

## RENTAL AGREEMENT TERMS AND CONDITIONS

**PART A** APPLIES TO BOTH MINILEASE™ AND MINILEASE PROTECT™ AND MINILEASE PROTECT PLATINUM™

**PART B** APPLIES ONLY TO MINILEASE™

**PART C** APPLIES ONLY TO MINILEASE PROTECT™ AND MINILEASE PROTECT PLATINUM™

**PART D** APPLIES ONLY TO MINILEASE PROTECT PLATINUM™

**Flexirent Capital Pty Ltd holds Australian Credit Licence number 394735. Flexirent Capital Pty Ltd does not hold an Australian Financial Services Licence.**

This Rental Agreement is between you and Flexirent Capital Pty Ltd.

### PART A - GENERAL TERMS AND CONDITIONS

#### 1. OWNERSHIP OF EQUIPMENT

- a) We are the owner of the Equipment. You only have the right to use it.
- b) For the purposes of this Rental Agreement, Equipment includes hardware and software.
- c) You acknowledge that you have rights in the Equipment that are leased, or bailed to you under this Rental Agreement, when you obtain possession of the Equipment.
- d) You must protect our ownership of the Equipment and not attempt to sell, hire or deal with it in any way, other than in accordance with this Rental Agreement.
- e) You acknowledge that, subject to the *Personal Property Security Act 2009* (Cth) ("**PPS Act**"), if the Equipment gives rise to proceeds (by being dealt with or otherwise), the "Security Interest":
  - i) continues in the Equipment; and
  - ii) attaches to the proceeds (and nothing in this Rental Agreement will be taken to provide otherwise).

#### 2. ENTIRE AGREEMENT

- a) Except for any Consumer Guarantees under clause 3, the entire Rental Agreement between you and us consists of these terms and conditions, the Signature Page and the Direct Debit Request. This clause does not purport to exclude any of your rights under the common law.
- b) This Rental Agreement cannot be cancelled or terminated except in accordance with its terms.

#### 3. DISCLAIMER OF WARRANTIES

- a) Upon delivery of the Equipment you must inspect it and satisfy yourself that it is in good operating order and condition.
- b) You must rely on your own judgment as to the:

- i) quality and condition of the Equipment and its fitness and suitability for any particular purpose; and
  - ii) performance of services provided by third parties.
- c) To the extent that you acquire the Equipment as a consumer within the meaning of Schedule 2 of the *Competition and Consumer Act 2010* (Cth) or the *Australian Securities and Investment Commission Act 2001* (Cth), you have certain rights, warranties and remedies that cannot be excluded, restricted or modified by agreement. In particular, in the event of a major failure of the Equipment, you are entitled to a replacement or refund, and for compensation for any other reasonably foreseeable loss or damage. In the event that the Equipment fails to be of acceptable quality and the failure does not amount to a major failure, you are entitled to have the Equipment repaired or replaced ("**Consumer Guarantees**").
  - d) Except for applicable Consumer Guarantees we do not give any warranties or guarantees in relation to the Equipment or any services.
  - e) Nothing in this Rental Agreement is to be taken to exclude, restrict or modify any Consumer Guarantee as described in clause 3(c) that 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 Equipment or the re-supply of the services or the cost of these.
  - f) To the extent that you acquire Equipment that is not ordinarily acquired for personal, domestic or household use, 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.
  - g) No salesman or agent of the seller of the Equipment is authorised to act as our agent to agree or negotiate or change any term of this Rental Agreement or to make any warranties or representations about it or the Equipment, oral or otherwise. You may have rights against the seller if any of their warranties or representations are incorrect, or against us (in particular if we are a "linked credit provider" of the seller under consumer laws).

#### 4. AUTHORITY TO COMPLETE AND AMEND

- a) You authorise us to complete any blanks or correct any errors in this Rental Agreement (including inserting serial numbers, model numbers, the Start Date, Payment Date and Contract Number) and any document signed by us which is in connection with this Rental Agreement (such as Corporation Act forms, financing statements, financing charge statements, amendment demands or transfers for the Equipment).
- b) You must promptly do anything that we ask (such as obtaining consents, signing and producing documents, and getting documents completed and signed) to enable us to register our interest under the Premises Rental (if applicable) at the land titles office or on any relevant public register.

#### 5. PAYMENTS

- a) You must pay to us:
  - i) if there is a First Rental Amount shown on the Signature Page, the First Rental Amount on the first Payment Date and the Total Periodic Rental Payment shown on the Signature Page each subsequent Payment Date for the full Agreed Term; or
  - ii) otherwise you must pay us the Total Periodic Rental Payment shown on the Signature Page each Payment Date for the full Agreed Term, and any other fee or charge payable under this Rental Agreement.

