

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 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.