

**Parties**

**XMAS Pty Limited**  
ACN 003 440 906

(Bailor)

**AND**

«Franchisee»

**The Party Described in Item 1 of the Schedule**

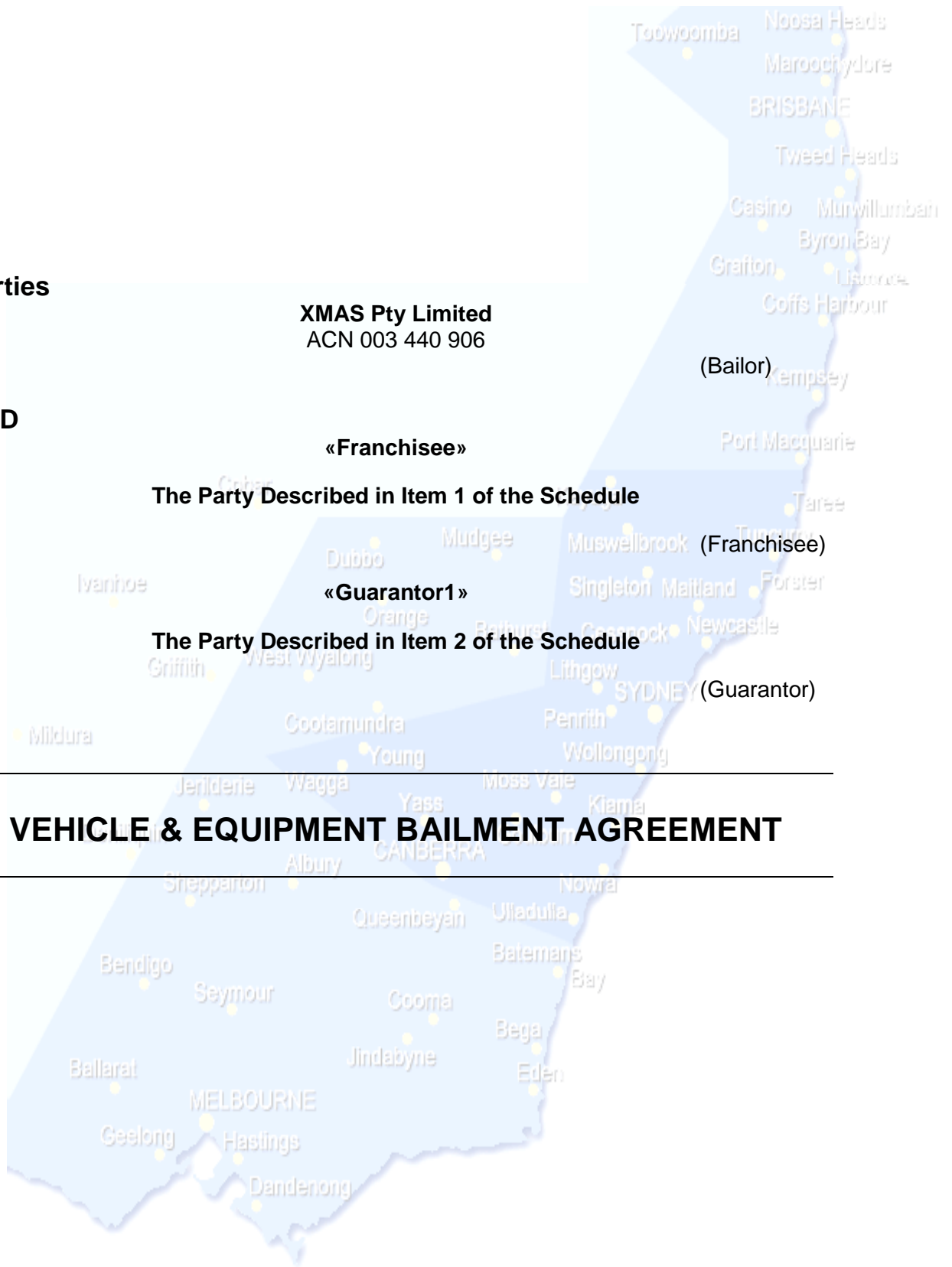
«Guarantor1»