(The Total Periodic Rental Payment may be described in the Signature Page as a Total Monthly Rental Payment).

- b) The first payment date is the Start Date shown on the Signature Page.
- c) If the Date Goods Taken is before the Start Date you acknowledge that the Agreed Term will commence on the Date Goods Taken and will be longer than the Agreed Term by the number of days between the Date Goods Taken and the Start Date. The End Date will not change.
- d) Payments for each Payment Period are due in advance on the Payment Date (except where there is a First Rental Amount payable, which is payable partly in arrears and partly in advance).
- e) If the Payment Date falls on a weekend or public holiday, payment is due on the next business day.
- f) Unless we otherwise agree, all payments must be made by direct debit from your bank account or credit card.
- g) All payments, once paid, are not refundable. If you believe that a payment was made in error, you believe that we have not complied with this Rental Agreement or if you have a claim against us based on our conduct, follow our

dispute resolution process as set out in clause 30 and part 4 of our Credit Guide.

- h) 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 Rental Agreement, you agree that we may adjust the Total Periodic Rental Payment and any other amounts payable under this Rental Agreement accordingly.
- i) You must pay all amounts due under this Rental Agreement in full without set-off or counterclaim, and without any deduction in respect of taxes, unless a law provides otherwise. This obligation continues no matter what happens, even if the Equipment becomes unusable as a result of any act or omission of yours, or any person to whom you have lent, given or otherwise passed custody or care of the Equipment, including a family member, friend or courier. If you wish to dispute any amount payable, please follow our dispute resolution process set out in clause 30 and part 4 of our Credit Guide.

#### 6. USE AND MAINTENANCE OF EQUIPMENT

- a) You must keep the Equipment 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 Equipment in accordance with the manufacturer's instructions and recommendations.
- c) You may modify the Equipment only with our consent.
- d) You must remove all personal data and software from the Equipment before returning it to us.
- e) We expressly deny all liability for any consequences arising from your failure to remove such information or software in accordance with clause 6(d), except for any consequences arising from our fraudulent or negligent handling or disposal of such information.

#### 7. LOCATION, OCCUPANCY AND INSPECTION

- a) Other than portable equipment, you must not move the Equipment from its location noted on the Signature Page without our prior written consent.
- b) You agree to provide our authorised agents and us with reasonable access to inspect the Equipment to confirm its existence, condition and proper maintenance. We will give you 5 business days' notice before inspecting the Equipment unless we reasonably consider that the Equipment will be in jeopardy without immediate action.
- c) Following our giving notice as set out in clause 7(b), 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 Equipment is located in order to confirm its 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.

## 8. LATE PAYMENTS

- a) If a Total Periodic Rental Payment or any other amount due is not paid in full on time, you are in default and we are entitled to recover liquidated damages on the overdue amount which you agree is a genuine pre-estimate of the actual loss that we will suffer as a result of you being late in any payment to us.
- b) For each failure to make a payment in full and on time, the amount of liquidated damages payable will be:
  - i) if the Payment Period is monthly, \$30; or
  - ii) if the Payment Period is quarterly, \$75.
- c) In addition, you agree to reimburse us for the amount that our bankers charge us for your dishonoured payment(s).
- d) All liquidated damages are payable on demand which we may enforce by debiting the amount of any liquidated damages from your nominated bank account or credit card, however we will provide you with reasonable notice before debiting your bank account or credit card.

## 9. DEFAULT

- a) You will be considered to be in default and to have repudiated this Rental Agreement if you:
  - i) do not pay in full any Total Periodic Rental Payment or any other amounts due in accordance with clause 5:
    - (A) by the Payment Date or other due date on more than one occasion; or
    - (B) within 5 days after the Payment Date or other due date.
  - ii) 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
  - iii) sell, sub-lease, dispose of or create a Security Interest in the Equipment or attempt to do any of those things.
- b) You must promptly notify us if any of the events described in clause 9(a)(i)-(iii) occur, or if you reasonably expect any of the events to occur during the Agreed Term.
- c) If the National Credit Code ("**Code**") set out in Schedule 1 of the *National Consumer Credit Protection Act 2009* (Cth) ("**NCCPA**") applies to this Rental Agreement, we must give you written notice before we take any enforcement

action in relation to this Rental Agreement in accordance with the Code.

## 10. TERMINATION

- a) This Rental Agreement will terminate upon the occurrence of any of the following events:
  - i) we give you notice terminating this Rental Agreement after your default and repudiation of this Rental Agreement; or
  - ii) you return the Equipment to us at any time prior to the expiry of the Agreed Term and pay us the amounts due under clause 11(a).
- b) If we breach a material term of this Rental Agreement and do not rectify such breach(es) within 5 Business Days of receiving a detailed written rectification request from you to do so, you may immediately terminate this Rental Agreement by providing written notice to us.

