



Pass-Through Services (PTS) Agreement

This Pass-Through Services Agreement (the “**Agreement**”) states the terms and conditions that govern the contractual agreement

BETWEEN:

Client Name: _____ (the “**Client**”)

Contact Name: _____

Client Address: _____

Client E-Mail: _____

Client Phone: _____

AND:

Name: Nathan Gardocki Productions, LLC (the “**Pass-Through Entity**” or “**PTE**”)

Address: 7101 North Santa Fe Avenue, Suite A
Oklahoma City, Oklahoma 73116

E-Mail: rentals@ngpfilm.com

Phone: 405.420.0577

who agree to be bound by this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises made by the parties hereto, the Client and the PTE (individually, each a “**Party**” and collectively, the “**Parties**”) covenant and agree as follows:

- PASS-THROUGH SERVICES.** On the terms and subject to the conditions contained in this Agreement, Client may, from time to time upon approval of PTE, place orders (“**PTS Orders**”) through PTE to procure from third-party out-of-state sub-vendors certain goods, services, and/or material items (“**PTS Items**”) to be more particularly described in one or more documents (“**PTS Documents**”), including, but not limited to, rental forms and estimates.
- TERM; TERMINATION.** This Agreement, including any and all Exhibits and/or Addenda attached hereto, shall be in force unless terminated: (a) by Client, with 30 days written notice to PTE (“**Termination Notice Period**”), provided termination shall not apply to PTS Items which are either (i) subject to executed PTS Orders then in effect pursuant to the terms of this Agreement and/or PTS Orders which are in active

negotiation as of the date of such notice and which are executed within ten (10) business days thereafter (ii) the subject of continuing PTS Agreements; or (b) by PTE, at any time, immediately upon written notice to Client, provided termination shall not apply to PTS Items which are either (i) subject to executed PTS Orders then in effect pursuant to the terms of this Agreement and/or PTS Orders which are in active negotiation as of the date of such notice and which are executed within ten (10) business days thereafter (ii) the subject of continuing PTS Agreements.

3. PAYMENTS, CREDITS, AND FEES.

- a. Each PTS Order must be paid to PTE in full by the Client, in accordance with the terms of the applicable agreement and the terms hereof, before PTE will finalize or pay for the order with the sub-vendor. Client recognizes that PTE will not use its own funds to pay for any PTS Orders.
- b. A special deposit account will be required (see Exhibit B). Client may pay for orders via this special deposit account, wire transfer, check, money order, or credit/debit card.
- c. Client agrees to pay for all fees related to the transferal of funds between PTE, the Client, and/or the sub-vendors (including, but not limited to, wire transfer fees, currency exchange fees, credit card processing fees, etc.).
- d. Client agrees to pay for all shipping/handling fees related to the transportation of equipment/supplies for PTS Orders.
- e. Client agrees to pay PTE a non-refundable PTS Fee equal to a percentage of the sub-vendor payments which PTE pays on the Client's behalf, calculated according to a progressive tiered system based on how much the Client has passed through PTE:
 - i. For the first \$250,000.00 that the Client passes through PTE, the PTS Fee will be 7.5%.
 - ii. For the second \$250,000.00 that the Client passes through PTE, the PTS Fee will be 5.0%.
 - iii. Once Client has passed \$500,000.00 through PTE, the PTS Fee for all remaining pass-through payments will be 3.0%.
- f. Client agrees to pay Oklahoma Sales and Use Tax (8.625%) for all orders, the calculation of which shall exclude the PTS Fee referenced in Section 3e.
- g. If the sub-vendor issues a refund to PTE, PTE will refund that amount to the Client (plus any applicable sales tax for that amount). PTS Fees are non-refundable. Refunds will only be issued via check, wire, or deposit transfer.

4. ACQUISITION AND RETURN.

- a. Unless otherwise agreed between the Client and PTE, all PTS Items will be transferred directly from the sub-vendor to the Client via the pre-approved method of acquisition, as coordinated between the Client and the sub-vendor.
- b. Client agrees to return all rented PTS Items to the sub-vendor by the due date/time, as coordinated between the Client and the sub-vendor, via the pre-approved method of return, as coordinated between the Client and the sub-vendor.

