

LICENSE AGREEMENT

This License Agreement (hereinafter referred to as "Agreement") is effective as of the _____ day of _____, _____ between the parties hereto, who agree as follows in consideration of the mutual promises contained herein:

I. PARTIES

A. The Association of Texas Small School Bands (hereinafter referred to as "ATSSB") has as its principal place of business 2117 Morse Street; Houston, Texas 77019.

B. _____
(hereinafter referred to as "Licensee") has as its principal place of business

Email address: _____

Telephone: _____

C. ATSSB and Licensee are the only two parties to this Agreement.

II. RATIONALE

A. ATSSB owns rights to certain marks identified in Attachment A hereto and has acquired public recognition and goodwill through the use of such marks.

B. Licensee recognizes the goodwill associated with the use of the marks and desires to obtain a nonexclusive license to utilize such marks.

C. ATSSB is willing to grant such a license under the terms and conditions of this Agreement.

III. DEFINITIONS

A. **Marks** includes trademarks and service marks.

B. **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 ATSSB or registrations which may be issued to ATSSB covering such marks, whether state or federal.

C. **Licensed products** refers to those products specified in Attachment B hereto on or in connection with which any of the **licensed marks** are used.

D. **Territory** refers to the United States of America and its territories and possessions.

E. **Gross sales price** means Licensee's billing price to customers or distributors, less discounts which are given and which are customary in the trade, returns, transportation charges on returns if paid by Licensee, taxes, and prepaid transportation charges on **licensed products** shipped by Licensee.

F. **Effective date** is the date specified in the first paragraph of this Agreement.

G. **Sold** (or **sale**) means that a **licensed product** is shipped, distributed, paid for, billed or invoiced (whichever occurs first).

H. **Term** refers to 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 the Agreement, on written notice of either party.

I. **Quality** means an acceptable level of quality to ATSSB. **Quality** for **licensed products** is more specifically defined in paragraph XI.A hereof.

J. **Contract year** shall mean the consecutive twelve-month period commencing with each September 1 and terminating the following August 31, except the first **contract year** may be less than twelve months, commencing on the **effective date** and terminating the next August 31.

IV. LICENSE GRANT Subject to the terms and conditions of this Agreement, ATSSB grants to Licensee the nonexclusive rights and license to utilize the **licensed marks** in the **territory** solely on and in connection with the **licensed products of quality** during the **term** thereof.

V. PAYMENT TO ATSSB

- A. On or before the **effective date**, Licensee shall pay to ATSSB a License Issue Fee of **\$20.00**. Said Issue Fee is not an advance toward royalties that may become due during any **contract year** 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**.
- B. In addition to the License Issue Fee, Licensee shall pay to ATSSB 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. If Licensee sells any **licensed products** to any party affiliated with Licensee, or in any way directly or indirectly related to or under common control with Licensee, at a price less than the regular price charged to other parties, the royalties payable hereunder shall be computed on the basis of the regular price charged to other parties. There shall be no deduction from the royalties owed for the uncollectible accounts or for advertising or other expenses of any kind which may be incurred or paid by Licensee, except those specifically listed in paragraph III.E above.
- C. Licensee agrees to pay ATSSB a minimum royalty of \$ -0- during each **contract year** of the **term**, other than a **contract year** of less than six months. Failure of Licensee to make payment of said minimum royalty may be the termination of this Agreement pursuant to the termination provisions listed in paragraph III.H above.

VI. STATEMENTS AND ACCOUNTING

- A. Licensee shall submit annual statements in the format containing the information specified in Attachment C hereto, unless Licensee uses an alternate form which includes all information specified in Attachment C and has been approved by ATSSB. Such statement shall be submitted within thirty (30) days after the end of each **contract year** and shall be accompanied by payment of continuing royalties payable pursuant to paragraph V.B above for that **contract year**.
- B. Any and all delinquent accounts not paid when due pursuant to paragraph VI.A above shall be charged the maximum rate of interest permitted under applicable law, not to exceed one and one-half percent (1½%) per month of any portion thereof during which said amounts remain delinquent.
- C. Licensee agrees to keep accurate records of account covering all transactions relating to the sale, exchange or marketing of **licensed products**. ATSSB and its authorized representative shall have the right at all reasonable hours of the business day at Licensee's usual place of business, upon ten (10) business days' notice, to examine and copy said books of account and records and all other related documents and material in the possession or under the control of Licensee, insofar as they relate to **licensed products**, in order to determine the accuracy of the statements delivered by Licensee to ATSSB. If any such examination shall reveal an error in royalty payments 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 ATSSB in connection with the examination. Upon demand by ATSSB, Licensee shall, at its own expense, furnish ATSSB a detailed statement, signed by Licensee's Chief Financial Officer, showing the number, description, **gross sales price**, and itemized deductions from the **gross sales price** of the **licensed products** covered by this Agreement **sold** by the Licensee to the date of ATSSB's demand. All such books of account and records shall be kept available during the **term** of this license and for at least one year thereafter.

VII. DEFAULT AND TERMINATION

- A. In the event Licensee fails to submit timely statements and payments to ATSSB 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, or in the event either party fails to comply with any of its obligations under

this Agreement, the other party may serve the defaulting party a notice of default specifying the nature of the default. If the default is not cured within thirty (30) days after notification is received, the other party may then serve its Notice of Termination, and this Agreement shall be automatically terminated upon service of said Notice of Termination.