## 11. EFFECT OF TERMINATION

- a) If this Rental Agreement is terminated under clause 10(a), you must immediately pay to us:
  - i) all overdue Total Periodic Rental Payments; plus
  - ii) the present value of all remaining Total Periodic Rental Payments for the balance of the Agreed Term discounted at Periodic rests at the Reserve Bank of Australia's cash rate current on the date this Rental Agreement is terminated; plus
  - iii) the present value of the Residual Amount discounted to the rate reasonably determined by us having regard to prevailing interest rates current on the date this Rental Agreement is terminated; plus
  - iv) any liquidated damages payable under clause 8 amount you agree is a genuine pre-estimate of the loss that we will suffer because of the early termination of this Rental Agreement and any other amounts payable under this Rental Agreement.
- b) If this Rental Agreement is validly terminated under clause 10(b) you must immediately pay to us all overdue Total Periodic Rental Payments.
- c) If this Rental Agreement is terminated under clauses 10(a) or 10(b), you must immediately return the Equipment to us in accordance with clause 12 if you have not previously done so.

If the Code applies to this Rental Agreement, you may terminate this Rental Agreement before the Equipment is provided to you by giving us written notice. If you terminate this Rental Agreement under this clause, you are not obliged to pay a Termination Amount calculated under this clause 11. However, you must immediately pay any fee or charge that was payable under this Rental Agreement and which was incurred before the termination of this Rental Agreement.

## 12. RETURN OF EQUIPMENT

- a) On termination of this Rental Agreement (under clause 10 or otherwise), you must return the Equipment at your reasonable expense to any location reasonably nominated by us together with all software specified in the Signature Page, all CDs, DVDs, accessories and manuals, in as good condition as the Equipment was delivered to you, except for normal fair wear and tear.
- b) It is your responsibility to remove any personal data and software not specified in the Signature Page that is stored on or in the Equipment before returning it to us.
- c) We expressly deny all liability for any consequences arising from your failure to remove such information except for any liability arising from our fraudulent or negligent handling or disposal of such information.
- d) If any Equipment is returned to us other than in accordance with clause 12(b), you must pay 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 12(b). We will not be held liable for any data that is lost, corrupted or compromised during this process, except for any direct liability arising from our fraudulent or negligent handling or disposal of such information.

## 13. REPOSSESSION OF EQUIPMENT

- a) If you fail to pay any Total Periodic Rental Payment (including the First Rental Amount if applicable) or if you fail to return the Equipment when you are required to do so under this Rental 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 Equipment may be located and repossess the Equipment.
- b) Subject to complying with any applicable law, we may sell any repossessed Equipment at any time.
- c) If we have not terminated this Rental Agreement, you may collect the Equipment from us only if you have paid all amounts payable under this Rental Agreement (including any amounts owing under clause 17(a)).
- d) We may sell any Equipment we repossess or which is otherwise returned to us at any time after this Rental Agreement is terminated. The Net Sale Proceeds (being the actual amount received by us from the sale of the Equipment less all costs incurred by us in selling the Equipment, including agents fees or commissions, storage costs, transport costs and our administration costs) will be applied towards the Termination Amount and all other amounts payable by you under this Rental Agreement or any other agreement between us or will be paid to you if you have previously

paid all amounts due to us under this Rental Agreement or any other agreement between us.

- e) Where we have given you prior notice of the repossession, you must remove all personal data and software from the Equipment before it is 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 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 Equipment but we will not be liable for any consequences if we fail to remove such information or software except for any consequences arising from our fraudulent or negligent handling or disposal of such information.

## 14. END OF TERM

- a) We will use reasonable endeavours to provide you with 90 days' notice before the end of the Agreed Term. You must provide us with 60 days' written notice before the end of the Agreed Term regarding your intention with respect to the Equipment. You may offer to purchase the Equipment at the end of the Agreed Term at any price you see fit. You acknowledge that we are free to accept or reject your offer. If we accept your offer, GST will apply to the agreed purchase price.
- b) At the end of the Agreed Term, you must either:
  - i) pay to us the purchase price for the Equipment in accordance with any agreement made under clause 14(a), which amount we may debit from your nominated bank account or credit card on reasonable notice; or
  - ii) return the Equipment to us in the condition required under clause 12(a) and (b).
- c) If you fail to comply with clause 14(b)(ii), you must pay to us on demand liquidated damages equal to the Residual Amount, which you agree is a genuine pre-estimate of the actual loss that we will suffer as a result of your failure to return the Equipment to us in accordance with clause 14(b)(ii), which amount we may demand by debiting it from your nominated bank account or credit card on any date at our election on reasonable notice to you.
- d) If you return the Equipment to us and the Net Sale Proceeds (see clause 13(d)) we receive are less than the Residual Amount, then you must pay us on demand the amount equal to the excess of the Residual Amount over the Net Sale Proceeds.

