



Master Lease Agreement



**Terms and
Conditions**

March 2019

SECTION A: GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

Unless the context otherwise requires all capitalised terms in this Agreement shall have the meaning given to them in Section H: Definitions of this document.

2. CREATING A LEASE

- 2.1 **Making an offer:** The Customer may offer to lease Goods from Eclipx by returning to Eclipx a signed and completed Lease Schedule in respect of those Goods. Any such offer is irrevocable by the Customer.
- 2.2 **Binding agreement:** Eclipx will only become bound to a Lease upon ordering the Goods for the Customer, even if the Customer has prepaid any amount.
- 2.3 **Early delivery:** If the Customer receives Goods before it has signed the Lease Schedule relating to those Goods, the Customer must comply with the terms and conditions of the Lease in respect of those Goods from the time of receipt.
- 2.4 **Lease Schedule return:** At the time the Customer returns a signed Lease Schedule to Eclipx, the Customer:
- (a) repeats each warranty in clause 9;
 - (b) confirms that it has selected the Goods specified in that Lease Schedule on its own and has satisfied itself as to the condition of those Goods and their suitability for the Customer's purposes;
 - (c) agrees at its own cost, to obtain delivery and installation of the Goods;
 - (d) agrees that, to the fullest extent permitted by law:
 - (i) all express and implied terms, conditions and warranties (other than the ones set out in the relevant Lease) are excluded;
 - (ii) the Eclipx Group makes no representation or warranty in relation to the Goods, whether any licence or permit is required in respect of the Goods or as to the taxation treatment or accounting classification of any transaction under a Lease;

- (iii) for the purposes of section 5D of the Fair Trading Act 1986, the parties are contracting out of sections 9, 12(a) and 13 of the Fair Trading Act 1986 in respect of all conduct and representations in connection with the relevant Lease; and
 - (iv) the Eclipx Group makes no representation about any software included in the Goods or the terms of any licence relating to such software;
- (e) agrees that the Eclipx Group's liability in relation to the Goods or their use, including damage, injury or economic loss to anyone, is limited to the maximum extent permitted by law. In any event, the Eclipx Group's liability is limited, at the option of Eclipx:
- (i) in the case of Goods that are not software, to the replacement or repair cost of those Goods (or equivalent); or
 - (ii) in the case of services, to the supplying of the services again or the cost of having the services supplied again;
- (f) agrees that in no event will the Eclipx Group be liable for any indirect, consequential or economic loss or damage arising under or in connection with any Goods, any software (including as a result of any virus), or any Lease or for any defect in, breakdown, damage to, loss or destruction of the Goods; and
- (g) agrees that if the Customer was referred to the Eclipx Group by another entity, that entity was not acting as the Eclipx Group's agent, subcontractor, representative, employee or partner and no member of the Eclipx Group is bound by the conduct of that entity or any representation or statement given by that entity.

3. TERM

- 3.1 **Term:** The Customer shall lease Goods from Eclipx for the Term relating to those Goods from the Commencement Date for those Goods.

- 3.2 **Interim Term:** If the Commencement Date for a Lease occurs after the Acceptance Date for that Lease, then the Lease shall also cover the period from the Acceptance Date to the Commencement Date.

4. PAYMENTS

- 4.1 **Payments:** The Customer must pay each Payment to Eclix on the Lease Payment Dates (including making the Interim Payment on the Commencement Date) by way of direct debit (unless Eclix otherwise directs in writing).
- 4.2 **Overdue payments:** If a Payment is due and unpaid, the Customer must pay interest to Eclix at the rate of the actual cost of funds to Eclix in providing financial accommodation under the relevant Lease plus 4.0% per annum (calculated daily from the due date to the date payment is received). The overdue amount is payable on demand and shall compound monthly.
- 4.3 **Business Day:** If a date for a Payment is not a Business Day, the Payment must be made on the following Business Day. However, if such day would be in the calendar month following the actual date for Payment, the Payment must be made on the first Business Day before the actual date for payment.
- 4.4 **Other fees:** The Customer must pay and indemnify the Eclix Group for any taxes, fees or charges that Eclix may reasonably request:
- (a) in respect of taxes (including GST payable by the Eclix Group but excluding income tax of the Eclix Group) in connection with a Lease;
 - (b) in respect of any registration fees relating to the Goods or any transaction fees or costs actually incurred by the Eclix Group in connection with a Lease, including, but not limited to, any costs incurred in seeking to recover any Payments; or
 - (c) in connection with any assignment or variation of a Lease requested by the Customer.

The Customer authorises Eclix to debit the Customer's account for these fees at the time charged.

