

Exhibit D



Memorial Hall/Lowell Hall

Office for the Arts at Harvard

45 Quincy Street | Cambridge | Massachusetts 02138 | T 617 496 4595 | F 617 495 2420 | www.fas.harvard.edu/~memhall

STANDARD FORM OF REVOCABLE LICENSE FOR USE OF SPACE

Memorial Hall / Lowell Hall Complex, agent for President and Fellows of Harvard College ("Harvard"), hereby licenses to the organization identified below ("Licensee") the space ("Space") identified below on the terms and conditions herein. Harvard shall have no obligation of any kind hereunder unless expressly set forth on Exhibit A attached hereto.

Licensee: Foregen
Eric Clopper

Licensee's Address: [Redacted]

Boston, MA 02127

Space: Sanders Theatre

Date of use: Tuesday May 1, 2018
In: 3:00pm Out: 11:00pm Event start time: 7:00pm

Purpose: Concert

Amount: \$4,020.00
Includes up to nine hours of access. (Non-profit discount)
Includes patron parking at Broadway Garage (up to 6 hours)

TOTAL DUE: \$4,020.00

50% deposit due on contract: \$2,010.00

Remainder due 30 days prior to event: \$2,010.00 on April 1, 2018

Please make check payable to Harvard University.



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- 1) **USE.** Licensee certifies that it (rather than any other organization including organizations with which it is affiliated) will be the actual and primary user of the Space. Licensee further certifies that Licensee will use the Space only for the Purposes described on the first page (the "Program").
- 2) **MINOR PARTICIPANTS.** Licensee shall provide Licensor with 24/7 contact information for the person designated by Licensee as the primary contact for the Program. If any occupant or Program participant shall be under the age of 18, then Licensee shall (a) obtain from the parent or legal guardian of each such occupant or Program participant a signed Consent and Release agreement in the form attached hereto as Exhibit B; and (b) submit to Harvard a signed certificate in the form attached hereto as Exhibit C.
- 3) **LIMITED TIME.** The Space will be available to Licensee only during the Hours and Day(s) ("Time(s) of Use") specified above, and Licensee agrees that at Licensee's sole cost and expense Licensee shall ensure that the Space shall not be occupied or used by Licensee before or after each of the Time(s) of Use. Time is of the essence of this License.
- 4) **PAYMENT.** On or before the date stipulated in the written confirmation sent by Memorial Hall / Lowell Hall Complex, Licensee shall pay one-half of the License Fee to confirm licensing of the Space (the "First Fee Payment"). Licensee shall pay the remainder of the License Fee 30 days prior to the Time of Use. If there are multiple Time(s) of Use, Licensee shall pay to Memorial Hall / Lowell Hall Complex, as a First Fee Payment to confirm licensing of the Space, one-half of the License Fees for all Time(s) of Use, and shall pay the remainder of the License Fee for each of the subsequent Time(s) of Use no later than 30 days prior to each Time of Use. No part of the License Fee (including the First Fee Payment) shall be refunded for any reason, except as provided in Section 14.
- 5) **BOX OFFICE.** All ticket sales for Licensee's events in the Space shall be handled by the Harvard Box Office. The conditions and charges for the sale of tickets through the box office are specified in a separate agreement which Licensee must sign.
- 6) **SALES OF GOODS.** Licensee may not sell or offer for sale goods or services in the Space without the prior written consent of Memorial Hall / Lowell Hall Complex's Representative. Licensee shall be solely responsible for all permits, taxes, and other obligations for any sales which are approved, and shall submit copies of all permits required to Memorial Hall / Lowell Hall Complex's Representative at least 24 hours prior to any sales.
- 7) **ALCOHOL.** Licensee may not sell or serve alcoholic beverages of any kind without the prior written consent of Memorial Hall / Lowell Hall Complex's Representative. If such permission is granted, Licensee shall be solely responsible for obtaining all permits or other authorizations and for obtaining insurance satisfactory to Memorial Hall / Lowell Hall Complex, and shall submit copies of all permits required and documentation of insurance to Memorial Hall / Lowell Hall Complex's Representative at least 24 hours prior to any Time of Use. If the copies of permits and insurance are not received in a timely fashion, no alcohol may be sold or served. Licensee shall also ensure that no illegal drugs are used in the Space, or in or immediately around Memorial Hall during any Time of Use.
- 8) **SPECIAL EQUIPMENT, RECORDINGS.** No lighting or other special equipment may be installed or used without the prior written consent of Memorial Hall / Lowell Hall Complex's Representative. Licensee shall not undertake or permit any sound or video recording or photography in the Space without prior written consent of the Memorial/Lowell Hall Complex and the payment of an additional fee to the Memorial/Lowell Hall Complex at least two weeks prior to each recording or photography session. If permission is granted, Licensee agrees not to alter or move any of the historical or memorial artifacts (such as pictures, busts, or sculptures) in the Space.
- 9) **VISITOR PARKING, UNLOADING.** Parking for patrons and presenters is available, depending on the time of day of the event, in the Broadway Garage or another Harvard parking facility, for a period of one hour before the scheduled event until one hour after the end of the event. The Licensee must pay for use of the garage as indicated on the current rate sheet. This amount must be paid 30 days prior to the first Time of Use, or, failing that, will be automatically deducted from box office receipts. The availability of free parking to patrons must be mentioned on all printed publicity information. Licensee acknowledges that there is no parking on the Memorial Hall premises. After obtaining the written consent of Memorial Hall / Lowell Hall Complex's Representative, Licensee may use the driveway off Kirkland Street only for loading and unloading of equipment or handicapped access. In no event shall Licensee block egress routes in any way.
- 10) **HARVARD CONSENT.** Wherever in this document Harvard's or Memorial Hall / Lowell Hall Complex's written consent is required, Harvard and Memorial Hall / Lowell Hall Complex retain the right to withhold that consent in their sole discretion.
- 11) **CLEAN-UP.** Upon the expiration of each of the Time(s) of Use, Licensee agrees to deliver the Space to Harvard neat, clean, and free of personal property, trash, and debris. Licensee agrees to bear all costs of cleaning, repairing, and restoring the Space to its previous condition, reasonable wear and use excepted.
- 12) **LICENSEE'S LIABILITY.** Licensee will exercise due care in conducting all operations on the Licensed Premises, including provision of adequate supervision over all Program participants under the age of 18. Licensee is and hereby agrees to be fully responsible and liable for any and all injuries (and death) suffered by persons, and for any and all damage to Harvard's property and any theft or loss of Harvard's furnishings and equipment, resulting from or occurring during Licensee's use of the Space, and not caused by Harvard,

