



AXS Access Management Pty Ltd (ACN 126 708 736)  
 11 Harris Road, Malaga, WA 6090  
 Telephone: (08) 9241 6088 Fax: (08) 9248 3244  
 PO Box 3204, Malaga DC 6945

## CREDIT APPLICATION

This Application is between the applicant nominated below (**Applicant**) and AXS Access Management Pty Ltd (ACN 126 708 736) ("**AXS**").

PLEASE COMPLETE ALL SECTIONS

### APPLICANT

Legal entity type (Please tick one)

Individual/Sole Trader

Trust

Partnership

Public Company

Private Company

\*Other

Joint Venture

\*Please specify \_\_\_\_\_

Applicant Full Name and ABN/ACN:

ACN:

ABN:

Trading Name:

Name and ACN/ABN of Partnership

ACN:

ABN:

(if a company)

Name and ABN of Trust (if acting as trustee)

ABN:

Name and ABN/ACN of Joint Venture

ACN:

ABN:

Registered Business Address:

Business Postal Address (if different to the above):

Leased: Yes  No

Mortgaged: Yes  No

Business Contact Name & Position:

Email Contact:

Phone:

Fax:

Date Trading Commenced:

Name of Bank:

Branch & Address of Bank:

BSB & Account Number:

Credit Limit Requested: A\$

A\$

Company use only  
APPROVED LIMIT :

Accounts Contact and email:

Email address for Notices

Do you wish to on-hire goods? (tick one)

Always

Sometimes

Never

### TRADE REFERENCES

Organisation:

Contact name and position:

Address:

Phone:

Fax:

Email Contact:

Organisation:

Contact name and position:

Address:

Phone:

Fax:

Email Contact:

Organisation:

Contact name and position:

Address:

Phone:

Fax:

Email Contact:

**SOLE TRADER/OFFICER DETAILS**

Please complete full details for ALL Directors/ Proprietors/ Partners/Trustees of the Applicant as applicable (please add extra pages as necessary)

Position with Applicant: \_\_\_\_\_  
 Full Legal Name\*: \_\_\_\_\_  
 Residential Address: \_\_\_\_\_  
 Email Contact: \_\_\_\_\_ ABN (If a trustee): \_\_\_\_\_  
 Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
 Drivers Licence Number: \_\_\_\_\_ DOB: \_\_\_\_\_

Position with Applicant: \_\_\_\_\_  
 Full Legal Name\*: \_\_\_\_\_  
 Residential Address: \_\_\_\_\_  
 Email Contact: \_\_\_\_\_  
 Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
 Drivers Licence Number: \_\_\_\_\_ DOB: \_\_\_\_\_

Position with Applicant: \_\_\_\_\_  
 Full Legal Name\*: \_\_\_\_\_  
 Residential Address: \_\_\_\_\_  
 Email Contact: \_\_\_\_\_  
 Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
 Drivers Licence Number: \_\_\_\_\_ DOB: \_\_\_\_\_

**\*Name must match the name on Drivers Licence and a copy of Driver's Licence submitted with the Application**

**APPLICANT DECLARATIONS**

By signing this Application:

1. I/we declare that the information given in this Application is correct, that the person signing is authorised to do so and I/we hereby apply for credit facilities for the purchase or hire of goods and or services and agree to provide all information reasonably required by AXS in order to verify the information provided such as (without limitation) original passport, driver's licence or other identification (for sighting purposes only), copy of trust deed or of partnership deed (where relevant)
2. I/we declare that I/we **have read and accept AXS's Sales and Services Terms and Conditions and AXS's Conditions of Hire ("the Terms") both attached to this Application** which apply to the provision of all goods by sale and services and to the hire of all goods, respectively, from AXS to the Applicant, whether or not the Applicant has signed either or both Terms.
3. I/we acknowledge that terms used in this Application shall have the same meaning as provided in the Terms unless otherwise defined.
4. I/we acknowledge that AXS may accept or refuse this Application at its sole discretion and that AXS may at any time and from time to time, suspend, withdraw or refuse to extend any further credit to the Applicant or decrease or increase the limit of the credit facility without notice to the Applicant.
5. I/we acknowledge that any application for credit will result in an enquiry about the Applicant and/or its office holders through a credit agent. The Applicant and its office holders consent to such enquiries as deemed necessary by AXS to investigate the consumer and commercial creditworthiness or commercial credit activities of the Applicant.
6. I/we acknowledge that if AXS is unable to obtain all the relevant information it requires in a timely manner, including information requests for the purposes of the *Personal Properties Securities Act 2009(Cth)*, it may not be able to approve the Application.
7. I/we acknowledge that AXS will, in providing the goods and or services to the Applicant, act in reliance on this information.
8. I/we acknowledge that where there is more than one Applicant each Applicant shall be jointly and severally liable hereunder and all terms in this Application shall be read and construed as including plural.

