

## I AGREE TO BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS

Please read these Terms and Conditions ("Terms and Conditions") carefully before using the <https://www.acumenfinance.com.au> website and completing the Acumen Finance Lending Application and agreeing to the provision of the service ("Acumen Finance Service") offered by Acumen Finance Pty Ltd ACN 617 819 217

Your access to and use of the Acumen Finance Service is conditional upon your acceptance of, and compliance with, these Terms and Conditions and your acknowledgement that you understand the Terms and Conditions as stated, that you confirm that they are fair and reasonable in all the circumstances and that you have sought appropriate legal or financial advice before accepting the Terms and conditions. By clicking "**Accept**" you agree to be bound by the *Electronic Transactions Act 1999 (Cth)* and the *Electronic Transactions Act 2000 (NSW)*.

These Terms apply to all visitors, users and others who access or use Acumen Finance Service.

**If you disagree with any aspect of the Terms and Conditions then you may not access the Acumen Finance Service website.**

**If you do not understand any of the Terms and Conditions you should obtain independent legal or financial advice.**

**By accepting these Terms and Conditions you warrant and undertake that you have read and understood the Terms and Conditions in their entirety or have obtained independent legal and / or financial advice on the Terms and Conditions and their force and effect and that you accept the Terms and Conditions in their entirety.**

## REFERENCE SCHEDULE

This Reference Schedule is incorporated by reference and contains other particulars which have been agreed between the parties.

Words and phrases which have a special meaning when used in this agreement are defined below in this Reference Schedule.

**THIS AGREEMENT IS ENTERED INTO ON 02/23/2021**

**BETWEEN**

**ACUMEN FINANCE LIMITED (ACN 617 819 217) ("ACUMEN") of**

Level 29 Chifley Tower, 2 Chifley Square Sydney

**AND**

- **CEO Financial Services Pty Ltd** -1 King Street Randwick
- **Ggg sdn bhd** -1 Queen Street Randwick,2567 NSW
- **Hhh sdn bhd** -1 Prince Street Randwick ,28739 NSW

**(Company Borrowers)**

**AND**

- **AAA aaa**
- **BBB bbb**
- **CCC ccc**

**(Borrowers)**

AND

- **Ddd sdn bhd**
- **EEE eee**
- **Fff sdn bhd**

**(Guarantors)**

## **DEFINED TERMS**

Affiliate means:

- a. each Related Entity of each body corporate who is or is one of the persons who comprise Acumen or an Obligor (as the case may be); and
- b. each Related Person of each natural person who is or is one of the persons who comprise Acumen or an Obligor (as the case may be), and each body corporate in relation to which the natural person is a Related Entity.

Alternative Way means:

- a. a way of structuring a transaction or obtaining funds, whether by utilising debt or equity;
- b. in order to achieve or complete (in full or part) the Purpose; and
- c. as proposed by Acumen that is an alternative way to that proposed by the Borrower.

**APRA** means the Australian Prudential Regulation Authority.

**ASIC** means the Australian Securities and Investments Commission.

**Attorney** means an attorney appointed by an Obligor under a Mandate Document.

**Authorised Representative** means in respect of Acumen, a director or secretary of Acumen, or any employee or officer of Acumen whose title includes the word "director ", "chief ", "counsel ", "executive ", "head ", "president "or "manager "or a person notified to the Borrower as being its attorney or authorised representative for the purposes of the Mandate Documents.

Broking Fee means an amount determined as follows, based on the lending market from which Acumen endeavours to procure a loan offer to the Borrower, and is payable in accordance with clause 3(a):

Loan Market	Broking Fee (plus GST)
Tier 1 Entities	1%
Tier 2 Entities	2%
Tier 3 Entities	3%
In any other case	3%

and in each case calculated based on the higher of:

- a. the gross facility limit in any Transaction Document;
- b. the aggregate amount of finance advanced in connection with the Purpose during the Term;
- c. if all of the Project Assets are sold following the completion of the Project and prior to the time when the Broking Fee becomes payable, then the total gross amount for which the Project Assets are sold and otherwise, the total gross amount for which all of the Project Assets are likely to be capable of being sold following the completion of the Project, but regardless of the likelihood that the Project will be completed; or
- d. the total value of the Project Assets as at the time that the Broking Fee becomes payable.

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in the capital city of the Jurisdiction.

**Confidential Information** means information acquired by a party which relates to the other party or any Lender, its shareholders or its business and its Affiliates and which is not generally known and includes:

- a. information of and about Lenders, including information about any intermediaries via which loans can be obtained from those Lenders;
- b. information about Alternative Ways;
- c. information about Acumen and or any of its Related Entities, including about their processes and financial information;
- d. all Intellectual Property;
- e. any other information about Acumen and or any of its Related Entities and which is not public information; and

f. information communicated to any Obligor in confidence.

**Copyright** has the meaning set out in the Copyright Act 1968 (Cth) as amended.

**Credit Report** means a credit report on any Obligor as conducted by, or provided by the Borrower to, Acumen and by a credit reporting agency acceptable to Acumen.

**Drawdown** means a provision of financial accommodation under a Loan Document.

**Engagement Fee** means an amount determined as follows and payable in accordance with clause 3(a):

<b>Loan Application Amount</b>	<b>Engagement Fee Payable (plus GST)</b>
Less than \$1,000,000	\$3,750
Equal to or greater than \$1,000,000	\$4,750
Equal to or greater than \$3,000,000	\$5,750
Equal to or greater than \$10,000,000	\$9,500

**Event of Default** means each event set out in clause 7.1.

**External Administrator** means an administrator, controller or managing controller (each as defined in the Corporations Act), trustee, provisional liquidator, liquidator or any other person (however described) holding or appointed to an analogous office or acting or purporting to act in an analogous capacity.

**Fee Letter** means any fee letter or agreement between Acumen, any of its Related Entities, any Lender, or other person, on the one part, and the Borrower, on the other part.

**Government Agency** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity: it includes any self-regulatory organisation established under statute and any stock exchange.

GST has the meaning set out in the GST Act.

GST Act means *A New System (Goods and Services Tax) 1999 (Cth)*.

**Improvements** means any improvements, additions or modifications to the Intellectual Property which are adopted by Acumen.

