

Terms and Conditions

1. VENUE. Berklee hereby grants to Client the license and privilege of:
 - a. The nonexclusive use and occupancy of PowerStation (the "Venue"), including but not limited to the recording studio, together with such corridors, foyers, entryways and vestibules as are reasonably necessary for access.
 - b. The nonexclusive right to use the entrances, lobbies, restrooms, and common areas during the session.
 - c. Berklee will deliver the Venue to Client for the Term in its then present condition and in reasonable working order.
 - d. Berklee reserves a right of access without notice to all parts of the Venue for any reasonable purpose. Berklee agrees, to the extent feasible, to exercise such rights in a manner as will not cause unreasonable interference with Client's use of the Venue.
 - e. Berklee will have no obligation to provide Client with office supplies, computer cables, computer systems, photocopy machines, secretarial services, or delivery services.
 - f. Notwithstanding anything set forth herein to the contrary, Berklee shall be responsible for the permanent building access requirements. The Client shall be solely responsible for any and all costs associated with non-permanent accessibility requirements, such as sign language interpreters, and other requested auxiliary aids and services.

2. PURPOSE & USE. Client agrees that it will use the Venue during the session for the sole purpose of live album recording sessions. No use will be made of the Venue which is illegal or in violation of Berklee's policies, in Berklee's sole judgment.
 - a. Discrimination and Harassment. Discrimination or Harassment of any kind will not be tolerated on any part of Berklee's campus. Client and its employees, agents, guests, and contractors are expected to comply with the Berklee Equity and Title IX Policies and Processes, which are available at <https://www.berklee.edu/equity/policy-and-process>. Failure to do so may result in immediate removal from the Venue and loss of deposit or other amounts paid to Berklee.
 - b. No Illegal Substances. Client will not bring onto the Venue, nor will it permit its employees, agents, contractors, guests, or staff to bring onto the Venue, or permit the use anywhere on the Venue of any illegal narcotics or controlled substances, and Client hereby acknowledges and agrees that a breach of the foregoing covenant will be a material breach of this Agreement, permitting Berklee to terminate this Agreement immediately without opportunity to cure such breach.
 - c. No firearms or dangerous weapons of any type are allowed on the Berklee College of Music campus without the express written approval of Berklee's President or Director of Public Safety. Such possession is against state law and Berklee policy and will result in immediate removal from campus and potential legal action.
 - d. No E-Bikes & Scooters. The use, storage, and charging of electric scooters, skateboards, hoverboards, and other forms of electric transportation is banned on campus.
 - e. Smoking Prohibited. No smoking, vaping, or use of any e-cigarette products are allowed at the Venue at any time.
 - f. Food & Beverages. Client may provide food and nonalcoholic beverages to Client's staff, volunteers, and other contractors for their personal consumption in the dressing room areas. Client will prohibit consumption of food or beverage where indicated by Berklee. Provision of alcoholic beverages must comply with any applicable state or local rules and regulations, including obtaining any permits or licenses that may be required.
 - g. Access to Venue: Other Uses. Client acknowledges that there may be other activities on Berklee's campus directly adjacent to the Venue during the Term.
 - i. Client is solely responsible for any and all local or state permits that may be required for the use. If the permit is not issued, this agreement will terminate without liability or penalty except for the retention by the Lessor of the non-refundable deposit.
 - ii. Berklee also has the right, at any time during the term of this agreement, to terminate this agreement if the session is deemed objectionable for any reason by Berklee's standards, or any aspect of the use is in violation of the terms herein or may otherwise endanger the Venue, the Venue, or any person or personal property. The termination will be without liability or penalty. Under no circumstances, however, will the Client be refunded the non-refundable deposit paid to Berklee.

iii. Under no circumstances shall the Venue be used for any religious service or political meeting of any kind without prior written authorization from Berklee, which may be withheld, conditioned, or delayed.

3. **FEES & EXPENSES.** Client acknowledges that all final, actual costs will be calculated following the end of the session.

4. **USE OF BERKLEE'S EQUIPMENT BY CLIENT.** Berklee hereby agrees to allow Client use of the Venue's equipment. Client agrees and acknowledges that use of certain equipment may be at additional cost. Berklee will help Client make arrangements regarding load-in, or lighting/sound requirements, as applicable. It is imperative that Berklee know Client's technical needs well in advance in order to provide the proper personnel and equipment.

5. **INSURANCE.** When booking Powerstation at BerkleeNYC for an event, at all times during the term of this agreement, the Client will keep in force, at its own expense, at least the following insurance coverage from an insurance company acceptable to Berklee that maintains an A.M. Best A rating or better and that is authorized to do business in the Commonwealth of Massachusetts. Providing and maintaining insurance coverage are material terms of this Agreement.

