

PAYROLL SERVICES AGREEMENT

Dated 2020-02-11

Between

Threadgold Plummer Hood Pty Ltd (TPH)

ACN 106 302 747

Suite 8, 25 Claremont St, South Yarra, VIC 3141

and

My Corona (Producer)

ABN 12345678

110 Spencer Street, Melbourne 3000

BACKGROUND

- A. TPH is in the business of providing payroll services and associated software in relation to theatrical, television and commercial production, as detailed in the Schedule attached to or accompanying this Agreement.
- B. The Producer wishes to engage TPH to provide its services in relation to the project or production identified in the Schedule, and the parties have agreed to enter into this Agreement on the terms set out below.

Agreed Terms

1. Definitions and Interpretation

- 1.1 The following definitions shall apply in this Agreement:

Business Day means a day (not being a Saturday or Sunday or public holiday) on which Australian banks are open for general banking business in Melbourne.

Commencement Date means the date TPH shall commence the Services, as set out in the Schedule.

Confidential Information means all trade secrets, processes, Intellectual Property and information concerning the business or finances of a party (**Discloser**) or its customers, suppliers or retailers and any of the Discloser's information which would reasonably be regarded as confidential, disclosed to the other party (**Recipient**) before or after the Commencement Date including the terms of this Agreement but excluding information which:

- (a) the Recipient can prove it possessed before the relevant information was disclosed or made available to it by or on behalf of the Discloser;
- (b) is lawfully acquired prior to the date of disclosure under this Agreement by the Recipient from a third party without restrictions as to its use or disclosure; or
- (c) is in or becomes part of the public domain other than as a result of the breach by the Recipient of this Agreement.

End Date means the date the Term will end, as set out in the Schedule.

Fees means the fees payable for the Services, as set out in the Schedule.

GST means the same as in GST Law.

GST Law has the same meaning as "GST Law" in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property means any and all rights in respect of or in connection with any Confidential Information, copyright (including future copyright and rights in the nature of or analogous to copyright), inventions (including patents), business processes, designs, logos or trade marks throughout the world, whether such rights are afforded protection by a system of registration or not, and includes all rights to apply for registration of such rights where applicable.

Personal Information has the same meaning as in the *Privacy Act 1988* (Cth).

Personnel means the persons engaged by the Producer as employees or contractors to provide services in relation to the Production.

Personnel Information means the information required by TPH to provide the Services, as detailed in the Schedule.

Privacy Laws means the *Privacy Act 1988* (Cth) and any other legislation, statutory instruments and any other enforceable codes or guidelines regulating the collection, use and/or disclosure of personal information that applies to any of the parties or to this agreement.

Production means the project or production identified in the Schedule.

Services means the services to be provided by TPH, as set out in the Schedule or otherwise agreed in writing by the parties from time to time.

Term is the period commencing on the Commencement Date and continuing until the End Date unless terminated earlier in accordance with this Agreement.

1.2 In this Agreement, unless the context otherwise indicates:

- (a) a word importing the singular includes the plural and vice versa, a word importing a gender includes each other gender and a reference to a person includes an individual or a firm, body corporate, or association (whether incorporated or not);
- (b) a reference to a person includes the person's legal personal representatives, successors and assigns;
- (c) a reference to a clause, party or schedule is a reference to a clause of or party to this Agreement;
- (d) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (e) a reference to any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
- (f) a covenant, agreement, representation, warranty or indemnity on behalf of two or more persons (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (g) if this Agreement requires an action to be undertaken on a day that is not a business day, that action must be undertaken on the next following business day; and
- (h) headings are inserted for convenience and do not affect the interpretation of this Agreement.

2. Obligations

- 2.1 During the Term and subject to the provisions of this Agreement, TPH shall perform the Services with all due care and skill, using suitably qualified personnel and in accordance with standard industry practice.
- 2.2 The Producer acknowledges and agrees that TPH's ability to perform the Services in accordance with this Agreement is dependent on the Producer providing TPH with complete and accurate Personnel Information, and any other information reasonably requested by TPH in a timely manner.
- 2.3 The Producer must notify TPH as soon as reasonably practicable of the completion of any assignment, or layoff or termination of any Personnel and provide TPH with all necessary information for TPH to prepare and issue final payments to such Personnel in accordance with any applicable laws.

