**Source Funding Pty Ltd**

**ABN 95 622 815 294**

**Australian Financial Services License 510226**

**Australian Credit License 510226**

**Guarantee and indemnity**

**Regulated by the National Credit code**

**(SMSF) Holding Trustee**

**Version: 1.2 (August 2023)**

**WARNING**

* We strongly recommend that you should obtain independent legal and financial advice on the effect of this guarantee and indemnity **before** you sign it.
* You should read the Information Statement attached to this guarantee and indemnity **before** you sign it.
* There are financial risks involved in signing this guarantee and indemnity (for example, it may become necessary for you to sell your assets so that you can pay the Credit Provider).
* You have the right to limit your liability under this guarantee and indemnity in accordance with the National Credit Code and as allowed by law.
* You can request information about the transaction or facility to be guaranteed (including any existing facility with us to be refinanced by the new facility).
* You can refuse to sign this guarantee and indemnity.

**Guarantee and indemnity**

**(SMSF) Holding Trustee**

|  |  |  |
| --- | --- | --- |
| **Details** | | |
| **Credit Provider: (“*we*, *us*, *our*”)** | **Source Funding Pty Ltd (ABN 95 622 815 294) (AFSL & ACL 510226)**  Address: Level 6, 201 Kent Street SYDNEY NSW 2000 |  |
|  | | |
| **Guarantor: (“*you*, *your*”)**  (SMSF Holding Trustee) | <<Guarantor1FullName>> as trustee for the <<GUARANTOR1TRUSTNAME>>  ACN: <<Guarantor1ACN>>  ABN:  Address: <<GUARANTOR1ADDRESSLINE1>>, <<GUARANTOR1SUBURB>> <<GUARANTOR1STATE>> <<GUARANTOR1POSTCODE>> |  |
|  | | |
|  | | |
| **Borrower:**  (SMSF borrower) | <<BORDET1FULLNAMESAL>> as trustee for the <<bordet1trustname>>  ACN: <<BORDET1ACN>>  ABN:  Address: <<BORDET1ADDRESSLINE1>>, <<BORDET1SUBURB>> <<BORDET1STATE>> <<BORDET1POSTCODE>> |  |
|  | | |
| **guaranteed agreement:** | Loan agreement between the Credit Provider and the Borrower dated on or about the date of this Guarantee. |  |
|  |  |  |
|  | | |
| **Special Conditions:** | **Clause 26** |  |
|  |  |  |
| **Date of guarantee and indemnity:** | /Sig2Date/ |  |
| The **signing page** for this Guarantee and Indemnity is on page 13.  The **National Credit Code** **Information statement** for this Guarantee and Indemnity starts at page 14. | | |

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**Provisions**

**Key words and interpretation**

The meaning of words printed *like this* and some key terms and concepts are explained in clause 27 of this guarantee and indemnity.

# Your obligations under this guarantee and indemnity

* 1. This clause 1.1 applies to the extent that the *code* applies to this guarantee and indemnity. If a provision of this guarantee and indemnity contravenes a requirement of the *code* or imposes an obligation or liability on *you* which is prohibited by the *code*, this guarantee and indemnity is to be read as if that provision *we*re varied to the extent necessary to comply with the *code* or, if necessary, omitted.

***You* may have rights under the *code* to end, withdraw from, or limit this guarantee and indemnity.** ***You* should seek legal advice about *you*r rights before *you* sign this guarantee and indemnity**.

**See clause 25, for more *code* related provisions.**

* 1. This guarantee and indemnity is entered into in consideration of *us* providing or continuing to provide financial accommodation to the *borrower* or not immediately enforcing rights against the *borrower* at *you*r request.
  2. By signing this guarantee and indemnity, *you* could become liable to pay *us*:

1. under the guarantee provisions in clause 2;
2. under the indemnity provisions in clause 3;
3. *costs* and other expenses under clause 4; and
4. interest on any amount which is due for payment in accordance with clause 5.

However, the maximum amount *we* can recover from *you* may be limited by the special conditions specified in the *details* section of this guarantee and indemnity (if any restrictions are included).

* 1. *You* are liable for all the obligations under this guarantee and indemnity both separately on *you*r own and jointly with any one or more other persons named in this guarantee and indemnity as a guarantor.
  2. *You* acknowledge that *you* are responsible for making yourself aware of the financial position of the *borrower* and any other person who is a *guarantor* of the *guaranteed money*.

# What you undertake in giving this guarantee and indemnity

1. **The guarantee that you give**
   1. *You* unconditionally and irrevocably guarantee to *us*:
2. the due and punctual payment of the *guaranteed money;* and
3. the due and punctual observance and performance of the *borrower’s* obligations under the *guaranteed agreement*.

If the *borrower* does not pay the *guaranteed money* on time and in accordance any arrangement with us under which it is expressed to be owing, *you* agree to pay us the *guaranteed money* on demand (whether or not *we* have made demand on the *borrower*).

* 1. The guarantee specified in clause 2 is a continuing obligation and extends to all of the *guaranteed money*.
  2. Subject to clause 1.1, except to the extent *you* have a right conferred by the *code*, *you* cannot otherwise withdraw from, end or limit this guarantee and indemnity.