5. MAINTENANCE, SERVICE, LOSS, AND DAMAGE.

- a. PTE is not responsible for the quality/condition of the PTS Items procured via PTS Orders. If an issue arises in which the Client is not satisfied with the order, the Client must resolve the issue directly with the sub-vendor.

6. REPRESENTATIONS AND WARRANTIES.

- a. Client represents and warrants as follows:
 - i. Client has read and understands the Pass-Through Services One-Sheet attached hereto as "Exhibit A".
 - ii. Client will source desired PTS Items from out-of-state vendor and will work with that vendor directly to build an order/estimate that is acceptable to the Client (in terms of equipment, supplies, dates, acquisition method, pricing, etc.). The Client will then fill out a PTS Request Form (ask PTE for details) and send that form to PTE, along with the sub-vendor's estimate/invoice and any other pertinent information/paperwork.
 - a. Client will not place orders with sub-vendors using PTE's name/account without prior approval from & payment to PTE.
 - b. Estimate/invoice must list all main items with individual rates/costs.
 - c. Estimate/invoice must include any known applicable fees and shipping costs. When shipping items, if the exact shipping cost for the item(s) is not known in advance, the Client must provide its UPS or FedEx Account Number, and in doing so, authorizes PTE and/or sub-vendor to utilize that account for shipping and related costs for the applicable PTS Order(s). Client accepts responsibility for such charges.
Notwithstanding the foregoing, the Client agrees to reimburse PTE for all applicable shipping costs.
 - iii. Upon receiving a PTS estimate/invoice from PTE, Client may approve the PTS Order by signing the estimate for that order and sending it back to PTE. Client must also submit a fully executed Rental Agreement, Certificate of Insurance, Credit Card Authorization Form, and Copy of Photo ID to PTE. The Client name, info, and signature must match across all paperwork.
 - iv. Client may designate authorized signatories to act exclusively as representative agents of Client in order to create, edit, and approve agreements, account information, paperwork, documents, and orders on behalf of Client. Client hereby warrants that any person which it directs or allows to receive PTS Items and who shall sign for receipt of said PTS Items is authorized by Client to do so.
 - v. When prompted by PTE, Client agrees to provide a Certificate of Insurance for sub-vendors (as necessary).
 - vi. Client recognizes that PTS requests involving more than one vendor/invoice will, if applicable, be treated as separate individual orders (per vendor/invoice).

- vii. Client recognizes that each individual PTS Order must have a total cost of at least \$500 (before taxes and fees) to be eligible for PTE's Pass-Through Services.
 - viii. Client is responsible for and agrees to pay in full any rental costs, purchases, losses, damages, exchange rate overages, and/or fees (as determined/charged by the sub-vendor) caused or owed, as applicable, by Client.
 - a. While PTE will make every effort to pay for out-of-state orders as quickly as possible (and/or within the payment timeframe stipulated by the sub-vendor) after receiving payment from the Client, Client recognizes that the transfer of funds to do so may take up to (5) full business days, depending on the circumstances. Client will not hold PTE accountable for any delays or late fees this may incur.
 - b. PTE will invoice Client for any overage costs beyond the initial payment amount. These overage invoices are due upon receipt, and Client agrees to pay all uncontested overage invoices immediately upon receipt. Upon receipt of PTS overage invoice(s) from PTE, Client shall have 14 days to resolve any contested charges directly with sub-vendor or submit payment to PTE for PTS overage invoice(s). Upon receipt of written notice from sub-vendor, PTE shall revise, re-submit, and/or void PTS overage invoice(s) to Client accordingly. Client will not hold PTE responsible for any payments owed to sub-vendors beyond those which have been approved and paid to PTE by Client.
 - ix. Client accepts responsibility for ensuring that each PTS Order complies with the Oklahoma Film Enhancement Rebate Administrative Rules as published/administered by the Oklahoma Film & Music Office. PTE makes no guarantee that any specific PTS Order will be eligible for the Oklahoma Film Enhancement Rebate.
- b. PTE represents and warrants as follows:
- i. Upon receiving a completed PTS Request Form and sub-vendor estimate/invoice (and any other pertinent information/paperwork) from the Client regarding an out-of-state order, PTE will create a PTS Order (based on the information provided by the Client and sub-vendor). This order will include (as a separate line item) PTE's Pass-Through Services Fee (as stipulated in Section 3 herein).
 - ii. PTE will send a PTS estimate and invoice to the Client for each individual PTS Order.
 - iii. Upon receiving approval (via signed estimate) and full payment from the Client, PTE will finalize the order and/or payment, as applicable, with the out-of-state sub-vendor. In the case of multiple PTS requests, PTE will finalize and pay for each PTS Order in the order that it is approved (via signed estimate) and paid for by the Client.