- e) Notwithstanding anything contained in this Rental Agreement you have no right or obligation at any time to purchase the Equipment.

## 15. INTENTIONALLY BLANK

## 16. ASSIGNMENTS

- a) We may, without giving you notice, sell, assign or otherwise dispose of or deal with our interest in the Equipment, or this Rental Agreement.
- b) You may apply to assign this Rental Agreement but you acknowledge that we are not obliged to agree. We may charge a reasonable fee to credit assess the proposed assignee even if the proposed assignee is declined. We will act reasonably in considering your application to assign this Rental Agreement.

## 17. 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 Rental Agreement; and
  - ii) any expenses we reasonably incur in enforcing this Rental Agreement or incur because you have repudiated, terminated or breached this Rental Agreement, including any legal costs and expenses, financing break costs, costs incurred in repossessing or attempting to repossess the Equipment and costs incurred in storing and disposing of the Equipment.
- b) Subject to the application of the Consumer Guarantees (see clause 3) 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 the Equipment or its use including you or your agents' fraudulent, illegal, negligent or otherwise improper use of the Equipment (except to the extent that the injury, death or damage occurs as a result of the Equipment 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 Equipment which is inconsistent with its ordinary purpose.
- c) The indemnity given by you under clause 17(b) does not extend to loss (including loss of bargain or profit), damage, liabilities, costs, taxes, duties, charges and expenses suffered or incurred by us as a result of the negligent acts or omissions of us or our agents or employees.
- d) 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.

## 18. PRIVACY (INCLUDING CONSENTS)

- a) This clause 19 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.

Our "Privacy Policy and Credit Reporting Policy" document, available "at [www.flexicommercial.com.au](http://www.flexicommercial.com.au) (select) 'Privacy Policy' provides more details about how we manage your personal information, including your credit information and credit eligibility information).

- b) When collecting, using, disclosing and managing your personal information, we comply with the *Privacy Act 1988* (Cth) ("**Privacy Act**") as well as the Credit Reporting Privacy Code.

### Collection, use, and disclosure of your personal information

- c) 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 of the Equipment or any other service provider appointed by us contacting you about your end of rental term options, any trade up 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: the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) and other anti-money laundering legislation (for example, for identity verification), the NCCPA (for example, for responsible lending) the PPS Act (for example, for search and registration purposes), the *Financial Sector (Collection of Data) Act 2001* (Cth), the *Corporations Act 2001* (Cth) and other regulatory legislation (for example, requiring us to maintain client and transaction records, to provide information relating to loans to APRA and to make reports and provide other information to regulators such as ASIC) and the *Taxation Administration Act 1953* (Cth), the *Income Tax Assessment Act 1997* (Cth) and other taxation laws (for example, to comply with information requests issued by the Commissioner of Taxation);
  - d) 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 of the Equipment; 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.
  - e) 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.
  - f) 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 of the Equipment; 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); any person specifically authorised by you in writing; and
    - ii) any person as permitted or required by law (except this clause 18(f)(ii) 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).
- We may disclose your personal information to overseas recipients**
- g) 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 Privacy Policy and Credit Reporting Policy available on our website). You acknowledge that by consenting to us disclosing your personal information to overseas recipients, Australian Privacy Principle (“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). By applying for this product you consent to disclosures to overseas recipients.
- Important information about credit reporting**
- h) Our website at [www.flexicommercial.com.au](http://www.flexicommercial.com.au) (select) ‘Privacy 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.

- i) 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.
- j) 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.
- k) 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.
- l) 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 identity as required under Australia's anti-money laundering and counter-terrorism 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.

#### **Marketing products and services to you**

- m) 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). 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 340 447.

#### **Accessing and correcting your personal information**

- n) 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 request please see our Privacy Policy and Credit Reporting Policy contains details about how you can make such requests.
- o) 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 Privacy and Credit Reporting 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.

#### **19. SEVERABILITY**

If:

- a) the Code or any other law would otherwise make a provision of this Rental Agreement illegal, void or unenforceable in any jurisdiction; or
- b) a provision of this Rental Agreement would otherwise contravene a requirement of the Code or impose an obligation or liability which is prohibited by the Code or any other law,

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

#### **20. 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 Rental 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 shall 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 Rental Agreement and rights

and obligations arising under it unless you can demonstrate otherwise.

