

PMA MODELS PTY LTD – SERVICE AGREEMENT



DATE OF AGREEMENT:

The date referred to in **Item 1** of the Work Order (“the Date of the Agreement”)

BETWEEN:

The party referred to in **Item 2** of the Work Order (“PMA”)

AND:

The party referred to in **Item 3** of the Work Order (“the Customer”)

INTRODUCTION

- A. PMA is in the business of supplying and installing point-of-sale systems and registers.
- B. PMA agrees to supply the Services to the Customer on the terms and conditions contained in this Agreement.
- C. The parties agree to be bound by the terms and conditions contained in the Work Order at Annexure A and these terms of Agreement.

TERMS OF AGREEMENT

1. Interpretation

1.1 Interpretation

- (a) words importing the singular include the plural and vice versa and words importing any gender include the other genders;
- (b) a reference to an Act of Parliament, or section or schedule of that Act includes any statutory modification or re-enactment of that Act;
- (c) a reference to a document or agreement (including this agreement) includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (d) a reference to a party will be construed as a reference to a party to this agreement;
- (e) where a party comprises two or more persons an agreement or obligation to be performed or observed by that party binds those persons jointly and severally and a reference to that party includes a reference to any one or more of those persons;
- (f) a reference to a party will be construed as a reference to a party to this agreement;
- (g) references to “dollar” and “\$” will be construed as references to Australian currency;
- (h) a reference to writing includes typewriting, printing, lithography, photography and any other mode of representing or reproducing words in a permanent and visible form;
- (i) if any day appointed or specified by this agreement for the doing of any act, matter or thing falls on a day which is a Saturday, Sunday or public holiday, the day so appointed or specified will be deemed to be the next day which is not such a day.

1.2 Definitions

In these Standard Terms, the following words have the corresponding meanings:-

“**Customer**” means the Customer specified on the Work Order.

“**Date of Agreement**” means the date specified on the Work Order.

“**Excluded Duties**” means duties that are not included in a Proposal or Event Brief and make Talent:

- (a) feel unsafe or uncomfortable;
- (b) harassed either physically, verbally or sexually; or
- (c) feel demeaned in performing duties that are not reasonably outlined in the Event Brief (ie Corporate Hostess asked to hand out flyers on a side street or dance on a podium).

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“Event Brief” means the

“PMA” means PMA Models Pty Ltd A.C.N. 137 597 829.

“Premises” means the job location specified on the Work Order.

“Proposal” means the proposal attached to this Agreement as Annexure B.

“Services” means the promotional services described in the Proposal.

“Talent” means PMA’s contracted promotional models and staff.

“Term” means the term of this Agreement specified in item * of the Work Order.

“Work Order” means the Work Order annexed to this Agreement.

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2. Services and Acceptance

- 2.1 The Proposal set out in Annexure C is open for acceptance by the Customer at least 28 days before the event date.
- 2.2 Upon written acceptance of the Proposal by the Customer, PMA shall provide the Services to the Customer.
- 2.3 If the Proposal is not accepted pursuant to this clause, the Proposal shall be withdrawn and PMA shall not be required to fulfil the Work Order.
- 2.4 The Proposal may be varied after acceptance, subject to agreement by PMA which may be withheld at PMA’s discretion including but not limited to availability of talent, conflicts with other events, time until the event.
- 2.5 Each variation to the Proposal shall incur administration fee of \$50.00.
- 2.6 All Talent are entitled to a 30 min break for every 5 hours worked at times to be determined by the Customer and Talent on good faith.
- 2.7 The Customer agrees that it is required to observe occupational health and safety requirements and comply with this clause as if it were an employer of Talent.

3 Model /Talent Briefs & Attendance

- 3.1 The Customer must provide a full written description of the Event Brief to PMA within 7 days before the event. Unless otherwise notified by PMA, Talent will be directed to comply with the Event Brief in performing the Services.
- 3.2 The Customer agrees to execute a Proposal Sign-off form (attached at Annexure “B”) by the Proposal Date listed in item 8 of the Work Order.
- 3.3 The Customer shall not be given personal information and contact information of any Talent and must direct all enquiries to PMA. The Customer must not ask for personal or contact information of any Talent and must use best endeavours to ensure its invitees, employees, staff and guests comply with this clause.
- 3.4 The Customer agrees that if Talent is required/requested by the Customer or any person representing the Customer to perform Excluded Duties, the Talent may immediately conclude the Services the subject of the Proposal and the Customer agrees to pay the Service Fee without discount or deduction.