- a. Comprehensive General Liability and Excess/Umbrella Liability
 - General Aggregate - \$1,000,000 (One Million dollars)
 - Bodily Injury and Personal Injury - \$1,000,000 (One Million Dollars)
 - Each Occurrence - \$1,000,000 (One Million Dollars)

Said policies will name as Additional Insured, "Berklee College of Music, its affiliates, officers, directors, trustees, volunteers, students, and employees" and other such parties of which Berklee will give Client notice from time to time. Such insurance policy will include a waiver of subrogation against any of the Indemnitees and Client hereby waives any recovery against the Indemnitees (as that term is defined below) related to any such matter. All such policies will contain an agreement by the insurer that the policy will not be canceled, amended or modified without at least thirty (30) days prior written notice to Berklee.

Certificates of insurance evidencing the foregoing coverage will be furnished to Berklee at least seven (7) days prior to the session. If Client fails to provide the certificates of insurance as of the due date, Client will not have access to the Venue until such time that certificates have been supplied.

- b. **No Liability Restriction.** Neither the issuance of any insurance policy or coverage required under this Agreement, nor the minimum limits specified herein with respect to the Client's insurance coverage, will be deemed to limit or restrict in any way the Client's liability arising under or out of this Agreement.
- c. **Workers' Compensation.** Client will also maintain workers' compensation and other insurance required by applicable law, as well as employer's liability against all claims which may be brought for bodily injury or death of Client's employees.
- d. **Personal Property.** Client will insure all personal property brought onto the Venue during the session at full replacement cost against theft, fire or casualty. Berklee will not be responsible for the loss of any property of Client or of Client's agents, employees, invitees, or patrons.

6. **INDEMNITY.** The Client will indemnify and hold Berklee its affiliates, officers, directors, trustees, volunteers, students, and employees (the "Indemnitees") harmless from and against all claims, losses, costs, damages, expenses or liability, including, without limitation, reasonable attorneys' fees and expenses arising as a result of any (a) accident, injury to or death of persons or loss of or damage to any property occurring on or about the Venue or any part thereof or the adjoining sidewalks and arising from the Client's use of the Venue, (b) any negligence or tortious act on the part of the Client or any of his employees, agents, contractors, invitees or guests, (c) any violation or infringement of any copyright, right of privacy, patent, trademark or other statutory or common law right of any person (including without limitation slander, libel, or any other form of defamation), or (d) any violation of the Code of Good Practice of the National Association of Broadcasters if any performance is broadcast by radio or television, and in each case, occurring during the session and for such longer period as Client may use and occupy the Venue. The obligations of the Client in this section will survive any termination of this Agreement. Berklee will indemnify and hold the Client harmless from and against all claims, losses, costs, damages, expenses or liability, including, without limitation,

reasonable attorneys' fees and expenses, arising from the gross negligence of Berklee. Berklee's liability with respect to such indemnification will not exceed the lesser of (a) the amount of the total fee to be paid by Client, or (b) Twenty Thousand Dollars (\$20,000).

7. **CONDITION OF THE VENUE.** Client will exercise due care in the use of the Venue and will keep the Venue and every part thereof neat and clean, and will maintain the same in good order, condition and repair. Client shall be responsible for any damages resulting from Client's use of the Venue, or caused by Client's agents, patrons, employees, contractors, guests, or invitees.

- a. **Modifications to Venue by Client.** Client will make no improvements, changes, or alterations to the Venue or Venue without Berklee's prior written consent and the approval of all governmental authorities having jurisdiction thereof.
- b. **Surrender of Venue by Client.** At the end of the session, or earlier termination thereof, Client will promptly give up and surrender the Venue to Berklee in the same order, repair, and condition as at the beginning of the Term, excepting reasonable wear and tear. Client will promptly remove its goods, effects, furnishings, equipment and fixtures, and will make any repairs to the Venue necessitated by such removal.
- c. **Holdover.** In the event of holding over by Client after expiration or other termination of this Agreement, Client will be deemed to have abandoned the production and the property and Client will be liable to Berklee for all damages sustained by Berklee as a result of Client's failure to move the production and for the costs and expenses of moving the production out of the Venue and disposing of same, and for storage charges, if any.

8. **TERMINATION.**

- a. **Termination by Berklee.** Upon fifteen (15) days notice or immediately in the event of breach of this Agreement by Client, Berklee may terminate this agreement with or without cause without liability or penalty. Except in the event of termination due to Client's breach, Berklee will refund to Client any rent paid by Client for any part of the Term of this Agreement unexpired at the time of such termination, including any deposit.
- b. **Client Cancellation.** In the event Client cancels the agreement within forty-eight (48) hours of the session, Berklee will retain the Deposit in full.

