

## VENUE AGREEMENT

THIS VENUE AGREEMENT (the "Agreement") is entered into and made effective **3 Nov 2023** (the "Effective Date") by and between MOODSWINGS, LLC whose address is 1691 E Mendocino Street, Altadena, CA 91001 (the "DISTRIBUTOR") and **Salt Lake County on Behalf of it's Clark Planetarium** whose address is **110 S 400 W Salt Lake City Utah 84101** (the "VENUE").

### RECITALS

A. WHEREAS, DISTRIBUTOR is in the business of presenting immersive audiovisual programs to the public (DISTRIBUTOR's "Shows" or "Events");

B. WHEREAS, VENUE has an appropriate venue and facilities for presenting DISTRIBUTOR's Events;

C. WHEREAS, DISTRIBUTOR wishes to use VENUE's facilities and the parties may also elect to associate with each other's programs through cross-marketing and promotion;

NOW, THEREFORE, in consideration of the above recitals and other good and valuable considerations, the parties agree as follows.

### AGREEMENT

1. USE OF FACILITY. The VENUE agrees to provide its facility named **Northrop Grumman IMAX** for DISTRIBUTOR's Events at such dates and times as may be scheduled by the parties and set forth in Exhibit "A" on the general terms and conditions set forth in Exhibit "C".

2. CAPACITY. Full capacity of VENUE is **288 sellable seats and 4 wheelchair spots**, which is not to be exceeded and which may be limited from time to time to Reduced Capacity.

3. COMPENSATION. On a monthly basis, DISTRIBUTOR will pay VENUE the total amount credited to VENUE with respect to its accumulated Associate Venue fee as set forth in more details below. Payment will be made by DISTRIBUTOR to VENUE within fifteen (15) days of receipt of invoice from VENUE for the month preceding.

(a) Per Seat Rental Fee. For each seat sold per scheduled block of time, COMPANY shall pay VENUE **\$5** per seat sold up to Full Capacity or Reduced Capacity as the case may be.

(b) Minimum Guarantee. For each block of time (3 scheduled consecutive screenings on one calendar day), should VENUE's total amount of revenue for seats sold fall below the amount of the Minimum Guarantee of **\$1,250** DISTRIBUTOR shall credit VENUE the Minimum Guarantee, provided the VENUE is operating at full seating capacity.

The Minimum Guarantee is intended to cover VENUE'S staff and electricity costs for the times set out in Exhibit A.

(c) Adjustments. The Minimum Guarantee may be adjusted by the parties in Exhibit "A" for scheduling outside the normal blocks of time.

4. MERCHANDISE SALES. DISTRIBUTOR shall have the option to sell its own merchandise at Events and shall retain the proceeds of such sales.

5. FOOD AND BEVERAGE. DISTRIBUTOR shall have the option to sell food and beverages in the foyer if VENUE allows the sale of food and beverages in its normal course of business. DISTRIBUTOR will provide reasonable notice when it intends to do so. When DISTRIBUTOR is not selling food and beverages VENUE is free to do so. In either case DISTRIBUTOR will respect VENUE's wishes regarding food and beverage consumption within the theater.

6. PARKING. If VENUE provides designated parking in its normal course of business and it is available, or can be reasonably made available, during scheduled Events, such designated parking will be made available to DISTRIBUTOR's attendees and team on the same terms as is normally provided by VENUE.

7. TERM. This Agreement shall commence as of the Effective Date and shall continue thereafter as renewed by the parties with newly scheduled blocks of time for Events until terminated by either party. Newly scheduled Events shall be set forth in an Addendum attached as Exhibit "A" (or substantially in the form thereof) to be supplemented from time to time as mutually agreed by the Parties. This Agreement may be terminated by either party upon sixty (60) days' written notice to the other party ("the Termination Period") with the proviso that the Termination Period will be automatically extended to include any Events already on sale to the public or private events for which tickets have already been sold.

8. RECITALS & ATTACHMENTS. The above cited Recitals and attached Exhibits A, B, C, and D are incorporated herein by this reference and made a part of this Agreement.

IN WITNESS WHEREOF, the parties execute this Agreement as of the day first written above.

**MOODSWINGS LLC, DBA MESMERICA**

Signature:

Dated:

Name/Title: Michael Daut, Director of Sales

**VENUE**

Signature:

Dated:

Name/Title: County Mayor or Designee

Reviewed and Advised as to Form and Legality:

**EXHIBIT "A"**

**ADDENDUM TO VENUE AGREEMENT**

**SCHEDULE OF EVENTS**

This Addendum makes specific reference to that certain Venue Agreement entered into between Moodswings, LLC (the "DISTRIBUTOR"), and **Salt Lake County on Behalf of its Clark Planetarium** (the "VENUE") as of **3 Nov 2023** . All of the terms and conditions of the Venue Agreement are incorporated herein by this reference.

