

LICENSE AND TECHNICAL ASSISTANCE AGREEMENT

THIS LICENSE AND TECHNICAL ASSISTANCE AGREEMENT, made on March 19, 1975, by and between THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, a body having corporate powers under the laws of the State of California, United States of America (GRANTOR), and NIPPON GAKKI SEIZO KABUSHIKI KAISHA, a Japanese corporation, having a principal place of business at 10-1, Nakazawa-cho, Hamamatsu-shi, Shizuoka-ken, Japan (GRANTEE).

R E C I T A L S

1. GRANTOR has a substantial body of Know-How necessary and useful in the design and manufacture of a Musical Instrument for improved sound production and also has the capability to synthesize various tones and presently has a library of synthesizable tones.

2. GRANTOR is the owner by assignment of certain inventions for which application for United States Letters Patent has been made, entitled "Method of Synthesizing a Musical Sound", United States (U.S.) Patent Application Serial No.454,790, filed March 26, 1974. Corresponding foreign (to U.S.) patent applications have been or will be made.

3. GRANTEE wishes to manufacture, assemble, distribute, sell and service Musical Instruments and has expressed the desire to benefit from GRANTOR's Know-How and Patents and has, therefore, requested GRANTOR to make available to it Know-How relating to the Musical Instruments and certain technical assistance in connection with the utilization thereof by GRANTEE and a license under GRANTOR's Patents.

4. GRANTOR is entitled to grant rights and licenses with respect to Know-How and Patents relating to the Musical Instruments and is willing to grant to the GRANTEE, upon the terms and conditions of this Agreement, rights and licenses to such Know-How and Patents and to render technical assistance to GRANTEE in connection with the utilization of such Know-How;

In consideration of the mutual premises and covenants contained herein, the parties agree as follows:

Section 1 - Definitions

1.1 Wherever used in this Agreement, unless otherwise clearly indicated in the text, the following terms shall have the meanings as defined in this Section 1.

1.2 "GRANTOR" shall mean The Board of Trustees of the Leland Stanford Junior University, a body having corporate powers under the laws of the State of California, United States of America.

1.3 "GRANTEE" shall mean NIPPON GAKKI SEIZO KABUSHIKI KAISHA, a Japanese corporation, organized under the laws of Japan, with a principal place of business at 10-1, Nakazawa-cho, Hamamatsu-shi, Shizuoka-ken, Japan.

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1.4 "Musical Instrument" shall mean a digital electronic organ employing a frequency modulation technique to synthesize quality electronic sound by digital techniques, and covered by claims of Patents.

1.5 "Know-How" shall mean

- a) technical information including presently available engineering, scientific and practical information for the design and manufacture of a Musical Instrument, and
- b) a catalog of presently available tones and corresponding digital words which can be used for the synthesis of the tones.

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1.6 "Patents" shall mean the above entitled/patent application *G.R. M* and include divisions, reissues, continuations, renewals, extensions and patents of addition. Further, Patents shall include any and all issued or registered patents, covering the invention disclosed in the specification of the U.S. Patent Application Serial No. 454, 790 and continuations thereof, if any, and assigned for licensing to GRANTOR in any of the countries of the world. It is understood that such issued or registered patents shall include a patent which may issue from Japanese patent application corresponding to the U.S. Patent Application Serial No. 454, 790 and continuations thereof, if any.

1.7 "Term of this Agreement" shall mean the period beginning on the date Musical Instruments utilizing Patents and Know-How are first offered for sale supplied hereunder or in connection herewith and ending on the tenth anniversary of such date or the expiration of the last to expire of the Patents, whichever is longer.

Section 2 - License

2.1 GRANTOR grants to GRANTEE and its subsidiaries under the Patents and Know-How:

a) a worldwide exclusive right and license, with a right to sublicense, to make, use and sell Musical Instruments for a period of ten (10) years, from the date of approval of this Agreement by the Japanese Government, and

b) a worldwide non-exclusive right and license to make, use and sell Musical Instruments for the remainder of the Term of this Agreement.

