

EFFECTIVE FROM 11 OCTOBER 2016



# CREDIT GUIDE AND TERMS & CONDITIONS



RENTAL AGREEMENT

SMARTWAY<sup>®</sup>

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## CREDIT GUIDE

**Flexirent Capital Pty Ltd**  
**ABN 93 064 046 046**  
**Australian Credit Licence number 394735**  
**Locked Bag 5005,**  
**Royal Exchange, Sydney NSW 1225**  
**Phone: 1800 240 102 Fax: 1800 240 103**

### 1. Introduction

We offer customers rental agreements. This Credit Guide is designed to assist you in deciding whether to enter into a rental agreement with us. It provides you with an overview of our obligations and your rights in assessing the suitability of a credit contract or credit limit increase for each customer. This Credit Guide also outlines the procedure for making a complaint. (For additional information about making privacy-related complaints, please also see the 'Privacy' section in the Rental Agreement Terms & Conditions).

### 2. Contacting Us

Name: Flexirent Capital Pty Ltd  
 Address: Level 7, 179 Elizabeth Street  
 Sydney NSW 2000  
 Phone number: 1800 240 102  
 Website: www.smartway.com.au

### 3. Assessment of suitability for a Rental Agreement – our obligations and your rights

Before we enter into the Agreement, we are required by law to assess the suitability of the rental agreement for each customer.

To assess suitability, we will make reasonable inquiries about:

- your requirements and objectives in relation to the rental agreement; and
- your financial situation.

#### a. Unsuitability criteria

We cannot offer a rental agreement to a customer if:

- it is likely that the customer will be unable to meet their financial obligations under the rental agreement or could only meet them with substantial hardship; or
- the rental agreement does not meet the customer's requirements or objectives.

#### b. Requesting a copy of our assessment notice

Before entering into the rental agreement or at any time during the first seven (7) years of the rental agreement, you can request a written copy of our assessment. There is no fee for requesting a copy of our assessment.

If you request a copy of the assessment before we enter into the rental agreement we will provide you with a copy of the assessment.

If you ask to see our assessment within the first two (2) years of the rental agreement, we will provide you with a written copy of our assessment within seven (7) business days after we receive your request.

If you ask to see our assessment 2-7 years after the start date of the rental agreement, we will provide you with a written copy of our assessment within twenty one (21) business days after we receive your request.

We do not have to provide the assessment if you don't enter into the rental agreement.

### 4. Resolving disputes

We genuinely want to hear from our customers. We want to keep our lines of communication open and hear your suggestions for improvement. If you have

something on your mind regarding our rental products or services, share it with us. We welcome the opportunity to resolve the situation.

Our staff are here to help you so if you have a concern or complaint, please talk to our staff at our Customer Contact Centre, seven (7) days a week, on 1300 888 779.

If our Customer Contact Centre team has not resolved your concern or complaint, please contact our internal dispute resolution scheme (managed by the Service & Recovery Team). You can contact the team via:

- Email at [servicerecovery@flexigroup.com.au](mailto:servicerecovery@flexigroup.com.au);
- Telephone at 1300 858 608 between 9:00am - 5:00pm (EST) weekdays; or
- Fax at (02) 8905 1821.

A Service & Recovery team member will review your complaint and the resolutions offered and discuss the complaint with you within two (2) business days of your complaint being lodged.

If you are unhappy with the resolution of your complaint by our Service & Recovery team, the Credit and Investments Ombudsman (“**CIO**”) helps individuals and small business customers resolve problems and disputes with their financial service provider, and its use is free for individual customers. CIO can be contacted online at [www.cio.org.au](http://www.cio.org.au), via telephone at 1800 138 422 or in writing through PO Box A252, Sydney South NSW 1235 (Australia).

This is a free service established to provide you with an independent mechanism to resolve specific complaints.

You can also contact ASIC, the regulator, for information on 1300 300 630 or through ASIC’s website at [www.asic.gov.au](http://www.asic.gov.au).

Flexirent Capital Pty Ltd ABN 93 064 046 046, Australian Credit Licence number 394735. Flexirent Capital Pty Ltd does not hold an Australian Financial Services Licence.

Some of the obligations described above will not apply to your rental agreement unless your rental agreement is a “consumer lease” regulated under Part 11 of the National Credit Code. Please call us if you have any queries.

**IMPORTANT INFORMATION:** This information statement applies if you are an individual or strata corporation and, at the date of signing the rental agreement, you intend to use the goods wholly or predominantly for personal, domestic or household purposes. It does not apply to customers who are using the goods predominantly for business purposes. This information statement will apply if your rental agreement is deemed to be a “consumer lease” as defined in Part 11 of the National Credit Code.

## INFORMATION STATEMENT

*Subsection 175 (1) of the National Credit Code regulation 105 of the National Consumer Credit Protection Regulations 2010*

### Things you should know about your consumer lease

This statement tells you about some of the rights and obligations of yourself and your lessor. It does not state the terms and conditions of your lease.

### The lease

#### 1. How can I get details of my lease?

Your lessor must give you a copy of your consumer lease with this statement. Both documents must be given to you within 14 days after the lessor enters into the consumer lease, unless you already have a copy of the consumer lease.

If you want another copy of your lease write to your lessor and ask for one. Your lessor may charge you a fee. Your lessor has to give you a copy —

- within 14 days of your written request if the contract came into existence 1 year or less before your request; or
- otherwise within 30 days.

#### 2. What should my lease tell me?

You should read your lease carefully.

Your lease should tell you about your obligations, and include information on

matters such as —

- details of the goods which have been hired; and
- any amount you have to pay before the goods are delivered; and
- stamp duty and other government charges you have to pay; and
- charges you have to pay which are not included in the rental payments; and
- the amount of each rental payment; and
- the date on which the first rental payment is due and either the dates of the other rental payments or the interval between them; and
- the number of rental payments; and
- the total amount of rent; and
- when you can end your lease; and
- what your obligations are (if any) when your lease ends.

This information only has to be included in your lease if it is possible to give it at the relevant times.

If your lease does not tell you all these details, contact your credit provider’s external dispute resolution scheme, or get legal advice, for example from a community legal centre or Legal Aid, as you may have rights against your lessor.

### 3. Can I end my lease early?

Yes. Simply return the goods to your lessor. The goods may be returned in ordinary business hours or at any other time you and the lessor agree on or the court decides.

### 4. What will I have to pay if I end my lease early?

The amount the lease says you have to pay.

If you have made rental payments in advance then it is possible that your lessor might owe you money if you return the goods early.

### 5. Can my lease be changed by my lessor?

Yes, but only if your lease says so.

### 6. Is there anything I can do if I think that my lease is unjust?

Yes. You should talk to your lessor. Discuss the matter and see if you can come to some arrangement.

If that is not successful, you may contact your credit provider's external dispute resolution scheme.

**EXTERNAL DISPUTE RESOLUTION IS A FREE SERVICE ESTABLISHED TO PROVIDE YOU WITH AN INDEPENDENT MECHANISM TO RESOLVE SPECIFIC COMPLAINTS. YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION PROVIDER IS THE CREDIT AND INVESTMENTS OMBUDSMAN AND CAN BE CONTACTED AT:**

**TELEPHONE: 1800 138 422**

**INTERNET: WWW.CIO.ORG.AU**

**POSTAL ADDRESS: PO BOX A252,  
SYDNEY SOUTH, NSW 1235.**

Alternatively, you can go to court. You may

also wish to get legal advice, for example from a community legal centre or Legal Aid, and/or make a complaint to ASIC. ASIC can be contacted on 1300 300 630 or through ASIC's website at <http://www.asic.gov.au>.

## The goods

### 7. If my lessor writes asking me where the goods are, do I have to say where they are?

Yes. You have 7 days after receiving your lessor's request to tell your lessor. If you do not have the goods you must give your lessor all the information you have so they can be traced.

### 8. When can my lessor or its agent come into a residence to take possession of the goods?

Your lessor can only do so if it has the court's approval or the written consent of the occupier which is given after the occupier is informed in writing of the relevant section in the National Credit Code.

## General

### 9. What do I do if I can not make a rental payment?

Get in touch with your lessor immediately. Discuss the matter and see if you can come to some arrangement.

You can ask your lessor to change your lease in a number of ways —

- to extend the term of your lease and reduce rental payments; or
- to extend the term of your lease and delay rental payments for a set time; or
- to delay rental payments for a set time.

**10. What if my lessor and I can not agree on a suitable arrangement?**

If the lessor refuses your request to change the rental payments, you can ask your lessor to review this decision if you think it is wrong.

If the lessor still refuses your request, you can complain to the external dispute resolution scheme that your lessor belongs to. Further details about this scheme are set out below in question 12.

**11. Can my lessor take action against me?**

Yes, if you are in default under your lease. But the law says that you can not be unduly harassed or threatened for rental payments. If you think you are being unduly harassed or threatened, contact your credit provider's external dispute resolution scheme or ASIC, or get legal advice.

