

SOFTWARE FUNDING AGREEMENT

Flexirent Capital Pty Ltd ABN 93 064 046 046 / Australian Credit Licence number 394735
of Level 7, 179 Elizabeth Street, Sydney CBD NSW 2000, Australia.
(Financier)

On the Acceptance Date, Financier accepts Customer's offer to borrow the Amount Financed from Financier on the terms and conditions of this Software Funding Agreement. The offer is irrevocable and made pursuant to the Terms and Conditions. Financier may accept or reject the offer in its discretion and may impose any conditions it deems appropriate on acceptance.

SOFTWARE FUNDING AGREEMENT SCHEDULE				
Financier's Contract Details (for Financier's completion only)				
Application Number (if applicable)				
Introducer Name				
Customer(s)				
Customer #1				
Legal Name				
Trading Name (if applicable)				
ACN & ABN	ACN		ABN	
Contact Name		Contact Phone		
Address		Contact Email		
Suburb/Town		State/Territory/Postcode		
Where Customer #1 is a trustee of a Trust (clause 12.15)	Name of Trust			
	Date of Trust Deed			
	Trust ABN			
Where Customer #1 is a Partnership (clause 12.16)	Name of Partnership			
	Date of Partnership Agreement			
	Partnership ABN			
Customer #2 (leave blank if not applicable)				
Legal Name				
Trading Name (if applicable)				
ACN & ABN	ACN		ABN	
Contact Name		Contact Phone		
Address		Contact Email		
Suburb/Town		State/Territory/Postcode		
Where Customer #2 is a trustee of a Trust (clause 12.15)	Name of Trust			
	Date of Trust Deed			
	Trust ABN			
Where Customer #2 is a Partnership (clause 12.16)	Name of Partnership			
	Date of Partnership Agreement			
	Partnership ABN			
Software – clause 4.3				
Software Name & Details	Brand	Quantity	Software Seller	Software Supplier
Term – clause 3				
Term (clause 3.1)	months from Commencement Date	Commencement Date		
Important Note:				
<ul style="list-style-type: none"> Term: Is the scheduled contracted term of this Software Funding Agreement, starting from the Commencement Date up to and including the Expiry Date (clause 3.1). Commencement Date: If the Commencement Date in this Software Funding Agreement Schedule is blank or otherwise does not contain a date, the Commencement Date will be the Acceptance Date. 				

SOFTWARE FUNDING AGREEMENT SCHEDULE

Amount Financed – clause 4.3

Amount Financed	\$
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Payments – clause 4

Instalment Payments – clause 4

Instalment Payment Number From	Instalment Payment Number To	Net Instalment Payment (exc. GST)	GST Instalment Payment	Total Instalment Payment (inc. GST)	Instalment Payment Intervals	Advance / Arrears (clause 4.4)

Upfront Payment & First Instalment Payment – clause 4

Upfront Payment (exc. GST) (clause 4.2(a))	Upfront Payment (inc. GST) (clause 4.2(a))	First Instalment Payment (exc. GST) (clause 4.2(b))	First Instalment Payment (inc. GST) (clause 4.2(b))

Important Note:

- **Upfront Payment:** If applicable, Customer must pay Financier the Upfront Payment on the Start Date (clause 4.2(a)).
- **First Instalment Payment:** Customer must pay Financier the First Instalment Payment on the First Instalment Payment Date (clause 4.2(b)).
- **Instalment Payments:** Customer must pay Financier the Instalment Payments on each Instalment Payment Date (except on the First Instalment Payment Date) (clause 4.2(c)).
- **Moneys Owning:** Customer must pay Financier the Moneys Owning on the Expiry Date and otherwise in accordance with this Software Funding Agreement (clauses 4.2(f) and 9.5).
- **Instalment Payment Date:** Unless otherwise notified by Financier, the Instalment Payments (following the First Instalment Payment) are due on the same day of the month as the First Instalment Payment Date at each Instalment Payment Interval.
- **Payment of additional amounts:** Customer must pay additional amounts under this Software Funding Agreement including duties and taxes (clause 6.2), GST (clause 4.9) and transaction fees costs and other expenses and losses (clause 4.10).

Guarantors (leave blank if not applicable) – clause 10

Guarantor #1

Legal Name		Contact Name	
ACN & ABN	ACN ABN	Contact Phone	
Address		Contact Email	
Suburb/Town		State/Territory/Postcode	
Guarantee Limit (clause 10.6)			
Is the Guarantee and Indemnity granted by Guarantor #1 secured? (clause 10.19)			
Does Guarantor #1 own the above real property?	Yes or No?	Yes	No
	Value of property?		
	Value of mortgage?		

Guarantor #2

Legal Name		Contact Name	
ACN & ABN	ACN ABN	Contact Phone	
Address		Contact Email	
Suburb/Town		State/Territory/Postcode	
Guarantee Limit (clause 10.6)			
Is the Guarantee and Indemnity granted by Guarantor #2 secured? (clause 10.19)			
Does Guarantor #2 own the above real property?	Yes or No?	Yes	No
	Value of property?		
	Value of mortgage?		

Important Note:

- **Guarantee and Indemnity:** Guarantor is liable to Financier under the Guarantee and Indemnity (clause 10).
- **No Guarantor:** Unless otherwise agreed in writing between the parties, if there is no Guarantor specified in the Software Funding Agreement Schedule the Guarantee and Indemnity will automatically remain dormant and inactive.
- **Independent legal and financial advice:** Financier recommends that Guarantor obtain independent legal and financial advice in relation to this Software Funding Agreement (including clause 10).
- **Guarantee Limit:** Unless there is a Guarantee Limit, Guarantor's liability to Financier under the Guarantee and Indemnity is unlimited. For each Guarantor that has a Guarantee Limit, the amount payable by Guarantor is limited to that Guarantee Limit plus any costs and expenses (clause 10.6).
- **Variations and replacement:** This Software Funding Agreement may be varied or replaced from time to time. The guarantee under clause 10.2 and indemnity under clause 10.3 include any obligations under this Software Funding Agreement as varied or replaced (clause 10.5).

SOFTWARE FUNDING AGREEMENT SCHEDULE

- **Guarantee and Indemnity remains unaffected:** Guarantor's liability under this Guarantee and Indemnity is not affected by any increase or variation in the amount payable under the Guarantee and Indemnity or this Software Funding Agreement for any reason (clause 10.18(c)) or any amendment to or transfer of this Software Funding Agreement, or any right or liability of any person under this Software Funding Agreement, whether for or without consideration (clause 10.18(d)).
- **Secured Guarantee and Indemnity.** If the Guarantee and Indemnity is expressed to be secured in the Software Funding Agreement Schedule, Guarantor grants a Security Interest over all of its real and personal property and Financier may register a mortgage or lodge a caveat over any real estate owned by Guarantor as security for its obligations under the Guarantee and Indemnity. If Guarantor fails to comply with the terms of the Guarantee and Indemnity, Financier may exercise rights in respect of the mortgage, including the sale of the relevant real property, to recover any money owing by Guarantor to Financier (clause 10.19).

Special Conditions (leave blank if not applicable) – clause 12.1

Note: If there is any inconsistency between the Special Conditions and the Terms and Conditions, the Special Conditions will prevail to the extent of the inconsistency (clause 1.2(k)).

- Not Applicable.

BUSINESS USE DECLARATION

IMPORTANT


Customer declares to Financier that the credit is to be used wholly or predominantly for business purposes; or investment purposes other than investment in residential property.

You should only sign this declaration if the Facility is wholly or predominantly for:

- business purposes; or
- investment purposes other than investment in residential property.

By signing this declaration you acknowledge that the protections under the National Credit Code do not apply.

Customer signature

Customer: 

Customer signature

Customer name

Date

Customer: 

Customer signature

Customer name

Date

SIGNATURE PAGE(S) FOR SOFTWARE FUNDING AGREEMENT

Execution information:

Executed by Financier and Customer as an agreement effective on the Acceptance Date. Executed by Guarantor as a deed effective on the Acceptance Date. Financier, Customer and Guarantor may sign this Software Funding Agreement by handwritten or electronic signature(s). If electronic signature(s) are used, then clause 12.27 applies. There may be consequences if Customer (see clauses 12.15 and 12.16) and/or Guarantor (see clauses 10.13 and 10.14) enter into this Software Funding Agreement as a trustee of a trust and/or as a partnership.

Important notice:

This Software Funding Agreement consists of multiple documents, including the Software Funding Agreement Schedule, Signature Page(s), Terms and Conditions and where applicable, Special Conditions, Business Use Declaration, Privacy Statement, Direct Debit Request and any other documents referred to in such documents (**Documents**). Execution by Customer and Guarantor confirms Customer and Guarantor's agreement to the Documents.

Privacy information for any individual signing this Software Funding Agreement:

Financier will collect, use, disclose, hold and manage any Personal Information provided to Financier in the Documents (or in any other dealings with Financier) consistently with the Privacy and Credit Reporting Policy, which is available at www.flexirent.com.au/privacy-policy. The Privacy and Credit Reporting Policy provides more details about how Financier manages Personal Information including credit information and credit eligibility information. For more information see clauses 7.2 – 7.7.

Financier's Acceptance

Signed on behalf of Financier

Accepted by: ✍

Signature

Name

Financier's Execution Date

Customer's Acceptance

Customer acknowledges and confirms that: (1) it has read, understood and agrees to be bound by the Documents; (2) it is entitled to negotiate the Terms and Conditions; (3) it has read and understood the Privacy and Credit Reporting Policy, Privacy Statement and the privacy provisions set out in this Software Funding Agreement (clause 7) and consents to Financier collecting and using Customer's Personal Information (where applicable) in accordance with such documents and provisions; and (4) all information provided by Customer to Financier at the Acceptance Date is true and correct.

Executed by Customer as an Agreement.

Individual: Individual Customer for Commercial Use

Signed by:

NAME:

ABN:

Individual: ✍

Customer signature

Customer name

Date

Witness: ✍

Witness signature

Witness name

Date

Company: Authorised Representative of Company (e.g. power of attorney)

Signed by:

NAME:

ABN:

Authorised Representative: ✍

Authorised Representative signature

Authorised Representative name

Date

Company: Sole Director / Company Secretary – pursuant to section 127 of the Corporations Act 2001 (Cth)

Signed by:

NAME:

Sole Director & Company Secretary: ✍

Sole Director & Company Secretary signature

Sole Director & Company Secretary name

Date

Company: pursuant to section 127 of the Corporations Act 2001 (Cth)

Signed by:

NAME:

ABN:

Director: ✍

First Director signature

First Director name

Date

Director or Company Secretary: ✍

Second Director / Company Secretary signature

Second Director / Company Secretary name

Date

Guarantor's Acceptance

Guarantor: (1) agrees to provide a guarantee and indemnity on the terms and conditions specified in clause 10; (2) acknowledges having read and understood this Software Funding Agreement (including clause 10) and that Financier has recommended Guarantor obtain independent legal and financial advice in relation to this Software Funding Agreement (including clause 10); (3) acknowledges having read and understood the Privacy and Credit Reporting Policy, Privacy Statement and the privacy provisions set out in this Software Funding Agreement (clause 7) and consents to Financier collecting and using Guarantor's Personal Information (where applicable) in accordance with such documents and provisions; and (4) all information provided by Guarantor to Financier as at the Acceptance Date is true and correct.