1. **The indemnity that you give**
   1. As an independent and principal obligation *you* unconditionally and irrevocably indemnify *us* against, and *you* must therefore pay *us* on demand for, liability, loss or *costs we* reasonably suffer or incur if:
2. the *borrower* does not, is not obliged to, or is unable to, pay *us* the *guaranteed money* in accordance with the *guaranteed agreement* or any other document under which it is expressed to be owing; or
3. *you* are not obliged to pay *us* an amount under clause 2 (other than as a result of *our* deliberate act or omission); or
4. *we* are obliged, or *we* agree, to pay an amount to a trustee in bankruptcy or liquidator (or a bankrupt person or *insolvent* company) in connection with a payment by *you* or the *borrower* (for example, *we* may have to, or may agree to, pay interest on the amount).

*You* as principal debtor agree to pay *us* on demand a sum equal to the amount of any such liability, loss or *costs*.

* 1. The indemnity in clause 3.1 and the other indemnities in this guarantee and indemnity are continuing obligations, independent of *you*r other obligations under this guarantee and indemnity and they continue even after those other obligations end until the *guaranteed money* has been fully and finally paid or discharged and *we* are reasonably satisfied that such payment or discharge is not liable to be set aside, avoided or reversed.

# Amounts *you* must pay *us*

1. ***Enforcement* and other *costs* and expenses**
   1. *You* must pay or reimburse *us* on demand all reasonable *costs* and expenses *payable* in connection with:
2. arranging, administering (including giving and considering consents, variations, discharges and releases and producing title documents or enforcing or attempting to enforce or taking any action within our rights), terminating and enforcing this guarantee and indemnity; and
3. *our* or anyone we appoint, exercising, enforcing or protecting a right, power or remedy under this guarantee and indemnity or at law, or attempting to do so; and
4. *taxes*, fees and charges in connection with this guarantee and indemnity and any transactions under it, and any interest, penalties, fines and expenses in connection with them.

*You* must pay or reimburse *us* these amounts when *we* request. We can also debit any of these amounts to any account *you* have with *us*.

1. **The Interest you agree to pay**
   1. *You* agree to pay interest (at the highest rate agreed between *us* and the *borrower*) on:
2. any amounts *payable* by you which are not otherwise incurring interest;
3. any amounts under this guarantee and indemnity which are not paid on the due date or if no date is stipulated, when required by us,

on demand from *us*.

* 1. Interest accrues daily from (and including) the due date (or if no due date, the date stipulated by *us*) up to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 365 or 366 days (as the case may be).
  2. If *your* liability under this guarantee and indemnity is the subject of a judgment or order:

1. *your* obligation to pay interest under clause 5.1 is separate from, and continues despite, the judgment or order; and
2. the interest accrues both before and after judgment at the higher of the rate determined under clause 5.1 and the rate payable under that judgment or order.
3. ***Your* must pay for your own costs and other expenses**

*You* must pay *your* own costs and expenses in connection with *your* entry into and *your* performance of *your* obligations under this guarantee and indemnity.

# Reinstatement and protection of *our* rights

1. **Reinstatement of rights in insolvency**

*You* agree that if under law relating to *insolvency* a payment or other transaction relating to the *guaranteed money* is void, voidable, unenforceable or defective or a related claim is upheld, conceded or settled (each an *avoidance*), then:

1. each right, power or remedy and *your* liability under this guarantee and indemnity will be what it would have been, and will continue, as if the *avoidance* had not occurred; and
2. *you* will on request from *us* promptly execute and do anything reasonably necessary or required by *us* to restore *us* to the position *we* were immediately before the *avoidance* (including reinstating this guarantee and indemnity).
3. **Our rights are protected**
   1. Rights given to *us* and *you*r liabilities under this guarantee and indemnity are not affected by:
4. any time, waiver, concession or consent granted to, or composition with, the *borrower* or any other person;
5. any transaction or agreement, or variation, novation or assignment of a transaction or agreement, between *us* and the *borrower* or any other person; or
6. the fact that *we* release the *borrower* or any other person or give them a concession, such as more time to pay; or
7. the fact that *we* release, lose the benefit of any *security interest*; or
8. the fact that *we* release any person who guarantees any of the *borrower's* obligations; or
9. the fact that the obligations of any person who guarantees any of the *borrower's* obligations may not be enforceable; or
10. the death, mental or physical disability or insolvency of any person including *you* or the *borrower*; or
11. changes in the membership, name or business of a firm, partnership, committee or association.
    1. This guarantee and indemnity binds each person who signs as guarantor even if another person who was intended to sign it does not sign it or is not bound by it.
    2. This guarantee and indemnity does not merge with or adversely affect, and is not adversely affected by, any of the following:
12. any other guarantee, indemnity, mortgage, charge or other *security interest*, or right or remedy to which *we* are entitled; or
13. a judgment or order which *we* obtain against *you* in respect of the *guaranteed money* or any other amount *payable* under this guarantee and indemnity.

We can still exercise *our* rights under this guarantee and indemnity as *we*ll as under the judgment, order, other guarantee, indemnity, mortgage, charge, other *security interest*, right or remedy.

