



Serving UT, ID, NV, WY

Office: 801.779.3030

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localcrew@upstagecrews.com

UPSTAGE CREW SERVICES, INC.

DBA-UPSTAGE RENTALS

TERMS & CONDITIONS

Sales Contract

1. General

Upstage Crew Services, Inc. ("Upstage" "Upstage Rentals" or "Seller"), among other services, sells professional audio, video and lighting systems for use in arenas, stadiums, theaters and for other event venues. This Sales Contract (the "Agreement") establishes the terms, warranties and obligations of the parties to this Agreement, which are Upstage and Peery's Egyptian Theater as the "Buyer." Buyer and Seller are herein collectively referred to as the "Parties."

2. Upstage's Obligations:

- a. In exchange for Buyer's payment as outlined below, Upstage agrees to deliver to Buyer the Equipment specified in Buyer's Purchase Order(s) attached hereto as Exhibit A. The price(s) for the Equipment are set forth in Buyer's Purchase Order(s) and in Upstage's Bid or Proposal attached hereto in Exhibit B.
- b. Upstage represents that it is an authorized reseller for the Equipment set forth in Exhibit A and that all Equipment provided by Upstage is new (unless otherwise specified and accepted by Buyer) and eligible for the manufacturer's warranties, if any subject to proper installation, use and maintenance of the Equipment by Buyer. For a period of up to one year (or if the manufacturer's warranty is less than one year, for the duration of that warranty) following the delivery of the Equipment to Buyer, Upstage will replace any equipment that is determined to have manufacturing or other defects that are covered by the manufacturer's warranty. Upstage shall exercise Buyer's warranty to obtain credit or replacement product directly from the manufacturer. This service is designed to facilitate prompt replacement of the defective product in the first year after Buyer takes delivery of the Equipment, or, in the event the manufacturer's warranty is less than one year then for the duration of that warranty. Thereafter, and assuming the manufacturer's warranty exceeds one year, Buyer shall be responsible to pursue any and all warranty claims directly with the manufacturer(s). Nothing herein may be construed to alter, extend, modify or exceed the warranties provided by the manufacturers of the Equipment. Moreover, any damage, defects or malfunction to the Equipment caused by misuse, abuse, improper installation, overuse or neglect may negate the manufacturer's warranty and nothing herein may be construed to modify, extend or expand the manufacturer's warranties to cover damage, defects or malfunction to the equipment caused by misuse, abuse, improper installation, overuse or neglect by Buyer or Buyer's agents, employees or customers.
- c. In the event Buyer engages Upstage to install the Equipment, Upstage's obligations and warranties with respect to that installation work shall be governed by a separate labor and



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services contract, which labor and services contract shall exclusively govern the Parties' relationship as to the installation services provided by Upstage.

- d. Unless Upstage provided design services to Buyer and recommended specific equipment for Buyer's needs, nothing herein may be construed to create any warranty, covenant or representation by Upstage that the Equipment is suitable or fit for any specific or intended purpose or use by Buyer. Upstage expressly disavows any warranties, promises, representations or covenants regarding the fitness or suitability of the Equipment for Buyer's intended or actual use of the Equipment.
- e. Upstage also makes the following representations and warranties regarding its Equipment: **Compliant with Applicable Laws.** Upstage will provide the Equipment consistent with applicable laws and regulations if any apply; **Licenses and Permits.** To the extent required by law, Upstage will maintain all licenses and permits necessary to provide the Equipment set forth in this Agreement; **No Other Warranties.** Upstage makes no warranty or representations regarding its Equipment not otherwise specified herein. Upstage expressly disclaims, without limitation, any warranty or representation as to: (i) the description, condition, design, quality or performance of the Equipment; (ii) the merchantability or fitness or suitability of the Equipment for a particular use or purpose whether or not disclosed to Upstage; and (iii) delivery of the Equipment free of the rightful claim of any person by way of infringement (including, but not limited to, patent or copyright infringement) or the like. All Equipment provided under this Agreement is provided on an "as is" basis, subject only to manufacturer's warranties and Upstage's agreement to facilitate warranty replacement during the first year of the warranty period or for the warranty period if such is less than one year. Upstage makes no warranty or representation regarding the fitness for a particular purpose of any Equipment provided under this Agreement. Upstage is not a guarantor with respect to the Equipment it provides pursuant to this Agreement. The implied warranties of merchantability and fitness for a particular purpose are hereby waived by Buyer.