**The Party Described in Item 2 of the Schedule**

---

**VEHICLE & EQUIPMENT BAILMENT AGREEMENT**

---



## Table of contents

---

1.	<a href="#">Possession</a>	3
2.	<a href="#">Loss or damage</a>	4
3.	<a href="#">Indemnity</a>	4
4.	<a href="#">Use of Equipment</a>	5
5.	<a href="#">Transportation</a>	5
6.	<a href="#">Terms of Payment</a>	6
7.	<a href="#">The Franchisee Warrants</a>	6
8.	<a href="#">Charges</a>	6
9.	<a href="#">Breakdown</a>	6
10.	<a href="#">Conditions and warranties</a>	7
11.	<a href="#">Termination by the Bailor</a>	7
12.	<a href="#">Cleaning</a>	8
13.	<a href="#">Damage Waiver</a>	8
14.	<a href="#">Damage Waiver Fee</a>	8
15.	<a href="#">Driver of Motor Vehicle</a>	9
16.	<a href="#">Implied Conditions</a>	10
17.	<a href="#">Authorised Use</a>	10
18.	<a href="#">Guarantee &amp; Indemnity</a>	11

## Vehicle & Equipment Bailment Agreement

---

**Date:** 2011

**Parties:**

«Franchisee» ("Bailor")  
THE PARTY DESCRIBED IN ITEM 1 OF THE SCHEDULE ("Franchisee")  
THE PARTY DESCRIBED IN ITEM 2 OF THE SCHEDULE ("Guarantor")

**Background:**

- A The franchisee owns and operates an independent Barnetts Couriers franchisee business.
- B The bailor is an associate of Langmana Pty Limited the Barnetts Couriers franchisor.
- C The bailor provides various services to the franchisees in the Barnetts Couriers franchise group including the supply of vehicles and other equipment used in the franchised business.
- D If the franchisee is a company, the bailor enters into this agreement at the request of the guarantor and in consideration of the guarantor's promises in this agreement.

**Operative part:**

### 1. Possession

---

- 1.1 The period of possession shall commence from the commencement date or the time the equipment is delivered to the franchisee whichever is the later and will cease when the equipment is returned to the bailor by the franchisee or if the franchisee notifies the bailor in writing that the equipment is available for return at a particular place, when it is collected by the bailor from that place. During the period of possession the franchisee shall be entitled to exclusive possession of the equipment and this contract shall in all respects mean and be construed as a bailment for custody.
- 1.2 During the period of possession the franchisee shall at all times keep the equipment in good and substantial repair and condition and at the expiration of the period of possession shall deliver up the equipment to the bailor in good and substantial repair. If at the expiration of the period of possession, the equipment is not returned in a clean condition the cost of cleaning may be deducted by

## Bailment Agreement

the bailor from the deposit or charged to the franchisee's account.

- 1.3 The franchisee shall be responsible for all freight and other charges whether incurred by the bailor of the franchisee in respect of delivery and return of the equipment and such charges shall be in addition to the time charges shown overleaf.
- 1.4 Notwithstanding anything herein contained charges for possession shall commence from the commencement of the period of possession as provided for in clause 1.1 and shall continue until the completion of the period of possession as herein defined or until the expiration of the minimum period of possession specified overleaf whichever is the later.
- 1.5 Termination due date. Equipment not returned by the due date may be regarded as stolen.

### **2. Loss or damage**

---

- 2.1 The franchisee shall be responsible for any loss or damage to the equipment for any reason whatsoever while it is in his possession whether such loss or damage is caused by negligence of the franchisee or otherwise. It is agreed that on completion of the period of possession the whole or any part of the cost of replacement or repair to the equipment may be deducted from the deposit, or charged to the franchisee's account.

### **3. Indemnity**

---

- 3.1 The franchisee will indemnify and keep the bailor indemnified from and against all actions, claims, suits, demands, costs and expenses in any way arising out of the use of the goods between the commencement of the period of possession and the return of the goods to the bailor whether caused by the negligence of the franchisee, his servants or agents, or by the negligence of any other person whatsoever or arising out of the condition of the goods or the use to which they are put or otherwise.