**Executed** on behalf of the Applicant by an authorised office holder/s of the Applicant:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Full Name & Position of Signatory

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Full Name & Position of Signatory

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness Name

\_\_\_\_\_  
Address

**GUARANTEE**

In consideration of AXS Access Management Pty Ltd (ACN 126 708 736) ("**AXS**") agreeing, at the request of the Applicant to provide goods and/or services to the Applicant in accordance with the terms of this Application and the Sales and Services Terms and Conditions and/or the Conditions of Hire ("Terms"), the person/s signing this guarantee below (**Guarantor**), hereby jointly and severally, unconditionally and irrevocably guarantee to AXS the due and punctual performance by the Applicant of any term of any agreement resulting from this Application. As an independent liability, the Guarantor agrees to indemnify AXS and to keep AXS indemnified against and from all loss, damage, costs and expenses suffered or incurred by AXS by reason of any breach or non-performance by the Applicant.

The Guarantor hereby agrees to be bound by the terms of the Application and the Terms and make the declarations and give the consents and authorities contained therein as if they were the Applicant and the terms were repeated fully within this Guarantee and the Guarantor were the Applicants named therein.

The Guarantor acknowledges that the liability of the Guarantor is absolute and is not subject to the execution of this or any other instrument or document by any person other than the Guarantor and is not subject to the performance of any condition precedent or subsequent. Until all obligations have been fully satisfied, the Guarantor will not be subrogated to any rights of AXS. The liability of the Guarantor will not be affected by any act, omission, matter or thing that would otherwise operate in law or in equity to reduce or release the Guarantor from the Guarantor's liability and AXS may proceed against any one or more Guarantor (where more than one) before or instead of proceedings against the Applicant. The Guarantor acknowledges that a certificate from AXS shall be conclusive evidence as to the amount owed by the Applicant and the Guarantor.

The Guarantor hereby charges and creates in AXS's favour a security interest in the Guarantor's present and future interests in any real property or other property and agrees that on demand by AXS, the Guarantor will immediately execute such mortgage or instrument of security as AXS requires. The Guarantor irrevocably authorises AXS to lodge a caveat on any property noting the interest of AXS by this charge.

The Guarantor acknowledges and agrees that it understands the nature and effect of this Guarantee and declares that it has had the opportunity of obtaining independent legal advice prior to signing this Guarantee or having the opportunity to seek such advice, determined such advice was not necessary before executing this Guarantee and enter into this Guarantee freely after considering such advice or electing not to obtain such advice.

**Signed, sealed and delivered** by the  
Guarantors:

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Full Name of Guarantor:

\_\_\_\_\_  
Full Name of Guarantor:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness (Print)

\_\_\_\_\_  
Name of Witness (Print):

\_\_\_\_\_  
Address of Witness:

\_\_\_\_\_  
Address of Witness:

\_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Full Name of Guarantor:

\_\_\_\_\_  
Full Name of Guarantor:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness (Print)

\_\_\_\_\_  
Name of Witness (Print)

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Address of Witness

## CONDITIONS OF HIRE

### 1. INTERPRETATION

In these conditions:

- (a) "**Commencement Date**" means the date on which either the Goods are delivered to the Hirer or collected from the Owner by the Hirer, and where both occurs whichever is the earlier;
- (b) "**Goods**" means all goods hired by the Owner to the Hirer including all accessories and parts;
- (c) "**Hirer**" means the person or entity taking possession of the Goods from the Owner;
- (d) "**Owner**" means ASX Access Management Pty Ltd (ACN 126 708 736) its successors and assigns.

