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# **SERVICE AGREEMENT**

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SAMPLE

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SAMPLE

**Date:** 18 June, 2008

**Parties**

**Principal Pty. Ltd.**, ACN 123456789

as trustee for the John Smith Trust of  
123 Principal st  
Sydney, NSW, 2000  
Australia  
(the principal)

and

**Service Provider**, ACN 123456789

as trustee for the Matthew Smith Trust of  
1 Service st  
Sydney, NSW, 2000  
Australia  
(the service provider)

**Background**

- A The principal conducts the business.
- B The principal wishes the service provider to provide the services to the principal.
- C The terms of the services to be provided are set out in this agreement.
- D This agreement describes the nature of the relationship between the parties and the service provider's responsibilities in carrying out the services. Also, it outlines rules about the service provider's support staff.

**A No employment relationship between the parties**

- 1 No relationship of employment or partnership is created by this agreement. The parties expressly deny any such relationship.
- 2 The service provider operates as an independent contractor under this agreement.

**B The service provider and support staff must be able to do the work**

- 3 The service provider warrants that it and its support staff:
  - 3.1 are capable of providing the services to the principal;
  - 3.2 will provide the services to the principal;
  - 3.3 have the skills required to carry out the services; and
  - 3.4 will comply with this agreement in carrying out the services.
- 4 The service provider confirms that the qualifications of its support staff, as represented to the principal, are correct and true.

## **C The use of equipment by support staff**

5 The service provider must ensure that the support staff use the principal's and the service provider's equipment responsibly and in a manner that is consistent with the principal's business objectives, as the principal communicates them to the service provider.

6 The service provider indemnifies the principal against all costs, claims, losses, damages and expenses it suffers or incurs in connection with the support staff's use of either the principal's or the service provider's equipment.

## **D When the provision of the services begins**

7 The service provider agrees to start providing the services from the date of this agreement. This agreement commences on the day this agreement is signed.

## **E Service provider's responsibilities**

8 The service provider must, and must arrange for its support staff to:

- 8.1 provide the services as and when the principal reasonably requires;
- 8.2 carry out the services with due diligence and proper decorum;
- 8.3 carry out the services to the principal's reasonable satisfaction;
- 8.4 carry out the services to the best of their ability and judgment;
- 8.5 use their best endeavours to complete the services within reasonable time frames set by the principal;
- 8.6 carry out the services in a way that promotes the principal's business objectives as the principal communicates them to the service provider;
- 8.7 comply with any legislation that is relevant to the services or that relates to the business; and
- 8.8 comply with any relevant policies of the principal.

## **F Principal's responsibilities**

### **Principal may not deny service**

9 The principal agrees to use the services made available and provided by the service provider under this agreement.

### **Principal must indicate expectations**

10 The principal agrees to inform the service provider about the nature of the services to be provided and how often the principal will require them.

## **G Where the services will be carried out**

11 The services will be carried out at the business premises.

## **H Can the service provider engage in other business?**

### **No conflict of interest**

12 The service provider may engage in other business activities so long as those activities do not:

- 12.1 conflict with the principal's business objectives as the principal communicates them to the service provider; or
- 12.2 hinder the performance of the services to the principal's reasonable satisfaction.

### **Warning of conflict of interest**

- 13 If the service provider sees any risk of any conflict of interest of the kind referred to in clause 12 occurring, then the service provider must warn the principal immediately.

### **Written consent**

- 14 Once the principal has been warned of a possible conflict, the service provider must not engage in those other business activities until the service provider receives written consent from the principal.

## **I What rights does the principal hold over the service premises?**

### **Access and use of service premises**

- 15 The service provider as owner of the service premises, or as lessee of the service premises, (as the case may be) allows the principal access to, and a non-exclusive licence to occupy and use, the service premises for the term – unless the parties agree otherwise.

### **No interest in premises**

- 16 The principal gains no interest in the service premises by virtue of this agreement.

### **No exclusive possession**

- 17 The principal acknowledges that it has no right to exclusive possession of the service premises during the term of this agreement.