- iv. After PTE receives valid pre-payment and pre-approval from the Client for a given order, PTE agrees to pay the sub-vendor the pre-approved amount for the pre-approved order.

7. **INDEMNITY.**

- a. Client agrees to indemnify, defend, and hold harmless PTE and its affiliates, officers, directors, agents, successors, assigns, representatives, employees, and licensees against any and all third-party claims, actions, injuries, damages, liabilities, and expenses arising from:
 - i. The use, possession, or operation of the PTS Items by Client, its officers, employees, affiliates, agents, and licensees, and/or
 - ii. Client's breach of any representations or warranties made herein, and/or
 - iii. The negligence or willful misconduct of Client, its officers, employees, affiliates, agents, and licensees.
- b. PTE agrees to indemnify, defend, and hold harmless Client and its affiliates, officers, directors, agents, successors, assigns, representatives, employees, and licensees against any and all third-party claims, actions, injuries, damages, liabilities, and expenses arising from:
 - i. The use, possession, or operation of the PTS Items by PTE, its officers, employees, affiliates, agents, and licensees, and/or
 - ii. PTE's breach of any representations or warranties made herein, and/or
 - iii. The negligence or willful misconduct of PTE, its officers, employees, affiliates, agents, and licensees.
- c. This mutual indemnification shall survive the term of this Agreement.

8. **DEFAULT.**

- a. **Client Default:** Client's failure to comply with any provision of this Agreement shall constitute a default if such failure is not cured within 14 days of Client's receipt of written notice thereof. Upon Client Default, Client hereby releases PTE from and accepts responsibility for any PTS Item(s) and/or payment(s) owed to applicable sub-vendor(s), and PTE may, to the extent permitted by law, collect any amounts owed to PTE by Client via any method (including, but not limited to, charging Client's credit/debit cards on file, retaining special deposit account funds, and filing claims on Client's insurance).
- b. **PTE Default:** If PTE fails to pay sub-vendor(s) in a timely manner upon receiving signed approval and full payment from Client, and/or fails to return Special Deposit Funds in a timely manner upon payment/completion of all PTS Orders and non-PTS NGP orders, and/or fails to comply with any provision of this Agreement, PTE shall be in default hereunder if such failure is not cured within 14 days of PTE's receipt of written notice thereof.

- c. Either Party shall be permitted to terminate this Agreement immediately upon the default of such other Party. Termination of this Agreement shall not exempt either Party from monies owed under this Agreement and/or any/all executed PTS Orders.

9. **GOVERNING LAW.** This Agreement has been entered into in the State of Oklahoma and shall be governed by laws of the State of Oklahoma, without reference to any conflicts of law principles.

10. **ARBITRATION.** All claims and disputes arising under or relating to this Agreement are to be settled by binding arbitration in Oklahoma City, Oklahoma or another location mutually agreeable to the Parties. The arbitration shall be conducted on a confidential basis pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses, and reasonable attorneys' fees. Any such arbitration shall be conducted by a single arbitrator, as appointed by PTE, and shall include a written record of the arbitration hearing. The Parties reserve the right to object to any individual who shall be employed by or affiliated with a competing organization or entity. An award of arbitration may be confirmed in a court of competent jurisdiction. The Arbitrator shall be empowered to award attorneys' fees and costs to the prevailing party, in addition to any other award.

11. **VENUE.** Venue for the enforcement of any arbitration award arising out of this Agreement shall lie exclusively in the state and U.S. Federal district courts for the districts in which Oklahoma City, Oklahoma, is located. The court enforcing the award shall award attorneys' fees and costs to the prevailing party, in addition to its enforcement of the arbitrator's award.