1. **Your rights are suspended**

For so long as any of the *guaranteed money* remains unpaid, *you* may not, without *our* consent:

1. exercise any legal rights or entitlements or claim to be entitled to the benefit of another *security interest* given in connection with the *guaranteed money* or any other amount *payable* under this guarantee and indemnity; or
2. reduce *you*r liability under this guarantee and indemnity by claiming that *you* or the *borrower* or any other person has a right of set-off, counterclaim or deduction against *us*; or
3. claim an amount from the *borrower*, or another guarantor of the *borrower's* obligations, under a right of indemnity; or
4. claim an amount in the *insolvency* or winding up of the *borrower* or another guarantor of the *guaranteed money* including any other person who has signed this guarantee and indemnity.

# What you acknowledge and declare

* 1. *You* acknowledge that *you* are responsible for making *you*rself aware of the financial position of the *borrower* and any other person who guarantees the *guaranteed money*.
  2. *You* declare that:

1. if you are a natural person, you are over 18 years old and able to enter into this *guarantee and indemnity*; and
2. *your* entry into this *guarantee and indemnity* will not breach any other agreement or document you are a party to; and
3. if *you* are a corporation, no director or other person breaches any law or any obligation to another person by signing this guarantee and indemnity and that all necessary authorisations to do so have been obtained; and
4. if *you* are a corporation, *you*r obligations under this guarantee and indemnity are valid and binding and enforceable in accordance with its terms; and
5. if *you* are a corporation, *you* benefit by entering into this guarantee and indemnity; and
6. all information and declarations given by *you* or on *you*r behalf (such as financial statements) is correct and not misleading in any material respect; and
7. since the date the information was given there has been no change in *you*r financial circumstances which may have a material impact on *you*r ability to meet *you*r obligations under this guarantee and indemnity; and
8. *you* have not withheld information about *you* or *your* financial circumstances that might have caused *us* not to enter into any *arrangement with us*; and
9. if *you* are a corporation, *you* have power to carry on *you*r business and *you* are not in breach of any law or obligation; and
10. there is no threatened or current court or other proceeding affecting *you* except those in which a decision against *you* would be insignificant.
    1. *You* must tell *us* whenever anything happens which would mean *you* could not truthfully repeat all the declarations in clause 10.2.
    2. *You* agree to promptly give us any information about *you* or *your* financial affairs when we ask.

# Money *we* receive

* 1. We mayuse any money paid by or for the *borrower* towards meeting any part of the *guaranteed money we* choose (acting reasonably). We mayuse any money paid by *you* under this guarantee and indemnity towards paying any partof the *guaranteed money* *we* choose (acting reasonably) or any other amount *you* owe *us* under this guarantee and indemnity. This applies even if that part or that amount only falls due after *we* give a notice of demand.

* 1. If, at the time *we* receive the money, any part of the *guaranteed money* is not then due for payment, *we* may retain an amount equal to that part. We must hold it in an interest bearing account and *us*e it (and any net interest after tax) to pay the *guaranteed money* when it becomes due for payment.
  2. If the *guaranteed money* has been fully and finally paid or discharged and *we* are satisfied that such payment or discharge is not liable to be set aside, avoided or reversed, then the balance standing to the credit of the suspense account and any accrued interest will be paid to or for the account of the *borrower* for distribution to the person entitled to it and *we* will have no further liability in relation to it.
  3. We only credit payments as soon as practicable after *we* receive them.

# General provisions

1. **No set-off, counterclaim or deduction**
   1. *You* must pay *us* the *guaranteed money* in full without set-off, counterclaim or deduction. However, *we* may set-off or deduct against the *guaranteed money* any money you believe *we* owe *you*.
   2. If a law requires *you* to deduct an amount in respect of *taxes* from a payment under an *arrangement with us* with the result that *we* would not actually receive on the due date the full amount provided for under the *arrangement with us*, then:
2. *you* agree to deduct the amount for the *taxes*; and
3. *you* agree to pay an amount equal to the amount deducted to the relevant authority in accordance with applicable law and give the original receipts to *us*.
4. **Notices and other communications**
   1. *Notices* in connection with this guarantee and indemnity must be in writing. If *you* are a corporation, communications from *you* must be signed by a director or another person *we* approve.
   2. *Notices* may be:
5. given personally (if they are for *you* and *you* are a corporation, to one of *you*r directors; if they are for *us*, to one of *our* employees at the address stated in the details or any other address *we* tell *you*); or
6. left at the address last notified to or known by *us*; or
7. sent by prepaid post to the address last notified or known by *us*; or
8. sent by email to the email address last notified or known by *us*; or
9. given in any other way permitted by law.
   1. Subject to clause 13.4, *notices* take effect from the time they are received unless a later time is specified in them.
   2. If a *notice* is:
10. given personally, it is received on the date it is received by the person to whom it is addressed;

1. sent by post, it is taken to be received three (3) days after the date of posting;
2. sent by email or some other form of electronic transmission that produces a transmission report, it is taken to be received at the time shown in a transmission report that indicates that the whole email or other form of electronic transmission was sent.
3. **Time for payment**
   1. A demand may be made at any time and from time to time. However, if a special condition restricting the time when *we* can make a demand on *you* is specified in this guarantee and indemnity, *we* may only make a demand in accordance with that special condition.
4. **Obligations requiring your prompt performance**

If this guarantee and indemnity specifies when *you* must perform an obligation, *you* must perform it by the time specified. *You* must perform all other obligations promptly.