### **Access fee**

- 18 The principal must pay a fee to the service provider for access to and use of the service premises. The fee is to be calculated in the manner specified in column 2 of Schedule 2 or as the parties otherwise agree.

## **J Support staff**

### **Support staff employed by service provider**

- 19 The service provider is the sole employer of members of the support staff. At no stage will the principal be required to employ the support staff.

### **Principal not the employer of support staff**

- 20 The principal is not the employer of the support staff for the purposes of any law.
- 21 The principal is not liable for superannuation payments, or payments in respect of workers' compensation or any type of insurance policy with respect to the support staff.

### **Service provider responsible for support staff**

- 22 The service provider is responsible for all superannuation payments, workers' compensation and all types of insurance policies with respect to its support staff, including personal, accident and disability insurance, and professional indemnity insurance.
- 23 The service provider has sole discretion in appointing members of its support staff.
- 24 The service provider is responsible for directing and supervising its support staff.
- 25 The service provider must:
- 25.1 make superannuation and workers compensation insurance contributions for its support staff, except if support staff are not in fact its employees;
  - 25.2 ensure that support staff who are not employees:
    - 25.2.1 are responsible for making their own superannuation payments;
    - 25.2.2 make their own workers' compensation and other insurance arrangements that are required by law;
    - 25.2.3 indemnify the principal and the service provider in respect of all costs, claims, losses, damages and expenses they may suffer or incur in connection with any requirement in respect of the support staff to:
      - (a) make superannuation payments; and
      - (b) maintain such insurance arrangements; and
  - 25.3 if the principal requests, produce evidence of all necessary workers' compensation and other insurance policies for itself and its support staff.

## **K Payment**

### **Calculation of payment**

- 26 The principal must pay the service provider for the services. The amount is to be calculated in the manner specified in column 2 of Schedule 3 (or as the parties otherwise agree).

### **Invoicing**

- 27 Every month the service provider will give the principal a tax invoice for the previous month's service.

### **When tax invoices must be paid**

- 28 The principal must pay tax invoices within 7 days after receiving them.

### **Set off**

- 29 The principal may set off any amounts the service provider owes against any payments it must make to the service provider.

## **L GST**

### **GST Act**

30 In clauses 30-33, words that are defined in *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning as their definition in that Act.

### **Exclusive of GST**

31 Except as otherwise provided by this clause, all consideration payable under this agreement in relation to any supply excludes GST.

### **Recipient must pay**

32 If GST is payable in respect of any supply made by a supplier (that is, the service provider in respect of the services) under this agreement, then (subject to clause 33 of this agreement) the recipient (that is, the principal in respect of the services) will pay to the supplier an amount equal to the GST payable on the supply. The recipient is to make the GST payment at the same time and in the same manner as they pay the consideration for the supply provided under this agreement.

### **Tax invoice**

33 The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST payable under clause 32 of this agreement.

## **M Related entities may receive services**

### **Related entity**

34 The principal may nominate a related entity to receive the services.

### **Fees**

35 The related entity must pay fees for the services that the service provider provides to it in the manner described in section K of this agreement.

### **Set off**

36 The related entity may set off any amounts the service provider owes it against any payments it or the principal must make to the service provider.

## **N Termination**

37 Either party may terminate this agreement by giving the other party written notice of its intention to terminate this agreement at the end of 7 days from the date the notice is given. In that case, this agreement terminates at the end of the 7 day period.

## **O General**

### **Amendment**

38 This document may only be varied or replaced by a document executed by the parties.



### **Entire understanding**

39 This document contains the entire understanding between the parties as to the subject matter contained in it. This document replaces all previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter. They have no effect.

### **Further assurance**

40 Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this document.

### **Legal costs and expenses**

41 Each party must pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this document and other documents referred to in it – unless expressly stated otherwise.

### **Stamp duty**

42 The principal must pay any stamp duty (including all fines and penalties except those arising from the default of another party) in respect of any transactions contemplated under this document or otherwise arising out of, or incidental to, this document.