### 2. ACKNOWLEDGMENTS

The Hirer acknowledges that:

- (a) it has inspected the Goods and has satisfied itself as to the condition and quality of the Goods, the suitability and fitness of the Goods for the Hirer's purpose or purposes and their compliance with their description.
- (b) to the extent permitted at law the Owner provides no warranty or condition (express or implied) as to the condition and quality of the Goods or as to the suitability or fitness of the goods for the Hirer's purpose or purposes.

### 3. OWNERSHIP OF GOODS

The Owner retains full title for the Goods at all times even where they become attached to any land or building to facilitate their use.

### 4. PAYMENT

- 4.1 The Hirer will pay the Owner's usual charges for the hire of the Goods ("**hire fees**") from the Commencement Date until the Goods either are:
  - (a) returned to the Owner's premises as shown on this delivery note or any other place specified by the Owner in writing; or
  - (b) collected by the Owner.
- 4.2 The Owner reserves the right at any time and without notice to the Hirer to revise its charges for the Goods.
- 4.3 The Owner will render invoices to the Hirer of the Goods on a monthly basis in respect to the hire of the Goods and the Hirer shall pay each invoice within 30 days EOM to the Owner at the address shown on this delivery note or any other place notified by the Owner in writing.
- 4.4 The Owner shall be entitled to refuse to supply any Goods to the Hirer whilst any invoice then due remains unpaid the Hirer in any other way be in breach of its obligations as set out herein.
- 4.5 The Hirer shall pay all GST imposed on the supply of Goods.

### 5. INTEREST

The Hirer will pay interest on all sums outstanding from the due date at the prime rate chargeable by the Owner's current bank on overdrafts of less than ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) plus 2 per centum.

### 6. DELIVER AND COLLECTION

- 6.1 Subject to condition 6.2 herein, the Hirer shall collect the Goods from the Owner's premises and upon the conclusion of the hiring shall return the Goods to the Owner's premises.
- 6.2 If the Hirer so requests the Owner shall deliver the Goods to or collect the Goods from any place designated by the Hirer to which the Hirer has lawful access provided that:
  - (a) any such request must be given in writing to the Owner's head office at least 48 hours in advance of the time when the Goods are to be delivered or collected;
  - (b) nothing herein shall require the Owner to deliver or collect the goods on a Sunday or public holiday;
  - (c) the Owner may at its absolute discretion refuse or decline to deliver or collect the Goods, whereupon the responsibility for delivery or collection or both remains with the Hirer.
- 6.3 The Hirer shall pay the Costs for any delivery of the Goods upon delivery and for collection of the Goods upon collection.
- 6.4 It is the responsibility of the Hirer to check quantities delivered or collected. If there is a discrepancy between the Goods delivered or collected and the Goods as shown on this delivery docket the Hirer must notify the Owner of that discrepancy within 24 hours of delivery or collection. If the Hirer does not provide any such notice then the Hirer acknowledges that the items delivered or collected correspond with the goods as shown on this delivery docket.

### 7. ERECTION, POSITIONING, MOVING AND ADJUSTMENT OF THE GOODS

- 7.1 Unless otherwise agreed in writing, the Goods are only to be positioned, erected and moved by the Owner.

### 8. USE OF THE GOODS

- 8.1 The Hirer shall ensure that the Goods are used in a skilled and proper manner and for the purposes for which the Goods were designated.
- 8.2 The Hirer will comply at its own expense with the rules or requirements of all authorities and any applicable statutes, rules or regulations necessary for the sale and lawful use of the Goods.

### 9. CONDITION OF THE GOODS

- 9.1 Subject to Condition 9.4, the Hirer will at its own expense service, clean and maintain the Goods in proper working order and repair (reasonable wear and tear excepted).
- 9.2 The Hirer will clean the Goods before collection of the Goods by the Owner or returning the Goods to the Owner.
- 9.3 The Hirer will give the Owner access to the Goods for inspection and testing at any reasonable time and without the Owner being required to give any prior notice.

- 9.4 In the event of a breakdown or failure of the Goods the Hirer shall immediately notify the Owner. Repairs to the Goods effected during the hire of the Goods are only to be done by persons who are employees of or are nominated by the Owner. Where the breakdown or failure has arisen by reason of the Hirer not having complied with its obligations in Condition 9.1 or having in any other way misused the Goods the Hirer will pay to the Owner on demand the cost of repairing or restoring the Goods.