**12. Do I have any other rights and obligations?**

Yes. The law will give you other rights and obligations. You should also READ YOUR LEASE carefully.

**IF YOU HAVE ANY DOUBTS, OR WANT MORE INFORMATION, CONTACT YOUR CREDIT PROVIDER. YOU MUST ATTEMPT TO RESOLVE YOUR COMPLAINT WITH YOUR CREDIT PROVIDER BEFORE CONTACTING YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION SCHEME. IF YOU HAVE A COMPLAINT WHICH REMAINS UNRESOLVED AFTER SPEAKING TO YOUR CREDIT PROVIDER YOU CAN CONTACT YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION SCHEME OR GET LEGAL ADVICE.**

**PLEASE KEEP THIS INFORMATION STATEMENT. YOU MAY WANT SOME INFORMATION FROM IT AT A LATER DATE.**

## QUESTIONS & ANSWERS

### Common questions & answers with us

Every day, more and more Australians use us to keep up-to-date with the very latest technology for their homes and offices. We are delighted to welcome you as one of them.

This document contains important information about your rental agreement (“**Agreement**”) that you will find useful both now and in the future. Please take a few moments to read it and for future reference be sure to retain in a secure place along with the Agreement.

Unless otherwise defined or the context requires otherwise, capitalised terms used in these Questions & Answers have the meanings given to them in the Agreement. Reference to Clauses in these Questions & Answers are references to Clauses in the Agreement.

#### 1. Who is responsible if the Goods break?

The Goods may come with certain guarantees under Australian Consumer Law, including that they will be of acceptable quality. We also have responsibility for accidental damage as set out in paragraph 3. In either of these circumstances you can call us to see if you are entitled to a remedy (e.g. repair or replacement of the goods). The Goods may also come with a manufacturer’s warranty in addition to your rights under Australian Consumer Law or you may be able to claim under your own insurance. Otherwise, you are responsible for maintaining the Goods.

#### 2. FlexiCare Program

If your rented laptop computer, smartphone, tablet and camera Goods require repairs, you

are entitled to free loaned goods through our FlexiCare Program in some circumstances. We will endeavour to provide the Goods to you within one (1) business day from the time of your request to us (provided that delivery is to an Australian metropolitan area and your request is made during business hours). These goods are known as “**Loaner Goods**” and are discussed in Clause 13.10.

Loaner Goods include goods which we may provide under the Loaner Goods program from time to time, including: laptop computer, smartphone, tablet device or camera. Loaner Goods are subject to availability.

Call us on 1300 888 779 and we will make the arrangements. Courier delivery and collection will be at our cost. See the Agreement for full details.

#### 3. Who is responsible if the Goods are stolen, accidentally lost or accidentally damaged?

Except in the circumstances set out in Clauses 13.1 and 13.2, we retain and bear the risk of theft, accidental loss or accidental damage to the Goods anywhere in Australia or New Zealand or occurring anywhere in the world during a trip of not more than twenty eight (28) days’ duration. This feature is known as “**FlexiCare Protect**” and is set out in Clauses 13.1 to 13.4.

We also allow you to terminate the Agreement early without payment of the Termination Amount in the event of unemployment, disablement, terminal illness or death. In the event of involuntary unemployment, you can also obtain a temporary release from Monthly Rental Payments for three (3) months. This feature is known as “**FlexiCare Protect Platinum**” and is set out in Clauses 13.5 to 13.9.

For terms, conditions and exclusions please see Clause 13.1.

Please note – extra care is needed for portable Goods.

You should always keep the Goods in a safe place. Please do not leave the Goods unattended in a public place or in an unoccupied motor vehicle unless the vehicle is locked and the Goods are out of sight in a locked compartment permanently fixed to the vehicle. Your liability may increase if you fail to ensure that the Goods are kept safe and secure. See Clause 13.1 for details.

#### 4. How do I report an incident?

Just call us on 1300 888 779 and ask for an Incident Notification form. Our Customer Service Centre will help you through the process.

#### 5. What happens at the end of my Agreement?

Because the Agreement is a rental arrangement, you **are not buying the Goods**. This means that you must choose one of the options set out under the heading “End of Term options”. Options 1 to 5 set out in these End of Term options are subject to our agreement.

Towards the end of the Term we will contact you and remind you that it is time to consider your End of Term options. See Clause 12 for full details of the options.

When you return the Goods to us at the end of the Term, you must remove all personal information from the Goods before returning them to us – we are not liable for any consequences arising from your failure to do this.

#### 6. If you don't elect an End of Term option

If no End of Term option is elected at the end of the Term, the Agreement will defer to a month to month arrangement whereby the Monthly Rental Payments will continue until the Goods are returned.

#### 7. Upgrading the performance of the Goods

If you want to modify the Goods to improve its performance you must receive our written consent. Please notify us beforehand by phone or in writing.

#### 8. What happens if I can no longer meet my payment obligations?

If you are having difficulties meeting your payment obligations, you can contact us on 1300 888 779 to discuss your options.

#### 9. How to have Double Time at the end of the Term

At the end of the Term, you can ask us to double the length of the Term in return for you paying the Double Time Payment.

If you request Double Time and we agree, you will not be required to make any further Monthly Rental Payments during the Double Time Period, but all other terms and conditions of the Agreement will continue to apply. This means, for example, that you will be entitled to the FlexiCare Program you signed up to at the beginning of your Agreement, including FlexiCare Protect and FlexiCare Loaner during the Double Time Period.

At the end of the Double Time Period, you can make an offer to purchase the Goods or return the Goods. However, we reserve the right to accept or reject the offer to purchase the Goods.

## END OF TERM OPTIONS

**IMPORTANT NOTE:** The Agreement is a rental arrangement. Under the Agreement **you are not buying the Goods**, rather you are only renting the Goods from us. At the end of the Term, you can choose one of the following End of Term options. Capitalised terms used in these End of Term options have the meanings given to them in the Agreement.

Options	Summary	Description
1. <b>Upgrade and offer to purchase</b>	Upgrade to new goods and offer to purchase the existing Goods*	You can upgrade the existing Goods by entering into a new rental agreement with us for new goods. You can make an offer to purchase the existing Goods. You can offer any price, but we have the right to accept or reject your offer.
2. <b>Upgrade and Double Time</b>	Upgrade to new goods and Double Time the Term*	You can upgrade the existing Goods by entering into a new rental agreement with us for new goods. If you would also like to continue using the existing Goods, you can double the length of the Term by paying the Double Time Payment – equivalent to one (1) Monthly Rental Payment.
3. <b>Upgrade and return</b>	Upgrade to new goods and return the existing Goods*	You can upgrade the existing Goods by entering into a new rental agreement with us for new goods. You can return the existing Goods in good working order (subject to fair wear and tear) at the end of the Term with no more Monthly Rental Payments to pay. If you return the existing Goods before the end of the Term, we may waive some Monthly Rental Payments depending on the promotion offered at the time of purchase. <sup>#</sup>
4. <b>Offer to purchase</b>	Offer to purchase the existing Goods*	If you would like to own the existing Goods, you can make us an offer to purchase the existing Goods. You can offer any price, but we have the right to accept or reject your offer.
5. <b>Double Time</b>	Double Time the Term*	You can double the length of the Term by paying the Double Time Payment – equivalent to one (1) Monthly Rental Payment.
6. <b>Return</b>	Return the Goods	If, at the end of the Term, you do not want to keep using the existing Goods, simply return the existing Goods to us in good working order (subject to fair wear and tear) with no more Monthly Rental Payments to pay.

\*Options 1 to 5 are subject to our agreement and our standard terms and conditions, and in the case of options to upgrade, our internal credit criteria. <sup>#</sup>Promotional offer of monthly rental waiver subject to terms and conditions as outlined at time of purchase. Available on eligible, approved and settled deals and is subject to credit criteria. Customers are liable for payments for the full term under the existing Agreement. One offer per customer. We hold the right to withdraw the offers at any time.

## RENTAL AGREEMENT TERMS & CONDITIONS

**IMPORTANT NOTICE:** This Agreement consists of multiple documents, including these Terms and Conditions, the Signature Page and where applicable the Special Conditions, Direct Debit Request, Goods Delivery or Collection Confirmation, Business Use Declaration and other documents referred to in them (“Documents”). Execution of the Signature Page confirms your agreement to the Documents.

Flexirent Capital Pty Ltd ABN 93 064 046 046,  
Australian Credit Licence number 394735.  
Flexirent Capital Pty Ltd does not hold an  
Australian Financial Services Licence.

### THIS AGREEMENT IS BETWEEN YOU AND US

## PART A: TERMS & CONDITIONS

### 1. TITLE AND OWNERSHIP OF THE GOODS

- (a) We are the owner of the Goods. You only have the right to use the Goods during the Term.
- (b) You acknowledge that you have rights in the Goods that are rented, leased, or bailed to you under this Agreement, when you obtain possession of the Goods.
- (c) You must protect our ownership of the Goods and not attempt to sell, hire, dispose or deal with the Goods in any way or permit any Security Interest that is not in our favour other than in accordance with this Agreement.
- (d) You acknowledge that, subject to the PPS Act, if the Goods give rise to proceeds (by being dealt with or otherwise), the Security Interest:
  - (i) continues in the Goods; and
  - (ii) attaches to the proceeds (and nothing in this Agreement will be taken to provide otherwise).