**Insolvency Event** means, in respect of a person, any of the following occurring:

- a. it becomes insolvent within the meaning of section 95A, or is taken to have failed to comply with a statutory demand under section 459F(1), or must be presumed by a court to be insolvent under section 459C(2), or is the subject

of a circumstance specified in section 461 (whether or not an application to court has been made under that section) or, if the person is a Part 5.7 body, is taken to be unable to pay its debts under section 585, of the Corporations Act;

- b. except with Acumen's consent:
  - i. it is the subject of a Liquidation, or an order or an application is made for its Liquidation; or
  - ii. an effective resolution is passed or meeting summoned or convened to consider a resolution for its Liquidation;
- c. an External Administrator is appointed to it or any of its assets or a step is taken to do so or its Related Entity requests such an appointment;
- d. if a registered corporation under the Corporations Act, a step is taken under section 601AA, 601AB or 601AC of the Corporations Act to cancel its registration;
- e. if a trustee of a Trust, it is unable to satisfy out of the assets of the Trust the liabilities incurred by it for which it has a right to be indemnified from the assets of the Trust as and when those liabilities fall due;
- f. in respect of any natural person, that person has committed an act of bankruptcy within the meaning of section 40, or is or becomes bankrupt within the meaning of section 5 of the Bankruptcy Act 1966 (Cth);
- g. an analogous or equivalent event to any listed above occurs in any jurisdiction; or
- h. it stops or suspends payment to all or a class of creditors generally.

**Inspector** means a person retained by Acumen or acting on Acumen's behalf for the purpose of clause 8.1.

**Intellectual Property** means:

- a. all technical, marketing, borrower and lender data bases and other information owned by, or in the possession of, Acumen or any of its Related Entities;
- b. the Trade Marks;
- c. all customer information collected by Acumen and its Related Entities in the course of operating Acumen's business; and
- d. the Copyright in all of the above.

**Investigating Accountant** means representatives or accountants appointed by Acumen to investigate the affairs and financial position of any Obligor in accordance with clause 8.2.

**Jurisdiction** means New South Wales.

**Lender** means all lenders (including banks), individuals, non-bank financiers and investment funds, including their associated entities, advisers or agents, as determined by Acumen as a potential lender to the Borrower.

**Liquidation means:**

- a. a winding up, dissolution, liquidation, provisional liquidation, administration, bankruptcy or other proceeding for which an External Administrator is appointed, or an analogous or equivalent event or proceeding in any jurisdiction; or
- b. an arrangement, moratorium, assignment or composition with or for the benefit of creditors or any class or group of them.

**Loan Documents** means the following relevant documents in form and substance satisfactory to the relevant Lender:

- a. loan or facility agreement;
- b. any mortgage of land;
- c. any general security agreement;
- d. each other document that Acumen, the Lender and Borrower agree is a 'Loan Document'; and
- e. any document entered into or given under or in connection with, or for the purpose of amending or novating, any document referred to in a paragraph above.

**Loss** means a loss, claim, action, damage, liability, cost, charge, expense, penalty, compensation, fine or outgoing suffered, paid or incurred.

**Mandate Documents** means:

- a. this agreement, including the Guarantee and Indemnity in Schedule 1 of this agreement;
- b. each Solicitor's certificate of independent legal advice in the form set out in Schedule 2;
- c. any Term Sheet;
- d. any Fee Letter; and
- e. each other document that Acumen and the Borrower agree is a 'Mandate Document'; and

- f. any document entered into or given under or in connection with, or for the purpose of amending or novating, any document referred to in a paragraph above.

**Material Adverse Effect** means a material adverse effect on any one or more of the following:

- a. on any Obligor's ability to perform any of its obligations under any Transaction Document;
- b. on the validity, legality or enforceability of all or any part of any Transaction Document or the Powers of Acumen or a Lender under a Transaction Document or on the effectiveness or intended priority of any Security;
- c. the credit worthiness of any Obligor, as reflected in any Credit Report of an Obligor;
- d. on the assets, business, operations, condition (financial or otherwise) or prospects of an Obligor;
- e. on the value of any property mortgaged or charged to Acumen under any Mandate Document; or
- f. on the rights or remedies of Acumen or any lender under any Transaction Document.

**Obligor** means:

- a. the Borrower; and
- b. each Guarantor

**Power** means any right, power, authority, discretion or remedy conferred on Acumen, a controller, or an Attorney by any Mandate Document or any applicable law.

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

**PPSA Security Interest** means a security interest as defined in the PPS Act and to which the PPS Act applies.

**Project** means Construction loan for DA Approved 8 room Boarding House in Randwick

**Project Assets** means

**1 King Street, Randwick NSW 2031**

**22a Millen Street, Townsville Queensland 12345**

**1 Queen Street, Geelong Victoria 7890**

**1 Prince Street, Hobart Tasmania 89077**

**Purpose** means Construction loan for DA Approved 8 room Boarding House in Randwick

**Related Entity** has the meaning attributed thereto in section 9 of the Corporations Act 2001 (Cth).

**Related Person** has the meaning attributed thereto in the *Dictionary in the Duties Act 1997 (NSW)*.

**Secured Moneys** means all fees, costs, debts and monetary liabilities of each Obligor to Acumen under or in relation to the Transaction Documents, including without limitation the Engagement Fee and Broking Fee, and in any capacity, irrespective of whether the debts or liabilities:

- a. are present or future;
- b. are actual, prospective, contingent or otherwise;
- c. are at any time ascertained or unascertained;
- d. are owed or incurred by or on account of the Obligor alone, or severally or jointly with any other person;
- e. are owed to or incurred for the account of the Financier alone, or severally or jointly with any other person;
- f. are owed to any other person as agent (whether disclosed or not) for or on behalf of Acumen;
- g. are owed or incurred as principal, interest, fees, charges, Tax, damages (whether for breach of contract or tort or incurred on any other ground), losses, costs or expenses, or on any other account;
- h. are owed to or incurred for the account of Acumen directly or as a result of:
  - i. the assignment or transfer to Acumen of any debt or liability of an Obligor (whether by way of assignment, transfer or otherwise); or
  - ii. any other dealing with any such debt or liability;
  - iii. are owed to or incurred for the account of Acumen before the date of this agreement or before the date of any assignment of this agreement to Acumen by any other person or otherwise; or
  - iv. comprise any combination of the above.

**Security** means each present or future Security Interest, mortgage, guarantee created under any Mandate Document or other document or agreement created or entered into as security (directly or indirectly) for the payment of any Secured

Moneys or the performance of any obligation in favour of Acumen under a Transaction Document.

**Security Interest** means any:

- a. PPSA Security Interest;
- b. security for payment of money, performance of obligations or protection against default (including a mortgage, bill of sale, charge, lien, pledge, trust, power or title retention arrangement, right of set-off, assignment of income, garnishee order or monetary claim and flawed deposit arrangements); and
- c. thing or preferential interest or arrangement of any kind giving a person priority or preference over claims of other persons or creditors with respect to any property or asset,

and includes any agreement to create any of them or allow them to exist.

**Security Property** means

- A. **1 King Street, Randwick NSW 2031**
- B. **22a Millen Street, Townsville Queensland 12345**
- C. **1 Queen Street, Geelong Victoria 7890**
- D. **1 Prince Street, Hobart Tasmania 89077**

**Security Provider** means

**CEO Financial Services Pty Ltd - a,b**

**CCC ccc - c,d**

**Tax** means:

- a. any tax, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding; or
- b. any income, stamp or transaction duty, tax or charge,  
which is assessed, levied, imposed or collected by any Government Agency and includes any interest, fine, penalty, charge, fee or other amount imposed on or in respect of any of the above.

