images.
- o. **“Work Made for Hire”** shall refer to a Custom Arrangement created under the terms of a work made for hire as defined in Section 101 of the Copyright Act (title 17 of the U.S. Code). For clarification, please see <http://www.copyright.gov/circs/circ09.pdf>.

## 2. The Licensing Exchange:

- a. Tresóna agrees to assist Licensee in requesting a Copyright Use License which it may offer through the Licensing Exchange from time to time. Tresóna does not guarantee that certain Compositions will be available for licensing, that Publishers can be found, or that Publishers will grant the license so requested. Failure by Tresóna to issue a Copyright Use License shall not be a breach of this Agreement; past approval of a Copyright Use License is not an indicator of future approval.
- b. Licensee shall identify each Composition for which it requests a Copyright Use License, and the intended use for the Composition with sufficient specificity for Tresóna to identify the Publisher for each Composition.
- c. Licensee hereby grants Tresóna a limited right for the specific limited purpose of requesting and executing requests for Copyright Use Licenses from Publishers via the Licensing Exchange to make such requests on behalf of Licensee.
- d. Tresóna will notify Licensee when permission has been approved by the respective Publisher to allow Tresóna to grant a Copyright Use License, and all other paperwork as reasonably requested by Tresóna has been completed.
- e. In the case of Custom Arrangement Licenses and DDVRs, licenses may be issued only after the following steps have taken place:
  - e.i. when the Arranger has accepted terms and conditions of a work for hire agreement via the License Exchange;
  - e.ii. Tresóna has issued an approval for the prospective Arrangement License or DDVR;
  - e.iii. payment for the Copyright Use License has been received by Tresóna;
  - e.iv. the sheet music of the Custom Arrangement (the score and parts) are uploaded into the Licensing Exchange as a PDF; and
  - e.v. the sheet music of the Custom Arrangement has been downloaded by the ensemble director.

e.vi. A Custom Arrangement License or DDVR does not permit an Arranger to make any changes to the lyrics of the Composition or alter the fundamental character of the Composition without first obtaining additional approval from the copyright owners.

**To be clear, the licensing process outlined above in paragraph 2(e) of this Agreement does not apply to the licensing of Custom Arrangements or musical arrangements of musical compositions for the use of symphony orchestras.**

- f. In the case of Custom Arrangements (or musical arrangements of musical compositions) for the use of symphony orchestras, Custom Arrangement Licenses and DDVRs are only perfected and valid after the following steps have taken place:
- f.i. when the Arranger or Packager has accepted terms and conditions of a work for hire agreement via the Licensing Exchange;
  - f.ii. Tresóna has issued a conditional approval for the prospective Custom Arrangement License or DDVR;
  - f.iii. payment of the Copyright Use License has been received by Tresóna;
  - f.iv. the sheet music of the Custom Arrangement (or musical arrangement of a musical composition), including both the score and parts, are uploaded into the Licensing Exchange as a PDF;
  - f.v. an application for a Rental License for the specific Custom Arrangement (or musical arrangement of a musical composition) is made by each symphony orchestra for each use of that Custom Arrangement (or musical arrangement of a musical composition);
  - f.vi. Tresóna has issued approval for each prospective Rental License; and
  - f.vii. payment of any Rental Fees due for that Custom Arrangement (or musical arrangement of a musical composition) has been received by Tresóna.
  - f.viii. A Rental License is not required for symphony orchestras at public and private Pre-Kindergarten through 12<sup>th</sup> grade schools.
  - f.ix. A Custom Arrangement License or DDVR does not permit an Arranger to make any changes to the lyrics of the Composition or alter the fundamental character of the Composition without first obtaining additional approval from the copyright owners.
  - f.x. In the case of the creation of a Custom Arrangement for use by a symphony orchestra, the validity of a Custom Arrangement License is conditional on the symphony orchestra also obtaining a Rental License without which the Custom Arrangement License has not been perfected and is invalid.
- g. For clarity, the validity of a Custom Arrangement License(s) or DDVR issued to Arranger, Packager, or symphony orchestra for the privilege of creating such a Custom Arrangement (or musical arrangement of a musical composition) for use by symphony orchestras is conditional on each symphony orchestra obtaining a Rental License each time it uses that specific Custom Arrangement (or musical arrangement of a musical composition). The use of a Custom Arrangement (or musical arrangement of a musical composition) without having first obtained both a Custom Arrangement License(s) (or DDVR) and a Rental License means that the Custom Arrangement License(s) (or DDVR) is not perfected and is not valid.
- h. Licensee shall make payment of any required License Fee(s) to Tresóna prior to making, displaying, performing or distributing physical or digital copies of the Composition for which

Copyright Use Licenses are being requested. For certainty, no rights are granted until Tresóna receives full payment of the License Fee as determined in the generated Copyright Use License.

3. **Term:** Either party may terminate this Agreement with sixty (60) days written notice to the other party at the addresses listed below.
4. **Permission to Use Names:** Licensee agrees to permit Tresóna to disclose that Licensee is a customer of Tresóna for promotional and marketing purposes. Licensee also understands that Licensee's name and email address may be used to uniquely identify Licensee to others who are Users of the Licensing Exchange. Licensee agrees not to use any information obtained through the Licensing Exchange for any purpose other than its immediate use in obtaining Copyright Use Licenses through the Licensing Exchange. Tresóna may also provide name and contact information for Licensee to a Publisher in relation to a Copyright Use License request.