9. **NOTICES.** Any and all notices and requests under this Agreement will be in writing, signed by the party giving the same, and sent by email, hand, or by nationally recognized overnight mail carrier such as FedEx to the Client or Berklee at the address listed above. All notices will be effective upon the earlier of personal delivery or receipt of confirmation of delivery, if first delivered by e-mail or a nationally recognized overnight mail carrier.

10. **MISCELLANEOUS.**

- a. **Berklee Logo & Title.** Berklee's names, including but not limited to Berklee College of Music, Boston Conservatory at Berklee, BerkleeNYC, and Power Station at BerkleeNYC shall not be used to suggest co-sponsorship or endorsement of any event, recording, or activity, unless prior written approval has been received from Berklee, which may be revoked at any time in Berklee's sole discretion.
- b. **Required Visas.** Client shall be solely responsible for obtaining any and all required U.S. Government approvals or authorizations (including the appropriate visa or resident alien status) to permit entry into, and lawful status within, the United States for any individual required by Client in attending the session.
- c. **Taxes.** Client shall be solely responsible for all applicable tax payments, including the payment of income, social security, and other employment taxes due on behalf of any individual required by Client to attend the session and acknowledges that Berklee will not deduct such taxes from any payments hereunder. Client agrees to indemnify, defend, and hold harmless Berklee and its trustees, officers, employees, and agents from and against any and all costs, losses, damages, liabilities, expenses, demands, and judgments, including court costs and attorney's fees, relating to the payment of such taxes, wages, or income, social security, and other employment taxes.
- d. **No Waiver.** Failure on the part of Berklee or Client to complain of any action or non-action on the part of the other, no matter how long the same may continue, will never be a waiver by Client or Berklee. Further, no waiver at any time of any of the provisions hereof by Berklee or Client will be construed as a waiver of any of

the other provisions hereof, and a waiver at any time of any of the provisions hereof will not be construed as a waiver at any subsequent time of the same provisions.

- e. Invalid Provision. If any term or provision of this Agreement, or the application thereof to any person or circumstance, will to any extent be invalid or unenforceable, the remainder of this Agreement will not be affected thereby and each term and provision of this Agreement will be valid and be enforced to the fullest extent permitted by law.
- f. Force Majeure; Campus Closings. Neither party shall be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without fault or negligence, including but not limited to acts of God (such as weather, fire, or flood), labor strikes, terrorists, acts of a public enemy, epidemics, quarantine restrictions, political issues, situations determined to be dangerous by Berklee, or any other happening that causes Berklee to cancel its classes and/or close its campus or any portion thereof ("force majeure event") on or immediately prior to the Term. Client is responsible for communicating all cancellations and reschedulings under this section to any third-parties it has engaged.
- g. Covid-19 Notice. All Client employees, agents, vendors, performers, third parties, and guests, who work on or attend any event or session on Berklee's campus are required to comply with any and all COVID-19 protocols set forth by Berklee or federal, state, or local public health officials in effect at the time of the the session. Client understands the potential health risks of COVID-19 and acknowledges that Berklee cannot guarantee an environment that is completely virus-free at any given time.
- h. Jurisdiction. This Agreement will be governed by the laws of the Commonwealth of Massachusetts (without regard to conflicts of law rules). Client hereby consents to jurisdiction and venue in any Massachusetts court of competent jurisdiction or the United States District Court for the county and federal judicial district, respectively, in which the Venue are located, and agrees that such courts will constitute the exclusive venue for any dispute arising hereunder.
- i. No Joint Venture. This document constitutes a license of the Venue only and nothing contained herein will be deemed to constitute a joint venture or trust relationship between the parties, nor will this Agreement grant to Client any interest in real property.
- j. No Personal Liability. Client agrees that no Indemnities, Trustee, director, officer, or employee of Berklee, nor any successor of Berklee, will be personally liable for any judgment against Berklee, or for the payment of any monetary obligation to Client. In no event will Berklee's liability with respect to any judgment obtained by Client against Berklee under this Agreement exceed the lesser of (i) the amount of the total License Fee to be paid by Client, or (ii) Twenty Thousand Dollars (\$20,000.00).
- k. Entire Agreement. This Agreement is the entire agreement between Berklee and Client, and this Agreement expressly supersedes any negotiations, considerations, representations and understandings and proposals or other written documents relating hereto. This Agreement may be modified or altered only by written agreement between Berklee and Client, and no act or omission of any employee or agent of Berklee will alter, change or modify any of the provisions hereof.
- l. Agreement Execution. This Agreement may be executed in multiple counterparts, each of which will be deemed an original and all of which together will constitute one and the same document. The individuals whose signatures appear herein warrant and represent that they have requisite authority on behalf of the Parties to bind the Parties hereby. A facsimile or PDF signature shall be acceptable as an original.