



# CREDIT GUIDE AND TERMS & CONDITIONS

## LEASE AGREEMENT

Effective from November 2018



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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: 1300 888 779 Fax: 1800 240 103**

### 1. Introduction

We offer customers lease agreements. This Credit Guide is designed to assist you in deciding whether to enter into a lease agreement with us, so it is important that you carefully read this guide as soon as you receive it. 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 and how you can contact us. (For additional information about making privacy-related complaints, please also see the 'Privacy' section in the Lease Agreement Terms & Conditions and our Privacy Policy at [www.smartway.com.au](http://www.smartway.com.au)).

### 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](http://www.smartway.com.au)**

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

Under the National Consumer Credit Protection Act 2009 (“**NCCP Act**”), before we enter into the lease agreement, we’re required to assess the suitability of the lease agreement for each customer.

To assess suitability, we’ll make reasonable inquiries about:

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

It is therefore very important that the information you provide us is accurate. Even if we offer you a lease agreement, it is important that you consider whether the product will be right for you and whether you are comfortable that you will be able to meet your commitments under the lease agreement.

#### a. Unsuitability criteria

We can’t offer a lease agreement to a customer if:

- it is likely that the customer will be unable to meet their financial obligations under the lease agreement or could only meet them with substantial hardship; or
- the lease agreement doesn’t meet the customer’s requirements or objectives.

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

Before entering into the lease agreement or at any time during the first 7 years of the lease 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 lease agreement, we’ll provide you with a copy of the assessment.

If you ask to see our assessment within the first 2 years of the lease agreement, we’ll provide you with a written copy of our assessment within 7 business days after we receive your request.

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

We don’t have to provide the assessment if you don’t enter into the lease 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 lease 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, 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 Customer Relations Team).

You can contact the team via:

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

A Customer Relations Team member will review your complaint and the resolutions offered and will endeavour to discuss the complaint with you within 2 business days of your complaint being lodged. However, sometimes we are unable to do this because there are complicated circumstances to investigate, which may include speaking with other parties. In these cases, the process can take longer.

If you are unhappy with the resolution of your complaint by our Customer Relations Team, you can lodge a complaint with the Australian Financial Complaints Authority (**AFCA**). AFCA provides fair and independent financial services complaint resolution that is free to consumers. They can be contacted online at [www.afca.org.au](http://www.afca.org.au); via email at [info@afca.org.au](mailto:info@afca.org.au); via telephone at 1800 931 678 (free call) or in writing to: Australian Financial Complaints Authority, GPO Box 3, Melbourne VIC 3001.

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 doesn't hold an Australian Financial Services Licence.

This Credit Guide applies if you are an individual or strata corporation and, at the date of signing the lease agreement, you intend to use the goods wholly or predominantly for personal, domestic or household purposes. It doesn't apply to customers who are using the goods predominantly for business purposes. This Credit Guide will apply if your lease agreement is deemed to be a "consumer lease" as defined in Part 11 of the National Credit Code.

**IMPORTANT INFORMATION:** This information statement applies if you are an individual or strata corporation and, at the date of signing the lease agreement, you intend to use the goods wholly or predominantly for personal, domestic or household purposes. It doesn't apply to customers who are using the goods predominantly for business purposes. This information statement will apply if your lease 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 AUSTRALIAN FINANCIAL COMPLAINTS AUTHORITY AND CAN BE CONTACTED AT:**

TELEPHONE: 1800 931 678 (FREE CALL)

ONLINE: [WWW.AFCA.ORG.AU](http://WWW.AFCA.ORG.AU)

EMAIL: [INFO@AFCA.ORG.AU](mailto:INFO@AFCA.ORG.AU)

POSTAL ADDRESS: GPO BOX 3, MELBOURNE VIC 3001.

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 [www.asic.gov.au](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 lease 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. What is SmartWay?

SmartWay is the lease product provided by us. Effectively, it allows you to take advantage of the latest goods for work, study and/or your lifestyle, and stay up to date with new product releases. Since you’ll be leasing, rather than buying goods, SmartWay can provide you with a great way of always having the latest and greatest without the huge outlays that buying requires.

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

The Goods come with certain guarantees under Australian Consumer Law (**ACL**), including that they will be of acceptable quality (**Consumer Guarantees**). The Consumer Guarantees cannot be limited or excluded. You are not required to pay for your ACL rights and remedies. We also have responsibility for accidental damage as set out in paragraph 4. The rights under FlexiCare are additional to your rights and remedies under the ACL. 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 or an extended warranty or customer care plan (if applicable). Otherwise, you are responsible for maintaining the Goods.

#### 3. FlexiCare Program

If your leased laptop computer, smartphone, tablet and digital camera require repairs, you are entitled to loaned goods through our FlexiCare Program in some circumstances. We will endeavour to provide the Goods to you within 48 hours 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 20.

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

Loaner Goods are meant to be a short-term solution only. If you return the Loaner Goods soon after we repair or replace your leased Goods, you won’t be charged anything. If you do not return the Loaner Goods, a late return fee will be charged monthly.

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.

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

Except in the circumstances set out in clause 18.2 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 clause 18.

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 Lease Payments for three (3) months. This feature is known as “**FlexiCare Protect Platinum**” and is set out in clause 19.

#### 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 18.2 for details.

#### 5. 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.

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

Because the agreement is a lease arrangement, **you are not buying the Goods**. This means you will need to discuss your options with us at least 3 months before your end of the Term. At this point you’ll need to think about what you would like to do with your leased goods:

- Return the goods and end your agreement
- Offer to purchase
- Double Time

See **clause 11** for full details of the options.

#### 7. What are my end-of-lease options?

You can:

**Return:** You’re welcome to return the goods and end your agreement with us. The goods will need to be in the same condition as when you received them (subject to fair wear and tear) and returned at your expense.

When you return the Goods to us, 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.

**Offer to purchase:** 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

**Double Time:** You can double the length of the term by paying the “Double Time Payment” – equivalent to one (1) Monthly Lease Payment.

**8. If you don't elect an end-of-lease option**

If no other end-of-lease option is elected at the end of the Term, then you must return the Goods at the end of the Term. If you do not do this, the agreement will continue on a month to month basis whereby the Monthly Lease Payments will continue until the Goods are returned.

**9. 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.

**10. 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. You must ask at least 30 days before the end of the Term.

If you request Double Time and we agree, you will not be required to make any further Monthly Lease 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. If you don't make an offer, or if we reject it, you must return the Goods.



