

Affidavit

No. NSD 747 of 2021

Federal Court of Australia
District Registry: New South Wales
Division: General

**IN THE MATTER OF THE FORUM GROUP OF COMPANIES PTY LIMITED ACN 151 964
626 (IN LIQUIDATION)
(ACN 151 964 626)**

**Jason Preston and Jason Ireland in their capacity as joint and several liquidators of
the First to Twenty-Fifth Plaintiffs**

First Applicant

**Jason Preston and Jason Ireland in their capacity as joint and several provisional
liquidators of the Twenty-Sixth to Twenty-Eighth Plaintiffs**

Second Applicant

Affidavit of: **Jason Preston**
Address: Level 12, 20 Martin Place, Sydney NSW 2000
Occupation: Registered Liquidator
Date: 19 August 2021

I, Jason Preston, of Level 12, 20 Martin Place, Sydney NSW 2000, Registered Liquidator,
affirm:

1. I am a Partner in the Restructuring practice of McGrathNicol, a Chartered Accountant
(admitted as a member of the Chartered Accountants Australia and New Zealand)
and a Registered Liquidator.

Filed on behalf of (name & role of party)

Prepared by (name of person/lawyer) The Applicants
Chris Prestwich
Law firm (if applicable) Allens
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2. I have over 20 years' experience undertaking complex restructuring and turnaround assignments, capital reorganisations and formal insolvency administrations.
3. I believe that the information contained in this affidavit is true.
4. This affidavit is made in connection with the Applicants' application to the Court pursuant to section 477(2B) of the Corporations Act 2001 (Cth) (**Corporations Act**) and section 90-15 of the Insolvency Practice Schedule (Corporations) 2016, to enter into a funding agreement with Westpac Banking Corporation (**Westpac**) for the purposes of, among other things, conducting investigations into matters concerning the external administrations of the First to Twenty-Eighth Plaintiffs (**Funding Agreement**).
5. Exhibited to me at the time of swearing this affidavit is an electronic bundle of documents referred to in my affidavit and marked "JP-1". Where I refer to a document by page number noting Exhibit JP-1, I am referring to the corresponding page number in Exhibit JP-1 where the document is located.

External administration of the Forum Group

6. As a result of the following sequence of steps, Jason Ireland and I have been appointed as liquidators or provisional liquidators of each of the First to the Twenty-Eighth Plaintiffs:
 - (a) On 8 July 2021, by resolution of the directors pursuant to section 436A of the Corporations Act, Domenic Calabretta, Grahame Ward, and Thyge Trafford-Jones of Mackay Goodwin (**Former Administrators**) were appointed voluntary administrators of the First to Twenty-Eighth Plaintiffs and Autonomous Energy Pty Ltd ACN 113 595 383 (**AE**).
 - (b) On 9 July 2021, Jason Ireland and I were appointed joint and several liquidators of Forum Finance Pty Limited ACN 153 301 172 (In Liquidation) (**FF**), the Twenty-Fifth Plaintiff. At pages 1 to 4 of Exhibit JP-1 is a copy of the court orders dated 9 July 2021.
 - (c) On 15 July 2021, Jason Ireland I were appointed joint and several provisional liquidators of the Twenty-Sixth to Twenty-Eighth Plaintiffs. At pages 5 to 11 of Exhibit JP-1 is a copy of the court orders dated 15 July 2021.
 - (d) At a creditors' meeting convened on 20 July 2021 and adjourned to 21 July 2021, a resolution was passed by which Jason Ireland, Katherine Sozou and I replaced the Former Administrators as voluntary administrators of the First to Ninth Plaintiffs, the Eleventh to Twenty-Fourth Plaintiffs and AE.

- (e) At a creditors' meeting convened on 20 July 2021, adjourned to 21 July 2021 and adjourned again to 22 July 2021, a resolution was passed by which Jason Ireland, Katherine Sozou and I replaced Former Administrators as voluntary administrators of the Tenth Plaintiff.
- (f) On 28 July 2021 Jason Ireland and I were appointed joint and several liquidators of the First to Twenty-Fourth Applicants. At pages 12 to 15 of Exhibit JP-1 is a copy of the court orders dated 28 July 2021.

7. Throughout this affidavit I will refer to:

- (a) The First and Second Applicants as the **Liquidators**; and
- (b) The First to Twenty-Eighth Plaintiffs as the **Forum Group**.

Funding Agreement

- 8. At pages 16 to 27 of Exhibit JP-1 is the form of a proposed Funding Agreement that has been negotiated with, and offered to the Liquidators by, Westpac.
- 9. The Funding Agreement is to operate as follows:
 - (a) Westpac will provide the Liquidators a loan for the purposes of funding the Liquidators' remuneration and expenses incurred in July, August and September 2021 (or other such longer period as agreed in writing) (**Invoice Period**) in connection with their initial investigations of the Forum Group and the identification of possible future sources of asset recoveries (**Facility**) (clauses 1.1 and 3.2);
 - (b) To drawdown on the Facility, the Liquidators may from time to time submit invoices to Westpac in respect of the Liquidators' remuneration and expenses incurred during the Invoice Period (clause 3.3(a));
 - (c) Following the approval of an invoice, the Liquidators may drawdown on the Facility up to a value of \$4,500,000 (or such other amount as agreed between the parties) (**Facility Limit**) (clauses 1.1 and 3.3(b)). As indicated above, this funding is available in respect of the Liquidators' remuneration and expenses incurred in July, August and September 2021, but not later unless otherwise agreed. I estimate that the level of funding will be sufficient to cover the Liquidators' remuneration and expenses for July and August 2021 and at least part of the Liquidators' remuneration and expenses for September 2021;