- 4.5 **Unconditional obligations:** The Customer's obligation to make Payments (including without limitation, any Payments pursuant to clause 4.6) are absolute and unconditional and continue despite any other act, matter or thing including but not limited to:

- (a) the condition, design, operation or fitness for any particular use of the Goods;
- (b) any defect in, breakdown, damage to, loss or destruction of the Goods (including as a result of any virus);
- (c) any defect in a Lease or there being no right, power or authority for the Customer to enter into a Lease; or
- (d) insolvency, bankruptcy or similar proceedings by or against the Customer,

and the Customer acknowledges for the purposes of Part 2, Subpart 3 of the Contract and Commercial Law Act 2017 that its sole remedy in respect of misrepresentation, repudiation or breach of this contract is a claim in damages. The Customer shall make all Payments without any abatement, set-off, withholding, deduction, defence or counterclaim for any reason whatsoever.

- 4.6 **Maintenance and service charges:** If any Payments include amounts payable for the maintenance of Goods or for the provision of other services (or for recovery by the Eclix Group of funding of maintenance and other services), the Customer agrees and acknowledges that:
- (a) the charges have been included at the request of the Customer;
 - (b) the Customer has irrevocably directed Eclix to pay those charges to the person providing the services (**Service Provider**) or to retain those amounts if Eclix has already paid the relevant maintenance or service charges to the Service Provider;
 - (c) the Eclix Group is not responsible for the maintenance of the Goods or the provision of any services; and

(d) Eclipx may, in its sole discretion, remove the Service Provider and replace it with any other person providing substantially similar services.

4.7 **Partial payments:** If the Customer makes any payments, or Eclipx deducts any amounts via direct debit, which are insufficient to cover all Payments due and unpaid at the time of such payment or deduction, Eclipx may allocate such amounts to any due and unpaid Payments in its sole discretion.

4.8 **Gross up:** If:

(a) a Customer or a person on its behalf is required by law to make a deduction or withholding from any amount paid or payable by it under the Lease; or

(b) Eclipx or a person on its behalf is required by law to make any payment for or on account of tax (other than tax on overall net income of Eclipx) or otherwise on or in relation to any amount received or receivable by it from a Customer under the Lease,

then the relevant Customer will:

(a) ensure that any such deduction or withholding does not exceed the legal minimum and shall pay the amount required to be deducted, withheld or paid to the relevant authority before the date any penalty begins to accrue; and

(b) increase the actual amount paid to Eclipx to the extent necessary to ensure that after any deduction, withholding or payment is made, Eclipx actually receives and retains on the due date (free from any liability in respect of any such deduction, withholding or payment) a net amount equal to the amount that it would have received and so retained had no such deduction, withholding or payment been required to be made.

5. TERMINATION BEFORE END OF TERM

5.1 **Default events:** Eclipx may terminate a Lease if:

(a) the Customer fails to make a Payment when due;

(b) the Customer breaches any other obligation under that Lease, unless such breach is remedied within 7 days of Eclipx giving the Customer notice of the default;

(c) the Customer breaches any representation made in connection with a Lease;

(d) an Insolvency Event occurs in respect of the Customer or any Guarantor; or

(e) Eclipx determines in its reasonable opinion that there is a serious risk of material loss or damage to the Goods for any reason.

5.2 **Repossession:** Eclipx may repossess any Goods subject to a Lease if any of the events under clause 5.1 occur in respect of that Lease. If no prior notice of termination is given, repossession of the relevant Goods under this clause will itself terminate that Lease.

5.3 **Return of Goods:** If Eclipx terminates a Lease before the end of its Term, the Customer must immediately deliver the Goods subject to that Lease, duly executed transfers of any certificates of registration applicable to the Goods and any other records regarding those Goods as directed by Eclipx.

5.4 **Payments:** The Customer must pay the Early Termination Sum to Eclipx upon early termination of a Lease.

6. GOODS

6.1 Title, use and care: The Customer agrees and acknowledges that:

(a) **Title and property:** Eclipx owns the Goods at all times and the Customer has no authority to deal with, or create, any interest in the Goods. The Customer will not claim otherwise, and will do everything necessary to protect Eclipx's ownership including notifying Eclipx immediately if any third party claims ownership of the Goods;

(b) **Business purposes:** the Goods are intended to be used for business purposes and will only be used as such, and only for the purposes for which those Goods were designed and only by qualified personnel;

- (c) **Affixing identification:** it will provide the Eclix Group with access to the Goods to enable the Eclix Group to affix any identifying plates, marks or serial numbers and will not remove, deface or otherwise cover up any plates, marks or serial numbers;
- (d) **Access to Goods:** it will allow any member of the Eclix Group to enter upon any land or premises where it reasonably believes the Goods are located, to repossess the Goods (if so entitled) or to examine their state of repair and operation and ensure compliance with each Lease;
- (e) **Control and location of Goods:** it will keep the Goods in the Customer's personal control, it will not permit the Goods to be located at a location not acceptable to Eclix and it will not move the Goods outside New Zealand unless section F has been selected in respect of such Goods or Eclix has given its prior written consent;
- (f) **Laws:** it will ensure the Goods are used in compliance with all laws (including all health and safety laws) and with all instructions and recommendations issued by the designer, supplier or manufacturer of the Goods;
- (g) **Maintenance:** it will, at the cost of the Customer, ensure that the Goods are maintained in good working order and condition, inspected, tested and repaired by qualified personnel in accordance with all instructions and recommendations issued by the designer, supplier or manufacturer of the Goods and in all cases in accordance with law and best practice;
- (h) **Alterations:** any replacements or amendments to the Goods (or any related accessories or tools) during the Term will be deemed to be part of the Goods;
- (i) **Accession/fixture:** it will not permit any Goods to become a fixture to land or an accession to any other equipment or item which Eclix does not own, or have a security interest in that is equal to or better in priority than the security interest in those Goods;
- (j) **Licences:** the Eclix Group shall not be required to procure any consents necessary to transfer any licence held by the Eclix Group in relation to any software included as part of the Goods and the Customer must not do anything to render any licence subject to termination;
- (k) **Software:** it must not attempt to reverse engineer any software included with the Goods; and
- (l) **Credit of the Eclix Group:** it has no authority to act on behalf of the Eclix Group or to pledge the credit of the Eclix Group (including representing that the Eclix Group will pay for any costs in connection with the Goods) or create any interest or right in, or over, any Goods (including any lien).