- d) You consent to us and our related bodies corporate sending commercial electronic messages to you.

## 21. CHANGES TO THESE TERMS AND CONDITIONS

- a) We may change these Terms and Conditions at any time as a result of:
  - i) any new legislation or change in any legislation (including government revenue raising legislation) or subordinate legislation, or any change in any ruling, guideline, directive or requirement issued by any government authority or any change in the interpretation of any such legislation, subordinate legislation, ruling, guideline, directive or requirement that affects this Rental Agreement; or
  - ii) in regard to changes to any fees or charges, any change in costs associated with our fees or charges under this Rental Agreement where such change is applied generally to other customers entering into Rental Agreements with us.
- b) We will give you not less than 30 days' notice of any changes under clause 21(a).
- c) Any change shall not affect the amount of the Total Periodic Rental Payment (except as permitted in accordance with clause 5(h)) and shall only apply to obligations arising after the expiry of the notice period.
- d) You have the right to terminate this Rental Agreement in accordance with clause 10(b).
- e) Where the Code applies, all changes will be made in accordance with the Code.

## 22. FEES

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

- a) a dishonour fee of:
  - i) \$30 if the Payment Period is monthly; or
  - ii) \$75 if the Payment Period is quarterly,if a Total Periodic Rental Payment or any other amount due under this Rental Agreement, 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 Total Periodic Rental Payment or other amount due more than once however we will give you reasonable notice before doing so. The dishonour fee will only be charged a maximum of once per Payment Period. Dishonour fees are payable immediately on the dishonour, however we will give you reasonable notice before debiting your bank account or credit card. Clause 8 sets out our rights to liquidated damages for

late payments which are payable in addition to this fee;

- b) a payment deferral fee of \$30 where we agree to defer a Total Periodic Rental Payment or any other amount due under this Rental Agreement. A payment deferral fee is payable at the same time as the deferred payment is due; and
- c) a payment administration fee of 1% of the Total Periodic Rental Payment or any other amount due under this Rental Agreement where payment is made from a MasterCard, Visa & American Express. Each MasterCard, Visa & American Express administration fee is payable (and will also be charged to the relevant MasterCard, Visa & American Express) at the same time as the relevant payment is processed.

## 23. GOVERNING LAW

- a) This Rental 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.

## 24. PERSONAL PROPERTY SECURITIES ACT

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

- a) provide more effective security over the Equipment, or any other personal property over which we have a "Security Interest" for payment of money owing to us in connection with this Rental Agreement;
- b) bind yourself and any other person intended to be bound under this Rental 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 Rental 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 Equipment; and
- f) show whether you are complying with this Rental Agreement.

24.2 If:

- a) you hold any "Security Interest" for the purposes of the PPSA and if your failure to perfect such "Security Interest" would materially adversely affect your business or our "Security Interest" over the Equipment; or
  - b) a "Security Interest" in your favour arises over the Equipment (whether or not as a result of a breach by you under this Rental Agreement),
- you agree to implement, maintain and comply in all material respects with procedures for the perfection



of those "Security Interests". These procedures must include procedures designed to ensure that you take all reasonable steps under the PPS Act to continuously perfect such "Security Interest" including all steps reasonably necessary:

- c) for you to obtain the highest ranking priority possible in respect of the "Security Interest" (such as perfecting a purchase money "Security Interest" or perfecting a "Security Interest" by control); and
- d) to reduce as far as possible the risk of a third party acquiring an interest free of our "Security Interest".

If we ask, you agree to arrange at your expense an audit of the PPS Act procedures. We may ask you to do this if we reasonably suspect that you are not complying with this clause.

24.3 If a "Security Interest" in connection with the Equipment in the form of chattel paper (as defined in the PPS Act) is held by you or arises in your favour (whether or not as a result of a breach by you under this Rental Agreement), you grant a "Security Interest" in the chattel paper to us for the purpose of securing payment of any money you owe us in connection with this Rental Agreement. The "Security Interest" created by this clause is a charge and you may not transfer, dispose or otherwise deal with the chattel paper or allow another "Security Interest" to exist over it. You must deposit with us all original documents of title comprising the chattel paper and any other documents we request relating to the chattel paper.

24.4 You must notify us in writing of any change in your name at least 14 days before your propose to change your name.

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

24.6 You agree that:

- a) we need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPS Act, or any other provision of the PPS Act notified to you by us after the date of this Rental Agreement, to the extent the law permits them to be excluded;
- b) we may not exercise rights under section 142 and 143 of the PPS Act to the extent the law permits them to be excluded; and
- c) we need not give any notice required under the PPS Act (including a notice of a verification statement, but not including a notice under section 135) unless the requirement to give the notice cannot be excluded.

