

BERKLEE MEDIA WEB AFFILIATE AGREEMENT

THIS AFFILIATE AGREEMENT (“Agreement”) is entered into on this date _____ by and between Berklee Media, a department of Berklee College of Music, Inc. having offices at 1140 Boylston St., Boston, MA 02215 (“Berklee”), and _____, having offices at _____ (“Affiliate”) (each of Affiliate and Berklee are referred to herein as a “Party” and collectively, as the “Parties”).

The Affiliate desires to enter into a relationship whereby Affiliate will promote Berklee products and services including but not limited to online courses, books, DVDs, video streams, job and gig databases and Berklee career resources (“Berklee Products”) on a non-exclusive basis on the Affiliate’s web site(s). Such promotion by Affiliate will contain Links to the Berklee Web site, and Berklee agrees to track and pay Affiliate a Commission on net sales of Berklee products that result from customer traffic generated by such Affiliate Links under the terms of this Agreement,

1. RIGHTS OF USE; OWNERSHIP.

1.1 Once Affiliate is approved for this relationship and subject to the terms of this Agreement, Berklee hereby grants Affiliate a revocable, nontransferable, nonsublicensable, royalty-free, nonexclusive license to display on Affiliate’s web site (“Site”) banners, logos and specific links to Berklee Products (“Content”) that Affiliate receives directly from Berklee.

1.2 The Content is protected by the copyright laws of the United States and international copyright treaties. As between the Parties, title, ownership rights, and intellectual property rights in and to the Content, and any copies or portions thereof, shall remain in Berklee. Berklee shall retain all rights to the Content and Services not expressly granted to Affiliate under this Agreement. Affiliate agrees not to do anything contesting or impairing the rights of Berklee or Berklee Media in and to any of the Content.

1.3 Usage Restrictions. Except as expressly set forth herein, Affiliate may not, directly or indirectly: (a) sell, modify, translate, copy, publish, transmit, distribute or otherwise disseminate the Content or any portion thereof; (b) rent, lease, or otherwise transfer rights to the Content; (c) display the name, logo, trademark or other identifier of another entity on your Site in such a manner as to give the viewer the impression that such other entity is a publisher or distributor of the Content on the Site; (d) remove, conceal or obliterate any copyright or other proprietary notice or mark or source identifier included on the Content, including without limitation, the size, color, location or style of any Berklee marks; (e) encumber or suffer to exist any lien or security interest on the subject matter of this Agreement; (f) make any representation or warranty on behalf of Berklee; or (g) use Content on any Site that contains nudity or pornographic material of any kind, provides material that is grossly offensive to the online community, including blatant expressions of bigotry, prejudice, racism, hatred or excessive profanity, promotes or provides instructional information about illegal activities or physical harm or injury against any group or individual, or use the Content in any manner that is obscene, defamatory, libelous, invasive of personal privacy or misleading.

2. DELIVERY OF CONTENT

2.1. In most cases, Content is available in digital form available on a Berklee administration page. Any digital files created by Affiliate under this Agreement will be transmitted to Berklee upon creation and remain the property of Berklee.

2.2 Berklee will provide you with instructions on how to Link to different products and services on the Berklee Web site.

3. DISTRIBUTION AND MARKETING.

3.1 Berklee will provide Affiliate with Web site banners, graphics and marketing materials for use on the Affiliate Site to generate traffic to the Berklee Web sites.

3.2 Unless otherwise permitted by Berklee, Affiliate will: (i) display all Content on its Site or elsewhere generally in the form received by Affiliate, and not modify or edit any of the foregoing without Berklee’s written consent; (ii) ensure that the fundamental meaning of the Content is not changed or distorted; (iii) comply with all applicable laws and all limitations and restrictions placed by Berklee on the use, display or distribution of any Content;

3.3 Affiliate is solely responsible for the development, operation, and maintenance of its site and for all materials that appear on the Affiliate site. We disclaim all liability for these matters. Further, you will indemnify and hold Berklee harmless from all claims, damages, and expenses (including, without limitation, attorneys’ fees) relating to the development, operation, maintenance, and contents of the Affiliate site.

4. PROMOTIONS, SALES, COMMISSION, ADS AND PAYMENT

4.1. Promotions. Affiliate agrees to link and redirect to the appropriate Berklee web page or related Berklee-hosted pages when a user clicks on the Content or its links. Berklee will provide Affiliate with a referral code and/or special URLs enabling Affiliate to link from the Site to the appropriate Berklee web pages (“Links”). Affiliate shall not display content in such a manner that does not allow for successful linking and redirection to, and delivery of, the Berklee web page. Affiliate will promote Berklee in a positive manner and not take any actions that will harm the reputation or positive image of Berklee and Berklee’s adherence to the high standards of ethics and good business practices.

4.2 Press Releases. Affiliate may not issue any press release with respect to this Agreement or your participation in this relationship; such action may result in termination of this Agreement. In addition, you may not in any manner misrepresent or embellish the relationship between us and you, or express or imply any relationship or affiliation between us and you, or any other person or entity except as expressly permitted by this Agreement.