## LEASE AGREEMENT TERMS AND CONDITIONS

**IMPORTANT NOTICE:** This agreement consists of multiple documents, including these Terms and Conditions, the Product Schedule and where applicable the Special Conditions, Goods Delivery or Collection Confirmation, Business Use Declaration and other documents referred to in them

Flexirent Capital Pty Ltd ABN 93 064 046 046, Australian Credit Licence number 394735. Flexirent Capital Pty Ltd doesn't hold an Australian Financial Services Licence.

### THIS AGREEMENT IS BETWEEN YOU AND US

## PART A: TERMS AND CONDITIONS

### 1. TITLE AND OWNERSHIP OF THE GOODS

- (a) We own the Goods. You only have the right to use them during the Term. Despite anything else in this agreement, you have no right or obligation to purchase the Goods, either during the Term or during any extended term.
- (b) You must not:
  - (i) create or allow another interest in the Goods; or
  - (ii) dispose, or part with possession, of the Goods.
- (c) We may reissue a Product Schedule at any time to better describe, or correct any description of, the Goods or to correct any error in the Product Schedule.

### 2. DISCLAIMER OF WARRANTIES

- (a) Upon delivery of the Goods you have to inspect them and satisfy yourself that they are in good operating order and condition.
- (b) You have to 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) Under the ASIC Act, Australian Consumer Law (see also 2(e) – 2(g) below), National Credit Code or a law to a similar effect, you may have the benefit of statutory warranties, guarantees, linked credit provider liability and other rights against us in respect of the Goods or any services. Apart from this, and to the fullest extent permitted by law:
  - (i) we don't give any warranties or guarantees in relation to the Goods or any services;
  - (ii) our liability in respect of the Goods or any services is limited to the repair or replacement of the Goods or the re-supply of the services or the cost of these; and
  - (iii) we're not liable for indirect or consequential damage, loss of income, loss of profit or interruption of business arising in relation to the Goods or any services. However, you will not be liable for losses which arise from fraud, negligence or wilful misconduct by us or any of our employees, contractors, agents or any receiver appointed by us.
- (d) No salesman or agent of the seller of the Goods is 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. You may have rights against:

- (i) the Supplier or seller if any of their warranties or representations are incorrect; or
  - (ii) us (in particular if we're a "linked credit provider or lessor" of the Supplier or seller under the National Credit Code or any other consumer laws).
- (e) The Goods come with certain guarantees under Australian Consumer Law, which are free of charge and cannot be excluded.
  - (f) The Consumer Guarantees require that, in light of the nature and price of the goods, and all of the relevant circumstances, the goods must be free of defects, be fit for any purpose specified by the customer, do what they say they will, be safe, durable and of acceptable quality, comply with any description provided or demonstration model used. If there is a major failure of the Goods, you are entitled to a replacement or refund and to compensation for any other reasonably foreseeable loss or damage. If there is a minor failure of the Goods, you are entitled to have the Goods repaired or replaced.
  - (g) Consumer Guarantees do not have a set time limit, and generally last for a period of time that is reasonable in the circumstances. Consumer Guarantees may continue even after a manufacturer's warranty for the goods expires.
  - (h) In addition to your rights under the Australian Consumer Law, by entering this agreement, you will be provided with:
    - (i) FlexiCare Protect, which is our internal arrangement for theft, accidental loss or accidental damage of Goods; and
    - (ii) FlexiCare Protect Platinum, which is our internal arrangement for dealing with your death, disablement or unemployment.
 See Part C below for further information on FlexiCare.
  - (i) You may also have rights under:
    - (i) a manufacturer's warranty; or
    - (ii) an extended warranty or customer care plan.

### 3. PAYMENTS

- (a) You have to pay us the Total Amount Payable.
- (b) You have to make the following payments under this agreement on the following dates:
- (c) If the Received Date is before the Start Date:
  - (i) the Term will commence on the Received Date (but the End Date set out on the Product Schedule won't change); and
  - (ii) you have to pay any Upfront Payment.
- (d) Monthly Lease Payments are payments in advance. If there is an Interim Lease Payment, the Interim Lease Payment portion of the First Lease Payment is a payment in arrears.
- (e) If a date on which a payment must be made doesn't fall on a Business Day, payment is due on the next Business Day.
- (f) Unless we otherwise agree in writing, all Lease Payments must be made by direct debit from your nominated bank account or credit card.
- (g) All Lease Payments, once paid, aren't refundable.
- (h) You, and each Guarantor, have to 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, or the Guarantor, believes that we owe you an amount in relation to the Goods or this agreement (eg if you or the Guarantor believes that we owe you money because the Goods are faulty) you or the Guarantor may raise that claim with us separately.
- (i) If you wish to dispute any amount payable, you believe that a payment was made in error, you believe that we haven't complied with this agreement or if you have a claim against us based on our conduct or the Goods, please follow our dispute resolution process as set out in the Credit Guide or the Direct Debit Request Service Agreement.
- (j) 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, we may adjust the Monthly Lease Payment or any other amount payable under this agreement accordingly.

### 4. USE AND MAINTENANCE OF THE GOODS

You:

- (a) have to 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) have to use, service and maintain the Goods in accordance with the manufacturer's instructions and recommendations; and
- (c) may not change the Goods without our written consent which will not be unreasonably withheld.

However, where this doesn't happen because of theft, accidental loss or accidental damage to the Goods, then we may take the risk of that under FlexiCare Protect. See Part C

("FlexiCare Program") for when we take the risk, and when you take the risk, of these matters.

### 5. INSPECTION

- (a) You have to give our agents reasonable access to inspect the Goods to confirm their existence, condition and proper maintenance. We'll give you 2 Business Days' notice before inspecting the Goods, unless we reasonably consider that the Goods will be in jeopardy without prompt action.
- (b) If you don't give us or our agents access, we or our agents may enter the premises where we believe the Goods are located to confirm the existence, condition and proper maintenance. We'll comply with all relevant laws in entering the premises.
- (c) If the National Credit Code applies to this agreement, we or our agents may not enter residential premises under this clause without the written consent of the occupier or court authorisation.

### 6. FEES

You have to pay us any Fees set out in the Fee Table.

### 7. EARLY TERMINATION OPTION

- (a) You may end this agreement early by paying to us the Termination Amount and returning the Goods in accordance with clause 9. If you pay the Termination Amount and return the Goods in accordance with clause 9, you may receive a refund under clause 9(f).
- (b) Until you do both of the things outlined in clause 7(a), you have to continue to make payments under this agreement when due.
- (c) If the National Credit Code applies to this agreement, you may end this agreement before the Goods are provided to you by giving us written notice. If you do this, you don't have to pay a Termination Amount but you have to immediately pay any Fees which were incurred before you ended this agreement.