- (d) The drawn down amounts will be charged at an interest rate of BBSY Bid plus 3% with any unpaid interest to be capitalised monthly. No fees are applicable to the Facility (clauses 1.1 and 3.4);
- (e) Subject to the matters outlined in paragraphs 11 and 17, the drawn down amounts together with any interest accrued are to be reduced and repaid once and to the extent that there are sufficient funds in the liquidations of the Forum Group and the Liquidators reasonably form the view that those funds are not required for the purposes of that liquidation (clause 3.5) (noting that an application under section 564 of the Act is contemplated by the Funding Agreement in clause 3.8 and referred to below at paragraph 20). That is, to the extent that there are not sufficient assets available in the liquidations, no amounts become due and payable by the Liquidators to Westpac;
- (f) The Liquidators' liability to repay the drawdown amounts together with any interest accrued is on a limited recourse basis, with Westpac's recourse being limited to the assets available in the liquidation of the Forum Group (clause 3.7), subject to the matters discussed in paragraphs 11 and 17; and
- (g) Other financiers who have legal proceedings on foot against various Forum Group entities (being SMBC Leasing and Financing Inc, Sydney Branch ARBN 602 309 366 and Societe Generale ABN 71 092 516 286) may accede as a funder to the Funding Agreement, with the written consent of the Liquidators and Westpac, for the purpose furthering investigations and/or proceedings commenced in respect of Forum Group entities (clause 7).

Funding Agreement advances position of employee creditors

10. Having regard to the cross-collateralisation provisions that I refer to at paragraph 18 below, the Liquidators have negotiated protections in the Funding Agreement for both employees and creditors of Iugis Investments Pty Ltd ACN 647 627 745 (In Liquidation) (***Iugis Investments***), the Seventeenth Plaintiff .

Priority employee creditors

11. To ensure that priority employee creditors of the Forum Group retained are not disadvantaged, the Funding Agreement provides that to the extent there are any outstanding employee entitlements (which are afforded priority under sections 556 and 560 of the Corporations Act) in a Forum Group entity, any recoveries made by that Forum Group entity must first be used to pay those priority employee entitlements (clause 3.6(a)).

12. The effect of this protection is that payments will first be made to priority employee creditors before amounts are repaid under the Funding Agreement.

lugis Investments as a creditor of AE

13. In around February 2021, lugis Investments acquired both the shares in AE and the benefit of an intercompany loan owing by AE.
14. On 12 August 2021, the creditors of AE passed a resolution that AE execute a deed of company arrangement (**DOCA**) by which the shares held by lugis Investments be transferred to an entity controlled by the existing AE management team in exchange for, among other things, contributions made to a Creditors' Trust from which distributions would be made for the benefit of creditors of AE.
15. The DOCA was executed on 13 August 2021 and a notice of termination was given pursuant to s445FA of the Corporations Act on 16 August 2021.
16. lugis Investments remains a creditor of AE, is entitled to participate in the Creditors' Trust and will receive a distribution under the Creditors' Trust.
17. To ensure that the creditors of lugis Investments are not disadvantaged by the Funding Agreement, the Funding Agreement provides that any distribution received by lugis Investments as a creditor of AE will not be available to be used to repay the Facility unless each creditor of lugis Investments has been paid in full (clause 3.6(b)). For completeness, I anticipate that the amounts recovered through the Creditors' Trust pursuant to the debt created by the intercompany loan will be the subject of a proprietary claim so may not be available for distribution in any event.

Forum Group entities are jointly and severally liable for the Facility

18. The Funding Agreement provides that, regardless of whether the funding was used in the liquidation or provisional liquidation of a particular Forum Group entity, the Liquidators of each Forum Group entity are jointly and severally liable for the repayment of all amounts drawn down and any interest accrued under the Facility (clause 3.5(b)).
19. I consider that it is in the interests of the Forum Group to enter into the Funding Agreement with that provision for the following reasons:
 - (a) Although the claims made against each Forum Group entity have not yet been adjudicated for distribution purposes, each of the Forum Group entities face the same claim in respect of funds loaned to FF by Westpac and other financiers. At the first meeting of creditors for the Forum Group entities, Westpac lodged a proof of debt in each Forum Group entity in the sum of

\$259,486.19. Any recoveries by any Forum Group entity would result in a corresponding reduction to the amount claimed against each other Forum Group entity;

