

PAYROLL SERVICES AGREEMENT

This PAYROLL SERVICES AGREEMENT (“**Agreement**”), is entered by and between THE TALENT FUND LLC, a California corporation (“**The Talent Fund**”), located at 1200 Pacific Avenue, Suite 350, Santa Cruz, California, and _____ (“**Client**”), located at _____.

In exchange for mutual and valuable consideration, The Talent Fund and Client (sometimes referred to herein as the “parties” or individually as “party”) agree to the following terms and conditions.

1. **Effective Date.** This Agreement will be effective the _____ (“Effective Date”).
2. **Term.** The term of this Agreement will commence on the Effective Date and continue until terminated by either Party pursuant to Paragraph 11 of the Agreement (“Term”).
3. **Administrative Payroll Services Only.**
 - 3.1. The Talent Fund will provide the payroll services set forth herein as an independent contractor of Client providing services directly to Client and not to any other person or party.
 - 3.2. Neither this Agreement nor the provision of services by The Talent Fund creates an employment relationship between The Talent Fund and Client’s employees, agents, contractors, or other workers. For all purposes Client is the sole and exclusive employer of Client’s employees. The Talent Fund has no employment, joint-employment, co-employment, common law, or other employment relationship with any employee, agent, contractor, or other worker employed by, or affiliated with Client.
 - 3.3. Client acknowledges and agrees that The Talent Fund is not a Professional Employer Organization (PEO), employee leasing company, staffing services company, or temporary services company. Client also acknowledges and agrees that The Talent Fund is not providing Client with PEO services, employee leasing services, temporary agency services, or staffing agency services, pursuant to this Agreement or otherwise.
4. **Schedules, Addenda, and Exhibits.** References to the “Agreement” refer to the aggregation of this documents and any Schedules, Exhibits, and Addenda.
5. **Payroll Services.** The Talent Fund will process payroll payments in accordance with Client’s instructions, conditioned upon Client timely and accurately supplying all data and funds necessary for The Talent Fund to perform its payroll processing services.
 - 5.1 **Payroll Taxes and Unemployment Insurance.** The Talent Fund will withhold, report, and remit federal, state, and local payroll taxes, including, without limitation, unemployment insurance contributions, in accordance with Client’s instructions. The Talent Fund will remit all deductions required by law and or any collective bargaining agreement, and file the appropriate tax and/or collective bargaining agreement reports. Client at all times remains solely responsible for funding all wage and payroll tax payments. Client agrees to cooperate with The Talent Fund in the use of Client’s state unemployment insurance account. Client will provide all required and requested forms, signatures, powers of attorney, reports, documents and historical data.

- 6. Obligations of Client.** Client's obligations are as follows:
- 6.1. Payroll Data. Client will timely and accurately provide all data necessary for The Talent Fund to process payroll, including but not limited to employee's name and address, social security number, hours worked, rates of pay, payments owed, W4 and I9, and exempt/non-exempt status.
 - 6.2. Record Keeping. Client is solely responsible for creating and maintaining records of attendance and hours worked, in accordance with applicable federal, state, and local laws, regardless of whether Client utilizes time and attendance tracking systems provided by The Talent Fund (if any).
 - 6.3. Credit History. Client hereby authorizes The Talent Fund to obtain a credit, financial, or identity history on Client as pertains to labor union collective bargaining agreements, including but not limited to, SAF-AFTRA, IATSE, Teamsters, and Actors Equity.
 - 6.4. Cooperation with The Talent Fund. Client will respond in a timely and accurate fashion to requests from The Talent Fund for records and data necessary for The Talent Fund to perform its services
 - 6.5. Business and Legal Compliance. Client is solely responsible to comply with all applicable laws governing Client's business, including but not limited to labor, employment, and wage payment laws, and laws pertaining to required filings, licensing, taxes, fidelity bonding, insurance, facilities/building codes and regulations, and environmental compliance.
 - 6.6. Fringe Benefits. Client is solely responsible for funding and accurately determining eligibility for fringe benefits, including, without limitation, vacation, paid sick leave (including legally mandated paid sick leave), other paid time off, profit sharing, deferred compensation, bonuses, severance payments, stock or other equity-based compensation, commissions, and other incentive compensation payments. The Talent Fund takes no responsibility for the administration or funding of fringe benefits payments. Notwithstanding the forgoing, The Talent Fund will process payroll with respect to fringe benefits at Client's request and pursuant to Client's instructions, when appropriate and permitted by law, and if requested, The Talent Fund will assist Client with tracking accruals and payments of fringe benefits when practicable, so long as such activities are consistent with all other terms of this Agreement.
 - 6.7. Collateral Agreements. Client will sign such transfer of rights/assumptions agreements as may be required by The Talent Fund and employees' labor unions, including not limited to SAG-AFTRA, American Federation of Musicians, IATSE, Teamsters, and Actors Equity, if applicable. The Talent Fund shall have no obligation to process payroll nor any liability therefore, unless and until such agreements are signed and returned to The Talent Fund.
 - 6.8. Appointment of Attorney in Fact. Client hereby appoints The Talent Fund as attorney in fact to represent it before and/or submit records to federal, state, and local taxing authorities and any insurance provider with respect to payrolls and taxes, and pursuant to any collective bargaining agreement. The Talent Fund will be the reporting agent, affirmed by the Client's signature, over the tax accounts and taxing authorities. The Client