3. Buyer's Obligations:

- a. Upon delivery of the Equipment or earlier or later, as set forth in the documents attached hereto as Exhibit A, Buyer agrees to pay in full the amounts specified in Upstage's bid or Proposal set forth in Exhibit A and any subsequent invoices issued by Upstage that are consistent with authorized change orders or subsequent purchase orders issued by Buyer and accepted by Upstage. Payment shall be made by check or other form(s) agreed to and accepted by Upstage in its sole discretion. Unless otherwise specified in Exhibit A, payment is due upon receipt and delivery of the Equipment to Buyer.
- b. In the event a discrepancy in price is found in Buyer's Purchase Order (s) when compared with the prices set forth in Upstage's bids, proposals or invoices, the Parties agree that the pricing set forth in Upstage's bids or proposals shall rule and govern the terms of this Agreement unless said discrepancies in Upstage's bids or proposals are the result of mistake or clerical error. This Agreement may not be modified orally or by email from the Buyer (absent Upstage's direct and affirmative acceptance of the terms set forth in the email). If Buyer, its employees, agents or representatives request additional equipment not specified herein Buyer agrees that Upstage's bids or proposals and the prices reflected therein (as attached hereto as Exhibit A) will not apply to or govern Buyer's subsequent equipment purchases. Additionally, Upstage's pricing is based on the quantities ordered by Buyer and the timing of Buyer's purchase and payment. Therefore, any reduction to those quantities or delay in ordering by Buyer shall entitle Upstage to modify its



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pricing in the event Upstage is unable to acquire the Equipment at the same pricing due to the reduction in quantities by the Buyer or Buyer's delays.

- c. Buyer agrees and acknowledges that it is solely and exclusively responsible for the suitability or unsuitability of the Equipment for its intended or actual purposes or intended or actual uses and that Buyer specified the Equipment in the Purchase Order (s) and/or Request for Proposal(s) based on Buyer's reliance on designers, planners, architects, sound engineers or other employees or third parties. Buyer expressly waives implied warranties of merchantability and fitness for a particular purpose. If Buyer is dissatisfied with the performance of any Equipment provided under this Agreement Buyer shall notify Upstage as soon as possible.
- d. All accounts are due and payable at the address shown on Upstage's invoice(s). Credit or open account terms and availability shall be at the sole discretion of Upstage and may be terminated and/or changed at any time by Upstage. Upstage specifically reserves the right to require payment in cash for any job order, shipment or delivery should Upstage so determine such form of payment is required in its sole discretion. No payment by offset is permitted unless approved by Upstage. Buyer agrees to pay interest on all past due amounts at a rate of 2% each month (compounded monthly) (24% APR) but not to exceed the highest rate lawfully allowed under the laws of the State of Utah. Acceptance of any payment from Buyer without the accrued interest included shall not be deemed to be a waiver of such accrued interest. In the event Upstage provides open credit terms (for example Net 30), interest will not accrue if the balance is paid in full within the terms provided. In the event Buyer fails to pay any invoice in full within the terms provided by Upstage, interest will be calculated and accrue from the date of the invoice forward and will continue to accrue until the invoice is paid in full.
- e. Buyer agrees to pay all costs of collection, including attorney's fees, associated with Upstage's efforts to secure payment for the Equipment. In the event Buyer's payment by check is returned for non-sufficient funds (NSF) or is otherwise rejected by Buyer's bank or credit union, Buyer agrees to pay all remedies provided for under Utah law, including but not limited to bounced check fees and treble damages. Buyer acknowledges that collection efforts by legal counsel of Upstage's choice may require Upstage to agree to pay as an attorney's fee, a contingent fee rather than an hourly rate. Buyer agrees that the attorney's fees Upstage is entitled to collect under this Agreement shall be defined by the actual terms of engagement agreed to between Upstage and its chosen legal counsel.
- f. Buyer makes the following representations and warranties to Upstage: **Licenses, Permits, and Approvals**. Buyer shall obtain, maintain, and comply with all licenses, permits and approvals from any governmental authority that may be required to install, implement or operate the Equipment and to enable Upstage to deliver all Equipment provided pursuant to this Agreement;



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4. Delivery Terms

Acknowledged delivery dates are approximate only and based, in part, on prompt receipt of all necessary information from Buyer and deposits or up-front payments where required by Upstage. Upstage shall not be liable for delays, short calls, event delays, or shipping delays whether or not resulting from causes beyond its control, including, without limitation, failure by Buyer to sign paperwork, issue purchase orders, pay deposits as required by Upstage, changes to event order, force majeure, fire, labor difficulties, pandemics or delays in Upstage's usual sources of supply. Shipping dates are subject to delays resulting from preference ratings or priority shipments ordered or requested by the United States government or any department, commission or agent thereof, and Upstage shall not be liable for any such delays. Upstage is also not liable for any consequential damages of any kind or nature whatsoever caused by delays in delivery of the Equipment, defects or failures of the Equipment, the unsuitability of the Equipment for Buyer's needs or any delays to opening or events regardless of the cause and even in the event Upstage is solely or partially responsible for said delays.

