



COSM FACILITY LICENSE AGREEMENT

This Cosm Facility License Agreement dated as of January 31, 2023, is entered into by Cosm Inc., a Delaware corporation, having its principal office at 4143 Maple Ave Suite 400, Dallas, TX 75219 ("Licensor") and Salt Lake County on behalf of its Clark Planetarium ("Licensee") having an address at 110 South 400 West, Salt Lake City, UT 84101.

WHEREAS, Licensor owns and operates the Cosm Experience Center located at 770 Komas Drive, Salt Lake City, UT 84108; and

WHEREAS, Licensee desires to use the Cosm Experience Center, including the lobby, dome, shipping bay, and east and west parking lots located at 770 Komas Drive, Salt Lake City, UT 84108 (the "Event Space"), for the purpose of the Clark Planetarium Gala 2023 (the "Event").

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **EVENT SPACE:** Licensor hereby grants to Licensee a limited and revocable license (the "License") to use the Event Space for the Event, together with the right to use all other areas in and about the Cosm Experience Center which are used in common with others including, without limitation, the lobbies, elevators, stairways, rest rooms, delivery areas, and parking areas (collectively, the "Common Areas"). The License permits the Licensee to use the Event Space only for the Event on the Event Date (hereinafter defined) during the Event Hours (hereinafter defined), subject to, and upon all of the terms, covenants, and conditions contained in this Agreement. The License shall not, under any circumstances, be coupled with an interest in the Event Space or the Common Areas.

2. **EVENT DATE AND EVENT TIME.** The Event shall be held on May 6, 2023 (the "Event Date") between the hours of 2:00 PM MST and 12:00AM MST, which includes set up and take down time (the "Event Time"). Licensee, Licensee's Caterer, if any (hereinafter defined), and Licensee's other independent contractors, contracted vendors, and service providers retained by Licensee to provide services for the Event (collectively, "Licensee's Service Providers") shall not have access to the Event Space at any time other than during the Event Time, unless Licensee receives prior written authorization from Licensor.

3. **AUDIO/VISUAL DOME SERVICES.** Any operation of the Licensor's dome and related systems, technology and display of content in the Event Space using Licensor's technology shall be performed exclusively by Licensor as set forth in **Exhibit A**. For the avoidance of doubt, the parties agree that Licensor will have its employees present at the Event to operate Licensor's technology and systems as mutually agreed upon.

4. **FEES.** Licensee shall pay the fees to Licensor (collectively, the "Fees") as set forth in Exhibit A. If Licensee fails to pay any of the Fees, including the Service Fee in Exhibit A, by the applicable due dates set forth in this Agreement, and such failure continues for ten (10) days after Licensor gives Licensee notice of such failure, Licensor shall have the right to revoke the License and retain the full amount of the Security Deposit.

5. **SECURITY DEPOSIT.** Licensee shall pay a refundable security deposit in the amount of \$4,800.00 USD ("Security Deposit") due and payable to Licensor on or before May 1, 2023. Licensor shall refund the Security Deposit to Licensee within thirty (30) days after the Event Date; provided, however, all or a portion of the Security Deposit may be retained by Licensor pursuant to Section 5, Section 7, Section 17, and Section 19 set forth below. Subject to Licensor's rights to apply or retain all or any portion of the Security Deposit as set forth in this Agreement, the Security Deposit shall be returned to Licensee if the Event Space and the Common Areas are left in the same or similar condition as delivered to Licensee. If any repair and/or excessive cleaning is needed at the Event Space or the Common Areas by reason of the Event to bring the Event Space, the Common Areas, or both to the same or similar condition as delivered to Licensee: (i) the Security Deposit will be applied by Licensor to the costs of such repair and/or cleaning; (ii) any portion of the Security Deposit in excess shall be returned to Licensee; and (iii) if the Security Deposit is insufficient to reimburse Licensor for such costs, Licensee shall be responsible for any deficiency, which shall be payable to Licensor within thirty (30) days after Licensee's receipt of written demand for same.