7. INSURANCE

- 7.1 **Required insurance:** The Customer must, at the Customer's own cost, arrange insurance for the Goods and maintain such insurance for the full insurable value of the Goods against all loss or damage of any kind, must ensure that Eclix's ownership of the Goods is noted on all insurances and must provide Eclix with evidence of such insurance if requested.
- 7.2 **Proceeds of insurance:** Eclix is entitled to all amounts payable under any policy of insurance relating to the Goods or by any other person and if the Customer receives any such amounts it must immediately pay them to Eclix.
- 7.3 **Application of proceeds:** Eclix may apply moneys received (less any GST) in respect of any loss of, or damage to, any Goods towards any debt or liability of the Customer or, in the discretion of Eclix, towards repairing such damage or replacing the damaged Goods. If such moneys are insufficient to effect such repairs, the Customer must pay any additional required amounts.

7.4 **Power of attorney:** The Customer irrevocably appoints Eclix as attorney for the Customer to recover or release any claim under any insurance in the name of either Eclix or the Customer.

8. DAMAGE TO GOODS

8.1 **Loss or damage to Goods:** The Customer must immediately notify Eclix if the Goods or any part of the Goods (**Affected Goods**) are lost, stolen or damaged beyond economic repair. The Customer must, within 5 Business Days of notification, at the direction of Eclix:

- (a) replace the Affected Goods at the cost of the Customer with equivalent goods approved by Eclix and ensure Eclix obtains clear title to such replacement goods (which shall be deemed to be the same Goods for the purposes of the relevant Lease); or
- (b) pay Eclix within 5 Business Days of notification under clause 8.1 the portion of the Early Termination Sum referable to the Affected Goods calculated as at the date of Eclix's notice under clause 8.1(b)(i). Upon receipt by Eclix of such amounts:
 - (i) the relevant Lease will terminate immediately in relation to the Affected Goods;
 - (ii) the relevant Lease will continue with respect to any remaining part of the Goods, with adjusted payments as notified by Eclix to the Customer in writing and calculated as the Payments otherwise payable less the proportion of the Payments which related to the Affected Goods; and
 - (iii) Eclix will make a pro rata adjustment to any Payments already paid in respect of the Affected Goods for the period from receipt of such amounts to the next Lease Payment Date.

8.2 **Use of insurance proceeds:** If Eclix receives any insurance proceeds in respect of the Affected Goods:

- (a) where the Customer has replaced the Affected Goods in accordance with clause 8.1(a), such insurance proceeds (net of GST) will be credited to the Customer; and
- (b) where the Customer has paid out the Affected Goods in accordance with clause 8.1(b), a portion of such insurance proceeds (net of GST) equal to the payments made by the Customer will be credited to the Customer.

9. WARRANTIES

9.1 **Representations and warranties:** The Customer represents and warrants that:

- (a) all information given by the Customer to the Eclix Group is true and correct;
- (b) it has not relied on any statement made by or on behalf of the Eclix Group in entering into this Master Lease Agreement or any Lease;
- (c) it has procured all necessary authorisations, licences and permits to enter into, and perform its obligations under, each Lease;
- (d) each Lease has been validly executed by the Customer and constitutes valid and binding obligations which are enforceable against the Customer in accordance with its terms;
- (e) no Insolvency Event has occurred; and
- (f) the security interest granted under each Lease ranks first in priority in relation to the Goods subject to that Lease.

9.2 **Repetition and reliance:** The representations and warranties contained in clause 9.1 are taken to be made by the Customer each day during the Term and the Customer acknowledges that Eclix enters into each Lease in reliance on these representations and warranties.

10. INDEMNITIES

10.1 **Indemnities:** The Customer indemnifies the Eclix Group and all Related Entities against all losses, damages, liabilities, taxes (including any GST payable by Eclix, any deductions and rebates) and reasonable costs, charges and expenses (including legal expenses) actually

incurred or suffered by the Eclix Group or the Related Entity arising in respect of all Leases and Goods including any damage to the Goods, changes in law and early termination of any Lease.