4.3 Sales. Prices for Berklee Products offered for sale under this Agreement are completely within the control and discretion of Berklee

and may be changed at any time. Affiliate is not authorized to change the pricing established by Berklee. Berklee will update product information and prices on its Web site when appropriate. Berklee cannot guarantee availability of all Berklee Products for sale or shipment. Berklee will be solely responsible for accepting, processing and filling customer orders. These tasks will be performed in accordance with stated ordering policies and customer services at berkleemusic.com.

4.4 Commission. Berklee shall pay Affiliate a Commission on net sales of Berklee products that result from customer traffic generated by the Affiliate Links under the terms of this Agreement. The amount of the Commission shall be five percent (5%) of the amounts actually received by Berklee on account of the sale of Products under this Agreement, less shipping, discounts, refunds, coupons, revenue shares to third parties, taxes, licenses or other distribution costs.

4.5 Calculation. Affiliate will receive a Commission from a sale directly related to a customer clicking through from a Link on the Affiliate's Site to the Berklee Web site and such customer purchasing a Berklee Product during that current referred session. Affiliates can visit <http://www.berkleemusic.com/affiliate> to view a report of their earned commissions.

4.6 Payment by Berklee. Berklee shall account to Affiliate for and pay all Commission amounts due, if any, after the deduction of a reasonable reserve for returns or bad debt, within sixty (60) days after the last day of March, June, September and December of each year. If the amount due Affiliate for a specific period is less than fifty (\$50) dollars, such statement and the payment may be deferred until the aggregate amount due exceeds fifty (\$50) dollars.

5. CONFIDENTIALITY

5.1 During the term of this Agreement, Affiliate may have access to some of Berklee's nonpublic technical, business, product, marketing or financial information ("Proprietary Information"). Such Proprietary Information shall belong solely to Berklee. Affiliate shall not, except as expressly authorized by this Agreement, use or disclose Proprietary Information without the prior written consent of Berklee unless such Proprietary Information becomes part of the public domain through no fault of the Affiliate.

5.2 Affiliate agrees (i) not to disclose any Proprietary Information to any third parties, (ii) not to use any Proprietary Information for any purposes except carrying out its rights and responsibilities under this Agreement, and (iii) to keep the Proprietary Information confidential using the same degree of care it uses to protect its own confidential information, as long as Affiliate uses at least reasonable care. Affiliate acknowledges and agrees that due to the unique nature of Berklee's Proprietary Information, there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach may allow Affiliate or third parties to unfairly compete with Berklee resulting in irreparable harm to Berklee, and therefore, that upon any such breach or threat thereof, Berklee shall be entitled to injunctions and other appropriate equitable relief in addition to whatever remedies it may have at law.

5.3 Affiliate acknowledges that by participating in this Affiliate relationship and placing any of the above links on your Site, Berklee may receive information regarding visitors coming from your Site. Participation in Berklee's Affiliate relationship constitutes the Affiliate's

specific and unconditional consent to and authorization for Berklee's access to, receipt, storage, use, and disclosure of any and all such information, consistent with the policies and procedures set forth in Berklee's Privacy Policy.

5.4 In addition, Affiliate acknowledges that Berklee may crawl or otherwise monitor your Site for the purpose of ensuring the quality and reliability of Links on your Site (for example, to detect links that are broken or non-functional, links to products that are out of stock or otherwise unavailable, etc). Therefore, Affiliate agrees that Berklee may take such actions and that Affiliate will not seek to block or otherwise interfere with such crawling or monitoring (and that Berklee may use technical means to overcome any methods used on your Site to block or interfere with such crawling or monitoring).

6. TERM AND TERMINATION.

6.1 Term. The initial term ("Initial Term") of this Agreement shall commence as of the Effective Date and shall continue for one year unless sooner terminated as provided herein.

6.2 Termination or Suspension Due to Breach. Any Party may suspend performance and/or terminate this Agreement immediately upon written notice to the other Party.

6.3 If either Party files for protection under the bankruptcy laws of the United States or any state thereof and such petition is not dismissed within ninety (90) days after the filing thereof, then this Agreement shall automatically terminate without prejudice to Berklee's right, title and interest in and to the Content, or any monies due or to become due either Party under this Agreement.

6.4 Upon Termination of this Agreement for any reason, Affiliate agrees to destroy or return to Berklee all copies of the Content and all Proprietary Information promptly upon notice of Termination and to remove all such Content and any copies thereof from the Site.