- (e) You acknowledge, if you dispose of or otherwise deal with the Goods or an interest in them in breach of Clause 1(c), that we have not authorised the disposal or agreed that the dealing would extinguish our interest (including any Security Interest), and that our interest (including any Security Interest) continues in the Goods or interest, despite the disposal or dealing.

### 2. DISCLAIMER OF WARRANTIES

- (a) Upon delivery of the Goods you must inspect the Goods and satisfy yourself that the Goods are in good operating order and condition.
- (b) You must rely on your own judgment as to the:
  - (i) quality and condition of the Goods;
  - (ii) fitness and suitability of the Goods for any particular purpose; and
  - (iii) performance of services provided by third parties.
- (c) Except for applicable non-excludable consumer guarantees, rights or warranties under consumer laws (“**Consumer Guarantees**”) we do not give any warranties or guarantees in relation to the Goods or any services.
- (d) Nothing in this Agreement is to be taken to exclude, restrict or modify any Consumer

- Guarantees we are prohibited by law from excluding, restricting or modifying. To the extent that a Consumer Guarantee applies (and where the relevant goods or services are not of a kind ordinarily acquired for personal, domestic or household use) our liability for breaches of that Consumer Guarantee is limited, as far as the law permits, to the repair or replacement of the Goods or the re-supply of the services or the cost of these.
- (e) To the extent permitted by law, we exclude all liability for indirect or consequential damage, loss of income, loss of profit or interruption of business.
- (f) No salesman or agent of the seller of the Goods are authorised to act as our agent to agree or negotiate or change any term of this Agreement or to make any warranties or representations about it or the Goods, oral or otherwise. You may have rights against the Supplier and/or seller if any of their warranties or representations are incorrect, or against us (in particular if we are a “linked credit provider” of the Supplier and/or seller under the National Credit Code or any other consumer laws).
- (iii) on the Date Goods Taken, before you take the Goods, you must pay us the Upfront Payment, if any; and
- (iv) you must pay us any other Fees or other amounts payable under this Agreement in accordance with this Agreement.
- (c) If the Date Goods Taken is before the Start Date, the:
- (i) Term will commence on the Date Goods Taken; and
- (ii) Term will be extended by the number of days between the Date Goods Taken and the Start Date.
- For the avoidance doubt the End Date will not change.

### 3. PAYMENTS

- (a) You must pay to us the Total Amount Payable.
- (b) You must make Payments in the following way:
- (i) on the Start Date, you must pay us the First Rental Payment, if any;
- (ii) on each Monthly Rental Payment Date (after the Start Date), you must pay us the Monthly Rental Payment;
- (d) Rental Payments are due monthly in advance on the Monthly Rental Payment Date (except where there is an Interim Rental Payment payable, in which case the First Rental Payment is payable partly in arrears and partly in advance as indicated on the Signature Page).
- (e) If the Start Date or a Monthly Rental Payment Date does not fall on a Business Day, payment is due on the next Business Day.
- (f) Unless we otherwise agree in writing, all Rental Payments must be made by direct debit from your nominated financial account or credit card.
- (g) All Rental Payments, once paid, are not refundable. If you believe that a Rental Payment was made in error, if you believe that we have not complied with this Agreement or if you have a claim against us based on our conduct, follow our

dispute resolution process as set out in the Direct Debit Request and Credit Guide.

- (h) You must pay all amounts due under this Agreement in full without set-off or counterclaim, and without any deduction in respect of taxes unless a law provides otherwise. This obligation is absolute, unconditional and continues, even if the Goods become unusable as a result of any act or omission of yours, or of any person to whom you have lent, given or otherwise passed custody or care of the Goods, including a family member, friend or courier. If you wish to dispute any amount payable, please follow our dispute resolution process as set out in the Direct Debit Request and Credit Guide.
- (i) If there is any change to the amount of stamp duty or GST payable or if any other taxes or government charges become payable in respect of this Agreement, you agree that we may adjust the Monthly Rental Payment or any other amount payable under this Agreement accordingly.

#### **4. USE AND MAINTENANCE OF THE GOODS**

- (a) You must keep the Goods in good repair, condition and working order (normal fair wear and tear excepted) and must supply all parts and servicing required.
- (b) You must use, service and maintain the Goods in accordance with the manufacturer's instructions and recommendations.
- (c) You may modify the Goods only with our written consent.

#### **5. LOCATION AND INSPECTION**

- (a) Unless the Goods are portable, you must not, without our prior written consent, remove the Goods from the Approved Goods Location.
- (b) You agree to provide our authorised agents and us with reasonable access to inspect the Goods to confirm the existence, condition and proper maintenance. We will give you two (2) Business Days' notice before inspecting the Goods, unless we reasonably consider that the Goods will be in jeopardy without prompt action.
- (c) If you fail to provide access to us and/or our authorised agents, we may enter the premises, or authorise our agents to enter the premises, where we believe the Goods are located in order to confirm the existence, condition and proper maintenance. We will comply with all relevant laws, including any applicable debt collection and consumer credit requirements in entering the premises.

#### **6. FEES**

- (a) You must pay to us any Fees.
- (b) In addition to any other Fees described in this Agreement, the following Fees may be payable by you:
  - (i) Dishonour Fee if any Payment is unable to be processed (including because you do not have sufficient funds in your account, or a credit card transaction is declined). We may attempt to process a Payment more than once. However, we will give you reasonable notice before doing so. You must pay a Dishonour Fee each time a Payment is unable

to be processed. Dishonour Fees are payable immediately on the dishonour. However, we will give you reasonable notice before debiting your bank account or credit card;

- (ii) Payment Deferral Fee where we agree to defer any Payment. A Payment Deferral Fee is payable at the same time as the deferred Payment is due; and
- (iii) Payment Administration Fee where payment is made from a MasterCard, Visa or American Express card. Each Payment Administration Fee is payable (and will also be charged to the relevant MasterCard, Visa & American Express card) at the same time as the relevant Payment is processed.

## **7. EARLY TERMINATION OPTION**

- (a) By paying to us the Termination Amount, you may return the Goods and terminate this Agreement.
- (b) Until you:
  - (i) return the Goods as required by Clause 10; and
  - (ii) pay the Termination Amount as required by this Clause 7you must continue to pay the Payments when due.
- (c) If the National Credit Code applies to this Agreement, you may terminate this Agreement before the Goods are provided to you by giving us written notice. If you terminate the Agreement under this Clause 7(c), you are not obliged to pay a Termination Amount. However, you must immediately pay any

Fees which were incurred before the termination of this Agreement.

## **8. TERMINATION**

If you Default (and if the National Credit Code applies, if you have not remedied your Default after we have provided you with a notice of Default) this Agreement will terminate and you must then immediately:

- (a) pay to us the Termination Amount; and
- (b) return the Goods in accordance with Clause 10.

## **9. DEFAULT**

- (a) You will be taken to have repudiated this Agreement if you:
  - (i) Default; or
  - (ii) do not comply with any of the essential terms of this Agreement.
- (b) Without limiting the other essential terms of this Agreement, it is essential that you:
  - (i) pay each Rental Payment on its due date;
  - (ii) comply with Clause 1(c); and
  - (iii) remain solvent.
- (c) If the National Credit Code applies to this Agreement, we must give you written notice before we take any enforcement action in relation to this Agreement in accordance with the National Credit Code.

## **10. RETURN OF THE GOODS**

- (a) If you must return the Goods to us or we repossess Goods under this Agreement, including without limitation on termination of this Agreement:

- (i) under Clause 8;
- (ii) at the end of the Term; or
- (iii) if you have chosen Double Time, at the end of Double Time Period,

you must, subject to Clause 12, return the Goods to us at your expense to an address nominated by us and where applicable together with all software specified on the Signature Page, all CDs, DVDs, accessories and manuals, in as good condition as the Goods were delivered to you (subject to normal fair wear and tear, and not in respect of Goods returned for replacement or repair).

- (b) You must remove any personal data and (except in the case of return for replacement or repair) software not installed on the Goods on the Date Goods Taken or specified on the Signature Page that is stored on or in the Goods before returning the Goods to us.
- (c) We expressly deny all liability for any consequences arising from your failure to remove such information except for any consequences arising from our fraudulent or grossly negligent handling or disposal of such information.
- (d) For any Goods returned to us other than in accordance with Clause 10(a) or Goods returned for replacement or repair, you must pay to us the difference between the Fair Market Value as returned to us and the Fair Market Value as they should have been returned to us.
- (e) If any Goods are returned to us other than in accordance with Clause 10(b), or repossessed by us other than in accordance with Clause 11(e), you must pay to us, calculated at our standard

rates (as notified to you at the time), for our services required to remove any personal data in accordance with Clause 10(b). We will not be held liable for any data that is lost, corrupted or compromised during this process, except for any consequences arising from our fraudulent or grossly negligent handling or disposal of such information.