- 2.4 The Producer acknowledges and agrees that no relationship is formed between TPH and the Personnel, and the Producer bears sole responsibility for registration of all workers compensation insurance, payroll tax, superannuation, PAYG, fringe benefit tax and any other insurances and tax registrations applicable to the Personnel involved in the Production.

3. Fees

- 3.1 TPH shall provide the Producer with invoices for the Fees and any amounts paid to the Personnel by TPH in connection with TPH's performance of the Services, and the Producer agrees to pay such invoices within the timeframe set out in the Schedule.
- 3.2 The Producer acknowledges and agrees that the Fees quoted are conditional on TPH being the exclusive provider of the Services in relation to the Production's Australian payroll, and TPH reserves the right to vary such Fees in the event that the Producer engages any other third party to provide the same or similar services to the Services.

4. Liability and Indemnity

- 4.1 Without limiting clauses 4.3 and 4.4 and to the extent permitted by applicable law, TPH's liability to the Producer for breach of this Agreement shall be capped at an amount equal to 125% of the Fees paid in the 12 months prior to the relevant liability arising and shall exclude liability for indirect or consequential loss, including, but not limited to, loss of actual or anticipated profits, loss of contract, loss of opportunity and loss of goodwill.
- 4.2 Each party (the **Indemnifying Party**) indemnifies the other party (the **Indemnified Party**) against any loss or damage suffered or incurred by the Indemnified Party as a result of:
- (a) any infringement by the Indemnifying Party of the intellectual property rights of the Indemnified Party;
 - (b) any breach by the Indemnifying Party of the obligations of confidence contained in clause 6;
 - (c) any breach under Privacy Law by the Indemnifying Party;
 - (d) any negligent acts or intentional misconduct of the Indemnifying Party or its representatives; and
 - (e) personal injury, death or loss of or damage to real or personal property caused by the Indemnifying Party or its representatives.
- 4.3 Neither party will be liable under this clause 4 to the extent that any loss or damage was caused or contributed to by any act or omission of the other party.
- 4.4 For the avoidance of doubt, TPH shall not be liable for, and the Producer indemnifies TPH against and holds TPH harmless from, any loss or damage arising as a result of any claims of underpayment of Personnel, or any penalties for late payment of Personnel, to the extent that such claims or penalties are caused or contributed to by:
- (a) the Producer's failure to provide TPH with complete, accurate or timely information; or
 - (b) any delay, act or omission of any regulatory body or superannuation fund.

5. Force Majeure

- 5.1 Neither party shall be liable to the other, or be deemed to be in breach of this Agreement, by reason of any delay in performing, or failure to perform, any of its obligations under this Agreement if the delay or failure was beyond that party's reasonable control (including without limitation failure or delay in third party systems, fire, flood, explosion, epidemic, riot, civil commotion, any strike, lockout or other industrial action, act of God, war, warlike hostilities or threat of war, terrorist activities, accidental or malicious damage and any prohibition or restriction by any government or other legal authority which affects this Agreement and which is not in force on the date of this Agreement).
- 5.2 A party claiming to be unable to perform its obligations under this Agreement (either on time or at all) in any of the circumstances set out in clause 5.1 shall notify the other party of the nature and extent of the circumstances in question as soon as practicable.

- 5.3 This clause 5 shall cease to apply when such circumstances have ceased to have effect on the performance of this Agreement and the party affected shall give notice to the other party that the circumstances have ceased.
- 5.4 If any circumstance relied on by either party for the purposes of this clause 5. continues for more than two months, the other party shall be entitled to terminate this agreement by giving one month's notice.