- 10.2 **Exclusion from indemnity:** The indemnities given by the Customer under clause 10.1 do not extend to the extent the harm was caused by any act or omission of the Eclix Group or the Eclix Group's agents or employees.
- 10.3 **Calculation of indemnity amount:** Upon written request from the Customer, Eclix will provide the Customer with the calculation of any amount claimed and payable by the Customer under the above indemnities.

11. PPSA

- 11.1 **Enforcement:** To the extent that Part 9 of the PPSA would otherwise apply to an enforcement by Eclix of any security interest provided for by this Master Lease Agreement or any Lease, the parties agree that, to the extent allowed by section 107 of the PPSA, sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133, and 134 of the PPSA are excluded.
- 11.2 **Verification statement:** The Customer waives its rights under section 148 of the PPSA to receive notice of any verification statement (as defined in the PPSA).

12. CUSTOMER INFORMATION

- 12.1 **Privacy policy:** Any information obtained in respect of the Customer, the Guarantor and any beneficial owner of either will be obtained, held, used and disclosed in accordance with the Eclix Group's privacy policy available at <http://www.eclixcommercial.co.nz/privacy-policy> and the terms of this agreement.
- 12.2 **Compliance with laws:** If any member of the Eclix Group is required to obtain information about the Customer or a Guarantor in order to comply with any laws of New Zealand or otherwise, the Customer must comply with all requests for information (including any financial or other information relating to its financial condition, business, assets and affairs) from the Eclix Group and must ensure its employees, agents, contractors and the Guarantors comply with such requests.

12.3 **Collection of information:** The Customer authorises the Eclix Group and its Related Entities to collect information in respect of the Customer or Guarantor from third parties, including credit reference agencies, as may be required either in connection with their application for finance, or in connection with their relationship with the Eclix Group.

12.4 **Personal information:** The Customer agrees that if it provides personal information to the Eclix Group in relation to any third party (**Affected Individual**):

- (a) that information has been collected, and may be used and disclosed, for the purposes of the Customer's dealings with the Eclix Group under a Lease (including to assess the Customer applications for credit and to provide the Customer with the Eclix Group's products and services);
- (b) it will provide each Affected Individual with a copy of any privacy related notifications that the Eclix Group may provide the Customer from time to time;

12.5 **Information:** The Customer agrees that:

- (a) Eclix may, without notice, sell, assign or otherwise dispose of or deal with any information obtained in respect of a Lease as it sees fit subject to any privacy laws including disclosure to any security trustee, trustee, financier or rating agency under or in connection with financing arrangements in place for Eclix or a Related Entity of Eclix;
- (b) each member of the Eclix Group or their Related Entities may use any information that they hold about the Customer or Affected Individual to inform the Customer or Affected Individual of other products and services of the Eclix Group, its Related Entities or third parties;
- (c) information may be disclosed if it is, or becomes, public knowledge other than as a result of a breach of the relevant Lease; and
- (d) the Eclix Group may disclose any information if required by law or stock exchange or in connection with any legal proceedings related to a Lease.

13. GENERAL PROVISIONS

- 13.1 **Assignment by Eclipx:** Eclipx may assign, transfer or otherwise deal with any Lease Assets without the consent of the Customer, the Guarantor or any other person. All the rights and powers of Eclipx in respect of a Lease Asset may be exercised by any assignee.
- 13.2 **Assignment by Customer:** The Customer must not assign, transfer or otherwise deal with any of its rights under a Lease without Eclipx's prior written consent.
- 13.3 **Amendments:** Eclipx may amend any Lease, or this Master Lease Agreement (which amendments shall then govern and be incorporated into each Lease entered into after the date on which such changes become effective) from time to time by giving not less than 30 days' notice in writing to the Customer. Such notice must set out the nature of the proposed amendments and the date on which those amendments shall become effective.
- 13.4 **Continuing rights:** Termination of a Lease or related Guarantee by Eclipx will be without prejudice to its rights, powers and remedies with respect to any antecedent breach by the Customer under that Lease. All rights of the Eclipx Group under each Lease are in addition to its rights under the law. The indemnities in clause 10.1 continue in full force and effect notwithstanding the termination of any Lease.
- 13.5 **Notices:** Any notice or demand to be given by Eclipx under a Lease may be served on the Customer by being left at or sent by pre-paid mail or transmitted by facsimile or email to the address set out in the Lease Schedule or otherwise as notified in writing to Eclipx. The notice or demand will be treated as having been given and received:
- (a) if sent by registered post, 2 Business Days after it was posted; and
 - (b) if transmitted by email or facsimile, on the day of transmission if a Business Day, or otherwise on the next Business Day. If the email or facsimile is transmitted after 5:00pm (in the place of receipt) on a Business Day, on the next Business Day.
- 13.6 **Electronic information:** The Customer consents to the Eclipx Group providing it with information in electronic form. The Customer acknowledges that if it no longer wishes to receive documents electronically, it can contact Eclipx in accordance with this Master Lease Agreement.
- 13.7 **Commissions:** The Customer consents to the Eclipx Group paying a commission to any third party in relation to any Lease. The Customer acknowledges that any third party which submitted a Lease Schedule to the Eclipx Group is not and was not the Eclipx Group's agent for any purpose and is the Customer's agent. Commissions may be included in the cost of the Goods.
- 13.8 **Eclipx cure right:** If the Customer neglects to pay any amount or take any other action required by a Lease, the Eclipx Group may pay that amount or take that other action and recover such costs from the Customer. Any member of the Eclipx Group may enter and remain upon any land or premises for this purpose.
- 13.9 **Set-off:** The Customer irrevocably authorises Eclipx to set-off any amount held by Eclipx on any account of the Customer against any amount owing by the Customer to any other of the Eclipx Group without notice to the Customer.
- 13.10 **Invalid provisions:** If any provision of a Lease or related Guarantee is found to be invalid or unenforceable in any jurisdiction, that provision will have no force or effect in that jurisdiction and will be severed from that Lease or related Guarantee for the purposes of that jurisdiction only without affecting any of the remaining provisions or the operation of that Lease in any other jurisdiction.
- 13.11 **Agency:** Eclipx may enter into this Master Lease Agreement and any Leases under it as agent for another person (whether disclosed or not).
- 13.12 **Administrator:** Eclipx may from time to time appoint any person as servicer, back-up servicer, agent or administrator to act on its behalf under a Lease or related Guarantee. Any notice, document