## 11. REPOSSESSION OF GOODS

- (a) If you fail to pay any Rental Payments or if you fail to return the Goods when you are required to do so under this Agreement, in addition to our other rights, we or our authorised agents may (subject to complying with any applicable law) take all necessary steps to enter any premises where we believe the Goods may be located and repossess the Goods.
- (b) We will give you thirty (30) days' notice before exercising our rights under Clause 11(a) unless the law provides that this is not required, including where we have made reasonable attempts to locate you, but without success.
- (c) Subject to complying with any applicable law, we may sell any repossessed Goods at any time.
- (d) If this Agreement has not been terminated, you may collect the Goods from us only if you have paid all Payments (including any amounts owing under Clause 16(a)) and the Term or Double Time has not ended.
- (e) Where we have given you prior notice of the repossession, you must remove all personal data and software from the Goods before they are repossessed.

- (f) We expressly deny all liability for any consequences arising from your failure to remove such information, except for any consequences arising from our fraudulent or grossly negligent handling or disposal of such information.
- (g) Where we have not given you prior notice of the repossession we will take reasonable steps to remove any personal information and software from repossessed Goods, but we will not be liable for any consequences if we fail to remove such information or software.

## 12. END OF TERM OPTIONS

At least thirty (30) days before the end of the Term, you must elect one (1) of the End of Term options set out in this Clause 12.

### 12.1. Upgrade and offer to purchase

- (a) You can request to upgrade the Goods to new goods and make us an offer to purchase the Goods under Clause 12.4.
- (b) If we agree to your request under Clause 12.1(a), we may provide you with a new rental agreement giving you the right to use the new goods. Clause 12.4 applies to the purchase of the Goods.
- (c) Provided all amounts owing under this Agreement at the end of Term have been paid in full on settlement of your new rental agreement, this Agreement will be terminated and you will not be required to make any further Payments to us (other than any purchase price agreed under Clause 12.4).

### 12.2. Upgrade and Double Time

- (a) You can request to upgrade the Goods to new goods and keep possession of the

Goods for the Double Time Period under Clause 12.5.

- (b) If we agree to your request under Clause 12.2(a), we may provide you with a new rental agreement giving you the right to use the new goods. Clauses 12.5(b) and 12.5(c) applies to Double Time for the Goods.

### 12.3. Upgrade and return Goods

- (a) You can request to upgrade the Goods to new goods and return the Goods to us in accordance with Clause 10.
- (b) If we agree to your request under Clause 12.1(a) to upgrade the Goods, we may provide you with a new rental agreement giving you the right to use the new goods.
- (c) Provided all amounts owing under this Agreement at the end of the Term have been paid in full and the Goods are returned in accordance with Clause 10, on settlement of your new rental agreement, this Agreement will be terminated and you will not be required to make any further payments to us pursuant to this Agreement.

### 12.4. Offer to purchase

Make us an offer to purchase the Goods. If we accept your offer to purchase, you will own the Goods. GST will apply to the purchase price. However, we do have the right to reject your offer.

### 12.5. Double Time

- (a) You can request to keep possession of the Goods and extend the Term by a period equal to the length of the Term (“**Double Time**”).

- (b) If you make a request under Clause 12.5(a), you must pay us the Double Time Payment. Provided all amounts owing under this Agreement at the end of the Term have been paid in full, including the Double Time Payment:
- (i) we will extend the Term by a term equal to the Term;
  - (ii) you are not required to return the Goods to us under Clause 10 at the end of the Term;
  - (iii) you are not required to make any further Payments to us; and
  - (iv) subject to Clause 12.5(b)(iii), these Terms and Conditions will otherwise continue to apply, including the FlexiCare Program where appropriate.
- (c) At the expiry of the Double Time Period, you must either:
- (i) return the Goods to us in accordance with Clause 10;
  - (ii) make us an offer to purchase the Goods in accordance with Clause 12.4;
  - (iii) ask us to upgrade to new goods and return the Goods under Clause 12.3; or
  - (iv) ask us to upgrade to new goods and offer to purchase the Goods under Clause 12.1.
- internal credit criteria, policy and new terms and conditions.
- (b) If no End of Term option is selected under this Clause 12 before the end of the Term (including any Double Time Period under Clause 12.5), then:
- (i) you must return the Goods as contemplated by Clause 10; and
  - (ii) this Agreement will continue on a month to month basis until the Goods are returned to us (“**Month to Month Period**”). During the Month to Month Period, you must pay the Monthly Rental Payment as though the Month to Month Period was part of the Term.
- (c) Notwithstanding anything contained in this Agreement, you have no right or obligation at any time to purchase the Goods, either during the Term or during any extended term.

## 12.6. Return Goods

Return the Goods to us in accordance with Clause 10.

## 12.7. Additional terms

- (a) Any request under this Clause 12 is subject to our suitability assessment,

## PART B: FLEXICARE PROGRAM

### 13. FLEXICARE PROGRAM

#### *FlexiCare Protect*

#### 13.1. Risk of theft, accidental loss or accidental damage

- (a) Subject to Clauses 13.2 and 13.3, while we own the Goods (including during any extended term), we retain and bear the risk of theft, accidental loss or accidental damage to the Goods occurring anywhere in Australia or New Zealand or anywhere else in the world during a trip of not more than twenty eight (28) days duration.
- (b) You assume and bear the risk of all theft, loss or damage to the Goods, which we do not retain and bear under Clause 13.1(a) and you agree to indemnify us for any such theft, loss or damage.
- (c) If the Goods are stolen, accidentally lost or accidentally damaged, and the risk of that loss or damage is ours under this Agreement, subject to your compliance with Clause 13.3, we will Release you.

#### 13.2. Exclusions, allocation of risk and indemnity

- (a) Notwithstanding Clause 13.1, we will not pay for, and you will assume and bear the risk of any theft, accidental loss or accidental damage, to the Goods:
  - (i) where it is not theft, accidental loss or accidental damage;
  - (ii) where at the time of the theft, accidental loss or accidental damage, you are in arrears for one (1) month or more;
- (iii) which is covered by a manufacturer's warranty or any other extended warranty or would have been so covered had that warranty not been voided;
- (iv) caused by mechanical and/or electrical breakdown of any kind, unless the breakdown/derangement occurs as a result of an external accident (e.g. power surge) and where you have been grossly negligent;
- (v) arising from theft, misappropriation, fraudulent, intentional or dishonest acts, or malicious damage by you, your employees, your family, any person who has unrestricted access to the Goods, or any person to whom you have lent the Goods to or otherwise permitted to use the Goods;
- (vi) arising from theft, attempted theft or loss:
  - (A) from premises which are unoccupied on a permanent or long term basis, unless the premises were Secure and the theft or loss resulted directly from Forced Entry to the premises;
  - (B) from occupied premises and at the time of the theft or loss the occupants were not present, unless the premises were Secure and the theft or loss resulted directly from Forced Entry to the premises;
  - (C) from a vehicle which was Secure with no occupants in it at the time of the theft or loss, unless the theft or loss resulted directly from a

- Forced Entry to the vehicle and the Goods were concealed from sight;
- (D) from an unoccupied vehicle under any circumstances where the Goods were stored or left overnight;
- (E) from any public place or any place where the public has regular access and where the Goods were left unattended. However, if you have an education program, a public place where the Goods were located excludes:
- (I) an unlocked classroom or school building, but only during normal school hours;
- (II) at an organised school event; or
- (III) in transit during travel to or from school or an organised school event.
- (F) if the Goods are used other than for a purpose for which they were designed, which we determine in our discretion; or
- (G) if the Goods are stolen, accidentally lost or accidentally damaged, by a third party. For example, by a friend, family member, postal worker or courier;
- (vii) occurring during or as a result of the Goods being transported in any aircraft or watercraft unless carried as cabin baggage;
- (viii) that were on loan or being used for trial, testing, demonstration or exhibition;
- (ix) where the loss or damage is to software or data of any type whatsoever or is caused by any computer virus, worm, trojan or the like, or any other software based malfunction;
- (x) for the costs of data programming, data reconstruction, data recovery or program installation or reconfiguration;
- (xi) resulting from:
- (A) any consequence of war or warlike or terrorist activities;
- (B) ionizing radiation or radioactivity; or
- (C) the confiscation or destruction of any Goods by any government, public or statutory authority;
- (xii) caused by corrosion, oxidation, rust, insects, vermin, dust, dampness, dryness, cold, heat, wasting, cosmetic damage, scratching or marring, faulty workmanship or materials, loss of screen or image brightness or resolution, failure to perform to specifications or wearing away or wearing out of any part of any Goods which arises from normal fair wear and tear, ordinary use or gradual deterioration;
- (xiii) which are expendable or consumable items including fuses, lamps, batteries, bells, chains, tapes or ribbons or any other part of any Goods which requires periodic or frequent replacement;
- (xiv) where Loaner Goods are stolen, accidentally lost or accidentally damaged, while in your possession;
- (xv) where it occurred whilst under the influence of drugs and/or alcohol; or

(xvi) if you supply false or misleading information in relation to the incident that resulted in the theft, accidental loss or accidental damage.