**Term** means the period starting on the date of this agreement and continuing for a period of 7 years.

**Term Sheet** means the term sheet proposed to one or more Lenders by Acumen in connection with the Purpose.

**Tier 1 Entities** means first tier banks and entities registered with and regulated by APRA.

**Tier 2 Entities** means second tier lenders registered with and regulated by ASIC, including mortgage securitization programs, residential and commercial mortgage-backed securities lenders, fintech backed property lenders, wholesale mortgage lenders and non-bank mortgage managers that raise capital from a wholesale credit line or investors.

**Tier 3 Entities** means unregistered sophisticated investors, private companies and distressed debt trading funds or special situations debt funds.

**Transaction** means the engagement of Acumen in accordance with the terms of the Mandate Documents in order to arrange finance so as to achieve or complete the Purpose.

**Transaction Documents** means the:

- a. Loan Documents; and
- b. Mandate Documents.

**Trade Marks** means the trade-marks, trade names, domain names and URL addresses, logos, get-up, patents, inventions, algorithms, registered and unregistered design rights, copyrights, and all similar rights in any part of the world (including know-how) of which Acumen has exclusive licence or other rights and if they are granted any registered trade-marks owned by Acumen, together with any other distinctive names, signs, designs, business marks, commercial symbols and colours of Acumen together with any variations or modifications of the same.

**Trust** means, in respect of an Obligor, each trust or managed investment scheme of which it is or becomes trustee or responsible entity. It includes for an Obligor any trust or managed investment scheme specified in any Transaction Document.

## **AGREEMENT**

### **1. Exclusive Appointment**

- a. The Borrower appoints Acumen as the exclusive arranger of any and all loans related to the Purpose.
- b. For the duration of the Term, the Borrower will not, and will ensure that none of its Affiliates, without the prior written consent of Acumen (which may be withheld in its absolute discretion):
  - i. directly or indirectly approach, contact or discuss with any Lender or lender, the Purpose;

- ii. announce, enter into discussions to raise, raise or attempt to raise any other or further finance in relation to the Purpose in the international or domestic market.
- c. Acumen offers, on the Terms and Conditions set out in this agreement, to use its reasonable endeavours to procure a loan offer for the Borrower on terms acceptable to the Borrower, and the Borrower accepts Acumen's offer.
- d. The performance of an obligation on the part of Acumen contained in this agreement by an Affiliate of Acumen will constitute performance of that obligation by Acumen.

## 2. Conditions Precedent

Acumen will not be obliged to perform any services under the Mandate Documents until it has received:

- a. this agreement duly executed by each Obligor; and
- b. the Engagement Fee in cleared funds.

## 3. Fees

- a. The Borrower must pay to Acumen:
  - i. the Engagement Fee on or prior to the date of this Agreement; and
  - ii. the Broking Fee on the date determined under clause 3(a).
- b. The Borrower will be liable to pay to Acumen the Broking Fee on the first to occur of the following:
  - i. **(Loan Offers)** The date on which Acumen submits to the Borrower a loan offer by a Lender, irrespective of whether that loan offer is satisfactory to or accepted by the Borrower, or a Loan Document is entered into by the Borrower or Lender.
  - ii. **(Alternative Finance)** The date on which any debt finance or equity is provided or made available to the Borrower or any of its Affiliates:
    - A. by any party for the Purpose during the Term as a result of an Alternative Way suggested or arranged by Acumen; or
    - B. by a Lender to the Borrower or any of its Affiliates for any purpose where that Lender was introduced by Acumen to the Borrower or any of its Affiliates;

- iii. **(Completion)** The date on which a certificate of occupancy in respect of any building(s) constructed in respect of the Purpose is issued and which evidences completion of the Purpose.
  - iv. **(Failure to Proceed)** The date on which:
    - A. any Obligor notifies Acumen of the Borrower's intention not to proceed with the proposed Transaction; or
    - B. Acumen reasonably determines (in its sole and absolute discretion) that due to material delays in an Obligor providing information requested by Acumen or any other conduct by the Obligor, the Borrower intends not to proceed with the Transaction, for any reason whatsoever.
  - v. **(Event of Default)** The date on which an Event of Default occurs.
- c. In the event that the Borrower pays to Acumen a Broking Fee under clause 3(b) ("Initial Broking Fee") and at a later date enters into a Loan Document which would have resulted in the Borrower paying to Acumen a higher Broking Fee ("Subsequent Broking Fee"), the Borrower agrees to pay to Acumen the difference between the Initial Broking Fee and Subsequent Broking Fee.
  - d. Each Obligor acknowledges and agrees that on the occurrence of any of the events set out in clause 3(b):
    - i. the Borrower will be liable to pay to Acumen the Broking Fee and that the Broking Fee will form part of the Secured Money; and
    - ii. The guarantee and indemnity granted by each Guarantor under clause 10 will guarantee, amongst other things, the payment by the Borrower of the Broking Fee.
  - e. The Broking Fee will be payable by the Borrower to Acumen on the date on which the Borrower becomes liable to Acumen to pay the Broking Fee under clause 3(b), provided that Acumen may elect in its sole discretion for the Broking Fee to be paid on the date, and from the proceeds, of first Drawdown under a Loan Document.
  - f. All fees payable under this agreement are non-refundable.

#### **4. Supply of Information and Documents**

- a. Each Obligor must use its best endeavours to promptly provide to Acumen such information and documents which Acumen may reasonably request from the Borrower from time to time.
- b. Acumen is not liable for any loss or damage including consequential loss or damage, arising directly or indirectly from any delay in any Obligor providing to Acumen any information or documents reasonably requested by Acumen.