or demand given or made to or by any such person shall be deemed to be validly given or made to or by Eclix and any act or omission of any such person shall be binding on Eclix.

- 13.13 **Governing law:** Each Lease and related Guarantee is governed by the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
- 13.14 **Contract and Commercial Law Act 2017:** For the purposes of Part 2, Subpart 1 of the Contract and Commercial Law Act 2017, the Customer acknowledges and accepts that its obligations under each Lease shall be enforceable by any member of the Eclix Group notwithstanding that that Eclix Group member may not sign this agreement.

SECTION B: GUARANTEE AND INDEMNITY TERMS

This section B only applies if it is selected on the Lease Schedule.

14. GUARANTEE

- 14.1 **Guarantee:** The Guarantor guarantees to and indemnifies the Eclix Group in respect of the Customer's performance of each Lease and the Customer's payment of all sums owing to the Eclix Group under each Lease or otherwise (**Guaranteed Obligations**) in the manner and at the time agreed between Eclix and the Customer. If no time is agreed, then payment shall be on demand.
- 14.2 **Indemnity:** The Guarantor agrees, independently of the other provisions of the Guarantee, to indemnify the Eclix Group against all losses, costs and other expenses (including solicitor / client costs) arising from any failure by the Customer to make payment of all or any of the Guaranteed Obligations, whether or not the Customer's liability is or has become void or unenforceable for any reason and whether or not the remainder of the Guarantee is void or unenforceable against the Guarantor for any reason.
- 14.3 **Continuing Guarantee:** This Guarantee is a continuing, unconditional and irrevocable guarantee and indemnity

and it shall remain in full force and effect until Eclix grants a written release to the Guarantor following payment or satisfaction of the whole of the Guaranteed Obligations. This Guarantee shall not be discharged by the receivership, liquidation, bankruptcy or death of the Customer or the Guarantor.

- 14.4 **Principal debtor:** The Guarantor agrees to be bound as principal debtor and the Guarantor's liability shall not be affected by any delay or other concession which may be granted to the Customer by Eclix, or any compromise which Eclix may reach with the Customer or by the release or variation of any security held by Eclix in respect of the Customer.
- 14.5 **No competition:** The Guarantor agrees that it will not compete with Eclix for any dividend or distribution in any winding-up, scheme or arrangement or bankruptcy of the Customer.
- 14.6 **Notification:** The Guarantor agrees to notify Eclix in writing of any change in address for the Guarantor and any such notification shall only be effective upon receipt from Eclix.

SECTION C: OPERATING LEASE ADDITIONAL TERMS

This section C only applies if it is selected on the Lease Schedule.

15. OPERATING LEASE

- 15.1 **End of term:** At any time between the date 6 months prior to the expiry of the Term of a Lease and the date of expiry of the Term, the Customer may give Eclix 30 days' written notice that, effective from the end of the Term, the Customer elects to:
- (a) return the Goods specified in that Lease in good working order and condition along with duly executed transfers of any certificates of registration applicable to the Goods and any other records regarding those Goods as directed by Eclix;
 - (b) enter into negotiations with Eclix in order to extend the Term; or
 - (c) offer to purchase the Goods specified in that Lease (which offer Eclix may accept or reject in its sole discretion).

15.2 **Effect:** If the Customer does not give notice in respect of a Lease in accordance with clause 15.1, that Lease will continue after the end of the Term on a monthly basis on the same terms and conditions (other than in respect of Term) until:

- (a) the Customer does give notice that it elects one of the options listed in 15.1; or
- (b) the Lease is otherwise terminated in accordance with clause 5.

