

ONLINE LICENSE TERMS & CONDITIONS • 2018



Welcome to **Quaver's General Music Education Program**, created and managed by QuaverMusic.com, LLC., a Tennessee limited liability company whose address is: 1706 Grand Avenue, Nashville, TN 37212 (hereinafter referred to as "Quaver"), a division of Mastran Music Group, Inc. Quaver's General Music Education Program refers to the online resources in the Quaver Curriculum, Essentials Program, ClassPlay™, and ClassPlayStarter™.

Quaver and any and all entities that control, are controlled by, or are affiliated or under common control with Quaver are collectively referred to herein as "we," "us," or "our." "Quaver Sites" shall mean any and all portions of the Internet site of Quaver or its affiliated entities, including the Supervisor/Teacher-Only and Student-Only areas, the Kids Website, Informational areas, and others.

This document sets forth the Terms and Conditions for use of the Quaver Beyond Marvelous General Music Program.

1. DEFINITIONS

For the purposes of this license agreement (hereinafter the "Agreement"), the following terms shall have the following meanings:

"Service(s)" shall mean the use of Quaver online resources and improved or updated versions of the materials introduced by Quaver from time to time during the lifetime of the license.

"Accredited User" shall mean the licensee who has purchased non-exclusive user licenses to access the Quaver online resources. "Site License" grants access to the physical location of each campus where the resources will be utilized. "Personal License" shall refer to a teacher granted access to the resources, for use at multiple locations.

"Site License" and "Personal License" shall be referred to collectively as "License."

"Participating Students" means the participating student-users who access the Services pursuant to this license purchased by the Accredited User.

"Users" refers to both "Accredited Users" and "Participating Students."

"Material" means the online resources and related elements, including recorded music, scores, interactive whiteboard screens, videos, quizzes and printable materials.

2. BACKGROUND

This non-exclusive Accredited User License is granted by Quaver for the access and use of the materials by Users for the purpose of providing an interactive classroom teaching experience.

3. QUAVER ACCREDITED USER USAGE AND PRIVILEGES

3.1 • Site License: The Accredited User purchasing a Site License may request permission from Quaver designate up to three additional teachers on the same campus to receive individual user names under these Terms and Conditions.

3.2 • Personal License: Accredited Users purchasing a Personal License are entitled to access at multiple campuses where they teach. Teachers in the same district, but from different physical campuses, without a Personal License must purchase separate licenses.

3.3 • Student Access: Each Quaver Curriculum License entitles the Accredited User to access the Services hereunder for an unlimited number of Participating Students on an unlimited number of computer devices located at the school where the Accredited User uses the license. Such student access is not granted for Essentials or ClassPlay™ licenses.

3.4 • Each Accredited User License entitles the Accredited User's Participating Students to use non-downloadable audio and video content as well as the limited reproduction of the printable materials published on the Website. The Accredited User is hereby granted access and may use the online tests for their participating students, print the pages for their participating students, and use the teaching presentations and audio-visual content for their participating students.

3.5 • Access to Songs: Quaver allows Accredited Curriculum Users to receive MP3 files of songs for which Quaver owns the copyright or which exist in the public domain. Such MP3s can be used only in student performances outside the classroom and for no other purpose. Requests for MP3 files must be received in writing. At the end of the license term, the MP3 files must be deleted.

3.6 • Quaver Unplugged Kit: Each Quaver Curriculum Accredited User with a license duration of five years or more will receive a single Quaver Unplugged Kit for use if the Internet becomes unavailable. This kit includes a flash drive with all the Quaver Lessons encoded as well as a song for each three-lesson module and all printable materials existing at the time the license was purchased. The Kit also includes disks containing all 30 Quaver episode videos. The Kit can be retained and used by the Accredited User after the license expires.

3.7 • Quaver reserves the right to update or reasonably change the contents of the online resources, including the sequencing and contents of any module or lesson plan at any time during the license period.

4. TERM AND LICENSING FEE

4.1 • Term: The effective license duration for each Accredited User License (also referred to as the "Term") shall be noted on the Accredited User's invoice. Each license will have a start date and an end date corresponding to either January 1 or July 1 of the year the license starts and ends.

4.2 • Licensing Fee: The price for each Accredited User license "Licensing Fee" is referenced on the Accredited User's invoice. Prices do not include applicable sales or use taxes or book depository fees, which shall be separately stated on the License invoices and borne by the Accredited User, unless the User is Tax Exempt.