(b) You agree to indemnify us for:

(i) any theft, accidental loss or accidental damage to the Goods to which Clause 13.2(a) applies;

(ii) liability for any injury or death to any person or damage to any property arising directly or indirectly from the Goods or their use; and

(iii) any loss or damage we suffer as a result of you failing to remove personal information or software as required under this Agreement.

(c) For any Protect Event, you agree to pay us any Fees, that may be payable in accordance with the Fees.

### 13.3. Protect Event notification

(a) If any Goods are stolen, you must inform the Police within 48 hours and promptly provide us with a copy of the associated Police report event number. We are not obliged to process a Protect Event until you have provided us with a copy of the police report number, or if you have not informed the police within 48 hours of the Protect Event.

(b) Within fourteen (14) days of the theft, accidental loss or accidental damage occurring, you must complete an "Incident Notification Form" and send it to us.

(c) We may request a copy of the Police report at any time during the claim process in which case you must provide the copy of the report to us at your own

expense. If we request a copy of the Police report, we will not complete the claim process until you provide us with the copy of the report.

### 13.4. Basis of settlement

(a) We may, at our discretion, choose to:

(i) repair the damaged Goods;

(ii) replace the stolen, accidentally lost or accidentally damaged Goods with goods of similar age, original specifications (excluding modifications not under this Agreement) and condition, but this may not necessarily be the same make or model and may include refurbished goods; or

(iii) release you from your future obligations under this Agreement except for any payments in arrears at the time the incident was approved.

(b) We reserve the right to choose any suitably qualified repairer to carry out repairs or any suitable Supplier to replace the Goods.

(c) Unless we release you from your obligations under Clause 13.4(a)(iii), you must continue to pay the Monthly Rental Payments in accordance with Clause 3.

(d) Clause 10 applies to any return of Goods under this clause.

## *FlexiCare Protect Platinum*

### 13.5. Release

Subject to Clause 13.7, upon:

- (a) the happening of a Platinum Event; and
- (b) your compliance with Clauses 13.8 and 13.9,

we will treat this Agreement as terminated and release you from the obligation to pay to us any remaining Monthly Rental Payments and any other amounts which may be owing under this Agreement as a consequence of the termination or otherwise (except for any Fee that may apply) (“**Release**”).

### 13.6. Temporary Release

- (a) Subject to Clause 13.7, if you or a person nominated in accordance with Clause 17.6, being involuntarily unemployed (as set out in paragraph (b) in the definition of Platinum Event) you may, instead of seeking a Release, elect to have payment of Monthly Rental Payments temporarily released for a period of three (3) months from when we notify you that we have accepted that your notification of the Platinum Event entitles you to a Release (“**Temporary Release**”).
- (b) If you elect for a Temporary Release, rather than a Release, we may waive the application of Clause 13.8(c).
- (c) Following expiration of the three (3) month period in Clause 13.6(a), you may elect to seek a Release under Clause 13.5, in which case any Fee that may be payable becomes payable or if you choose not to seek a Release under Clause 13.5, the remaining Monthly Rental Payments will be adjusted to allow for the Temporary Release.

### 13.7. Exclusion and indemnity

Notwithstanding Clause 13.5, we will not Release you or give you a Temporary Release where you are two (2) or more Monthly Rental Payments in arrears.

### 13.8. How to make a notification of a Platinum Event

- (a) You or your executor must give us written notice within thirty (30) days of a Platinum Event occurring (“**Notice of Platinum Event**”).
- (b) If required, we may forward to you or your executor a notification form that must, within fourteen (14) days of receipt, be completed and returned to us with all relevant information including such information set out in Clause 13.5.
- (c) For any Notice of Platinum Event you agree to pay us any Fees that may be payable.
- (d) We may make any reasonable enquiries as we see fit about the notification and may require you to have a medical examination. If we request an examination, we will pay for the associated direct reasonable costs.

### 13.9. Returning the Goods

- (a) If we advise you that we agree a Platinum Event has occurred, you or your executor must immediately return the Goods to us.
- (b) Clause 10 applies to any Goods returned to us under this Clause.

*FlexiCare Loaner*

**13.10. Loaner Goods - use and maintenance**

If we exercise our right under Clause 13.4(a) (i), we will, at your request, lend you the Loaner Goods while the damaged Goods are being repaired, subject to the following conditions:

- (a) you may only request Loaner Goods if the damaged Goods are a laptop computer, smartphone, tablet device or camera;
- (b) the Loaner Goods will be of the same class of goods as the damaged Goods (for example, if the damaged Goods are a computer, the Loaner Goods will be a computer), but the Loaner Goods may not be identical to the damaged Goods (in brand, size or technical specifications);
- (c) you may request Loaner Goods on more than one occasion provided you pay the relevant administration fee each time you request Loaner Goods, but you may only have Loaner Goods for an aggregate of sixty (60) days within the Term (this includes the period after you have made the Double Time Payment if applicable). If you do not return the Loaner Goods or you lose the Loaner Goods we will charge you a Fee that may be set out in this Agreement;
- (d) subject to some exceptions for remote areas, we will deliver Loaner Goods to, and collect the Loaner Goods from, anywhere within Australia;
- (e) if your request is made during normal business hours and delivery is to an Australian metropolitan area, we will make reasonable efforts to deliver Loaner Goods to you within one (1) Business Day of your request;

- (f) Loaner Goods are subject to the availability of equivalent goods in our warehouse facility at the time the Loaner was requested;
- (g) you agree that any replacement of, alteration or addition to any accessories, tools or other goods supplied with, installed in, or attached to, the Goods or the Loaner Goods during the Term will become our property and will be considered part of the Goods for the purposes of this Agreement; and
- (h) You must return Loaner Goods to us when you receive your repaired Goods, or when the aggregate period in Clause 13.10(c) expires. Clause 10 applies to any Loaner Goods returned to us under this Clause, as if references to "Goods" were references to "Loaner Goods".

## PART C: GENERAL PROVISIONS

### 14. PRIVACY

#### 14.1. Privacy (including consents)

- (a) This Clause 14 sets out:
  - (i) consents that you (including if you are a guarantor) give us in relation to your personal information by applying for credit from us or applying to be a guarantor in relation to credit; and
  - (ii) important information about our collection, use, disclosure and management of your personal information.
- (b) Our “Privacy Policy and Credit Reporting Policy” (“**Policy**”) is available at [www.smartway.com.au](http://www.smartway.com.au). Our Policy provides more details about how we manage your personal information, including your credit information and credit eligibility information.
- (c) When collecting, using, disclosing and managing your personal information, we comply with the Privacy Act as well as the Credit Reporting Privacy Code.

#### 14.2. Collection, use and disclosure of your Personal Information

- (a) We ordinarily collect Personal Information about you for the following purposes and, to the extent not already authorised by law, you agree to us using and disclosing that information for these purposes:
  - (i) assessing and processing existing or future application(s) for consumer or commercial credit and, where applicable, insurance or extended warranty products, managing your account or other products,

responding to your questions and performing our obligations in relation to credit and insurance and extended warranty products provided to you;

- (ii) either us, any relevant insurer, the Supplier or any other service provider appointed by us contacting you about your end of rental term options, any upgrade options or other special offers or promotions;
- (iii) protecting us and our assets (including against fraud) and selling our assets (including by assigning any debts);
- (iv) enforcing our rights (including undertaking debt collection) in connection with any credit provided to you;
- (v) obtaining, administering and enforcing any guarantee given or to be given by you or any guarantee given or to be given by any other person as your guarantor, and assessing whether to accept any person as a guarantor;
- (vi) managing, changing and improving our systems and processes; and
- (vii) complying with laws. Various Australian laws may require us to collect your Personal Information, or we may need to do so to be able to comply with other obligations under those laws. These laws include:
  - (A) Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) and other anti-money laundering legislation (for example, for identity verification);

