

BERKLEE COLLEGE OF MUSIC
STANDARD ADDENDUM

STANDARD ADDENDUM for all contracts or agreements between Berklee College of Music, Inc. (“Berklee” or the “College”) and any third-party vendor or consultant. This Standard Addendum (hereinafter referred to as “Agreement”) is attached to and forms part of the agreement between the College and **Dillan Hoyos** (“Service Provider”) as of **December 5, 2022** and attached hereto as Exhibit A (the “Contract”). To the extent that any of the terms or conditions contained in this Agreement may contradict or conflict with any of the terms or conditions of the attached Contract, it is expressly understood and agreed that the terms of this Agreement shall take precedence and supersede the Contract.

STANDARD TERMS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Service Provider and Berklee hereby agree as follows:

Performance of Services

All services to be performed by the Service Provider shall be performed by qualified personnel, using the professional skill and care ordinarily provided by professionals in the field practicing in the same or similar locality under the same or similar circumstances.

Assignment

Neither party shall have the right to assign this Agreement without the prior written consent of the other party.

Choice of Law/Jurisdiction

This Agreement shall be governed exclusively by the laws of the Commonwealth of Massachusetts. Jurisdiction shall lie in the Superior or District Courts of the Commonwealth of Massachusetts, depending on the nature of the claim and remedy sought, and venue over any such action shall lie exclusively in Suffolk County.

Severability

In the event that any one or more of the provisions contained in this Agreement shall, for any reason, be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, 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 provision had never been contained herein.

Entire Agreement

This Agreement constitutes the entire agreement and there are no oral or other representations regarding the subject of this Agreement that are binding on either party. All changes to this Agreement must be in writing, signed by both parties. Such changes shall be attached to and incorporated into this Agreement.

Confidentiality

Any and all information learned by Service Provider or any agent thereof in connection with or as a result of this Agreement shall be treated as confidential material, including without limitation information concerning or related to Berklee's business practices, employees, operational procedures, and student information, and Service Provider shall maintain any such information in strict confidence and return it to Berklee immediately upon request. This provision shall survive expiration and termination of this Agreement.

Names and Marks

Service Provider shall make no reference to Berklee in any advertising or promotional materials, or publish any articles relating to Berklee or this Agreement, without the express written authorization of an officer at Berklee. This provision shall survive the expiration and termination of this Agreement.

Personal Information/Data Security

The Service Provider represents and warrants that it is capable of safeguarding personal information transmitted to it in accord with 201 CMR 17.00, Berklee policy, and relevant laws, regulations, and rules including, where applicable, international privacy laws, such as the EU General Data Protection Regulation 2016/679 (GDPR) ("Applicable Laws"). Service Provider will use any such personal information solely for the purpose of performing its duties and exercising its rights under this Agreement and will not disclose or communicate the personal information, directly or indirectly, to any third party except as may be necessary or appropriate for the performance of its duties and the exercise of its rights hereunder. Service Provider further agrees that personal information will be disclosed only to such of its employees, agents and contractors who need access to the personal information for the purposes described herein. Service Provider shall implement and maintain information security measures to protect against unauthorized access to or use of personal information, and meet the requirements and objectives of Applicable Laws. These measures will be extended by contract to all subcontractors used by Service Provider to perform hereunder. At the termination or expiration of this Agreement, Service Provider shall delete or make available to Berklee for retrieval all relevant personal information transmitted to Service Provider.

Maintenance and Retention of Records.

Service Provider will keep and maintain complete and accurate books and records related to its performance hereunder for a period of at least seven (7) years following the termination of this Agreement. College shall have the right to audit and copy such books and records for the purpose of verifying Service Provider's performance of its obligations under this Agreement,

reviewing amounts expended under this Agreement, and/or providing information within Service Provider's possession, custody, or control to the United States Department of Education ("Dept. of Ed.") in connection with Dept. of Ed. requests for information related to or auditing of Berklee's compliance with its federal financial assistance obligations.

Authority and Execution

The individuals whose signatures appear below warrant and represent that they have requisite authority on behalf of the Parties to bind the Parties hereby. This Agreement may be executed in counterparts. A facsimile or PDF signature shall be acceptable as an original.

Taxes

Service Provider shall be solely responsible for payment of income, social security, other employment taxes, or federal, state or local taxes (the "Taxes") due to the proper taxing authorities. Service Provider acknowledges that College will not deduct such taxes from any payments to Service Provider hereunder. Service Provider agrees to indemnify, defend, and hold harmless the College 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 wages or the Taxes.

Relationship of the Parties

It is expressly understood that Service Provider is an independent contractor and not the agent, partner, or employee of College. The Parties agree and acknowledge that this Agreement does not create any employment, partnership, joint venture, revenue sharing arrangement, or other relationship between the Parties. Service Provider and Service Provider's workers, if any, are not employees of College and are not entitled to tax withholding, Workers' Compensation, unemployment compensation, or any employee benefits, statutory or otherwise, from Berklee, and Service Provider agrees never to assert otherwise. Service Provider shall not have the authority to enter into any contract or agreement to bind College and shall not represent to anyone that Service Provider has such authority. Service Provider represents and warrants that in performing the services called for hereunder Service Provider will not be in breach of any agreement with a third party. Any persons employed by or contracting with Service Provider to perform any part of Service Provider's obligations hereunder shall be under the sole control and direction of Service Provider, and Service Provider shall be solely responsible for all liabilities and expenses related thereto.