## 5. Representations and Warranties

- a. Each Obligor represents and warrants to Acumen and its Affiliates, except as to matters disclosed by it to Acumen and accepted by Acumen in writing, that:
  - i. **(Status)** other than in the case of an Obligor that is a natural person, it is a corporation, limited by shares, registered (or taken to be registered) and validly existing under the laws of its jurisdiction of incorporation;
  - ii. **(Capacity)** it acts in its own right and not as trustee or responsible entity of any trust, scheme or settlement, as partner of any partnership or agent or nominee for any other person or in any other capacity in entering into, and performing its obligations under, the Mandate Documents;
  - iii. **(Power, capacity and authority)** it has the power, full legal capacity and necessary corporate authority to enter into, and exercise its rights and perform its obligations under each Mandate Document to which it is expressed to be a party and the transactions contemplated by the Mandate Documents;
  - iv. **(Mandate Documents)** each Mandate Document to which it is expressed to be a party is (subject to equitable principles and laws generally and subject to applicable stamping and registration) or will be valid, binding and enforceable against it in accordance with its terms when entered into;
  - v. **(Litigation)** no litigation or administrative, arbitration, mediation, conciliation, Tax claim or other proceeding or action (including any action by a Government Agency), or series of proceedings and actions, is current or pending or, to its knowledge, is likely or threatened against it or any of its property;
  - vi. **(Solvency)** it is solvent and there are no reasonable grounds to suspect that it is unable to pay its debts as and when they become due and payable;
  - vii. **(Material Adverse Effect)** nothing has occurred that has had, or is likely to have, a Material Adverse Effect;
  - viii. **(Ownership of assets):**
    - A. unless it is a trustee of a Trust, it is the sole legal and beneficial owner of all property secured by it under a Security and all assets included in its most recent Financial Statements; and
    - B. it has good title to all property and assets held by it or on its behalf
  - ix. **(Secured property)** all property secured by it under a Security:

- A. has a market value that is the same or materially the same as that notified by the Borrower to Acumen in any loan application; and
  - B. is free from all Security Interests;
- x. **(Information)** any factual information which an Obligor advises or provides to Acumen by or on behalf of it, or any of its Affiliates, ("Information ") is true, complete and accurate in all material respects as at the date it is provided or as at the date (if any) at which it is stated;
  - xi. **(Misleading statements)** nothing has occurred or been omitted and no information has been given or withheld that results in the Information being untrue or misleading in any material respect;
  - xii. **(Financial projections)** any financial projections contained in the Information have been prepared in good faith on the basis of recent historical information and on the basis of reasonable assumptions; and
  - xiii. **(Documents complete)** all documents which the Borrower provides to Acumen are complete and are either the original documents or true copies of the original documents.
- b. The representations and warranties set out in clause 5(a), are deemed to be made by the Borrower daily by reference to the facts and circumstances then existing commencing on the date of this agreement and continuing until the date the Loan Documents are signed.
  - c. The Borrower must immediately notify Acumen in writing if any representation or warranty set out in clause 5(a) is incorrect, misleading and agrees to supplement the Information promptly from time to time to ensure that such representation and warranty is correct when made.
  - d. The Borrower acknowledges and confirms to Acumen and its Affiliates that:
    - i. it is acting for its own account and that it has made its own independent decisions to enter into the Transaction and as to whether the Transaction is appropriate or proper for it based upon its own judgement and upon advice from such advisers as it has deemed necessary;
    - ii. it is not relying on any communication (written or oral) from any or all of Acumen and its Affiliates as investment advice or as a recommendation to enter into the Transaction, it being understood that information and explanations related to the terms and conditions of the Transaction will not be considered investment advice nor a recommendation to enter into the Transaction. No communication (written or oral) received from any or all of Acumen and its Related Entities will be deemed to be an assurance or guarantee as to the expected results of the Transaction; and

- iii. it is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms and conditions and risks of the Transaction. It is also capable of assuming, and assumes, the risks of the Transaction.

## 6. Payments

All payments to be made under the Mandate Documents:

- a. will be paid in the currency of the invoice and in immediately available, freely transferable cleared funds to such account(s) with such bank(s) as Acumen notifies the Borrower in writing;
- b. will be paid without any deduction or withholding for or on account of tax (a "**Tax Deduction**") unless a Tax Deduction is required by law. If a Tax Deduction is required by law to be made, the amount of the payment due will be increased to an amount which (after making any Tax Deduction) leave an amount equal to the payment which would have been due if no Tax Deduction had been required; and
- c. are exclusive of any GST.

## 7. Events of Default

An Event of Default occurs if any one or more of the following occurs (whether or not within an Obligor's control):

- a. (**Non-payment**) an Obligor does not pay on the due date any amount payable pursuant to a Transaction Document at the place at and in the currency in which it is expressed to be payable unless:
  - i. its failure to pay is caused by administrative or technical error beyond the control of the Obligor; and
  - ii. payment is made within 2 Business Days of its due date;
- b. (**Waiver or consent conditions**): an Obligor breaches any condition of any waiver or consent by Acumen or a Lender under or in connection with any Transaction Document;
- c. (**Other obligations**): an Obligor does not comply with any provision of any Transaction Document;
- d. (**Misrepresentation**): any representation or statement made or deemed to be made by an Obligor in any Transaction Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made;
- e. (**Vitiation of Transaction Document**) any of the following occurs or is alleged by an Obligor to have occurred:

- a. all or part of any Transaction Document is terminated or is or becomes void, avoided, illegal, invalid, unenforceable or limited in its effect;
  - b. it becomes impossible or unlawful for an Obligor to perform a material obligation under any Transaction Document; or
  - c. any party has the right to terminate or give a notice of termination due to breach or to rescind, accept repudiation of or avoid all or part of any Transaction Document;
- f. **(Business stopped or changed)** an Obligor stops or threatens to stop carrying on its business or a material part of it or substantially changes the nature of its business without Acumen's consent;
- g. **(Government Agency action or breach of law or Authorisation):**
- i. any Government Agency takes any action against an Obligor;
  - ii. there is any claim or requirement of substantial expenditure or alteration of activity under, or breach of, any Environmental Law; or
  - iii. there is any breach or threatened breach of any Authorisation, and in Acumen's or the relevant Lender's opinion such action, claim, requirement or breach has or is likely to have a Material Adverse Effect;
- h. **(Security Interest):**
- i. any Security Interest is enforced, or becomes capable of being enforced, against an asset of an Obligor; or
  - ii. a Security does not have, or ceases to have, the priority contemplated in it in whole or in part;
- i. **(Insolvency Event)** an Insolvency Event occurs with respect to an Obligor or a Trust;
- j. **(Trust)** if an Obligor is, or is expressed in this agreement to be, the trustee or responsible entity of a Trust (**Trustee**), any of the following occurs without Acumen's or the relevant Lender's prior consent;

- i. the Trustee ceases to be the trustee or responsible entity of the Trust or any step is taken to appoint a new or additional trustee or responsible entity of the Trust;
  - ii. the beneficiaries of the Trust resolve to wind up the Trust, or the Trustee is required to wind up the Trust under the terms of the Trust or applicable law, or the winding up of the Trust commences or any action, notice or application is made for a winding up of the Trust;
  - iii. in the case of a Trust which is a scheme:
  - iv. the scheme is deregistered or any action, notice or application is made or meeting is called, under or in accordance with the Corporations Act for the deregistration or winding up of the scheme;
  - v. the Trustee ceases to hold, or breaches the terms of, its Australian financial services licence;
  - vi. a temporary responsible entity of the scheme is appointed, or an application is made to do so, under the Corporations Act;
  - vii. the Trust is held or is conceded by the Trustee not to have been constituted or to have been imperfectly constituted;
  - viii. the Trustee fails to perform and observe its material obligations under the constituent documents of the Trust or at law;
  - ix. the Trustee ceases to be authorised under the terms of the Trust to hold the property of the Trust in its name and to perform its obligations under the Transaction Documents to which it is party; or
- the Trustee ceases to be entitled to be indemnified out of, or have a lien over, the assets of the Trust in respect of all of its obligations and liabilities under the Mandate Documents or Loan Documents or such right of indemnity is reduced or restricted.