- (b) The Liquidators have not to date located sufficient assets to satisfy the claims made against the entities and currently does not have sufficient cash at bank to fund any detailed investigations into the flow of funds from the loans made into FF or to make any substantive recoveries of assets. In that respect:
- (i) Forum Group Pty Limited (Receivers Appointed) (In Liquidation), the Tenth Plaintiff ACN 153 336 997 (**FG**) and Forum Group Financial Services Pty Limited ACN 623 033 705 (In Provisional Liquidation), the Twenty-Sixth Plaintiff (**FGFS**) are the main entities in the Forum Group with any substantive cash holdings;
 - (ii) As the funds loaned to FF by Westpac were transferred to FGFS, the funds held by FGFS remain subject to, among other claims, Westpac's proprietary claim of \$259,486.19 (as well as a set-off claim by National Australia Bank (**NAB**)). The funds held by FGFS and the assets located to date are not sufficient to repay the claims made against FGFS;
 - (iii) As to the funds in FG's account:
 - (A) A secured creditor, Octet Finance Pty Limited (**Octet**) has appointed Anthony Resnick and Mark Robinson of DVT Group as receivers of the property of FG (**Receivers**);
 - (B) NAB has a first ranking security interest over the funds held by FG in a NAB bank account;
 - (C) A number of proprietary claims have been asserted in respect of the monies in that account; and
 - (D) To the best of my knowledge, quite apart from the proprietary claims, the assets of FG are insufficient to satisfy the debt owed by FG to Octet and NAB, such that there would be no assets available for unsecured creditors in the liquidation of FG;
 - (iv) The Receivers have also been appointed over Smartprint Fleet Management Pty Ltd ACN 132 807 080 (Receivers Appointed) (In Liquidation), the Twenty-Third Plaintiff (**Smartprint**). The Receivers have completed a recent sale of certain assets of Smartprint. To the

best of my knowledge, this sale does not satisfy the debt owed to Octet such that no funds from the sale are available to unsecured creditors in the liquidation and are also the subject of a proprietary claim;

- (v) The Liquidators are currently considering a sale of stock currently held by Iugis Pty Ltd ACN 632 882 243 (In Liquidation), the Eighteenth Plaintiff (**Iugis**). At present, the value that will be obtained through that sale is unclear. Iugis has approximately \$1,126,000 worth of priority employment entitlement claims (which, as described above, are preserved through the terms of the Funding Agreement); and
- (vi) The Second to Fifth Plaintiffs are currently the trustees of real property owning trusts. These real properties are subject to mortgages and any surplus will be the subject of proprietary claims.

Considerations in entering into the Funding Agreement

20. Based on my experience, I consider that entering into the Funding Agreement is in the best interests of Forum Group and its creditors on the basis that:
- (a) From my investigations to date, there are clearly matters requiring detailed investigation in order to identify assets that may be able to be recovered for the benefit of the Forum Group's creditors;
 - (b) No other funding has been offered to the Liquidators;
 - (c) The Funding Agreement retains the protections discussed in paragraphs 11 and 17 above;
 - (d) Given the security that has been granted and the proprietary claims made, the Forum Group does not have available assets to fund investigations and recovery actions;
 - (e) I have not identified any potential prejudice or oppression to the creditors of Forum Group entities that would arise by reason of entering into the Funding Agreement; and
 - (f) I consider that the entry into the Funding Agreement presents little risk to the Forum Group and its creditors.
21. Given the absence of any security that can be offered, or the certainty of any recoveries, I consider it very unlikely that funding would be available from any other source. I consider that the terms of the Funding Agreement are likely to be more

favourable than those that would, in my experience, likely be available from a commercial litigation funder for the following reasons:

- (a) No premium or fee is payable by Forum Group on the Facility;
- (b) The interest of the BBSY Bid plus 3% is a reasonable level of interest;
- (c) The Funding Agreement confers a benefit on Westpac only to the extent that, subject to a successful application under section 564 of the Act and the matters discussed in paragraphs 11 and 17, Westpac will obtain a priority and recover funds from assets which are recovered (in whole or part) from the use of funds accessed under the Facility.

Sworn by the abovenamed deponent
at Sydney, New South Wales on
19 August 2021
Before me:

Jason Preston

.....
Signature of deponent

Kirsty Prinsloo

.....
Signature of witness

Federal Court of Australia
District Registry: New South Wales
Division: General

**IN THE MATTER OF THE FORUM GROUP OF COMPANIES PTY LIMITED ACN 151 964
626 (ADMINISTRATORS APPOINTED)
(ACN 151 964 626)**

**Jason Preston and Jason Ireland in their capacity as joint and several liquidators of
the First to Twenty-Fifth Plaintiffs**

First Applicant

**Jason Preston and Jason Ireland in their capacity as joint and several provisional
liquidators of the Twenty-Sixth to Twenty-Eighth Plaintiffs**

Second Applicant

Affidavit of: **Jason Preston**
Address: Level 12, 20 Martin Place, Sydney NSW 2000
Occupation: Registered Liquidator
Date: 19 August 2021

CERTIFICATE IDENTIFYING EXHIBIT

This is the exhibit marked "**JP-1**" produced and shown to Jason Preston at the time of swearing his affidavit this 19 August 2021.