5. **Termination Rights:**

- a. Tresóna may terminate, cancel, or suspend a Copyright Use License by notifying Licensee in writing, including via email to the address specified in the User's account, in the event that (i) Tresóna no longer has the rights to such Composition, (ii) if the Copyright Use License was obtained by providing false information in making the request, (iii) if false information was uploaded by Licensee into the Licensing Exchange, or (iv) in the case of a third party claim or anticipated claim or other legal risk to Tresóna.
- b. Licensee acknowledges that signing on behalf of another person or company may negate agreements made through the Licensing Exchange and any Copyright Use Licenses that may appear to emanate from such agreements, and such action may result in copyright infringement and other charges being brought against Licensee.
- c. In addition to the immediate cancellation of the Copyright Use License, Licensee understands that further use of the Compositions may constitute copyright infringement: Tresóna and or the Publisher shall have the right to seek all damages and remedies that are available in law and/or equity.

6. **Representations and Warranties.**

- a. Licensee warrants that it will provide, to the best of its ability, correct, complete and accurate information regarding the Copyright Use License(s) requested and the intended uses of the Composition, and that it will not intentionally provide any false information to Tresóna or intentionally infringe on the rights of any Publisher from whom Tresóna offers or obtains Copyright Use Licenses.

Each party hereto represents, warrants and covenants to the other party the following: (i) such party has the full right, power and authority to enter into this Agreement and to perform the acts required of it hereunder; (ii) when fully executed by the parties hereto, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms; and (iii) such party acknowledges that the other party makes no representations, warranties or agreements related to the subject matter hereof that are not expressly provided for in this Agreement.

- b. Licensee shall indemnify and hold harmless Tresóna from any and all costs and expenses (including but not limited to legal costs and reasonable attorney fees) resulting from any and all claims made by third parties resulting from a violation of any representation, warranty, or agreement made by Licensee hereunder.
7. **Notices.** Unless otherwise explicitly stated in the Agreement, any notice, consent, approval,

demand, or other communication to be given to either party shall be sent, as the case may be, at the address referenced below. Any notice, consent, approval, demand, and/or other communication hereunder shall be hand delivered or sent by certified mail, return receipt requested, or via over-night delivery services. Any notice shall be deemed complete the date of receipt, except that (a) all materials personally delivered shall be deemed served when actually received by the party to whom addressed, and (b) air express or courier (e.g., UPS, FedEx, etc.) materials shall be deemed served on the day of delivery to the recipient. Notwithstanding the foregoing, by using the Licensing Exchange, Licensee consents to receive all communications, including notices, agreements, legally required disclosures, or other information in connection with the Licensing Exchange electronically at the e-mail addresses provided by Licensee. All notices to Tresóna shall be sent to Tresóna Multimedia, LLC, BOX 477, 7349 N. Via Paseo Del Sur, Suite 515, Scottsdale, AZ 85258-3749.

**8. Miscellaneous.**

- a. This Agreement represents the entire agreement between Tresóna and Licensee with regard to the services offered via the Licensing Exchange. No change, modification, waiver or termination of this agreement shall be binding upon either party unless it is made by an instrument signed by an authorized officer of the party against whom enforcement is sought. A waiver by either party of any provision of this Agreement in any instance shall not be deemed a waiver of such provision, or any other provision hereof, as to any future instance or occurrence.
- b. Without limiting any other remedy available at law or equity, Tresóna may terminate this Agreement, effective upon written notice to Licensee, if Licensee materially breaches (e.g., failure to make payments when due) any of the provisions of this Agreement or the Copyright Use License and, except in any event under 5.a. above, fails to cure same within fifteen (15) days after Licensee's receipt of such written notice. Upon any expiration or termination of this Agreement or any Copyright Use License, Licensee shall immediately cease to exercise any of the rights otherwise granted hereunder or any Copyright Use License.
- c. All remedies, rights, undertakings, obligations and agreements contained in this Agreement shall be cumulative and none of them shall be in limitation of any other remedy right, undertaking, obligation or agreement of either party. Licensee's rights and remedies in the event of a breach of this Agreement with respect to any particular transaction shall be limited to payments made by Licensee to Tresóna in association with that particular transaction.
- d. To the extent any portion of this Agreement is deemed unenforceable for any reason, the unenforceable provision shall be severed from the remainder of this Agreement, and the remainder of this Agreement shall remain in full force and effect.

This Agreement shall be construed as a whole in accordance with the fair meaning of its language and, regardless of who is responsible for its original drafting, shall not be construed for or against either party. The captions of the various sections of this Agreement are included for convenience of reference only and shall in no way affect the construction or interpretation of this Agreement.

- e. THIS AGREEMENT HAS BEEN ENTERED INTO IN THE STATE OF ARIZONA, AND THE VALIDITY, INTERPRETATION AND LEGAL EFFECT OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF ARIZONA APPLICABLE TO CONTRACTS ENTERED INTO AND PERFORMED ENTIRELY WITHIN THE STATE OF ARIZONA (WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES UNDER ARIZONA LAW). ONLY THE ARIZONA COURTS (STATE AND FEDERAL) SHALL HAVE JURISDICTION OF ANY CONTROVERSIES REGARDING THIS AGREEMENT; THE PARTIES WAIVE ANY AND ALL OBJECTIONS TO VENUE IN THOSE COURTS AND HEREBY SUBMIT TO THE JURISDICTION OF THOSE COURTS.

- f. Tresóna may assign its rights and obligations hereunder to an affiliate company or to a third-party purchaser of all or substantially all of Tresóna's assets without Licensee's prior written approval.