Intellectual Property

All materials developed, generated, or produced by Service Provider pursuant to this Agreement, shall be owned by and shall be the exclusive property of Berklee and considered a "WORK MADE FOR HIRE," as that term is defined for copyright and other purposes. Service Provider hereby assigns all rights to the materials developed pursuant to this Agreement finally and irrevocably to Berklee. Service Provider shall promptly execute any and all documents and take any additional actions that Berklee may reasonably request in order to affect this assignment. This provision shall survive expiration and termination of this Agreement.

Compliance with Law and Policy

Service Provider agrees that, in connection with this Agreement, it will take no action, or omit to take any action, which would cause any party to be in violation of applicable laws and regulations. To the extent Service Provider has access to any student educational records, Service Provider agrees that it will comply with all federal and state information security and confidentiality laws, including but not limited to the Family Educational and Privacy Act (FERPA). Service Provider further agrees to adhere to policies, procedures, and guidance regarding compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”) (20 U.S.C., § 1092(f)), with Title IX of the United States Education Amendments of 1972 (20 U.S.C. §§ 1681-1688), and other relevant law and College policies. The College will provide Service Provider with written copies of College policies, procedures, and guidance, at Service Provider’s request and Service Provider agrees that it shall be Service Provider’s responsibility to be familiar with such.

Service Provider shall comply with the provisions of the Immigration Reform and Control Act of 1986 with respect to the hiring of any Service Provider personnel assigned to the Berklee campus, irrespective of whether such personnel are assigned to the campus on a permanent or temporary basis. Upon both parties' execution of this Agreement, upon the date of the anniversary of execution hereof, and at any time upon Berklee's request, Service Provider shall certify, by letter bearing Service Provider letterhead and signed by the Company's president or an authorized Company officer: that all Service Provider personnel assigned to the campus, replacement workers, and workers assigned to complete out-of-scope work are legally authorized to work in the United States.

Accessibility

Service Provider represents that it is committed to promoting and improving accessibility of all its products, and will remain committed throughout the term of this Agreement. If the products and services are not in conformance with all applicable federal and state disability laws, policies, and regulations as of the execution date, Service Provider shall use reasonable efforts to update the products and services so as to be in conformance therewith. In the event any issues arise regarding Service Provider’s compliance with applicable federal or state disability laws, policies and regulations, the College may advise Service Provider and Service Provider will assign a person with accessibility expertise to reply to the College within two business days.

Online/Remote Capabilities

As may be required by extenuating circumstances, which will be determined at the sole discretion of the College, the services described herein may need to be performed in an online or otherwise remote environment. Should such circumstances arise, Service Provider represents and warrants that they have sufficient technology capabilities as to perform this Agreement in such a manner.

Firearms Prohibition

No firearms are allowed on Berklee campus. Service Provider acknowledges that Berklee policy and Massachusetts statutory law prohibit possession of firearms on the Berklee campus. Service Provider agrees that its employees will not bring any firearm onto the campus at any time.

Relationships

Dating, romantic, or sexual relationships between students and any person engaged, directly or indirectly, to perform services at or for Berklee, even if consensual, are prohibited.

Background Information

Service Provider and any employees providing services to the College may, at Berklee's sole discretion, be required to undergo a background check, including but not limited to criminal background and sex offender record information checks, prior to rendering services to the College.

Certification

Service Provider shall maintain in good standing any and all certifications that are required under state and/or federal law and appropriate organizational licenses, as required to perform the Services. Service Provider agrees to notify Berklee if Service Provider loses any certification, or organizational or individual professional licensure relevant to any of the Services, any termination or suspension of professional license, termination or limitation of staff privileges, change in malpractice insurance coverage, or the imposition of sanctions under any applicable law.

Price Warranty

Service Provider warrants that the prices of goods or services furnished under this order are not less favorable than those prices currently extended to any other customer for the same or similar goods or services. If Service Provider reduces its prices for such goods or services during the term of this order, Service Provider shall reduce the prices for Berklee accordingly.

Liability and Indemnification

To the fullest extent permitted by law, Service Provider will defend, indemnify, and hold harmless Berklee, including its current and former trustees, officers, directors, employees, volunteer workers, agents, assigns, and students from and against claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of, or from the performance of its operations or services and for the acts or omissions of its employees, volunteers, participants, guests, or any third party for whom it is responsible, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder, including without limitation any claim, suit, or proceeding brought by a third party for alleged infringement of a third party's patents, trade secrets, copyrights, trademarks, designs, or other proprietary rights by

any of the goods or services furnished by Service Provider. Such obligations shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist in the absence of this Agreement. This provision shall survive expiration and termination of this Agreement.

