

## **GENERAL TERMS AND CONDITIONS DIGITAL CONCERT HALL FOR INSTITUTIONS BERLINER PHILHARMONIKER**

### **1. Scope of Application**

- 1.1. In the course of the initiative known as DIGITAL CONCERT HALL FOR INSTITUTIONS, the Berliner Philharmoniker provide educational institutions (hereinafter “**INSTITUTIONS**”) such as universities, conservatories, schools, or libraries with institutional access to the Digital Concert Hall at [www.digitalconcerthall.com](http://www.digitalconcerthall.com). The INSTITUTION itself purchases access to the Digital Concert Hall (hereinafter “**INSTITUTIONAL ACCESS**”). After registration, members of the INSTITUTION (hereinafter “**INSTITUTIONAL USERS**” as specified in Section 5.3) receive personalised and free access to all content and functions of the Digital Concert Hall.
- 1.2. Use of the Digital Concert Hall by INSTITUTIONAL USERS and other customers is governed by the “General Terms of Use Digital Concert Hall of the Berliner Philharmoniker” which are available at <https://www.digitalconcerthall.com/terms>
- 1.3. The following General Terms and Conditions DIGITAL CONCERT HALL FOR INSTITUTIONS (hereinafter “**T&C**”) govern all contracts concluded between Berlin Phil Media GmbH, Leipziger Platz 1, 10117 Berlin, represented by its managing directors Olaf Maninger and Maximilian Merkle (hereinafter “**BERLIN PHIL MEDIA**”) and INSTITUTIONS regarding INSTITUTIONAL ACCESS to the services offered at [www.digitalconcerthall.com](http://www.digitalconcerthall.com). These T&C, the privacy policy, the application pursuant to Section 2.1, and the **AGREEMENT** pursuant to Section 2.2 constitute the entire agreement made between BERLIN PHIL MEDIA and the INSTITUTION. Differing or additional provisions of the INSTITUTION do not apply, even if BERLIN PHIL MEDIA does not explicitly object to them. Contractual languages are German and English.
- 1.4. For all communication by email, the parties shall only use the INSTITUTION’s contact person’s email address as specified in the AGREEMENT and BERLIN PHIL MEDIA’s email address [institutions@digitalconcerthall.com](mailto:institutions@digitalconcerthall.com).

### **2. Application and Conclusion of AGREEMENT**

- 2.1. To get INSTITUTIONAL ACCESS, the INSTITUTION shall apply to BERLIN PHIL MEDIA via the online form provided at <https://campaign.berliner-philharmoniker.de/institutions-offer> . In the application form, the INSTITUTION has to provide the following data:

- type, name, legal representatives, address, and IP range of the INSTITUTION;
- name, job title, email, and phone number of a contact person;
- number of students and staff;
- number of parallel streams
- desired term and date of commencement;
- preferred payment method.

BERLIN PHIL MEDIA will confirm the data entered by email.

2.2. BERLIN PHIL MEDIA decides on the application at its sole discretion.

2.2.1. Based on the data provided in the application form, BERLIN PHIL MEDIA may make the Institution an individual contractual offer. The agreement regarding INSTITUTIONAL ACCESS (hereinafter “**AGREEMENT**”) shall be concluded on receipt of the INSTITUTION’s acceptance. The INSTITUTION may provide BERLIN PHIL MEDIA with the signed AGREEMENT by mail, fax, or email (as a scan in PDF format). BERLIN PHIL MEDIA shall confirm conclusion of the AGREEMENT by email.

2.2.2. BERLIN PHIL MEDIA may, at its sole discretion, decide not to make the INSTITUTION a contractual offer. BERLIN PHIL MEDIA shall notify the INSTITUTION thereof by email.

2.3. The INSTITUTION ensures that all data entered during application is correct and that it has not used data of a third party. The INSTITUTION shall immediately inform BERLIN PHIL MEDIA by email of any changes to the data.

### 3. **Automatic extension of the term of the AGREEMENT**

The term agreed upon in the AGREEMENT (hereinafter “**INITIAL TERM**”) shall be automatically extended for subsequent periods of 12 months (hereinafter “**EXTENDED TERM**”) unless either party gives notice not less than 90 days before the end of the INITIAL TERM or each EXTENDED TERM. Any notice given by a party shall require text form (in writing, no signature required, e.g. email, fax) to be effective. The right to terminate the AGREEMENT pursuant to Section 8 remains unaffected. BERLIN PHIL MEDIA will notify the INSTITUTION of each automatic extension by email.

### 4. **Payment**

4.1. The annual fee agreed upon in the AGREEMENT is to be paid in advance for each year of the INITIAL TERM and each EXTENDED TERM of the AGREEMENT. Each annual fee shall be invoiced by BERLIN PHIL MEDIA and payable by the INSTITUTION within 14 days after receipt of the invoice.