Before me:

Kirsty Prinsloo

.....
Signature of witness



Federal Court of Australia
District Registry: New South Wales
Division: General

No: NSD616/2021

WESTPAC BANKING CORPORATION ABN 33 007 457 141
Applicant

FORUM FINANCE PTY LIMITED and others named in the schedule
Respondent

ORDER

JUDGE: JUSTICE LEE

DATE OF ORDER: 09 July 2021

WHERE MADE: Sydney

THE COURT ORDERS THAT:

Winding up of the first respondent

1. Pursuant to s 461(1)(k) of the *Corporations Act 2001* (Cth) (**Act**), the first respondent be wound up on the basis that the Court is of the opinion that it is just and equitable that the first respondent be wound up.
2. Pursuant to s 472(1) of the Act, Jason Preston and Jason Ireland of McGrathNicol, Level 12, 20 Martin Place, Sydney NSW 2000, are appointed jointly and severally as liquidators of the first respondent (**Liquidators**).
3. Compliance with r 5.6 of the *Federal Court (Corporations) Rules 2000* (Cth) be dispensed with.
4. The Liquidators have liberty to apply for directions in relation to the conduct of the liquidation.
5. The Liquidators have access to all documents of the first respondent seized in accordance with the search orders made against the first respondent by order 7 of the orders made by Justice Lee on 28 June 2021.



Freezing orders

6. The freezing order made against the first respondent by order 4 of the orders made by Justice Lee on 2 July 2021 in relation to the interlocutory application dated 28 June 2021 (the **2 July Orders**) be extended until 5pm (AEST) on 16 July 2021.
7. The freezing order made against the second respondent by order 5 of the 2 July Orders be extended until further order.
8. The freezing order made against the third respondent by order 4 of the orders made by Justice Lee on 2 July 2021 in relation to the interlocutory application dated 2 July 2021 be varied in the form of Annexure A and be extended and apply until further order.

Orders sought by the Receivers

9. The freezing order made by Justice Lee on 28 June 2021 in the form of Annexure A be varied by adding:

“(10) This order does not prohibit:

...

- (d) without limiting subparagraphs (b) and (c), dealing with the bank account in the name of Forum Group Pty Ltd with BSB 082-080 Account Number 12-178-2934 held with National Australia Bank Ltd by discharging business expenses of Forum Group Pty Ltd bona fide and properly incurred not limited to obligations bona fide and properly owing to Octet Finance Pty Ltd ACN 124 477 916.

10. The freezing order made by Justice Lee on 28 June 2021 in the form of annexure B be varied by adding:

“(10) This order does not prohibit:

...



- (e) without limiting subparagraphs (b) and (c), dealing with the bank account in the name of Forum Group Pty Ltd with BSB 082-080 Account Number 12-178-2934 held with National Australia Bank Ltd by discharging business expenses of Forum Group Pty Ltd bona fide and properly incurred not limited to obligations bona fide and properly owing to Octet Finance Pty Ltd ACN 124 477 916.

Search Orders

11. The time for compliance by the Independent Computer Experts with order 14 of the 2 July Orders be extended insofar as it applies for the Sydney Premises as follows:
 - (a) the Independent Computer Expert provide an interim report to the Independent Solicitor of whether any Listed Things (as defined in the search orders in the 28 June Orders) were or had been located on any of the electronic copies by 5pm on 12 July 2021;
 - (b) the Independent Computer Expert provide a final report to the Independent Solicitor of whether any Listed Things were or had been located on any of the electronic copies (but not including the Our Kloud Servers) by 5pm on 19 July 2021;
 - (c) the Independent Computer Expert provide a further report to the Independent Solicitor of whether any Listed Things were or had been located on the Our Kloud Servers as soon as practicable; and
 - (d) return as soon as practicable to the Independent Solicitor all of the electronic copies.

Access to documents

12. Upon the applicant by its counsel giving the usual undertaking as to damages, until further order, the first and second respondents are restrained from deleting or altering (other than in the ordinary course of business) any data held for or on behalf of the first respondent which is stored on servers hosted by Our Kloud Pty Ltd (ACN 603 675 529).



13. The first and second respondents have first access to any documents delivered to the Court from the Brisbane search until 5pm (AEST) on 13 July 2021.
14. Any application by any person to prevent access by the applicant to any hard copy documents delivered to the Court as a result of any of the search orders in these proceedings is to be made and notified to the Associate to Lee J by 4pm on 13 July 2021.
15. The applicant is to have access from 5pm (AEST) on 13 July 2021 to any hard copy documents delivered to the Court as a result of any of the search orders in these proceedings that is not the subject of any application made in accordance with Order 14.

Other

16. These orders are to be entered forthwith.
17. The second and third respondents file notice of appearance by no later than 5pm Monday 12 July 2021.
18. The applicant file and serve any application to further amend its originating application by 26 July 2021.
19. The applicant serve the statement of claim it would file if leave were granted to amend the originating application by 26 July 2021.
20. The matter otherwise be relisted for further case management on a date to be fixed as soon as practicable after 2 August 2021 before the docket judge.
21. The parties have liberty to apply on notice to the other parties.