hereby authorizes The Talent Fund to pay the payroll taxes, and collective bargaining agreement payments, and/or associated fees.

6.9. Reversion Upon Termination. Upon termination of this Agreement for any reason, or upon Client's failure either to provide payroll data as required herein or to timely pay The Talent Fund's invoices, as required herein, all of The Talent Fund's obligations set forth herein (including, without limitation, the administration of payroll) will revert to Client retroactive to the last date on which The Talent Fund was paid in full for The Talent Fund's services.

7. Fees.

7.1. Rates. Client will pay The Talent Fund fees according to the rates approved and confirmed by Client. The Talent Fund may adjust rates at any time with thirty (30) days' advance notice, or without advance notice in the event of immediate changes in payroll tax or insurance rates. Such charges will be billed on Client invoice. Payment of invoice is conclusive evidence of Client approval.

7.2. Funding Wage Payments. During the Term of this Agreement, Client remains responsible for timely and fully funding wage payments. In addition to Administrative Fees and all other applicable fees and charges, Client shall pay to The Talent Fund all gross wages; federal, state, and local taxes and related charges (including but not limited to FICA, FUTA, and SUTA).

7.3. Payment Procedures. The Talent Fund issues checks to employees on Mondays and Thursdays of each week. As soon as possible, client will provide to The Talent Fund, in the method authorized by The Talent Fund, the payroll data upon which payroll payments will be calculated, in the format prescribed by The Talent Fund, before payroll is due. As soon as practicable following receipt of the payroll data, The Talent Fund will send to Client an invoice for payment. Upon receipt of the invoice, Client will notify The Talent Fund of any errors or modifications proposed by Client and thereafter waives any right to dispute the content of the invoice. Client shall ensure that payment is made no later than Twenty-Four(24) hours prior to the applicable payroll issuance date by wire or ACH.

Alternately, Client agrees to payment through an auto-debit account with a local bank. Additionally, Client shall provide The Talent Fund with an irrevocable letter of credit that is effective as of the Effective Date, or a prepayment security/escrow deposit in the amount of \$10,000.00 or 100% of the estimated payroll whichever is greater. Client hereby authorizes The Talent Fund to deduct or debit from Client's bank account any monies due and owing, outstanding, or including outstanding fees, retroactive changes in payroll tax amounts, unpaid insurance premiums, delinquent payroll and other related taxes including assessed fines, penalties and interest, charge backs due to Client's bank account having insufficient funds (NSF charges), and any other amounts that may accrue or may become outstanding relating to services provided by The Talent Fund.