The parties wish to supplement the Agreement by adding the following blocks of time for Distributor Events:

**Confirmed Dates**

- December 8, 2023, 7:00 pm 8:15 pm 9:30 pm
- December 15, 2023, 7:00 pm 8:15 pm 9:30 pm
- December 22, 2023, 7:00 pm 8:15 pm 9:30 pm
- December 29, 2023, 7:00 pm 8:15 pm 9:30 pm

**Held Dates**

- December 9, 2023, 7:00 pm 8:15 pm 9:30 pm
- December 16, 2023, 7:00 pm 8:15 pm 9:30 pm
- December 23, 2023, 7:00 pm 8:15 pm 9:30 pm
- December 30, 2023, 7:00 pm 8:15 pm 9:30 pm

**Schedule is subject to change and additional dates may be added by mutual written agreement between parties, by means of email, which will be deemed binding upon receipt.**

AGREED AND ACCEPTED

**MOODSWINGS LLC, DBA MESMERICA**

Signature:

Dated:

Name/Title: Michael Daut, Director of Sales

**VENUE**

Signature:

Dated:

Name/Title: County Mayor or Designee

Reviewed and Advised as to Form and Legality:

**EXHIBIT "B"**

**ASSOCIATE VENUE BENEFITS**

**1. Affiliate Link.** DISTRIBUTOR will credit VENUE Five Dollars (\$5 USD) per ticket sold using VENUE's own unique URL or QR code link via its unique controlled channels. Accordingly, VENUE may post the link only as follows unless otherwise approved: (i) to email and/or physical mailing lists; (ii) on Twitter, Facebook and/or Instagram and/or other social media platforms, other than on pages of advertisements controlled by DISTRIBUTOR; (iii) as electronic or print displays in-venue (Upon request, DISTRIBUTOR will provide custom-sized advertisement designs for in-Venue displays or print areas). It is understood and acknowledged that DISTRIBUTOR's paid advertising drives advertising to VENUE's website and, therefore, it is agreed that VENUE shall not post the above-described unique URL/QR link on its website. Nonetheless, VENUE may generally advertise DISTRIBUTOR's programs on its website and in-venue to generate increased interest in the Venue and Events.

**2. Merchandise Sales.** DISTRIBUTOR will at its own discretion sell selected VENUE merchandise items together with DISTRIBUTOR'S items and will credit 100% total gross amount from VENUE merchandise sales less credit card or other collection processing fees with VENUE's other monthly accumulated earnings.

**3. Attribution.** DISTRIBUTOR will add Venue "presents" or "in association with" Venue to its marketing materials. No inadvertent failure by DISTRIBUTOR to comply with the foregoing attribution provision shall constitute a breach of this agreement; however, in the event of such failure, DISTRIBUTOR shall exert reasonable efforts to prospectively cure such failure on materials prepared after DISTRIBUTOR's receipt of notice by VENUE of such failure.

**✓ (Check To Opt-In to Attribution 'presents' or;)**  
~~—(Check To Opt-In to Attribution 'in association with')~~

**4. Upgrades.** Should VENUE desire to discuss having DISTRIBUTOR provide facility upgrades for Event presentations in exchange for bookings, please contact your Sales Representative.

**VENUE**

Signature:

Dated:

Name/Title: County Mayor or Designee

Reviewed and Advised as to Form and Legality:

\_\_\_\_\_  
Deputy District Attorney  
Salt Lake County

## EXHIBIT "C"

### GENERAL TERMS AND CONDITIONS

1. **Use of Facility** DISTRIBUTOR shall have unfettered access to the Facility for the purpose of preparing and presenting Events in a commercially effective manner in accordance with its highest standards, provided that DISTRIBUTOR adheres to any additional terms and conditions that may be set forth below.
  - a. DISTRIBUTOR shall have additional access to the VENUE premises as may be reasonably needed for Event presentation, setup, check-in, merchandise sales and take down.
  - b. Property may be brought into the Facility by DISTRIBUTOR only through the entrances designated by VENUE's Event Manager.
  - c. Decorations, electrical connections and special lighting must be approved in advance by VENUE.
  - d. Smoking is not permitted inside the building. Information about the locations of designated smoking areas will be provided by VENUE to DISTRIBUTOR.
  - e. DISTRIBUTOR shall be responsible for obtaining all permits and licenses required for the Event. DISTRIBUTOR shall comply with all applicable federal, state and local laws, ordinances and regulations. DISTRIBUTOR will be responsible for all damages to buildings, equipment, exhibits, fixtures, and furniture arising out of its use of the Facility.
  - f. DISTRIBUTOR will hire a local Representative to serve as the on-site production manager and point-person for the Event. Should an Incident (any technical emergencies, personal injuries, or other urgent issues) occur during the Event, VENUE shall immediately inform DISTRIBUTOR's Representative, so that they may inform DISTRIBUTOR of all details related to the Incident. Representative will coordinate between VENUE and DISTRIBUTOR to resolve the Incident as expeditiously as possible.
  - g. DISTRIBUTOR will send VENUE instructions to create an account with DISTRIBUTOR's electronic payment provider in order that DISTRIBUTOR may pay fees directly into VENUE's bank account.
  - h. Use of the Facility includes, at a minimum, general lighting, heat, air conditioning, electricity and water.
  - i. VENUE will provide additional personnel, services, equipment and amenities as may be agreed upon, is foreseeably necessary and proper for Event presentation, or reasonably requested from time to time, which initially includes the following:
  - j. **Staff:** VENUE will have an Event Manager. VENUE will provide an on-site **Guest Experiences Team Supervisor, trained in basic technical operations and in possession of contact info for theater management staff, to operate** their IMAX system, who will perform all necessary system operations for the screenings and will be able to troubleshoot any technical issues that may arise. VENUE **Guest Experiences Team Supervisor** will be briefed by our team, and any replacement/stand-in operators need to be similarly briefed by our team before being deemed acceptable, to maintain our quality of service to attendees. In addition to a **Guest Experiences Team Supervisor**, VENUE will also provide additional staff to assist with ushering and crowd control, at the minimum: 1 member of staff for a VENUE with a capacity under 150 seats, and 2 members of staff for a VENUE with a capacity over 150 seats.
  - k. **Equipment and Spaces Provided:** VENUE to provide use of IMAX theater, lobby space to receive guests, a space to set up registration and merchandise tables, unlimited use of Wifi, and a space for guests to queue to enter the theater.
  - l. **Tables:** VENUE will provide two to three (8ft) tables to DISTRIBUTOR for check-in and merchandise staff, together with chairs and a wastebasket at a mutually agreed upon location.
  - m. **Health and Safety Standards:** VENUE will operate at the then-current health and safety standards and as may otherwise be requested from time-to-time by DISTRIBUTOR to meet its own independent risk assessment for COVID-19 or other similar threats to our audience including posting an appropriate disclaimer. DISTRIBUTOR retains the right to reduce VENUE's capacity according to its own risk assessments, rental fee to be adjusted pro-rata.
  - n. **Parking:** VENUE does not own or operate a parking facility. DISTRIBUTOR representatives may purchase 'all-day' validations to the adjacent parking garage at a cost of \$5.00 ea. Additionally, VENUE provides free limited validations to visitors, guests and contractors, reducing parking costs to \$1.00 for up to three hours of parking time.

- o. **Technical Specifications:** VENUE will cooperate with DISTRIBUTOR'S initial technical review as set forth in the attached Exhibit "D" Technical Review Rider and agrees to discuss and evaluate repairs or upgrades that may be requested from time-to-time by DISTRIBUTOR.
- p. **Improvements:** While it is understood that VENUE is responsible for technical maintenance of the Facility to present Events in accordance with DISTRIBUTOR'S highest standards, DISTRIBUTOR may agree from time to time to contribute funds for technical upgrades to improve the audience experience of Events at the Facility such as bulb changes, equipment repairs and system upgrades. While DISTRIBUTOR provides no such guarantee, VENUE may make such requests to DISTRIBUTOR's Sales Director and DISTRIBUTOR will give due consideration in light of all the circumstances. Any agreed upon terms and conditions for Improvements will be separately documented.

## **2. Advertising**

- a. All advertising materials describing the VENUE must be submitted to VENUE's Event Manager for approval at least one week prior to release or usage.
- b. Coverage of the Event by television or radio media must be pre-approved by VENUE's Event Manager.

## **3. Property**

- a. Neither VENUE nor its staff will be liable to DISTRIBUTOR's guests, agents or employees, for any loss or damage to their personal property, except as expressly indemnified herein.
- b. DISTRIBUTOR must make advance arrangements with VENUE's Event Manager before having any property delivered to the Facility.
- c. If VENUE agrees to store DISTRIBUTOR's property at the Facility between shows (e.g. merchandise or branding items), VENUE will use its best efforts to store the property safely, however DISTRIBUTOR will be responsible for insuring the property.
- d. Once DISTRIBUTOR has ceased running shows at VENUE, any property of DISTRIBUTOR or DISTRIBUTOR's guests, agents or employees remaining at the Facility past the reasonably agreed time for completion of DISTRIBUTOR's move-out may be deemed abandoned and disposed of by VENUE in any manner and at DISTRIBUTOR's cost.