15.3 **Recovery Costs:** If the Customer elects to return Goods and then fails to comply with its obligations to do so, the Customer must pay Eclix its Recovery Costs and, by way of liquidated damages the sum of the average daily Lease Payment for those Goods payable by the Customer during the Term for each day the Customer fails to deliver up those Goods or until Eclix repossesses those Goods.

15.4 **End of term payments:** At the end of the Term the Customer must pay Eclix all amounts which are due and payable in respect of those Goods under that Lease.

15.5 **No option to purchase:** Notwithstanding anything else contained in this section 15, the Customer has no option at any time to purchase any Goods.

SECTION D: LEASE TO OWN ADDITIONAL TERMS

This section D only applies if it is selected on the Lease Schedule.

16. LEASE TO OWN

16.1 **End of Term:** At the end of the Term of a Lease, the Customer must pay Eclix all amounts which are due and payable in respect of those Goods under that Lease including the Residual Payment.

16.2 **Transfer of ownership:** On receipt by Eclix of all amounts in 16.1, ownership of the Goods will pass to the Customer. The Customer:

- (a) agrees that the Goods are purchased on an “as is, where is” basis and the Customer can make no claim against the Eclix Group in relation to any Goods;

- (b) agrees that it will be liable for any tax consequences which arise as a consequence of its purchase of any Goods;

- (c) agrees that the Eclix Group may or may not take tax advice on the consequences of the purchase of any Goods by the Customer; and

- (d) indemnifies the Eclix Group (on demand) for any tax liability imposed on the Eclix Group as a consequence of the Customer purchasing any Goods.

16.3 **Recovery Costs:** If the Customer fails to comply with its obligations under clause 16.1, the Eclix Group may repossess the Goods and the Customer must also pay Eclix its Recovery Costs and, by way of liquidated damages, the sum of the average daily Lease Payment for those Goods payable by the Customer during the Term for each day the Customer fails to deliver up those Goods or until Eclix repossesses those Goods.

16.4 **Continuance:** This clause 16 survives the termination or expiry of each Lease.

SECTION E: FINANCE LEASE ADDITIONAL TERMS

This section E only applies if it is selected on the Lease Schedule.

17. FINANCE LEASE

17.1 **End of Term:** At the end of the Term of a Lease, the Customer must:

- (a) pay Eclix all amounts which are due and payable in respect of those Goods under that Lease; and
- (b) return the Goods specified in that Lease in good working order and condition along with duly executed transfers of any certificates of registration applicable to the Goods and any other records regarding those Goods as directed by Eclix.

17.2 **No option to purchase:** The Customer does not have an option, right or obligation to purchase the Goods at the expiry of the Term. Eclix may, but is not obligated to, on expiry or termination of a Lease, consider any offer from the Customer to purchase the Goods subject to that Lease. If Eclix agrees to sell any Goods to the Customer, the Customer:

- (a) agrees that the Goods are purchased on an “as is, where is” basis and the Customer can make no claim against any member of the Eclipx Group in relation to any Goods;
- (b) agrees that it will be liable for any tax consequences which arise as a consequence of its purchase of any Goods;
- (c) agrees that the Eclipx Group may or may not take tax advice on the consequences of the purchase of any Goods by the Customer; and
- (d) indemnifies the Eclipx Group (on demand) for any tax liability imposed on any member of the Eclipx Group as a consequence of the Customer purchasing any Goods.

17.3 **Price of purchase:** If Eclipx approves the Customer’s offer to purchase Goods, the price payable for those Goods will be the Residual Payment attributable to those Goods.

17.4 **Continuance:** This clause 17 survives the termination or expiry of each Lease.

SECTION F: EQUIPMENT PROTECTION PLAN TERMS

This section F only applies if it is selected on the Lease Schedule.

18. EQUIPMENT PROTECTION

18.1 **Insurance:** Clause 7 will not apply in respect of any Goods for which the Customer has selected this section F.

18.2 **Risk of loss or damage:** Subject to the other provisions of this clause 19, while Eclipx owns the Goods and the Customer does not have any amounts owing but unpaid in respect of those Goods, Eclipx will retain and bear the risk of any theft, loss or accidental damage to the Goods occurring anywhere in New Zealand, Australia or anywhere else in the world during a trip of not more than 35 days duration.

18.3 **Exclusions:** The Customer will assume and bear the risk of all theft, loss or damage to the Goods (and any resulting liability for injury, death or damage) that:

- (a) is not covered by clause 18.2 for any reason;
- (b) is covered by a manufacturer’s warranty or any other extended warranty or would have been covered if that warranty was not void;
- (c) is caused by mechanical or electrical breakdown of any kind (unless occurring as a result of an event outside the Customer’s control);
- (d) arises from theft, misappropriation, fraudulent, intentional or dishonest acts or malicious damage by the Customer, anyone with unrestricted access to the Goods or anyone permitted to use the Goods;
- (e) arises from theft, attempted theft or loss where the Goods were in an unoccupied vehicle left overnight or left unlocked, or were in a public place unattended;
- (f) arises from a computer virus or other software based malfunction;
- (g) arises from war or other government interference;
- (h) is caused by corrosion, oxidation, rust, insects, animals, dust, weather conditions (including dryness or wet), cosmetic damage, faulty workmanship, failure to perform to specifications;
- (i) is a result of normal wear and tear; or
- (j) occurs to any expendable or consumable items (including batteries and any other part of any Goods which require periodic replacement).