4 Key-Person

- 4.1 The Customer agrees to nominate a Key-Person, identified at item 4 of the Work Order as the sole point of contact for all dealings with PMA. The Customer agrees by executing this Agreement that the Key Person has authority to bind the Customer and is entitled to make decisions on behalf of the Customer.

5. Payment for Services

- 5.1 The Customer must pay the Service Fee in item 15 of the Work Order to PMA and in addition any Goods and Services Tax payable pursuant to clause 4 below, in full consideration for all Services rendered by PMA.
- 5.2 The Customer must pay the Deposit on the Service Fee as specified in item 16 of the Work Order on execution of this Agreement.
- 5.3 Failure by the Customer to pay any of the Service Fees by the Proposal Signoff Date specified in this Agreement will result in termination of the Agreement and forfeit of the Deposit or any other payments made by the Customer.

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5.4 All Services Fees must be paid by the Final Payment Date.

6. Goods and Services Tax (“GST”)

6.1 The Customer acknowledges that any liability imposed upon PMA pursuant to *A New Tax System (Goods and Services Tax) Act 1999* in respect of taxable supplies will be passed on by PMA to the Customer and included in PMA' accounts to the Customer.

7. Estimated Fees and Cancellations

7.1 PMA has provided an estimate of fees as set out in item 14 of the Schedule as a tentative quote including foreseeable costs and out of pocket expenses pursuant to the Proposal.

7.2 PMA is not bound by the amount set out in item 14 of the Schedule.

7.3 PMA will provide the confirmed Service Fee to the Customer at least 7 days prior to the Event which may be accepted by the Customer verbally, in writing or by conduct and shall be binding on the Customer.

7.4 Cancellations must be notified to PMA during hours of 8.30am – 5.30pm Monday – Friday and shall be charged on the following basis:-

Fee Payable	Time Frame/Reason
100%	Cancelled within 48 hours from Event
100%	Cancelled due to inclement weather on arrival
100%	Specified Talent is ill but suitable replacement is provided by PMA.
0%	Specified Talent is ill but suitable replacement not provided.
25%	Cancelled more than 7 days before Event
50%	Cancelled less than 7 days and more than 48 hours before Event.

8. Interest

8.1 The Customer agrees that in the event that it has not made any payment owing by the due date specified in the Work Order and PMA has not yet elected to terminate the Agreement, interest will accrue on that late payment at a rate equivalent to the percentage which is 5% above the prime lending rate imposed by PMA' s financial institution from time to time.

9. Risk

9.1 The Products & Systems will be at the risk of the Customer for their full replacement value from the time the Products & Systems arrive on the Premises. The Customer has or agrees to take out such policies of insurance as are reasonable in the circumstances.

10. Ownership of Intellectual Property

10.1 Nothing in this agreement grants any rights in relation to PMA's intellectual property in relation to its systems, trade secrets, methods, scripts, trademarks, services and databases, including registered or unregistered copyrights, trademarks, designs or patents.

11. Out of Pocket Expenses & Hourly Rate

11.1 PMA may provide additional ongoing Services in addition to the time set out in the Proposal where required by the Customer, to be charged at a time and attendance basis at the hourly rate identified in item 17 of the Work Order.

11.2 Unless otherwise stated in the Proposal, the Customer agrees to pay (in addition to the Service Fee and charges set out in the Proposal) travel allowance for a driver of \$0.50 per kilometre plus \$0.35 per kilometre per passenger for any Event that is located more than 30 kilometres from a Central Business District of a Capital City of Australia.

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- 11.3 Unless otherwise stated in the Proposal, the Customer agrees to pay (in addition to the Service Fee and charges set out in the Proposal) per diem fee of \$60.00 per 24 hours for meals and incidentals for any Proposal which requires Talent for multiple days.
- 11.4 The Customer agrees to provide accommodation in a safe and suitable hotel approved by PMA and paid for prior to the Event where Talent are required to travel more than 100km to attend the Event. PMA will use reasonable endeavours to limit the requirement for the Customer to pay for accommodation by using Talent in the local area of the Event unless specific Talent is selected by the Customer for the Proposal/Event.
- 11.5 If the Customer no longer requires the Services to be performed in the allocated hours in the Proposal, the Customer shall be liable for the full time booked and no discount or refund shall apply.
- 11.6 PMA will render Tax Invoices to the Customer from time to time and the Customer will attend to payment in accordance with PMA' terms contained in the Tax Invoice.
- 11.7 This Agreement where applicable shall continue to apply in relation to any payments owing pursuant to this clause 11.

12. Delegation of Duties

- 12.1 PMA may delegate its duties to an employee(s), or contractor(s) under this Agreement without written consent from the Customer.
- 12.2 The Customer also acknowledges that PMA is not responsible to the extent for damages made by any contractor(s) or sub-contractor(s) of a contractor under this Agreement.