**4. Use of equipment**

---

- 4.1 All goods and materials are supplied in good and serviceable condition and accepted as such on signing of agreement.
- 4.2 No warranty or condition expressed or implied is given by the bailor as to the condition of the goods, as to the suitability or fitness of the goods for any purpose.
- 4.3 Due to the use of equipment and materials being beyond the bailors control the bailor shall not be liable for any consequential damage, loss or injury caused in the use of such equipment or materials.
- 4.4 The franchisee will not interfere in any way with any mechanical fittings or appliances attached to or forming part of the goods or without the written consent of the bailor have any repairs effected thereto by any person other than an employee of the bailor or such person as the bailor may nominate.
- 4.5 The bailor or his representative has not specifically recommended any equipment but rather has suggested what it would use in the circumstances explained.

**5. Transportation**

---

- 5.1 Prior notification of 48 hours before termination of agreement is required if transportation is to be supplied by the bailor.
- 5.2 Notification on completion of agreement remains the responsibility of franchisee. Notification by post accepted. Drivers to not accept instruction.
- 5.3 If return delivery service is required it is the franchisee's responsibility to contact the bailor's plant controller and advise that equipment is available for collection and obtain a "verbal contact" number which is recorded and serves as a protection for the franchisee and verifies that the call has been recorded. It is the franchisee's responsibility to safeguard the equipment until collection.
- 5.4 Proof of return. It is the franchisee's responsibility to obtain written proof of returned equipment from the bailor.

## 6. Terms of payment

---

- 6.1 Terms of payment are net on termination of period of possession unless otherwise stated.

## 7. The franchisee warrants

---

- 7.1 That he will remain in exclusive possession of the equipment during the period of this agreement.
- 7.2 That he will not give up or part with possession of the equipment without the previous consent in writing of the bailor.
- 7.3 That he will be responsible for any expenditure damages and/or loss incurred by him caused by the equipment or arising out of the franchisee's possession of the equipment.

## 8. Charges

---

- 8.1 The bailor charges for the equipment for the time equipment is out (not time used) rates are based on 8 hours a day, 40 hours a week work shifts. Extra shifts on some equipment may be charged for in addition to normal daily rate.
- 8.2 A day is 24 hours (one 8 hour working shift). A week is 7 days (40 hours a week work shifts).
- 8.3 If available for work with franchisee's factoring company a % will be charged for work completed whilst using the hire equipment.

## 9. Breakdown

---

- 9.1 In the event of a breakdown or failure of the equipment, the franchisee shall return the equipment to the bailor's premises forthwith and on no account repair or attempt to repair the equipment without prior consent of the bailor. In the event that such breakdown or failure is caused by reasonable wear and tear and not by the negligence or misuse or any other reason whatsoever then the period of possession shall be determined upon such return of the equipment to the bailor. In no event shall the bailor be responsible for any expenditure damages and/or loss incurred by the franchisee arising out of any breakdown or failure of the equipment whether caused by fair wear and

## Bailment Agreement

tear, negligence on the part of the bailor or any other reason whatsoever.

- 9.2 In the event of breakdowns the equipment will be returned for exchange or rectification and credit allowed for lost time. Credits will, when necessary be given, not cash refunded.

### 10. Conditions and warranties

---

- 10.1 No conditions or warranties other than those expressed herein shall be included or implied in this agreement except to the extent that any condition or warranty may be included by agreement between the bailor and the franchisee and in such circumstances any condition or provision expressed herein inconsistent therewith to the extent of the inconsistency shall be of no force or effect.

### 11. Termination by the bailor

---

- 11.1 The bailor may notwithstanding the specified period of possession and notwithstanding any waiver of some previous default forthwith terminate this agreement and repossess the equipment in any of the following events:
- 11.1.1 if the franchisee shall fail to pay any charge within 30 days of the due dates;
  - 11.1.2 if the franchisee shall do or permit any act or thing whereby the bailor's rights in the equipment may be prejudiced;
  - 11.1.3 if the franchisee should become or made insolvent or bankrupt or make any arrangement of composition with its creditors or in the case of franchisee being a limited company should an order be made or a resolution passed for the winding up of such company;
  - 11.1.4 if the franchisee commits any breach of this agreement.
- 11.2 For the purposes of repossessing the equipment, the bailor may enter into or upon any premises where the equipment may be without prejudice to the rights of the bailor to recover from the franchisee any monies due here under or any damages for breach hereof and the franchisee indemnifies the bailor in respect of any claims, damages or expenses arising out of any action taken under this clause.