6. **ALCOHOLIC BEVERAGES.** Any alcohol must be provided by Licensee's Caterer and its use and distribution must follow applicable local and state liquor laws and requirements.

7. **LICENSEE'S CATERING.** If Licensee is using its own caterer ("Licensee's Caterer") for the Event, Licensee shall provide its caterer's information to Licensor in advance of the Event. Licensee's Caterer must clean the Event Space, and all service areas within the Event Time, leaving it in the same condition and working order as at the start of Event set up. Licensee's Caterer must remove all trash, composting, and recyclables from the Event Space and service areas. Failure to remove or clean the Event Space and service areas will result in additional fees being charged to Licensee.

8. **INSURANCE:**

- A. Licensee warrants and represents that it shall maintain or cause to be maintained for the duration of the term of this Agreement, insurance that meets or exceeds the types and limits noted herein for claims, damages and demands including legal defense costs and fees which may arise from or in connection with this Agreement. The insurance limits noted herein may be met in conjunction with an Umbrella or Excess liability policy:
- B. Commercial General Liability insurance with coverage including, without limitation, bodily injury, property damage, personal injury, advertising injury, contractual liability, independent contractors, premises/operations and products/completed operations with limits of not less than \$1,000,000 each occurrence and \$1,000,000 in the aggregate.

- C. Automobile Liability insurance covering all owned, non-owned and hired vehicles with a combined single limit for bodily injury and property damage of not less than \$1,000,000 per accident.
 - D. Workers' Compensation insurance covering all personnel employed directly by Licensee or by way of a contract from any payroll service utilized by Licensee in compliance with appropriate federal and state laws, and Employers' Liability Insurance with limits of not less than \$1,000,000 per person and \$1,000,000 per accident or disease in the relevant jurisdiction.
 - E. Errors & Omissions/Media/Professional Liability insurance with coverage including, without limitation, claims or occurrences related to or arising from infringement or misappropriation of any intellectual property, copyright, trademarks, trade secrets, know-how and other present and future property and/or proprietary rights of a similar nature; breach of contract and unauthorized use of materials, defamation, plagiarism, piracy, unfair competition, rights of publicity or privacy or false advertising; errors, omissions, or negligent acts in the performance or failure to perform professional services. Limits of liability to be at least \$1,000,000 per occurrence/claim and \$5,000,000 in the aggregate. If alcohol is served, the policy shall also include host liquor liability coverage
 - F. All above insurance shall: (i) name Cosm Inc., its parents, subsidiaries, affiliated companies, officers, directors and employees as Additional Insureds (except for Workers' Compensation insurance); (ii) include a Waiver of Subrogation in favor of Cosm Inc., its parents, subsidiaries, affiliated companies, officers, directors and employees; (iii) be primary, not contributory, and not in excess of any other valid or collectible insurance carried by Cosm Inc., its parents, subsidiaries, affiliated companies, officers, directors and employees; (iv) not include an exclusion for "Cross Liability" or "Severability of Interests;" (v) be placed with companies lawfully authorized to transact business in the jurisdiction in which the services are rendered and maintain during the policy term with a current Best's rating of not less than A- VII; (vi) include coverage for liability assumed under this Agreement as an "Insured contract" for the performance of Licensee's indemnity obligations under this Agreement. The limits of said insurance required by this agreement or as carried by Licensee shall not limit the liability of Licensee nor relieve Licensee of any obligation hereunder.
 - G. Licensee is self-insured for liability claims including general, malpractice, auto, workers' compensation, director's and officers' liability and employer's liability. Licensee will provide limits up to 1 million dollars per occurrence for general liability as required by the agreement. Notwithstanding any requirement, term, or condition of this agreement with respect to which have been provided, the self-insured limits agreed to above are subject to all the terms, exclusions, and conditions of such policies and to the provisions of the Governmental Immunity Act of Utah.
- (b) The Additional Insured section should read as follows: Cosm Inc., Evans & Sutherland Computer Corporation, their parents, divisions, subsidiaries, affiliated companies, officers, directors, and employees are included as Additional Insureds.
- (c) Certificates of insurance evidencing all the required insurance, including points b(i), b(ii), and b(iii) above, shall be executed by a duly authorized representative of the insurer(s) and submitted to Licensor prior to commencement of the Term if requested by Licensor.