- 9.5 If Goods are returned in an unclean condition or not in good and substantial order and repair, then the hire fees will apply until the Goods have been restored to a condition accepted by the Owner at the cost of the Hirer. If the restoration is undertaken by the Owner the Hirer will pay the Owner's usual hourly rate for the person or people involved in that work.

### 10. RESPONSIBILITY FOR LOSS OF GOODS

- 10.1 The Hirer accepts full responsibility to compensate the Owner on demand for the Goods or any part thereof which may be lost or stolen whilst the Goods are being hired by the Hirer.
- 10.2 The compensation payable by the Hirer to the Owner shall include, but not be limited to:
  - (a) the replacement cost of the Goods; and
  - (b) the hiring charge for the period from when the lost or stolen Goods should have been returned to the Owner to when the lost or stolen goods are replaced.

### 11. TERMINATION AND DEFAULT

- 11.1 Subject to Condition 11.2 the hiring of any or all of the Goods may be terminated by the Owner giving to the Hirer 24 hours' notice.
- 11.2 If the Hirer defaults in the observance or performance of any of these conditions the Owner may without notice to the Hirer terminate the hiring and re-take possession of the Goods in which case, the Hirer authorises the Owner, its servants and agents to enter upon the relevant premises to remove the Goods and to undertake all necessary steps to gain such entry.
- 11.3 The Hirer shall on demand pay to the Owner all costs incurred by the Owner as a result of any breach by the Hirer of its obligation and the exercise or the attempted exercise by the Owner of its rights.

### 12. LIABILITY AND INDEMNITY

- 12.1 The Owner will not be liable for any loss or damage which the Hirer may suffer arising from, or caused or contributed to by, the Goods or their use.
- 12.2 The Hirer indemnifies the Owner from and against all claims, actions, suits, demands, costs and expenses, including all legal costs and expenses, whatsoever arising under any statute or at common law from:
  - (a) the use of the Goods between the Commencement Date and the return of the Goods to the Owner whether caused by negligence, omission or default of the Hirer, its servants or agents or by negligence of any other person whatsoever;
  - (b) any use to which the Goods are put.

### 13. PERSONAL PROPERTY SECURITIES ACT (2008) ("PPSA")

- 13.1 Terms have the same meaning as in the PPSA.
- 13.2 The Owner may register any Security Interest arising from its hire of Goods on the PPS Register and the Hirer must do anything reasonably required by the Owner to assist with this.
- 13.3 The Hirer waives its rights under s157(1) of the PPSA.
- 13.4 The Hirer will give 14 days
- 13.5 written notice to Owner before changing its name, ABN or other identifiers.
- 13.6 The Hirer and Owner exclude ss95, 96, 121(4), 128, 130, 132(3)(d), 132(4), 142 and 143 of the PPSA

### 14. MISCELLANEOUS

- 14.1 All personal information collected by the Owner shall be dealt with in accordance with the Owner's Privacy Policy and the *Privacy Act 1988*.
- 14.2 The Hirer must not, without the Owner's prior written consent, transfer, assign, encumber or otherwise dispose of any of the Hirer's rights or obligations under any Contract, Credit Agreement or these Terms and Conditions. The Owner may assign or novate any rights or obligations under any contract, credit agreement or these Conditions of Hire without notice to the Hirer.
- 14.3 No waiver of any term of any contract, credit agreement or these Conditions of Hire will be valid unless such waiver is in writing and signed by the Owner. If the Owner does not enforce any right or delays in enforcing any right under any contract, credit agreement or these Conditions of Hire, this must not be construed as a waiver of such right.
- 14.4 These Conditions of Hire and any contract they form part of will be governed by and determined in accordance with the laws of Western Australia.
- 14.5 The Hirer irrevocably appoints the Owner its attorney with the rights at any time to:
  - (a) comply with the obligations of the Hirer under a hire contract;
  - (b) do everything that in the Attorney's reasonable opinion is necessary or expedient to enable the exercise of any right of the Owner in relation to any hire contract between the Owner and the Hirer.