Executed by Guarantor as a Deed.

Individual: Individual Guarantor

Signed, sealed and delivered by:

NAME:

ABN:

Individual: 

Guarantor signature

Guarantor name

Date

Witness: 

Witness signature

Witness name

Date

Company: Authorised Representative of Company (e.g. power of attorney)

Signed by:

NAME:

ABN:

Authorised Representative: 

Authorised Representative signature

Authorised Representative name

Date

Company: Sole Director / Company Secretary – pursuant to section 127 of the Corporations Act 2001 (Cth)

Signed by:

NAME:

Sole Director & Company Secretary: 

Sole Director & Company Secretary signature

Sole Director & Company Secretary name

Date

Company: pursuant to section 127 of the Corporations Act 2001 (Cth)

Signed by:

NAME:


ABN:

Director: 

First Director signature

First Director name

Date

Director or Company Secretary: 

Second Director / Company Secretary signature

Second Director / Company Secretary name

Date

TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1. **Definitions.** In this Software Funding Agreement, unless the context otherwise requires:

Acceptance Date means the earlier of the:

- Financier's Execution Date; and
- date Financier provides finance for Software.

Administrative Fees means an amount not less than one (1) Instalment Payment (or if the Instalment Payment Interval is longer than thirty (30) days, the proportion of an Instalment Payment that reflects a thirty (30) day period) or such other amount as may be reasonably charged by Financier from time to time.

Affected Individual has the meaning given to it in clause 7.1.

AML Act means the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth).

AML/CTF Laws means any law in relation to the prevention of money laundering and terrorism financing including the AML Act and any rules, regulations or guidance notes made in connection with the AML Act.

Amount Financed means the amount financed by Financier to Customer under this Software Funding Agreement, namely:

- "Amount Financed" specified in the Software Funding Agreement Schedule; and
- any part of the Amount Financed that remains outstanding from time to time.

APP means the Australian Privacy Principles prescribed in the Privacy Act.

Application Form means (if any) the application form (however described) that Financier requires Customer to duly

complete and lodge with Financier for Customer to become a customer of Financier.

Arrears means (if any) the arrears of the Instalment Payments.

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

Attorney has the meaning given to it in clause 9.7.

Australian Consumer Law means Schedule 2 of the CC Act.

Authorised Officer means any director, secretary or other officer, employee or person notified in that capacity by any party to this Software Funding Agreement in or under any provision of this Software Funding Agreement to the other party, without withdrawal or cancellation of that notification as at that time.

Break Costs means (if any) the reasonable cost, loss or expense actually arising by reason of the cancellation, termination or alteration of any funding arrangements entered into by Financier in order to fund (whether in whole or in part) this Software Funding Agreement or reflecting the difference between the rate of interest used by Financier to calculate the Instalment Payments and the rate of interest used by Financier to calculate instalment payments in similar transactions on or around the Termination Date.

Business Day means a day on which Financier is open for business in New South Wales and, where applicable, in the jurisdiction of Customer.

Business Use Declaration means (if any) the declaration signed by Customer declaring that:

- Software is being financed wholly or predominantly for business purposes; and

- (b) the protections under the National Credit Code do not apply to this Software Funding Agreement.

CC Act means *Competition and Consumer Act 2010* (Cth).

Commencement Date means the earlier of:

- (a) if any, the "Commencement Date" specified in the Software Funding Agreement Schedule; and
(b) the Acceptance Date.

Customer means "Customer(s)" specified in the Software Funding Agreement Schedule.

Direct Debit Request means the "Direct Debit Request" authorising Financier to debit Customer's nominated financial institution account and which incorporates the Direct Debit Service Agreement.

Direct Debit Service Agreement means the agreement setting out the terms and conditions governing the Direct Debit Request.

Discount Rate means the rate reasonably determined by Financier, having regard to prevailing interest rates as appropriate to calculate the net present value of the remaining Instalment Payments. See Present Value Amount.

Documents has the meaning given to it on the Signature Page(s).

Early Termination Amount (see clause 4.2(d)) means the sum of:

- (a) Present Value Amount;
(b) Break Costs; and
(c) Administrative Fees.

EULA means the "End User Licence Agreement" governing the operation and use of Software which has been negotiated and agreed directly between Customer and Software Supplier.

Expiry Date means the scheduled expiration of the Term (calculated with reference to the Commencement Date).

Fees and Charges (see clause 4.2(g)) means any fees and charges that Financier may reasonably request or incur, including:

- (a) for the provision of information to or by Financier in connection with or pursuant to this Software Funding Agreement;
(b) for acting on any assignment or variation of this Software Funding Agreement;
(c) to recover registration, account maintenance and other related fees; and
(d) other administrative and procedural matters under this Software Funding Agreement as notified by Financier.

Financier means:

- (a) "Financier" as specified on the first page of this Software Funding Agreement; and
(b) includes (if applicable) any Receiver, Attorney, employee or agent of Financier for the purposes of this Software Funding Agreement.

Financier's Authorised Officer means any:

- (a) Authorised Officer of Financier; and
(b) person(s) or class of person(s) nominated and/or employed by Financier or Related Entity of Financier (including, if applicable, any Receiver, Attorney, employee or agent of Financier for the purposes of this Software Funding Agreement).

Financier's Execution Date means the date this Software Funding Agreement is duly signed and accepted on Financier's behalf by Financier's Authorised Officer, namely the "Financier's Execution Date" in the "Financier's Acceptance" execution block on the Signature Page(s).

First Instalment Payment (see clause 4.2(b)) means the first Instalment Payment due to Financier by Customer on the First Instalment Payment Date, namely:

- (a) the "First Instalment Payment" specified in the Software Funding Agreement Schedule; or
(b) if not specified in the Software Funding Agreement Schedule, an amount equal to the Instalment Payment.

First Instalment Payment Date means the date the First Instalment Payment is due to Financier by Customer, namely:

- (a) the date notified by Financier in writing; or
(b) if no date is notified by Financier, the Commencement Date.

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 the guarantee and indemnity granted by Guarantor to Financier as specified in clause 10.

Guarantee Limit (see clause 10.6) means (if any) the "Guarantee Limit" specified in the Software Funding Agreement Schedule. The Guarantee Limit is the corresponding Guarantor's maximum amount payable to Financier under the Guarantee and Indemnity. For clarity, if no amount is specified in the Guarantee Limit, the Guarantee Limit is unlimited.

Guarantor means (if any) "Guarantor(s)" specified in the Software Funding Agreement Schedule. For clarity, unless otherwise agreed in writing between the parties, if there is no Guarantor specified in the Software Funding Agreement Schedule the Guarantee and Indemnity will automatically remain dormant and inactive.

Hardware means any physical product manufactured by a third party and includes each individual item, unit or component of such product.

Insolvency Event means either party enters into, or any steps or reasonably genuine threats are taken to have either party enter into, liquidation, provisional liquidation, official management, receivership, receivership and management, administration, bankruptcy or any arrangement, reconstruction or composition with either party's creditors or any of them or Customer fails to pay either party's debts as they fall due or otherwise become insolvent.

Instalment Payments (see clause 4.2(c)) means, subject to the terms and conditions of this Software Funding Agreement, the "Instalment Payments" specified in the Software Funding Agreement Schedule which are due to Financier by Customer on each Instalment Payment Date occurring during the Term. For clarity, Instalment Payments include the First Instalment Payment.

Instalment Payment Date means the ongoing date the Instalment Payments are due to Financier by Customer during the Term. Unless otherwise notified by Financier in writing, the Instalment Payment Date is the same day of the month as the First Instalment Payment Date at each Instalment Payment Interval. See clause 4.4 regarding the dates for Payment generally.

Instalment Payment Intervals means the "Instalment Payment Intervals" specified in the Software Funding Agreement Schedule. For clarity, the Instalment Payment Interval is the scheduled period between when the Instalment Payments are due to Financier by Customer (e.g. weekly, fortnightly, monthly, quarterly or semi-annually). Financier may specify alternative Instalment Payment Intervals if not specified in the Software Funding Agreement Schedule.

Moneys Owning (see clause 4.2(f)) means all moneys, liabilities, debts or obligations due or payable from or by Customer (in any capacity) to Financier at any time and from time to time under or in relation to or in connection with this Software Funding Agreement or any other agreement created at any time between Customer and Financier under or in relation to or in connection with this Software Funding Agreement including:

- (a) by way of principal, interest, cost, indemnity, tax, damages or monetary judicial order under, in relation to, in connection with or as a result of any breach of or default under this Software Funding Agreement or that other agreement; and
(b) whether payable:
(i) presently or in the future;
(ii) actually, prospectively or contingently;
(iii) alone or jointly with another person, and irrespective of whether any amount payable is ascertained or unascertained or arises from the transfer to Financier of the liability, debt or obligation.

National Credit Code means the National Credit Code set out in Schedule 1 of the NCCP Act.

NCCP Act means the *National Consumer Credit Protection Act 2009* (Cth).

Payments means the payments paid or payable (actually or contingently) by Customer under this Software Funding Agreement including:

- (a) Upfront Payment;
(b) First Instalment Payment;
(c) Instalment Payments;

- (d) Early Termination Amount;
- (e) Present Value Amount;
- (f) Fees and Charges;
- (g) Service Fees; and
- (h) all other amounts payable by Customer under this Software Funding Agreement.

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

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

PPS Register means the Personal Property Securities Register established under Part 5.2 of the PPS Act.

PPS Regulations means the *Personal Property Securities Regulations 2010* (Cth).

PPS Security Interest means a security interest under the PPS Act.

Present Value Amount means the Instalment Payments (net of GST) which, but for the termination of this Software Funding Agreement, would have been payable by Customer under this Software Funding Agreement as from the Termination Date up to and including the Expiry Date (inclusive of any unamortised brokerage or commission comprising part of any Instalment Payments), reduced to a present value as at the Termination Date by applying the Discount Rate to such Instalment Payments.