Date that entry is stamped: 9 July 2021

Sia Lagos
Registrar



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD616/2021

WESTPAC BANKING CORPORATION ABN 33 007 457 141

Applicant

FORUM FINANCE PTY LIMITED and others named in the schedule

Respondent

ORDER

JUDGE: JUSTICE LEE

DATE OF ORDER: 15 July 2021

WHERE MADE: Sydney

THE COURT ORDERS THAT:

Joinder of parties and leave to proceed

1. To the extent necessary, the applicant have leave under s 440D(1)(b) of the *Corporations Act 2001* (Cth) (**Corporations Act**) to add:
 - (a) Forum Group Financial Services Pty Ltd ACN 623 033 705 (**FGFS**) as the fourth respondent;
 - (b) Forum Group Pty Ltd ACN 153 336 997 (receivers appointed) (administrators appointed) (**Forum Group**) as the fifth respondent;
 - (c) Forum Enviro Pty Ltd ACN 168 709 840 (**FE**) as the sixth respondent; and
 - (d) Forum Enviro (Aust) Pty Ltd ACN 607 484 364 (**FEA**) as the seventh respondent.
2. To the extent necessary, the applicant have leave under s 440D(1)(b) of the *Corporations Act* to file a further amended originating application in the form annexed to the interlocutory application filed on 12 July 2021.



3. The applicant have leave under s 471B of the Corporations Act to proceed as against the first respondent for the purposes of these proceedings.
4. The applicant is to file and serve a statement of claim by 5pm on 21 July 2021.

Production by NAB

5. Pursuant to s 23 of the *Federal Court of Australia Act 1976* (Cth) and/or r 7.22 of the *Federal Court Rules 2011* (Cth) (**FCR**) and/or FCR 20.23, National Australia Bank Limited ABN 12 004 044 937 (**NAB**) is to give discovery to the applicant by 4pm (AEST) on 15 July 2021 of all bank statements for transactions from 1 September 2018 to date for any account held with NAB or any of its subsidiaries in the name of any of the persons or entities named in Annexure A to these orders.
6. The applicant is to pay NAB's costs and expenses in complying with order 5, as agreed or (failing agreement) as determined by the Court.
7. The parties to these proceedings have access to any documents discovered in accordance with order 5.
8. The applicant in this proceeding (NSD616/2021) be released from the implied obligation of confidence (described in *Hearne v Street* [2008] HCA 36; 235 CLR 125) to the extent necessary to, and be permitted to, provide documents produced on subpoena or discovered (or to be produced or discovered) in these proceedings, including by NAB, to the applicant in proceeding number NSD642/2021 Société Générale (**SocGen**) and the applicant in proceeding number NSD681/2021 SMBC Leasing and Finance, Inc (**SMBC**).

Appointment of provisional liquidators of the Forum Group Companies

9. Upon the applicant giving the usual undertaking as to damages, pursuant to s 472(2) of the Corporations Act, Jason Preston and Jason Ireland of Level 12, 20 Martin Place, Sydney NSW 2000 are appointed jointly and severally as provisional liquidators (**Provisional Liquidators**) of each of:

- (a) FGFS;



(b) FE; and

(c) FEA,

together the **Companies**.

10. Pursuant to s 447A of the Corporations Act and/or s 90-15 of the Insolvency Practice Schedule (Corporations) (**IPSC**) (Schedule 2 to the Corporations Act), the voluntary administration of each of the Companies terminate with immediate effect from the appointment of the Provisional Liquidators.
11. The Provisional Liquidators have control over all of the assets of each of the Companies.
12. Pursuant to s 472(3)(b) of the Corporations Act, the Provisional Liquidators may exercise the following functions and powers:
 - (a) all functions and powers conferred on the Provisional Liquidators by the Corporations Act or the *Federal Court (Corporations) Rules 2000* (Cth) (**Corporations Rules**) (including those described in s 472(4) of the Corporations Act);
 - (b) the power to carry on the business of the Companies;
 - (c) the power to enter the premises of the Companies;
 - (d) the power to take possession of all of the books and records of the Companies;
 - (e) to investigate and report to the court on the assets of the Companies wherever located, giving their value, location and details (including any mortgages, charges or other encumbrances to which they are subject) and the extent of the interest of the Companies in the assets; and
 - (f) to investigate and report to the court on where any funds obtained by any of the Companies that originated from any of the applicants is located or has been dispersed to and whether it was used to acquire, in whole or part, any assets and, if so, who holds those assets and where those assets are.



13. By no later than 4pm (AEST) on 19 July 2021, the applicant is to:
 - (a) lodge an office copy of these orders with the Australian Securities and Investments Commission;
 - (b) serve a copy of these orders on the Companies at their registered office; and
 - (c) give to the Provisional Liquidators an office copy of these orders and a written statement that it has served a copy of these orders on the Companies at their registered office.
14. The applicant and the Provisional Liquidators otherwise have liberty to apply for directions in relation to the conduct of the provisional liquidation.
15. The Provisional Liquidators have access to all documents seized in accordance with the search orders made by order 7 of the orders made by Justice Lee on 28 June 2021.
16. The application for the appointment of the Provisional Liquidators in relation to the sixth respondent, Forum Group, be adjourned to 2.15pm on 22 July 2021.
17. Any submissions and evidence in relation to the application to appoint the Provisional Liquidators to Forum Group to be filed and served by 5pm on 21 July 2021.