4.2. The INSTITUTION can pay by credit card, bank transfer, or PayPal.

- 4.3. If the INSTITUTION delays payment, BERLIN PHIL MEDIA may charge interest in the amount of 5 percentage points above the base interest rate. BERLIN PHIL MEDIA reserves the right to claim further damages.
- 4.4. Should the INSTITUTION not fulfil the payment duty or should amounts that already have been paid be returned or redebited, BERLIN PHIL MEDIA is entitled, reserving the right to assert further claims, to block the INSTITUTIONAL ACCESS. Should the INSTITUTIONAL ACCESS be blocked due to outstanding debts, access shall again be granted if the debts are settled. The right to terminate the AGREEMENT pursuant to Section 8 shall remain unaffected.

## **5. Use of the INSTITUTIONAL ACCESS**

- 5.1. BERLIN PHIL MEDIA shall activate the INSTITUTIONAL ACCESS upon conclusion of the AGREEMENT pursuant to Section 2.2.1 and receipt of the fee pursuant to Section 4.1 but not before the date of commencement as specified in the AGREEMENT. BERLIN PHIL MEDIA will notify the INSTITUTION thereof by email.
- 5.2. Upon activation, INSTITUTIONAL USERS may use the INSTITUTIONAL ACCESS to register as INSTITUTIONAL USERS at [www.digitalconcerthall.com](http://www.digitalconcerthall.com). Registration is only possible within the IP range of the INSTITUTION as specified in the AGREEMENT.
- 5.3. Only members of the INSTITUTION who have been provided with a unique user ID and password to access the INSTITUTION's network qualify as INSTITUTIONAL USERS within the meaning of these T&C. For universities, conservatories, and schools, only the following categories of users are permitted: students, faculty and staff. For libraries, only the following categories are permitted: library users, librarians and staff. Any other category of users shall be subject to BERLIN PHIL MEDIA's explicit prior consent in text form (in writing, no signature required, e.g. email, fax).
- 5.4. The number of INSTITUTIONAL USERS who can use the streaming services at [www.digitalconcerthall.com](http://www.digitalconcerthall.com) concurrently is limited by the number of parallel streams as specified in the AGREEMENT. Only INSTITUTIONAL USERS who are streaming a video in the Digital Concert Hall which is subject to a charge for customers of the Digital Concert Hall occupy one of the parallel streams. INSTITUTIONAL USERS who are logged in streaming free content of the Digital Concert Hall (e.g. trailers, interviews, or free concerts) shall not be considered to occupy one of the parallel streams.
- 5.5. BERLIN PHIL MEDIA may block INSTITUTIONAL USERS pursuant to the General Terms and Conditions which govern use of the Digital Concert Hall pursuant to Section 1.2. BERLIN PHIL MEDIA shall notify the INSTITUTION thereof by email.
- 5.6. After the end of the term of the AGREEMENT pursuant to Section 3 or after its termination pursuant to Section 8, BERLIN PHIL MEDIA shall deactivate the INSTITUTIONAL ACCESS. INSTITUTIONAL USERS will no longer be able to register as INSTITUTIONAL USERS and/or have free access to all content and functions of the Digital Concert Hall.

## **6. Prohibited Uses and Obligations of the INSTITUTION**

6.1 The INSTITUTION shall ensure that:

- access to the INSTITUTIONAL ACCESS is limited to INSTITUTIONAL USERS pursuant to Section 5.3;
- use of the INSTITUTIONAL ACCESS is free of charge for INSTITUTIONAL USERS;
- INSTITUTIONAL USERS, representatives and employees of the INSTITUTION do not misuse the streaming services. In particular, they are prohibited from
  - recording the concerts in full or in part;
  - using the stream for commercial purposes or for public performance, publicly broadcasting it or distributing it in any other way; or
  - reproducing the stream.

INSTITUTIONAL USERS may screen the streaming services within the INSTITUTION for educational purposes and for the purpose of lectures. Any further use of the streaming services, in particular, but not limited to the public performance of the streaming services (e.g. public screening on the premises of the INSTITUTION) is prohibited.

6.2 The INSTITUTION shall notify BERLIN PHIL MEDIA of any known or suspected misuse or breach of security (cyber attacks, stolen user IDs, and/or passwords enabling third parties to access to the Institution's network etc.) without undue delay.

6.3 If the INSTITUTION breaches the duties defined in Sections 6.1 and/or 6.2, BERLIN PHIL MEDIA may block the INSTITUTIONAL ACCESS and terminate the AGREEMENT for cause.

6.4 The INSTITUTION shall be liable for all damages caused by a culpable breach of the duties defined in Sections 6.1 and/or 6.2 by its representatives or employees. Regarding breach of the duties defined in Section 6.2, the representative or employee is to be considered culpable within the meaning of these T&C if he was aware of such misuse or breach of security or could have been aware in the exercise of reasonable care. The INSTITUTION is responsible for proving that its representative or employee was not culpable.

