

## PERFORMANCE LICENSE AGREEMENT

**THIS PERFORMANCE LICENSE AGREEMENT** (this “**Agreement**”) is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2022 (the “**Effective Date**”), made by and between TMT International Observatory LLC, whose principal place of business is 137 West Walnut Avenue; Monrovia, CA 91016 (“**Licensor**” ), and \_\_\_\_\_, whose principal place of business is \_\_\_\_\_ (“**Licensee**”).

**WHEREAS** [describe background] (collectively, the “**Show**”); and

**WHEREAS** Licensor is willing to grant certain rights to the Show, including the right to distribute the Show; and

**WHEREAS** Licensee wishes to receive a license that includes the right to distribute the Show.

**NOW THEREFORE**, the parties agree to the following terms and conditions:

**1. IN-HOUSE PERFORMANCE RIGHTS.** Licensor grants to Licensee the limited, revocable, non-transferable, non-sublicensable, and non-exclusive rights to publicly perform the Show at Licensee’s planetarium located in \_\_\_\_\_ (the “**Venue**”), commencing \_\_\_\_\_ 2021 for \_\_\_\_\_ months through \_\_\_\_\_ 202\_\_\_\_, and to copy and distribute the Show’s marketing materials provided to Licensee by Licensor, solely in support of Licensee’s public performance of the Show at the Venue. Admission may be charged for the performances of the Show. Licensee may not use, reproduce, display, or distribute the Show or marketing materials for any purpose except as expressly permitted herein. Nothing in this Agreement shall constitute or be construed as a transfer of any proprietary interest in the Show or marketing materials to Licensee, and Licensor (and its respective licensor(s), as applicable) reserve all rights not expressly granted herein. Licensee may not modify the Show for any reason and may not modify the marketing materials for any purpose.

**2. PERFORMANCE CONDITIONS.** Licensee agrees that the Show must always be presented in its entirety. No visuals, audio, or other content of the Show may be edited, added or deleted in any way, and no audio material may be edited from the soundtrack. Licensee further agrees not to (a) decompile, disassemble or otherwise reverse-engineer the Show, (b) modify or create derivative works of the Show, (c) remove any credits or copyright or other proprietary designations for the Show, or (d) otherwise alter the Show without the prior written consent of the Licensor.

**3. SYNCHRONIZATION RIGHTS.** Licensee shall have the right to synchronize display of the Show’s script text using captioning or other text-display devices in connection with the permitted public performance of the Show pursuant to Section 1.

**4. RECORDED MEDIA.** Licensor shall provide Licensee with the recorded media and any other associated materials required to play and exhibit the Show on a full dome video system.

**5. INSTALLATION & PRESENTATION.** Licensee shall be responsible at its expense for installation and on-going presentation of the Show in the Venue. Licensor shall not be responsible for any difficulties in the presentation of the Show including, but not limited to, the failure of Licensee's exhibition equipment.

**6. COPIES.** Licensor grants Licensee permission to copy the delivered material ("Production Copy") as necessary for exhibiting the Show, as an effective planetarium show presentation at the Venue. Beyond this Production Copy, no portion of the Show -- visuals, script text or soundtrack -- may be reproduced, stored in a data retrieval system, or transmitted by any means, whether electronic, mechanical, photocopying, or otherwise, without first obtaining Licensor's written approval.

**7. COPYRIGHT.** Licensee agrees and acknowledges that all rights in the Show are held by the Licensor, that the copyright laws of the United States govern the making of reproductions, distribution, and public performance of copyrighted material without permission, and that certain international copyright laws also apply. Licensee's use, copying, and performance of the Show are solely pursuant to the limited licenses and permissions granted herein. Licensee and Licensee's employees agree to abide by all applicable copyright laws, and to not reproduce, recreate, duplicate, distribute, perform, make derivative works of or otherwise infringe upon the copyright in the Show and their associated materials, nor allow any other party to do the same.

**8. REPRESENTATIONS, INDEMNIFICATION.** Licensor represents and warrants that Licensor has the right to grant the public performance rights in the Show granted herein. Licensor agrees to indemnify and hold Licensee harmless for any claims, damages or liability of any kind arising out of the failure to obtain such rights.

**9. OTHER VENUES AND MEDIA.** Licensee agrees that no portion of the Show will be used in any other planetarium program, or transferred to another medium, such as photographic, slide, magnetic tape, digital media formats, radio or television broadcast, cable or Internet, without obtaining Licensor's prior written approval, which may be withheld in Licensor's sole discretion.

**10. NON-TRANSFER.** Licensee agrees that neither this License nor use of any or all parts of the materials provided in the Show shall be granted, assigned or permitted to any of Licensee's officers, employees, agents or assignees, or to other individuals or organizations, without Licensor's written approval, which may be withheld in Licensor's sole discretion.

**11. PUBLICITY.** In all advertising, posters, press releases, etc. which Licensee creates for the Show, the credit phrase "\_\_\_\_\_ " must be included. Licensee agrees not to imply or state that the Show was created, produced or distributed by any person, organization or party other than the Licensor. Phrases such as "\_\_\_\_\_ presents..." are acceptable in billing the programs. Biographical material (if provided) about the people involved in the production of the Show may be used in Licensee's publicity releases.

