



PERFORMANCE LICENSE AGREEMENT

This Performance License Agreement (the “**Agreement**”), is made as of

the _____ day of _____, 20____,

to expire on the _____ day of _____, _____, (the “**Termination Date**”),

by and between Weber State University, a Utah public institution of higher education (“**University**”),

and _____, a _____ (“**Licensee**”).

University and Licensee are sometimes referred to individually as a “**Party**”
or collectively as the “**Parties**.”

BACKGROUND

A. University has obtained and owns certain rights with respect to a collection of copyrighted audio, visual, and textual materials used to create an audiovisual program to be known as:

_____ (the “**Show**”); and

B. Licensee desires to license the right to publicly perform the Show, according to the terms of this license.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, University and Licensee agree to the following terms and conditions:

1. Grant of License. University grants Licensee limited and non-exclusive rights to present the Show to public audiences. The Show may be performed as often as Licensee desires, and admission may be charged for the performances in whatever amounts Licensee chooses.

2. Payment. Licensee agrees to pay to University, for the Show, the sum of:

_____ US Dollars (\$ _____ . ____) (the “**Purchase Price**”).

The Show shall be delivered to Licensee upon receipt of the Purchase Price by University.

3. Performance Conditions. Licensee agrees that the Show must always be presented in its entirety. No audio material may be edited from the soundtrack. All the visuals provided in the Show (all-skies, panoramas, video, stills, etc.) must appear when and in the original form provided.

4. Synchronization Rights. University grants Licensee permission to synchronize certain visuals with those provided in the Show, such as pointer indicators, or those from the planetarium projector or its equivalent -- e.g., stars, planets, moon. University also grants permission to synchronize display of the text of the script using captioning or other text-display devices. Beyond this, Licensee agrees not to add or substitute visuals from other sources without first obtaining University's written approval. In addition, University grants Licensee permission to record and synchronize translated narration tracks with a narrationless soundtrack provided by the University, upon Licensee request for such purpose. Beyond those, Licensee agrees not to add or substitute audio material from other sources without first obtaining University's written approval.

5. Copies. University grants Licensee permission to copy only the materials necessary for producing the Show as an effective show presentation at Licensee's site. For example, copies of the visuals or the soundtrack may be made onto various media for playback and/or archiving. Beyond these production copies, 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, slide transfer or otherwise, without first obtaining University's written approval.

6. Copyright. The copyright law of the United States (Title 17, U.S. Code) governs the making of reproductions of copyrighted material without permission; certain international copyrights also apply. The Show contains materials which are copyrighted by University, and it may contain other materials which are used under strictly limited permissions from their respective copyright owners. Licensee and its employees agree to abide by all applicable copyright laws, and not to reproduce, recreate, duplicate or otherwise make unauthorized copies of copyrighted material, and to take all steps as reasonably necessary to prohibit others from doing the same.

7. Other Venues and Media. Licensee agrees that no portion of the Show will be used in any other program, or transferred to another medium, such as radio or television broadcast, cable or Internet, without first obtaining University's written approval.

8. Publicity. In all forms of advertising -- e.g., posters, press releases, public service announcements -- which Licensee creates for the Show, the credit phrase "*(Show Name) was created by The Ott Planetarium at Weber State University.*" must be included. Licensee agrees not to state or in any way suggest that the Show was created or produced by Licensee's staff or facility, nor that any of the organizations mentioned in the credit phrase are presenting the program at Licensee's facility. Phrases such as "*(Licensee Name) Presents an Ott Planetarium Production*" are acceptable in billing the program. Biographical and promotional material provided with the show about the people involved in the production may be used in publicity releases for the show, but it may not be altered to state or in any way suggest that any individual or the organizations in the above-mentioned credit phrase are endorsing, starring in, or making a personal appearance at Licensee's presentation.

9. Limited Warranty. University warrants the Show Program to be free from defects in materials and workmanship for ninety (90) days from the date of original purchase, provided that it is used as directed. Provided that all terms and conditions of this Limited Warranty are complied with, University will, at its option, either repair or replace any defective Show Program or refund the Purchase Price to Licensee.

This Limited Warranty applies to the Show Program only under normal use and does not cover any damage or defect caused by accident, misuse, abuse, or by an alteration, repair or attempted repair by anyone other than University. Any defective Show Program covered by this Limited Warranty should be returned to University at the address set forth in Section 14F.

This Limited Warranty may not be extended or modified except in writing by University.