## **SALES AND SERVICES TERMS AND CONDITIONS**

### **1. Application of Terms and Conditions**

- 1.1. These Terms and Conditions will apply to the sale of any Goods and the provision of any Services by the Company to the Customer and will form part of any Contract resulting from the Company's acceptance of a Purchase Order.
- 1.2. In the event of any inconsistency between the terms of the Contract and the terms of a document issued by the Customer, the Customer agrees the terms of the Contract will prevail.
- 1.3. Upon acceptance of any Goods or Services from the Company, the Customer is deemed to have accepted these Terms and Conditions.
- 1.4. The Company may amend these Terms and Conditions on written notice to the Customer. If the Customer accepts Goods and/or Services from the Company following receipt of notice, the Customer is deemed to have accepted the amended Terms and Conditions.

### **2. Quotations**

- 2.1. Any quotation issued by the Company is not an offer to sell, hire or supply any Goods or Services and may be withdrawn or varied at any time prior to a related Purchase Order being accepted by the Company in accordance with clause 3. A quotation will only be valid for 30 days from its date of issue unless extended in writing by the Company.
- 2.2. Unless otherwise advised by the Company the terms of any Quotation will form part of the Contract between the Company and the Customer for the provision of Goods and/or Services upon the acceptance by the Company of a related Purchase Order.

### **3. Acceptance of Orders**

- 3.1. The Customer may request the Company to sell Goods or Services to the Customer in accordance with these Terms and Conditions by providing a Purchase Order to the Company. All Orders received by the Company are subject to acceptance by the Company in writing. The Company may accept or reject a Purchase Order in whole or in part in its absolute discretion. The issue by the Company of a written acceptance of a Purchase Order will not be or imply acceptance of any terms or conditions in the Purchase Order which are inconsistent with these Terms and Conditions or, if the Customer has a Credit Account with the Company, which are inconsistent with the terms of the Credit Agreement.

### **4. Terms of Payment**

- 4.1. The Company will invoice the Customer for:
  - (a) the price of the Goods and/or the Services being the price set out in the Contract, subject to clause 4.2;
  - (b) any applicable GST or other tax, stamp duty or statutory charges or levies payable in relation to or in connection with the supply of the Goods or Services in accordance with clause 5.
- 4.2. Any change, after the earlier of the date of the Company's Quotation (if applicable), the Purchase Order or the Contract and before the date of the invoice, in the cost of labour, materials, transport, essential services, tariffs, duties, exchange, or any other costs or expenses incurred by the Company must be paid for by the Customer.
- 4.3. Time for payment of the invoice will be stated on the invoice and, if no time is stated, then payment will be due on delivery or within 7 days of the date of the Invoice as advised by the Company. If the Customer has provided the Company with a Purchase Order, the Company will not be required to deliver the Goods to the Customer until payment has been received in accordance with this clause 4.
- 4.4. Notwithstanding clause 4.3, if the Customer possesses a current Credit Account with the Company then payment of the invoice will be due within the period required under the Credit Agreement or, if no period is stated in the Credit Agreement, within 30 days of the EOM in which the invoice is issued.

4.5. The Customer must pay the amount stated in the invoice in full and in cleared funds on or before the due date, without demand, deduction or set-off. If payment is made by way of cheque or electronic funds transfer, the Company will be deemed to receive payment of the funds on the date the Company receives cleared funds in its bank account.

4.6. The Company reserves the right to issue an invoice for partial deliveries and deliveries delayed at the request of the Customer.

## **5. Late payments and interest**

5.1. Interest must be paid on any unpaid or outstanding amount payable to the Company, calculated from the due date for payment until final payment has been received by the Company, charged at the rate of 12% per annum.

5.2. Any and all expenses, costs and disbursements incurred by the Company in recovering or seeking to recover any outstanding monies due from the Customer including (without limitation) debt collection, agency fees and solicitor's costs, shall be payable by the Customer to the Company on demand.

5.3. All sums payable by the Customer to the Company, whether or not such amounts are due for payment, will immediately become due and payable if:

(a) any payment by the Customer to the Company is overdue, in whole or in part;

(b) the Customer is otherwise in default under any Contract or Credit Agreement or any Contract or Credit Agreement is terminated; or

(c) the Customer or any Guarantor shall become bankrupt or commit any act of bankruptcy or enter into an arrangement with its creditors or have judgment entered against it in any court or, being a company, have a provisional liquidator, voluntary administrator, receiver or manager appointed or otherwise suffer some form of insolvency administration.