**12. LICENSEE'S OBLIGATIONS.** [this section to be tailored]

12.1 Licensee agrees to provide Licensor or its designee with a variety of data during the period the Show is available for viewing

at Licensee's [theater], as well as any period where it is a choice offered to a pre-booked group. This data will be collected in an online form and will be reported to Licensor on approximately a quarterly basis. The data requested will include public audience numbers and demographics and numbers of school children and other pre-booked groups who see the Show, how Licensee promoted the show, and how Licensee used and promoted the related products such as the web portal, social media, and toolkits for research purposes where possible. Such reports may not include or incorporate any personally identifiable information that could be used to identify any individual person. Licensee represents and warrants that all data and information contained in any such report is and shall be collected and shared in full compliance with all applicable laws and regulations, including without limitation those laws and regulations governing data privacy, information security, and consumer protection. Licensee agrees that as between the parties Licensor shall be the sole owner of all such reports and any proprietary interest embodied therein, and Licensee hereby assigns to Licensor all of its right, title, and interest in such reports.

12.2 A selected number of theaters will be asked to conduct surveys to obtain feedback on the Show. A select number of theatres may also be asked to encourage patrons to participate in longitudinal studies to explore impact and retention of Show information. If Licensee is asked to participate, this may involve providing patrons with a postcard (which may be via email) or other method for soliciting feedback.

12.3 Licensee agrees that all expenses incurred or related to the licensed installation, promotion and presentation of the Show shall be Licensee's sole responsibility.

12.4 Licensor will provide playback files to Licensee for purposes of preparing files for Licensee's presentation of the Show in Licensee's Venue. Other than creating a backup copy of the playback files, Licensee may not create or retain copies of any of the media provided by Licensor.

**13. TERMINATION.** This Agreement may be terminated upon the occurrence of a breach of any material terms of the Agreement, provided that the party claiming a breach has provided written notice to the other party and offered such party thirty (30) days from the date notice is given to cure such breach. If the breach is not cured, the Agreement shall terminate effective after such thirty (30) days following the date of initial notice of the breach (and this

Agreement may be terminated immediately in the case of a willful breach where Licensee refuses to desist). Upon termination, all licenses granted to Licensee shall automatically terminate, and Licensee shall immediately return all materials provided by Licensor to Licensor at Licensee's expense.

**14. \_\_\_\_\_ TERM.** Notwithstanding the Effective Date of this Agreement, the License granted herein for the Show commences \_\_\_\_\_, solely for Licensee's public performance of the Show for \_\_\_\_\_ months in Licensee's planetarium, and ends at midnight \_\_\_\_\_, unless otherwise terminated pursuant to Paragraph 13 above.

**15. LICENSE FEE.** A one-time licensing fee of Five Hundred dollars (\$500 US) (the "License Fee") shall be paid within thirty (30) days after Licensee's receipt of the Licensor's invoice and the presentable materials. The License Fee applies only to those Licensees requesting the planetarium show and resources to be mailed to them on a hard drive.

**16. BREACH.** Use of the Show for any purpose outside the scope of the license granted herein, without first obtaining Licensor's separate, written permission shall be a material breach of this Agreement.

**17. RECIPROCAL INDEMNIFICATION.** Licensor and Licensee each agree to accept full and exclusive responsibility for their own acts and those of their respective employees, agents and subordinates, and to indemnify, hold harmless from and reimburse the other for any liabilities, claims, demands, costs and expenses incident to any claim, loss, damage or injury of any kind, including attorney's fees and court costs incurred arising from a breach of their obligations under this Agreement; their performance under this Agreement, and their other respective acts and omissions.

**18. LIMITATION OF LIABILITY.** IN NO EVENT SHALL LICENSOR'S TOTAL CUMULATIVE AND AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS CONTRACT, INCLUDING THE PERFORMANCE OR BREACH THEREOF, UNDER ANY THEORY OF RECOVERY, EXCEED THE LICENSE FEE. IN NO EVENT SHALL EITHER PARTY, UNDER ANY CIRCUMSTANCES, UNDER ANY WARRANTY (EXPRESS, IMPLIED, OR STATUTORY) OR UNDER ANY THEORY OF LIABILITY (INCLUDING BUT NOT LIMITED TO TORT, NEGLIGENCE, STRICT LIABILITY, CONTRACT, OR OTHER LEGAL OR EQUITABLE THEORY) HAVE ANY LIABILITY TO THE OTHER PARTY OR THE OTHER PARTY'S AFFILIATES OR TO ANYONE ELSE FOR ANY PUNITIVE, SPECIAL, CONSEQUENTIAL AND/OR INCIDENTAL DAMAGES, LOST REVENUES OR PROFITS, OR ANY OTHER FORM OF ECONOMIC LOSS, WHETHER OR NOT FORESEEABLE, RESULTING FROM ANY BREACH OR PERFORMANCE OF THIS CONTRACT, INCLUDING WITHOUT LIMITATION ANY DEFICIENCY IN THE SHOW OR ANY INFORMATION, INSTRUCTIONS, SERVICES OR OTHER THINGS PROVIDED PURSUANT TO THIS CONTRACT.

**19. INDEPENDENT CONTRACTORS.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement creates any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the

parties, and neither party has authority to contract for or bind the other party in any manner whatsoever.

**20. AMENDMENTS.** This Agreement may be amended only in a written document signed by both parties.

**21. WAIVER.** No waiver by any party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the waiving party. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

**22. SEVERABILITY.** If any provision or portion of this Agreement or its application to any circumstance shall be found to be invalid or unenforceable, the remainder of this Agreement and its application to other circumstances shall nevertheless be valid. In place of such invalid and unenforceable provision, another provision as similar in terms to such invalid or unenforceable provision as may be possible, legal, valid and enforceable shall be added automatically.

**IN WITNESS WHEREOF,** the parties have executed this Agreement, effective on the Effective Date.

**LICENSOR:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**LICENSEE:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_