- (B) NCCPA (for example, for responsible lending);
  - (C) PPS Act (for example, for search and registration purposes);
  - (D) Financial Sector (Collection of Data) Act 2001 (Cth);
  - (E) Corporations Act 2001 (Cth); and
  - (F) any other regulatory legislation (for example, requiring us to maintain client and transaction records, to provide information relating to loans to the Australian Prudential Regulation Authority and to make reports and provide other information to regulators such as the Australian Securities and Investments Commission) and the Taxation Administration Act 1953 (Cth), Income Tax Assessment Act 1997 (Cth) and other taxation laws (for example, to comply with information requests issued by the Commissioner of Taxation).
- (b) We collect your personal information primarily from you. However, sometimes we may collect personal information about you from third parties for the purposes described above where it is unreasonable or impracticable to collect it directly from you. These third parties include the Supplier; other credit providers; insurers (such as insurers who provide insurance in relation to your credit); any of your employers, former employers, referees, banks, landlords, guarantors, accountants, lawyers and financial advisers; service providers to us (including debt collection agencies, introducers, private investigators, professional advisers); professional organisations; internet sources; public and subscriber only databases; and government authorities. The circumstances in which we may do so include, for example, where we need information from a third party to assist us to deal with any application or request made by you (such as to verify information you have provided or to assess your circumstances) or to assist us to locate you or communicate with you.
- (c) The consequences of you not providing to us the personal information that we require can include that we will not be able to approve your application for credit or a related product, or accept you as a guarantor, or that we will not be able to deal with future requests or queries from you in connection with credit we provide.
  - (d) You agree that we can disclose your Personal Information (including, where permitted to do so under the Privacy Act, your credit information and credit eligibility information) for the purposes described above to:
    - (i) any of our related bodies corporate; our assignees or potential assignees; the Supplier; any other supplier appointed by us, credit reporting agencies or any business providing information about commercial credit worthiness; other credit providers; insurers (such as insurers who provide insurance in relation to your credit); any guarantor or proposed guarantor of your obligations to us; your assignees or proposed assignees; debt collection agencies; our banks and financial advisers; our lawyers, accountants and other professional advisers; any suppliers or contractors

to us whom may need to have access to your personal information for the purpose of providing services to us or you (including, without limitation, valuers, physical and electronic file storage suppliers, receivables management suppliers and data warehouses);

- (ii) any person specifically authorised by you in writing; and
- (iii) any person as permitted or required by law (except this paragraph does not permit us to disclose any information of the kind referred to in section 275(1) of the PPS Act unless section 275(7) of the PPS Act applies).

#### 14.3. We may disclose your Personal Information to overseas recipients

- (a) Some of the organisations to whom we may disclose your personal information (including your credit information or credit eligibility information) will be located overseas and may not have an Australian link. The countries in which overseas recipients are likely to be located currently include the Philippines (for an updated list of countries from time to time please see our Policy).
- (b) You acknowledge that by consenting to us disclosing your personal information to overseas recipients, APP 8.1 will not apply to the disclosure (which means that we will not be obliged under the Privacy Act to take reasonable steps to ensure that an overseas recipient does not breach the APPs and we may not be liable under the Privacy Act if the recipient does not act consistently with the APPs).
- (c) By applying for this product you consent to disclosures to overseas recipients.

#### 14.4. Important information about credit reporting

- (a) Our Policy contains important information about credit reporting, including the credit reporting bodies that we deal with, credit information that we may give them about you (such as about defaults and serious credit infringements) and details regarding how those credit reporting bodies use and disclose that information to credit providers and their policies about managing the information. You have important rights regarding access, correction and complaints relating to your credit reporting information, as well as certain rights to prevent its use for direct marketing or where you have been a victim of fraud. You will also find details about these rights on the same page. You can also ask us to provide you with a copy of this important information.
- (b) If you have made an application for commercial credit, or have obtained commercial credit from us, you agree that we can also obtain credit reporting information about you from a credit reporting body for the purposes of:
  - (i) assessing your application for commercial credit; or
  - (ii) collecting payments that are overdue in relation to commercial credit provided to you.
- (c) You also agree that we can obtain, from any business providing information about commercial credit worthiness, commercial credit reports about you for the purposes of assessing applications for consumer or commercial credit.
- (d) If you are applying to be a guarantor in relation to credit we may provide to

another person, you agree that we can obtain credit reporting information about you from a credit reporting body for the purposes of assessing whether to accept you as a guarantor.

- (e) You agree that we can disclose your name, residential address and date of birth to a credit reporting body so that the credit reporting body can provide an assessment to us of whether the information provided by you matches (in whole or in part) the information in the credit reporting body's possession or control (which may include personal information held by the credit reporting body about you or other individuals). This will be done for the purpose of verifying your identify as required under Australia's anti-money laundering and counterterrorism laws where applicable. If you would prefer us to use another form of verification, such as your passport or driver's licence, you must notify us and provide us with any information that we request.

#### 14.5. Marketing products and services to you

- (a) You agree to us using and disclosing your Personal Information (including your telephone number, regardless of whether it is listed on the Do Not Call Register and your email or other electronic addresses) to provide you with information about our other products and services and the products and services offered by our dealers, insurers (such as insurers who provide credit-related insurance), our related companies or suppliers. This includes, without limitation, communicating with you via emails, text messages or other electronic messages (without an unsubscribe facility).

- (b) This Agreement operates indefinitely. However, you can tell us that you no longer wish us to use or disclose your personal information for these purposes by contacting us on 1300 888 779.

#### 14.6. Accessing and correcting your Personal Information

- (a) You have rights to request access to and correction of personal information that we hold about you (including credit information and credit eligibility information). For details about how you can make such requests please see our Policy.
- (b) We always try to deal with your personal information consistently with our privacy obligations and we are committed to resolving any issues that you may wish to raise. Our Policy contains details about how you can make a complaint if you think there has been a breach of the Privacy Act or the Credit Reporting Privacy Code and how we will deal with such a complaint.

### 15. PERSONAL PROPERTY SECURITIES ACT

#### 15.1. Security Interest

You must do anything we reasonably ask and consider necessary (at your own expense) such as obtaining consents, signing and producing documents, getting documents completed and signed, and supplying information to:

- (a) provide more effective security over the Goods, or any other personal property over which we have a Security Interest for payment of money owing to us in connection with this Agreement;

- (b) bind yourself and any other person intended to be bound under this Agreement;
  - (c) ensure that a Security Interest is enforceable, perfected (including where possible, by control in addition to registration) and otherwise effective;
  - (d) enable us to apply for any registration, or give any notification, in connection with a Security Interest created by this Agreement so that the Security Interest has the priority we require and any notice in relation to it;
  - (e) enable us to exercise our rights in connection with the Goods; and
  - (f) show whether you are complying with this Agreement.
- (b) may not exercise rights under sections 142 and 143 of the PPS Act to the extent the law permits them to be excluded; and
  - (c) need not give any notice required under the PPS Act (including a notice of a verification statement, but not including a statement under section 135) unless the requirement to give the notice cannot be excluded.

## 16. COSTS, INDEMNITIES AND COMMISSIONS

- (a) You must pay or reimburse us for:
  - (i) all taxes (including GST) and stamp duties payable in connection with this Agreement; and
  - (ii) any expenses we reasonably incur in enforcing this Agreement or incur because you have repudiated, terminated or breached this Agreement, including, without limitation, any legal costs and expenses, financing break costs, costs incurred in repossessing or attempting to repossess the Goods and costs incurred in storing and disposing of the Goods.
- (b) Subject to the application of the Consumer Guarantees, you must indemnify us for:
  - (i) liability for any injury or death to any person or damage to any property arising directly or indirectly from you or your agents' fraudulent, illegal, negligent or otherwise improper use of the Goods (except to the extent that the injury, death or damage occurs as a result of the Goods being faulty); and
  - (ii) a claim for patent, trademark or copyright infringement, for strict liability or for any other reason being

### 15.2. Name change

You must notify us in writing of any change in your name at least fourteen (14) days before you propose to change your name.

### 15.3. Registration

We may at your expense, apply for any registration, or give any notification, in connection with a Security Interest created under this Agreement.

### 15.4. Contracting out

You agree that we:

- (a) need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) and 132(4) of the PPS Act, or any other provision of the PPS Act notified to you by us after the date of this Agreement, to the extent the law permits them to be excluded;

made against us as a result of your acts or omissions or use of the Goods, which is inconsistent with its ordinary use or purpose.

- (c) You agree that we may pay commissions or fees to any broker, agent, dealer or other person who introduces you to us, or us to you.

## 17. MISCELLANEOUS

### 17.1. Authority to complete and amend errors

You authorise us to complete any blanks or correct any errors in this Agreement (including inserting serial numbers, model numbers and the Agreement Number) that are clearly incorrect and the amendment of which would not have a detrimental effect on your liabilities or materially affect your obligations under this Agreement.

### 17.2. Assignments

- (a) At law we may, without giving you notice, sell, assign or otherwise dispose of or deal with our interest in the Goods, Loaner Goods or this Agreement. To the extent that it applies, you will continue to have rights against the assignee under the National Credit Code, and the person to whom we assign has no greater rights than us.
- (b) You may apply to assign this Agreement, but you acknowledge that we are not obliged to agree. We may charge a Fee to credit assess the proposed assignee even if the proposed assignee is declined.