Force Majeure/Campus Closure

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”). In the event of a force majeure event immediately prior or during the Term, this agreement may be cancelled or rescheduled at Berklee’s election. Service Provider is responsible for communicating all cancellations and rescheduling under this Section to any third-parties it has engaged. Should a Force Majeure event occur and this Agreement is Terminated as a result, Berklee shall be entitled to a pro-rated refund of all fees pre-paid to Service Provider and Service Provider shall be entitled to payment of fees for Services completed up to the date of termination due to a Force Majeure event.

Insurance

Service Provider agrees to maintain the insurance coverage set forth in Berklee’s Contractor/Vendor Insurance Guidelines, attached hereto as Exhibit B. This insurance requirement shall not be construed as limiting in any way the extent to which Service Provider may be held responsible for the payment of damages to Berklee or any persons resulting from its operations or the activities of any person or persons for whom it is liable.

Limitation of Liability

Notwithstanding anything contained in the Contract or Proposal, nothing in this Agreement shall limit the liability of Service Provider under law or custom.

Non-waiver

The failure or delay of either party to exercise any of its rights under this Agreement for a breach thereof shall not be deemed to be a waiver of such rights, and no waiver by either party, whether written or oral, express or implied, of any rights under or arising from this Agreement shall be binding on any subsequent occasion; and no concession by either party shall be treated as an implied modification of the Agreement unless specifically agreed in writing.

Notice

Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail or electronic mail with return receipt requested. All notices shall be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing:

Any notice shall be deemed to have been given on the earlier of: (a) actual delivery or refusal to accept delivery, (b) the date of mailing by certified mail, or (c) the day electronic mail delivery is verified. Actual notice, however and from whoever received, shall always be effective.

Term and Termination

This Agreement shall commence as of **December 5** and end on **May 31, 2023** (the "Term"). Notwithstanding the foregoing, this Agreement may be terminated by Berklee at any time. Berklee shall also have the right to terminate this Agreement with immediate effect upon a breach of the terms hereof by Service Provider. In the event of any termination, Berklee shall be entitled to a pro-rated refund of all fees pre-paid to Service Provider and Service Provider shall be entitled to payment of fees for Services completed up to the date of termination. All work scheduled and in process at the time of termination must be released to the College by the Service Provider in order for the Service Provider to receive payment. This Agreement may be renewed only upon written agreement of both parties.

IN WITNESS WHEREOF, the Parties have set their hands and seals and caused this Agreement to be executed by their duly representatives, on the date and year last written below.

Berklee College of Music, Inc.

Dillan Hoyos


Print Name

Dillan Hoyos_____
Print Name

Title

Sound Designer_____
Title

Signature



Signature

Date

January 9 / 2023_____
Date

EXHIBIT A

Services: Programming and Sound Design

Duration: Sprint of Fall semester and Tutorials in January

Payment Terms: 30\$ usd an Hour, Hours worked approximately 25/week.
Hours Worked till 9 of January of 2023: 119 hr.
Lump sum payment for fees owed.
and Bi-weekly payments starting the week of January 9th.

EXHIBIT B

Contractor/Vendor shall procure and maintain during the terms of this agreement at its own expense, the types of insurance coverage with minimum limits specified below:

A. Workers' Compensation statutory as required by Massachusetts Law and Employers

Liability Insurance with limits of:

- \$1,000,000 bodily injury by accident
- \$1,000,000 bodily injury by disease each employee
- \$1,000,000 bodily injury by disease policy limit

The policy must include a waiver of subrogation in favor of Berklee College of Music.

B. General Liability Insurance (CGL):

- \$1,000,000 each occurrence (combined single limit for bodily injury and property damage)
- \$1,000,000 for personal and advertising injury liability
- \$1,000,000 aggregate on products and completed operations
- \$2,000,000 general aggregate

C. Automobile Liability Insurance:

- \$1,000,000 combined single limit for bodily injury and property damage per accident and including coverage for all owned, non-owned, and hired vehicles.

D. Umbrella Excess Liability Insurance:

- \$2,000,000 each claim
- \$2,000,000 annual aggregate

Policy must follow form of underlying liability policies, (Except Workers' Compensation), and include defense costs.

Additional Insurance Requirements:

1. All such insurance shall name Berklee College of Music and such other parties as Berklee may require as Additional Insured by policy endorsement and be primary and noncontributory.
2. Workers Compensation policies must include a Waiver of Subrogation endorsement in favor of Berklee College of Music.
3. All policies must be written with insurance companies that are licensed and/or authorized to conduct business in the Commonwealth of Massachusetts with a current A.M. Best Rating of A- or better.
4. Contractor/Vendor shall require any subcontractor to maintain insurance on similar terms.
5. Certificate of Insurance (COI) must be submitted prior to the start of any work and renewal COI's or notices shall be sent to:

Berklee College of Music
Risk Manager
1140 Boylston Street
MS-855 CBPV
Boston, MA. 02215-3693