2.2 For purposes of this Section, "subsidiary" means any corporation of which over 50% of the voting stock is directly or indirectly owned or controlled by GRANTEE. This license shall extend to subsidiaries present and future of GRANTEE who notify GRANTOR in writing that they accept the terms and obligations of this Agreement.

Section 3 - Disclosure of Know-How

3.1 Upon execution of this Agreement and approval by the cognizant Japanese government agencies, GRANTOR shall make available to GRANTEE all of its existing information relative to the Musical Instrument as follows:

- a) a copy of United States Patent Application Serial No.454,790 already made available to GRANTEE;
- b) a copy of Japanese Patent Application No.41602/74; and
- c) technical information for the design and manufacture of a Musical Instrument presently in GRANTOR's possession.

3.2 GRANTOR shall also make available to GRANTEE from time to time all of the technical information for the design and manufacture of a Musical Instrument which will be acquired from the Computer Music Group by GRANTOR during the life of this Agreement.

3.3 It is understood that any exportation of technical data by GRANTOR to GRANTEE, and further re-exportation by GRANTEE, shall not be inconsistent with U.S. or Japanese export regulations.

Section 4 - Technical Services and Additional Know-How

4.1 If GRANTEE so requests, GRANTOR shall arrange for a separate agreement between GRANTEE and the Computer Music Group through which the Computer Music Group shall consult for GRANTEE.

4.2 It is understood that the Computer Music Group shall consist of John Chowning, J.A. Moorer, John Grey and Loren Rush, and such other persons as may be agreed upon, who are presently employees of GRANTOR but who shall act in such separate agreement as independent consultants and not as employees or representatives of GRANTOR.

4.3 GRANTOR shall have the right to review any such separate agreement between GRANTEE and the Computer Music Group to ascertain that there are no provisions therein which jeopardize or otherwise affect GRANTOR's proprietary rights.

4.4 It is expressly understood that GRANTOR's undertaking to arrange for such separate agreement hereunder shall be limited to using its best efforts to arrange for such agreement, subject to the approval of the parties thereto. In no event shall the GRANTOR be liable for any claim of any kind arising out of or in connection with such separate agreement or performance thereunder.

Section 5 - Royalties

5.1 In consideration of entering into this Agreement and the license herein granted, GRANTEE agrees to pay royalties to GRANTOR as follows:

a) For Know-How made available to GRANTEE by GRANTOR under this Agreement, an initial payment of Fifty Thousand U.S.Dollars (U.S.\$50,000.00).

b) For Patents licensed to GRANTEE by GRANTOR under this Agreement, an earned royalty of Ten U.S.Dollars (U.S.\$10.00) per Musical Instrument which is made, used, sold or otherwise disposed of by GRANTEE during the Term of this Agreement in any of the countries in which any of the Patents is in force, and which is covered by any of the effective Patents.

deleted → c) Notwithstanding provisions 5.1 a) and 5.1 b), in the event that GRANTEE makes available of production of FM MOS chips for Musical Instruments by April 1, 1978 and so notifies GRANTOR with evidence to prove the fact above, earned royalties becoming due in accordance with provision 5.1 b) may be credited against a half of the initial payment provided for in provision 5.1 a).

d) If GRANTEE is not in production of FM MOS chips for Musical Instruments by April 1, 1978, GRANTOR may terminate this Agreement, except if GRANTEE makes an additional payment of Twenty-Five Thousand U.S. Dollars (U.S. \$25,000.00) before April 1, 1978. If GRANTEE is subsequently not in production by April 1, 1979, GRANTOR may terminate this Agreement.