### 17.3. Severability

If:

- (a) the National Credit Code or any other law would otherwise make a provision of this

Agreement illegal, void or unenforceable in any jurisdiction; or

- (b) a provision of this Agreement would otherwise contravene a requirement of the National Credit Code or impose an obligation or liability which is prohibited by the National Credit Code or any other law,

this Agreement is to be read as if that provision were varied to the extent necessary to comply with the National Credit Code or that other law or, if necessary, omitted, without affecting the continued operation of the rest of this Agreement in that jurisdiction or any other jurisdiction.

### 17.4. Notices

- (a) You must tell us if you change your bank account or credit card details, your business, postal or email address, or if you think there is any information that we should be aware of about your ability to comply with this Agreement.
- (b) We can give you notice by delivering it to you personally or leaving it at, or sending it by post, facsimile or email, to your home, business, postal or email address last known to us. An email notice will be deemed to be valid if not returned.
- (c) A certificate signed by one of our authorised officers is adequate proof of the facts stated in it relating to this Agreement and rights and obligations arising under it unless you can demonstrate otherwise.
- (d) You consent to us and/or our related bodies corporate sending commercial electronic messages to you.

## 17.5. Changes to these Terms and Conditions

- (a) We may change these Terms and Conditions and/or any part of this Agreement at any time by giving you not less than thirty (30) days' notice.
- (b) Any change will not affect the amount of the Total Amount Payable and the Monthly Rental Payment (except as permitted in accordance with Clause 3(g)) and will only apply to obligations arising after the expiry of the notice period.
- (c) This notice may also be given to you by an advertisement in one or more newspapers circulating in your State or Territory.
- (d) You have the right to end this Agreement at any time before the end of the Term in accordance with Clause 8.
- (e) Where the National Credit Code applies, all changes to this Agreement will be made in accordance with the National Credit Code.

## 17.6. Partnerships, Trusts, Companies

Where you as the customer are not an individual natural person, but you have nominated an individual/s natural person/s as well under the customer details on the Signature Page, you are eligible for benefits under Clauses 13.1 to 13.9 inclusive in relation to the nominated partners, trustee(s) or directors as relevant, and as such a notification may be lodged in their names, on behalf of the customer.

## 17.7. Governing Law

- (a) This Agreement is governed by the laws of New South Wales.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

## 18. DEFINITIONS AND INTERPRETATION

### 18.1. Definitions

In this Agreement, unless the context otherwise requires:

“**Administration Fee**” means the applicable FlexiCare Program administration fee as set out in the Fee Table.

“**Agreement**” means the agreement between you and us comprising the:

- (a) Terms and Conditions; and
- (b) Signature Page; and where applicable any:
- (c) Special Conditions;
- (d) Direct Debit Request;
- (e) Goods Delivery or Collection Confirmation; and
- (f) Business Use Declaration.

“**Agreement Number**” means the unique number assigned by us under this Agreement.

“**APP**” means the “Australian Privacy Principles”.

“**Approved Goods Location**” means the location set out on the Signature Page, being the location at which the Goods must remain.

“**Business Day**” means a day (not being a Saturday, Sunday or a public holiday) on which banks are open for general banking in Sydney, New South Wales.

“**Business Use Declaration**” means, if applicable, the declaration signed by the customer declaring that the:

- (a) Goods are being rented wholly or predominantly for business purposes; and
- (b) protections under the National Credit Code do not apply to the Agreement.

“**Consumer Guarantees**” has the meaning given to it in Clause 2(c).

“**Credit Guide**” means the document entitled “Credit Guide” provided to you with this Agreement as amended from time to time.

“**Date Goods Taken**” means the date set out on the Signature Page, being the date you take possession of the Goods.

“**Default**” means that you:

- (a) do not pay in full any Rental Payments or any other amounts due in accordance with Clause 3:
  - (i) by the due date on more than one occasion; or
  - (ii) within thirty (30) days of the due date;
- (b) become insolvent, bankrupt or become subject to any arrangement or composition, or as a company or business you enter administration, receivership, liquidation or external administration; or
- (c) sell, sub-lease, dispose of or create a Security Interest in the Goods or attempt to do any of those things.

“**Direct Debit Request**” means the “Direct Debit Request” authorising us to debit your nominated financial institution account and which incorporates the Direct Debit Service Agreement.

“**Direct Debit Service Agreement**” means the agreement setting out the terms and conditions of the direct debit request.

“**Dishonour Fee**” means the dishonour fee as set out in the Fee Table.

“**Double Time**” has the meaning given to it in Clause 12.5(a).

“**Double Time Payment**” means the amount payable by you if you choose to exercise the Double Time options available as End of Term options. The Double Time Payment is the agreed amount as set out on the Signature Page.

“**Double Time Period**” means the period of time double the length of the Term (commencing upon the expiry of the Term).

“**End Date**” means, subject to the terms of this Agreement, the end date set out on the Signature Page.

“**End of Term options**” means one of the end of Term options set out in Clause 12.

“**Event**” means a Protect Event and/or a Platinum Event, where relevant.

“**Fair Market Value**” means the amount acceptable to us for which the Goods would sell if put up for sale, as determined by us at any given time.

“**Fees**” includes any fees or charges that we may reasonably request under or in connection with this Agreement, including the fees set out in the Fee Table.

“**Fee Table**” means the “Fee Table” set out in Part D.

“**First Rental Payment**” means the sum of the:

- (a) Interim Rental Payment; and

(b) Monthly Rental Payment.

For the avoidance of doubt, if no Interim Rental Payment is payable, the First Rental Payment will equal the Monthly Rental Payment.

“**FlexiCare Loaner**” means the FlexiCare Program providing you with the Loaner Goods, in accordance with Clause 13.10.

“**FlexiCare Program**” means:

- (a) FlexiCare Loaner;
- (b) FlexiCare Protect;
- (c) FlexiCare Protect Platinum; or
- (d) a combination of any of the above.

“**FlexiCare Protect**” means the FlexiCare Program protecting the Goods against theft, accidental loss or accidental damage, in accordance with Clause 13.1.

“**FlexiCare Protect Platinum**” means the FlexiCare Program protecting certain payment obligations under this Agreement on the occurrence of a Platinum Event.

“**Forced Entry**” means violent and forcible entry to the premises or a vehicle, for example by breaking and entering through a window or breaking down a door. To avoid doubt, entry by the entry of an alphanumeric code, or use of a key is not violent and forcible entry for the purposes of Clause 13.2.

“**Goods**” means each one or more of the following as applicable:

- (a) the goods described on the Signature Page;
- (b) all goods purchased by us with the assistance of the total financed amount;

(c) includes any hardware and software associated with the goods installed or associated with the goods at the Date Goods Taken, or described on the Signature Page; and

(d) any Loaner Goods;

(e) any replacements for the goods; and

(f) any accessories fitted to the goods described on the Signature Page (including anything installed in or affixed to goods for purposes of the PPS Act).

“**Goods Delivery or Collection**

**Confirmation**” means document entitled “Goods Delivery or Collection Confirmation” provided to you with this Agreement.

“**GST**” means goods and services tax levied under A New Tax System (Goods and Services Tax) Act 1999 (Cth) and related legislation.

“**Interim Rental Payment**” means, if any, the amount payable by you to us as set out on the Signature Page. This amount relates to the use of the Goods from the Date Goods Taken up to, and including, the Start Date.

“**Loaner Goods**” means the Goods offered under the FlexiCare Program which may be offered by us as an interim replacement of the Goods for the agreed time between you and us.

“**Month to Month Period**” has the meaning given to it in Clause 12.7(b)(ii).

“**Monthly Rental Payment**” means the monthly rental payment amounts payable by you to us each month, as set out on the Signature Page.

“**Monthly Rental Payment Date**” means the agreed date of the Monthly Rental Payments set out on the Signature Page, for:

- (a) each month of the Term;
  - (b) any Double Time Period; and
  - (c) any Month to Month Period,
- but does not include the Start Date.

“**National Credit Code**” means the National Credit Code set out in Schedule 1 of the NCCPA.

“**NCCPA**” means the National Consumer Credit Protection Act 2009 (Cth).

“**Notice of Platinum Event**” has the meaning given to it in Clause 13.8.

“**Payments**” means:

- (a) the Rental Payment(s);
- (b) the Upfront Payment; and
- (c) any other payments made or to be made by you under this Agreement.

“**Payment Administration Fee**” means the payment administration fee as set out in the Fee Table.

“**Payment Deferral Fee**” means the payment deferral fee as set out in the Fee Table.

“**Personal Information**” has the same meaning as in the Privacy Act.

“**Platinum Event**” means

- (a) your disablement or disablement of the person(s) nominated in accordance with Clause 17.6 where disablement means:
  - (i) total and continuous inability to perform the usual duties of an occupation for which you or the person(s) nominated in accordance with Clause 17.6 as relevant are reasonably qualified by education, training or experience due to illness

or injury for more than thirty (30) consecutive days;

- (ii) the disablement is certified by a legally qualified medical practitioner licensed to practice in Australia and who is acceptable to us;
- (iii) you or the person(s) nominated in accordance with Clause 17.6 as relevant have not been engaged in work or an occupation for remuneration or profit since the occurrence of the illness or injury; and where
- (iv) your disablement or disablement of the person(s) nominated in accordance with Clause 17.6:
  - (A) is not due to pregnancy;
  - (B) does not relate to any illness, injury or condition that is a direct result of the use of illegal substances;
  - (C) does not relate to any illness, injury or condition that is a direct result of any illegal activity undertaken by you; or
  - (D) does not relate to any illness, injury or condition known to be present in the twelve (12) months preceding the Start Date.