### 8. TERMINATION

- (a) If you Default we may end this agreement by giving you a termination notice. If we give you a termination notice, you have to immediately:
  - (i) pay us the Termination Amount; and
  - (ii) return the Goods in accordance with clause 9.
- (b) If you breach any essential term of this agreement, we're entitled at law to terminate this agreement. Allowing a Default to occur is a breach of an essential term.
- (c) If the National Credit Code applies to this agreement, we'll give you 30 days' notice before giving you a termination notice under this clause or otherwise enforcing this agreement (unless the law provides that this isn't required, including where we have made reasonable attempts to locate you, but without success). We will endeavour to give you not less than 30 days notice before taking enforcement action or demanding repayment unless we determine that it is important for us to take action more promptly. In making that decision, we will act reasonably, but our decision once made is final and binding on you.

- (d) Unless we determine that it is important for us to take action more promptly, we will endeavour to give the Guarantor not less than 5 Business Days notice:
- (i) if you are 30 days behind your agreed repayment schedule; and
  - (ii) of the commencement of legal proceedings against you or the appointment of a receiver.

## 9. RETURN OF THE GOODS

- (a) You have to return the Goods to us:
- (i) at the end of the Term; or
  - (ii) if you have chosen Double Time, at the end of Double Time Period; or
  - (iii) earlier if required under clause 8.

You may also choose to return the Goods to us earlier in accordance with clause 7 or clause 11.

- (b) If you have to return the Goods to us under this agreement for any reason or we give you prior notice that we'll repossess Goods under this agreement, subject to clause 11, you have to:
- (i) return the Goods to us at your expense to an address nominated by us;
  - (ii) return any software specified on the Product Schedule, and all CDs, DVDs, accessories and manuals provided with the Goods;
  - (iii) except where Goods are returned for replacement or repair — ensure the Goods and anything else returned with them are in as good condition as they were delivered to you (subject to normal fair wear and tear).
- (c) Except where Goods are returned for replacement or repair, you have to remove any personal data and software from the Goods if the software was not installed on the Goods on the Received Date or isn't specified on the Product Schedule. If you don't do this, we're not liable for:
- (i) any consequences arising from your failure to remove it;
  - (ii) any data that is lost, corrupted or compromised if we remove it,
- except to the extent arising from our fraudulent or grossly negligent handling or disposal of it.
- (d) If you don't return any Goods to us in accordance with the condition required by this clause, then you have to:
- (i) pay us the difference between the Fair Market Value of the Goods as returned to us and the Fair Market Value as they should have been returned to us; and
  - (ii) pay us, calculated at our standard rates (as notified to you at the time), for our services required to remove any personal data or software in accordance with this clause.
- (e) If no end-of-lease option is selected under clause 11 before the end of the Term then you must return the Goods to us in accordance with clause 9(a). If you do not return the Goods to us when required by this agreement, then the lease under this agreement will continue on a month to month basis until the Goods are returned to us. You have to pay the Monthly Lease Payment during this period.
- (f) If this agreement is terminated under clause 7 or 8 you have to pay the Termination Amount and return the Goods in accordance with clause 9. If you do both of

these things, then we'll refund to you a portion of the Termination Amount equal to our reasonable estimation of the Fair Market Value of the Goods at that time and in their condition as returned (less a reasonable estimate of costs associated with holding and sale).

## 10. REPOSSESSION OF GOODS

- (a) If you don't return the Goods when you are required to do so under this agreement, we or our agents may take all necessary steps to enter any premises where we believe the Goods may be located and repossess the Goods. If the National Credit Code applies to this agreement, we or our agents may not enter residential premises under this clause without the written consent of the occupier or court authorisation.
- (b) If the National Credit Code applies to this agreement, we'll give you 30 days' notice before exercising our rights under this clause unless the law provides that this isn't 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. We'll pay any excess sales proceeds to you if required under the PPSA or any other law.
- (d) If we haven't ended this agreement, you may collect the Goods from us only if you have paid all payments under this agreement and the Term has not ended or Double Time has not ended.

## 11. END-OF-LEASE OPTIONS

At least thirty (30) days before the end of the Term, you must elect one (1) of the end-of-lease options set out in this clause 11. If you do not make an election, or we do not accept your offer or request under clause 11.1 or clause 11.2, clause 11.3 will apply.

### 11.1. 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.

### 11.2. 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 11.2(a), and we agree to your request, 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 original Term;
  - (ii) you are not required to return the Goods to us under clause 9 at the end of the Term;
  - (iii) you are not required to make any further Payments to us; and

- (iv) subject to clause 11.2(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 9; or
    - (ii) make us an offer to purchase the Goods in accordance with clause 11.1.
- If you do not make an offer, or we do not accept it, clause 11.3 will apply

### 11.3. Return Goods

Return the Goods to us in accordance with clause 10.

## PART B: GENERAL PROVISIONS

### 12. PRIVACY

#### 12.1. Privacy (including consents)

- (a) Our “Privacy Policy and Credit Reporting Policy” (“**Policy**”) is available at [www.smartway.com.au](http://www.smartway.com.au). It sets out important information about how we manage your Personal Information, including your Credit Information. It also details what credit reporting bodies we deal with, what information we can give them, and how those bodies use and disclose that information. You should read our Policy carefully.
- (b) We comply with the Privacy Act and the Credit Reporting Privacy Code when we collect, use, disclose and manage your Personal Information.
- (c) When you applied for this agreement with us, you gave various consents relating to your Personal Information and your Credit Information. You should tell us if you wish to change any of those consents, by contacting us on 1300 888 779.

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

- (a) From time to time, we collect Personal Information about you. You agree to us using and disclosing your Personal Information for the following purposes:
  - (i) assessing and processing your applications with us for credit, insurance or extended warranty or customer care plan products;
  - (ii) managing your account and other products;
  - (iii) responding to your questions;
  - (iv) performing our obligations in relation to your credit, insurance and extended warranty or customer care plan products;
  - (v) contacting you about your end-of-lease options, any upgrade options or other special offers or promotions, either directly or through a relevant insurer, the Supplier or any other service provider appointed by use;
  - (vi) protecting us and our assets (including against fraud) and selling our assets (including by assigning any debts);
  - (vii) enforcing our rights in connection with any credit provided to you (including debt collection);