4.3 • The price stated on the Accredited User's invoice is guaranteed for 90 days from the date of the quote. Quaver reserves the right to change the prices at any time for future products. All prices quoted must conform to the current Quaver price list unless otherwise authorized by the Vice President of Sales

4.4 • Payment: Acceptable forms of payment for the Licensing Fee to Quaver are check, wire, or credit card. Credit card purchases in excess of \$5,000 will be assessed an additional 3% transaction processing fee.

5. ACCREDITED USER WARRANTY

5.1 • The Accredited User warrants that all Services under this Agreement are for use only in the authorized School (or for preparation for School lessons) and that such Services shall not be sold nor shall title be transferred to other schools or districts, other homeschool co-op groups, retail music stores, or parties other than the license rights specifically set forth in this section. Quaver shall retain all copyright, ownership right, title, and interest in the Services and any and all materials furnished to the Accredited User pursuant to this Agreement.

5.2 • ‘Customized Lessons or Resources’ created by Districts or Accredited Users will be accessible only through the Quaver Curriculum online license. Customization of a lesson does not invalidate or alter Quaver’s underlying copyright and ownership of Material. The Accredited User will comply with the policies and requirements of Quaver in effect with respect to (i) the licensing by Quaver of its proprietary, protected, or confidential material and information including the QuaverMusic.com Terms of Use and Privacy Policy of the Websites and (ii) any products which are subject to one or more license agreements between Quaver and third parties.

5.3 • Duty to Inform: The Accredited User agrees to immediately inform Quaver in writing of any suspected violations or concerns under Federal COPPA and FERPA laws and the Accredited User hereby agrees to fully cooperate with Quaver’s requests to remedy any such violations as soon as possible.

5.4 • Accredited User acknowledges that the purchase of Quaver requires computer hardware, Internet bandwidth, and projection equipment that complies with the minimum standards to realize full benefits for classroom use. The purchase of Quaver does not include any hardware or separate software products that may be required in demonstrations, tutorials, or trainings, other than agreed otherwise in writing.

6. ACCOUNT, PASSWORD, AND SECURITY

The Accredited User is responsible for maintaining the confidentiality of the Accredited User’s account identifier and password. The Accredited User shall be responsible for all uses of its account, whether or not authorized by the Accredited User. The Accredited User agrees to immediately notify Quaver of any unauthorized use of its account or any other breach of security. To avoid accidental misuse or unauthorized login, the Accredited User agrees to exit from its account after daily use. The Accredited User understands and agrees that the technical processing and transmission of any content may involve transmissions over various networks, which may require the adaption of data to technical requirements of such connecting networks or devices.

7. QUAVER PROTECTION OF CONFIDENTIAL DATA

The parties expect and anticipate that Quaver may receive education records and/or personally identifiable information (PII) from the Accredited User as an incident of service or training that Quaver provides to the Accredited User. Quaver shall be permitted to use any such education records and/or PII as a function of performing its duties and obligations. QuaverMusic represents that it shall not use or further disclose any education records or PII other than as a function of performing its duties or obligations. Quaver further warrants that it will take all reasonable measures to protect the data, and if compromised, will notify the Accredited User within 24 hours.

8. NO RESALE OF SERVICE

Except as otherwise authorized herein, the Accredited User agrees not to reproduce, duplicate, copy, sell, resell, or exploit for any commercial purposes, any portion of the Service, use of the Service, or access to the Service without the specific written permission of Quaver.

9. PROPRIETARY NOTICES

This software and documentation constitutes several published and unpublished works and contains valuable trade secrets and proprietary information belonging to Quaver. None of the foregoing material may be copied, duplicated, or disclosed without the express written permission of Quaver. Quaver leases certain songs from other publishers. These songs may not be downloaded by Accredited Users for use outside the classroom.

10. PRODUCT WARRANTY, DISCLAIMER OF WARRANTIES

Quaver warrants to the Accredited User that the Service purchased hereunder shall be free from defects in materials and workmanship and shall conform in all material respect to the specifications, provided the Service in question has been used in accordance with ordinary industry practices and conditions. Quaver also warrants that it owns or has licensed all copyrighted Material or that the Material is in the public domain.

Quaver does not warrant that the operation of the online service will be uninterrupted or error free. User acknowledges that use may be interrupted or constrained by bandwidth restrictions by school's Internet provider, firewalls, server malfunctions, and other problems. Whenever possible, Quaver will forewarn all users of any planned outage for maintenance or acknowledged problem. The foregoing express warranties are limited to Quaver and are not transferable and are in lieu of any other warranty by Quaver with respect to Services furnished hereunder. Quaver grants no other warranty, or fitness for a particular purpose, either express or implied.