1. **You must take further steps**

*You* must do anything *we* reasonably ask (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) to bind yourself under this guarantee and indemnity.

1. **How we may exercise our rights**
   1. *We* may exercise a right or remedy or give or refuse *our* consent in any way *we* consider reasonably appropriate to protect our legitimate business interests, including by imposing conditions.
   2. *We* may claim against *you* under this guarantee and indemnity before *we* enforce other rights or remedies:
2. against the *borrower* or any other person; or
3. under another document including a *security interest*.

If *we* have more than one guarantee and indemnity or *security* *interest*, *we* may enforce them in any order that *we* choose.

* 1. *Our* rights or remedies under this guarantee and indemnity are cumulative and do not limit or exclude *our* rights or remedies under law.
  2. *Our* full or partial exercise of a right or remedy does not prevent *our* further exercise of that or any other right or remedy.
  3. Our failure or delay in exercising a right or remedy does not operate as a waiver or release of *your* obligations.
  4. Unless expressly provided in this guarantee and indemnity, no right or remedy merges in, limits or excludes any other rights or remedies, which we (or anyone claiming through us) may have or obtain.
  5. *Our* rights and remedies under this guarantee and indemnity may be exercised by any of *our* directors, any of *our* employees whose job title includes the word “manager” or any other person *we* authorise.

1. **Dealing with our rights**
   1. *You* consent to and agree that we may at any time assign, novate or otherwise deal with all or any part of *our* rights and obligations under this guarantee and indemnity in any way we consider appropriate. If *we* do this *you* must sign anything and do anything we reasonably require to enable any dealing with guarantee and indemnity. *You* may not assign or otherwise deal with *you*r rights and obligations under this guarantee and indemnity unless *we* consent.
   2. If *we* novate, assign, transfer or otherwise deal with *our* rights and obligations under this guarantee and indemnity, *you* may not claim against any novatee, assignee or transferee (or any other person who has an interest in this guarantee and indemnity) any set-off or other right which you have against *us*.
2. **Disclosure of information**

Information *you* provide to *us* may be disclosed:

1. if *you* consent (*you* may not unreasonably withhold or delay *you*r consent); or
2. if required by any stock exchange or if allowed or required by law; or
3. to any person in connection with *our* exercising rights or dealing with rights or obligations (including preparatory steps such as negotiating with any potential assignee of *our* rights or other person considering contracting with *us* in connection with this guarantee and indemnity); or
4. to *our* officers and employees, to receivers and to legal and other advisers; or
5. to any of *our* “related entities” (as defined in the Corporations Act); or
6. if the information is generally and publicly available; or
7. to the *borrower* or to any other person who guarantees payment of any of the *guaranteed money*.
8. **Complying with conditions of our consent**

*You* must comply with all conditions in any consent which *we* give in connection with this guarantee and indemnity.

1. **Variation and waiver of this guarantee and indemnity**

A provision of this guarantee and indemnity, or right created under it, may not be waived or varied except in writing signed by the party or parties to be bound.

1. **Trustee provisions**

*You* make the following declarations if *you* enter into this guarantee and indemnity as trustee of any trust or settlement:

1. *you* are the sole trustee of the trust;
2. *you* have full authority to enter into this guarantee and indemnity;
3. this guarantee and indemnity is for the benefit of the trust;
4. *you* have the right to be fully indemnified out of the trust assets for obligations incurred under this guarantee and indemnity;
5. no action has been taken or proposed to terminate the trust;
6. the copies of the trust deed and other documents relating to the trust have been provided to *us* and disclose all the terms of the trust; and
7. *you* have not delegated any of *you*r powers as trustee or exercised any power of appointment.

*You* repeat each of these declarations on each day until the *guaranteed money* has been fully and finally repaid. *You* must tell *us* whenever anything happens which would mean *you* could not truthfully repeat all these declarations.

1. **Inconsistent law**

Subject to clause 25 and to the extent permitted by law:

1. this guarantee and indemnity prevails to the extent it is inconsistent with any law; and
2. any present or future law that would otherwise vary your obligations under this guarantee and indemnity is excluded if it affects our rights or remedies adversely.
3. **Applicable law and serving documents**
   1. This guarantee and indemnity is governed by the law of the State or Territory where *our* address specified in the details is situated. *You* and *we* submit to the non-exclusive jurisdiction of the courts of that State or Territory.
   2. We may serve any document in a court action (including a writ of summons, other originating process or third or other party notice) on *you* by delivering it to, or leaving it at, *you*r address set out in the details or such other address as *you* and *we* agree at any time. This clause does not prevent any other method of service. If *you* are incorporated in a jurisdiction outside Australia, *you* irrevocably appoint the *borrower* (or the first named *borrower* if more than one) as *you*r agent to accept service of any process in connection with this guarantee and indemnity.
4. **If the National Credit Code applies**
   1. If the *code* applies to this guarantee and indemnity, the maximum amount we can require you to pay under this guarantee and indemnity is not more than the sum of:
5. the *guaranteed money* and your liability under clause 3; and
6. our reasonable enforcement expenses reasonably incurred in enforcing this guarantee and indemnity.
   1. This guarantee and indemnity extends to any increase in the *guaranteed money* including as a result of any variation to any agreement (including a loan agreement, guarantee, indemnity, lease or other facility document) related to or connected with the *guaranteed money*. However, despite anything else in this guarantee and indemnity, *your* liabilities under this guarantee and indemnity are not increased or changed as a result of any change to the *guaranteed money* or relevant agreement if under the *code* we are required to give notice of the change, give information or documents, or obtain *your* acceptance to the change and have not done so in accordance with the *code*.