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

Privacy and Credit Reporting Policy means Financier's "Privacy and Credit Reporting Policy" which is available at www.flexirent.com.au/privacy-policy. The Privacy and Credit Reporting Policy provides more details about how Financier manages Personal Information, including credit information and credit eligibility information.

Privacy Statement means (if any) the document titled "Privacy Statement, Acknowledgements & Consent".

Purchase Date means the date Customer acquires Software.

Receiver means a receiver, manager or receiver and manager, and when two (2) or more persons are appointed as receivers, managers or receivers and managers refers to each person separately as well as any two or more of them jointly.

Related Entity has the meaning given to it in the *Corporations Act 2001* (Cth).

Security Interest means:

- (a) a PPS Security Interest;
- (b) any other mortgage, pledge, lien, charge, hypothecation, trust arrangement, title retention arrangement, set-off arrangement; and
- (c) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.

Service Fees (see clause 4.2(h)) has the meaning given to it in clause 5.1.

Service Provider means the person providing Services.

Services means:

- (a) all service and maintenance required or undertaken in respect of Software;
- (b) any services supplied or performed by or on behalf of Customer regarding Software; and
- (c) anything else that Flexi may agree to provide or procure by way of maintenance and/or services in respect of Software in writing from time to time.

Signature Page(s) means the "Signature Page(s)" of this Software Funding Agreement, comprising the execution blocks for Financier, Customer and Guarantor.

Software means:

- (a) "Software" specified in the Software Funding Agreement Schedule;
- (b) any other items, in the reasonable opinion of Financier, deemed to be or form part of Software (including the EULA).

Software Funding Agreement means this document being the agreement between Financier, Customer and Guarantor comprising the:

- (a) Software Funding Agreement Schedule;
- (b) Signature Page(s); and
- (c) Terms and Conditions;

and where applicable any:

- (d) Special Conditions;
- (e) Business Use Declaration;
- (f) Privacy Statement; and
- (g) Direct Debit Request.

Software Funding Agreement Schedule means the "Software Funding Agreement Schedule" appearing on the first page of this Software Funding Agreement.

Software Seller means "Software Seller" specified in the Software Funding Agreement Schedule.

Software Supplier means "Software Supplier" specified in the Software Funding Agreement Schedule.

Special Conditions means (if any) the "Special Conditions" specified in the Software Funding Agreement Schedule.

Start Date means the earlier of:

- (a) Acceptance Date; and
- (b) Purchase Date.

Term (see clause 3.1) means the "Term" specified in the Software Funding Agreement Schedule. Subject to the terms and conditions of this Software Funding Agreement, the Term is the scheduled contracted term of this Software Funding Agreement starting from the Commencement Date up to and including the Expiry Date.

Termination Date means the date of effective termination of this Software Funding Agreement. For clarity, the Termination Date may or may not be the Expiry Date.

Termination Event occurs if:

- (a) **Failure to pay:** Customer fails to pay any Payment within two (2) Business Days of the due date;
- (b) **Breach:** Customer breaches any material provision of this Software Funding Agreement and, if such breach is capable of rectification, does not rectify the breach within two (2) Business Days of receiving a detailed written notice from Financier requiring Customer to rectify the breach;
- (c) **Misrepresentation:** any representation, warranty or statement made by Customer in, or in connection with, this Software Funding Agreement is untrue or misleading (whether by omission or otherwise) in any material respect (see clause 8);
- (d) **Material change:** there is, in Financier's reasonable opinion, a material adverse change in Customer's business, assets or financial condition or a material change in the persons who comprise, own or control the management of Customer without Financier's prior written consent;
- (e) **Cross default:** Customer fails, or a Related Entity of Customer fails, to comply with its material obligations under any leasing, borrowing, hiring or other finance agreement or arrangement with Financier or any Related Entity of Financier, or under any guarantee, indemnity or undertaking given to Financier or any Related Entity of Financier;
- (f) **Partnership:** If Customer is a partnership, the partnership is dissolved or an application is made to a court for dissolution of the partnership; or
- (g) **Trust:** if Customer is a trustee, Customer ceases to be entitled to be indemnified fully out of the Trust property before the Trust's beneficiaries for the liabilities Customer incurs under or in connection with this Software Funding Agreement or Customer ceases to be trustee of the Trust without the prior written consent of Financier.

Terms and Conditions means these "Software Funding Agreement – Terms and Conditions".

Total Amount Payable means the total amount payable by Customer under this Software Funding Agreement.

Trust has the meaning given to it in clause 12.15.

Upfront Payment (see clause 4.2(a)) means (if any) the "Upfront Payment" specified in the Software Funding Agreement Schedule. In certain circumstances, Financier may accept or require Customer to make an Upfront Payment.

1.2. **Interpretation.** In this Software Funding Agreement, unless the context otherwise requires:

- (a) a reference to any party (including Financier, Customer or Guarantor) includes that party's successors, personal legal representatives and permitted assigns;

- (b) if any party is comprised of more than one (1) person, those persons' obligations are joint and separate;
- (c) the singular includes the plural and vice versa;
- (d) the word "including" is not limiting;
- (e) a reference to a person includes a company, trust, partnership or any other type of legal entity;
- (f) a reference to a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (g) all momentary amounts are in Australian dollars, unless otherwise stated;
- (h) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Software Funding Agreement;
- (i) headings are for convenience only and do not affect the interpretation, or form part of, this Software Funding Agreement;
- (j) a clause, party, schedule or annexure is a reference to a clause, party, schedule or annexure of this Software Funding Agreement;
- (k) if there is any inconsistency between the Special Conditions and the Terms and Conditions, the Special Conditions will prevail to the extent of the inconsistency; and
- (l) the following terms have the meanings given to them in the PPS Act: account; amendment demand; collateral; financing change statement; financing statement; perfected; personal property; registration; secured party; serial number; and verification statement.

2. **GENERAL**

2.1 **Customer acknowledgements.** Customer acknowledges and agrees that subject to clause 2.2:

- (a) it has satisfied itself as to the condition and suitability of Software for Customer's purposes;
- (b) it has not relied on Financier in deciding to enter into this Software Funding Agreement;
- (c) it has obtained its own independent taxation, legal, financial and accounting advice in relation to this Software Funding Agreement, or else has determined that it does not require independent advice of this kind;
- (d) it will, at its own cost, obtain delivery and, if applicable, installation and commissioning of Software;
- (e) Financier will not be liable for any delay in delivery, installation or commissioning of Software;
- (f) Customer must satisfy itself that Hardware is adequate for the installation and operation of Software and Customer is not relieved of any obligation because Software and/or Hardware is or becomes defective, damaged, lost, stolen, destroyed or unsuitable for Customer's purposes;
- (g) Financier is providing the Amount Financed to enable the purchase of Software by Customer directly from Software Seller or Software Supplier (as applicable);
- (h) Financier is not a party to the EULA, has no interest in the EULA and does not purport to sub-licence or otherwise grant rights in respect of the EULA;
- (i) Financier is not Software Seller and makes no representation in relation to Software or Hardware;
- (j) Customer has selected Software and Software Seller based upon Customer's own skill and judgment;
- (k) the terms governing Customer's use, rights and obligations in respect of Software are governed by the EULA and Customer agree to be bound by the terms of the EULA, including without limitation, any obligations or restrictions relating to the operation or use of Software as set out in the EULA;
- (l) Customer has obtained a copy of the EULA from Software Supplier prior to entering into this Software Funding Agreement, has read and understood its terms and conditions and accept the scope of any representations, warranties and undertakings provided by Software Supplier; and
- (m) Financier does not provide any representation or warranty in connection with Software, the EULA, their operation or use.

2.2 **Disclaimer by Financier.**

- (a) Under the ASIC Act, Australian Consumer Law or a law to a similar effect, Customer has the benefit of statutory warranties, guarantees, linked credit provider liability and other rights in respect of Software. In particular, in the event of a major failure of the Software, Customer is entitled to a replacement or refund, and for compensation for any other reasonably foreseeable loss or damage. In the event the Software fails to be of acceptable quality and the failure does not amount to a major failure, Customer is entitled to have the Software repaired or replaced. Apart from this, and to the fullest extent permitted by law:
 - (i) all express and implied terms, conditions and warranties (other than the ones specified in this Software Funding Agreement) are excluded;
 - (ii) Financier makes no representation or warranty as to the condition, specifications, quality, fitness for purpose, suitability or safety of Software or as to the taxation treatment or accounting classification of any transaction evidenced by this Software Funding Agreement; and
 - (iii) Financier is not liable for any damage, injury or loss to any person or property arising from the possession, operation, repair or use of Software;

2.3 **Limitation of Liability.** Whether or not the ASIC Act, Australian Consumer Law or any law to a similar effect applies, Financier's liability for anything in relation to Software or its use, including damage or economic loss to anyone, is limited to the maximum extent permitted by law. To the extent that Customer acquires Software that is not ordinarily acquired for personal, domestic or household use, Financier's liability is limited to the maximum extent permitted by law (but excluding any vicarious liability arising because of any act or omission of Financier or Financier's agents or employees), Financier will not be liable for any indirect, consequential or economic loss or damage arising under or in connection with this Software Funding Agreement.

3. **TERM**

3.1 **Term.** Subject always to the terms and conditions of this Software Funding Agreement, this Software Funding Agreement commences on the Commencement Date and ends on the Expiry Date.

4. **PAYMENTS**

4.1 **Total Amount Payable.** Customer must pay Financier the Total Amount Payable in accordance with the terms and conditions of this Software Funding Agreement.

4.2 **Payments.** Customer must make Payments in the following way:

- (a) **Upfront Payment:** on the Start Date, Customer must pay Financier the Upfront Payment;
- (b) **First Instalment Payment:** on the First Instalment Payment Date, Customer must pay Financier the First Instalment Payment;
- (c) **Instalment Payments:** on each Instalment Payment Date occurring during the Term (except on the First Instalment Payment Date – see clause 4.2(b)), Customer must pay Financier the Instalment Payments;
- (d) **Early Termination Amount:** Customer must pay Financier the Early Termination Amount in accordance with this Software Funding Agreement (see clause 9.4(a));
- (e) **Present Value Amount:** Customer must pay Financier the Present Value Amount in accordance with this Software Funding Agreement (see clause 9.3(a));
- (f) **Moneys Owning:** Customer must pay Financier the Moneys Owning on the Expiry Date and otherwise in accordance with this Software Funding Agreement (see clause 9.5);
- (g) **Fees and Charges:** Customer must pay the Fees and Charges in accordance with this Software Funding Agreement (including clause 4.10);
- (h) **Service Fees:** Customer must pay the Service Fees in accordance with this Software Funding Agreement (including clause 5.1); and
- (i) **Miscellaneous:** Customer must pay all other amounts payable under this Software Funding Agreement in accordance with this Software Funding Agreement.