6.5 Berklee assumes no liability for the Affiliate's activity in connection with the Content or for the development, operation, and maintenance of the Site. Any fraudulent, abusive, or otherwise illegal activity may be grounds for termination of this Agreement. Affiliate will not attempt to hide its identity, represent itself as someone else, compromise or attempt to compromise the security of any account, or interfere or attempt to interfere with the proper delivery of the Content. If Affiliate uses, or attempts to use, any Content beyond the scope of the license granted in this Agreement, or attempt to, tamper, hack, spoof, use robots or scripts, copy, distribute, modify, or otherwise corrupt the administration, security, or proper function of any part of the Content or any Berklee web site, then, in addition to termination of this Agreement, Affiliate will forfeit any amounts due to Affiliate hereunder and be subject to appropriate legal and equitable action.

7. WARRANTIES.

7.1 Each Party represents and warrants to the others that it has right and power to enter into and perform this Agreement according to its terms.

7.2 The Content as provided by Berklee to Affiliate does not infringe any statutory or common law right of any party including, without limitation, copyright rights. Berklee makes no other representations concerning the Content and neither Berklee Media or Berklee College of Music or its faculty or authors will be responsible or liable for the accuracy of any Content. Berklee provides the Content to Affiliate "as is" and "as available" without warranty of any kind, and Berklee hereby

disclaims all express or implied warranties, including without limitation warranties of merchantability, fitness for a particular purpose, performance, accuracy, and reliability. This disclaimer of warranty constitutes an essential part of this Agreement.

8 . INDEMNIFICATION.

8.1 Affiliate hereby agrees to fully indemnify, defend and hold Berklee and its respective affiliates, officers, directors and licensors harmless from and against any and all claims, liability, losses, costs and expenses (including attorneys' fees) incurred in connection with: (i) any use or alleged use of the Content through the Affiliate by any person, whether or not authorized by Affiliate; or (ii) Affiliate Site or (iii) any breach of this Agreement. Berklee reserve the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by Affiliate, and in such case, Affiliate agrees to fully cooperate with Berklee's defense of such claim.

9 . LIMITATION OF LIABILITY.

9.1 Under no circumstances and under no legal theory, tort, contract, strict liability, or otherwise, shall Berklee be liable to Affiliate or any other person for any indirect, special, incidental, or consequential damages of any character including, without limitation, damages for lost profits, loss of goodwill, work stoppage, accuracy of services, content or results, computer failure or malfunction, damages resulting from disabling of the Content related to non-payment of license fees, cost of procurement of substitute goods, or any and all other commercial damages or losses. In no event will Berklee be liable for any damages in connection with the Content, even if Berklee shall have been informed of the possibility of such damages, or for any claim by any other party. Some states do not allow exclusion of implied warranties or limitation of liability for incidental or consequential damages, so the above limitations or exclusions may not apply to Affiliate. In such states, the liability of the providers, third party content providers and their respective agents shall be limited to the greatest extent permitted by law.

10 . NOTICES AND CHANGES OF ADDRESS.

10.1.All notices shall be sent by overnight courier, registered or certified mail, return receipt requested, postage prepaid, to the Parties at the addresses first written above. Each Party shall provide the other with written notice of any change of address in accordance with this Section.

11. MISCELLANEOUS.

11.1. Relationship of Parties. The Parties are independent licensors and contractors and nothing in this Agreement shall be construed as creating an employer-employee relationship, partnership, franchise arrangement, agency relationship, or joint venture between or among them.

11.2. Nonexclusivity. Nothing in this Agreement will be deemed to limit or restrict Berklee from entering into agreements with any other entity or person covering content or services similar to Affiliate's Site or from offering such similar services itself.

11.3. No Ongoing Waiver. A waiver of any breach of any of the provision of this Agreement shall not be construed as a continuing waiver of other breaches of the same or other provisions hereof.

11.4. Enforceability. This Agreement shall be binding upon the Parties and their respective heirs, successors, assigns and representatives.

11.5. Counterparts. This Agreement may be executed in counterparts each of which shall be deemed an original and as executed shall constitute one agreement, binding on all Parties even though all Parties do not sign the same counterpart.

11.6. Severability. If a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, such provision shall be given the maximum effect permitted under applicable law, and the remainder of this Agreement shall remain valid and fully enforceable according to its terms.

11.7. Force Majeure. No Party shall be liable to any other Party under this Agreement for any delay or failure to perform its obligations under this Agreement if such delay or failure arises from any cause(s) beyond such Party's reasonable control, including labor disputes, strikes, acts of God, floods, fire, lightning, utility or communications failures, earthquakes, vandalism, war, acts of terrorism, riots, insurrections, embargoes, or laws, regulations or orders of any governmental entity.

11.8. Headings. The Section headings used in this Agreement are for ease of reference only, are not substantive, and shall not be used to interpret any provision of this Agreement.

11.9. Governing Law. The internal laws of the Commonwealth of Massachusetts shall govern this Agreement, without regard to conflict of law principles.

11.10. Assignment. Nether Party may assign or sublicense this Agreement or any obligations thereof without the other Party's prior written consent; any such assignment by either Party without such written consent shall be null and void.

11.11. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements or communications with respect to the subject matter hereof.

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound by the terms of this Agreement, have caused this Agreement to be executed in good faith by their duly authorized representatives as of the Effective Date.