## **6. Taxes and duties**

6.1. Unless stated otherwise, prices quoted to the Customer or set out in the Contract do not include the taxes, imposts and duties described in clause 6.2.

6.2. The Company may recover from the Customer, and the Customer must pay, the amount of any sales tax, customs duty, use tax, consumption tax, goods and services tax, value-added tax or any similar tax, impost or duty levied on any supplies made by the Company to the Customer under or in connection with these Terms and Conditions (excluding any income tax imposed on the Company), whether that tax, impost or duty is currently in force or comes into force after the date of any Contract. Any such tax, impost or duty must be paid by the Customer at the same time as when payment for the supplies in respect of which the tax, impost, or duty is levied is due.

## **7. Application of payments**

7.1. All payments to the Company must be made in the way reasonably required by the Company (which may include electronic funds transfer).

7.2. If the Customer makes a payment to the Company at any time, whether in connection with a Contract or otherwise, the Company may apply the payment to any part of the amounts owed by it to the Company as the Company sees fit.

7.3. The Company may, in its absolute discretion, offset any amount due from the Company to the Customer against any amount due from the Customer to the Company, or which will in the future be due from the Customer to the Company, whether in connection with a Contract or otherwise.

## **8. Delivery of Goods**

8.1. The Goods will be delivered by the Company or its nominated courier to the place nominated in writing by the Customer ("Delivery Point") and all costs associated with delivery will be paid by the Customer.

8.2. The Customer will be deemed to take delivery of the Goods and the Goods will be at the Customer's risk from the date they are delivered to the Delivery Point.

- 8.3. The time within which the Company may advise the Customer that it will make delivery of Goods will be regarded as a best estimate, but will not be guaranteed and may be subject to extension to cover delays caused by or contributed to by Government priorities, manufacturers or suppliers, strikes, lockouts, breakdowns, delays in transport, fire, late delivery of raw material or components, or any other cause beyond the control of the Company and no responsibility will be accepted by the Company for the consequences of any such delays.
- 8.4. The Customer acknowledges and agrees that the Company will not be liable for and the Customer releases the Company from any liability in respect of any loss, damage or expense that the Customer may suffer or incur arising out of or contributed to by any delays in obtaining the Goods.

## **9. Warranties**

- 9.1. The Company's Goods and Services may come with guarantees that cannot be excluded under applicable law. The Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 9.2. Subject to any warranties which are implied by law and cannot otherwise be excluded, the Company excludes all other warranties, conditions or liability in relation to the sale, use or supply of the Goods and the supply of the Services and the Company will not be liable for any claim for direct, indirect or consequential loss or damage arising out of or contributed to by the manufacture, sale, use or supply of the Goods or the supply of the Services.
- 9.3. Subject to clause 23.2, to the extent that the Company's liability cannot be excluded, the Company's liability shall be limited to, in its sole discretion, either in respect of Goods, repairing the defective Goods or part of the Goods or replacing it with the same Goods (or part of the Goods) or a comparable product and in respect of Services either repairing the defective Service or resupplying the Service or covering the cost of resupply of the Service.
- 9.4. The Company makes no representation or warranty in relation to the supply of spare parts or the availability of facilities for the repair of the Goods (or any part of the Goods).
- 9.5. The Customer acknowledges and agrees that it has made its own enquires as to the suitability of the Goods (or any part of the Goods) for the Customer's intended use and the Customer does not rely on any statement, representation or information provided by or on behalf of the Company in relation to the Goods (including the use of the Goods) other than the statements, representations and information set out in writing in the Contract for the Goods.

## **10. Release and Indemnity**

- 10.1. The Customer releases and discharges the Company from all claims and demands on the Company and any loss or damage whatsoever and whenever caused to the Customer of any other person of any nature or kind and indemnifies and holds the Company harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by the Company and from and against all actions, proceedings, claims or demands made against the Company, arising in either case as a result of, or which has been contributed to by:
- (a) the Customer's failure to comply with any laws, rules, standards, or regulations applicable to the Goods or use of the Goods;
  - (b) any use of the Goods contrary to any instructions or warnings given by the Company or the manufacturer of the Goods;
  - (c) any other negligence or any breach of duty by the Customer;
  - (d) any compliance or adherence by the Company with any instruction by the Customer; or
  - (e) any reliance by the Company on any representation by the Customer.