18.4 **First loss:** The Customer must pay the first \$150 (including GST) of any amount claimed from Eclipx under clause 18.2 to compensate Eclipx for its processing costs.

18.5 **Maximum claims:** The Customer may not make more than one claim under clause 18.2 in any one 12 month period.

18.6 **Consequence of claim:** If the Customer makes a claim under clause 18.2 in respect of any Goods or part of Goods (**Protected Goods**), the relevant Lease will terminate immediately in respect of both the Protected Goods and all other Goods specified in that Lease and, if Eclipx chooses (in its sole discretion), Eclipx and the Customer may enter into a new Lease

for the Goods other than the Protected Goods on the same terms and conditions as the terminated Lease (including as to Term).

- 18.7 **Notification:** If the Customer wishes to exercise its rights under clause 18.2, it must provide Eclipx with written notice within 14 days of the relevant event occurring along with any evidence Eclipx requires to assess the Customer's claim. Eclipx may make any reasonable enquiries as it sees fit about the notification and may request that the Customer provide a policy report.

SECTION G: PAYMENT PROTECTION PLAN TERMS

This section G only applies if it is selected on the Lease Schedule.

19. PAYMENT PROTECTION

- 19.1 **Termination:** If any of the following occurs in respect of the Customer, and provided the Customer complies with clause 19.3, the Lease will be terminated and the Customer will be released from all obligations to make any remaining Payments as a consequence of the termination or otherwise:

- (a) **Disablement:** The person specified as a "nominated protected person" in the relevant Lease Schedule or, if the Customer is an individual, a trustee or a partner in a partnership, that Customer (in either case, **Protected Individual**):
- (i) becomes totally and continually unable to perform its usual occupational duties due to illness or injury for more than 30 consecutive days;
 - (ii) such disablement is certified by a medical practitioner licensed to practise in New Zealand and approved by Eclipx;
 - (iii) has not been engaged in work for remuneration since the occurrence of the disablement; and
 - (iv) the disablement does not relate to any illness, injury or condition known to be present in the 12 months prior to the date of the relevant Lease.

- (b) **Involuntary unemployment:** The Protected Individual is terminated from gainful employment and is certified as unemployed by the appropriate government agency. This clause does not include any termination resulting from voluntary unemployment, voluntary redundancy, retirement or becoming unemployed due to acts of wilful misconduct.
- (c) **Death:** The Protected Individual dies and such death is certified by a medical practitioner licensed to practise in New Zealand and approved by Eclipx.
- (d) **Terminal illness:** The Protected Individual is diagnosed by a medical practitioner licensed to practise in New Zealand and approved by Eclipx with a terminal illness with a life expectancy of 3 months or less.
- (e) **Business interruption:** The Customer suffers interruption to its business resulting in the Customer not being able to carry on its normal business activity for more than 30 consecutive days as a result of total physical loss or damage to the business premises, prevention of access to the business premises or failure of the essential services to the business premises required for normal operation. The Customer must have been operating the same business for a period of 6 months prior to a claim being lodged under this clause 19.1(e).

- 19.2 **Suspension:** Rather than exercising its rights of termination under clause 19.1, the Customer may instead elect to suspend all Payments under a Lease for a period of 3 months from the date Eclipx accepts the Customer's notification of an event under clause 19.1. Following the end of that 3 month period, the Customer may choose to exercise its full rights under clause 19.1 or, if it does not do so, the remaining Payments will be adjusted to account for the suspended Payments.

- 19.3 **Notification:** If the Customer wishes to exercise its rights under clause 19.1, it must provide Eclipx with written notice within 14 days of the relevant event occurring along with any evidence Eclipx requires

to assess the Customer's claim. Eclix may make any reasonable enquiries as it sees fit about the notification and may request that the Customer undergo a medical examination at Eclix's expense.

- 19.4 **Goods:** If the Customer exercises its rights under clause 19.1, it must immediately return the Goods to Eclix.

SECTION H: DEFINITIONS

20. DEFINITIONS

- 20.1 In this Agreement, the capitalised terms below shall have the following meanings, unless the context otherwise requires:

Acceptance Date means, in relation to a Lease, the date Eclix disburses funds in purchase of the Goods relating to that Lease.

Business Day means a day other than a Saturday, Sunday or any day which is a public holiday in Auckland, New Zealand.

Commencement Date means, in relation to a Lease, the commencement date specified in the relevant Lease Schedule.