- (viii) obtaining, administering and enforcing any Guarantee and Indemnity given by you or your Guarantor;
  - (ix) assessing whether to accept any person as a Guarantor;
  - (x) managing, changing and improving our systems and processes; and
  - (xi) complying with laws, including for example the National Consumer Credit Protection Act 2009 (Cth) and the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth).
- (b) We collect your Personal Information primarily from you. However, where it is unreasonable or impracticable to collect your Personal Information directly from you, we can collect it from third parties. For example, we can collect your Personal Information from a third party where we need that information 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. The third parties we can collect your Personal Information from in these circumstances include:
    - (i) the Supplier;
    - (ii) other credit providers;
    - (iii) insurers (such as insurers who provide insurance in relation to your credit);
    - (iv) any of your employers, former employers, referees, banks, landlords, Guarantors, accountants, lawyers and financial advisers;
    - (v) our service providers (including debt collection agencies, introducers, private investigators, and other professional advisers);
    - (vi) professional organisations;
    - (vii) internet sources;
    - (viii) public and subscriber only databases; and
    - (ix) government authorities.
  - (c) If you do not give us the Personal Information that we require, then we may not be able to approve your application for credit or a related product, or accept you as a Guarantor. We may also not be able to deal with your future requests or queries in connection with credit we provide. There may be other consequences of you not providing us with your Personal Information.
  - (d) You agree that we can disclose your Personal Information for the purposes described in clause 12.2(a) above to the following third parties:
    - (i) any of our related bodies corporate;
    - (ii) our assignees or potential assignees;
    - (iii) the Supplier;
    - (iv) credit reporting agencies or any business providing information about commercial credit worthiness;
    - (v) other credit providers;
    - (vi) insurers (such as insurers who provide insurance in relation to your credit);
    - (vii) any Guarantor or proposed Guarantor;
    - (viii) your assignees or proposed assignees;
    - (ix) debt collection agencies;

- (x) our banks and financial advisers;
- (xi) our lawyers, accountants and other professional advisers;
- (xii) any investors, agents or advisers, trustees, ratings agency or businesses assisting us with funding for credit made available to you, or any entity that has an interest in your finance or our business;
- (xiii) any person where we are authorised to do so by law, such as under the Anti-Money Laundering and Counter Terrorism Financing Act 2006 (Cth) or by government and law enforcement agencies or regulators;
- (xiv) entities to whom we outsource some of our functions or that provide information and infrastructure systems;
- (xv) other borrowers or Guarantors (if more than one) or borrowers or prospective borrowers of any credit you guarantee or propose to guarantee;
- (xvi) associated businesses that may want to market products to you;
- (xvii) other financial institutions – for example, to process a claim for mistaken payment;
- (xviii) any organisation providing online verification of your identity;
- (xix) any of our suppliers or contractors who need to have access to your Personal Information for the purpose of providing services to us or to you;
- (xx) any person specifically authorised by you in writing; and
- (xxi) 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).

### 12.3. You consent to us disclosing your Personal Information to overseas recipients

- (a) We may disclose your Personal Information to third parties that are located overseas and which may not have a link to Australia. Our Policy contains a list of countries that these third parties are located in.
- (b) By consenting to us disclosing your personal information to overseas recipients, you acknowledge that Australian Privacy Principle 8.1 will not apply to the disclosure. This means that we don't have to take reasonable steps to ensure that an overseas recipient does not breach the Australian Privacy Principles, and we aren't liable under the Privacy Act if the overseas recipient breaches the Australian Privacy Principles and you will not be able to seek redress under the Privacy Act for any such breach.
- (c) You have consented to us disclosing your Personal Information to overseas recipients.

### 12.4. Important information about credit reporting

- (a) Our Policy contains important information about credit reporting. It lists the credit reporting bodies that we deal with, and sets out what Credit Information we can give them (including information about your defaults or serious credit infringements). Our Policy also contains details about how credit reporting bodies can use and disclose

that information to other credit providers and their own policies about managing your information.

You have important rights to access and correct your Credit Information.

You also and complaints relating to your Credit Information You also have rights to prevent your credit information from being used 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 give 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 obtain credit reporting information about you from a credit reporting body for the purposes of:
  - (i) assessing your application for commercial credit and managing that 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 and managing that 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 drivers licence, you must notify us and provide us with any information that we request.

### 12.5. Marketing products and services to you

- (a) You have agreed to us using and disclosing your Personal Information (including your telephone number, regardless of whether it is listed on the Don't Call Register and your email or other electronic addresses) to give you information about products and services offered by us or our dealers, insurers, related companies or suppliers. This includes communicating with you by 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.

### 12.6. Accessing and correcting your Personal Information

- (a) You can request access to and correction of Personal Information that we hold about you. For details 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.

### 13. GUARANTEE AND INDEMNITY

- (a) The Guarantor acknowledges and agrees that:
  - (i) we have entered into this agreement at the Guarantor's request;
  - (ii) the Guarantor has received valuable consideration for entering into this agreement;
  - (iii) we are acting in reliance of the Guarantor incurring obligations and giving rights under this agreement;
  - (iv) it has read and understood the terms of this agreement, including the Guarantee and Indemnity;
  - (v) it has made its own enquiries and satisfied itself as to the financial condition of the customer's ability to perform its obligations and has not relied in any way on information provided by us; and
  - (vi) any security interest granted to us by the Guarantor at any time secures payment by the Guarantor of all amounts (including losses and damages) that arise from the customer's breach of this agreement or are payable by the customer to us on any account under or in connection with this agreement.
- (b) In consideration of us entering into this agreement with the customer at the request of the Guarantor, the Guarantor unconditionally and irrevocably guarantees to us, the customer's compliance with its obligations, including each obligation to pay all amounts under this agreement. If customer does not comply with its obligations, then the Guarantor agrees to comply with those obligations on our demand. A demand may be made whether or not we have made a demand on customer.
- (c) This Guarantee and Indemnity creates a principal and independent liability of the Guarantor.
- (d) The Guarantor unconditionally and irrevocably indemnifies us against any liability or loss arising from, any costs that we incur if:
  - (i) a customer does not, or is unable to, comply with an obligation it has;
  - (ii) an obligation that a customer would otherwise have under this agreement (including an obligation to pay money) is found to be void, voidable or unenforceable;
  - (iii) an obligation that a Guarantor would otherwise have under this clause 13(d) is found to be void, voidable or unenforceable; and
  - (iv) a representation or warranty by a customer in this agreement is found to have been incorrect or misleading when made or taken to be made.
- (e) The Guarantor agrees to pay any amount under this Guarantee and Indemnity on demand from us. We need not incur any expense or make payment before enforcing our right or indemnity.
- (f) This Guarantee and Indemnity is a guarantee and indemnity for all guaranteed obligations (including the obligation to pay money). However, the maximum amount of money the Guarantor can be liable for under this Guarantee and Indemnity is the maximum amount payable under the agreement
- (g) The customer authorises us to give the Guarantor a copy of any notice or other document given to you under or in connection with this agreement or the security. You cannot cancel this authority.
- (h) The Guarantor hereby charges in favour of us all of the Guarantor's real and personal property (including all present and after acquired property, with no exceptions including but not limited to sale proceeds and an account for such monies) for the purpose of securing payment to us of all moneys owing under this Guarantee and Indemnity and compliance with all obligations of the Guarantor under the agreement. The Guarantor acknowledges that we may place a caveat over their real property as a consequence of the Guarantor charging such property to secure the repayment under this agreement
- (i) The Guarantor waives any right it has of first requiring us to commence proceedings or enforce any other right against customer or any other person before claiming from Guarantor under this Guarantee and Indemnity.
- (j) The Guarantor agrees that the Guarantee and Indemnity in this clause include any obligations under this agreement as varied or replaced.
- (k) The Guarantor must pay us for:
  - (i) our reasonable costs in arranging, administering (including enforcing or taking any other action in connection with our rights) and terminating this Guarantee and Indemnity; and
  - (ii) all stamp and other duties, fees, taxes and charges payable in connection with this Guarantee and Indemnity and any transaction (such as a payment or receipt) under it and any interest, penalties, fines and expenses in connection with them.
- (l) The Guarantee and Indemnity does not merge with or adversely affect:
  - (i) any other guarantee or indemnity, or mortgage, charge or other security, or right or remedy to which we are entitled at any time; or
  - (ii) a judgment or order which we obtain against Guarantor in respect of an amount payable under the Guarantee and Indemnity.