# Limited recourse guarantee and indemnity (SMSF)

* 1. Despite any other provision in this guarantee and indemnity to the contrary in the absence of fraud or misrepresentation by the *borrower* orby *you*, *our* recourse (including the recourse of anyone claiming through *us*, such as a receiver, receiver and manager) to the *borrower* and to *you* under this guarantee and indemnity is limited to the *security property*.
  2. If *you* are entitled under this guarantee and indemnity to exercise any rights against the *borrower* in connection with this guarantee and indemnity (for so long as *your* rights are not suspended under clause 9 or otherwise restrained, restricted, postponed, subordinated or suspended under any other provision of this guarantee and indemnity) then *your* recourse (including the recourse of anyone claiming through *you*) to the *borrower* is limited to the *security property*. In exercising any such rights against the *borrower* *you* must comply with and otherwise not contravene the *superannuation law*.
  3. Despite clause 9(c), *you* waive any right to claim any amount from the *borrower* under any right of indemnity.
  4. Subject to clause 26.6, the provisions of clause 26.1 is not intended to and does not create or establish any monetary limit with respect to *our* rights against *you* arising under or in connection with this guarantee and indemnity.
  5. Subject to clause 26.6, nothing in this clause 26 is intended to limit or restrict in any way any right, power or remedy *we* may have against *you* under this guarantee and indemnity or at law or in relation to any *security interest* including over the *security property*.
  6. If a provision of this guarantee and indemnity contravenes a requirement of the *superannuation law* or imposes an obligation or liability on *you* which is prohibited by the *superannuation law*, this guarantee and indemnity is to be read as if that provision were varied to the extent necessary to comply with the *superannuation law* or, if necessary, omitted.
  7. *You* enter into this guarantee and indemnity only in your capacity as trustee for trust identified in the Details and in no other capacity.
  8. We make no warranty or representation in relation to the structure under which you or the *borrower* acquire the *security property.* You acknowledge that you have made and rely upon your own enquiries and investigations in relation to the structure and confirm that you have no claim against *us* in relation to any aspect of the structure or the transactions contemplated by or connected with this guarantee and indemnity.
  9. Subject to clause 26.10, we will not take any step pursuant to the rights conferred by this *guarantee and indemnity* to:

1. have an administrator appointed to *you*;
2. have a receiver, receiver and manager, trustee, other controller (as defined in the Corporations Act), liquidator, provisional liquidator or similar official appointed to *you* or the *borrower*  other than a receiver of the *security property*;
3. have *you* wound up, or prove in any winding up of *you;*
4. carry out any distress or execution on any property of *yours* or the *borrower* other than the *security property*;
5. exercise any:
6. right of set-off;
7. right to combine or consolidate accounts; or
8. lien,

against *you* or the *borrower*, other than in respect of the *security property*;

1. make any other claim or institute proceedings of any kind as against any of *your* property or assets other than the *security property*.
   1. Clause 26.9 does not:
2. prohibit or restrict us from obtaining, or undertaking proceedings to obtain, an injunction or other court order to restrain any breach of any *arrangement with us* by *you* or the *borrower*; or
3. prohibit or restrict us from obtaining, or taking proceedings to obtain, declaratory or other such relief in relation to any *arrangement with us* with regards to *you* or the *borrower*; or
4. affect our rights:
5. to enforce this *guarantee and indemnity* or any *security interest* over the *security property* in accordance with the terms of this *guarantee and indemnity* and the relevant *security interest*; or
6. for the purpose of enforcing our rights against the *security property*, to proceed against *you* or the *borrower* to the extent necessary to do so; or
7. to enforce any rights we have under any other document; or
8. to enforce any rights we have against *you* or the *borrower* for fraud or misrepresentation; or
9. to enforce any rights we have under the *NCCP* including the *code*.

# Meaning of words and interpretation

* 1. In this guarantee and indemnity the following words have the following meaning:

***arrangement with us*** means an arrangement (including an agreement or a *security interest*) under which a *borrower* or *guarantor* has or could in the future have obligations to *us*.

***borrower*** means each person named in the details as borrower.

***code***means the *National Credit Code* under the *NCCP*.

***controller*** has the meaning given to it in the Corporations Act.

***Corporations Act*** means the *Corporations Act* 2001 (Cwlth).

***costs*** includes charges and expenses; and costs, charges and expenses in connection with advisers.

***GST*** has the same meaning as in the *A New Tax System (Goods and Services) Tax Act 1999 (Cwlth)*.

***guaranteed agreement***means the agreement described as a ‘guaranteed agreement’ in the Details section of this guarantee and indemnity.

***guaranteed money*** means all amounts that at any time and for any reason or circumstance and on any basis in connection with any agreement (including a loan agreement, guarantee, indemnity or other facility document) and whether or not of a type within the contemplation of *you*, or *us* or of the *borrower* at the date of this guarantee and indemnity:

1. are *payable*, are owing but not currently *payable*, are contingently owing, or remain unpaid, by the *borrower* to *us*; or
2. we have advanced or paid on the *borrower’s* behalf or on the *borrower’s* express or implied request; or
3. we have paid or are liable to pay as a result of the *borrower’s* act or omission; or
4. are reasonably foreseeable as likely, after that time, to fall within any of the above paragraphs.