## **4. Responsibilities of VENUE**

- a. Except for those matters unique to the presentation of DISTRIBUTOR's Events and for which DISTRIBUTOR has direct control, VENUE warrants and represents that: (i) it has all licenses, permits, authorizations and certificates required from each governmental authority, board, agency, guild or association properly having jurisdiction over the VENUE premises and operation of the Facility; (ii) it will adhere to all applicable health and safety standards in maintaining the Facility, will provide a safe environment for the Facility usage so that the Events, attendees, equipment and personal property are free and secure from adverse health, weather, fire, other hazards and potentially negative or unfavorable conditions, situations or events ("Adverse Conditions").
- b. Once a specific Event has concluded its exhibition at the VENUE, VENUE agrees to delete all copies of the Show on their computer systems unless DISTRIBUTOR and VENUE agree separately in writing to allow the VENUE to present the Show on a paid basis for private events hosted by the VENUE.

## **5. Indemnification**

- a. DISTRIBUTOR and VENUE agree to mutually indemnify, defend, and hold one-another, and their respective employees, agents, directors, officers, volunteers and representatives, harmless from, and be responsible for any and all claims, demands, suits, actions, proceedings, loss and damages of every kind and description, including attorneys' fees and litigation expenses, which may be brought or made against or incurred by either party on account of loss of or damage to any property, whether the Facility or any building, exhibits, furnishings, fixtures, or equipment owned by VENUE, or others, or for injuries to, or the death of any person, caused by, arising out of, or contributed to in whole or in part, by reason of any act or omission, breach of warranty or representation, professional error, fault, mistake, or negligence of the other party or their employees, agents, representatives, contractors, patrons, guests, visitors, licensees or invitees in connection with or incident to the Agreement.
- b. The parties warrant and represent that they each carry insurance in amounts sufficient to cover their respective indemnification obligations. Should both parties be subject to claims, demands, suits, actions or proceedings arising from or out of the same incident, then neither party shall be required to

undertake the defense of the other, but they shall still be subject to their respective indemnification obligations pending any final judicially determined judgment.

- c. DISTRIBUTOR's obligations under this Section shall not extend to any liability caused by the sole negligence of VENUE or its staff or VENUE's City or their employees.
- d. Under no circumstances will either party be liable to the other or any third party in contract, tort or otherwise, for any indirect, incidental, special, consequential, punitive, exemplary, or similar damages that result from the either party's performance or non-performance hereunder including but not limited to general loss of revenue, or lost profits whether or not such damage was foreseeable and whether or not such party has been advised of the possibility of such damages.

#### **6. Cancellations and Rescheduling**

- a. DISTRIBUTOR may cancel or move a scheduled event to another date at no charge no later than 14 days prior to the scheduled event. Should DISTRIBUTOR cancel within 14 days of an Event, DISTRIBUTOR shall owe VENUE the Minimum Guarantee, unless cancellation was due to an act of God beyond DISTRIBUTOR's reasonable control including but not limited to changing concerns over public safety due to the prevalent Covid-19 situation locally, or unless the Parties otherwise agree to reschedule.
- b. The parties acknowledge that the VENUE may be prevented from making the Facilities available to DISTRIBUTOR as scheduled by an act of God, fire, technical problems, labor difficulties or any other cause beyond the reasonable control of VENUE (excluding financial inability as stated in 'Utah Clause 2. Non-funding'). In such an event, the parties agree to cooperate to reschedule canceled shows. Should VENUE cancel or terminate an Event for any other reason within 30 days of the Event requiring seats already booked by the public to be refunded or moved, VENUE shall reimburse DISTRIBUTOR \$15 as liquidated damages per seat refunded or moved in respect of marketing costs already incurred by DISTRIBUTOR to sell those seats.
- c. Notwithstanding the foregoing, VENUE may ask DISTRIBUTOR to move a scheduled event no later than 30 days prior to the scheduled event should another rental opportunity present itself to the VENUE. In these instances of another rental opportunity requesting dates booked by DISTRIBUTOR, DISTRIBUTOR will have first right of refusal for these dates prior to rescheduling the event to another agreed time.

#### **7. No Assignment**

- a. DISTRIBUTOR's rights under this Agreement cannot be assigned, transferred or sublet, in whole or in part, without the prior written consent of VENUE, which VENUE may withhold in its sole and absolute discretion; provided, however, this paragraph is not intended to apply to DISTRIBUTOR's parent company or other entities created by or with DISTRIBUTOR for the operation of Events.