9. **INDEMNIFICATION:** Licensee hereby agrees to indemnify, defend, and hold harmless Licensor, its officers, directors, employees, and agents, from any and all damages, liabilities, actions, suits, claims, costs (including reasonable attorneys' fees), penalties, or expenses arising out of or in connection with, in whole or in part, directly or indirectly: (a) the occupancy or use of the Event Space, the Common Areas, sidewalks, and other appurtenances to the Event Space, by Licensee, Licensee's Caterer (if any), Licensee's Service Providers (if any), or any other invitee of the Event; (b) any acts, errors, or omissions on the part of Licensee, its officers, directors, employees, or agents, including, without limitation, Licensee's Caterer (if any) or any of Licensee's Service Providers; or (c) as a result of Licensee's alleged or actual infringement of any third party's proprietary rights. This Section 8 shall survive termination of this Agreement.

10. **LIMITATION OF LIABILITY.**

UNDER NO CIRCUMSTANCES IS LICENSOR LIABLE FOR LOST PROFITS OR OTHER INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR OTHER EXEMPLARY DAMAGES FOR ANY OF THEIR ACTS OR OMISSIONS IN CONNECTION WITH THE EVENT, WHETHER OR NOT LICENSOR HAS BEEN APPRISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOST PROFITS. IN NO EVENT WILL LICENSOR'S LIABILITY HEREUNDER, OR OTHERWISE IN CONNECTION WITH THE EVENT, EXCEED THE AMOUNT ACTUALLY PAID TO IT BY LICENSEE FOR THE EVENT.

LICENSOR IS NOT LIABLE TO LICENSEE FOR ANY DAMAGE, LOSS, HARM, OR INJURY TO THE PERSON, PROPERTY, OR BUSINESS OF LICENSEE, OR ANY OF ITS VISITORS, OFFICERS, AGENTS, EMPLOYEES, OR OTHER REPRESENTATIVES, RESULTING FROM THEFT, FIRE, EARTHQUAKE, WATER, UNAVAILABILITY OF THE EVENT SPACE OR INTERMEDIATE STAGING FACILITIES, INSUFFICIENT PARTICIPATION, ACCIDENT, OR ANY OTHER REASON IN CONNECTION WITH THE EVENT OR ANY PLANNING MEETINGS, DEMONSTRATIONS, OR STAGING, EXCEPT TO THE EXTENT SUCH LIABILITY ARISES DIRECTLY FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LICENSOR.

11. **"AS-IS" CONDITION.** Licensee agrees to accept the Event Space in its "as-is" condition "with all faults".

12. **CONFIDENTIALITY.**

- A. Definitions and Primary Obligations. During and after the Event Date, each party receiving Confidential Information (as defined below) (the "Receiving Party") from the other party (the "Disclosing Party") may use such Confidential Information solely for the purpose or the performance of its obligations or exercise of its rights hereunder, and may not disclose such Confidential Information to any third party. "Confidential Information" means all information disclosed by one party to the other party hereunder during the term of this Agreement to the extent that either: (i) if tangible, the information is marked as confidential or with similar marking at the time of disclosure, or (ii) if, considering the nature of the information and circumstances of its disclosure, a reasonable person would understand it to be confidential. All non-public information regarding the Services, Licensor's business and technology development plans, and all know-how or other proprietary information of Licensor are the Confidential Information of Licensor. Notwithstanding the foregoing,

“Confidential Information” shall not include any information to the extent: (A) it is or becomes generally known to the public through no fault of, or breach of this Agreement by, the Receiving Party; (B) it is rightfully in the Receiving Party’s possession at the time of disclosure without an obligation of confidentiality; (C) it is independently developed by the Receiving Party without use of the Disclosing Party’s Confidential Information; or (D) it is rightfully obtained by the Receiving Party from a third party without restriction on use or disclosure.