EXCEPT AS SPECIFICALLY REQUIRED BY APPLICABLE LAW, THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, RELATING TO THE SHOW PROGRAM, AND UNIVERSITY SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. UNDER NO CIRCUMSTANCES SHALL UNIVERSITY OR ITS AUTHORIZED REPRESENTATIVES BE LIABLE FOR SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, REGARDLESS OF WHETHER UNIVERSITY HAS NOTICE OF THE POTENTIAL FOR SUCH LOSS OR DAMAGE. THE SOLE REMEDY WITH RESPECT TO ANY DEFECTIVE SHOW PROGRAM SHALL BE LIMITED TO REPLACEMENT OR REPAIR. ANY DAMAGES OF UNIVERSITY SHALL BE LIMITED TO THE PURCHASE PRICE.

10. Non-Transferability. Licensee agrees that neither this License nor use of any or all parts of the materials provided in the Show shall be transferred, conveyed, granted, assigned or sublicensed to any of Licensee's officers, employees, agents or assignees, or to other individuals or organizations, without first obtaining University's written approval.

11. Authority and Voluntariness. University and Licensee expressly represent and warrant that they each have the requisite power and authority to enter into and to perform the obligations under this Agreement, and have entered into this Agreement voluntarily and without compulsion.

12. Term. This License shall continue until the Termination Date indicated above, or until otherwise terminated according to the terms of this Agreement.

13. Breach. Use of the Show for any purpose outside the scope of this License without first obtaining University written permission shall be a breach of this License. In such event, or if Licensee fails in any of Licensee's obligations under this Agreement, this License shall automatically terminate, and Licensee shall promptly return all Show materials to University at the above-indicated address. If the termination is due to a breach or an unauthorized advertisement, broadcast, production or reproduction of the Show, University shall be entitled to all proceeds of any kind received by Licensee for such unauthorized use. In the event of any other breach by University or Licensee, the nonbreaching party shall give written notice of the breach to the other party. If the breach is not cured within thirty (30) days, or, if it cannot reasonably be cured within 30 days, or if cure is not commenced within thirty (30) days and diligently completed, the nonbreaching party shall have all remedies available at law, provided that remedies against University shall be limited as set forth in Section 9, and, in any event, the maximum liability of the University shall be limited to the Purchase Price.

14. Miscellaneous.

A. Applicable Law. This Agreement and the rights of the Parties shall be interpreted in accordance with the internal laws of the State of Utah, excluding conflict of laws provisions.

The Parties agree that the courts of the State of Utah shall have exclusive jurisdiction over matters relating to this Agreement and that venue is proper in the State of Utah.

B. Entire Agreement. This Agreement constitutes the entire agreement of the Parties relating to the License of the Show. Each Party acknowledges that no representation, promise or agreement has been made, orally or otherwise, by any other Party, or anyone acting on behalf of any other Party, unless such representation, promise or agreement is included in this Agreement.

C. Amendments and Waivers. This Agreement may not be amended and compliance with any provision of this Agreement may not be waived except in a writing signed by the Parties.

D. Third Party Beneficiaries. The obligations of each Party under this Agreement shall inure solely to the benefit of the other Party, and no other person or entity shall be a third party beneficiary of this Agreement.

E. Waiver. A failure to enforce any provision of this Agreement at any time shall not nullify University's right to enforce the same or any other provision in the future.

F. Notices. Any notice or other communication required or permitted to be made or given under this Agreement, shall be in writing and shall be deemed to have been received by the Party to whom it is addressed: (i) on the date indicated on the certified mail return receipt sent by certified mail return receipt requested; (ii) on the date actually received if hand delivered or transmitted by telefax (receipt of which is confirmed to sender); (iii) three business days after such notice was deposited in the United States Mail postage pre-paid; or (iv) one business day after such notice was delivered to an overnight delivery service, addressed, delivered or transmitted in each case as follows:

If to the University:

Ott Planetarium
Weber State University
2508 University Circle
Ogden, UT, 84408-2508

If to Licensee:

With a copy to:

Weber State University
Attention: Legal Counsel
1001 University Circle
Ogden, Utah 84408-1001

Facsimile No. (801) 626-7447

With a copy to:

SIGNATURES

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

UNIVERSITY:

By: _____

Its: _____

Printed Name: _____

Date: _____

License No. _____

LICENSEE:

By: _____

Its: _____

Printed Name: _____

Date: _____

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