- (b) your involuntary unemployment or involuntary unemployment of the person(s) nominated in accordance with Clause 17.6, which is the termination from permanent and gainful employment, not by your choice or the choice of the person(s) nominated in accordance with Clause 17.6, as relevant, and being certified as unemployed by the appropriate government agency and which does not include any termination

that was due to voluntary unemployment, voluntary redundancy, or the Customer reaching retirement, or becoming unemployed due to an act or acts of misconduct;

- (c) your death or death of the person(s) nominated in accordance with Clause 17.6 as relevant where the death is certified by a legally qualified medical practitioner acceptable to us; or
- (d) diagnosis by a qualified medical practitioner acceptable to us that you or the person(s) nominated in accordance with Clause 17.6 as relevant are suffering a terminal illness with a life expectancy of three (3) months or less.

“**Policy**” has the meaning given to it in Clause 14.1(b).

“**Privacy Act**” means the Privacy Act 1988 (Cth).

“**Protect Event**” means any event of theft, accidental loss or accidental damage for which we retain the risk under Clause 13.

“**PPS Act**” means the Personal Property Securities Act 2009 (Cth).

“**Release**” has the meaning given to it in Clause 13.5.

“**Rental Payment(s)**” means the:

- (a) First Rental Payment; and/or
- (b) Monthly Rental Payment.

“**Secure**” means premises or a vehicle that is locked and otherwise secure, including doors, windows and other means of entry or assisting to enter those premises or vehicle.

“**Security Interest**” means the security interest created under this Agreement and includes any mortgage, pledge, lien or

charge and includes any security interest under the PPS Act, mortgage, pledge, lien, charge, hypothecation, trust arrangement, title retention arrangement or other security interest or encumbrance.

“**Signature Page**” means the “signature page” of this Agreement.

“**Special Conditions**” means the special conditions, if any, incorporated into this Agreement.

“**Start Date**” means, subject to the terms of this Agreement, the start date set out on the Signature Page.

“**Supplier**” means the supplier of the Goods or any supplier of the replacement goods including the Loaner Goods (as appropriate and applicable).

“**Temporary Release**” has the meaning given to it in Clause 13.6.

“**Term**” means, subject always to the terms of this Agreement, the “term” set out on the Signature Page, being the length of the Agreement.

“**Termination Amount**” means:

- (a) all overdue Rental Payments; plus
- (b) the present value of all remaining Rental Payments for the balance of the Term discounted monthly at the Reserve Bank of Australia’s cash rate; plus
- (c) any other Fees or other amounts payable under this Agreement; plus
- (d) the value of origination costs for this Agreement reasonably incurred by us, to the extent that these costs have not already been recovered; plus
- (e) if the Goods are not returned in accordance with Clause 10, the estimated

Fair Market Value as at the end of the Term.

“**Terms and Conditions**” means these “Rental Agreement Terms and Conditions”.

“**Total Amount Payable**” means the total amount of Rental Payments payable by you to us under this Agreement as set out on the Signature Page.

“**Upfront Payment**” means, if applicable, the upfront payment payable (whether voluntary or mandatory) by you to us as set out in the Signature Page.

“**we**” or “**our**” or “**us**” means FLEXIRENT CAPITAL PTY LTD ABN 93 064 046 046 and Australian Credit Licence number 394735.

“**you**” means the customer referred to on the Signature Page.

(f) If there is any inconsistency between any Special Conditions and this Agreement, the Special Conditions will prevail to the extent of the inconsistency.

(g) A reference to:

- (i) unless otherwise noted or the context requires otherwise, reference to Part or Clause is a reference to a Part or Clause in this Agreement;
- (ii) a document includes any variation or replacement of it; and
- (iii) any thing (including the Total Amount Payable) includes the whole and each part of it.

## 18.2. Interpretation

- (a) A reference to AUD, “dollars” or “\$” is a reference to the lawful currency of the Commonwealth of Australia.
- (b) If there is more than one, “you” means each of you separately and all of you jointly.
- (c) A reference to any party includes that party’s successors, personal legal representatives and permitted assigns.
- (d) A reference to any legislation or to any section or provision of any legislation includes any statutory modification or re-enactment or any substituted statutory provision and all ordinances, by-laws, regulations and other statutory instruments.
- (e) The singular includes the plural and vice versa.

## PART D: FEE TABLE

In addition to any other fees and charges described in this Agreement, the following fees and charges may be payable by you:

Fee	Amount
Dishonour Fee	\$30
Payment Deferral Fee	\$30
Payment Administration Fee (for credit card payments)	1% of the relevant Payment.
<b>FlexiCare Program fees</b>	
Loaner Goods Administration Fee	\$880, charged in eight (8) consecutive payments of \$110 which is added to the Monthly Rental Payment.
Processing event Administration Fee (applicable to FlexiCare Protect and FlexiCare Protect Platinum)	\$110 for any Event in respect of risks retained by us for our processing and administration costs.

## IMPORTANT INFORMATION RELATING TO CREDIT REPORTING

**This statement sets out important information about credit reporting that is relevant to you if:**

- (a) you are an individual applying for a lease or other credit product, or who holds a lease or other credit product, from Flexirent Capital Pty Ltd ABN 93 064 046 046 (“**we**”/“**us**”); or
- (b) we deal with you in connection with credit applied for by, or provided to, another customer – for example if you are a guarantor or proposed guarantor for such credit or if you are a director of a company obtaining credit.

► **We may disclose your personal information to credit reporting bodies:**

We may disclose personal information about you in connection with your credit applications or other credit-related interactions with us to credit reporting bodies. Those credit reporting bodies may then include that information in reports that they provide to other credit providers to assist them to assess your credit worthiness.

For example, if you fail to meet your payment obligations to us in relation to consumer credit, or if you commit a serious credit infringement in relation to consumer credit provided by us, we may be entitled to disclose this information to credit reporting bodies.

► **We disclose information to the following credit reporting bodies**

**Dun & Bradstreet**

Website: [checkyourcredit.com.au](http://checkyourcredit.com.au)  
Phone: 13 23 33  
Address: Attention: D&B Public Access Centre,  
PO Box 7405,  
St Kilda, VIC 3004

**Veda Advantage**

Website: [vedaadvantage.com](http://vedaadvantage.com)  
Phone: 1300 762 207  
Address: Attention: Veda Advantage Public Access,  
PO Box 964,  
North Sydney, NSW 2059

A credit reporting body is required to have a policy which explains how they will manage your credit-related personal information. To view the policy for:

**Dun & Bradstreet** visit [checkyourcredit.com.au](http://checkyourcredit.com.au)  
**Veda Advantage** visit [vedaadvantage.com](http://vedaadvantage.com)

► **Excluding your credit reporting information from pre-screening for direct marketing:**

You have a right to request that a credit reporting body exclude your credit reporting information from being used by them for direct marketing-related pre-screenings requested by credit providers. You should contact a relevant credit reporting body directly if you wish to request this.

► **Protecting your credit reporting information if you become the victim of fraud:**

You have a right to request that a credit reporting body not use or disclose your credit reporting information if you believe that you have been, or are likely to be, the victim of fraud (for example, if you think that someone is misusing your identity to apply for credit). You should contact a relevant credit reporting body directly if you wish to request this.

► **Accessing or correcting your personal information or making a privacy complaint:**

You have rights to request access to, or correction of, personal information that we hold about you, including credit-related information. You also have rights to make a complaint if you consider that we have not complied with the Privacy Act or Credit Reporting Privacy Code in relation to your information. Our Privacy Policy and Credit Reporting Policy sets out how you can make such requests or complaints and how we will deal with them.

For details about how our management of credit-related personal information (including credit reporting information) that we hold about you, please see our **Privacy Policy and Credit Reporting Policy** available at [www.smartway.com.au/Privacy-policy](http://www.smartway.com.au/Privacy-policy) (Select 'Privacy and Credit Reporting Policy') or by calling us on 1300 858 608.

This statement also covers any other entities for which we may act as agent for an undisclosed principal in entering into a credit agreement with you.





# GET IN TOUCH

## CALL

All enquiries:

**1300 888 779**

Reference number:

## HEAD OFFICE

Flexirent Capital Pty Ltd  
Level 7, 179 Elizabeth Street  
Sydney NSW 2000

Locked Bag 5005  
Royal Exchange  
Sydney NSW 1225

Visit [smartway.com.au](https://smartway.com.au)  
Email [customer.service@flexigroup.com.au](mailto:customer.service@flexigroup.com.au)



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