- k. **(Change in control)** Control of the Obligor is altered from that subsisting at the date of this agreement without Acumen's or the relevant Lender's prior written consent; and
- l. **(Material Adverse Event)** an event or series of events (whether related or not) occurs which, in the opinion of Acumen or the relevant Lender, has or is likely to have a Material Adverse Effect.
- m. **(Effect of Event of Default)** If an Event of Default occurs, Acumen may by notice to the Borrower do one or more of the following:

- i. declare that the Secured Moneys is immediately due and payable, in which case the Borrower must immediately pay to Acumen the Secured Moneys; and
- ii. terminate Acumen's obligations under the Transaction Documents with immediate effect
- iii. The Transaction Documents may be enforced without notice to an Obligor or any other person even if Acumen accepts any part of the Secured Moneys after an Event of Default or another Event of Default has occurred.
- iv. Acumen is not liable to any Obligor for any Loss an Obligor may suffer, incur or be liable for arising out of or in connection with Acumen exercising any Power, except to the extent specifically set out in any Transaction Document.

## **8. Access**

### **1. Giving access to records**

Each Obligor that is a party to this Engagement agreement must:

- a. ensure that its business, financial records and property are available for inspection on reasonable notice by Acumen and its Inspectors if an Event of Default occurs; and
- b. allow each Inspector to take copies of or extracts from the Obligor's business and financial records and give reasonable assistance to each Inspector.

### **2. Investigating Accountants**

- a. Acumen may at any time, appoint Investigating Accountants to investigate the affairs and financial position of any Obligor that is a party to any Transaction Document. Each Obligor:
  - i. unconditionally authorises the Investigating Accountants to take the action which is reasonably necessary or desirable for the investigation. This does not include the power to manage the Obligor's business;
  - ii. agrees to give the Investigating Accountants all reasonable assistance for that purpose; and
  - iii. unconditionally authorises the Investigating Accountants to disclose to Acumen and its advisers all information and documentation in connection with the investigation.

- b. The Obligor must pay the costs and expenses of the Investigating Accountants immediately on demand by Acumen.

### **3. Valuations**

Acumen may instruct at any time valuation of any property for mortgage security purposes or lending purposes and the borrower and guarantors agree to pay for the valuation as invoiced by Acumen immediately after the valuation has been instructed even in the case of the report has not been finalized. The valuer that is chosen will be at Acumen's sole discretion. The valuer must have the relevant experience and professional indemnity insurance for mortgage security purposes and the insurance must specify that the valuation can be used for either or (As requested by Acumen Specifically) Tier 1, Tier 2 and Tier 3 lending purposes. The valuation must be approved for first and or second-ranking mortgages or caveat lending or unregistered mortgages.

## **9. Confidentiality and Ownership intellectual Property**

### **1. Information disclosed in confidence**

Each Obligor acknowledges and agrees that information will be taken to be or have been (as the case may be) disclosed in confidence by Acumen unless:

- a. the information is publicly available information; or
- b. at, or before the time that disclosure is made, Acumen states in writing that the information is not being disclosed in confidence.

### **2. Limitation on Use and Disclosure**

Each Obligor must keep the Confidential Information confidential and only use any Confidential Information disclosed to it for the purpose of considering whether to accept a loan offer procured by Acumen and or, if applicable, whether to obtain the funds in, or substantially in, an Alternative Way if any is proposed by Acumen.

### **3. Ownership of Intellectual Property**

- a. Each Obligor acknowledges and agrees that:
  - i. it will not at any time acquire any interest in the Intellectual Property; and
  - ii. the use or duplication of the Intellectual Property by the Obligor would constitute a material breach of this agreement.

Each Obligor confirms and acknowledges:

- a. Acumen may require any Obligor to take or to join with Acumen in taking reasonable legal action or instituting proceedings to prevent unauthorised use of any Intellectual Property.
  - i. Acumen's and its Affiliates' exclusive ownership or the exclusive right to the Intellectual Property and will not directly or indirectly contest or aid in contesting the validity or ownership of the Intellectual Property or take any action which might affect or prejudice Acumen's or its Affiliates' rights in any Intellectual Property;
  - ii. that any Improvements will be the sole property of Acumen and its Affiliates; and
  - iii. that it will not be a party (directly or indirectly) to the doing of any act, matter, omission or thing which may endanger, jeopardise or prejudicially affect the goodwill or the business of Acumen or the Intellectual Property.

## **10. Guarantee**

- a. The Guarantors, jointly and severally, irrevocably and unconditionally provide a guarantee to Acumen on the terms set out in Schedule 1 for the payment of the Secured Money on time.
- b. Each Guarantor that is a natural person represents and warrants that:
  - i. the Guarantor is aware of and fully understands the purpose, effect and consequences of the Guarantee;
  - ii. the Guarantee was executed voluntarily by the Guarantor; and
  - iii. unless waiver by Acumen in its sole discretion, it has obtained independent legal advice prior to entering into this agreement and has provided to Acumen a Solicitor's certificate of independent legal advice in the form set out in Schedule 2.

## **11. General Indemnity**

The Borrower must immediately indemnify Acumen on demand against any Loss by Acumen (and, in the case of paragraph (f) below, any of its officers) in respect of any of the following:

- a. the use of the loan monies by the Borrower;
- b. any Transaction Document (including any default by the Borrower in making any payment which the Borrower is required to make or any breach by the Borrower or the Guarantor); and/or
- c. arranging a loan for the Borrower

- d. any advance or proposed advance by a Lender not being made for any reason including any failure by the Borrower to fulfil any condition contained in a Loan Document;
- e. the occurrence of any Event of Default;
- f. the exercise by Acumen of any Power;
- g. any payment required under a Transaction Document not being made on its due date;
- h. Acumen acting in good faith on any notice or communication from, or genuinely believed to be from, an Obligor; and
- i. reliance by Acumen on information supplied by or on behalf of an Obligor which proves to be a misrepresentation or to be misleading or deceptive.