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e) Amend #1 - credit given
f) Amend #2 - royalties on improvement in instruments

5.2 In order to assure to GRANTOR the full royalty payments

contemplated in this Agreement, GRANTEE agrees that in the event any Musical Instrument shall be sold for resale either 1) to a corporation, firm or association which, or individual who, owns a controlling interest in GRANTEE by stock ownership or otherwise, or 2) to a corporation, firm or association in which GRANTEE or its stockholders own a controlling interest by stock ownership or otherwise, royalties shall be paid in respect to such Musical Instruments in accordance with provision 5.1 b).

5.3 The expression "Musical Instruments otherwise disposed of" means 1) Musical Instruments not sold but delivered by GRANTEE to others (including deliveries for export) regardless of the basis of compensation, if any; 2) Musical Instruments put into use by GRANTEE for any purpose other than routine testing of such Instruments; and 3) Musical Instruments not sold as such but sold by GRANTEE as components or constituents of other products.

Section 6 - Payment, Reporting and Accounting

6.1 The initial payment of Fifty Thousand U.S. Dollars (U.S. \$50,000.00) prescribed for in provision 5.1 a) shall be paid within thirty (30) days after the approval of this Agreement by the Japanese Government.

6.2 GRANTEE agrees to make written reports to GRANTOR quarterly, within sixty (60) days after the first day of March, June, September and December of each year during the life of this Agreement, stating in each such report the number of Musical Instruments sold or otherwise disposed of during the preceding three (3) calendar months and upon which royalty is payable in accordance with provision 5.1 b).

6.3 GRANTEE agrees to make a written report to GRANTOR within sixty (60) days after the date of termination of this Agreement, stating in such report the number of all Musical Instruments sold or otherwise disposed of and upon which royalty is payable hereunder but which were not previously reported to GRANTOR.

6.4 Concurrently with the making of each report required under this Section 6, payment shall be made of royalties at the rate specified in provision 5.1 b).

6.5 GRANTEE agrees to keep records showing the sales or other disposition of Musical Instruments sold or otherwise disposed of under the license herein granted in sufficient detail to enable the royalties payable hereunder by GRANTEE to be determined. GRANTEE further agrees to permit its books and records to be examined from time to time to the extent necessary to verify reports provided for in provisions 6.2 and 6.3. Such examination to be made at the expense of GRANTOR by any auditor appointed by GRANTOR who shall be acceptable to GRANTEE or, at the option and expense of GRANTEE, by a certified public accountant appointed by GRANTOR.

6.6 Royalties paid by GRANTEE to GRANTOR shall be subject to such deductions by way of taxation as is now required by the Japanese Government at the time of payment.

Section 7 - Consumer Price Index

7.1 Royalties payable in accordance with Section 6 shall be adjusted every three years beginning March 1, 1981 by multiplying the earned royalty by the ratio of the Consumer Price Index of the San Francisco Bay Area at that date to the Consumer Price Index of the San Francisco Bay Area as of March 1, 1978. A Copy of document evidencing each such Consumer Price Index shall be supplied to GRANTEE by GRANTOR. It is understood that such document is needed before the 1st day of May of the year in which such adjustment is to be made to assure next earned royalty payment is not delayed. Such adjustment of the earned royalty is subject to approval of the Japanese Government.

Section 8 - Designation of Currency

8.1 The payments to be made by GRANTEE to GRANTOR under this Agreement shall be made in United States currency to the credit of GRANTOR at such location as it may designate from time to time in writing. At present payments shall be made to the address specified in Section 18.

Section 9 - Improvements

9.1 With respect to improvements of the invention covered by the Patents and for which improvement inventions GRANTOR has been assigned for licensing, GRANTOR shall submit in writing appropriate invention description to GRANTEE for right of first refusal before submittal to any other commercial organization. Within ninety (90) days of receipt by GRANTEE of such description, GRANTEE shall advise GRANTOR in writing whether or not GRANTEE wishes licenses under such improvements to be added to this Agreement. When advised that GRANTEE wishes licenses under such improvements, GRANTOR, if it has not already done so, shall promptly file a U.S. patent application at GRANTOR's expense and submit copy of such application to GRANTEE, GRANTEE is then obligated to pay, within sixty (60) days of receipt of such U.S. patent application, to GRANTOR the sum of Five Thousand U.S. Dollars (U.S. \$5,000.00), if such payment is approved by the Japanese Government ~~for payment in full~~ for the licenses to be granted pursuant to this Section 9. *Amended*