- 4.3 **Use of Amount Financed.**
- (a) Customer must only use the Amount Financed in connection with the acquisition of Software.
 - (b) If the Amount Financed has not been utilised in accordance with clause 4.3(a) within one (1) month of the Acceptance Date (or such later date as Financier may agree in writing), then at Financier's option, this Software Funding Agreement will terminate.
 - (c) Customer acknowledges and agrees that Financier is not obliged to advance the Amount Financed if Financier has notice of another Security Interest in Software and that Security Interest will not be discharged upon the proceeds of the Amount Financed being paid to Software Seller or Software Supplier (as required) or the secured party who holds the benefit of that Security Interest.
- 4.4 **Payments to be made in advance.** Unless otherwise expressly specified in this Software Funding Agreement or agreed in writing by Financier, Payments are due in advance including the Instalment Payments which are due in advance on the Instalment Payment Date.
- 4.5 **Amount of Instalment Payment.** The Instalment Payment has been calculated on the basis:
- (a) interest has been calculated in accordance with Financier's usual practices for transactions of this nature;
 - (b) that all Instalment Payments will be paid when due;
 - (c) of the Interest Rate adopted by Financier for the purposes of this Software Funding Agreement; and
 - (d) of the estimated amount of stamp duty and other fees and expenses payable at the time of disbursement.
- 4.6 **Adjustment of Instalment Payment.** Financier may adjust the amount of each Instalment Payment as a result of any variation of any estimated amount or otherwise in accordance with this Software Funding Agreement by giving written notice to Customer at least ten (10) days prior to the adjusted Instalment Payment becoming payable.
- 4.7 **Date for Payment.** Subject to clause 4.8, Customer must make Payments on the dates provided in accordance with this Software Funding Agreement (see Software Funding Agreement Schedule and clause 4.2), or upon demand if no date is specified, in funds that are immediately available to Financier. If a date to make a Payment:
- (a) is not a Business Day, the Payment must be made on the preceding Business Day; or
 - (b) falls on a day not contained in a month, the Payment must be made on the last day of that month.
- 4.8 **Method of Payment.** Customer must make Payments by way of direct debit (see clause 12.23) or in such other manner as Financier may from time to time reasonably direct in writing. In the case of credit card payments, a payment administration fee may be payable to Financier in accordance with this Software Funding Agreement.
- 4.9 **Customer must reimburse Financier for GST.** Customer must pay or reimburse Financier on demand for the amount of any GST payable under or in connection with this Software Funding Agreement including on any supply made by Financier under or in connection with this Software Funding Agreement (including any GST payable in connection with the Early Termination Amount). Customer must also pay or reimburse Financier on demand for the amount of any GST payable by Financier on the acquisition of Software (to the extent that Financier is unable to claim an input tax credit in respect of such GST).
- 4.10 **Fees and Charges.** Customer must pay to Financier the Fees and Charges. A full list of the Fees and Charges is available upon request by Customer. Customer acknowledges these Fees and Charges may change from time to time where such change is applied generally to other customers of Financier. Financier will provide Customer with reasonable written notice of any change to the Fees and Charges not being less than notice of one (1) Instalment Payment Interval. Any change to the Fees and Charges will only be made to the extent applied to other like customers of Financier.
- 4.11 **Payments are absolute and unconditional.** Subject to clause 2.2, Customer's obligation to pay the Payments is absolute and unconditional. Customer agrees not to exercise or seek to exercise any right or claim to withhold payment or claim any deduction or set-off.
- 4.12 **Prepayment.** Customer agrees that unless it is repaying the Amount Financed in full (along with the Early Termination Amount), that if Customer makes an early repayment and it is accepted by Financier (which Financier may or may not do in its sole discretion), any such prepayment will not be credited to Customer's account until it is due.
- 5. SERVICES**
- 5.1 **Charges for Services.** If the Instalment Payments include amounts payable for the provision of Services (or for Financier's recovery of amounts funded by Financier for Services relating to Software) (**Service Fees**), whether or not such amounts are separately identified in the Software Funding Agreement Schedule, Customer agrees and acknowledges that:
- (a) Service Fees have been included at Customer's request;
 - (b) Customer has given to Financier a direction to pay the Service Fees to the Service Provider or to retain the Service Fees if Financier has already paid the Service Fees to the Service Provider;
 - (c) Financier is not responsible for the maintenance of Software or the provision of Services or any other services;
 - (d) Financier is not related to the Service Provider; and
 - (e) Subject to clause 2.2, Customer's obligation to:
 - (i) pay the Payments free of any deduction, withholding or set-off on any account; and
 - (ii) perform any other obligations under this Software Funding Agreement,
 is absolute and unconditional and, without limitation, will not be affected by the:
 - (iii) failure of Service Provider to perform Services;
 - (iv) insolvency of Service Provider; or
 - (v) termination of any agreement or arrangement for the provision of Services.
- 6. INDEMNITIES AND RELEASES**
- 6.1 **Customer indemnities.** Customer indemnifies Financier and Financier's agents and employees against all loss (including loss of bargain or profit), damage, liabilities, taxes, duties, charges and reasonable costs and expenses (including reasonable solicitors' fees and disbursements and collection fees) of whatever kind or nature, arising directly or indirectly from, or in respect of:
- (a) Software delivery, installation, use or change of use, location, condition, operation, seizure, forfeiture or other confiscation, or Software loss, destruction, theft or damage however caused including loss of value resulting from insufficient, inadequate or faulty repair;
 - (b) any claim or demand made by any third party in relation to Software or the use of Software;
 - (c) any damage to property or death of, or injury to, any person suffered or sustained in connection with Software or the use of Software;
 - (d) Customer not paying Financier in the way Financier requires under this Software Funding Agreement, including under clause 4;
 - (e) any breach of this Software Funding Agreement by Customer and/or arising from the early termination of this Software Funding Agreement;
 - (f) any untrue or misleading representation, warranty or statement (including on tax matters) made by Customer in, or in connection with, this Software Funding Agreement (and which are not otherwise recoverable under this Software Funding Agreement);
 - (g) any steps taken by Financier to administer, exercise, enforce or preserve any of Financier's rights under or in connection with this Software Funding Agreement;
 - (h) any amount actually incurred by Financier in rectifying any breach of this Software Funding Agreement by Customer where Financier determines it appropriate to do so (for example, payment of any amount to remove any repairer's lien);
 - (i) the taxation or accounting treatment of this Software Funding Agreement by Financier and Customer including any change in any tax assumptions made by Financier in calculating the Instalment Payments and any loss, reduction or disallowance of any depreciation allowance or of any tax deduction or rebate of any

income or other tax upon which Financier has relied in calculating the Instalment Payments payable under this Software Funding Agreement; and

- (j) any Security Interest contemplated by this Software Funding Agreement not having its intended priority required by Financier, failing to attach to Software, not being perfected, being void, illegal, invalid, unenforceable or of limited force and effect.

6.2 Customer must pay or bear and indemnify Financier. Customer must pay or bear and indemnify Financier against:

- (a) all stamp duties, taxes (other than personal income tax of Financier) in respect of this Software Funding Agreement, Software, their purchase, use or sale;
- (b) other duties, fees and fiscal imposts payable on or in respect of this Software Funding Agreement;
- (c) any associated transaction fees or costs actually incurred by Financier in connection with the acquisition of Software or Financier entering into this Software Funding Agreement, including any reasonable costs incurred in seeking to recover any payments owed by Customer to Financier and any costs incurred in Financier satisfying or dealing with any obligation which Customer is bound to perform under this Software Funding Agreement;
- (d) any action taken by Financier under or in relation to the PPS Act, including any registration, responding to an amendment demand, responding to a request under section 275 of the PPS Act, or any search of the PPS Register; and
- (e) other amounts under this Software Funding Agreement including any:
 - (i) moneys payable under this Software Funding Agreement;
 - (ii) liability incurred by or which Financier must pay in connection with Financier's purchase or sale of Software;
 - (iii) liability arising from the ownership, use or disposal of Software; and
 - (iv) other transaction evidenced by this Software Funding Agreement.

Should the amount actually payable to any relevant authority for any such duties, taxes, fees or imposts differ from the amount (if any) disclosed in the Software Funding Agreement Schedule or otherwise notified by Financier to Customer, Customer must pay Financier the amount of the deficiency when due and otherwise on demand by Financier.

6.3 Limitation of indemnities. The indemnities given by Customer under clauses 6.1 and 6.2 do not extend to loss (including loss of bargain or profit), damage, liabilities, costs, taxes, duties, charges and expenses suffered or incurred by Financier as a result of the negligent acts or omissions of Financier or Financier's agents or employees.

6.4 Calculation for indemnities. Upon written request from Customer, Financier will provide Customer in reasonable detail the calculation of any amount claimed and payable by Customer under the indemnities given by Customer under clauses 6.1 and 6.2. Relevantly, see clause 12.22.

6.5 Customer releases Financier. Customer releases Financier, to the full extent permitted by law, from all claims and demands of every kind arising out of the delivery, installation, location or use of Software, including any liability which may arise in respect of any accident or damage to property or death of, or injury to, Customer or any other person of whatever nature or kind or arising out of any steps taken by Financier to exercise, enforce or preserve Financier's rights under or in connection with this Software Funding Agreement. The release by Customer under this clause 6.5 does not extend to any claims or demands arising under or in connection with the negligent acts or omissions of Financier or Financier's agents or employees, or with Customer's rights under the ASIC Act, Australian Consumer Law or laws of similar effect.

7. PRIVACY

7.1 Privacy. Customer agrees that if it provides Personal Information to Financier in relation to any third party who is an individual (**Affected Individual**) (for example, as applicable, any director, employee or other staff member, employer or accountant) when dealing with Financier, Customer

acknowledges for itself (where Customer is an individual) and agrees to:

- (a) make any Affected Individual aware that:
 - (i) their Personal Information has been collected, and may be used and disclosed, by Financier for the purposes of Customer dealings with Financier (including, as relevant, to assess Customer applications for credit and to provide Customer with Financier's products and services);
 - (ii) Customer may not be able to obtain relevant products or services from Financier if Customer or Affected Individual's Personal Information is not provided to Financier;
 - (iii) their Personal Information will be held, used and disclosed consistently with the Privacy and Credit Reporting Policy; and
 - (iv) they have various rights relating to their Personal Information held by Financier (such as to request access to it) which they can exercise by contacting Financier using the details in the Privacy and Credit Reporting Policy;
- (b) take reasonable steps to provide each Affected Individual with a copy of the Privacy and Credit Reporting Policy; and
- (c) take reasonable steps to comply with any reasonable request from Financier to provide each Affected Individual with a copy of any other privacy related notification that Financier may provide Customer from time to time.