13. Entire Agreement

- 13.1 The terms and conditions of this Agreement constitute the entire understanding between the parties relating to the provision of services described herein and will supersede any previous communication, representation or agreement whether oral or written. Customer's additional or special terms and conditions will not apply, unless expressly stated herein or agreed in writing.

14. Warranties and Indemnities by the Customer

- 14.1 The Customer warrants It has obtained all approvals required by Law with respect to the performance of the Services by PMA.
- 14.2 The Customer indemnifies PMA against any actions against PMA by virtue of the Customer not obtaining all approvals required by Law.

15. Limitation of Liability

- 15.1 The Customer expressly acknowledges that PMA is not responsible for any loss or damage incurred by the Customer due to circumstances beyond the control of PMA, including but not limited to software viruses, power failure, electrical or topographical interference.
- 15.2 The Customer acknowledges and agrees that PMA will not indemnify the Customer for any resulting loss or damage.
- 15.3 The Customer therefore understands and agrees that PMA will not be responsible for any performance, or failure, of the Services and/or Products & Systems, and any resulting loss or damage whether due to the circumstances envisaged in clause 14.1 or otherwise.
- 15.4 The Customer acknowledges that PMA is not responsible for malfunction or failure to function by the Product supplied by a third party or any damages caused as a result of such failure or malfunction.

16. Insurance

- 16.1 The Customer warrants that they have public liability insurance in place for the Event in the sum of \$10,000,000.00 per occurrence.

17. Indemnities

- 17.1 The Customer shall indemnify PMA:

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- (a) against all actions, claims, losses, costs and expenses which PMA may sustain or incur as a result of installing and servicing the Products & Systems; and
- (b) against all actions, claims, losses, costs and expenses which PMA may sustain or incur as a result of any damage or injury which may occur to the Premises or any person arising from or in connection with the installation, inspection, operation, repair, replacement or removal of the Products & Systems.

18. Relationship of Parties

- 18.1 PMA' relationship with the Customer is that of independent contractor. Neither PMA nor the Customer has (nor may it represent that it has) any power, right or authority to bind the other, or to assume or create any obligation or responsibility, express or implied, on behalf of the other or in the other's name.
- 18.2 Nothing stated in this Agreement must be construed as constituting PMA and Customer as partners, or as creating the relationship of employer and employee, mater and servant or principal and agent between the parties.
- 18.3 PMA shall not be responsible for acts of the Customers employees, other contractors, or partners who may assist in any provision provided by this agreement.

19. Termination

- 19.1 PMA may terminate this Agreement at any time by the delivery to the Customer of written notice of intention to terminate the Agreement on a date not earlier than one (1) month from the date of the notice.
- 19.2 If the Customer fails to comply with its requirements under each Roll-Out Date by 5.00pm on the Roll-Out Date, PMA is entitled to terminate this Agreement immediately upon issue of written notice to the Customer.

20. Remedies and Waiver

- 20.1 If this agreement is terminated pursuant to clause 19, then each party retains all rights and remedies for any breaches of the agreement that occurred prior to the termination. It is acknowledged and agreed by PMA that damages are a sufficient remedy for any breach of this agreement by the Customer.
- 20.2 The failure of a party to require performance by any other party to this agreement in no way affects the full right to require the performance at any time afterwards.

21. Disputes/Arbitration

- 21.1 All questions or differences whatsoever which shall at any time hereafter arise between the parties hereto or their respective representatives or successors or any of them, touching or concerning this Agreement or the construction, meaning, operation or effect thereof or of any clause herein contained or as to the rights, duties or liabilities or the parties hereto or their respective representatives or successors or any of them under or by virtue of this Agreement, or otherwise touching the subject matter hereof, shall be referred to a single arbitrator to be agreed upon by the parties hereto or in the absence of agreement to be nominated by the President for the time being of the Queensland Law Society Incorporated and such arbitration shall be pursuant to the provisions of the *Commercial Arbitration Act 1990* (Qld) (as amended).

22. Joint and Several Liability

- 22.1 Where any party to this Agreement shall consist of more than one person or company or any combination of person, persons and company or companies being at least two, then the liability pursuant to this Agreement of such person, persons, company or companies, as the case may be, shall be joint and several.

23. Severability

- 23.1 In the event that any part of this Agreement shall become or be declared invalid, unenforceable or unlawful the remaining portions of this Agreement shall not thereby be affected and shall remain in full force and effect and be construed accordingly.

24. No Waiver

- 24.1 Failure of a party at any time to require full or partial performance of any provision of this Agreement shall not affect in any way the full right of that party to require that performance subsequently.