## **12. Limitation of Liability**

- a. Acumen makes no representation, warranty or guarantee that any offer for finance provided by a lender will be consistent with or reflect the terms of any application of finance or be acceptable to the Borrower.
- b. To the extent permitted by law, the Borrower releases Acumen and its affiliates and their officers, personnel, agents, attorneys and delegates from:
  - i. liability of any type to it under or in connection with this agreement; or
  - ii. any related transaction or past or future conduct (including omissions),
  - iii. except to the extent that the Borrower suffers a loss, liability or cost as a result of fraud, gross negligence or wilful misconduct by Acumen or an affiliate or any officer, employee, agent, attorney or delegate of Acumen.
- c. Without limiting paragraph (a), neither Acumen nor any of its affiliates or their directors, officers, personnel, agents, attorneys or delegates is responsible to the Borrower for, nor will be liable in respect of, whether before or after the date of this agreement, any loss (actual or contingent) suffered by the Borrower resulting (directly or indirectly) from the terms and conditions of any loan facility provided (or promised, guaranteed or represented and not provided) to the Borrower by any Lender.

## **13. SECURITY INTERESTS**

### **1. Personal Property**

- a. Each Obligor grants a Security Interest in its present and after-acquired property (including without limitation anything in respect of which the Obligor has at any time a sufficient right, interest or power to grant a Security Interest) to Acumen to secure payment of the Secured Money by the Obligor to Acumen.
- b. The Security Interest is a charge. If for any reason it is necessary to determine the nature of this charge, it is a fixed charge affecting the Secured Property (except that it is a floating charge over any personal property that is a circulating asset for the purposes of the PPS Act).
- c. Each Obligor acknowledges and consents to Acumen perfecting its Security Interests by lodging a Financing Statement (as defined in the PPS Act).
- d. All of the enforcement provisions of Chapter 4 of the PPS Act apply to all of the Security Interests created under or referred to in this agreement.

## **2. Security Property**

- a. Each Obligor mortgages all of its right, title and interest in all of its real property to Acumen as security for the due and punctual payment of the Secured Money.
- b. Without limiting clause 13.2(a), the Security Provider as legal and beneficial owner of the Security Property mortgages all of its interest in the Security Property to Acumen as security for the due and punctual payment of the Secured Money.
- c. The Borrower agrees and acknowledges that:
  - i. Acumen will by virtue of the mortgage provided in clause 13.2(a), have a legal or equitable interest in:
    - A. all real property in which each Obligor has a right, title and interest; and
    - B. specifically, the Security Property.
  - ii. Acumen has a caveatable interest and may register a caveat against:
    - A. any or all of the real property in which each Obligor has a right, title and interest; and
    - B. specifically, the Security Property. and may maintain its caveat(s) so registered until all of the

Secured Money has been paid to it in full by the Obligors.

## **14. PRIVACY WAIVER and CONSENT**

- a. Acumen and its Affiliates are allowed to give a credit reporting agency or a proposed lender or other proposed counterparty (to a transaction pursuant to which that counterparty will provide or procure the provision of funds which the Borrower requires) personal and business information about the Obligor. The information which may be given includes:
  - i. particulars of the identity of the Obligor;
  - ii. the fact that the Borrower has applied for credit and the credit amount;
  - iii. the fact that the Guarantor has agreed to guarantee the Borrower's obligations in relation to the credit applied for by the Borrower;
  - iv. the fact that Acumen is providing credit assistance to the Borrower;
  - v. where on more than one occasion cheques drawn by the Borrower or by the Guarantor or any of their Affiliates in favour of Acumen or of any other counterparty have bounced - of the fact that those cheques have bounced; and/or
  - vi. that in the opinion of Acumen, the Obligor has committed a serious credit infringement.
- b. If Acumen considers it relevant to assess the financial position of any Obligor for commercial credit, the Obligor agrees to Acumen obtaining a report about the Obligor's commercial activities or commercial credit worthiness from a business which provides information about the commercial worthiness of persons.
- c. Each Obligor acknowledges that Acumen or its Affiliates may, and are authorised by each of them to, record all telephone (or any similar electronic means of communication) conversations between them.

## **15. Notices**

- a. Any notice, demand, consent or other communication given or made under this agreement must be:
  - i. clearly readable;

- ii. signed by the party giving or making it (or signed on behalf of that party by its authorised representative); and
  - iii. left at the address or sent by pre-paid security post (air mail if outside Australia) to the address, the fax number or email of the recipient, in each case, as set out in this agreement or otherwise notified to the party giving or making it.
- b. A party may change its address or fax number for the purpose of service by giving notice of that change to the other parties.
- c. Any communication is taken to be received by the recipient:
  - i. in the case of a letter, on the 3rd (7th, if sent outside the country in which the letter is posted) Business Day after the date of posting;
  - ii. in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile communication was sent in its entirety to the fax number of the recipient;
  - iii. in the case of an email, on production of a 'read receipt' by the sender of the email showing the time and date the email was read; and
  - iv. if the time of dispatch of a facsimile is not on a Business Day, or is after 5.00 pm (local time) on a Business Day, it will be taken to have been received at 9.00 am (local time) on the next Business Day.

## **16. Costs**

The Borrower must pay or reimburse all costs and expenses of Acumen (and its officers, employees and agents) in relation to:

- a. the negotiation, preparation, execution, delivery, stamping, registration, completion, variation, release and discharge of any Transaction Document;
- b. the negotiation, preparation, execution, delivery, completion, registration and lodgement of any form or other ancillary document in connection with the registration or perfection of any Transaction Document; and
- c. the enforcement, attempted enforcement, protection or waiver of any rights or Powers under any Transaction Document or any consents given under a Transaction Document,

including any legal costs and expenses and any professional consultant's fees, on a full indemnity basis and without the necessity for any taxation or assessment.

## **17. Appointment of Attorney**

- a. Each Obligor for valuable consideration, to secure the performance of its obligations under each Mandate Document, irrevocably appoints Acumen and

each Authorised Representative of Acumen separately as its attorney to do any or all of the following on its behalf and in its or the attorney's name:

- i. prove in the Liquidation of any Obligor;
  - ii. anything which it must do under a Mandate Document or under law in connection with a Mandate Document;
  - iii. anything which the Attorney considers necessary or expedient to give effect to a Power or exercise of a Power, or to perfect any Mandate Document, including by signing any document for that purpose; and
  - iv. anything which an Attorney is expressly empowered to do under a Mandate Document on its behalf.
- b. Each Obligor agrees to ratify anything done by its Attorney under this power of attorney. An Attorney may delegate its powers (including the power to delegate) to any person for any period and may revoke the delegation.

## **18. Further Assurances**

Each Obligor agrees to do anything Acumen asks (such as obtaining consents, signing and producing documents and getting documents completed and signed):

- a. to bind it and any other person intended to be bound under the Mandate Documents;
- b. to enable Acumen to register the Securities with the priority required by Acumen, including without limitation entering into a mortgage of land in registrable form over the Security Property;
- c. to enable Acumen, a receiver or an attorney (and any of their respective officers, employees and agents) to exercise its rights or any Powers in connection with the Security Property;
- d. to enable Acumen to register any power of attorney under the Mandate Documents; and
- e. to show whether it is complying with the Mandate Documents.