8. 7.4. Pre-Payment. In the event Client fails to pay invoices timely, The Talent Fund in its discretion may require Client to pre-pay the estimated invoicing for the upcoming pay period prior to commencement of that pay period based on data and labor needs provided by the union. Client bears all legal responsibility for the nonpayment of wages in the event the data provided by the union results in an estimate that does not account for all labor utilized. This requirement may be imposed indefinitely or, in The Talent Fund's discretion, may be imposed temporarily until Client has demonstrated its ability to pay

on a timely basis. Client bears all responsibility **Confidential Information**. Client and The Talent Fund agree that confidential information, including but not limited to personnel information and payroll data, will be exchanged and used solely for the purposes provided herein. Moreover, the parties will cooperate with one another in taking reasonable steps to protect the confidentiality of information that is exchanged or used for the purposes provided herein. Each party will be responsible for the maintenance and protection of its own trade secrets and confidential information. If Client and The Talent Fund have entered into a separate Confidentiality and/or Non-Disclosure Agreement, the terms of that document will control.

9. Indemnification. The following indemnification provisions will survive the termination of the Agreement.

- 9.1. Client will indemnify, defend, and hold The Talent Fund harmless from and against any and all claims, losses, and liabilities of whatever nature (including liability to third parties, reasonable attorneys' fees and other costs of defense at all levels of proceedings), and all other consequences of any sort, whether known or unknown, without limit and without regard to the cause or causes thereof arising from: 1) Client's material breach of the Agreement or violation of any representation or warranty associated with the Agreement; 2) breach of a provision contained in any other agreement related thereto including but not limited to any transfer of rights/assumption agreements; 3) any failure by the Client to comply with any unions agreements or provision of applicable federal or state laws, regulations, rules, or operating letters including but not limited to 28 U.S.C. § 4001; 4) Client objecting to a modification, alteration, or amendment to the Agreement, pursuant to paragraph 13.14; 5) any claim asserting that The Talent Fund is an employer, joint employer, or co-employer of employees; 6) Client's violation of any of local, state or federal law, regulation, ordinance, directive or rule; 7) the products or services provided by Client; and 8) the actions or inactions of any employee of Client's, or any other person employed by, associated with, or working for Client. Without limiting the forgoing, Client's obligations set forth above include and apply to: 1) claims for unpaid overtime, minimum wage, or other wages; 2) claims for failure to provide adequate meal and rest breaks; and 3) failure to reimburse business related expenses.
- 9.2. The Talent Fund will indemnify, defend, and hold Client harmless from and against any and all claims, demands, losses, and liabilities of whatever nature, and all other consequences of any sort, whether known or unknown, arising from: 1) The Talent Fund's material breach of the Agreement; 2) The Talent Fund's gross negligence in the performance of The Talent Fund's services under the Agreement; and 3) The Talent Fund's violation of any law that is not a violation resulting all or in part from Client's failure to comply with its obligations under the Agreement or Client's own violation of the law.

Other than as specifically set forth in this Agreement, The Talent Fund will not be liable for any damage or loss (including, but not limited to, liabilities, costs and expenses) to the Client or its employees or their union or under any collective bargaining agreement arising out of its acts or omissions or those of the Client or any third parties. Nor shall The Talent Fund be liable for failure to provide the services herein if due to causes and conditions beyond its control. The Talent Fund makes no representations or warranties except as expressly stated herein and all other warranties express or implied are hereby specifically excluded. In no event shall The Talent Fund be liable for incidental or consequential damages even if The Talent Fund has been advised of the possibility of such damages. In no event shall The Talent Fund's total liability to the Client, its employees or

any third parties pursuant to any claim arising out of or relating to this Agreement or the transactions covered hereby (whether in contract or in tort) exceed the dollar amount of the official employee's check on which the claim is based.

- 9.3. The Talent Fund and Client expressly agree that the indemnification provisions of the Agreement shall not be limited to claims, expenses or liabilities for which one of them is solely liable, but shall also apply to claims, expenses and liabilities for which The Talent Fund and Client are jointly or concurrently liable. In such event, if either of them advances funds in connection with a claim, expense or liability in excess of its pro rata share, such party shall be entitled to recover from the other party the difference between such party's share and the actual amount paid.