Memorial Hall / Lowell Hall Complex, or so-called "acts of God." Licensee shall indemnify and hold harmless Harvard, Memorial Hall / Lowell Hall Complex, and their officers, agents, employees, and members of their governing boards from and against any and all liability, action, claim, demand, loss, expense, or damage (including reasonable attorneys' fees) caused by or arising out of any act, omission, publication, or representation of Licensee, its officers, directors, agents, or employees in connection with this License.

- 13) **HARVARD NOT LIABLE.** Harvard and Memorial Hall / Lowell Hall Complex shall have no liability for any loss, cost, expense, or damage to Licensee, its members, officers, directors, agents, employees, or anyone else by reason of theft or vandalism resulting from or occurring during Licensee's use of the space. Licensee agrees not to sue Harvard, Memorial Hall / Lowell Hall Complex, or any of Harvard's affiliated corporations, or any of their respective officers, agents, employees, members of its governing boards, successors, or assigns for any such loss, cost, expense, or damage. Harvard and Memorial Hall / Lowell Hall Complex shall have no liability for any loss, cost, expense, or damage from fire or other casualty to the extent caused by the Licensee.
- 14) **USE-OF-NAME.** Licensee shall not state or imply in any manner that Harvard University or one of its Schools is presenting or sponsoring the Program. Accordingly, Licensee shall not use the name "Harvard" (alone or as part of another name) or any logos, seals, insignia or other words, names, photos, symbols or devices that identify Harvard or any Harvard school, unit, division or affiliate ("Harvard Names") for any purpose in connection with Program, as part of the name of the Program or in connection with the use or occupancy of the Premises except in the description of the location of Program as permitted below. In addition, Licensee shall not use any Harvard Names on certificates, diplomas or other awards that may be produced in relation to the Program. An accurate address that includes reference to the location of the Premises at Harvard may be used, but only when necessary to describe the specific address where the Program is taking place and in any event shall not imply (through text, photographs or otherwise) that Harvard owns, controls, presents or is in any way responsible for the Program or the instruction, supervision or monitoring of occupants or Program participants. This Use-of-Name provision applies to all print and electronic materials produced by Licensee in relation to Licensee, including web and social media sites. Additionally, if the Program involves participation by anyone under the age of 18 or by any Harvard faculty member or other employee, a disclaimer must appear prominently in any materials promoting the Program that reads as follows: "This program is not owned, controlled or supervised by Harvard University or any of its schools or programs."