Subpoena to Our Kloud

18. The applicant have leave to file and issue a subpoena to produce documents to Our Kloud Pty Ltd in the form of Annexure B to these orders.

Orders relating to Search Orders

19. Order 11 of the Court's orders of 9 July 2021 be varied as follows:

The time for compliance by the Independent Computer Experts with order 14 of the 2 July Orders be extended insofar as it applies for electronic material obtained or to be obtained from the Brisbane, Perth, Melbourne and Sydney Premises as follows:



(a) the Independent Computer Expert provide an interim report to the Independent Solicitor of whether any Listed Things (as defined in the search orders in the 28 June Orders) were or had been located on any of the electronic copies by 5pm on 12 July 2021;

(b) the Independent Computer Expert provide a final report to the Independent Solicitor of whether any Listed Things were or had been located on any of the electronic copies (but not including the Our Kloud Servers) by 5pm on ~~19~~ 28 July 2021;

~~(c) the Independent Computer Expert provide a further report to the Independent Solicitor of whether any Listed Things were or had been located on the Our Kloud Servers as soon as practicable; and~~

(d) return as soon as practicable to the Independent Solicitor all of the electronic copies.

Freezing orders

20. The freezing orders made against the second respondent by order 6 on 28 June 2021 (as varied on 2 July 2021 and 9 July 2021) be amended to be in the form of Annexure C to these orders.
21. The solicitor for the second respondent file and serve, by no later than 5pm (AEST) on Monday 19 July 2021, an affidavit that:
 - (a) identifies the proposed travel plans of the second respondent in relation to his return to Australia,
 - (b) identifies with specificity the steps that have been taken to obtain from the second respondent the affidavit disclosing his assets required to be provided by order 8 of the freezing orders (**Disclosure Affidavit**);
 - (c) annexes a proposed copy of the Disclosure Affidavit; and



- (d) to the extent that an objection is taken pursuant to order 9(c) of the freezing orders, sets out the basis of that objection.
22. Any information or affidavit provided to the applicant by the second respondent, pursuant to orders 8 or 9 of the freezing orders, or pursuant to order 21 is also to be provided to SocGen and SMBC.
23. SMBC and SocGen are to be given the same notice as is given to the applicant of any application to vary or vacate the freezing orders.

General orders

24. Leave to enter these orders forthwith.

Date that entry is stamped: 16 July 2021

Sia Lagos
Registrar



Annexure A

	Name	Company number
1.	The Forum Group of Companies Pty Limited (Administrators Appointed)	ACN 151 964 626
2.	Forum Group Pty Ltd (Receivers Appointed) (Administrators Appointed)	ACN 153 336 997
3.	Forum Group (QLD) Pty Ltd (Administrators Appointed)	ACN 103 609 678
4.	Forum Group (VIC) Pty Ltd (Administrators Appointed)	ACN 153 062 018
5.	Forum Fleet Pty Limited (Administrators Appointed)	ACN 155 440 994
6.	Forum Enviro Pty Ltd (Administrators Appointed)	ACN 168 709 840
7.	Forum Direct Pty Ltd (Administrators Appointed)	ACN 054 890 710
8.	Forum Enviro (Aust) Pty Ltd (Administrators Appointed)	ACN 607 484 364
9.	Forum Group Financial Services Pty Ltd (Administrators Appointed)	ACN 623 033 705
10.	Iugis Pty Ltd (Administrators Appointed)	ACN 632 882 243
11.	Iugis Investments Pty Ltd (Administrators Appointed)	ACN 647 627 745
12.	Iugis (NZ) Limited	Registration number 6765037 and NZBN number 9429046666581
13.	Iugis Waste Services Pty Ltd (Administrators Appointed)	ACN 647 212 299
14.	Imagetec Financial Services Pty Ltd (Administrators Appointed)	ACN 111 978 182
15.	Imagetec Solutions Australia Pty Ltd (Administrators Appointed)	ACN 074 715 718
16.	Onesource Australia Holdings Pty Limited (Administrators Appointed)	ACN 120 463 541
17.	Smartprint Fleet Management Pty Ltd (Administrators Appointed)	ACN 132 807 080
18.	Autonomous Energy Pty Ltd (Administrators Appointed)	ACN 113 593 383
19.	14 James Street Pty Ltd (Administrators Appointed)	ACN 638 449 206
20.	26 Edmonstone Road Pty Ltd (Administrators Appointed)	ACN 622 944 129
21.	5 Bulkara Street Pty Ltd (Administrators Appointed)	ACN 630 982 160
22.	6 Bulkara Street Pty Ltd (Administrators Appointed)	ACN 639 734 473



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD747/2021

THE FORUM GROUP OF COMPANIES PTY LIMITED (ADMINISTRATORS APPOINTED) and others named in the schedule
Plaintiffs

ORDER

JUDGE: JUSTICE LEE

DATE OF ORDER: 28 July 2021

WHERE MADE: Sydney

THE COURT ORDERS THAT:

Winding up

1. Pursuant to s 447A of the *Corporations Act 2001* (Cth) (**Act**) and s 90-15 of the Insolvency Practice Schedule (Corporations), the administrations of the first to twenty-fourth plaintiffs be brought to an end.
2. Pursuant to s 461(1)(k) of the Act, the first to twenty-fourth plaintiffs be wound up on the basis that the Court is of the opinion that it is just and equitable.
3. Pursuant to s 472(1) of the Act, Jason Preston and Jason Ireland of McGrathNicol, Level 12, 20 Martin Place, Sydney NSW 2000, be appointed jointly and severally as liquidators of each of the first to twenty-fourth plaintiffs.
4. Leave be granted pursuant to s 532(2)(c) of the Act for Jason Preston and Jason Ireland of McGrathNicol, Level 12, 20 Martin Place, Sydney NSW 2000, to seek to be appointed, and act, as joint and several liquidators of each of the first to twenty-fourth plaintiffs.
5. Pursuant to s 467(3) of the Act, compliance with s 465A of the Act be dispensed with.
6. The requirements of rules 5.6 and 5.11 of the *Federal Court (Corporations) Rules 2000* (Cth) be dispensed with.



Costs

7. The reasonable costs of and incidental to this application be costs in the respective administrations of each of the Plaintiffs.

Date that entry is stamped: 28 July 2021

Sia Lagos
Registrar



Schedule

No: NSD747/2021

Federal Court of Australia

District Registry: New South Wales

Division: General

Second Plaintiff	14 JAMES STREET PTY LTD ACN 638 449 206 (ADMINISTRATORS APPOINTED)
Third Plaintiff	26 EDMONSTONE ROAD PTY LTD ACN 622 944 129 (ADMINISTRATORS APPOINTED)
Fourth Plaintiff	5 BULKARA STREET PTY LTD ACN 630 982 160 (ADMINISTRATORS APPOINTED)
Fifth Plaintiff	6 BULKARA STREET PTY LTD ACN 639 734 473 (ADMINISTRATORS APPOINTED)
Sixth Plaintiff	ARAMIA HOLDINGS PTY LTD ACN 114 958 717 (ADMINISTRATORS APPOINTED)
Seventh Plaintiff	EROS MANAGEMENT PTY LTD ACN 622 298 346 (ADMINISTRATORS APPOINTED)
Eighth Plaintiff	FORUM DIRECT PTY LTD ACN 054 890 710 (ADMINISTRATORS APPOINTED)
Ninth Plaintiff	FORUM FLEET PTY LIMITED ACN 155 440 994 (ADMINISTRATORS APPOINTED)
Tenth Plaintiff	FORUM GROUP PTY LTD ACN 153 336 997 (ADMINISTRATORS APPOINTED)
Eleventh Plaintiff	FORUM GROUP (QLD) PTY LTD ACN 103 609 678 (ADMINISTRATORS APPOINTED)
Twelfth Plaintiff	FORUM GROUP (VIC) PTY LTD ACN 153 062 018 (ADMINISTRATORS APPOINTED)
Thirteenth Plaintiff	IMAGETEC FINANCIAL SERVICES PTY LTD ACN 111 978 182 (ADMINISTRATORS APPOINTED)
Fourteenth Plaintiff	IMAGETEC SOLUTIONS AUSTRALIA PTY LTD ACN 074 715 718 (ADMINISTRATORS APPOINTED)
Fifteenth Plaintiff	INTRASHIELD INVESTMENT GROUP PTY LTD ACN 645 578



829 (ADMINISTRATORS APPOINTED)

- Sixteenth Plaintiff INTRASHIELD PTY LTD ACN 133 426 534
(ADMINISTRATORS APPOINTED)
- Seventeenth Plaintiff IUGIS INVESTMENTS PTY LTD ACN 647 627 745
(ADMINISTRATORS APPOINTED)
- Eighteenth Plaintiff IUGIS PTY LTD ACN 632 882 243 (ADMINISTRATORS
APPOINTED)
- Nineteenth Plaintiff IUGIS WASTE SOLUTIONS PTY LTD ACN 647 212 299
(ADMINISTRATORS APPOINTED)
- Twentieth Plaintiff ONESOURCE AUSTRALIA HOLDINGS PTY LIMITED ACN
120 463 541 (ADMINISTRATORS APPOINTED)
- Twenty First Plaintiff ORCA ENVIRO SOLUTIONS PTY LTD ACN 626 552 645
(ADMINISTRATORS APPOINTED)
- Twenty Second Plaintiff ORCA ENVIRO SYSTEMS PTY LTD ACN 627 597 782
(ADMINISTRATORS APPOINTED)
- Twenty Third Plaintiff SMARTPRINT FLEET MANAGEMENT PTY LTD ACN 132
807 080 (ADMINISTRATORS APPOINTED)
- Twenty Fourth Plaintiff SPARTAN CONSULTING GROUP PTY LTD ACN 168 989 544
(ADMINISTRATORS APPOINTED)

Westpac Banking Corporation

Jason Preston (in his capacity as Liquidator and Provisional Liquidator of the Relevant Entities)

Jason Ireland (in his capacity as Liquidator and Provisional Liquidator of the Relevant Entities)

Funding Agreement

Forum Group

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This Agreement is made on

Parties

- 1 **Westpac Banking Corporation** ABN 33 007 457 141 of 275 Kent Street, Sydney NSW 2000.
- 2 **Jason Preston and Jason Ireland** in their capacity as joint and several liquidators of the entities listed in item 2 of the Schedule of Level 12, 20 Martin Place, Sydney NSW 2000 (**Liquidators**).
- 3 **Jason Preston and Jason Ireland** in their capacity as joint and several provisional liquidators of the entities listed in item 1 of the Schedule of Level 12, 20 Martin Place, Sydney NSW 2000 (**Provisional Liquidators**).