**12. Cleaning**

---

- 12.1 Upon the expiration of the period of possession the equipment must be properly cleaned by the franchisee. It is agreed that the whole or any part of the cost incurred by the bailor arising out of the failure by the franchisee under this clause may be charged for to the franchisee.

**13. Damage waiver**

---

- 13.1 If the damage of the waiver option is marked in the schedule the bailor agrees to insure the equipment with such insurance company as may be designated by the bailor so as to waive the bailor's right to claim from the franchisee for any damage to the equipment in excess of a sum equal to 10% of the list price of the equipment which is caused by fire, storm, earthquake, collision or accident in respect of all other loss or damage to the equipment the provision of clause 21 hereof will apply.

**14. Damage waiver fee**

---

- 14.1 If the franchisee has agreed to pay the damage waiver fee on entering this contract and pays the fee then notwithstanding clause 2 the bailor waives any right to claim from the franchisee for any loss or damage caused by fire, store, earthquake, collision or accident for any sum in excess of:
- 14.1.1 in respect of any vehicle insurance excess;
  - 14.1.2 in respect of any other equipment 10% of the retail list price of such equipment as at the date the period of possession commenced.
- 14.2 The waiver of damage will not apply to any loss or damage in the following circumstances and the franchisee will be responsible for and indemnifies the bailor without limit against any loss or damage:
- 14.3 in the case of all equipment;
- 14.3.1 arising from overloading, exceeding rated capacity, misuse, abuse or improper servicing or the use or operation of the equipment in breach of any government regulations, this contract or the manufacturer's specifications;
  - 14.3.2 to tools or accessories (including batteries, hoses, points, drills, bits, grease guns, electric leads, tyres or tubes) in any circumstances;

## Bailment Agreement

- 14.3.3 arising from equipment being lost or stolen or otherwise mysteriously disappearing;
  - 14.3.4 arising while the equipment is located, used, loaded, unloaded or transported on over or adjoining water including but not limited to equipment located, used loaded, unloaded transported over or on wharves, bridges, barges or vessels of any kind;
  - 14.3.5 caused by the negligence of the franchisee or any person under his control or the nominated driver;
  - 14.3.6 arising from misappropriate or wrongful conversion by the franchisee or its employees, servants, independent contractors or agents or by any other person to whom the equipment is entrusted by the franchisee;
- 14.4 In the case of a motor vehicle:
- 14.4.1 to the van body or any motor vehicle above the level of the truck cabin or any damage to any truck – mounted loading device;
  - 14.4.2 where it is driven by one person other than the nominated driver except in the case of illegal use or theft;
  - 14.4.3 where it is used in racing, pace making or any speed trial or hill climbing test or is being tested in preparation for any of the foregoing;
  - 14.4.4 where it is used to convey any load in excess of that for which it was constructed or in excess of that allowed by law;
  - 14.4.5 where it is being drive by or is in charge of any person under the age of 21 years or under the influence of intoxicating liquor or any drug or having more than the legally prescribed level of blood alcohol content;
  - 14.4.6 where it is driven or used other than on a formed road or when it is in a damage or unsafe condition;
  - 14.4.7 where it is driven or used for the conveyance of passenger for hire or reward.

## 15. Driver of motor vehicle

---

## Bailment Agreement

- 15.1 Where the equipment is a motor vehicle, the franchisee must not permit any person other than a person nominated as the nominated driver in the schedule to drive the motor vehicle and the franchisee warrants that the nominated driver:
- 15.1.1 is over the age of 21 years;
  - 15.1.2 holds a current motor vehicle drivers licence valid in New South Wales for the class required by law to drive the hired motor vehicle;
  - 15.1.3 has not been convicted of any offence relating to driving a motor vehicle under the influence of liquor or drugs or with more than the legally prescribed level of blood alcohol content;
  - 15.1.4 has not been refused any motor vehicle insurance.
- 15.2 The franchisee must pay all fines, penalties and charges arising out of the use of the motor vehicle. The franchisee must return all motor vehicles with a full tank of fuel or pay the bailor the cost of filling the same.