## **19. National Consumer Credit Protection.**

The Borrower agrees and acknowledges that:

- a. the Purpose is not in any way, and no Drawdown is intended to be used:
  - i. for personal, domestic or household purposes; or

- ii. to purchase, renovate or improve residential property for investment purposes; or
  - iii. to refinance credit that has been provided wholly or predominantly to purchase, renovate or improve residential property for investment purposes.
- b. the *National Consumer Credit Protection Act 2009* will not apply to the provision of credit under any Loan Document or the performance of any service by Acumen under any Mandate Document.

## **20. General**

### **1. Where a Party is Comprised of More than One Person or Entity**

- a. Where an obligation is owed by two or more persons, that obligation is owed by them jointly and severally.
- b. Where two or more persons are owed an obligation, that obligation may be enforced by any of such persons for the benefit of all of them.

### **2. No Waiver**

- a. A right of one party (first party) to demand strict compliance by another party with one or more of the terms of this agreement may only be waived in writing signed by the first party.
- b. A waiver by one party (first party) of another party's strict compliance with one or more of the terms of this agreement on one or more occasions will not constitute a waiver by the first party of its right to demand strict compliance at any time thereafter.
- c. Nothing in this agreement will constitute either party the principal, agent or partner of the other or impose any fiduciary duty on Acumen.
- d. Neither party will have the authority to enter into an agreement or other arrangement on behalf of the other, and neither party must represent or hold itself out as having that authority.
- e. A failure by one party (first party) to exercise, or a delay by the first party in exercising, or a waiver by the first party of any of its rights arising upon a default by the other party does not affect or impair the first party's

rights in relation to that default or any later default of the same or of a similar nature.

**3. Fiduciary Duties Excluded**

**4. Goods and Services Tax**

- a. Words or expressions used in this clause have the same meaning as is attributed to those words or expressions in the GST Law.
- b. Except where expressly stated as including GST, any consideration stated in this agreement does not include GST.
- c. If a party is liable for GST in respect of any taxable supply made by that party under or in connection with this agreement, any consideration payable or to be provided by the recipient for the taxable supply will be increased by an amount calculated by application of the following formula:

$$AxR$$

Where:

**A** is the amount of the GST exclusive consideration expressed to be payable in this agreement by the recipient of the taxable supply; and

**R** is the applicable rate of GST.

- d. Each party will do all things necessary or reasonably desirable to ensure that the other party can claim input tax credits or refunds in respect of payments or set-offs made pursuant to this agreement.

**5. Courts**

- a. This agreement is governed by the laws of New South Wales, Australia.
- b. The parties submit non-exclusively to the Courts of New South Wales, Australia. The parties agree that proceedings in the Federal Court of Australia must be brought in Sydney, New South Wales, Australia

**6. Counterparts**

- a. This agreement may be executed in any number of counterparts and all such counterparts when executed and taken together will constitute one agreement.
- b. A party (the first party) who holds a counterpart of this agreement signed by another party has the same rights as against that other party as the first party would have had under this agreement if the first party held a counterpart of this agreement signed by all parties to this agreement.

## **7. Assignment**

- a. Each Obligor may not assign, transfer or otherwise deal with its rights, interests or obligations under this agreement without Acumen's prior written consent.
- b. Acumen may assign all or any of its rights or novate all or any of its rights and obligations, under any or all of the Transaction Documents (individually or collectively) at any time to any party in its sole discretion.
- c. Without limiting clause 20.7(b), Acumen may at any time without the consent of, or notice to, an Obligor:
  - i. assign or otherwise deal with all or any of its rights under the Transaction Documents to a securitisation or funding vehicle;
  - ii. assign, transfer, novate or otherwise deal with all or any of its rights or obligations under the Transaction Documents to a Related Entity of Acumen.

## **8. Transferor released from obligations**

Acumen and its Related Entities will be released from any obligations transferred or novated by it under clause 20.7(b) on the transfer or novation taking effect.

## **9. Acumen's certificate**

A certificate signed by any Authorised Representative of Acumen stating the amount of the Secured Moneys due and payable, the amount of the Secured Moneys, whether currently due and payable or not or any other matter in connection with this agreement, is sufficient evidence of that amount or matter as at the date stated on the certificate, unless it is manifestly incorrect or the contrary is proved.

## **10. Severability**

Any provision of this Agreement which is illegal or invalid in any jurisdiction must, in relation to that jurisdiction:

- a. be read down to the minimum extent necessary to achieve its legality or validity, if applicable; and
- b. be severed from this agreement in any other case,

without invalidating or affecting the remaining provisions of this agreement or the legality or validity of that provision in any other jurisdiction.

## **11. Variation**

This agreement cannot be amended or varied without confirmation via either an email, text message, telephone call or hand-written amendment to any transaction document or document given in connection with the purpose or project or loan application between the parties.

## **12. Indemnities and reimbursement obligations**

Acumen need not incur an expense or make a payment before enforcing an indemnity or reimbursement obligation in a Mandate Document. Unless otherwise stated, each such indemnity or reimbursement obligation is separate and independent of each other obligation of the party giving it, is absolute, irrevocable, unconditional and payable on demand and continues despite any settlement of account, termination of any Mandate Document or anything else.

## **13. Survival**

- a. Any indemnity, release or waiver of rights under this agreement is independent and survives expiry or termination of this agreement.
- b. Clauses 3, 8, 10, 11, 12, 13, 14, 16, 18, 20.7, 20.8 and 20.14 survive expiry or termination of this agreement.
- c. Any other term by its nature intended to survive termination of this agreement survives expiry or termination of this agreement.

## **14. Set-off**

- a. Acumen may set off any amount owing by Acumen to the Borrower (whether or not due for payment) against any amount due for payment by the Borrower to Acumen in connection with any Mandate Document.
- b. Acumen may do anything necessary to effect any set-off under this clause (including varying the date for payment of any

amount owing by Acumen to the Borrower and make currency exchanges).

**15. Entire agreement**

The Mandate Documents contain all the terms in relation to the Transaction and supersede all prior communications.

**16. Inconsistency of provisions**

If there is any inconsistency between the provisions of this agreement and the provisions of any other Transaction Document, the provisions of this agreement will govern and apply to the extent of the inconsistency.

## **SCHEDULE 1 - GUARANTEE AND INDEMNITY**

### **1. Consideration**

Each Guarantor enters into this Agreement (including this Guarantee and Indemnity) for valuable and adequate consideration in return for Acumen entering into the Mandate Documents.

### **2. Guarantee**

As contemplated by clause 10 of this Agreement each Guarantor jointly and severally irrevocably and unconditionally guarantees to Acumen the due and punctual payment of the Secured Money.