We can still exercise our rights under the Guarantee and Indemnity as well as under the judgment, order, other guarantee or security.
- (m) As long as an amount payable remains unpaid, Guarantor may not, without our prior written consent (such consent not to be unreasonably withheld):
  - (i) reduce the Guarantor's liability under the Guarantee and Indemnity by claiming that the Guarantor, customer

- or any other person has a right of set-off or counterclaim against us;
- (ii) exercise any legal rights to claim to be entitled to the benefit of another guarantee or mortgage, charge or other security given in connection with an amount payable or an amount payable under this Guarantee and Indemnity;
- (iii) claim an amount from customer or another guarantor of customer's obligations under a right of indemnity; or
- (iv) claim an amount in the insolvency of customer or another guarantor of customer's obligations (including a person who has signed this Guarantee and Indemnity).
- (n) We may use any money paid by or for customer towards meeting any part we choose of the amounts the customer owes to us (including meeting any amount the Guarantor does not guarantee). We may use any money paid by Guarantor under this Guarantee and Indemnity towards paying any part we choose of the amounts Guarantor owes us under this Guarantee and Indemnity.
- (o) This Guarantee and Indemnity and Guarantor's liability are not affected by:
  - (i) the occurrence of a Default;
  - (ii) the granting to any person by us of any waiver;
  - (iii) any increase or variation in the amount payable under this Guarantee and Indemnity or this agreement for any reason;
  - (iv) any amendment to or transfer of this agreement, or any right or liability of any person under this agreement, whether for or without consideration;
  - (v) any termination of this agreement, or any right or liability of any person under this agreement;
  - (vi) any release by us of any of our rights or liabilities or any person under this agreement;
  - (vii) us taking, completing or perfecting, or any failure in taking, completing or perfecting, any PPS Security Interest or any right under this agreement;
  - (viii) any failure by any person concerning, or by us in requesting or requiring, the execution of this agreement at any time by any person;
  - (ix) any exercise or enforcement, or any failure or incapacity in the exercise or enforcement, by us of any right conferred on us by this agreement or by law;
  - (x) the invalidity of any agreement other than the Guarantee and Indemnity, or its execution by any person other than Guarantor, for any reason;
  - (xi) any incapacity of or fact relating to any person other than Guarantor, including any change in the constitution or membership of any person; or
  - (xii) any other act or omission by us or anyone else, or any other fact or matter, that might otherwise affect the rights of us or the obligations or liabilities of Guarantor.

This clause 13(o) does not apply to any action taken by us with the specific and express purpose of varying, waiving or terminating a right or liability of Guarantor.

- (p) The Guarantor must promptly do anything we reasonably request to bind itself under the Guarantee and Indemnity.

- (q) This Guarantee and Indemnity endures for our benefit and our assigns and every Guarantor on demand by us or any assignee must execute a further Guarantee and Indemnity between the Guarantor and the assignee to confirm this Guarantee and Indemnity.
- (r) This Guarantee and Indemnity is in no way conditional on the condition, merchantability, suitability, title, operation, or delivery of the Goods.
- (s) The Guarantor acknowledges that a trustee in bankruptcy, liquidator or similar person may ask us to refund a payment that we have received in connection with this agreement or this Guarantee and Indemnity. To the extent we are obliged to, or we agree to make a refund, we may treat the original payment as if it had not been made. We are then entitled to our rights against Guarantor under this Guarantee and Indemnity as if the payment had never been made.

## 14. PERSONAL PROPERTY SECURITIES ACT

### 14.1. Further steps

You have to 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) ensure that a security interest created by this agreement is enforceable, perfected (including where possible, by control in addition to registration) and otherwise effective;
- (b) 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
- (c) enable us to exercise our rights in connection with the Goods.

### 14.2. PPSA

You agree that:

- (a) we don't have to give you notice that we have registered a financing statement or financing change statement under the PPSA in respect of this agreement;
- (b) to the extent the law permits:
  - (i) we need not comply with, and you may not exercise rights under, any provisions of Chapter 4 of the PPSA that may be contracted out of; and
  - (ii) you waive your rights to receive any notice that is required by the PPSA (but this doesn't prohibit us from giving such a notice); and
- (c) despite anything else in this agreement, neither you nor we may disclose any information in connection with this document under section 275(4) (unless section 275(7) of the PPSA applies).
- (d) you have waived your right to redeem the Goods under section 142 of the PPSA and to reinstate this agreement under section 143 of the PPSA;
- (e) the rights and powers conferred on us by this agreement or the law are in addition to any rights and powers conferred by the PPSA; and
- (f) for the avoidance of doubt, in addition to the powers under section 125 of the PPSA, we may take any action after default authorised by this document or the law, including

delaying any disposal, leasing or action to retain the Goods.

## 15. COSTS, INDEMNITIES AND COMMISSIONS

- (a) You have to 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 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. You will not be liable for losses which arise from fraud, negligence or wilful misconduct by us or any of our employees, contractors, agents or any receiver appointed by us
- (b) Under the ASIC Act, Australian Consumer Law, National Credit Code or a law to a similar effect, you may have the benefit of statutory warranties, guarantees, linked credit provider liability and other rights against us in respect of the Goods or any services. Apart from this, and to the fullest extent permitted by law, you 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 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.