5. Limit of Liability

Following completion of this Agreement and payment in full by Buyer, Upstage shall promptly return to BUYER any unused portion of any deposits not otherwise applied to the purchase price of the Equipment.

6. Indemnification and Hold Harmless

Other than claims based on Upstage's negligence or injuries/damage due to defective products, in no event shall Upstage and Upstage's affiliated entities, officers, directors, employees, agents and independent professional consultants, and any of them, be liable to Buyer and/or anyone claiming by, through or under Buyer, including Buyer's insurers, for any loss, delayed or diminished profits, revenues, or opportunities; or any other incidental, punitive, resultant, special, indirect, or consequential damages of any kind or nature whatsoever resulting from Upstage's performance or failure to perform services pursuant to any agreement.

Upstage hereby agrees to indemnify and hold harmless Buyer from and with respect to any losses, claims, demands, expenses, attorney's fees, costs, or judgments which Buyer may sustain, directly or indirectly, as the result of the negligent acts or omissions of Upstage, including any of its employees, agents, subcontractors, or volunteers, with respect to performance of any service required under this Agreement. Upstage's responsibility under this paragraph is limited to the allocation of fault attributed to Upstage's actions or inactions as determined by trial or binding arbitration.

Buyer hereby agrees to indemnify and hold harmless Upstage from and with respect to any losses, claims, demands, expenses, attorney's fees, costs, or judgments which Upstage may sustain, directly or indirectly, as the result of the negligent acts or omissions of Buyer, including any of its employees, agents, subcontractors, or volunteers, with respect to performance of any service required under this Agreement. Buyer's responsibility under this paragraph is limited to the allocation of fault attributed to Buyer's actions or inactions as determined by trial or binding arbitration.

7. Insurance

Upstage, at its own cost, shall secure and maintain during the term of this Agreement, including all renewal and extension terms, the following minimum insurance coverage: 1) Commercial General Liability (CGL) insurance with contractual liability coverage to cover Upstage's obligations under the Indemnification section of this Agreement in the amount of \$1,000,000 per occurrence with a \$2,000,000 general policy aggregate and \$1,000,000 Products and Completed Operations policy aggregate. The policy(ies) shall protect Upstage, its subcontractors, and the Buyer under the contractual liability coverage from claims for damages for personal injury, including accidental death, and from claims for property damage that may arise from Upstage's operations under this Agreement, whether performed by Upstage itself, any subcontractors retained by Upstage, or anyone directly or indirectly employed or engaged by either of them. The policy(ies) shall be primary and noncontributory to any other policy(ies) or coverage available to the County whether such coverage be primary, contributing or excess. If the CGL coverage is provided on a claims-made basis, Upstage shall maintain such policy(ies) of insurance for no less than four years after termination of this Agreement. 2) Workers' Compensation with statutory benefits limits as required by the State of Utah,



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including employer's liability coverage in the amount of \$100,000 each accident/\$500,000 policy limit/\$100,000 each employee. Proof of workers' compensation coverage is required unless a waiver of coverage is authorized and acquired pursuant to Utah law, in which case proof of authorization for the waiver of coverage will be required. 3) Commercial Automobile Liability insurance that provides coverage for owned, hired, and non-owned automobiles, in the minimum amount of \$1,000,000 per person, \$2,000,000 per accident, and \$500,000 per occurrence for property damage.

8. Prices

Prices and other information shown in any Upstage publication (including rate card and conditions, product catalogs, brochures and websites) are time sensitive and subject to change without notice and confirmation by specific quotation.

9. Changes

Buyer requested order changes, including those affecting the identity, scope and delivery of the Equipment, must be documented in writing and are subject to Upstage's prior approval and adjustments in price, scheduling and other affected terms and conditions. Upstage reserves the right to reject any change.

10. Returns

All returns of Equipment will be subject to prior Upstage approval and will be subject to Upstage's return policies in effect at the time, including applicable restocking charges and other conditions of return. Shipping containers must be clearly marked in accordance with Upstage's instructions and shipped freight prepaid by Buyer. All sales are final. See paragraph 2(b) for exchange or replacement policies.

11. Order Cancellation

An order may be canceled by Buyer prior to the issuance of a purchase order. Upon issuance of the Purchase Order(s) by Buyer may not cancel this Agreement or be released herein absent the express



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written approval of Upstage and only upon written notice and upon payment to Upstage of cancellation and restocking charges, including reimbursement for direct costs. Buyer acknowledges that Upstage does not generally stock in its inventory the Equipment set forth in Exhibit A and that Upstage, in reliance upon Buyer's purchase order(s) as attached in Exhibit A, will order the Equipment and incur costs to obtain and deliver the Equipment. Cancellation charges associated with orders for custom Equipment specifically manufacture to Buyer's specification may equal the actual selling price of the Services. No termination by either party for cause will be effective unless and until the other has failed to correct such alleged cause within forty-five (45) days after receipt written notice specifying such cause.