10.2. The parties agree and acknowledge that, for the purposes of clause 25.1, a reference to the Customer includes the Customer's agents, employees, directors, representatives and contractors and any person or party who uses the Goods or claims an interest in the Goods as a result of a transaction with, or otherwise with the permission of, the Customer.

**11. Inspection and Testing**

11.1. The Customer must inspect all Goods immediately upon the Goods being delivered and notice of any claim by the Customer in relation to the Goods (including but not limited to any claim that the Goods were damaged prior to delivery or do not accord with the relevant Purchase Order) must be made by the Customer in writing and received by the Company within 24 hours of the Delivery Date and, subject to clause 9, any claims not made within that period will be deemed to be waived.

**12. Retention of Title**

12.1. The Goods will remain the sole and absolute property of the Company as legal and equitable owner, and property in and title to the Goods will not pass from the Company to the Customer, until the Customer has paid the Company for the Goods in full.

12.2. Any payment made by or on behalf of the Customer which is later avoided or reduced by the application of any law will be deemed not to discharge the Company's title in the Goods or the Customer's indebtedness to the Company.

12.3. Until title in the Goods has passed, the Customer holds the Goods as bailee in the capacity of a fiduciary for the Company. The Customer will keep the Goods supplied to it by the Company in its possession and take good care of them and store them and mark them in a manner that identifies the Goods supplied and clearly shows that they belong to the Company.

12.4. If the Contract relating to the Goods is terminated before title in the Goods has passed to the Customer, the Company may retake possession of the Goods and the Customer must do everything in the Customer's power and at the Customer's own expense to ensure the Company can lawfully enter any premises where the Goods are located and remove the Goods.

**13. Amendment and Cancellation**

13.1. The Customer will not, after a Contract is formed, cancel or amend the Purchase Order on which the Contract is based in any way without the prior written approval of the Company. The Company may, on consenting to an amendment, revise its price and other terms of supply and amend the Contract to reflect such change(s). In the event of an amendment or cancellation, the Customer must reimburse the Company for all costs and expenses already incurred by the Company and any additional costs and expenses resulting from the amendment or cancellation.

**14. Termination**

14.1. The Company may, without notice, terminate a Contract if:

- (a) the Customer breaches any term of the Contract (including, without limitation, failing to pay an amount payable by the due date)
- (b) the Customer becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business; or
- (c) the Customer's conduct indicates that it no longer intends to be bound by the Contract.

**15. PPS Laws**

15.1. To the extent that a Security Interest arises under any Credit Agreement or Contract or any transaction contemplated by them in favour of the Company as the secured party:

- (a) the Customer acknowledges that the Security Interest will attach to any proceeds or any accession;



- (b) the Customer agrees to the Company effecting a registration on the PPS Register (in any manner the Company considers appropriate) in relation to any Security Interest and the Customer agrees to provide all assistance reasonably required to facilitate this (including paying all costs in connection with effecting, maintaining, amending or discharging that registration);
  - (c) the Customer waives the right to receive any verification statement (or notice of any verification statement) in respect of a registration made on the PPS Register; and
  - (d) the Customer must not, without first giving the Company 14 days' prior written notice, change its name, ABN or any other identifiers which are required to be recorded on the PPS Register in connection with any Security Interest.
- 15.2. The Customer and the Company agree that to the extent section 115(1) of the PPS Act allows them to be excluded, sections 95 (to the extent that it requires the Company to give notice to the Customer), 96, 121(4), 125, 130 (to the extent that it requires the Company to give notice to the Customer), 132(3)(d), 132(4), 142 and 143 do not apply to the enforcement by the Company of any Security Interest arising under any Credit Agreement or Contract or the transactions contemplated by them.
- 16. Confidentiality**
- 16.1. The Company and the Customer acknowledge and agree that neither party may disclose any information nor documents that are by their nature confidential, supplied by the other party that is not publically available subject to any requirement at law to do so.
- 17. Dispute Resolution**
- 17.1. If at any time any question, dispute or difference whatsoever shall arise between the Customer and the Company upon, in relation to, or in connection with a supply of Goods or Services ("Dispute") such Dispute must be dealt with by the parties following this procedure before either party may take legal actions against the other:
- (a) The disputing party shall provide a written notice to the other party outlining the Dispute ("Dispute Notice").
  - (b) After receipt of the Dispute Notice the parties shall, within 7 days, arrange for a meeting of senior representatives to attempt to resolve the Dispute.
  - (c) If the Dispute cannot be resolved by the senior representatives, then either party may initiate legal proceedings.
- 18. Trust**
- If the Customer is a trustee of any trust or settlement including, but not limited to, any trust specified in an Application for Credit, the Customer enters into any Credit Agreement or Contract in its personal capacity and in its capacity as trustee, and is liable in both of those capacities.
- 19. Miscellaneous**
- 19.1. The Customer must not, without the Company's prior written consent, transfer, assign, encumber or otherwise dispose of any of the Customer's rights or obligations under any Contract, Credit Agreement or these Terms and Conditions. The Company may assign or novate any rights or obligations under any Contract, Credit Agreement or these Terms and Conditions without notice to the Customer.
- 19.2. No waiver of any term of any Contract, Credit Agreement or these Terms and Conditions will be valid unless such waiver is in writing and signed by the Company. If the Company does not enforce any right or delays in enforcing any right under any Contract, Credit Agreement or these Terms and Conditions, this must not be construed as a waiver of such right.
- 19.3. These Terms and Conditions and any Contract will be governed by and determined in accordance with the laws of Western Australia.