You will not be liable for losses which arise from fraud, negligence or wilful misconduct by us or any of our employees, contractors, agents or any receiver appointed by us

- (c) From time to time we will, and you agree that we may, pay commissions or fees to any broker, agent, dealer or other person who is involved in introducing you to us, or us to you, or to a person nominated by them on their behalf.

## 16. GENERAL

### 16.1. Authority to complete and amend errors

You authorise us to complete any blanks (including inserting the date of this agreement, serial numbers, model numbers and the agreement number we assign to this agreement) or correct any errors in this agreement 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.

### 16.2. Assignments

- (a) We may, without giving you notice, sell, assign or otherwise dispose of or deal with our interest in the Goods or this agreement. To the extent that it applies, you and any Guarantor 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 and any Guarantor may apply to assign this agreement, but we don't have to agree. We may charge a Fee to credit assess the proposed assignee even if the proposed assignee is declined.

### 16.3. Provisions prohibited by law

If any term of this agreement:

- (a) is unenforceable at law;
- (b) doesn't comply with a law; or
- (c) imposes an obligation or confers a right, power or remedy prohibited by law,

the term is omitted, varied or suspended to the extent necessary to comply with that law.

### 16.4. Things you have to tell us

You have to tell us if you change your bank account or credit card details, or if you think there is any information that we should be aware of about your ability to comply with this agreement.

### 16.5. Notices

- (a) You have to tell us if you change your business, postal or email address.
- (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 taken to be valid if not returned.
- (c) A certificate by us about an amount payable or any other matter in connection with this agreement is sufficient proof of the facts stated in it unless proved otherwise.
- (d) You consent to us and our related bodies corporate sending commercial electronic messages to you.

### 16.6. Changes to these Terms and Conditions

- (a) We may make the following changes to this agreement at any time:
  - (i) changes necessary or desirable to comply with any law, regulator guidance or court decision;
  - (ii) changes that reflect changes to our business or technological systems or processes, or which are administrative or which correct mistakes or omissions;
  - (iii) changes to Fees or the introduction of new Fees;
  - (iv) changes that we make that apply to all, or a class of, customers like you; and
  - (v) any other change that is reasonably necessary to protect our legitimate interests.
- (b) We will give you at least 30 days prior notice of any change under this clause.
- (c) We must act reasonably when exercising this right.
- (d) Any change won't affect the amount of the Total Amount Payable and the Monthly Lease Payment (except as a result of dispute resolution as described in clause 3(i)).
- (e) This notice may also be given to you by an advertisement in one or more newspapers circulating in your State or Territory.



- (f) You can end this agreement at any time before the end of the Term in accordance with clause 7.
- (g) Where the National Credit Code applies, all changes to this agreement will be made in accordance with the National Credit Code.

### 16.7. Partnerships, Companies

Where you as the customer aren't an individual natural person, but you have nominated an individual natural person as well under the customer details on the Product Schedule (eg a partner, trustee or director), you are eligible for benefits under the FlexiCare Program in Part C ("FlexiCare Program") in relation to each nominated person, and a notification may be lodged in their names, on behalf of the customer.

### 16.8. 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.

## 17. DEFINITIONS AND INTERPRETATION

### 17.1. Definitions

In this agreement, unless the context otherwise requires:

**agreement** means the agreement between you and us comprising the:

- (a) Terms and Conditions; and
  - (b) Product Schedule;
- and where applicable any:
- (c) Special Conditions;
  - (d) Goods Delivery or Collection Confirmation; and
  - (e) Business Use Declaration.

**ASIC Act** means the Australian Securities and Investments Commission Act 2001 (Cth).

**Australian Consumer Law** means Schedule 2 to the Competition and Consumer Act 2010 (Cth).

**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 so described signed by you.

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

**Default** means that you:

- (f) don't pay any Lease Payments or any other amounts due in accordance with clause 3:
  - (i) by the due date on more than one occasion; or
  - (ii) within 30 days of the due date;
- (g) 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
- (h) create or allow another interest in, or dispose of or part with possession of, the Goods (or attempt to do so).

**Direct Debit Request Service Agreement** means the document so described and agreed to by you in connection with this agreement.

**Double Time** has the meaning given to it in clause 11.2(a).

**Double Time Payment** means the amount payable by you if you choose to exercise the Double Time options available as an end-of-lease option. The Double Time Payment is the agreed amount as set out on the Product Schedule.

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

**Fair Market Value** means the amount reasonably 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 in Part D ("**Fee Table**").

**First Lease Payment** means the sum of the:

- (i) Interim Lease Payment; and
- (j) Monthly Lease Payment.

If no Interim Lease Payment is payable, the First Lease Payment will equal the Monthly Lease Payment.

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

- (k) the goods described on the Product Schedule;
- (l) all goods purchased by us with the assistance of the total financed amount;
- (m) includes any hardware and software associated with the goods installed or associated with the goods at the Received Date, or described on the Product Schedule; and
- (n) any Loaner Goods;
- (o) any replacements for the goods; and
- (p) any accessories fitted to the goods described on the Product Schedule.

**Goods Delivery or Collection Confirmation** means the document entitled Goods Delivery or Collection Confirmation, if any, 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.

**Guarantee and Indemnity** means any guarantee referred to in the Product Schedule or subsequently given to secure your obligations under this agreement.

**Guarantor** means any person who has given a Guarantee.

**Interim Lease Payment** means, if any, the amount payable by you to us as set out on the Product Schedule. This amount relates to the use of the Goods from the Received Date up to, and including, the Start Date.

**Lease Payments** means the:

- (q) First Lease Payment; or
- (r) Monthly Lease Payment.

**Monthly Lease Payment** means the monthly rent payable by you to us each month, as set out on the Product Schedule.

**Monthly Lease Payment Date** means the date set out on the Product Schedule, including for any Double Time Period. It doesn't include the Start Date.

**National Credit Code** means the National Credit Code set out in Schedule 1 of the National Consumer Credit Protection Act 2009 (Cth).

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

**Policy** has the meaning given to it in clause 12.1(a).

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

**Product Schedule** means the product schedule of this agreement.

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

**Received Date** means the date set out on the Product Schedule, being the date you take possession of the Goods.

**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 Product Schedule.

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

**Term** means, subject always to the terms of this agreement, the term set out on the Product Schedule, being the length of the lease under this agreement.

**Termination Amount** means:

- (s) all overdue Lease Payments; plus
- (t) the present value of all remaining Lease Payments for the balance of the Term discounted monthly at the Reserve Bank of Australia's cash rate; plus
- (u) any other Fees or other amounts payable under this agreement; plus
- (v) if the Goods aren't returned in accordance with clause 9, the estimated Fair Market Value as at the end of the Term.