- B. Protection. The Receiving Party will only disclose Confidential Information of the Disclosing Party to its employees and contractor personnel on a need-to-know basis and only to the extent such personnel are bound by confidentiality obligations substantially similar to those set forth in this Agreement; provided that, all acts and omissions of such personnel shall be deemed to be acts and omissions of the Receiving Party, which shall be liable and responsible therefor. The Receiving Party will protect the Confidential Information of Disclosing Party using the same degree of care that it uses to protect its own confidential information of a like nature, but no less than a reasonable degree of care.
- C. Return of Confidential Information. Except (i) as otherwise specifically provided in this Agreement, (ii) as reasonably necessary to exercise any of its rights or perform any of its obligations hereunder which survive termination, (iii) for one copy retained solely for records/compliance purposes, and (iv) for backup or similar copies in its computer systems (subject to its normal retention and destruction processes therefor), upon the termination of this Agreement, the Receiving Party will promptly return to the Disclosing Party, or destroy, the Disclosing Party’s Confidential Information.
- D. Permitted Disclosure. The above non-disclosure obligations shall not prohibit the Receiving Party from disclosing Confidential Information of the Disclosing Party to the extent it is required to do so by applicable law or regulation, or a valid order of a court or other governmental body having jurisdiction; provided that the Receiving Party gives the Disclosing Party reasonable prior written notice of such disclosure, to the extent permitted by applicable law and regulation and otherwise practicable, and uses reasonable efforts to obtain, or to assist the Disclosing Party in obtaining, a protective order limiting further disclosure or requiring that the Confidential Information so disclosed be used only for the purposes for which the law or regulation required, or for which the order was issued.
- E. Feedback. Notwithstanding the above or anything to the contrary herein, to the extent that Licensee at any time provides Licensor with any feedback or suggestions regarding the Services, including potential improvements or changes thereto (collectively, “Feedback”), the Feedback shall not be considered Confidential Information of Licensee, and Licensor shall be free to use, disclose, and otherwise exploit in any manner, the Feedback for any purpose.

13. **RELEASE**. Licensee acknowledges that the Event may be recorded and reproduced in any form (including but not limited to digital formats), and hereby authorizes Licensor and its designees to record, transcribe, modify, reproduce, publicly perform, display, distribute, redistribute, and transmit in any form and for any purpose any such recording of the Event, and agrees to execute any additional release presented by Licensor, its licensees, or permittees, in connection with such activity or to give effect to this provision. Licensee hereby releases Licensor and its designees from and waives all claims it or its

employees or agents may possess, now or in the future, in connection with such activities, and specifically waives any statutory restriction on waivers of future claims or moral rights. Licensee for itself and on behalf of its employees and agents (a) grants to Licensor the unconditional right to film, photograph and record the likeness, appearance, voice, photos and video of the Event and each of its employees and representatives at the Event, and (b) unconditionally consents to Licensor's use, alteration and reproduction of all such filmed, photographed and recorded items for publicity purposes in all media, as Licensor considers appropriate in its sole discretion.

14. COVID-19 ACKNOWLEDGEMENT. Licensee acknowledges that an inherent risk of exposure to COVID-19 exists in any public place where people are present. COVID-19 is an extremely contagious disease that can lead to severe illness and death. Licensee hereby expressly waives any rights against, releases, holds harmless, and shall defend and indemnify Licensor, its officers, directors, employees, and agents, from any and all damages, liabilities, actions, suits, claims, costs (including reasonable attorneys' fees), penalties, or expenses arising out of or in connection with any illness, injury, or death associated with infection of COVID-19 or complications, symptoms, or other effects resulting from contracting COVID-19. Licensee shall not remove, cover, or otherwise obstruct any posted signage in the Event Space related to COVID-19 during the Event.