## **7. Limitation of Liability**

7.1. BERLIN PHIL MEDIA shall be liable without limitation for damages due to intent or gross negligence on the part of BERLIN PHIL MEDIA, its legal representatives or persons whom BERLIN PHIL MEDIA uses to perform its obligation. To the extent the breach of contract is unintentional, BERLIN PHIL MEDIA's liability shall be limited to typically foreseeable damages at the conclusion of the AGREEMENT for ordinary negligent breach of such duties arising from the contractual relationship that make the proper performance of the AGREEMENT possible in the first place, the observance of

which the contractual partner may regularly rely on and the violation of which puts the intended purpose of the AGREEMENT at risk (material contractual duties). Any liability not expressly provided for above – including the liability for persons employed in performing an obligation and vicarious agents – shall be disclaimed.

- 7.2. The limitation and exclusion of liability agreed upon in Section 7.1 shall not apply in cases of injury of life, body and health, in case of nonconformity of goods if BERLIN PHIL MEDIA has given a guarantee for the quality of the product or in cases where BERLIN PHIL MEDIA fraudulently concealed the material defect of the product. The liability under the Product Liability Act shall remain unaffected.

## **8. Termination**

- 8.1 Either party may terminate the AGREEMENT by giving notice not less than 90 days before the end of the INITIAL and each EXTENDED TERM. If the AGREEMENT is not terminated within that period of notice by either party, its term shall be automatically extended pursuant to Section 3. For the avoidance of doubt, ordinary termination of the AGREEMENT earlier than to the end of the Initial and/or each EXTENDED TERM is excluded.
- 8.2 The right to terminate for cause (außerordentliche Kündigung) remains unaffected by Section 8.1. In particular, BERLIN PHIL MEDIA shall be entitled to terminate for cause if the Institution violates these T&C. In case of a termination for cause, all fees that have already been paid for will not be refunded.
- 8.3 Any termination notice given by a party must be made in text form (in writing, no signature required, e.g. email, fax).

## **9. Data Protection**

BERLIN PHIL MEDIA collects and stores any data necessary for business purposes. When processing the personal data of the INSTITUTION and its INSTITUTIONAL USERS, BERLIN PHIL MEDIA complies with the applicable statutory provisions. For further information please refer to the privacy policy. The current version is available at [http://apps.digitalconcerthall.com/legal/privacy\\_policy\\_en\\_20230104.pdf](http://apps.digitalconcerthall.com/legal/privacy_policy_en_20230104.pdf).

## **10. Copyrights and Trade Marks**

- 10.1. All text, images, graphics, and/or videos included in or made available through [www.digitalconcerthall.com](http://www.digitalconcerthall.com) and their arrangement and graphic presentation on the website are subject to German copyright law and further protection acts. The INSTITUTION may not use, distribute or modify any material made available on this website (e.g. text or graphics) without BERLIN PHIL MEDIA's explicit prior consent in written form (in writing, signature required).

- 10.2. The INSTITUTION shall not be entitled to use the name, logos or trademarks of the Berliner Philharmoniker including, without limitation, the name or any logo of the Digital Concert Hall except with BERLIN PHIL MEDIA's explicit prior consent in written form (in writing, signature required).

## **11. Amendments**

BERLIN PHIL MEDIA has the right to amend these T&C at any time, unless material stipulations of the contractual relationship (such as the nature, scope, term and cancellation) are concerned. Such amendments are necessary, inter alia, in case of regulatory gaps (e.g. by changes in the law; court decisions deeming these T&C void). The INSTITUTION will be notified of such amendments in text form (in writing, no signature required, e.g. email, fax) 6 weeks before they take effect, at the latest. The amendments are deemed to be approved by the INSTITUTION if it does not object within 6 weeks after notification. If it objects, the amendments do not become part of the AGREEMENT between the parties, and the contract remains unchanged. BERLIN PHIL MEDIA will expressly inform the INSTITUTION of the possibility of objecting within the 6-week term. The right of cancellation remains unaffected.

## **12. Applicable Law**

These T&C and the AGREEMENT between BERLIN PHIL MEDIA and the INSTITUTION shall be governed by the laws of the Federal Republic of Germany. The Convention on Contracts for the International Sale of Goods does not apply.

## **13. Final Provisions**

- 13.1. Any changes and supplements to these T&C shall require text form (in writing, no signature required, e.g. email, fax) to be effective.
- 13.2. Should any provision of these T&C be invalid, this shall not affect the validity of all other provisions of the T&C.
- 13.3. Where legally permissible, the place of performance and exclusive place of jurisdiction for all disputes between the parties shall be Berlin.