### **Waiver and exercise of rights**

43 A single or partial exercise or waiver of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right.

44 No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

### **Assignment**

45 Before a party does any of the following, it must first get the written consent of the other parties to this document:

45.1 sells, transfers, delegates, assigns, licences any right under this document to any person;

45.2 mortgages, charges or otherwise encumbers any right under this document to any person; or

45.3 permits a proposed assignee to assume any obligation under this document.

46 If a party asks another party for its consent to do something in clause 45, then the other party must not unreasonably withhold consent.

47 The assigning party must pay all fees and expenses (including legal fees on a solicitor/own client basis) incurred by the other parties in connection with the proposed assignment and the investigation of the proposed assignee. It must do that whether or not the other party grants consent.

48 The assigning party must deliver to the other parties:

48.1 the name, address and occupation of the proposed assignee;

- 48.2 two written references as to financial circumstances of the proposed assignee;
- 48.3 an agreement in a form approved by the other parties, executed by the proposed assignee, in which the proposed assignee agrees to perform the obligations of the assigning party under this document; and
- 48.4 if required by the other parties, a guarantee in a form approved by the other parties executed by persons approved by the other parties, guaranteeing the performance of the proposed assignee's obligations.

**Time of the essence**

49 Time is of the essence for all dates, periods of time and times specified in this document.

**P Notices**

**Service of notice**

- 50 A notice or other communication required or permitted, under this document, to be served on a person must be in writing and may be served:
- 50.1 personally on the person;
  - 50.2 by leaving it at the person's current address for service;
  - 50.3 by posting it by prepaid post addressed to that person at the person's current address for service; or
  - 50.4 by facsimile to the person's current number for service.

**Particulars for service**

- 51 The particulars for service of the principal are:
- 51.1 address:  
123 Principal st  
Sydney, NSW, 2000  
Australia
  - 51.2 facsimile number:  
02 9111 2222
- 52 The particulars for service of the service provider are:
- 52.1 address:  
1 Service st  
Sydney, NSW, 2000  
Australia
  - 52.2 facsimile number:  
02 9888 7777

- 53 Any party may change the address or facsimile number for service by giving notice to the other parties.
- 54 If the person to be served is a company, then the notice or other communication may be served on it at the company's registered office.

## **Time of service**

- 55 A notice or other communication is deemed served:
- 55.1 if served personally or left at the person's address, upon service;
  - 55.2 if posted within Australia to an Australian address, 2 business days after posting and in any other case, 7 business days after posting;
  - 55.3 if served by facsimile, subject to clause 55.4 of this agreement, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile;
  - 55.4 if received after 6:00 pm in the place of receipt or on a day which is not a business day, at 9:00 am on the next business day.

## **Q Interpretation**

### **Governing law and jurisdiction**

- 56 This document is governed by and is to be construed in accordance with the laws of New South Wales. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and waives any right to object to proceedings being brought in those courts.

### **Persons**

- 57 In this document, a reference to:
- 57.1 a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
  - 57.2 a person includes the legal personal representatives, successors and permitted assigns of that person; and
  - 57.3 any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body.

### **Joint and several**

- 58 If a party consists of more than one person, then this document binds them jointly and each of them severally.

### **Legislation**

- 59 In this document, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

### **This document, clauses and headings**

- 60 In this document:
- 60.1 a reference to this or other document includes the document as varied or replaced regardless of any change in the identity of the parties;

- 60.2 a reference to a clause, schedule, appendix or annexure is a reference to a clause, schedule, appendix or annexure in or to this document all of which are deemed part of this document;
- 60.3 a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- 60.4 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this document;
- 60.5 if an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and
- 60.6 if the expression 'including' or 'includes' is used it means 'including but not limited to' or 'including without limitation'.

### **Severance**

- 61 If a provision in this document is held to be illegal, invalid, void, voidable or unenforceable, then that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- 62 If it is not possible to read down a provision as required in this clause, then that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this document.

### **Counterparts**

- 63 This document may be executed in any number of counterparts all of which taken together constitute one instrument.

### **Currency**

- 64 In this document, a reference to '\$' or 'dollars' is a reference to Australian dollars.