15. COMPLIANCE WITH LAWS. Licensee shall, and shall cause the Licensee's Caterer and the Licensee's Service Providers to, comply with all applicable laws and obtain any and all required permits and licenses necessary to use the Event Space. Licensee shall not, and shall not permit the Licensee's Caterer or the Licensee's Service Providers to, use the Event Space in any manner that would violate local, state, or federal laws or regulations related to Licensee's use of the Event Space.

16. ASSIGNMENT. This Agreement may not be assigned by Licensee without the prior written consent of Licensor.

17. REVOCATION OF LICENSE: Licensor's right of revocation shall be limited to the following events: (a) nonpayment of Fees by the applicable due dates; (b) breach of this Agreement by Licensee; or (c) the Event is of a nature that Licensor finds subjectively inappropriate. If Licensor revokes the Agreement because of any of the conditions in this section, Licensor shall retain all amounts paid to Licensor as liquidated damages and not as a penalty.

18. NON-EXCLUSIVE USE: Licensor shall have the right to use or permit the use of any portion of the Licensor's property not granted to the Licensee under this agreement to any person, firm, or entity regardless of the nature of the use of such other space.

- A. The Licensee understands that the Licensor will make available for use by others, such portions and areas that are not subject to this agreement. Licensee agrees to cooperate in good faith with the Licensor and with those persons using other portions and areas of Licensor's property, especially during periods of ingress and egress in order to make mutual use of Licensor's property harmonious and agreeable.
- B. The Licensee agrees not to cause interference with the orderly functioning of Licensor or its business operations.

19. **RESTORATION:** If any damage occurs to the Event Space, or if any repairs or replacements need to be made to the Event Space as a result of Licensee's exercise of its rights under this License, Licensee shall pay Licensor for any such damage, repairs, or replacements upon demand by Licensor.

20. **CANCELLATION:** Licensee may cancel this Agreement at any time up to 30 days prior to the Event Date by providing written notice of such election to Licensor, at no cost to Licensee. If Licensee shall elect to so cancel this Agreement 5 days or less prior to the Event Date, Licensee will be charged 50% of the License Fee and any expenses incurred in good faith by Licensor in preparation for Licensee's use of the Event Space.

21. **GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah. Any legal actions, claims or demands shall be handled in a court of competent jurisdiction within the State of Utah.

22. **SPONSORSHIP:** The Licensee shall not use the Cosm, Spitz, or Evans & Sutherland name or logo as sponsor of the group's activities without the express written permission of the Licensor. The Licensee may use the Cosm or Evans & Sutherland name to identify the location of the event.

23. **ENDORSEMENT:** Use of the Licensor's facilities does not imply endorsement of any particular activity or person by Licensor.

24. **FORCE MAJEURE:**

- A. "**Force Majeure Event**" means any of the following events: (i) acts of God; (ii) floods, fires, earthquakes, explosions, or other natural disasters; (iii) war, invasions, hostilities (whether war is declared or not), terrorist threats or acts, riots or other civil unrest; (iv) governmental authority, proclamations, orders, laws, actions, or requests; (v) embargoes or blockades; (vi) epidemics, pandemics, or other national or regional public health emergencies; (vii) strikes, labor stoppages or slowdowns, or other industrial disturbances; (viii) shortages of supplies, adequate power, or transportation facilities; and (ix) other events beyond the control of Licensor.
- B. In the event Licensor is unable, on or after the occurrence of a Force Majeure Event, to make the Event Space available to Licensee on the Event Date for the purpose set forth in this Agreement, Licensee shall have the option of choosing an alternate date to hold the Event (the "**Alternate Event Date**"), at no extra charge to Licensee. If Licensee chooses an Alternate Event Date that is reasonably acceptable to Licensor, then the Alternate Event Date shall replace the Event Date for the purposes of this Agreement, and all rights and obligations under this Agreement shall remain binding on the parties hereto. If: (a) Licensee does not elect to choose an Alternate Event Date; or (b) Licensor and Licensee cannot agree on an Alternate Event Date within 30 days of the original Event Date, this Agreement shall terminate and Licensor shall within a reasonable time after the termination of this Agreement, refund the any portion of the Fees received by Licensor from Licensee hereunder. In neither instance shall Licensor be liable for any additional costs, expenses, or damages suffered by Licensee (over and above the Fees) arising out of the rescheduling or cancellation of the Event pursuant to this section.