10. Client's Representations and Warranties.

- 10.1. The Client warrants and represents that there are no provisions of any law, whether federal, state, or local, or of its certificate of incorporation, by-laws or agreement of any kind, nature, or description binding upon the Client which prohibits the Client from entering into this Agreement and that the Client's performance of the Agreement has been duly authorized and is a binding obligation of the Client.
- 10.2. Client's Obligations to Covered Employees. (i) All compensation of the Covered Employees accrued prior to the Effective Date and for which Client or any third party is responsible and obligated has been paid in full; and (ii) all pension, profit-sharing, or other employee benefit plans existing at the Effective Date are current and in compliance with applicable law, and execution of this Agreement will not be deemed a breach under the terms of those plans.
- 10.3. Accuracy of Data. As of the Effective Date, and throughout the term of this Agreement, all information provided by the Client in contemplation of this Agreement or pursuant hereto, is and will be true and correct.

11. Termination.

- 11.1. Termination with Notice. Either party may terminate the Agreement following thirty (30) days' advanced notice.
- 11.2. Immediate Termination.
 - 11.2.1. By The Talent Fund. The Talent Fund may terminate this Agreement immediately, without prior written notice, in the event of: 1) Client's material breach of the Agreement 2) Client's failure to pay any invoice when due; 3) Client objecting to a modification, alteration, or amendment to the Agreement, pursuant to paragraph 13.4; 4) the threat of, or actual, filing by or against Client for bankruptcy, reorganization or appointment of a receiver, supervisor, assignee, or liquidator over its assets or property; 5) a money judgment against Client which remains unsatisfied for more than thirty (30) days and has not been appealed; and/or 6) Client becomes a credit risk.
 - 11.2.2. By Client. Client may terminate this Agreement in the event of a material breach by The Talent Fund following 1) a written notice of breach; and 2) a period of no less than thirty (30) days to cure the breach set forth in said notice.

12. **Dispute Resolution.** Except for claims for non-payment of fees and claims for injunctive relief, in the event of any claim, dispute or controversy ("Claim") arising out of

or relating to the interpretation, performance and/or breach of this Agreement, the parties agree that any Claim which would otherwise require or allow resort to any court or other governmental dispute resolution forum between Client and The Talent Fund will be submitted to mediation and if not resolved by mediation determined exclusively by binding arbitration. With respect to arbitration, the Federal Rules of Civil Procedure and Evidence will apply and the arbitrator will be a retired state or federal court Judge. To the extent applicable in civil actions, the following will apply and be observed: all rules of pleading (including the right to file a motion to dismiss or strike), all rules of evidence, all rights to resolution of the dispute by means of dispositive motion including but not limited to motions for summary judgment, and judgment on the pleadings. Resolution of the dispute will be based solely upon the law governing the claims and defenses pled, and the arbitrator may not invoke any basis other than such controlling law. Awards exceeding Fifty Thousand Dollars (\$50,000.00) will include the arbitrator's written opinion providing reasoned explanations for the decision, and at either party's written request within ten days after issuance of the award, will be subject to reversal and remand, modification, or reduction following review of the record and arguments of the parties by a second arbitrator who will, as far as practicable, proceed according to the law and procedures applicable to appellate review by the federal courts of appeal regarding a civil judgment following court trial. The parties waive all rights to trial by jury. Any legal proceeding to enforce the terms of this Agreement (including but not limited to arbitration) shall occur in San Mateo County, California.