However, if the National Credit Code applies to this agreement and regulates the amount payable on the termination of this lease before the end of its term, then the Termination Amount will be reduced to the extent necessary to comply with that regulation.

**Terms and Conditions** means these Lease Agreement Terms and Conditions.

**Total Amount Payable** means the total amount of Lease Payments payable by you to us under this agreement as set out on the Product Schedule.

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

**we** or **our** or **us** means FLEXIRENT CAPITAL PTY LTD ABN 93 064 046 046 and Australian Credit Licence number 394735. FLEXIRENT CAPITAL PTY LTD ABN 93 064 046 046 may enter into this agreement as agent for another person (whether disclosed or not).

**you** means the customer referred to on the Product Schedule.

## 17.2. 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.

- (f) The meaning of general words isn't limited by specific examples introduced by "including", "for example", "eg", "such as" or similar expressions.

- (g) If there is any inconsistency between any Special Conditions and this agreement, the Special Conditions prevail to the extent of the inconsistency.

- (h) A reference to:

- (i) a document includes any variation or replacement of it; and
- (ii) any thing (including the Total Amount Payable) includes the whole and each part of it.

## PART C: FLEXICARE PROGRAM

### Nature of the FlexiCare Program

FlexiCare Protect is our internal arrangement for theft, accidental loss or accidental damage of Goods. FlexiCare Protect isn't insurance and is only provided as an incidental component to the lease under this agreement. For clarity, FlexiCare Protect only deals with theft, accidental loss or accidental damage to Goods in limited circumstances and doesn't cover you for third party or other damages or losses that may fall to you.

FlexiCare Protect Platinum is our internal arrangement for dealing with your death, disablement or unemployment. FlexiCare Protect Platinum isn't insurance and is only provided as an incidental component to the lease under this agreement.

Please also refer to Part D: Fee Table, which sets out details of FlexiCare Program fees.

## 18. FLEXICARE PROTECT

### 18.1. Risk

- (a) While we own the Goods, we retain the risk of theft, accidental loss or accidental damage to them, as long as:
  - (i) the theft, accidental loss or accidental damage occurs in Australia or New Zealand, or occurs in any other country during a trip of 28 days or less;
  - (ii) no exclusion applies under clause 18.2 ("**Exclusions**");
  - (iii) the Goods aren't Loaner Goods;
  - (iv) you notify us in accordance with clause 18.4.
  - (v) you pay the Event Notification Fee in the Fee Table for each notification you make under (iv).
- (b) You take the risk of all other theft, loss or damage to the Goods.
- (c) Where we retain risk, we'll do one of the things set out in clause 18.5.

- (d) This does not apply to FlexiCare Excluded Goods. You take all risk for FlexiCare Excluded Goods, including risk of theft, loss or damage. FlexiCare Excluded Goods are set out on our website and the list is changed from time to time.

## 18.2. Exclusions

- (a) You take the risk of any theft, loss or damage, to the Goods:
- (i) that isn't accidental loss or accidental damage;
  - (ii) that occurs when you owe amounts under this agreement that are one month or more past their due date;
  - (iii) covered by a manufacturer's warranty or any other extended warranty or customer care plan, or that would have been covered had that warranty not been voided;
  - (iv) caused by your gross negligence;
  - (v) caused by mechanical or electrical breakdown of any kind, except as a result of an external accident (such as a power surge);
  - (vi) arising from theft, misappropriation, fraud, intentional or dishonest acts, or malicious damage by you, your family, your employees, or any person who you have let use the Goods or given access to the Goods;
  - (vii) 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 there was Forced Entry that directly led to the theft or loss;
    - (B) from occupied premises if the occupants were not present at the time, unless the premises were Secure and there was Forced Entry that directly led to the theft or loss;
    - (C) from an unoccupied vehicle where the Goods were stored or left unless the vehicle was Secure, the Goods were concealed from sight, and there was Forced Entry that directly led to the theft or loss;
    - (D) from any public place if the Goods were left unattended. However, if you are a student, this doesn't include:
      - (i) unlocked classrooms or school buildings during normal school hours;
      - (ii) at an organised school event; or
      - (iii) traveling to or from school or an organised school event;
    - (E) if the Goods are used other than for a purpose for which they were designed, which we determine in our reasonable discretion;
  - (viii) occurring during or as a result of the Goods being transported in any aircraft or watercraft unless carried as cabin baggage;
  - (ix) if the Goods were on loan or being used for trial, testing, demonstration or exhibition;
  - (x) 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;
  - (xi) to the extent of the costs of any data programming, data reconstruction, data recovery or program installation or reconfiguration;
  - (xii) resulting from:
    - (A) war or warlike or terrorist activities;
    - (B) ionizing radiation or radioactivity; or
    - (C) confiscation or destruction by any government, public or statutory authority;
  - (xiii) 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;
  - (xiv) 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;
  - (xv) that occurred whilst someone was using the Goods under the influence of drugs or alcohol; or
  - (xvi) if you supply false or misleading information in relation to the incident that resulted in the theft, loss or damage; or
  - (xvii) if the Goods are FlexiCare Excluded Goods.

## 18.3. Indemnity

You indemnify us for any theft, loss or damage for which you take the risk. You will not be liable for losses which arise from fraud, negligence or willful misconduct by us or any of our employees, contractors, agents or any receiver appointed by us

## 18.4. Notice of theft, loss or damage

- (a) If any Goods are stolen, lost or damaged, you have to complete and send us an "Incident Notification Form" within 14 days.
- (b) If any Goods are stolen, you also have to:
- (i) inform the police within 48 hours;
  - (ii) promptly give us a copy of the associated police report event number;
  - (iii) give us a copy of the police report if we request as soon as practically possible after the police provide it,
- and we don't have to process an event if you don't do these things.

## 18.5. What we do if we retain risk

- (a) If there is theft, accidental loss or accidental damage to Goods for which we retain the risk, we may, at our discretion, choose to:
- (i) repair damaged Goods;
  - (ii) replace 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 overdue payments at the time the incident was approved.
- (b) We can 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 this clause, you have to continue to pay the Monthly Lease Payment in accordance with clause 3.
- (d) Clause 9 applies to any return of Goods under this clause.

## 19. FLEXICARE PROTECT PLATINUM

### 19.1. You have to notify us of a Platinum Event

- (a) If a Platinum Event occurs, you or your executor must:
  - (i) give us written notice within 30 days;
  - (ii) complete and return to us within 14 days any notification form we send you; and
  - (iii) pay us the Event Notification Fee in the Fee Table.
- (b) 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'll pay for the associated direct reasonable costs.