Early Termination Sum means, in respect of a Lease, the sum of:

- (a) all amounts which fell due prior to termination and which remain outstanding;
- (b) the present value of the Payments (net of GST) (including, if applicable, the Residual Payment) which, but for the termination, would have been payable by the Customer under that Lease as from the date of early termination to the end of the Term of that Lease (inclusive of any unamortised brokerage or commission), calculated as at the date of termination by applying the implicit rate of interest used by Eclix to calculate Payments to each such Payment;
- (c) any cost, loss or expense arising by reason of the cancellation, termination or alteration of any arrangements entered into by Eclix in order to fund (whether in whole or in part) that Lease or arising by reason of the inability of Eclix to obtain the return which Eclix would have

received had that Lease terminated at the end of the Term of that Lease;

- (d) any Recovery Costs; and
- (e) at the option of Eclix, any other amounts due, owing or payable by the Customer to Eclix on any account under any other agreement or arrangement entered into by the Customer with Eclix or any Related Entity of Eclix.

Eclix means NZGT (FP) Trustee Limited in its capacity as trustee of the FP Ignition Trust 2011 – 1 New Zealand.

Eclix Group means Eclix NZ Limited, NZGT (FP) Trustee Limited (including it its capacity as trustee of any trust), any related company of Eclix NZ Limited and any other person that the Lessor notifies the Customer to be a member of the Eclix Group from time to time.

Goods means, in relation to a Lease, goods described in the relevant Lease Schedule (including hardware or software and anything related to those goods relating to their installation or use) and includes any other items that are deemed to be or form part of those goods.

GST means goods and services tax levied under the Goods and Services Tax Act 1985.

Guarantee means the guarantee and indemnity granted by each Guarantor in favour of Eclix under section B.

Guarantor means, in relation to a Lease, each person identified as a guarantor in the Master Lease Agreement relating to that Lease.

Insolvency Event means, in respect of the Customer or a Guarantor, that person enters into, or any steps are taken to have them enter into, liquidation, provisional liquidation, receivership, receivership and management, administration, bankruptcy or any arrangement, reconstruction or composition with their creditors, or a statutory manager is appointed with respect to any of their assets or they fail to pay their debts as they fall due or they otherwise become insolvent.

Interim Payment means, in respect of a Lease, the Interim Payment specified in the relevant Lease Schedule.

Interim Term means, in respect of a Lease, the period which commences on the Acceptance Date and expires on the Commencement Date.

Lease means a lease of Goods to the Customer by Eclix completed under the Master Lease Agreement as recorded in the Lease Schedule relating to those Goods and the sections of the Master Lease Agreement incorporated by reference into that Lease Schedule.

Lease Asset means, in respect of a Lease, all of Eclix's right, title and interest (present and future) in, to, under or derived from that Lease, any Guarantee relating to that Lease and the Goods subject to that Lease.

Lease Payments means, in relation to a Lease, the lease payments specified in the relevant Lease Schedule.

Lease Payment Date means, in relation to a Lease, each Lease Payment Date specified in the relevant Lease Schedule (including the first Lease Payment Date).

Lease Schedule means, in relation to a Lease, the schedule entitled as such provided to the Customer by Eclix in accordance with the Master Lease Agreement evidencing the key terms of a lease and signed by the Customer.

Master Lease Agreement means the document entitled such entered into by the Customer, each Guarantor and Eclix containing the Customer's details, the Guarantor's details and these terms and conditions.

Payment Interval means, in relation to a Lease, the payment interval specified in the relevant Lease Schedule.

Payments means, in respect of a Lease, the Lease Payments and all other amounts payable by the Customer under that Lease including the Interim Payment (if any).

PPSA means the Personal Property Securities Act 1999.

Recovery Costs means, in relation to a Lease, all costs and expenses incurred by the Eclix Group in repossessing or attempting to repossess the Goods

subject to that Lease, including satisfying any third party claims or liens, storing and insuring those Goods, returning those Goods to the condition required under the Lease and any reasonable legal costs incurred by the Eclix Group in connection with the repossession or attempted repossession of those Goods.

Related Entity has the meaning given to related company in the Companies Act 1993 on the basis that references to companies in that section are read as references to any person.


Residual Payment means, in relation to a Lease that is a lease to own, the residual payment specified in the relevant Lease Schedule or, in relation to a Lease that is an operating lease, the residual value adopted by Eclix in respect of that Lease in calculating the Payments for that Lease.


Term means, in relation to a Lease, the term specified in the relevant Lease Schedule and any extended term agreed in writing between the parties for that Lease.


20.2 **Interpretation:** Unless the context otherwise requires:


- (a) a reference to any party includes that party's successors, personal legal representatives and permitted assigns;
- (b) if any party is comprised of more than one person, those persons' obligations are joint and several;
- (c) the singular includes the plural and vice versa;
- (d) the word person includes any body corporate, association, authority and any other body or entity;
- (e) if there is any inconsistency between a Lease Schedule and the Master Lease Agreement, the Lease Schedule shall prevail; and
- (f) a reference to any law or legislation shall be deemed to be references to that law or legislation as from time to time amended, re-enacted or substitute and any subordinate legislation, by-laws, judgments, decrees, ordinances, rules and other authorities.



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