## 16. Implied conditions

---

- 16.1 The *Trade Practices Act* and State legislation may imply certain conditions and warranties into this contract and these conditions are to be read subject to such legislation. No other conditions or warranties will be implied into this contract and all implied conditions and warranties are excluded to the extent permitted by law.
- 16.2 The bailor's liability for any breach of any implied condition or warranty will be limited to the replacement or repair of the equipment the supply of which has resulted in a breach of any implied condition or warranty.

## 17. Authorised use

---

- 17.1 The franchisee shall not use the equipment or allow or suffer the equipment to be used by any other person unless the franchisee or such other person as the case may be in the holder of any necessary certificate of competence permit, licence or other lawfully prescribed qualification in respect of use of the equipment.

**18. Guarantee and indemnity**

---

- 18.1 The guarantor guarantees to the bailor all of the franchisee's obligations in this agreement.
- 18.2 As a separate obligation, the guarantor also indemnifies the bailor against any loss or costs that the bailor suffers because of a breach by the franchisee of this agreement.
- 18.3 The guarantor's liability under this agreement is not discharged or reduced by:
  - 18.3.1 any release, waiver or extension of time given by the bailor to the franchisee;
  - 18.3.2 any arrangement or compromise between the bailor and the franchisee;
  - 18.3.3 any variation of this agreement.

Signing Page

Executed as an Agreement

**EXECUTED BY «Franchisee» [ACN «Franchisee\_ABN»]** in accordance with section 127(1) of the Corporations Act by:

.....  
 Director Secretary

.....  
 Name of Director Name of Secretary

**EXECUTED BY THE [franchisee [ACN ] ]** in accordance with section 127(1) of the Corporations Act by:

.....  
 Director/Sole Director \* Director/Secretary \*

.....  
 Name of Director \* Name of Director/Secretary \*

*\* Delete whichever is not applicable*

**Note:**

1. If the company has a sole Director/Secretary, sign the left line and delete the inappropriate reference.
2. Otherwise, two (2) Directors or a Director and Secretary must sign.

SIGNED by «**Guarantor1**» )  
 in the presence of: )  
 ) .....  
 ) Signature of «**Guarantor1**»

.....  
 Signature of witness

.....  
 Name of witness (please print)

SIGNED by )  
 in the presence of: «**Guarantor2**» )  
 ) .....  
 ) Signature of «**Guarantor2**»

.....  
 Signature of witness

.....  
 Name of witness (please print)

## SCHEDULE

<b>ITEM 1 Franchisee</b>	
Name and ACN	«Franchisee» ACN «Franchisee_ABN»
Address	«Franchisee_Address»
Telephone number	
Facsimile number	
Mobile phone Number	
Email address	

<b>ITEM 2 Guarantor</b>	
Name/s	«Guarantor1»
Address	«Guarantor_1_Address_»

<b>ITEM 3 Inventory of bailed equipment</b>			
<b>Equipment</b>		<b>Particulars</b>	<b>Charge/ 8hr Shift</b>
<b>Printer:</b>			
Number			
Serial no.			
Date installed			
<b>Laptop:</b>			
Number			
Serial no.			
Date installed			
<b>Modem:</b>			
Number			
Date installed			
<b>CN50 ID.</b>			
<b>Phone:</b>			
Id			
Number			
Model			
<b>Vehicle:</b>			
Nominated Driver			
Rego			
Expiry date			
Capacity			
Tray length			
VIN			
Built date			
Engine no.			
Key no.			
<b>Trailer</b>			
Rego			
VIN			

**ITEM 4 – Contract number****ITEM 5 – Damage waiver fee clause 14**

Is damage waiver fee payable YES/NO

**If no election made, damage waiver fee not payable.****ITEM 6 Due date**

Franchisee Signature ..... Date .....