7.2 Privacy – where Customer and/or Guarantor is an individual.

- (a) Clauses 7.2 – 7.7 apply where Customer and/or Guarantor is an individual and set out:
 - (i) consents that Customer and Guarantor give Financier in relation their Personal Information by applying for credit from Financier or applying to be a guarantor in relation to credit; and
 - (ii) important information about Financier's collection, use, disclosure and management of Customer and Guarantor's personal information.
- (b) The Privacy and Credit Reporting Policy provides more details about how Financier manages Customer and Guarantor's Personal Information, including credit information and credit eligibility information.
- (c) When collecting, using, disclosing and managing Customer's Personal Information, Financier complies with the Privacy Act as well as the Credit Reporting Privacy Code.

7.3 Collection, use disclosure of Customer and/or Guarantor's Personal Information.

- (a) Financier ordinarily collects Personal Information about Customer and Guarantor for the following purposes and, to the extent not already authorised by law, Customer and Guarantor jointly and separately acknowledge and agree to Financier 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 Customer and Guarantor's account or other products, responding to Customer and Guarantor's questions and performing Financier's obligations in relation to credit and insurance and extended warranty products provided to Customer and Guarantor;
 - (ii) either Financier, any relevant insurer, the supplier or manufacturer of Goods or any other service provider appointed by Financier contacting Customer and Guarantor (as applicable) about any end of term options, any upgrade options or other special offers or promotions;
 - (iii) protecting Financier and its assets (including against fraud) and selling Financier's assets (including by assigning any debts);
 - (iv) enforcing Financier's rights (including undertaking debt collection) in connection with any credit provided to Customer;
 - (v) obtaining, administering and enforcing any guarantee given or to be given by Customer or

- any guarantee given by Guarantor (including the Guarantee and Indemnity), and assessing whether to accept Guarantor as a guarantor;
- (vi) managing, changing and improving Financier's systems and processes; and
 - (vii) complying with laws. Various Australian laws may require Financier to collect Customer and Guarantor's Personal Information, or Financier may need to do so to be able to comply with other obligations under those laws. These laws include:
 - A. AML/CTF Laws (e.g. for identity verification);
 - B. NCCP Act (e.g. for responsible lending);
 - C. PPS Act (e.g. for search and registration purposes);
 - D. *Financial Sector (Collection of Data) Act 2001* (Cth);
 - E. Corporations Act; and
 - F. any other regulatory legislation (e.g. requiring Financier 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), *Income Tax Assessment Act 1997* (Cth) and other taxation laws (e.g. to comply with information requests issued by the Commissioner of Taxation).
- (b) Financier collects Customer and Guarantor's personal information primarily from Customer and Guarantor. However, sometimes Financier may collect Personal Information about Customer and Guarantor from third parties for the purposes described above where it is unreasonable or impracticable to collect it directly from Customer or Guarantor. These third parties include:
- (i) the supplier or manufacturer of Goods;
 - (ii) other credit providers;
 - (iii) insurers (such as insurers who provide insurance in relation to Customer and Guarantor's credit);
 - (iv) any of Customer and Guarantor's employers, former employers, referees, banks, landlords, guarantors, accountants, lawyers and financial advisers;
 - (v) service providers to Financier (including debt collection agencies, introducers, private investigators, professional advisers);
 - (vi) professional organisations;
 - (vii) internet sources;
 - (viii) public and subscriber only databases; and
 - (ix) government authorities.
- The circumstances in which Financier may do so include, where Financier requires information from a third party to assist Financier to deal with any application or request made by Customer and Guarantor (such as to verify information Customer and Guarantor have provided or to assess Customer and Guarantor's circumstances) or to assist Financier to locate Customer and Guarantor or communicate with Customer and Guarantor.
- (c) The consequences of Customer and Guarantor not providing Financier required Personal Information may include Financier not able to approve Customer's application for credit or a related product, or accept Guarantor as a guarantor, or that Financier will not be able to deal with future requests or queries from Customer and Guarantor.
 - (d) Customer and Guarantor agree that Financier can disclose Customer and Guarantor Personal Information (including, where permitted to do so under the Privacy Act, Customer and Guarantor's credit information and credit eligibility information) for the purposes described in clauses 7.3(a) – (b) to:
 - (i) any of Financier's Related Entities, Financier's assignees or potential assignees, the supplier or manufacturer of Goods, any other supplier appointed by Financier, 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 Customer's credit), Guarantor or proposed guarantor of Customer's obligations to Financier, Customer's assignees or proposed assignees, debt collection agencies, Financier's banks and financial advisers, Financier's lawyers, accountants and other professional advisers, any suppliers or contractors to Financier whom may need to have access to Customer and Guarantor's Personal Information for the purpose of providing services to Financier, Customer or Guarantor (including valuers, physical and electronic file storage suppliers, receivables management suppliers and data warehouses);

- (ii) any person specifically authorised by Customer and Guarantor in writing; and
- (iii) any person as permitted or required by law (except this clause 7.3(d)(iii) does not permit Financier 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).

7.4 **Financier may disclose Customer and/or Guarantor's Personal Information to overseas recipients.**

- (a) Some of the organisations to whom Financier may disclose Customer and Guarantor's personal information (including 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 the Privacy and Credit Reporting Policy).
- (b) Customer and Guarantor acknowledge and agree that by consenting to Financier disclosing Customer and Guarantor's personal information to overseas recipients, APP 8.1 will not apply to the disclosure (which means that Financier will not be obliged under the Privacy Act to take reasonable steps to ensure that an overseas recipient does not breach the APPs and Financier may not be liable under the Privacy Act if the recipient does not act consistently with the APPs).
- (c) By applying for this product, Customer consents to disclosures to overseas recipients. By agreeing to provide the Guarantee and Indemnity, Guarantor consents to disclosures to overseas recipients.

7.5 **Important information about credit reporting.**

- (a) The Privacy and Credit Reporting Policy contains important information about credit reporting, including the credit reporting bodies that Financier deals with, credit information that Financier may give them about Customer and Guarantor (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. Customer and Guarantor have important rights regarding access, correction and complaints relating to credit reporting information, as well as certain rights to prevent its use for direct marketing or where Customer and Guarantor have been a victim of fraud. Customer and Guarantor will also find details about these rights on the same page. Customer and Guarantor can also ask Financier to provide Customer and Guarantor with a copy of this important information.
- (b) If Customer has made an application for commercial credit, or have obtained commercial credit from Financier, Customer acknowledges and agrees that Financier can also obtain credit reporting information about Customer from a credit reporting body for the purposes of:
 - (i) assessing Customer's application for commercial credit; or
 - (ii) collecting payments that are overdue in relation to commercial credit provided to Customer.
- (c) Customer and Guarantor agree that Financier can obtain, from any business providing information about commercial credit worthiness, commercial credit reports about Customer and Guarantor for the purposes of assessing applications for credit.

- (d) Customer and Guarantor acknowledge and agree that Financier may obtain credit reporting information about Guarantor from a credit reporting body for the purposes of assessing whether to accept Guarantor as a guarantor.
- (e) Customer and Guarantor acknowledge and agree that Financier can disclose Customer and Guarantor's name, residential address and date of birth to a credit reporting body so that the credit reporting body can provide an assessment to Financier whether the information provided by Customer and Guarantor 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 Customer, Guarantor or other individuals). This will be done for the purpose of verifying Customer and Guarantor's identify as required under the AML/CTF Laws where applicable. If Customer and Guarantor would prefer Financier to use another form of verification, such as passport or drivers licence, Customer and Guarantor must notify Financier and provide Financier with any information Financier requests.
- 7.6 **Marketing products and services to Customer and Guarantor.** Customer and Guarantor agree to Financier to using and disclosing their Personal Information (including telephone number, regardless of whether it is listed on the Do Not Call Register and email or other electronic addresses) to provide Customer and Guarantor with information about Financier's other products and services and the products and services offered by Financier's dealers, insurers (such as insurers who provide credit-related insurance), Related Entities or suppliers. This includes communicating with Customer and Guarantor via emails, text messages or other electronic messages (without an unsubscribe facility). This agreement operates indefinitely. However, Customer and Guarantor can tell Financier that it is no longer wishes to use or disclose its Personal Information for these purposes by contacting Financier on 1300 340 447.
- 7.7 **Accessing and correcting Customer and/or Guarantor's Personal Information.**
- (a) Customer and Guarantor have rights to request access to and correction of their Personal Information that Financier holds about Customer and Guarantor (including credit information and credit eligibility information). For details about how to make such requests see the Privacy and Credit Reporting Policy.
- (b) Financier always attempts to deal with Customer and Guarantor's Personal Information consistently with Financier's privacy obligations and Financier is committed to resolving any issues that Customer and Guarantor may wish to raise. The Privacy and Credit Reporting Policy contains details about Customer and Guarantor can make a complaint if Customer or Guarantor think there has been a breach of the Privacy Act or the Credit Reporting Privacy Code and Financier deals with such a complaint.
8. **REPRESENTATIONS AND WARRANTIES**
- 8.1 **Representations and warranties.** Customer represents and warrants to Financier that:
- (a) all information given by Customer to Financier (including in the Application Form) is true and correct in all material respects;
- (b) the information in the Software Funding Agreement Schedule (in particular the number of employees of Customer) is true and correct;
- (c) Customer has not relied on any statement made by or on behalf of Financier in entering into this Software Funding Agreement;
- (d) Customer has procured all necessary authorisations, licences and permits to enter into this Software Funding Agreement and perform its obligations under this Software Funding Agreement;
- (e) this Software Funding Agreement has been validly executed by Customer and constitutes valid and binding obligations which are enforceable upon Customer in accordance with its terms;
- (f) no Insolvency Event has occurred; and
- (g) the Security Interest granted under this Software Funding Agreement ranks first in priority in relation to Software and the EULA.
- 8.2 **Repetition of representations and warranties.** The representations and warranties contained in clause 8.1 are taken to be made by Customer each day during the Term.
- 8.3 **Reliance on representations and warranties.** Customer acknowledges and agrees that Financier has entered into this Software Funding Agreement in reliance on the representations and warranties in clauses 8.1 and 8.2.
9. **TERMINATION**
- 9.1 **Financier's rights on the occurrence of a Termination Event.** Without limiting Financier's right to terminate this Software Funding Agreement where an event would allow it to do so at law, on the occurrence of a Termination Event, Financier may) immediately on written notice to Customer terminate this Software Funding Agreement.
- 9.2 **Termination for Insolvency Event.** Either party may terminate this Agreement immediately by giving notice in writing to the other party if an Insolvency Event occurs in respect of the other party.
- 9.3 **Customer's rights on material breach of this Software Funding Agreement by Financier.** If Financier breaches a material term of this Software Funding Agreement and does not rectify such breach(es) within five (5) Business Days of receiving a detailed written rectification request from Customer to do so, Customer may immediately terminate this Software Funding Agreement by providing written notice to Financier. If this Software Funding Agreement is validly terminated by Customer under this clause 9.3, Customer must immediately pay Financier upon demand:
- (a) the Present Value Amount;
- (b) the Arrears; and
- (c) if any, all other amounts then due and payable under or in connection with this Software Funding Agreement and which remain outstanding.
- 9.4 **Termination before the Expiry Date – during the Term.** Subject to clause 9.3, if this Software Funding Agreement is terminated for any reason before the Expiry Date, Customer must immediately pay Financier upon demand:
- (a) the Early Termination Amount;
- (b) the Arrears; and
- (c) if any, all other amounts then due and payable under or in connection with this Software Funding Agreement and which remain outstanding.
- 9.5 **Termination on the Expiry Date – end of the Term.** Subject always to the terms and conditions of this Software Funding Agreement, where this Software Funding Agreement is terminated for any reason on the Expiry Date, Customer must immediately pay Financier the Moneys Owning.
- 9.6 **Cross default.** If a Termination Event occurs this will:
- (a) constitute an event of default; and
- (b) be taken to be a repudiation of Customer's obligations, under any other leasing, borrowing, hiring or other finance agreement or arrangement with Financier or any Related Entity of Financier, which will entitle Financier to terminate that leasing, borrowing, hiring or other finance agreement or arrangement.
- 9.7 **Customer appoints Financier as Attorney.** Customer irrevocably separately appoints Financier and any Authorised Officer of Financier as the attorney of Customer (**Attorney**) (without imposing any liability on Financier as secured party in possession) with full power for Financier at any time to appoint a substitute and revoke any appointment. Attorney may, prior or subsequent to any Termination Event, at the full cost of Customer perform any action, whether in the name of Customer, which:
- (a) Customer should perform under any agreement created by this Software Funding Agreement;
- (b) Financier may perform under any power conferred by this Software Funding Agreement; or
- (c) Financier in its discretion considers necessary or desirable for the effectiveness of the security of this Software Funding Agreement or the protection or transfer or, or dealing with, Software or the EULA.