13. General.

- 13.1. Choice of Law. This Agreement will be determined to be a contract made within the State of California and for all purposes will be governed and construed under and in accordance with the laws of the State of California, notwithstanding choice of law principles.
- 13.2. Assignability. This Agreement shall not be assigned or otherwise transferred by the Client to any other person, corporation or entity without the prior written consent of The Talent Fund which consent may be granted or withheld at The Talent Fund's sole discretion. This Agreement insures to the benefit of each party's heirs, permitted successors, and assigns.
- 13.3. Enforcement Costs. In the event of any proceeding to enforce the provisions of this Agreement, the prevailing party will be entitled to an award of its costs and reasonable attorneys' fees incurred at all levels of proceedings.
- 13.4. Signatures. Any individual signing this Agreement on behalf of Client ("Signer") or The Talent Fund represents, warrants, and guarantees that she or he has full authority to do so. The Client and the Signer hereby agree to be jointly and severally liable for the terms of this Agreement and for any and all amounts owing including, without limitation, dishonored checks, debit checks, NSF fees and costs, The Talent Fund's fees and costs and any and all obligations of The Talent Fund hereunder together with interest thereon at the rate of 2% per month, court costs, professional fees and costs incurred by attorneys, accountants, experts and witnesses and triple damages. Signatures may be provided electronically, and the parties agree that all future transactions between them may be executed via electronic signature. The parties agree that digitally signed, scanned, or faxed copies of this Agreement, shall be deemed to have the same legal force and effect as the original signed copy. Thus, neither party will contest an otherwise valid signature on the basis that it was provided electronically.

- 13.5. Counterparts. This Agreement may be executed in one or more counterparts and counterparts signed by Client and The Talent Fund in the aggregate will constitute a single original instrument.
- 13.6. Force Majeure. Neither party shall be liable for any delay in delivery or nonperformance in whole or in part of its obligations under this Agreement if prevented from doing so by a cause or causes beyond its control, including, without limitation, acts of God or public enemy, fire, floods, swarms, earthquakes, riots, strikes, war, and restraints of government. The suspension of performance shall be of no greater scope and no longer duration than is reasonably required and the non-performing party shall use reasonable efforts to remedy its inability to perform.
- 13.7. NEITHER CLIENT NOR THE TALENT FUND WILL BE RESPONSIBLE FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR OTHER SIMILAR DAMAGES (INCLUDING WITHOUT LIMITATION, LOST PROFITS OR BUSINESS INTERRUPTION DAMAGES) HOWEVER CAUSED OR UNDER ANY THEORY OF LIABILITY EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 13.8. Definitions. Terms and phrases that are defined in any part of this Agreement shall have the defined meanings wherever used throughout the Agreement. The terms "hereunder" and "herein" and similar terms used in this Agreement shall refer to this Agreement in its entirety and not merely to the section, paragraph or subparagraph in which the term is used.
- 13.9. Construction. The Talent Fund has prepared this Agreement and provided it to Client for Client's review. Client has either retained counsel or had the opportunity to do so to review this Agreement. With respect to any dispute concerning the meaning of this Agreement, this Agreement will be interpreted as a whole with reference to its relevant provisions and in accordance with its fair meaning, and no part of this Agreement will be construed against The Talent Fund on the basis that The Talent Fund drafted it. This Agreement will be viewed as if prepared jointly by The Talent Fund and Client.
- 13.10. False or Omitted Information. Any false statement or omission with regard to any information supplied by Client to The Talent Fund in anticipation of Client's contracting with The Talent Fund or at any other time will be deemed a material breach of this Agreement and The Talent Fund, at its option, may terminate this Agreement and seek appropriate relief.
- 13.11. Headings. Captions and organization are for convenience and will not be used in construing meanings.
- 13.12. Reference to "Day" or "Days". Unless there is a specific reference to the contrary, any reference to "day" or "days" in this Agreement shall mean calendar days.
- 13.13. Independent Contractor Relationship. The Talent Fund is an independent contractor of Client and will not be its principal, director, agent, master, servant, or employee.
- 13.14. Integration and Amendment. This document, together with the Schedules, Exhibit(s) and/or Addenda attached hereto, constitutes the full, complete, absolute and entire Agreement between the parties. The Agreement supersedes any prior statements, understandings, or offers. This Agreement may only be altered or amended by a written

amendment signed by the Parties with the exception of any alteration or amendment to this Agreement sent by The Talent Fund to Client in writing, in a manner in which proof of delivery can be established and which shall be deemed to have amended this Agreement and have been accepted by Client if not objected to in writing by Client. Notice of such objection must be received by The Talent Fund within fourteen (14) days of Client's receipt of The Talent Fund's notification of change (proof of The Talent Fund's receipt of objection must be supplied by Client upon request of The Talent Fund).