Except in connection with use of the Harvard Box Office, Licensee shall not involve or refer to any Memorial Hall / Lowell Hall Complex staff or Harvard telephone numbers in any publicity, ticket information, or on any printed program, without the permission of Memorial Hall / Lowell Hall Complex's Representative. Licensee's obligation to provide prior to distribution specimen copies of all promotional material relating to Licensee's use of the Space to Harvard shall be governed by the Licensee's agreement with the Memorial Hall / Lowell Hall Complex. Licensee is solely responsible for all publicity and other promotional materials. No advertisements or other materials may be posted in Memorial Hall without the permission of Memorial Hall / Lowell Hall Complex's Representative.

This Use-of-Name provision applies to all print and electronic materials produced by Licensee for the Program, including web and social media sites.

- 15) **HARVARD'S RIGHT TO REVOKE.** This License may be revoked by Memorial Hall / Lowell Hall Complex at any time in its sole discretion by written notice personally delivered or mailed to Licensee at Licensee's address. Upon such revocation, Memorial Hall / Lowell Hall Complex shall thereafter refund to Licensee the License Fee. In no event shall Harvard or Memorial Hall / Lowell Hall Complex be liable to Licensee (i) for incidental or consequential damages caused by or related to such revocation or (ii) in the event that Memorial Hall / Lowell Hall Complex or Harvard is unable to make the Space available to Licensee during all or any part of any of the Time(s) of Use.
- 16) **NOT A LEASE.** This is not a lease, and no interest in real estate is conveyed hereby.
- 17) **ASSIGNMENT OR SUBLICENSING.** Licensee shall neither assign nor sublicense the Space and shall not permit anyone else to use or occupy the Space.
- 18) **RULES AND POLICIES.** Licensee and Licensee's use of the Space shall be subject to Licensee's compliance with all federal, state and local laws and any policies, rules, and regulations that Memorial Hall / Lowell Hall Complex or Harvard may promulgate from time to time, including those stated in any publication promulgated by Memorial Hall / Lowell Hall Complex including, but not limited to, the Sanders Theatre Policy Book for Non-Affiliated Users, any correspondence from the Memorial Hall/Lowell Hall Complex Program Manager, the Annenberg Hall Policy Booklet and Harvard's Policy for the Safety & Protection of Minors. Licensee's use of the Space is non-exclusive as to Harvard and Memorial Hall / Lowell Hall Complex, each of which retains the right freely to enter the Space at any time for any purpose.
- 19) **BINDING EFFECT.** The terms and conditions of this License shall be binding on Licensee, on Licensee's officers, directors, members, agents, employees, invitees, and on those claiming by, through, or under Licensee, and Licensee agrees not to permit any such persons to violate any term or provision of this License. Licensee agrees to comply, at its cost and expense, with all federal, state, and other governmental laws and regulations in connection with this License and the Licensee's use of the Space.
- 20) **INSURANCE.** Licensee shall maintain at all times during the License Period, at its own cost and expense, insurance of the types and in the limits as follows: (a) a fully-paid Commercial General Liability insurance policy, alone or in combination with umbrella liability insurance, in form and amount and with deductibles acceptable to Harvard, but with limits of not less than \$1,000,000 per occurrence and an annual aggregate limit of at least \$2,000,000 with respect to bodily injury, personal injury, and property damage and, if any occupant or participant in the Program is under the age of 18, a limit of at least \$100,000 per person for sexual molestation; (b) Workers' Compensation insurance with statutory limits in accordance with applicable laws; and (c) if the Program is subject to Massachusetts Department of Public Health at 105 C.M.R. 430.000 et seq., "Minimum Sanitation and Safety Standards for Recreational Operators for