### **Business day**

- 65 If a payment or other act is required by this document to be made or done on a day which is not a business day, then the payment or act must be made or done on the next following business day.

### **Number and gender**

- 66 In this document, a reference to:
- 66.1 the singular includes the plural and vice versa; and
- 66.2 a gender includes the other genders.

## **R Definitions**

**Agreement** means this agreement between the parties.

**Business** means Legal services.

**Business day** means Monday to Friday excluding public holidays in New South Wales.

**Business premises** means the premises from which the principal conducts the business (as lessee or owner), as specified in Schedule 1 and any service premises and any other place that the principal carries on business during the term.

**Clause** means a clause of this agreement.

**Effective date** means the date of this agreement.

**Law** means any Act of Parliament, local law, regulation, order or ruling.

**Principal** means **Principal Pty. Ltd.** as trustee for the John Smith Trust, as stated in 'Parties' section of this agreement.

**Related entity** includes any entity that is a related entity of the principal under the *Corporations Act* 2001, and any entity that the principal nominates to be a related entity of the principal.

**Schedule** means a schedule to this agreement.

**Service premises** means the premises which the principal occupies and uses under section I of this agreement, as specified in column 1 of Schedule 2 and any additional premises agreed in writing between the parties.

**Service provider** means **Service Provider** as trustee for the Matthew Smith Trust, as stated in 'Parties' section of this agreement.

**Services** means the services specified in column 1 of Schedule 3.

**Support staff** means:

- the management staff, support and administration staff, consultants or other contractors the principal requires; and
- other personnel including, professional staff, as the parties agree at any time the principal requires to be employed by the service provider for the purpose of providing the services.

**Term** means the term commencing on the effective date and ending on the date this agreement terminates under clause 37 of this agreement.

## Execution

Executed as a deed.

Dated: \_\_\_\_\_

Executed by Principal Pty. Ltd. as trustee  
for the John Smith Trust in accordance  
with section 127(1) of the *Corporations  
Act 2001*:

\_\_\_\_\_  
Signature of director

David Director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Signature of director

Daniel Director

\_\_\_\_\_  
Name of director

Dated: \_\_\_\_\_

Executed by Service Provider in  
accordance with section 127(1) of the  
*Corporations Act 2001*:

\_\_\_\_\_  
Signature of director

Darren Director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Signature of secretary

Susan Secretary

\_\_\_\_\_  
Name of secretary

## Schedule 1

### Business premises

Location of business premises
123 Conduct st Sydney, NSW, 2000 Australia

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## Schedule 2

### Service premises

Column 1	Column 2
<b>Location of service premises</b>	<b>Fee</b>
123 Conduct st Sydney, NSW, 2000 Australia	A fee determined by the service provider provided which does not exceed a comparable market price.

SAMPLE



## Schedule 3

### Services

	Column 1	Column 2
Group	Services	Fee
1.	Labour hire	<ul style="list-style-type: none"> <li>Actual direct and indirect costs to the service provider of salary and benefits of support staff, plus a mark-up as determined by the service provider at its absolute discretion. However, the mark-up must not exceed 30% of the actual salary and benefits the service provider pays to support staff.</li> <li>All direct and indirect and indirect costs of salary and benefits of support staff must be absorbed by the mark-up.</li> </ul>
2.	Recruitment	<ul style="list-style-type: none"> <li>Actual direct and indirect operating costs to the service provider associated with recruitment activities plus a net mark-up at determined by the service provider at its absolute discretion. However, the mark-up must not exceed 10% of actual direct and indirect operating costs to the service provider.</li> </ul>
3.	Expense payments	<ul style="list-style-type: none"> <li>Actual direct and indirect operating costs associated with expense payment plus a mark-up determined by the service provider at its absolute discretion. However, the mark-up must not exceed 10% of actual direct and indirect operating costs to the service provider.</li> </ul>
4.	Equipment hire	<ul style="list-style-type: none"> <li>Actual operating costs to the service provider relating to the hire of equipment plus a mark-up determined by the service provider at its absolute discretion. However, the mark-up must not exceed 10% of actual costs to the service provider.</li> </ul>