9.2 Corresponding foreign (to U.S.) applications may be filed pursuant to provision 11.2.

9.3 Under the patents to be issued from the patent applications on the above-mentioned improvements, GRANTOR shall grant licenses to GRANTEE on an exclusive basis, provided that in the United States of America such license may be non-exclusive when Research Sponsors of GRANTOR so require, and provided that the payment provided in provision 9.1 has been made.

Section 10 - Confidential Nature of Information

10.1 All information supplied by virtue of this Agreement shall be accepted in confidence by GRANTEE and its Directors and employees and shall not be imparted to third parties unless such information (i) is at the time it is supplied by GRANTOR, or becomes thereafter through no fault of GRANTEE, public knowledge or (ii) is obtained by GRANTEE from another source with the right to disclose such information to others.

Section 11 - Cost of Patent Applications and Patents

11.1 GRANTOR shall bear the cost of filing and prosecuting the United States Patent Application described in provision 1.6, and of divisions, continuations, and reissues thereof, but in no case beyond an appeal to, and decision by, the United States Patent Office Board of Appeals.

11.2 With respect to foreign (to U.S.) patent applications, the procedure shall be as follows: Foreign (to U.S.) patent applications shall be filed by GRANTOR at the request of GRANTEE, such filing and the resulting prosecution and maintenance thereof, and maintenance of resulting Patents, to be done at the expense of GRANTEE. GRANTEE, having elected that GRANTOR file a foreign (to U.S.) application, may later request it be deleted from Patents, and GRANTEE shall not be liable for further prosecution and maintenance expense not already committed or necessary to abandon the foreign (to U.S.) application, provided, however, that GRANTEE may, if it desires, and for its separate purposes, continue such prosecution and/or maintenance at its expense.

Section 12 - Other Licenses

12.1 If GRANTOR, during any time in which the license to GRANTEE hereunder is non-exclusive, shall grant to any manufacturer or seller a license which is under any United States Letters Patent licensed in this Agreement and if such license is on more favorable terms, including but not limited to a lower royalty, than those hereby granted to GRANTEE, GRANTOR will promptly notify and advise GRANTEE as to the differences in terms between such more favorable license and the license granted under this Agreement. GRANTEE shall, at its election, be entitled to the benefit of such more favorable terms as of the date upon which such more favorable license shall become effective.

12.2 The provisions of provision 12.1 shall not be applicable, however, to any situation wherein GRANTOR has in good faith and to protect its patent position and that of its licensees, entered into a cross-licensing or similar arrangement with a third party and as consideration therefor has granted a lower royalty rate to such third party.

Section 13 - Negation of warranties; Indemnification

13.1 Nothing in this Agreement shall be construed as a) a warranting or representation by GRANTOR as to the validity or scope of any licensed Patent; or b) a warranty or representation that anything made, used, sold or otherwise disposed of under any license granted in this Agreement is or will be free from infringement of patents of third parties; or c) an obligation to bring or prosecute actions or suits against third parties for infringement, or d) conferring a right to use in advertising, publicity or otherwise any trademark or trade name of GRANTOR ; or e) granting by implication, estoppel or otherwise any licenses or rights under patents of GRANTOR other than Patents.

13.2 GRANTOR makes no representations, extends no warranties of any kind, either express or implied, and assumes no responsibilities whatsoever with respect to use, sale or other disposition by GRANTEE or its vendees or other transferees of Musical Instruments, provided, however, that if a third party institutes any action for infringement or any other action, proceeding or claim against GRANTEE for its sale or disposition of Musical Instruments, and GRANTEE so notifies GRANTOR, GRANTOR will make its best efforts to provide GRANTEE with necessary and useful information.