6. Confidential Information & Privacy

- 6.1 Both parties acknowledge that all the Confidential Information is secret and confidential to the other party and any unauthorised use, reproduction or disclosure of the Confidential Information by either party may cause loss, damage or expense to the other party.
- 6.2 During the Term and afterwards, both parties must (except as may be required by law or with prior mutual consent) maintain the secrecy and confidentiality of the Confidential Information and must not divulge the Confidential Information to any person or use the Confidential Information for any purposes other than those of the Agreement. If this Agreement allows the parties to disclose Confidential Information to a third party, the parties must ensure that the third party agrees to guard the confidentiality of the Confidential Information on the same terms as set out in this Agreement.
- 6.3 If either party is required by law to disclose Confidential Information:
- (a) the parties will promptly give the other party written notice specifying the legal requirement and the Confidential Information to be disclosed; and
 - (b) the parties will ensure that the relevant Confidential Information is disclosed in a manner which minimises the disclosure.
- 6.4 Both parties acknowledge and agree that a breach of this clause 6 may cause the other party to suffer loss, damage and expense for which damages may not be adequate compensation and may be difficult to ascertain and that the other party may immediately seek to restrain any actual or threatened breach of this clause 6 by injunction or any similar remedy.
- 6.5 Both parties will comply with all applicable Privacy Laws in respect of any Personal Information collected, used, disclosed and otherwise handled by the parties under or in connection with this Agreement.

7. Intellectual Property Rights

- 7.1 The Producer acknowledges that nothing in this Agreement assigns or transfers any interests in the Intellectual Property provided by TPH in the course of performing the Services, including any improvements or customisations to that Intellectual Property.
- 7.2 TPH agrees to grant the Producer during the Term a world-wide, royalty free, non-exclusive, unrestricted licence to use its Intellectual Property to the extent necessary to receive the full benefit of the Services.

8. Term and Termination

- 8.1 This Agreement shall commence on the Commencement Date and shall continue until the End Date, unless terminated in accordance with this clause 8.
- 8.2 Either party may immediately terminate this Agreement by written notice if the other party:
- (a) becomes insolvent or enters into liquidation, receivership or other insolvency administration or makes a composition or arrangement with its creditors generally or takes advantage of any statute for the relief of insolvent debtors;
 - (b) breaches this Agreement and fails to rectify the breach within 10 Business Days of receiving written notice from the other specifying the breach and requiring its rectification; or
 - (c) commits a breach that cannot be remedied.
- 8.3 During the Term either party may terminate this Agreement with 30 days' written notice.

- 8.4 On the expiration or termination of this Agreement for any reason, the parties must promptly:
- (a) deliver to the other party or erase or destroy, or procure the delivery, erasure or destruction (as applicable) of, all copies of materials containing the Confidential Information; and
 - (b) return to the other party any tools, equipment and materials supplied to them.
- 8.5 Clauses 3, 4, 6, 7 and 8.5 survive termination and expiry of this Agreement.

9. GST

- 9.1 In this clause 9, any expression used that is defined in GST Law has the defined meaning.
- 9.2 Any consideration to be paid or provided for a supply made under or in connection with this Agreement does not include an amount of GST (**GST Exclusive Consideration**).
- 9.3 If any supply by one party (**Supplier**) to another party (**Recipient**) under or in connection with this Agreement is a taxable supply, then the amount due to the Supplier for that supply will be the sum of:
- (a) the GST Exclusive Consideration; and
 - (b) the amount of GST payable by the Supplier in respect of that supply (the "**GST Amount**").
- 9.4 The Recipient's obligation to pay to the GST Amount is subject to the Supplier first providing to the Recipient a tax invoice in accordance with the requirements of GST Law.
- 9.5 If a party becomes liable for any penalties or interest as a result of a late payment of GST, where that late payment is as a direct result of a failure of another party to comply with the terms of this clause 9, that other party shall pay to the first party an additional amount on demand equal to the amount of those penalties and interest.

10. Disputes

- 10.1 If a dispute arises in connection with this Agreement (**Dispute**), then before having recourse to any other dispute resolution process, the parties must take the following steps:
- (a) the party claiming that a Dispute has arisen must give written notice to the other party or its representative, specifying in reasonable detail the nature of the Dispute (**Dispute Notice**); and
 - (b) following receipt of the Dispute Notice, the Dispute must promptly be referred to the representatives of each party who must use their best endeavours and act in good faith, to seek to resolve the Dispute within 15 Business Days from the date the Dispute Notice is received (**Initial Period**).
- 10.2 Neither party may commence or initiate any court proceedings (except applications for urgent interim injunctions) until the procedure set out in this clause 10 has been followed.
- 10.3 If the Dispute remains unresolved at the end of the Initial Period, it must be referred to mediation by a person agreed on by the parties for the purpose of assisting in negotiations. The mediator may not make a binding determination unless agreed by both parties.
- 10.4 Each party must bear its own costs in complying with this clause 10 and must share the costs of engaging any mediator equally.