### **3. Payment obligation**

- a. If any Obligor does not pay the Secured Money when it is due and payable, each Guarantor agrees to pay the Secured Money to Acumen on demand. A demand may be made at any time and from time to time.
- b. A demand under clause 3(a) of this Guarantee and Indemnity is required to specify the amount owing. It is not required to specify details of the calculation of the relevant amount.

### **4. Currency of payment**

Each Guarantor waives any right it has in any jurisdiction to pay the Secured Money in a currency other than the currency in which the Secured Money is denominated.

### **5. Indemnity**

- a. Each Guarantor unconditionally and irrevocably indemnifies Acumen against, and agrees to pay to Acumen on demand an amount equal to, any Loss Acumen suffers or incurs if:
  - i. that Guarantor is not obliged to pay Acumen the Secured Money under clause 2 of this Guarantee and Indemnity;
  - ii. any other Obligor does not, is not obliged to or is unable to pay Acumen the Secured Money; or
- b. Acumen is obliged to or agrees to pay an amount to a trustee in bankruptcy, liquidator, bankrupt person or insolvent company in connection with a payment to Acumen by an Obligor.
- c. A demand may be made at any time and from time to time.

- d. This indemnity is a continuing obligation, separate and independent from all other obligations under this agreement.

## **6. Money recovery**

### **1. Application of money**

Acumen may apply amounts received or recovered from a Guarantor to reduce the Secured Money in the order, and to satisfy whatever part of the Secured Money, Acumen sees fit in its sole and absolute discretion. The application will override any appropriation made by the Guarantor.

### **2. Suspense account**

- a. Until Acumen has been paid the Secured Money in full, it may:
  - i. prove in the liquidation of any person for all or part of the Secured Money, including any part of the Secured Money already recovered under this Guarantee and Indemnity or any other Security;
  - ii. credit to a suspense account any debt dividend recovered from proving in the liquidation of any person and all other amounts recovered from any Guarantor in respect of the Secured Money; and
  - iii. in its absolute discretion apply all or any of the amount standing to the credit of the suspense account (together with any accrued interest if the account is interest bearing) in satisfaction of the Secured Money; or
  - iv. retain all or any of the amount in the suspense account as security for payment of the Secured Money.
- b. The receipt by Acumen of any debt dividend does not prejudice the right of Acumen to recover all of the Secured Money from any other person, except to the extent the debt dividend is applied in accordance with clause 6.2(a)(a)(ii) of this Guarantee and Indemnity.

## **7. Nature of Guarantor obligations**

### **1. Independent obligations**

This Guarantee and Indemnity is a principal and independent obligation. It is enforceable against each Guarantor without Acumen first enforcing other Security or taking any prior steps (including issuing notices or demands) against the Borrower or any other person.

## 2. Preservation of Lender's rights

The obligations of each Guarantor under this Guarantee and Indemnity are absolute, binding and unconditional. They are not released, discharged, varied or otherwise prejudicially affected by anything which (but for this provision) might have that effect, including:

- a. **(Lender action or inaction)** anything Acumen does, attempts to, fails to do, or delays in doing in relation to any person or any document or agreement, including in connection with the giving of notices, entering into transactions or taking or perfecting security;
- b. **(Amendments)** anything that may amend, vary, repudiate, terminate, assign, novate or transfer all or part of any document or agreement or any obligation, right, power or remedy of any person;
- c. **(Incapacity)** any legal limitation, disability or incapacity affecting any person;
- d. **(Liquidation)** the liquidation of any person;
- e. **(Invalidity)** any document or agreement not being executed by any person or not being valid, binding on or enforceable against, any person for any reason;
- f. **(Secured Money)** any increase in the Secured Money;
- g. **(Judgment)** Acumen obtaining judgment against any person for payment of all or part of the Secured Money;
- h. **(Waiver)** any release or discharge of, or grant of any time, waiver or indulgence to, any person;
- i. **(Compromise)** Acumen entering into or being bound by any assignment, composition or compromise in relation to any person;
- j. **(Debt Dividend)** Acumen receiving any debt dividend or other payment; or
- k. **(Other)** any other act, omission or thing,
  - i. in each case:
  - ii. whether or not with the consent or knowledge of Acumen, any Guarantor or any other person;
  - iii. whether or not it is negligent; and
  - iv. irrespective of any Law to the contrary.

### **3. No competition**

Unless and until the Secured Money has been fully and finally paid and this Guarantee and Indemnity has been finally discharged, no Guarantor may:

- a. be subrogated to Acumen;
- b. claim or receive the benefit of any Security Interest, Guarantee or other document or any amounts held by or for the benefit of Acumen;
- c. accept, exercise any right of set off against, or enforce, any Security Interest granted in favour of the Guarantor by any Obligor;
- d. prove in the liquidation of, or claim or receive the benefit of any debt dividend in relation to, any person liable for payment of the Secured Money;
- e. raise any defence or counterclaim to reduce or discharge its obligations under any Contract;
- f. claim any right of contribution or indemnity from, or make any claim in competition with Acumen against, any person liable for payment of the Secured Money; or
- g. attempt or take steps to do any of the above,
- h. in each case, unless directed to do so by Acumen, in which case any proceeds received or recovered by the Guarantor must be held for the account of, and promptly paid to, Acumen.

### **8. Variations to Secured Money**

Acumen may at any time at its discretion vary, amend or amend and restate any Mandate Document or enter into a new Mandate Document without obtaining the consent of, or giving notice to, any Guarantor.

This Guarantee and Indemnity will apply to guarantee, and indemnify Acumen against any Loss in connection with, any resulting variation in the Secured Money.

### **9. General**

#### **1. General**

Acumen is not obliged at any time to marshal in favour of any Guarantor any other Security it holds or any asset it may be entitled to claim or recover.

## **2. Judgment**

A final judgment obtained against the Borrower will be conclusive against each Guarantor.

## **3. Conditions**

- a. Any condition, including any condition precedent, to the provision of financial accommodation by Acumen under the Contracts is for the benefit of Acumen and not for the benefit of any Guarantor.
- b. Acumen may disregard any waiver of, or failure to satisfy, any condition referred to in clause 9.3(a) of this Guarantee and Indemnity in determining whether an amount constitutes part of the Secured Money.

## **4. Non-exercise of rights**

No Guarantor may exercise any rights it may have which are inconsistent with this Guarantee and Indemnity.

## **10. Acceptance**

When Parties are taken to have entered into this Agreement or Electronic Agreement, the parties agree that this Agreement and Agreement will be taken to have been entered into on where the Borrower or someone authorised on the Borrower's behalf clicks acceptance of the [www.acumenfinance.com.au](http://www.acumenfinance.com.au) web finance application terms and conditions which is also found via the link <https://loans.acumenfinance.com.au/> or by pressing the apply now button and filling out the form and clicking I agree or and or accept.