12. **CONSEQUENTIAL DAMAGES.** Notwithstanding any provision of this Agreement to the contrary, neither Party (nor the officers, directors, employees or agents of either Party) is liable under this Agreement to the other in any action or claim for consequential, incidental, indirect, exemplary, punitive or special damages, whether the action in which recovery of the damages is sought is based on contract, tort (including sole, concurrent or comparative negligence), gross negligence, intentional or wrongful acts or strict liability. To the extent permitted by law, any statutory remedies inconsistent with these terms are waived by the Parties. Notwithstanding the foregoing, the limitation of liability pursuant to this Section 12 is not applicable to any third party claims whatsoever with respect to Section 7 of this Agreement, and PTE and Client shall continue to mutually indemnify and hold harmless the other, its affiliates, officers, directors, agents, successors, assigns, representatives, employees, and licensees from any and all consequential, incidental, indirect, exemplary, punitive or special damages.

13. **WAIVER.** Except as otherwise provided herein, no delay of or omission in the exercise of any right, power or remedy accruing to any Party as a result of any breach or default by any other party under this Agreement shall impair any such right, power or remedy, nor shall it be construed as a waiver of or acquiescence in any such breach or default, or of any similar breach or default occurring later; nor shall any waiver of any

single breach or default be deemed a waiver of any other breach or default occurring before or after that waiver.

14. **HEADINGS.** Any headings used herein are for convenience in reference only and are not a part of this Agreement, nor shall they in any way affect the interpretation hereof.

15. **NOTICES.** All notices under this Agreement shall be in writing addressed to aforementioned addresses, or at such other address as either party may designate from time to time by dated written notice to the other party.

- a. All notices shall be served by U.S. mail, electronic mail, recognized courier services such as Federal Express or DHL, or personal delivery addressed as specified above.
- b. The date of receipt by electronic mail or courier, as the case may be, shall be the date of service of notice.

16. **COUNTERPARTS.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. Facsimile or e-mail transmission of any signed original document and/or retransmission of any signed facsimile or e-mail transmission will be deemed the same as delivery of an original. At the request of any Party, the Parties will confirm facsimile or e-mail transmissions by signing a duplicate original document.

17. **NO THIRD PARTY BENEFICIARIES.** This Agreement is entered into for the benefit of the Parties hereto and not for any other person or entity.

18. **SEVERABILITY.** If any portion of this Agreement is found to be invalid, unenforceable, waived, or otherwise deficient, it shall be severable from the remaining provisions and all other provisions shall remain in full force and effect.

19. **FURTHER DOCUMENTS.** Client agrees to execute, acknowledge, and deliver to PTE and to procure the execution, acknowledgment, and delivery to PTE of any additional documents, information, or instruments which PTE may reasonably require to effectuate fully and carry out the intent and purposes of this Agreement.

20. **PRIOR AGREEMENT.** This Agreement replaces any other/prior Agreement(s) between the Client and PTE regarding the subject matter hereof.

21. **ENTIRE AGREEMENT.**

- a. Both Parties agree that they have read and fully understand and accept all provisions of this Agreement.
- b. This Agreement, together with any and all related addenda, constitutes the entire agreement between Client and PTE.
- c. Any changes to this agreement or any applicable addenda must be made in writing and signed by both Parties.
- d. In the event of conflict between any terms or provisions of any PTS Documents and this Agreement, the terms and provisions of the PTS Documents shall govern and control with respect to that PTS Order only.

- e. Both Parties acknowledge that a photocopy or electronic version of this document shall constitute the same consent as an original.

IN WITNESS WHEREOF, the Parties, each by its duly authorized officer, have executed this Agreement, as of the day and year set forth below.

Client (Name): _____

Signatory (Name/Title): _____

Signatory (Signature): _____

Date: _____

PTE: **NATHAN GARDOCKI PRODUCTIONS, LLC**

Signatory (Name/Title): _____

Signatory (Signature): _____

Date: _____

Exhibit A – Pass-Through Services One-Sheet

Step-by-Step Process:

1. Client sets up a Pass-Through Services (PTS) account and a customer account with Pass-Through Entity (PTE) (see PTE for details).
2. Client sources desired equipment/supplies from out-of-state vendor and works with that vendor to build an order/estimate that is acceptable to Client (in terms of equipment, supplies, dates, acquisition method, pricing, etc.).
3. Client fills out and submits an [online PTS Request Form](#) for each separate order/vendor.
4. Upon receiving the PTS Request Form from Client, PTE will create a PTS estimate for Client's approval.
5. An Authorized Signatory of the Client approves the estimate by signing it and sending the signed estimate and full payment to PTE.
 - a. Client's rental account paperwork and PTS account paperwork must already be on file with PTE before PTE will process any orders (ask PTE for details).
 - b. After receiving the necessary approval, paperwork, and payment from Client, PTE will contact the out-of-state sub-vendor to finalize and/or pay for the order.
6. Client acquires the equipment/supplies directly from the out-of-state sub-vendor via the pre-approved method of acquisition, as coordinated between Client and the sub-vendor.
7. Client returns all rented equipment/supplies directly to the sub-vendor by the due date/time via the pre-approved method of return, as coordinated between Client and the sub-vendor.

Notes/Requirements:

- Each individual Pass-Through Services order must have a total cost of at least \$500 (before taxes and fees) to be eligible for PTE's Pass-Through Services.
- Pass-Through Services requests involving more than one vendor must be submitted separately (per vendor), as they will be processed separately.
- All Pass-Through Services orders will be charged a Pass-Through Services Fee (as stipulated in the PTS Agreement). If the Production Company wishes to pay by card, an additional Processing Fee (3%) will be added. If the Production Company wishes to pay by wire transfer, an additional flat fee will be added (\$25 for domestic, \$50 for international). Oklahoma Sales & Use Tax (8.625%) will be charged on all orders.
- Depending on the circumstances, the above process can take up to several business days to complete. As such, it is vital that the Client gives PTE as much advanced notice as possible when trying to secure a PTS Order.

Exhibit B – Special Deposit Account (Required)

PTE will designate a special bank account into which Client will deposit funds. PTE will then withdraw funds from that account to pay for PTS Orders, as approved and/or owed by Client. This expedites the PTS Order process and facilitates timely payment for orders.

Terms & Conditions:

- The initial deposit amount for this project will be \$_____.
 - A contingency threshold will be maintained as a buffer in an effort to ensure that the deposit account maintains sufficient funds to pay for potential overages. PTE will not process any new orders that would cause the deposit account balance to fall below the contingency threshold. The contingency threshold shall initially be set at \$_____.
- Provided such request(s) will not cause the deposit account balance to fall below the contingency threshold, the Client may request that PTE withdraw money from the account to pay for one or more of the following:
 - PTS Orders that have been pre-approved in writing by the Client.
 - Non-PTS NGP invoices (i.e., direct rentals/purchases between NGP & Client, not involving any sub-vendors).
- Furthermore, if Client fails to provide necessary funds and/or approval to PTE for outstanding balances owed by Client, PTE may, at its sole discretion, use the deposit funds for one or more of the following:
 - PTS-related sub-vendor invoices for any outstanding overages owed by Client.
 - Overdue non-PTS NGP invoices.
- Client will not have direct access to the deposit account funds.
 - PTE agrees to keep a running ledger (via “view only” shared Google Doc) which details the date, amount, purpose, and recipient of each deposit/withdrawal made to/from the account, as well as a running calculation of the account’s remaining balance.
- Once Client verifies in writing and PTE, at its discretion, determines that all PTS sub-vendor accounts/orders have been invoiced in full and submitted to PTE, the contingency threshold will drop to \$0.00, at which point PTE may use any remaining funds to pay for any outstanding PTS invoices owed by Client. Once full payment has been submitted to all sub-vendors for all known invoices, PTE will return all unused funds from the account back to the Client, provided all non-PTS NGP invoices have been paid in full.
- A low balance in this account may cause delays in PTS Order processing. At any point throughout the term of this agreement, Client may (and is encouraged to) submit additional funds to PTE to replenish this account. Client must specify that such funds are specifically for PTS account replenishment.
- PTS Orders are typically based on an estimate from a sub-vendor, and not necessarily an exact total. If a PTS Order’s total cost increases after being pre-approved by the Client, but prior to the PTS Order being finalized with sub-vendor, PTE must submit a revised estimate/invoice to the Client for approval before finalizing the order and/or paying the sub-vendor.
 - Client recognizes and accepts that this may delay the PTS process.