This definition applies:

1. irrespective of the capacity in which *we* or the *borrower* became entitled to the amount concerned;
2. irrespective of the capacity in which *we* or the *borrower* became liable in respect of the amount concerned;
3. whether *we* or the *borrower* are liable as principal debtor, as surety, or otherwise;
4. whether the *borrower* is liable alone, or together with another person;
5. even if the *borrower* owes an amount or obligation to *us* because it was assigned to *us*, whether or not:
   1. the assignment was before, at the same time as, or after this guarantee or indemnity is executed; or
   2. we or the *borrower* consented to or *we*re aware of the assignment; or
   3. the assigned obligation was secured;
6. even if this guarantee and indemnity was assigned to *us*, whether or not:
   1. *you* consented to or *we*re aware of the assignment; or
   2. any of the *guaranteed money* was previously not guaranteed;
7. if *you* are a trustee, whether or not *you* have a right of indemnity from the trust fund.

A person is ***insolvent*** if:

1. they are (or state that they are) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
2. they have had a *controller* appointed, are in liquidation, in provisional liquidation, under administration or wound up or have had a receiver or receiver and manager appointed to any part of their property; or
3. they are subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute, or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by *us*); or
4. an application or order has been made, resolution passed, proposed put forward, or any other action taken, in each case in connection with them, which is preparatory to or could result in any of the things referred to above; or
5. they are taken (under section 459F of the Corporations Act) to have failed to comply with a statutory demand; or
6. they are the subject of any event described in section 459C(2)(b) or section 585 of the Corporations Act (or they make a statement from which *we* reasonably deduce they are so subject); or
7. they are otherwise unable to pay their debts when they fall due; or
8. something having a substantially similar effect to any of the things referred to above happens in connection with them under the law of any jurisdiction.

***NCCP***meansthe National Consumer Credit Protection Act 2009 (Cwlth).

***notices***meansnotices, certificates, consents, approvals and other communications.

***payable*** in relation to an amount, means an amount which is currently payable or will or may be payable in the future.

***security interest*** means any security interest for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust, power or title retention arrangement or any other ‘security interest’ as defined under the Personal Property and Securities Act 2009 (Cwlth) . *Security interest* also includes a guarantee and indemnity.

***security property*** means the property you grant to us a *security interest* over in connection with this guarantee and indemnity.

***superannuation law*** means the *Superannuation Industry (Supervision) Act* 1993 (Cth) and the *Superannuation Industry (Supervision) Regulations* 1994 (Cth).

***taxes*** means taxes (including GST), levies, imposts, charges and duties (including stamp and transaction duties) imposed by any authority together with (unless by *our* conduct *we* are the cause of the liability for) any related interest, penalties, fines and expenses in connection with them, except if imposed on *our* overall net income.

***we****,* ***us****,* ***our***  (including any similar expression) means the person or persons named in the details as credit provider. If there are more than one, *we* means each of them separately and every two or more of them jointly and it includes *our* successors and assigns.

***you****,* ***your*** (including any similar expression) means each person named in the details as guarantor. If there are more than one, ***you*** means each of them separately and every two or more of them jointly.

* 1. In this guarantee and indemnity, unless the contrary intention appears:

1. the singular includes the plural and vice versa;
2. headings are for convenience only and do not affect interpretation;
3. other grammatical forms of defined words or expressions have corresponding meanings;
4. a reference to a person includes a company, legal entity or body of persons;
5. a reference to a deed, document or agreement includes that deed, document or agreement as novated, amended, altered or replaced;
6. a reference to anything includes the whole or any part of that thing and a reference to a group of things or persons includes each thing or person in that group;
7. dollars and $ refer to Australian currency unless otherwise specified;
8. words implying natural persons include partnerships, bodies corporate and associations;
9. a reference to legislation or statutory instrument or a provision of any legislation or statutory instrument includes modifications or re-enactments of the legislation or statutory instrument, or any legislative or statutory provision substituted for, and all legislation and statutory instruments and regulations issued under the legislation;
10. the words “include”, “including”, “for example” or “such as” are not used as, nor is it to be interpreted as, a word of limitation and when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

**Signing page**

*Warning: If the debtor is under 18 years old, the courts might not let you sue the debtor if you have to pay amounts under this guarantee and indemnity (i.e. you may not be entitled to an indemnity against the debtor).*