- B. Licensee may terminate this Agreement at any time without cause by serving upon ATSSB two (2) months' Notice of Intent to Terminate.
- C. Unless sooner terminated pursuant to the above provisions, this Agreement shall remain in effect throughout the **term** described in paragraph III.H above.

VIII. EFFECT OF TERMINATION

- A. Upon Termination of this Agreement, all rights granted to Licensee hereto shall cease, and Licensee shall refrain from further use of the **licensed marks**. Licensee acknowledges that failure to comply with this provision shall result in immediate and irreparable harm affording injunctive and any and all other appropriate relief to ATSSB.
- B. Upon 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. Licensee shall have the right after Termination of this Agreement to ship and distribute those **licensed products of quality** which were manufactured and in Licensee's inventory prior to Termination of this Agreement provided no such **licensed products** shall be shipped no more than one hundred twenty (120) days after the date of Termination.

IX. NONTRANSFERABLE LICENSE

- A. This License is personal and may not be transferred without the express written approval of ATSSB. Licensee shall immediately notify ATSSB of any change or proposed change of ownership or control of Licensee during the **term** hereof.
- B. Licensee shall not grant sublicenses under this Agreement.

X. USE OF LICENSED MARKS

- A. Licensee agrees that it shall not during the **term** or any time thereafter:
 - 1) attack the title of any rights of ATSSB in or to the **licensed marks**;
 - 2) 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;
 - 3) use any colorable imitation or variant form of the **licensed marks** not specifically approved by ATSSB;
 - 4) misuse the **licensed marks**;
 - 5) take any action that would take the **licensed mark** into public disrepute; or
 - 6) use the **licensed marks**, or any mark or name confusingly similar thereto, in its corporate or trade name.
- B. All use by Licensee of the **licensed marks** inures to the benefit of ATSSB
- C. Licensee agrees to cooperate with ATSSB in securing and maintaining the goodwill of ATSSB in the use of the **licensed marks**.

XI. QUALITY CONTROL

- A. Licensee agrees that all **licensed products** shall be **quality** goods.
- B. Licensee agrees that if **licensed products** manufactured and sold by it were to be deemed inferior in design, material or workmanship, the goodwill which ATSSB possesses in its **licensed marks** would be impaired.
- C. On request by ATSSB, Licensee shall furnish to ATSSB, free of cost, a sample of requested **licensed product(s)** together with any carton or container, packaging or wrapping material for ATSSB's inspection. Said inspection will be requested if any **licensed product** is reported to ATSSB to be of less than desirable **quality**. This inspection request may also pertain to any advertising using the **licensed marks**.

XII. INDEMNITY

- A. Licensee agrees that it is wholly responsible for all products manufactured or **sold** by it, including all **licensed products**, and that ATSSB shall have no liability for any items, including the **licensed products**, manufactured or **sold** by Licensee.

- B. Licensee indemnifies and holds harmless ATSSB and its officers, employees, and agents thereof, from any claims, demands, causes of action, and damages, including attorney's fees, caused by or arising from the use of any **licensed marks** or workmanship, material or design of any **licensed product**, including without limitation, claims or actions for product liability and patent or copyright infringement.

XIII. STATUS OF PARTIES

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

XIV. BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of ATSSB and Licensee and, subject to paragraph IX.A above, their respective successors, assigns, executors, heirs, and personal representative.

XV. LAWS GOVERNING

The Agreement shall for all purposes be governed by and interpreted and enforced in accordance with the laws of the State of Texas. Licensee 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 Harris 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.

XVI. MISCELLANEOUS

- A. The failure or delay in the enforcement of the rights detailed herein by ATSSB shall not constitute a waiver of said rights or be considered as a basis for estoppel. ATSSB may exercise its rights herein despite said delay or failure to enforce said rights.
- B. 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.
- C. In the unlikely event that a dispute occurs or an action in law or equity arises out of the operation, construction or interpretation of the Agreement, Licensee shall bear the cost of attorney's fees and costs of said action, which are incurred by ATSSB.
- D. The paragraph headings used herein are descriptive only and shall have no legal force or effect whatever.

Executed by ATSSB and Licensee on the day and year first above written, in duplicate copies, each of which shall be deemed an original.

ASSOCIATION OF TEXAS SMALL SCHOOL BANDS

(name of firm or individual)

BY: _____

Kenneth L. Griffin
Executive Secretary

BY: _____

(Typed or printed name and title)

LICENSED MARKS ARE:

ATSSB Logo



ATSSB

ASSOCIATION OF TEXAS SMALL SCHOOL BANDS

Also includes related ATSSB activities including, but not limited to:

- All-State Band
- Area Band
- All-Region Jazz Ensemble
- All-Region Band
- All-Region JHS/MS Band
- All-Zone or All-District Band
- Region/District Honor Band
- Regional Solo-Ensemble Evaluation
- Area Solo-Ensemble Evaluation
- State Solo-Ensemble Evaluation
- Concert-Sightreading Evaluation
- Marching Evaluation

ATTACHMENT A

LICENSED PRODUCTS ARE:

ATTACHMENT B

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

LICENSEE:

_____ (Date of report)
 For Contract Year:
 September 1, _____ to August 31, _____

Complete and return within thirty (30) days after
 the end of the contract year to Licensor:
 ASSOCIATION OF TEXAS
 SMALL SCHOOL BANDS
 2117 Morse Street
 Houston, Texas 77019-6807

(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 of 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	_____ %
ROYALTIES DUE FOR THIS CONTRACT YEAR (with payment enclosed):	\$ _____

PREPARED BY: _____

ATTACHMENT C