11. General

- 11.1 These terms are governed by and shall be interpreted in accordance with the laws of the State of Victoria and the parties agree that the courts of the State of Victoria have exclusive jurisdiction to settle any dispute or claim that may arise out of or in connection with these terms.
- 11.2 This Agreement may only be varied or amended in writing and signed by both parties.
- 11.3 This Agreement may be executed in any number of counterparts which, when executed, shall together constitute one and the same document.
- 11.4 If any provision (or part of a provision) of this Agreement is found by any court or administrative body to be invalid, unenforceable or illegal, the other provisions shall remain in force.

- 11.5 This Agreement supersedes all prior agreements, representations and understandings between us, and constitutes the entire agreement between us relating to the subject matter.
- 11.6 Neither party shall, without prior consent in writing from the other party, give or make any commitment, undertaking, warranty, covenant, condition or representation, relating to the other party.
- 11.7 Neither party may, without the prior written consent of the other party, assign any of its rights or obligations under this Agreement.
- 11.8 Neither party shall, without prior written consent in writing from other party, contract any liability of any kind whatsoever in the name of, or on behalf of the other party, except as expressly permitted by this Agreement.

Executed as an Agreement


Signed for and on behalf of **Threadgold Plummer Hood Pty Ltd** by its authorised representative.



Signed

Kevin Plummer
Print Name

Signed for and on behalf of **Corona Virus Co** by its authorised representative.



Signed

Kerry Sng
Print Name

Schedule – Agreement Details

TPH Global Ltd	Address: Suite 8, 25 Claremont St, South Yarra, VIC 3141 Contact Person: Kevin Plummer Phone: 03 9829 2300 e-mail: kplummer@tphglobal.com
Corona Virus Co	Address: 110 Spencer Street, Melbourne 3000 Contact Person: Kerry Sng Phone: +610430604329 e-mail: Kerry Sng <tphkerry@gmail.com>

Commencement Date	2020-02-12
End Date	2020-10-14
Services	<p>TPH shall perform the following payroll services:</p> <ul style="list-style-type: none">• compute all wages, allowances, penalties, fees and benefits pursuant to the Personnel Information;• pay all required statutory payments to or on behalf of the Personnel• accumulate, record and process Personnel time and payments data provided by the Producer;• prepare payments for Personnel and invoices and reports reflecting the above charges in accordance with information provided by the Producer;• provide the Producer with reports and payslips in relation to the above payments for review and final sign off prior to releasing such payments to Personnel;• remit payments to Personnel by Electronic Funds Transfer (EFT) using the Westpac Online Banking system;• provide the Producer with invoices reflecting the above payments, including all gross wages, allowances and fringes, superannuation contributions and any and all other payments required;• process superannuation payments (including superannuation payments made for salary sacrifice) on the 15th day of the month following the month payment was made for wages and salaries of the applicable Personnel, or otherwise when payments are due under the applicable superannuation legislation; and

	<ul style="list-style-type: none"> • process payroll tax payments no later than the 7th day of the month following the month payments were made for wages and salaries of the applicable Personnel or otherwise when due in accordance with applicable legislation • process PAYG withholding on Producer's behalf on a weekly, monthly or quarterly basis, as notified by the Producer to TPH from time to time • create ATO Single Touch Payroll files <p>In addition to the above, TPH shall provide the Producer with:</p> <ul style="list-style-type: none"> • access to online Kiosk
Fees	<p>\$9.95 per payslip for Crew/Cast/Stunts</p> <p>Extras/Standins/Doubles 2% gross + fringes</p> <p>All prices are ex GST.</p>
Personnel Information	<p>The Producer shall provide TPH with the following information, in the format required by TPH:</p> <ul style="list-style-type: none"> • complete and accurate start slips for all Personnel including information as to personal history, tax withholding, union, start date, rate of pay; • complete and accurate detailed time cards for each Personnel reflecting all days and hours worked, and any additional information required by TPH, including any required notice of completion of assigned work. Such time cards must be signed by each employee and approved by an authorised representative of the Producer; and • properly completed PAYG tax form for each employee.