11. TERMINATION

11.1 • Breach of Agreement: In the event that Quaver verifies any actions by an Accredited User to intentionally breach the Terms and Conditions of this agreement, such actions will be grounds for immediate termination of the license(s) of the Accredited User. Termination will become effective on written notice from Quaver to the Accredited User. No refunds or credit for the unused term of the license(s) will be granted. Further action by Quaver to recover additional costs of the breach may be initiated.

11.2 • Failure of Quaver to Perform: In the event Accredited User believes that Quaver has failed to perform under the Terms and Conditions of this agreement, the Accredited User is required to give written notice to Quaver and allow 30 days to correct the problem. If the problem is not corrected within 30 days, the Accredited User will receive a refund for the unused portion of the license term. Note that the cost of the first year of any license is weighted twice as much as succeeding years. For a five-year license, for example, the first year cost to Quaver is deemed to be 2/6 of the total license cost, and each succeeding year is deemed to be 1/6 of the total license cost.

11.3 • Non-Payment: If the Accredited User does not pay Quaver within 90 days of the due date of the payment, Quaver may suspend the license until such payment is made.

11.4 • Bankruptcy: This Agreement shall terminate, without notice, (i) upon the filing by or against either party of insolvency, receivership, or bankruptcy proceedings or any other proceedings for the settlement of either party's debts, (ii) upon either party making an assignment for the benefit of creditors, or (iii) upon either party's dissolution or ceasing to do business.

12. MISCELLANEOUS

12.1 • The rights and obligations of either party shall not be transferable without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. All obligations of the parties herein shall be binding upon their respective successors or assignees.

12.2 • The Agreement shall be governed by, and its terms shall be construed in accordance with, the laws of the state where the license was purchased. The exclusive venue for disputes hereunder shall be the state and federal courts located in the state where the license was purchased. Where licenses are purchased outside of the United States, the laws of the State of Tennessee shall govern.

12.3 • Quaver shall have the right to modify the terms of this agreement, as needed (as reasonably determined by Quaver), in order to comply with Federal COPPA and FERPA laws or any other relevant legislation, including but not limited to any state or federal privacy laws.

12.4 • To the extent permitted by law, Quaver and Accredited User hereby indemnify the other and save and hold the other harmless from any and all claims, causes of action, damages, liabilities, costs, losses, and expenses (including legal costs and reasonable outside attorneys' fees) arising out of or connected with any claim, demand or action which is inconsistent with any of the warranties, representations, covenants, or agreements such party has made in this agreement including but not limited to any claim brought by a Participating Student (or the student's family) or any third party as a result of a failure of Licensee to obtain a valid parental con-

sent/waiver which duly authorizes the Participating Student's use of the Services and/or Materials associated with the Accredited User license.

12.5 • No waiver or breach of any term or condition of this Agreement shall be construed as a waiver of any other breach of such term or condition, or of any other term or condition, nor shall any failure to enforce any provisions hereunder operate as a waiver of such provision or any other provision hereunder.

12.6 • In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, except in those instances where removal or elimination of such invalid, illegal, or unenforceable provision or provisions would result in a failure of consideration under this Agreement, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein.

12.7 • All notices hereunder shall be in writing and shall be deemed to have been duly given and shall be effective only upon receipt. A copy of all notices to Quaver hereunder shall be sent via registered mail to the Director of Customer Service, 1706 Grand Ave, Nashville, TN 37212.

12.8 • Headings used in this Agreement are for the purpose of reference only and are not to be considered in construction or interpretation of this Agreement.

12.9 • This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument.

12.10 • This Agreement contains the entire Agreement between the parties relating to the subject matter hereof. All prior agreements and all prior negotiations, representations, and communications relating to the same subject are superseded by this Agreement. This Agreement may not be modified other than by a written document signed by an authorized representative of each party.

13. TAX EXEMPTION

Are you exempt from paying Sales Tax for Curriculum and Classroom Purchases?

YES NO *(required to check)*

By signing this agreement, the Accredited User understands, acknowledges, and agrees to the Terms and Conditions of this Agreement. For Site and Personal Licenses, the Accredited Users represent that they are authorized to sign this agreement and will communicate applicable terms to other Users.

Date _____

Signature _____

Print Name _____

Position _____

District or School Name _____