13.3 GRANTEE will defend, indemnify and hold GRANTOR harmless from and against all liability, demands, damages, expenses or losses arising a) out of use by GRANTEE or its transferees of Patents licensed or Know-How furnished under this Agreement, or b) out of any use, sale or other disposition by GRANTEE or its transferees of Musical Instruments made by use of such Patent or Know-How.

Section 14 - Infringement by Others; Protection of Patents

14.1 GRANTEE shall promptly inform GRANTOR of any suspected infringement of any licensed Patent by a third party and GRANTOR and GRANTEE each shall have the right to institute an action for infringement of the licensed Patent against such third party in accordance with the following procedure:

- a) In the event that GRANTOR and GRANTEE agree to institute suit jointly, the suit shall be brought in both their names, the costs thereof, including attorneys' fees, shall be borne equally, and recoveries, if any, whether by judgement, award, decree or settlement, shall be shared equally. GRANTEE shall exercise control over such action, provided, however, that GRANTOR may, if it so desires, be represented by counsel of its own selection, the fees for which counsel shall be paid by GRANTOR.
- b) In the absence of agreement to institute a suit jointly, GRANTOR may institute suit, and, at its option, join GRANTEE as a plaintiff. GRANTOR shall bear the entire cost of such litigation and shall be entitled to retain the entire amount of any recovery by way of judgment, award, decree or settlement.
- c) In the absence of agreement to institute a suit jointly and if GRANTOR determines not to institute a suit, as provided in provision 14.1 b), GRANTEE may institute suit and, at its option, join GRANTOR as a plaintiff. GRANTEE shall bear the entire cost of such litigation and shall be entitled to retain the entire amount of any recovery by way of judgment, award, decree or settlement.

14.2 Should either party commence a suit under the provisions of this Section 14 and thereafter elect to abandon the same, it shall give timely notice to the other party who may, if it so desires, continue prosecution of such suit, provided, however, that the sharing of expenses and any recovery in such suit shall be as agreed upon between the parties.

14.3 GRANTOR shall not be liable to GRANTEE for any losses incurred as the result of an action for infringement or any other action, proceeding or claim brought against GRANTEE as the result of GRANTEE's exercising any right granted under this Agreement.

Section 15 - Term and Termination

15.1 The word "termination" and cognate words, such as "term" and "terminate", as used in this section 15 and elsewhere in this Agreement are to be read, except where the contrary is specifically indicated, as omitting from their effect the following rights and obligations, all of which survive any termination to the degree necessary to permit their complete fulfillment or discharge:

- a) GRANTEE's obligation to supply a terminal report as specified in Section 6 of this Agreement.
- b) GRANTOR's right to receive or recover and GRANTEE's obligation to pay royalties accrued or accruable for payment at the time of any termination.
- c) GRANTEE's obligation to maintain records and GRANTOR's right to conduct a final audit as provided in Section 6 of this Agreement.
- d) Licenses, releases and agreements of nonassertion running in favor of customers or transferees of GRANTEE in respect to Musical Instruments sold or transferred by GRANTEE prior to any termination and on which royalties shall have been paid as provided in section 5 of this Agreement.
- e) Any cause of action or claim of GRANTOR, accrued or to accrue, because of any breach or default by GRANTEE.

~~15.2 If GRANTEE shall at any time default in the payment of any royalty or the making of any report hereunder, or shall commit any breach of any covenant herein contained, or shall make any false report and shall fail to remedy any such default, breach, or report within sixty (60) days after written notice thereof by GRANTOR, GRANTOR may, at its option, terminate this Agreement and the license herein granted by notice in writing to such effect.~~

15.3 GRANTEE shall have the right to terminate this Agreement in its entirety, at its option, effective March 1 of any year by giving at least six months' advance written notice thereof to GRANTOR.