### 19.2. Release

If we notify you that we agree a Platinum Event has occurred, then you have to return the Goods to us in accordance with clause 9. You will then be released from your future obligations under this agreement except for any overdue payments at the time the Platinum Event was confirmed.

### 19.3. Temporary release

If we notify you that we agree that the Platinum Event that has occurred (in that you or a Nominated Person have become involuntarily unemployed (as set out in paragraph (b) in the definition of Platinum Event)):

- (a) you may elect to have payment of Monthly Lease Payment temporarily released for 3 months;
- (b) we may waive the Event Notification Fee or any other Fees that may be payable in relation to a Platinum Event;
- (c) when the 3 month period expires, one of the following applies:
  - (i) you may seek a release under clause 19.2, in which case any Fee that may be payable becomes payable; or
  - (ii) the remaining Monthly Lease Payment will be adjusted to allow for the temporary release.

### 19.4. When we won't give you a release or temporary release

Despite anything else in this agreement, we won't give you a release or temporary release where 2 or more Monthly Lease Payments are currently outstanding.

## 20. FLEXICARE LOANER

### 20.1. Loaner Goods - use and maintenance

- (i) we'll, at your request, lend you the Loaner Goods while

the damaged Goods are being repaired, on the following conditions:

- (a) you may only request Loaner Goods if the damaged Goods are of a class which is an Available Loaner Goods Class. Available Loaner Goods Classes are set out on our website and the list is changed from time to time;
- (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 they may not be identical to the damaged Goods (in brand, size or technical specifications);
- (c) you may request Loaner Goods more than once as long as you have notified us in accordance with clause 18.4 and paid the Event Notification Fee each time, but you may only have Loaner Goods for a total of 60 days within the Term (this includes the Double Time Period);
- (d) we'll deliver Loaner Goods to, and collect them from, anywhere within Australia except for certain remote areas;
- (e) if your request is made during normal business hours and delivery is to an Australian metropolitan area, we'll make reasonable efforts to deliver Loaner Goods to you within 2 Business Days of your request;
- (f) Loaner Goods are subject to the availability of equivalent goods in our warehouse facility at the time they are requested;
- (g) 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 have to return Loaner Goods to us in accordance with clause 9 when you receive your repaired Goods, or when the period in clause 20.1(c) expires. If you don't return the Loaner Goods we'll charge you the Loaner Goods Administration Fee (in addition to our other remedies under this agreement).

## 21. FLEXICARE PROGRAM DEFINITIONS AND INTERPRETATION

In this agreement, unless the context otherwise requires:

**Available Loaner Goods Class** means:

- (a) laptop computer, smartphone, tablet device or digital camera; or
- (b) the classes of goods set out at [www.smartway.com.au](http://www.smartway.com.au) under the heading "Available Loaner Goods Classes", as amended from time to time.

**FlexiCare Excluded Goods** means the goods and classes of goods set out at [www.smartway.com.au](http://www.smartway.com.au) under the heading "FlexiCare Excluded Goods", as amended from time to time.

**FlexiCare Loaner** means the FlexiCare Program providing you with the Loaner Goods, in accordance with clause 20.1.

**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 18.

**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 isn't violent and forcible entry.

**Loaner Goods** means the Goods we may offer under the FlexiCare Program as an interim replacement of the Goods.

**Nominated Person** means a person nominated in accordance with clause 16.7.

**Platinum Event** means

- (a) you or a Nominated Person becomes disabled. This means that each of the following applies:
  - (i) the relevant person has suffered a total and continuous inability to perform the usual duties of an occupation for which they are reasonably qualified by education, training or experience, and this is due to illness or injury for more than 30 consecutive days; and
  - (ii) the disablement is certified by a legally qualified medical practitioner licensed to practice in Australia and who is acceptable to us; and
  - (iii) the relevant person has not been engaged in work or an occupation for remuneration or profit since the occurrence of the illness or injury; and
  - (iv) the disablement:
    - (A) isn't due to pregnancy;
    - (B) doesn't relate to any illness, injury or condition that is a direct result of the use of illegal substances;
    - (C) doesn't relate to any illness, injury or condition that is a direct result of any illegal activity undertaken by the person; or
    - (D) doesn't relate to any illness, injury or condition known to be present in the 12 months before the Start Date.
- (b) you or a Nominated Person become involuntarily unemployed which means that the person is terminated from permanent employment, and certified as unemployed by the appropriate government agency (this doesn't include any termination due to voluntary unemployment, voluntary redundancy, or reaching retirement, or becoming unemployed due to misconduct);
- (c) you or a Nominated Person die and that death is certified by a legally qualified medical practitioner acceptable to us; or
- (d) you or a Nominated Person are diagnosed by a qualified medical practitioner acceptable to us as having a terminal illness with a life expectancy of 3 months or less.

**Protect Event** means any event of theft, accidental loss or accidental damage for which we retain the risk under this agreement.

**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.

## 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	Where and when payable
Dishonour Fee	\$30	You have to pay a Dishonour Fee each time we're unable to process a payment (including because you don't have sufficient funds in your account, or a credit card transaction is declined). However, we'll give you reasonable notice before we debit your bank account or credit card. We may attempt to process a payment more than once. We'll give you reasonable notice before we do so.
Payment Deferral Fee	\$30	Where we agree to defer any payment under this agreement, you have to pay a Payment Deferral Fee when the deferred payment is due.
Payment Administration Fee	Debit card payments: 0.5% of the relevant Payment Other credit card payments: 1% of the relevant Payment.	Where you make a payment from a MasterCard, Visa or American Express card, you have to also pay a Payment Administration Fee and this will be charged to the relevant card when the relevant payment is processed.
<b>FlexiCare Program fees</b>		
Loaner Goods Administration Fee	\$110 per month for maximum of 8 months	Where you don't return Loaner Goods, you have to pay a Loaner Goods Administration Fee
Event Notification Fee (applicable to FlexiCare Protect and FlexiCare Protect Platinum)	\$110	You have to pay an Event Notification Fee on each Protect Event and Platinum Event you notify to 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:**

### Illion

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

### Equifax

**Website:** [equifax.com.au](http://equifax.com.au)  
**Phone:** 1300 762 207  
**Address:** Attention: Equifax 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:

### Illion

Visit [checkyourcredit.com.au](http://checkyourcredit.com.au)

### Equifax

Visit [equifax.com.au](http://equifax.com.au)

- **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.

## CALL

All enquiries: **1300 888 779**

# GET IN TOUCH



## CONTACT US

For all enquiries, call

**1300 888 779**

Visit [smartway.com.au](http://smartway.com.au)

Email [customer.service@smartway.com.au](mailto:customer.service@smartway.com.au)

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