10. **GUARANTEE AND INDEMNITY**

10.1 **Guarantor acknowledgements.** Guarantor acknowledges and agrees that:

- (a) Financier has entered into this Software Funding Agreement at Guarantor's request;
- (b) it has received valuable consideration for entering into this Software Funding Agreement;
- (c) Financier is acting in reliance of Guarantor incurring obligations and giving rights under this Software Funding Agreement;
- (d) it (or its directors if a company) has read and understood the terms of this Software Funding Agreement, including the Guarantee and Indemnity;
- (e) it has made its own enquiries and satisfied itself as to the financial condition of Customer and Customer's ability to perform its obligations under this Software Funding Agreement and has not relied in any way on any information provided by Financier; and
- (f) any Security Interest granted to Financier by Guarantor at any time secures payment by Guarantor of all amounts (including losses and damages) that arise from Customer's breach of this Software Funding Agreement or are payable by Customer to Financier on any account under or in connection with this Software Funding Agreement.

10.2 **Guarantee.**

- (a) Guarantor unconditionally and irrevocably guarantees to Financier, Customer's compliance with its obligations in connection with this Software Funding Agreement, including each obligation to pay all amounts under this Software Funding Agreement from time to time.
- (b) If Customer does not comply with its obligations on time and in accordance with this Software Funding Agreement, then Guarantor agrees to comply with those obligations on demand from Financier. A demand may be made whether or not Financier has made a demand on Customer.
- (c) This Guarantee and Indemnity creates a principal and independent liability of Guarantor.

10.3 **Indemnity.**

- (a) Guarantor unconditionally and irrevocably indemnifies Financier against any liability or loss arising from, any costs Financier incurs, if:
 - (i) Customer does not, or is unable to, comply with an obligation it has (including an obligation to pay money) in connection with this Software Funding Agreement;
 - (ii) an obligation Customer would otherwise have under this Software Funding Agreement (including an obligation to pay money) is found to be void, voidable or unenforceable;
 - (iii) an obligation Guarantor would otherwise have under clause 10.2 is found to be void, voidable or unenforceable; and
 - (iv) a representation or warranty by Customer in this Software Funding Agreement is found to have been incorrect or misleading when made or taken to be made.
- (b) Guarantor agrees to pay any amount under this Guarantee and Indemnity on demand from Financier. Financier need not incur expense or make payment before enforcing its right or indemnity under clause 10.3(a).
- (c) The liability of Guarantor under clause 10.3(a) is a separate and additional liability of Guarantor as a principal debtor and not as a surety.

10.4 **Extent of Guarantee and Indemnity.** Each of the guarantee in clause 10.2 and indemnity in clause 10.3 are continuing obligations despite any intervening payment (including Payment), settlement or other thing and extends to all Customer's obligations under or in connection with this Software Funding Agreement. Guarantor waives any right it has of first requiring Financier to commence proceedings or enforce any other right against Customer or any other person before claiming from Guarantor under this Guarantee and Indemnity.

10.5 **Variations and replacements.** Guarantor acknowledges and agrees that this Software Funding Agreement may be varied or replaced from time to time. Guarantor agrees that the

obligations guaranteed under clause 10.2 include any obligations under this Software Funding Agreement as varied or replaced.

10.6 **Limit to Guarantor's liability.** This Guarantee and Indemnity is a guarantee and indemnity for all guaranteed obligations (including the obligation to pay money). However, for each Guarantor that has a Guarantee Limit, the amount payable by Guarantor is limited to that Guarantee Limit plus any costs and expenses payable under clause 10.7 and interest under clause 10.9.

10.7 **Costs and expenses.** Guarantor must pay Financier for:

- (a) Financier's reasonable costs in arranging, administering (including enforcing or taking any other action in connection with Financier's rights) and terminating this Guarantee and Indemnity; and
- (b) 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.

10.8 **Payments to third parties.** The indemnity in clause 10.3 includes any amount which Financier is obliged to pay to another person to enable that other person to pay a tax.

10.9 **Overdue balances.** Guarantor must pay interest calculated on daily balances on any amount Guarantor owes under clauses 10.2 – 10.4 from the date Financier requests Guarantor for the amount until Guarantor pays it. This interest is to be calculated and is payable in accordance with clause 12.8.

10.10 **Avoided transactions.** Guarantor acknowledges that a trustee in bankruptcy, liquidator or similar person may ask Financier to refund a payment that Financier has received in connection with this Software Funding Agreement or this Guarantee and Indemnity. To the extent Financier is obliged to, or Financier agrees to, make a refund, Financier may treat the original payment as if it had not been made. Financier is then entitled to its rights against Guarantor under this Guarantee and Indemnity as if the payment had never been made.

10.11 **No merger.** The Guarantee and Indemnity does not merge with or adversely affect:

- (a) any other guarantee or indemnity, or mortgage, charge or other security, or right or remedy to which Financier is entitled at any time; or
- (b) a judgment or order which Financier obtains against Guarantor in respect of an amount payable under the Guarantee and Indemnity in respect of this Software Funding Agreement.

Financier can still exercise its rights under the Guarantee and Indemnity as well as under the judgment, order, other guarantee or security.

10.12 **No competing claims.** As long as an amount payable under this Software Funding Agreement remains unpaid, Guarantor may not, without Financier's prior written consent:

- (a) reduce Guarantor's liability under the Guarantee and Indemnity by claiming that Guarantor, Customer or any other person has a right of set-off or counterclaim against Financier;
- (b) 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 under this Software Funding Agreement or an amount payable under this Guarantee and Indemnity;
- (c) claim an amount from Customer or another guarantor of Customer's obligations under a right of indemnity; or
- (d) claim an amount in the insolvency of Customer or another guarantor of Customer's obligations under this Software Funding Agreement (including a person who has signed this Guarantee and Indemnity).

10.13 **Trust.** Guarantor declares that it does not enter into this Software Funding Agreement as a trustee, unless specified in the Software Funding Agreement Schedule. If Guarantor is a trustee, clause 12.15 applies equally to Guarantor and each reference to "Customer" in that clause is taken to be a reference to Guarantor.

10.14 **Partnership.** Guarantor declares that it does not enter into this Software Funding Agreement as a partnership, unless specified in the Software Funding Agreement Schedule. If Guarantor is a partnership, clause 12.16 applies equally to

Guarantor and each reference to "Customer" in that clause is taken to be a reference to Guarantor.

- 10.15 **Guarantor must act on demand.** Guarantor must promptly do anything Financier requests (such as obtaining consents, signing and producing documents and getting documents completed and signed) to bind itself under the Guarantee and Indemnity.
- 10.16 **Marshalling.** Financier may claim against Guarantor under this Guarantee and Indemnity before Financier enforces any of its rights:
- (a) against Customer or any other person; or
 - (b) under another document such as a guarantee or mortgage, charge or other security.
- 10.17 **Application of money.** Financier may use any money paid by or for Customer towards meeting any part Financier chooses of the amounts Customer owes Financier (including meeting any amount Guarantor does not guarantee). Financier may use any money paid by Guarantor under this Guarantee and Indemnity towards paying any part Financier chooses of the amounts Guarantor owes Financier under this Guarantee and Indemnity.
- 10.18 **Guarantee and Indemnity remains unaffected.** This Guarantee and Indemnity and Guarantor's liability are not affected by:
- (a) the occurrence of a Termination Event;
 - (b) the granting to any person by Financier of any waiver;
 - (c) any increase or variation in the amount payable under this Guarantee and Indemnity or this Software Funding Agreement for any reason;
 - (d) any amendment to or transfer of this Software Funding Agreement, or any right or liability of any person under this Software Funding Agreement, whether for or without consideration;
 - (e) any termination of this Software Funding Agreement, or any right or liability of any person under this Software Funding Agreement;
 - (f) any release by Financier of any right or liability of Financier or any person under this Software Funding Agreement;
 - (g) Financier taking, completing or perfecting, or any failure in taking, completing or perfecting, any PPS Security Interest or any right under this Software Funding Agreement;
 - (h) any failure by any person concerning, or by Financier in requesting or requiring, the execution or effective execution of this Software Funding Agreement at any time by any person;
 - (i) any exercise or enforcement, or any failure or incapacity in the exercise or enforcement, by Financier of any right conferred on Financier by this Software Funding Agreement or by law;
 - (j) the invalidity of any agreement other than the Guarantee and Indemnity, or its execution by any person other than Guarantor, for any reason;
 - (k) any incapacity of or fact relating to any person other than Guarantor, including any change in the constitution or membership of any person;
 - (l) any invalidity or incapacity of, or in any consent or conferral or delegation of power to, any person other than Guarantor, whether in its own right or any other purported capacity, to execute, or perform any liability under, any agreement;
 - (m) any failure in obtaining the consent of any person by Financier in connection with this Software Funding Agreement; or
 - (n) any other act or omission by Financier or anyone else, or any other fact or matter, that might otherwise affect the rights of Financier or the obligations or liabilities of Guarantor.