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- 24.2 The waiver by any party of a breach of a provision of this Agreement shall not be deemed a waiver of all or part of that provision or of the right of that party to avail itself of its rights subsequently.
- 24.3 Any waiver of a breach of this Agreement shall be in writing signed by the party granting the waiver, and shall be effective only to the extent specifically set out in that waiver.

25. Governing Law

- 25.1 The governing law of this Agreement is the law of Queensland and each party irrevocably submits to the jurisdiction of that place.

26. Competition and Consumer Act 2010 (Cth)

- 26.1 Parties agree that section 23(3) of Schedule 2 of the Competition and Consumer Act 2010 (Cth) (**Consumer Act**) does not apply to this Agreement as the supply of goods or services are not to an individual whose acquisition of the goods, services or interest is wholly or predominantly for personal, domestic or household use or consumption.
- 26.2 Given that this Agreement is not a consumer contract in accordance with section 23(3) of the Consumer Act, provisions relating to 'unfair terms' of a consumer contract in Schedule 2 of the Consumer Act shall not apply to this Agreement to the extent permitted by law.
- 26.3 If it is found by a court of competent jurisdiction that this Agreement is a Consumer Contract under section 23(3) of Schedule 2 of the Consumer Act, then clauses 26.4 – 26.5 apply.
- 26.4 PMA' liability for a breach of a condition or warranty implied by Schedule 2 Part 3-2 Division 1 of the *Consumer Act* is hereby limited to:
- a) in the case of goods, any one or more of the following:-
 - i. the replacement of the goods or the supply of equivalent goods;
 - ii. the repair of the goods;
 - iii. the payment of the cost of replacing the goods or of acquiring equivalent goods;
 - iv. the payment of the cost of having the goods repaired; or
 - b) in the case of services:-
 - i. the supplying of the services again; or
 - ii. the payment of the cost of having the services supplied again.
- 26.5 PMA liability under Schedule 2, Part 3-2 Division 1 s55 of the Consumer Act is expressly limited to a liability to pay to the Customer an amount equal to:
- a) the cost of replacing the goods;
 - b) the cost of obtaining equivalent goods; or
 - c) the cost of having the goods repaired,
- whichever is the lowest amount.

27. Confidentiality

- 27.1 All information ('the information ') acquired by a party in relation to this Agreement or any dealing arising out of this Agreement must be treated as confidential by that party and must not be divulged by that party in whole or in part to third persons without the prior written consent of the other parties, except:
- (a) a party may divulge the information to a related corporation of that party or to a bank or other lender to the extent necessary for a party arranging financing of its obligations under this agreement; or
 - (b) to the extent necessary to ensure the efficient operation of this Agreement; or
 - (c) to the extent required to be disclosed by the law applicable to that party or by any authority or regulatory body having jurisdiction over that party (including any stock exchange); or
 - (d) to the extent that the information or data lawfully is or becomes within the public domain; or
 - (e) when it is reasonably required for the purposes of any professional, adviser, consultant, expert, contractor or subcontractor employed or retained by the party.

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- 27.2 The Customer warrants that it must not contact any Talent directly for private or other work without the express written consent of PMA. The Customer agrees to compensate PMA for any Talent booked without consent at the nominal rate of \$300 per hour plus GST which may be recoverable by PMA as a liquidated debt.
- 27.3 Each party must take all steps reasonably necessary to ensure that the information is made known only to those persons that reasonably require its knowledge in the course of their duties. Despite this clause each party will, to the extent permitted by law, require any person to whom it intends to disclose the information (who is not under a legal, professional or contractual duty to keep the information confidential) to give a written undertaking to all parties to this contract to deal with the information in accordance with this clause.

28. Enforceability

- 28.1 Any provision of, or the application of any provision of, this agreement which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- 28.2 Any provision of, or the application of any provision of, this agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.
- 28.3 Any amount payable pursuant to this agreement and not paid within 21 days shall be referred to a debt collection agency and the Customer shall be liable for any additional fees and consents to their details being reported to any relevant credit reporting agency for non-payment or default.

29. Notices

- 29.1 Notices under this Agreement must be in writing and may be given by a party's lawyer.
- 29.2 Notices are effectively given if:
- a) delivered or posted to the other party or its lawyer; or
 - b) sent to the facsimile number of the other party or its lawyer;
- 29.3 Posted notices will be treated as given two business days after posting.
- 29.4 Notices sent by facsimile will be treated as given when the sender obtains a clear transmission report.
- 29.5 Notices given after 5.00 pm will be treated as given on the next business day;
- 29.6 Notices or other written communications by a party's lawyer will be treated as given with that party's authority.