Children”, Camper Accident and Health coverage with limits of \$25,000 accident medical expense (benefit period of 52 weeks), and \$5,000 accidental death & dismemberment coverage. All policies of insurance required pursuant to this Section shall be issued by insurance companies authorized to provide that class of insurance in the Commonwealth of Massachusetts with a minimum rating of A: IX by A.M. Best & Company. A duplicate original or certificate for each such policy shall be delivered to Memorial Hall / Lowell Hall Complex’s Representative at least one week prior to the first Time of Use. The insurance policy or policies shall not be cancelable except upon the insurer’s twenty days’ prior written notice to Memorial Hall / Lowell Hall Complex’s Representative and shall be in form and substance subject to Harvard’s and Memorial Hall / Lowell Hall Complex’s satisfaction.

- 21) **USE AND OCCUPANCY CHANGES.** If, for any reason, Licensee does not upon the revocation of this License or upon the expiration of each of the Time(s) of Use deliver the Space to Memorial Hall / Lowell Hall Complex free of occupants and cleaned in accordance with Section 10 of this License, then Licensee shall be liable to Memorial Hall / Lowell Hall Complex for each day, or portion thereof, that the Space is occupied by such persons or property until such Space is vacated and the property removed at a daily rate equal to the greater of \$1,000 or three times the total License Fee for one of the Time(s) of Use, and said payment shall be due and payable to Memorial Hall / Lowell Hall Complex on each such day, or portion thereof, that the Space is occupied by persons or property. Failure of Harvard or Memorial Hall / Lowell Hall Complex to demand any such payment or to enforce its right to receive any such payment shall not be deemed a waiver of any such demand or right of enforcement, and any demand for one payment shall be deemed a demand for all previous and subsequent payments.
- 22) **PERSONAL PROPERTY.** Licensee must remove all personal property at the end of each of the Time(s) of Use, unless Licensee has received written permission from Memorial Hall / Lowell Hall Complex’s Representative designating a different length of time for removal. If Licensee leaves any personal property in the Space beyond any of the designated Time(s) of Use, Memorial Hall / Lowell Hall Complex may remove such property and, if appropriate under the circumstances, discard such property. Memorial Hall / Lowell Hall Complex shall not be liable for any loss or damage to such property and such removal shall be considered the act of Licensee; provided, however, that on such removal, Memorial Hall / Lowell Hall Complex shall, to the extent practicable under the circumstances, exercise due care in handling such property.
- 23) **AS IS; DELAYS.** Harvard and Memorial Hall / Lowell Hall Complex do not warrant and do not make any representation as to the condition of the Space, and Licensee agrees to take the Space “as is.” In particular, Harvard and Memorial Hall / Lowell Hall Complex make no representation, express or implied, that the heating and air conditioning service will always maintain the temperature in the Space that the Licensee may wish. Moreover, Licensee understands that construction may take place in Memorial Hall, that noise and other evidence of construction may arise during the Time(s) of Use, and that delays and obstructions may occur. As a matter of courtesy, Memorial Hall / Lowell Hall Complex’s Representative will attempt to advise Licensee of any known or announced delays or unusual conditions, but is under no obligation to do so.
- 24) **WHEN EFFECTIVE.** Licensee certifies that its representative signing this Agreement is duly authorized to bind Licensee legally for all purposes of this Agreement. This License shall not be binding on Memorial Hall / Lowell Hall Complex until a copy hereof signed by both parties has been delivered by Memorial Hall / Lowell Hall Complex to Licensee and the Confirmation Fee for the first of the Time(s) of Use has been paid in full. Memorial Hall / Lowell Hall Complex shall be entitled to retain two executed copies of this License.
- 25) **GOVERNING LAWS.** The License shall be governed by the laws of Massachusetts and any claim hereunder shall be brought on the courts of The Commonwealth of Massachusetts.

EXECUTED under SEAL in duplicate as of March 1, 2018.

By: [Signature] Date: 3/1/2018
Signature of Licensee’s Representative

Foregen; Eric Clapper
Name (printed) of Organization and of Signing Representative

By: [Signature] Date: 3/1/2018
Signature of Memorial Hall/Lowell Hall Complex’s Duly Authorized Representative of President and Fellows of Harvard College

EXHIBIT A
OBLIGATIONS OF HARVARD