- 13.15. Legal Rights and Obligations. Client acknowledges and agrees that The Client Fund is not engaged in the practice of law or the provision of legal services, and that Client alone is completely and independently responsible for its own legal rights and obligations.
- 13.16. No Waiver of Rights. The failure of either party strictly to enforce any provision hereof will not be construed as a waiver thereof or as excusing either party from future performances in strict accordance with the provisions of the Agreement.
- 13.17. Notices. All notices and demands will be given in writing and transmitted by hand delivery, overnight courier delivery with signature required verifying receipt, or by facsimile transmission confirmed by certified mail posted within 24 hours of the transmission. All confirmations by mail shall be made by certified mail, postage prepaid, return receipt requested. Notice will be considered given and effective when received. Unless otherwise advised in writing by the other party, each party shall transmit notices and demands to addresses indicated below:

For The Talent Fund :
1200 Pacific Ave. Ste 350
Santa Cruz, CA 95060

For Client: _____

- 13.18. Scope of Services. The Talent Fund will provide only the services expressly described in this Agreement. No other services will be provided or implied. The Talent Fund is not obligated to provide, nor is it responsible for, strategic, operational or other business-related decisions with regard to Client's business. Nor shall The Talent Fund have any obligation to provide equipment for Covered Employees.
- 13.19. Security or Guarantee. The Talent Fund may, at its option, request security from Client. This security may, but is not required to be, in the form of a security deposit or personal guarantee.
- 13.20. Severability. Should any term, warranty, covenant, condition, or provision of this Agreement be held to be invalid or unenforceable by a court or other body of competent jurisdiction or pursuant to arbitration, the balance of this Agreement will remain in force and will stand as if the unenforceable part did not exist. The invalid or unenforceable provision will be replaced by a provision as similar as possible and which is valid and enforceable.
- 13.21. Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

- 13.22. Terms Surviving Termination of Agreement. Termination of this Agreement will not affect the continuation of any outstanding obligation or liability incurred by either party during the term of this Agreement. The obligation of either party to notify, indemnify, defend and hold harmless the other under the terms of this Agreement will continue after the termination hereof with respect to events occurring prior to such termination.
- 13.23. Third Party Beneficiaries. The parties acknowledge and agree that no parties other than the parties hereto are intended to benefit hereunder. No rights of any third party are created by this Agreement and no person other than parties to this Agreement may rely on any aspect of this Agreement notwithstanding any representation, written or oral, to the contrary. Unless otherwise set forth herein, under no circumstances shall Client's employees be construed as third party beneficiaries hereof.
- 13.24. The Talent Fund Does Not Provide Legal or Tax Advice. Client understands, acknowledges and agrees that the payroll services provided pursuant to this Agreement shall not constitute legal or tax advice to Client and Client shall seek all appropriate legal and tax advice from its own legal and tax advisors.
- 13.25. Time of Performance. Time is of the essence with respect to performance of all obligations set forth herein.
- 13.26. Duty to Cooperate. Each party will have the duty to cooperate with the other in the event of any claim filed by an employee or former employee, or any government agency investigation of a complaint filed by an employee or former employee covered by this Agreement. Such duty will survive the termination of this Agreement. Client agrees to cooperate with The Talent Fund as needed for any state licensing and/or registration requirements. Client further agrees to cooperate with The Talent Fund as needed for compliance with any additional state statute, regulation, or other requirement not aforementioned or referenced above or below. Such duties will survive the termination of this Agreement.
- 13.27. Records Retention. It is the policy of The Talent Fund to retain all payroll records for seven (7) years from the date the payroll is issued. This retention policy is subject to change upon notice. This retention policy shall not relieve Client of any obligation under law to retain its own records, and The Talent Fund shall not have any liability for missing records.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have executed this Agreement as of the Effective Date first written above.

Client:

THE TALENT FUND, LLC

By:

Laura Matthews, Managing Member:

Date:

Date:

Title:

Address:

EIN: _____

Signature: _____