This clause 10.18 does not apply to any action taken by Financier with the specific and express purpose of varying, waiving or terminating a right or liability of Guarantor.

- 10.19 **Security for Guarantee and Indemnity.** This clause 10.19 will only apply if the Software Funding Agreement Schedule for Guarantor indicates that the Guarantee and Indemnity is to be secured. If so:
- (a) Guarantor charges in favour of Financier all of Guarantor's real and personal property (including all property acquired after the Acceptance Date) for the

purpose of securing payment to Financier of all moneys owing under this Guarantee and Indemnity and compliance with all obligations of Guarantor to Financier under this Software Funding Agreement and:

- (i) grants Financier a mortgage of any land now or hereafter held by Guarantor with such mortgage containing a covenant to the effect that the mortgage secures all moneys owing by Guarantor to Financier under this Software Funding Agreement;
 - (ii) acknowledges the mortgage is to be in registrable form and incorporates the covenants contained in Memorandum Q860000 (NSW) or on equivalent terms in other states or territories and contain such other terms as Financier may require;
 - (iii) authorises Financier to take all actions necessary to give effect to this security including the lodgement of a caveat upon the title of any such land of Guarantor; and
 - (iv) irrevocably appoints Financier and any person nominated by us severally as attorney of Guarantor to execute, sign, seal and deliver such mortgage or other document to give effect to and enforce this security.
- (b) If the charge created by clause 10.19(a) is or becomes void or unenforceable, it may be severed from this Software Funding Agreement without any effect on its validity and Guarantor will not be exonerated in the whole or in part, nor will Financier's right, remedies or recourse against Guarantor be in any way prejudiced or adversely affected by such severance.

11. PPS ACT

- 11.1 **Security Interest.** To the extent not prohibited under the EULA, as security for Customer's obligations under this Software Funding Agreement, Customer grants Financier a Security Interest in Software and the EULA.

11.2 **PPS Act confidentiality.**

- (a) Customer and Financier agree with each other not to disclose information of the kind mentioned in section 275(1) of the PPS Act, except in the circumstances required by sections 275(7)(b) to (e) of the PPS Act. Customer agrees that it will only authorise the disclosure of information under section 275(7)(c) or request information under section 275(7)(d) if Financier approves. Nothing in this clause 11.2(a) will prevent any disclosure by Financier that Financier believes is necessary to comply with its other obligations under the PPS Act.
- (b) To the extent that it is not inconsistent with clause 11.2(a) constituting a "confidentiality agreement" for the purposes of section 275(6)(a) of the PPS Act, Customer agrees that Financier may disclose information of the kind mentioned in section 275(1) of the PPS Act to the extent that Financier is not doing so in response to a request made by an "interested person" (as defined in section 275(9) of the PPS Act) pursuant to section 275(1) of the PPS Act.

- 11.3 **Authority to Register and Waiver of Right to Receive Notice of Verification Statements.** Customer acknowledges that Financier may register one or more financing statements in relation to any PPS Security Interest provided for by this Software Funding Agreement. If permitted by the PPS Act, Customer waives its rights under section 157 of the PPS Act to receive notice of any verification statement relating to the registration of any such financing statement or any related financing change statement.

- 11.4 **Contracting out of the PPS Act.** To the extent that Chapter 4 of the PPS Act would otherwise apply to an enforcement by Financier of any PPS Security Interest provided for by this Software Funding Agreement, Financier and Customer agree with each other that the following provisions of the PPS Act do not apply:

- (a) to the extent that section 115(1) of the PPS Act allows them to be excluded: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 138B(4), 142 and 143; and
- (b) in addition, to the extent that section 115(7) of the PPS Act allows them to be excluded: sections 127, 129(2) and (3), 132, 134(2), 135, 136(3), 136(4), 136(5) and 137.

- 11.5 **Delay in enforcement.** If section 115(1) of the PPS Act does not allow section 125 of the PPS Act to be excluded, Customer agrees that at any time after any PPS Security Interest provided for by this Software Funding Agreement has become enforceable, Financier may delay disposing of, or taking action to retain, the whole or part of the collateral to the extent permitted by law.
- 11.6 **Acknowledgment of no subordination.** Unless agreed to by Financier in writing, Customer acknowledges that Financier has not agreed to subordinate any PPS Security Interest provided for by this Software Funding Agreement in favour of any third party.
- 11.7 **Attachment.** Nothing in this Software Funding Agreement may be taken as an agreement that any PPS Security Interest provided for by this Software Funding Agreement attaches later than the time contemplated by section 19(2) of the PPS Act.
- 11.8 **Name change.** Customer warrants that it has not had any other name in the last five (5) years other than the name in this Software Funding Agreement (except as notified to Financier in writing) and Customer agrees not to change its name without first providing Financier thirty (30) Business Days' notice in writing of the proposed new name.
- 11.9 **Transfer.** Customer must notify Financier immediately in writing of any transfer of Software or an interest in Software, and to provide Financier with any information that Financier requests for in relation to the transferee to enable Financier to perfect Financier's PPS Security Interest as against the transferee.
- 11.10 **Financier's interest continues.** Financier's interest (including any PPS Security Interest) continues in Software or interest despite any disposal or dealing.
- 11.11 **Account.** If Customer disposes of Software in a way that gives rise to an account, Customer grants Financier a PPS Security Interest in that account.
- 11.12 **Release.** Customer may require Financier to release Software and the EULA from the PPS Security Interest granted under clause 11 if no further Payment is required by Customer under this Software Funding Agreement. The PPS Security Interest over Software and EULA granted by Customer to Financier will continue until Financier actually releases Software and EULA from the PPS Security Interest.
- 12. GENERAL**
- 12.1 **Special Conditions.**
- (a) This Software Funding Agreement incorporates the Special Conditions (see clause 1.2(k)).
- (b) Unless waived by Financier, any Special Conditions which are conditions precedent to the commencement of this Software Funding Agreement must be satisfied before the Software Funding Agreement commences.
- (c) Subject to clause 12.1(b), Customer and/or Guarantor (as applicable) agree that any waiver by Financier to the satisfaction of the Special Conditions will not affect the operation or enforceability of this Software Funding Agreement (including the Guarantee and Indemnity) against Customer and/or Guarantor (as applicable).
- 12.2 **Assignment.** Subject only to Customer's rights under this Software Funding Agreement:
- (a) Financier may assign, transfer or otherwise deal with Software or all or any part of Financier's rights or obligations under or in connection with this Software Funding Agreement without Customer or Guarantor's consent provided any assignee or other party executes a deed poll confirming that the assignee is bound by the terms of this Software Funding Agreement in enforcing any right or obligation of Financier under this Software Funding Agreement; and
- (b) Customer must not assign, transfer or otherwise deal with any of its rights under or in connection with this Software Funding Agreement without Financier's prior written consent which will not be unreasonably withheld.
- 12.3 **Rights.** Termination of this Software Funding Agreement (for any reason) will be without prejudice to Financier's rights, powers and remedies with respect to any antecedent breach by Customer under this Software Funding Agreement. All rights of Financier under this Software Funding Agreement are in addition to Financier's rights under the general law.
- 12.4 **Recording.** Customer consents to the recording of telephone conversations between Customer (if Customer is an individual) and employees of Customer (if any) and Financier's employees, employees of Financier's related entities and agents, for purposes related to the administration of this Software Funding Agreement and the exercise of Financier rights under this Software Funding Agreement. Customer agrees to obtain any consent of Customer employees and to give any notice to Customer employees of such recording as may be required by law and must provide evidence of that consent upon demand by Financier. Any recordings may be submitted in legal proceedings arising out of this Software Funding Agreement, to the extent permitted by law.
- 12.5 **Product information.** Customer requests Financier to provide Customer from time to time with information on Financier's or other third party products or services.
- 12.6 **Financial information.** Customer must provide Financier with any reasonable financial or other information relating to the financial condition, business, assets and affairs of Customer and any of its related bodies corporate as and when requested by Financier.
- 12.7 **Notices.** Any notice or demand to be given by Financier under or in connection with this Software Funding Agreement may be served on Customer by being left at or sent by pre-paid mail, transmitted by facsimile to Customer address specified in the Software Funding Agreement Schedule or otherwise as notified in writing to Financier or sent by email to Customer email address specified in the Software Funding Agreement Schedule or as otherwise notified in writing to Financier. Notice or demand will be treated as having been given and received, if:
- (a) delivered, on the day of delivery;
- (b) sent by pre-paid mail, on the next delivery day;
- (c) transmitted by facsimile, at the time shown in the transmission report as the time the whole of the facsimile was sent; and
- (d) if sent by email, on the day of sending if a Business Day, or otherwise on the next Business Day where a delivery receipt has confirmed delivery to the relevant email address.
- Customer authorises Financier to accept and act on a communication given by fax or email without verification if Financier reasonably assumes that communication to be genuine. Customer acknowledges that communication by fax or email is not secure and involves higher risk of manipulation, distortion or attempted fraud and may be of poor quality and unclear. Customer must indemnify Financier against, and must pay Financier on demand the amount of, all claims, liabilities, losses, and reasonable costs, charges or expenses, of any nature incurred or suffered by Financier in connection with acting on a communication given by fax or email.
- 12.8 **Overdue fees.** Customer must pay to Financier on demand interest on any moneys payable under or in connection with this Software Funding Agreement which are overdue on a daily basis for the respective periods from the date the moneys became due to the date of payment by Customer. This interest will be calculated at the rate for judgments in the Supreme Court of New South Wales, and such amount will compound monthly. If a liability under or in connection with this Software Funding Agreement becomes merged in a judgement or order or exists after Customer winding up, Customer, as an independent obligation, must pay interest on the amount of that liability from the date the liability becomes payable both before and after the judgement, order or winding up until it is paid, also at that rate.
- 12.9 **No waiver by Financier.** No waiver or indulgence by Financier in relation to any breach of this Software Funding Agreement by Customer will be deemed a waiver or indulgence of any continuing or recurring breach.
- 12.10 **Commission.** Customer consents to Financier paying a commission to any third party in relation to this Software Funding Agreement. Customer acknowledges that any third party which submitted this Software Funding Agreement to Financier, or who conducted any antecedent negotiations with Customer, is not and was not Financier's agent for any purpose. Any commission may be included in the cost of Software at the option of Financier.
- 12.11 **Authority to complete and amend.** Customer authorises Financier to complete and/or amend any blank, incomplete, missing or inaccurate particulars in this Software Funding Agreement and to otherwise complete all necessary formalities to render this Software Funding Agreement or any Security Interest granted by Customer under this Software Funding Agreement complete and enforceable. For clarity, this