**Executed as an agreement:**

|  |  |
| --- | --- |
| **IMPORTANT** | |
| **BEFORE YOU SIGN** | **THINGS YOU MUST KNOW** |
| 1. READ THIS GUARANTEE AND THE CREDIT CONTRACT DOCUMENT. 2. You should also read the information statement: ‘THINGS YOU SHOULD KNOW ABOUT GUARANTEES’ 3. You should obtain independent legal advice. 4. You should also consider obtaining independent financial advice. 5. You should make your own enquiries about the credit worthiness, financial position and honesty of the debtor. | 1. Understand that, by signing this guarantee, you may become personally responsible instead of, or as well as, the debtor to pay the amounts which the debtor owes and the reasonable expenses of the credit provider in enforcing the guarantee. 2. If the debtor does not pay you must pay. This could mean you lose everything you own including your home. 3. You may be able to withdraw from this guarantee or limit your liability. Ask your legal adviser about this before you sign this guarantee. 4. You are not bound by a change to the credit contract, or by a new credit contract, that increases your liabilities under the guarantee unless you have agreed in writing and have been given written particulars of the change or a copy of the new credit contract document. |

|  |  |  |  |
| --- | --- | --- | --- |
| **EXECUTED** on behalf of<<GUARANTOR1FULLNAME>> ACN <<GUARANTOR1ACN>>by: | | )  )  ) |  |
| /signature1/ |
| Signature of director |
| <<Guarantor2FullName>> |

Form 9 Information statement

**section 56 (1) (b) of the Code**

**regulation 82 of the Regulations**

Things you should know about guarantees

This information tells you about some of the rights and obligations of yourself and the credit provider. It does not state the terms and conditions of your guarantee.

Guarantees

1 What is a guarantee?

A promise by you that the person who is getting credit under a credit contract (the ***debtor***) will keep to all the terms and conditions. If that person does not do so, you promise to pay the credit provider all the money owing on the contract (and any reasonable enforcement expenses) as soon as the money is asked for, up to the limit, if any, stated in the guarantee. If you do not pay, then the credit provider can take enforcement action against you which may result in the forced sale of any property owned by you such as your house.

2 How do I know how much the debtor is borrowing and how the credit charges are worked out?

These details are on the copy of the credit contract or proposed credit contract that you should be given before you sign the guarantee.

3 What documents should I be given?

Before you sign the guarantee you should get —

the document you are reading now; and

a copy of the credit contract or proposed credit contract.

**Your guarantee is not enforceable unless you get a copy of the credit contract or proposed credit contract before you sign.**

Within 14 days after you sign the guarantee and give it to the credit provider, the credit provider must give you a copy of —

the signed guarantee (if you do not already have a copy of the guarantee); and

the credit contract or proposed credit contract (if you do not already have a copy of the contract).

4 Can I get a statement of the amount that the debtor owes?

Yes. You can ask the credit provider at any time for a statement of the amount the debtor currently owes or any amounts credited or debited during a period you specify or any amounts which are overdue and when they became overdue or any amount payable and the date it became due.

The credit provider must give you the requested information —

within 14 days if all the information requested related to a period 1 year or less before your request is given; or

otherwise within 30 days.

This statement must be given to you in writing if you ask for it in writing but otherwise may be given orally.

You may be charged a fee for the statement.

You are not entitled to more than 1 written statement every 3 months.

5 How can I find out the payout figure?

You can write to the credit provider at any time and ask for a statement of the amount required to pay out the credit contract as at any date you specify. You can also ask for details of the items that make up the amount.

The credit provider must give you the statement within 7 days after you give your request to the credit provider. You may be charged a fee for the statement.

6 What other information can I get?

You can write to the credit provider and ask for a copy of —

the guarantee; or

any credit‑related insurance contract (such as insurance on mortgaged property) the credit provider has; or

a notice previously given to you, the debtor or the mortgagor under the National Credit Code.

The credit provider must give you the requested copy —

within 14 days of your written request if the contract came into existence 1 year or less before the request was given to the credit provider; or

otherwise within 30 days.

The credit provider may charge you a fee.

Your request can be made any time up to 2 years after the end of the credit contract.

7 Can I withdraw from my guarantee?

You can withdraw from your guarantee at any time by written notice to the credit provider if the final credit contract is materially different from the proposed credit contract given to you before you signed the guarantee.

8 Can I limit my guarantee?

Yes, if it relates to a continuing credit contract (such as a credit card contract or an overdraft). In that case you can give the credit provider a notice limiting the guarantee so that it only applies to —

credit previously given to the debtor; and

any other amount you agree to guarantee.

9 Can my guarantee also apply to any future contracts?

No, unless the credit provider has given you a copy of the proposed new credit contract and you have given your written acceptance.

10 If my guarantee says I have to give a mortgage, what does this mean?

A mortgage means that you give the credit provider certain rights over any property you mortgage. If you default under your guarantee, you can lose that property and you might still owe money to the credit provider.

11 Should I get a copy of my mortgage?

Yes. It can be part of your guarantee or, if it is a separate document, you will be given a copy of the mortgage within 14 days after your mortgage is entered into.

12 Is there anything that I am not allowed to do with the property I have mortgaged?

The law says you can not assign or dispose of the property unless you have the credit provider’s, or the court’s, permission. You must also look after the property. Read the mortgage document as well. It will usually have other terms and conditions about what you can or can not do with the property.

13 What can I do if I find that I can not afford to pay out the credit contract and there is a mortgage over my property?

See the answer to question 22.

Otherwise you may —

if the mortgaged property is goods — give the property back to your credit provider, together with a letter saying you want the credit provider to sell the property for you;

sell the property, but only if the credit provider gives permission first;

OR

give the property to someone who may then pay all amounts owing under the guarantee or give a similar guarantee, but only if the credit provider gives permission first.

If the credit provider won’t give permission, you may contact the credit provider’s external dispute resolution scheme for help. You should understand that you may owe money to the credit provider even after the mortgaged property is sold.