24.7 In this clause the Rental Agreement, "Security Interest" includes any security interest under the PPS Act, mortgage, pledge, lien, charge, hypothecation, trust arrangement, title retention arrangement or other security interest or encumbrance.

## 25. INTERPRETATION

Capitalised terms used in the Signature Page have the same meaning in these terms and conditions.

## 26. JOINT AND SEVERAL OBLIGATION

If there is more than one, "you" means each of you separately and all of you jointly.

## DDR SERVICE AGREEMENT

### 27. DEBITING YOUR ACCOUNT (clauses 27 - 30)

- a) By signing the Direct Debit Request ("DDR"), you authorise us to debit funds from your nominated account for any amount payable under this Rental Agreement and any other agreement between you and us. You should refer to the DDR Service Agreement and the DDR for the terms of the arrangement between you and us.
- b) If any payment falls due on a non-business day, it will be debited from your nominated account on the following business day.
- c) All enquiries should in the first instance be directed to us.
- d) Your records and account details held by us will be kept confidential, except information required by our Financial Institution in the event of a claim or relating to an alleged incorrect or wrongful debit.

### 28. CHANGES

- a) If you want to request a change to the drawing arrangements, please contact us at least 14 days prior to the next scheduled drawing date. You should contact us before contacting your Financial Institution.
- b) These requests may include:
  - i) deferring the drawing;
  - ii) stopping an individual debit;
  - iii) suspending the DDR; or
  - iv) cancelling the DDR completely.
- c) However, as we have relied on your agreement to honour the DDR, we would be unlikely to agree to a request to change it, unless you provide a reasonable proposal as to how you will make good your payment obligations under this Rental Agreement.

### 29. YOUR OBLIGATIONS

- a) It is your responsibility to:
  - i) ensure that your nominated account can accept direct debits as direct debits through BECS is not available on all accounts (your Financial Institution can confirm whether your account can accept direct debits);
  - ii) check your nominated account details with your Financial Institution before completing the DDR;
  - iii) ensure that there are sufficient cleared funds in the nominated account, by the

due date, to allow for payment of the amounts payable; and

- iv) advise us if the nominated account is transferred or closed.
- b) If your drawing is returned or dishonoured by your financial institution, you should contact us to make suitable arrangements to rectify the non-payment. If no contact is made, we reserve the right to redraw the non-payment plus any applicable liquidated damages and fees payable pursuant to this Rental Agreement at any time at our discretion (however we will give you reasonable notice before doing so).
- c) You will be responsible for paying any varying charges including, but not limited to, taxes, liquidated damages payable pursuant to clause 8 and any other fees and charges payable.

### **30. DISPUTES**

- a) If you believe that there has been an error in debiting your account, you should contact us directly on 1300 340 447 and confirm in writing with us as soon as possible so that we can resolve your query more quickly. Alternatively you can take it up directly with your financial institution.
- b) If we conclude as a result of our investigations that your account has been incorrectly debited, we will respond to your query by arranging for your financial institution to adjust your account (including interest and charges) accordingly. We will also notify you in writing of the amount by which your account has been adjusted.
- c) If we conclude as a result of our investigations that your account has not been incorrectly debited we will respond to your query by providing you with reasons and any evidence for this finding in writing.

### **PART B - TERMS AND CONDITIONS THAT ONLY APPLY TO MINILEASE**

#### **31. LOSS OR DAMAGE**

- a) You assume and bear the risk of loss or damage to the Equipment. If the Equipment is lost or damaged you agree to replace or repair the Equipment at your cost, and to continue to pay the Total Periodic Rental Payments in accordance with clause 5.
- b) You agree to indemnify us for any loss or damage to the Equipment.
- c) The indemnity given by you under clause 31(b) does not extend to loss (including loss of bargain or profit), damage, liabilities, costs, taxes, duties, charges and expenses suffered or incurred by us as a result of the negligent acts or omissions of us or our agents or employees.

### **32. INSURANCE**

If you have not selected Protect or Protect Platinum and you enter into this Rental Agreement as a Commercial Customer (as indicated on the Signature Page):

- a) you must arrange and at all times keep the Equipment insured against loss and all other normally insured risks for its full replacement value during the Agreed Term;
- b) you must ensure that we are named as an additional insured party and loss payee under the policy;
- c) you must provide us with a Certificate of Currency of Insurance evidencing that the Equipment is insured within 30 days of the Start Date;
- d) you must not do, or fail to do, anything which would allow the insurer to refuse or reduce a claim; nor can you enforce, conduct, settle or compromise any claim without our consent;
- e) we are entitled to receive any amounts paid by an insurer. If you receive them, you hold them on trust for us; and
- f) for the avoidance of doubt, this clause does not apply to you if the Rental Agreement is subject to the Code.