12. Force Majeure

Upstage shall not be liable for any loss, damage, or delay arising out of its failure to perform hereunder due to causes beyond its reasonable control, including, without limitation, acts of God or the Buyer, acts of civil or military authority, terrorist threats or attacks, fires, strikes, floods, epidemics, quarantine restrictions, war, riots, delays in transportation, or transportation embargoes. In the event of any such delay, Upstage's performance date(s) will be extended for that length of time as may be reasonably necessary to compensate for the delay. An artist or performer's cancellation (for any reason) shall not be considered an event of Force Majeure.

13. Proprietary and Confidential Information

Buyer is a governmental entity and is subject to Utah's Government Records Access Management Act. Upstage shall identify any confidential information it believes is protected from disclosure by submitting a written claim of business confidentiality in accordance with Utah Code Ann. § 63G-2-309.

14. Non-Solicitation

Buyer agrees, acknowledges and affirmatively represents that it will not solicit or attempt to solicit any Upstage employee or representative nor will Buyer attempt to directly pay or entice Upstage employees or representatives to enter in to any written or oral contractual, employment, moonlighting opportunities or work for hire without the direct and written permission of Upstage.

15. Miscellaneous

Buyer agrees that in the event legal action is necessary to enforce the terms and conditions set forth in this Agreement, the non-prevailing party shall pay the prevailing party's attorney's fees and costs, including, the costs associated with the prevailing party's retention of expert witnesses

16. INCORPORATION BY REFERENCE

This Agreement and any attached or future Equipment Schedules are incorporated by reference and made an integral part of the Agreement. This instrument and any such Equipment Schedules constitute the complete agreement between the parties as to the issues covered herein. Further, no agreements, representations, or warranties other than those specifically set forth in this Agreement or in the attached Equipment Schedule(s) shall be binding on any of the parties unless they are also set forth in a writing that is signed by both parties.

17. SECURITY DEPOSIT

Upstage may, at Upstage's option, require the Buyer to give Upstage a security deposit in an amount determined by Upstage. Said security deposit, if done by credit and/or charge card, shall be final. Buyer and/or charge card holder waive all rights to dispute charges with the credit/charge card company and agree to resolve disputes as if the charges were made as cash payments. In the event that the credit/charge company fails to honor Upstage's charges for any reason, or if the credit charge or credit available shall be insufficient to cover the claims of Upstage under this Agreement; Buyer shall remain absolutely liable for the full amount of the claims. The election by Upstage to request and accept a security deposit in lieu of a proof of insurance certificate from Buyer, or for any other reason, does not constitute a waiver or limitation by Upstage of any of Upstage's rights or Buyer's obligations under this Agreement.

18. SEVERABILITY



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The provisions of this contract shall be severable so that the invalidity, unenforceability or waiver of any of the provisions shall not affect the remaining provisions.

19. BANKRUPTCY

Neither this Agreement nor the Property is assignable or transferable by operation of law. If any proceeding under the Bankruptcy Act, as amended, is commenced by or against the Buyer, or if the Buyer is adjudged insolvent, or makes any assignment for the benefit of his creditors or if a writ of attachment or execution is levied on any item or items of the equipment and is not released or satisfied within ten (10) days thereafter, or if a receiver is appointed in any proceeding or action to which the Buyer is a party with authority to take possession or control of any item or any item or items of the Equipment, Upstage shall have and may exercise any one or more of the remedies available to it under law. This Agreement shall, at the option of the Upstage, without notice, immediately terminate and shall not be treated as an asset of Buyer after the exercise of said option and Upstage shall recover from Buyer any and all costs or damages associated with recovery of the Equipment.

20. VENUE and CHOICE OF LAW

Buyer agrees that any disputes or claims for damage arising from or related to this Agreement, Upstage's performance, Services, labor, rental equipment, damages (including consequential damages, lost profit, lost opportunity) related to the Event(s) or claims related to Buyer's failure to pay for Upstage's Services, rental Equipment, shall be resolved in the Second Judicial District Court of the State of Utah and that Utah law shall apply. Prior to initiating litigation, the Parties agree to mediate any disputes or claims with the mediation occurring in Ogden City with a neutral mediator chosen solely by both parties. The Parties further agree to share the mediator's fees equally and that in the event mediation fails, the costs associated with mediation shall be paid by the non-prevailing Party in litigation.



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DocuSigned by:

Chris Martin

322C9944DA36487

Upstage Crew Services
Representative Signature

9/3/2020

Date

Peery's Egyptian Theater
Buyer Representative Signature

Date