External dispute resolution is a free service established to provide you with an independent mechanism to resolve specific complaints. Your credit provider’s external dispute resolution provider is (name of external dispute resolution provider) and can be contacted at:

Telephone: 1800 931 678

Translating and Interpreting Service: 131 450

TTY / voice calls: 133 677

Australian Financial Complaints Authority Limited

GPO Box 3

Melbourne, VIC 3001

Website: [www.afca.org.au](http://www.afca.org.au)

14 Can the credit provider take or sell the mortgaged property?

Yes, if you have not carried out all of your obligations under your guarantee.

15 If the credit provider writes asking me where the mortgaged goods are, do I have to say where they are?

Yes. You have 7 days after receiving the credit provider’s request to tell the credit provider. If you do not have the goods you must give the credit provider all the information you have so they can be traced.

16 When can the credit provider or its agent come into a residence to take possession of mortgaged goods?

The credit provider can only do so if it has the court’s approval or the written consent of the occupier which is given after the occupier is informed in writing of the relevant section in the National Credit Code.

17 If the debtor defaults, do I get any warning that the credit provider wants to take action against the debtor?

In most cases both you and the debtor get at least 30 days from the date of a notice in writing to do something about the matter. The notice must advise —

why the credit provider wants to take action; and

what can be done to stop it (if the default can be remedied); and

that if the same sort of default is committed within 30 days of the date of the notice and is not remedied within that period, the credit provider can take action without further notice.

You should immediately discuss any warning notice with the debtor and consider getting independent legal advice and/or financial advice.

However, there will be no warning notice if —

there is a good reason to think the debtor committed a fraud to persuade the credit provider to enter into the contract; or

the credit provider has been unable to locate the debtor after making reasonable efforts to do so; or

the court says so; or

there is a good reason to think that the debtor has, or will, remove or dispose of mortgaged goods without the credit provider’s consent, or that urgent action is necessary to protect mortgaged property.

18 When can the credit provider enforce a judgment against me?

When —

the credit provider has judgment against the debtor and if the judgment amount has still not been met 30 days after the credit provider has asked the debtor in writing to pay it; or

the court says so because recovery from the debtor is unlikely; or

the credit provider has been unable to locate the debtor after making reasonable efforts to do so; or

the debtor is insolvent.

19 If the debtor can not be found and the credit provider intends to take legal action against me do I get any warning?

You may not. See the answer to question 17.

20 Can the credit provider take action against me without first taking action against the debtor?

Yes, but the credit provider will not be able to enforce any judgement against you except in the circumstances described in the answer to question 18.

21 How much do I have to pay the credit provider if the debtor defaults?

You have to pay what the debtor owes the credit provider, subject to any limit provided in the guarantee, plus the credit provider’s reasonable expenses in making you honour your contract of guarantee.

General

22 What can I do if I am asked to pay out the credit contract and I can not pay it all at once?

Talk to the credit provider and see if some arrangement can be made about paying.

If you can not come to a suitable arrangement, contact your credit provider’s external dispute resolution scheme.

There are other people, such as financial counsellors, who may be able to help.

23 If I pay out money for a debtor, is there any way I can get it back?

You can sue the debtor, but remember, if the debtor can not pay the credit provider, he or she probably can not pay you back for a while, if at all.

24 What happens if I go guarantor for someone who is under 18 when he or she signs a credit contract?

You are responsible for the full debt if the contract of guarantee has a clear and obvious warning. The warning has to tell you that the courts might not let you sue the debtor if you have to pay out the credit contract for him or her.

25 Do I have any other rights and obligations?

Yes. The law does give you other rights and obligations. You should also **READ YOUR GUARANTEE** carefully.

**IF YOU HAVE ANY DOUBTS, OR WANT MORE INFORMATION, CONTACT YOUR CREDIT PROVIDER. YOU MUST ATTEMPT TO RESOLVE YOUR COMPLAINT WITH YOUR CREDIT PROVIDER BEFORE CONTACTING YOUR CREDIT PROVIDER’S EXTERNAL DISPUTE RESOLUTION SCHEME. IF YOU HAVE A COMPLAINT WHICH REMAINS UNRESOLVED AFTER SPEAKING TO YOUR CREDIT PROVIDER YOU CAN CONTACT YOUR CREDIT PROVIDER’S EXTERNAL DISPUTE RESOLUTION SCHEME OR GET LEGAL ADVICE.**

**EXTERNAL DISPUTE RESOLUTION IS A FREE SERVICE ESTABLISHED TO PROVIDE YOU WITH AN INDEPENDENT MECHANISM TO RESOLVE SPECIFIC COMPLAINTS. YOUR CREDIT PROVIDER’S EXTERNAL DISPUTE RESOLUTION PROVIDER IS THE AUSTRALIAN FINANCIAL COMPLAINTS AUTHORITY LIMITED AND CAN BE CONTACTED AT:**

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**Australian Financial Complaints Authority Limited**

**GPO Box 3**

**Melbourne, VIC 3001**

**Website:** [**www.afca.org.au**](http://www.afca.org.au)

**PLEASE KEEP THIS INFORMATION STATEMENT. YOU MAY WANT SOME INFORMATION FROM IT AT A LATER DATE.**