If you do not provide a Certificate of Currency of Insurance evidencing that the Equipment is insured within 30 days of the Start Date, then you are in breach of this Rental Agreement and we will be entitled to charge you a fee of 7% of the Total Periodic Rental Payment from the second Total Periodic Rental Payment onwards until the Certificate of Currency of Insurance is provided. Where we charge this fee:

- g) this does not release you from your obligation to insure the Equipment in accordance with this clause 32, and you remain obliged to enter into that insurance as soon as possible; and
- h) Part C will apply for each Payment Period for which that fee is paid.

### **PART C - TERMS AND CONDITIONS THAT ONLY APPLY TO MINILEASE PROTECT AND MINILEASE PROTECT PLATINUM**

#### **33. RISK OF LOSS OR DAMAGE**

- a) Subject to clauses 34 and 35, while we own the Equipment we retain and bear the risk of theft, accidental loss or accidental damage to the Equipment occurring anywhere in Australia or New Zealand or anywhere else in the world during a trip of not more than 28 days duration.
- b) You assume and bear the risk of all theft, loss or damage to the Equipment which we do not retain and bear under clause 33(a) and you agree to indemnify us for any such theft, loss or damage.

- c) If the Equipment is stolen, accidentally lost or accidentally damaged and the risk of that loss or damage is ours under this Rental Agreement, subject to your compliance with clause 35, we will Release you (see clause 37).

**34. EXCLUSIONS, ALLOCATION OF RISK AND INDEMNITY**

- a) In this clause 34:
  - i) **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;
  - ii) **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 this clause 34.
- b) Notwithstanding clause 33, we will not pay for, and you will assume and bear the risk of, any loss, theft or damage to any Equipment:
  - i) which is not loss or accidental damage;
  - ii) where at the time of the loss, theft or damage you are in arrears for one 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, if the breakdown/derangement occurs as a result of an external accident (e.g. power surge) and where you have been 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 Equipment, or any person to whom you have lent the Equipment or otherwise permitted to use the Equipment;
  - 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, and you are able to provide evidence of Forced Entry;
    - (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, and you are able to provide evidence of Forced Entry

- (C) from occupied premises and at the time of the theft or loss, the occupants were present at the premises, unless the premises were Secure and the theft or loss resulted directly from Forced Entry to the premises (and you are able to provide evidence of Forced Entry);
- (D) from occupied premises and at the time of the theft or loss, by occupants who have been authorised by you to occupy or visit the premises on a temporary or permanent basis, and who were present at the premises, unless the premises were Secure and the theft or loss resulted directly from Forced Entry to the premises (and you are able to provide evidence of Forced Entry);
- (E) from an unoccupied vehicle with no occupants in it
- (F) from a vehicle which was secure with no occupants in it and the theft or loss resulted directly from a Forced Entry to the vehicle and you are able to provide evidence of Forced Entry and the Equipment was concealed from sight;
- (G) from a vehicle that was Secure with no occupants in it under any circumstances where the Equipment was stored or left overnight;
- (H) from any public place or any place where the public has regular access and where the Equipment was left unattended; or
- (I) from any public place or any place where the public has regular access and where the Equipment was left unattended;
- vii) occurring during or as a result of the Equipment being transported in any aircraft or watercraft unless carried as cabin baggage;
- viii) that was 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 what so ever 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;
  - (C) the confiscation or destruction of any Equipment by any government, public or statutory authority; or
  - (D) the use of alcohol or illegal drug use;
- 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 Equipment 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 Equipment which requires periodic or frequent replacement;
  - xiv) that occurred whilst under the influence of drugs and/or alcohol;
  - xv) if you supply false or misleading information in relation to the incident that resulted in the loss, theft or damage; or
  - xvi) if there is any incident in relation to any Equipment under any lease where you have already submitted an Incident Notification form to us 3 times in the last 12 months in relation to loss, theft or damage to the Equipment or other equipment leased to you under by us under other agreements.
- c) For your first and any subsequent Incident Notification lodged with us, you agree to pay us a processing fee of \$110 in respect of risks retained by us for processing and administration costs.

### 35. INCIDENT NOTIFICATION

- a) If any Equipment is stolen, you must inform the Police within 48 hours and promptly provide us with a copy of the Police report and event number. We are not obliged to process an Incident Notification until you have provided us with a copy of the Police report, or if you have not informed the Police within 48 hours of the incident.
- b) Within 14 days after the theft, accidental loss or accidental damage occurring, you must complete an Incident Notification form and send it to us.