- may include Financier enhancing the description of Software (e.g. serial numbers).
- 12.12 **Financier may act on Customer omissions.** If Customer neglects to pay any money or take any other action required by or in connection with this Software Funding Agreement, Financier may pay that money or take that other action and recover the costs from Customer. Financier may enter and remain upon any land or premises of Customer for this purpose.
- 12.13 **Indemnities and releases continue.** All of the indemnities and releases in this Software Funding Agreement continue in full force and effect notwithstanding the termination (however occurring) of this Software Funding Agreement.
- 12.14 **Set-Off.** Customer irrevocably authorises Financier to set off without notice any money held by Financier on any account of Customer against any money owing by Customer to Financier or any Related Entity of Financier (including any liquidated damages). Customer must not exercise any right of set off on any account.
- 12.15 **Trust.** If Customer enters into this Software Funding Agreement as a trustee of a trust (**Trust**), Customer:
- represents and warrants that Customer enters into this Software Funding Agreement for a proper purpose of the Trust;
 - has power and authority under the Trust to enter into this Software Funding Agreement and perform its obligations under this Software Funding Agreement;
 - has the right to be indemnified fully out of the Trust property before the Trust's beneficiaries for all liabilities Customer incurs under or in connection with this Software Funding Agreement; and
 - must not (unless with Financier's prior written consent) distribute any capital of the Trust, retire as trustee or be replaced as trustee, re-settle the Trust, amend the trust deed of the Trust or otherwise vary the terms of the Trust, grant a security interest over any of the assets of the Trust, or breach any terms of the Trust.
- Customer must provide immediate written notice to Financier if any of the events in clause 12.15(a) – (d) occur. Customer agrees that in enforcing any PPS Security Interest provided for by this Software Funding Agreement, Financier has recourse to and may satisfy any of Customer's liability directly out of the Trust assets.
- 12.16 **Partnership.** If Customer enters into this Software Funding Agreement as a partnership:
- each partner signing this Software Funding Agreement represents and warrants that they have power and authority to enter into this Software Funding Agreement for the partnership and perform their obligations under this Software Funding Agreement;
 - each partner of the partnership is liable to Financier as a separate, independent, principal and personal obligation, whether or not Financier may recover any sum from the partnership assets; and
 - Customer must provide immediate written notice to Financier if the partnership is dissolved, and if this occurs (to the extent permitted by law) then each partner must act in relation to the administration of the partnership assets in the manner (if any) directed by Financier, a retiring partner is not discharged from any liability to Financier as a result of an agreement between the then existing partners, and the obligations of a retiring partner to Financier are not affected by anything which might otherwise affect them at law or in equity.
- 12.17 **Governing law and jurisdiction.** This Software Funding Agreement is governed by the law of the State or Territory of in which Customer is located. Customer irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State or Territory in which Customer is located.
- 12.18 **Sever invalid provisions.** If any provision of this Software Funding Agreement is found to be invalid or unenforceable in any jurisdiction, it will have no force or effect in that jurisdiction and will be severed from this Software Funding Agreement in that jurisdiction without affecting the remaining provisions and without affecting the operation of this Software Funding Agreement in any other jurisdiction.
- 12.19 **Conditions of consent.** Financier may or may not grant any consent or approval under or in connection with this Software Funding Agreement in Financier's absolute discretion and upon such conditions as Financier may determine.
- 12.20 **Agency.** Financier may enter into this Software Funding Agreement as agent for another person (whether disclosed or not).
- 12.21 **Time of the essence.** Time is of the essence in respect of all of Customer's obligations under this Software Funding Agreement.
- 12.22 **Information.** Financier will, upon written request from Customer, provide such information as Customer reasonably requests in relation to the calculation of:
- Early Termination Amount;
 - any other amount payable by Customer under this Software Funding Agreement.
- 12.23 **Direct Debit authority.** Customer must complete and provide Financier with the Direct Debit Request. Customer irrevocably authorises Financier to debit any amounts due to Financier on any account of Customer.
- 12.24 **Counterparts.** This Software Funding Agreement may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.
- 12.25 **Software Funding Agreement binding.** This Software Funding Agreement is binding upon Customer immediately upon Customer executing this Software Funding Agreement notwithstanding that Financier may never execute this Software Funding Agreement. The Guarantee and Indemnity is binding upon Guarantor immediately upon Guarantor executing this Software Funding Agreement notwithstanding that Financier may never execute this Software Funding Agreement.
- 12.26 **Authority to sign.** Where this Software Funding Agreement is executed by individual(s) on Customer's behalf, that/those individual(s) warrant(s) that/they have the authority and delegated power to execute this Software Funding Agreement on Customer's behalf.
- 12.27 **Electronic signature.** If this Software Funding Agreement is signed by Customer (or on Customer's behalf) or Guarantor by use of electronic signature(s) (including by signing on an electronic device or by digital signature), then Customer and Guarantor jointly and separately:
- agree that Financier may rely on the electronic signature(s) as having the same force and effect as handwritten signature(s); and
 - unconditionally consent to any method used by Financier (at Financier's discretion) to identify the signatories and to confirm their intention to enter into a binding legal agreement.

Direct Debit Request (DDR)

Flexirent Capital Pty Ltd (We / Us / Our)

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

Please complete the details below for your preferred payment method.

PAYMENT DATE: Each date that you are required to make a payment under the Software Funding Agreement between you and us.

NON ACCEPTABLE METHODS OF PAYMENT: Money Order, Cash, Bank Cheque or Cheques from anyone other than the approved applicant; and credit cards other than those indicated below (i.e. only MasterCard, Visa & American Express credit cards can be accepted).

Direct Debit Request

IMPORTANT: Before completing this section, You should review the Direct Debit Service Agreement (DDSA) which details Your rights and Our obligations to You under this DDR.

Customer Name (You / Your)				
Address			Postcode	
			Branch	
Financial Institution			Branch	
Account Name				
Account Number			BSB	

Request and Authority to Debit

You request and authorise Flexirent Capital Pty Ltd (User ID No. 005221) to arrange, through its own financial institution, a debit to Your above nominated account (**Your Account**) of any amount We deem payable by You under the Software Funding Agreement or any other agreement between You and Us. This debit or charge will be made through the Bulk Electronic Clearing System (**BECS**) from Your Account and will be subject to the terms and conditions of the DDSA.

Acknowledgement

By signing and/or providing Us with a valid instruction in respect to the DDR, you have understood and agreed to the terms and conditions governing the debit arrangements between You and Us as set out in this DDR and in the DDSA. If debiting from a joint account requiring two (2) signatures, both signatures are required.

Date	
Signature (1)	
Signature (2)	

Credit Card Payment Authority

MasterCard Visa American Express Expiry Date

Card Number

Note: Diners Club and other Credit Cards will not be accepted. Credit Card transactions attract a 1% processing fee.

Date	
Cardholder's Name	
Cardholder's Signature	

Direct Debit Service Agreement (DDSA)

Unless already defined in this DDSA or the context requires otherwise, capitalised terms used in this DDSA have the meanings given to them in the Direct Debit Request (DDR).

1. DEBITING YOUR ACCOUNT

- (a) By signing the DDR, You authorise Us to debit funds from Your Account for any amount payable by You under the Software Funding Agreement and any other agreement between You and Us. You should refer to this DDSA and the DDR for the terms of the arrangement between You and Us.
- (b) We will only arrange for funds to be debited from Your Account as authorised in the DDR.
- (c) If any payment falls due on a non-business day, it will be debited from Your Account on the following business day. If You are unsure about which day Your Account has or will be debited You should ask Your financial institution.

2. CHANGES BY US

We may vary details of this DDSA or the DDR at any time by providing You no less than fourteen (14) days' written notice.

3. CHANGES BY YOU

You may change, stop or defer a payment, or terminate the DDR and this DDSA by providing Us with no less than fourteen (14) days' notice by:

- (a) writing to FlexiGroup Ltd, Locked Bag 5005, Royal Exchange Sydney NSW 1225;
- (b) telephoning Us on 1800 240 102 during business hours on a business day; or
- (c) arranging it through Your own financial institution which is required to act promptly on Your instructions. Your financial institution may 'change' Your debit payment only to the extent of advising Us of Your new account details.

4. YOUR OBLIGATIONS

- (a) It is Your responsibility to ensure that there are sufficient funds in Your Account to allow a payment to be made in accordance with the DDR and this DDSA.
- (b) If there are insufficient clear funds in Your Account to meet a payment, You:
 - (i) may be charged a fee and/or interest by Your financial institution;
 - (ii) may also incur fees and charges imposed or incurred by Us in accordance with the Software Funding Agreement, DDR and this DDSA; and
 - (iii) must arrange for the payment to be made by another method or arrange for sufficient clear funds to be in Your account by an agreed time so We can process the payment.
- (c) You should check Your Account statement to verify that the amounts debited from Your Account are correct.

5. DISPUTES

- (a) If You believe that there has been an error in debiting Your Account, You should contact Us directly on 1300 328 569 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 investigation 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.

6. ACCOUNTS

You should check:

- (a) with Your financial institution whether direct debiting is available for Your Account as direct debiting is not available on all accounts offered by financial institutions;
- (b) Your Account details which You have provided Us are correct by checking them against a recent account statement; and
- (c) with Your financial institution before completing the DDR if You have any queries about how to complete the DDR.

7. CONFIDENTIALITY

- (a) We will keep any information (including Your Account details) in the DDR confidential. We will make reasonable efforts to keep any such information that We have about You secure and to ensure that any of Our employees or agents who have access to information about You do not make any unauthorised use, modification, reproduction or disclosure of that information.
- (b) We will only discuss information about You:
 - (i) to the extent specifically required by law; or
 - (ii) for the purposes of the Software Funding Agreement, the DDR and this DDSA (including disclosing information in connection with any query or claim).

8. NOTICE

- (a) If You wish to notify Us in writing about anything relating to this DDSA, You should write to FlexiGroup Ltd, Locked Bag 5005, Royal Exchange NSW Sydney 1225.
- (b) We will notify You by sending a notice in the ordinary post to the address You have given Us in the DDR.
- (c) Any notice will be deemed to have been received on the third (3rd) business day after posting.