- 19.4. The Customer irrevocably appoints the Company its attorney with the rights at any time to:
- (a) comply with the obligations of the Customer under a Contract;
  - (b) do everything that in the Attorney's reasonable opinion is necessary or expedient to enable the exercise of any right of the Company in relation to a Contract.
- 19.5. In the event of an inconsistency between any document forming part of the Contract the following order of priority shall apply:
- (a) The Quotation (if any);
  - (b) Terms and Conditions;
  - (c) Purchase Order.
- 19.6. All personal information collected by the Company shall be dealt with in accordance with the Company's Privacy Policy and the *Privacy Act 1988*.

## 20. Definitions and Interpretation

In these Terms and Conditions:

**"Application for Credit"** means an application for credit form completed by the Customer and submitted to the Company;

**"Company"** means AXS Access Management Pty Ltd (ACN 126 708 736) its successors and assigns;

**"Contract"** means contract for the sale of Goods or the provisions of Services by the Company to the Customer formed on the acceptance by the Company of the Customer's Purchase Order and includes the Company's Quotation;

**"Credit Account"** means the Customer's credit account with the Company established on the terms set out in the Credit Agreement;

**"Credit Agreement"** means the agreement between the Company and the Customer for the supply of Goods on credit, formed by written acceptance by the Company of the Credit Application;

**"Delivery Point"** means the location at which the Goods will be delivered to the Customer as agreed to by the Parties;

**"Goods"** means all goods or services supplied by the Company to or at the direction of the Customer from time to time (and, in relation to any security interest in the Goods, includes any proceeds). The Goods may be "other goods" (such as spare parts) or "motor vehicles" or both as classified under the PPS Law;

**"Guarantor"** means a person that guarantees to the Company the performance of the Customer;

**"Parties"** means the Customer and the Company and **"Party"** means one;

**"PPS Law"** means the PPSA together with any subsidiary legislation or regulations made under the PPSA and any amendment to a PPS Law from time to time;

**"PPS Register"** means the register established under the PPS Law;

**"PPSA"** means the *Personal Properties Securities Act (2009) (Cth)* as amended from time to time;

**"Privacy Act"** means the *Privacy Act 1988 (Cth)* as amended from time to time;

**"Privacy Policy"** means the most recent version of the privacy policy created by the Company available on its website at [www.axsm.com.au](http://www.axsm.com.au)

**"Purchase Order"** means a written offer by the Customer to purchase Goods or Services from the Company accepted by the Company;

**"Quotation"** means the quotation provided by the Company to the Customer and accepted by the Customer within the time frame nominated by the Company for the provision of Goods and/or Services.

**"Security Interest"** has the same meaning as under the PPS Law;

**"Services"** means the repair or maintenance services to be carried out by the Company in accordance with these Terms and Conditions;

**"Terms and Conditions"** means these sale and services terms and conditions as may be amended from time to time.