#### **8. Entire Agreement**

- a. This agreement shall constitute the entire agreement of the parties with respect to the subject matter hereof and shall be binding upon the parties and shall not be modified or waived except by an instrument in writing, signed by the parties. This agreement, its validity, construction, and legal effect shall be governed by the laws of the United States and specifically the laws applicable to agreements entered into and performed entirely within the State of Utah. Any controversy or claim arising out of or relating to this agreement, or the breach thereof, shall be subject to the jurisdiction of the courts in Salt Lake County, State of Utah, as mentioned in the **Additional Clause under "Utah Clause 1. Governing Law and Arbitration"**.
- b. No waiver by any party of any breach of any covenant or provision of this agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same, or any other covenant or provision. If any provisions of this agreement are held to be void or unenforceable, all other provisions hereof shall continue in full force and effect.
- c. This agreement, including any Exhibits or Addendums, may be signed in counterparts, and facsimile and/or electronic signatures shall be deemed original for all purposes.

## EXHIBIT "D"

### TECHNICAL REVIEW RIDER

We (the DISTRIBUTOR) will perform an initial remote technical review conference to determine if your (the VENUE'S) technical systems meet our standards. This will require engagement from your team and operators to supply us with

- Facility Maps
- Seating Charts
- Pictures of Venue
- Pictures of Technical Systems
- A zoom session and walkthrough of the venue

In order to deliver the highest quality audio and video experience for this show, it's important that we be able to perform an onsite investigation and verification process that includes

- A 2-4 Hour Site Inspection
- Playing Audio & Video Test Files
- Measurements such as SPL, Brightness, Contrast, Phase and Intelligibility
- Verification of all system components working correctly

We will deliver venue specific audio files that are both calibrated to your system's specific EQ and level optimization, as well as encoded with watermarking ID's. To facilitate this venue specific content fingerprinting process, our trained team of planetarium engineers will need to take acoustic measurements in the room. This involves

- A 1-2 Day site visit (scheduled on off days or evening hours)
- Patching our audio analysis preamp inline with your signal chain between the house audio server and sound system.
- This is an objectively safe process which is standard in every recording studio and professional theater worldwide.

We will provide ongoing technical support to ensure all shows run perfectly. To ensure this we require

- All show operators complete a training session (remote) with us prior to beginning the run of shows.
- All playback anomalies are reported to us immediately as they happen so we can help troubleshoot and inform our customer service teams.
- Periodic review of venue technical systems upon any change in system design, new show distribution, or periods of inactivity, with all processes subject to repeat as necessary.



## **CLARK PLANETARIUM / SALT LAKE COUNTY / UTAH - Additional clauses**

Utah Clause 1. Governing Law and Arbitration. This Agreement shall be governed by, subject to and interpreted in accordance with the laws of Utah, U.S.A. and any claim arising out of or relating to this Agreement shall be settled by arbitration in accordance with the Utah Arbitration Act.

Utah Clause 2. Non-Funding. Venue depends on an appropriation of funds to operate and maintain the Planetarium. If funds are not available beyond December 31 of any effective fiscal year of the Agreement, VENUE'S obligation for performance of the Agreement beyond that date shall be null and void. The Agreement shall create no obligation on the VENUE as to succeeding fiscal years and shall terminate and become null and void on the last day of the fiscal year for which funds were budgeted and appropriated. Said termination shall not be construed as a breach of the Agreement or any event of default under the Agreement and said termination shall be without penalty, whatsoever, and no right of action for damages or other relief shall accrue to the benefit of DISTRIBUTOR, its successors, or its assigns, as to the Agreement, or any portion thereof, which may terminate and become null and void. If funds are not appropriated for a succeeding fiscal year, Venue shall promptly notify DISTRIBUTOR of said non-funding and the termination of the Agreement, and in no event, later than thirty (30) days prior to the expiration of the fiscal year for which funds were appropriated.

Utah Clause 3. Confidentiality. Venue and DISTRIBUTOR shall use their best efforts to maintain the confidentiality of the provisions of this Agreement. DISTRIBUTOR shall use its best efforts to maintain the confidentiality of any confidential information concerning VENUE'S business obtained by DISTRIBUTOR pursuant hereto. However, DISTRIBUTOR acknowledges that VENUE is a governmental entity subject to the Utah Government Records Access and Management Act ("GRAMA"), UTAH CODE ANN. §§ 63G-2-101 to -901. As a result, VENUE is required to disclose certain information and materials to the public, upon request.