### 36. BASIS OF SETTLEMENT

- a) Subject to the application of Consumer Guarantees (see clause 3), we may choose to:
  - i) repair the damaged Equipment;
  - ii) replace the stolen, accidentally lost or accidentally damaged Equipment with equipment of similar age, original specifications (excluding modifications under this Rental Agreement) and condition, but this may not necessarily be the same make or model and may include refurbished equipment; or
  - iii) release you from your future obligations under this Rental Agreement except for any payments in arrears at the time the loss or damage incident is approved.

- b) We reserve the right to choose any suitably qualified repairer to carry out repairs or any suitable supplier to replace the Equipment.
- c) Unless we release you from your obligations under clause 36(a)(iii), you must continue to pay Total Periodic Rental Payments in accordance with clause 5.
- d) Where the Equipment is returned to us under this clause 36 (including where Equipment is being repaired) you must remove all personal data from the Equipment which can be accessed by you before returning it to us.
- e) 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 negligent handling or disposal of such information.

## PART D - TERMS AND CONDITIONS THAT ONLY APPLY TO MINILEASE PROTECT PLATINUM

### 37. RELEASE

Subject to clause 38, if one of the following events occurring ("**Event**") and subject to your compliance with clauses 40 and 41, we will treat this Rental Agreement as terminated and you will have no obligation to pay to us any remaining Total Periodic Rental Payments and any other amounts which may be owing under this Rental Agreement as a consequence of the termination or otherwise ("**Release**"):

- a) your Disablement or Disablement of the person(s) nominated in accordance with clause 39 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 39 as relevant are reasonably qualified by education, training or experience due to illness or injury for more than 30 consecutive days; and where
  - ii) the disablement is certified by a legally qualified medical practitioner licensed to practice in Australia and who is acceptable to us; and where
  - iii) you or the person(s) nominated in accordance with clause 39 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 39 does not relate to any illness, injury or condition known to be present in the 12 months preceding the commencement of the Rental Agreement.
- b) your involuntary unemployment or involuntary unemployment of the person(s) nominated in accordance with clause 39, 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 39 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 wilful misconduct.
- c) your death or death of the person(s) nominated in accordance with clause 39 as relevant where the death is certified by a legally qualified medical practitioner acceptable to us.
- d) diagnosis by a qualified medical practitioner acceptable to us that you or the person(s) nominated in accordance with clause 39 as relevant are suffering a terminal illness with a life expectancy of three (3) months or less.

### **37A. SUSPENDED PAYMENTS**

- a) Subject to clause 38(a), if you or a person(s) nominated in accordance with clause 39, being involuntarily unemployed within the meaning of clause 37(b), you may, instead of seeking a Release under clause 37, elect to have payment of Total Periodic Rental Payments suspended until a period of 3 months has elapsed from us having notified you it has accepted that your notification of the Event entitles you to a Release ("**Suspended Payments**").
- b) If you elect for Suspended Payments, rather than a Release, we will waive the application of clause 38(b).
- c) Following expiration of the 3 month period, you may elect to seek a Release under clause 37, in which case the administration fee becomes payable in accordance with clause 38(b) or in the event you choose not to seek a Release under clause 37, the remaining Total Monthly Rental Payments will be adjusted to allow for the Suspended Payments.

### **38. EXCLUSION AND INDEMNITY**

- a) Notwithstanding clause 37, we will not Release you where you are two or more Total Periodic Rental Payments in arrears as at the date of the relevant Event (or in the case of disablement or unemployment, the date the Disablement or unemployment started).
- b) On making a notification to us under clause 40 you agree to pay us an administration fee of \$110.

### **39. PARTNERSHIPS, TRUSTS, COMPANIES**

Where you as the Customer are not an individual natural person you are only eligible for Protect Platinum in relation to the nominated partners, trustee(s) or directors as relevant. Unless we agree and confirm to you in writing otherwise, the Guarantor will be the nominated person.

### **40. HOW TO MAKE A NOTIFICATION OF AN EVENT**

- a) You or your executor must give us written notice within 30 days of an Event occurring.
- b) We will forward you or your executor a notification form that must, within 14 days of receipt, be completed and returned to us with all relevant information including such information as is set out in clause 37.
- c) 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 it.

### **41. RETURNING EQUIPMENT**

- a) If we advise you that we agree an Event has occurred and a Release has occurred under clause 37, you or your executor must promptly return the Equipment as per clause 12(a).
- b) Where Equipment is returned to us under clause 41(a) you or your executor must remove all personal data and software not specified on the Signature Page that is stored on the Equipment before it returning to us.
- c) We expressly deny all liability for any consequences arising from your failure to remove such information or software – except for any consequences arising from our fraudulent or negligent handling or disposal of such information.