15.4 This Agreement and the licenses granted hereunder shall become effective on the date of approval hereof by the Japanese Government and, unless previously terminated in accordance with other provisions of this Agreement, shall continue in full force and effect until the end of the Term of this Agreement.

15.5 GRANTEE agrees neither to manufacture nor to sell Musical Instruments in any country in which effective patents exist, if this Agreement is terminated prior to the expiration of the Term of this Agreement.

Section 16 - Prohibition Against Assignment

16.1 GRANTEE shall not assign this Agreement or any interest herein or any right hereunder without the prior written consent of GRANTOR.

Section 17 - Applicable Law

17.1 This Agreement shall be construed, interpreted and applied in accordance with the laws of the State of California, United States of America.

Section 18 - Notices

18.1 All notices, demands, or other writings in this Agreement provided to be given or made or sent, or which may be given or made or sent, by either party hereto to the other, shall be deemed to have been fully given or made or sent when made in writing and deposited in the United States, first class postage prepaid and addressed as follows:

To GRANTOR: Stanford University
 Encina 6-930
 Stanford, California 94305
 Attention: Manager, Technology
 Licensing

To GRANTEE: Nippon Gakki Seizo Kabushiki Kaisha
 10-1, Nakazawa-cho, Hamamatsu-shi,
 Shizuoka-ken, Japan
 Attention: Chief, Patent Department

The address to which any notice, demand or other writing may be given or made or sent to any party may be changed upon written notice given by such party as above provided.

Section 19 - Waiver

19.1 GRANTEE covenants and agrees that if GRANTOR fails or neglects for any reason to take advantage of any of the terms hereof provided for the termination of this Agreement or if GRANTOR, having the right to declare this Agreement terminated, shall fail so to do, any such failure or neglect by GRANTOR shall not be or be deemed or be construed to be a waiver of any cause for the termination of this Agreement subsequently arising, or as a waiver of any of the terms, covenants, or conditions of this Agreement or of the performance thereof. None of the terms, covenants, or conditions of this Agreement can be waived except by the written consent of GRANTOR.

Section 20 - Scope of Agreement

20.1 This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof. No representative of GRANTOR has been authorized to make any representation, warranty, or promise not contained herein.

Section 21 - Commercial Application

21.1 GRANTEE agrees to use all reasonable efforts and diligence to develop markets for Musical Instruments. In the event that GRANTEE is unable to supply the market demand for Musical Instruments, GRANTEE shall endeavor diligently to procure one or more sublicensees to supply such market demand.

21.2 GRANTEE agrees to submit a narrative report March 1 of each year prior to the first commercial introduction of Musical Instruments describing its efforts of the previous year toward commercialization of Musical Instruments.

21.3 If GRANTEE is unwilling or unable to serve or develop a potential market for an application of Musical Instruments for which there is a willing sublicensee, GRANTEE will, at GRANTOR's request, negotiate in good faith a sublicense hereunder.

21.4 Any sublicense granted by GRANTEE under this Agreement shall be subject to terms and conditions of this Agreement.

Section 22 - Arbitration

22.1 All disputes, controversies or differences which may arise between the parties, out of or in relation to or in connection with this Agreement, or for the breach thereof, shall be settled through bona fide negotiations between the parties hereto. Should such negotiations fail to come to the settlement within three (3) months, the parties hereto agree to finally settle by arbitration pursuant to the Japan-American Trade Arbitration Agreement of September 16, 1952, by which each party hereto is bound. The award shall be final and binding upon both the parties.

22.2 The arbitration venue shall be Stanford, California, U. S. A.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate originals by their duly authorized officers or representatives as of the date first hereinabove written.

THE BOARD OF TRUSTEES OF THE
LELAND STANFORD JUNIOR UNIVERSITY

By Nich Meimur
Its Manager, Technology Licensing

NIPPON GAKKI SEIZO KABUSHIKI KAISHA

By Genichi Kawakami
Its President