25. **WAIVER OF CLAIMS:** The Licensee is responsible to safeguard display booths, advertising material, goods held for display or sale, and all other property owned or used by Licensee, or any of its exhibitors, or invitees. The Licensee hereby releases Licensor and waives all claims for damages, loss of profits, or other compensation, unless such damage results in loss from the gross negligence or willful misconduct of Licensor.

26. **SIGNAGE AND DÉCOR:** No signage and décor will be affixed to Licensor’s facilities with nails, screws, staple guns, or adhesives. All banners, signs, and decorations can only be mounted, hung, or attached in such a way as to not cause any residual damage and must be removed immediately following the Event. If any repairs need to be made to the Event Space as a result of Licensee's noncompliance to this term, Licensee shall pay Licensor for any such damage, repairs, or replacements upon demand by Licensor.

27. **COUNTERPARTS.** This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

28. **SEVERABILITY.** If any one or more parts of this Agreement shall be held unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect. If any provision of this Agreement is deemed invalid or unenforceable by any court of competent jurisdiction, and if limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.

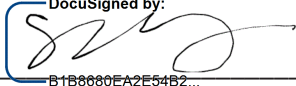
29. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between Licensor and Licensee, and supersedes any prior understanding or representation of any kind preceding the date of this Agreement. There are no other promises, conditions, understandings, or other agreements, whether oral or written, relating to the subject matter of this Agreement

Salt Lake County
By: **Katherine Fife**
Digitally signed by Katherine Fife
Date: 2023.03.24 17:26:10 -06'00'
Signature

Name: Katherine Fife

Title: Mayor or Designee

Address: 110 South 400 West, Salt Lake City, UT 84101

COSM INC.
By: 
DocuSigned by: 81B8880EA2E54B2...
Signature

Name: Sheli Reynolds

Title: COO

Address: 4143 Maple Ave Dallas, TX 75219

Reviewed and Advised as to Form and Legality:

Craig J. Wangsgard
Digitally signed by Craig J. Wangsgard
Date: 2023.02.28 10:09:30 -07'00'
Deputy District Attorney
Salt Lake County

EXHIBIT A

EVENT DETAILS

1. **Services:** Licensor will perform the services in support of the Event as described below:
 - a. Technical and creative support related to the lobby screen and dome content
 - b. Support related to the audio-visual equipment (e.g., microphones, speakers, DJ hook up)
 - c. Lobby screen and dome screen operation
 - d. In order for the Services to be provided adequately, Licensee must submit any material it requires to be displayed on Licensor's dome no less than 20 days prior to the Event Date.

2. **Fees:**
 - a. Licensor is waiving the standard rental fee, valued at \$20,000.00, as an in-kind offering to Licensee.
 - b. Licensor's rate for the services listed in Section 1(a) of this Exhibit A is \$350.00 per hour for all services utilizing Unreal Engine, the gaming platform and engine and for building content beyond the standard content available in the system.
 - c. Fees for the services listed in Section 1(b) and (c) of this Exhibit A are included at no charge to Licensee. Licensor will invoice upon completion of the Services.
 - d. Licensor shall charge Licensee a flat fee of \$250.00 for cleaning during and after the Event.

3. **Licensee Responsibilities.** Licensee shall be responsible for all costs and expenses associated with any catering or other support services, food and beverage, furniture rental, or decorations hired, rented, or purchased by Licensee for the Event.

4. **Third Party Proprietary Rights.** Licensee hereby represents and warrants to Licensor that it will not violate any proprietary rights of third parties in connection with its participation in the Event, including but not limited to the performance, distribution, or posting of copyrighted material without a license, assignment, or other legally effective permission.

5. **Warranty.** The Licensee represents and warrants that it is solely responsible for obtaining and paying for any copyright authorization/licenses to utilize copyrighted live or recorded music, dramatic, or other works it submits for use during the Event.