Recitals

- A Between 9 July and 28 July 2021, the Liquidators were appointed as joint and several liquidators of the Liquidation Entities.
- B On 15 July 2021 the Provisional Liquidators were appointed as joint and several provisional liquidators of the Provisional Liquidation Entities.
- C The Funder has agreed to provide funding to the External Administrators on terms and conditions set out in this Agreement.

It is agreed as follows.

1 Definitions and interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

Approved Request means a written request from the Funder to the External Administrators specifying the investigations and other work to be undertaken, which is approved by the External Administrators.

Autonomous Energy means Autonomous Energy Pty Limited ACN 113 593 383.

BBSY Bid means the applicable Screen Rate as of 11.00am (Sydney time) on the Quotation Day for Australian dollars and for a period equal in length to the Funding Period.

Claim includes any claim, liability, proceeding, cost, charge or expense.

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

Court means the Federal Court of Australia.

EA Nominated Individuals mean:

- (a) Jason Preston by email at JPreston@mcgrathnicol.com;
- (b) Jason Ireland by email at JIreland@mcgrathnicol.com; and
- (c) Katherine Sozou by email at KSozou@mcgrathnicol.com.

Expenses means the costs, expenses and disbursements incurred by the Liquidators in the Liquidation.

External Administrators mean the Liquidators and the Provisional Liquidators.

Facility Limit means the sum of AUD\$4,500,000 excluding GST (or other such other amount as

agreed in writing between the Funder and External Administrators from time to time).

Funder means Westpac Banking Corporation and any other party who accedes to this Agreement as a funder pursuant to clause 7.

Funder Nominated Individuals means:

- (a) Rodney Owen by email at rowen@westpac.com.au;
- (b) Mark John by email at mjohn@westpac.com.au; and
- (c) Richard Schofield by email at rschofield@westpac.com.au.

Funding means funding provided by the Funder pursuant to this Agreement.

Funding Period means a period for the fixing of interest rates for, and the funding of, the Facility Limit. That period commences on the date of the first drawdown on the Facility Limit and has a duration of three months from that date, or as otherwise agreed between the Funder and the External Administrators.

GST has the meaning given in section 195-1 of the GST Act.

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

Interest Rate means the BBSY Bid plus 3%.

IPSC means the Insolvency Practice Schedule (Corporations) being Schedule 2 to the Corporations Act.

Invoice Period means the period from 1 July 2021 to 30 September 2021 (for other such longer period as agreed in writing between the Funder and the External Administrators from time to time).

Iugis Investments means Iugis Investments Pty Ltd ACN 647 627 745 (In Liquidation).

Liquidation means the liquidation of the Liquidation Entities, the provisional liquidation of the Provisional Liquidation Entities, and any liquidation of the Provisional Liquidation Entities which occurs during the Funding Period.

Liquidation Entities mean the entities listed in item 1 of the Schedule.

Provisional Liquidation Entities mean the entities listed in item 2 of the Schedule and includes those entities in the event they subsequently enter into liquidation.

Quotation Day means, in relation to any period for which the Interest Rate is to be determined, the first day of the Funding Period, or as otherwise determined by the Funder in accordance with market practice.

Relevant Entities mean the Liquidation Entities and the Provisional Liquidation Entities.

Remuneration means the remuneration of the Liquidators properly incurred by them in the Liquidation, and which is approved by either:

- (a) resolution of the creditors of the Company; or
- (b) the committee of inspection of the Company (if one has been appointed); or
- (c) the Court,

in accordance with section 60-10(1) of the IPSC.

Screen Rate means:

- (a) the Australian Bank Bill Swap Reference Rate (Bid) administered by ASX Benchmarks Pty Limited (ACN 616 075 417) (or any other person which takes over the administration

of that rate) for the relevant period and displayed (before any correction, recalculation or republication by the administrator) on page BBSY of the Thomson Reuters Screen (or any replacement Thomson Reuters page which displays that rate). If that rate is less than zero, the Screen Rate shall be deemed to be zero; or

- (b) If such page or service ceases to be available, the Funder may specify another page or service displaying the relevant rate, or as otherwise reasonably determined by the Funder in good faith after consultation with the External Administrators.

SMBC means SMBC Leasing and Financing Inc, Sydney Branch ARBN 602 309 366.

SocGen means Societe Generale ABN 71 092 516 286.

1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) The meaning of terms is not limited by specific examples introduced by **including**, or **for example**, or similar expressions.
- (c) Nothing in this Agreement is to be interpreted against a party on the ground that the party put it forward.
- (d) The following rules apply unless the context requires otherwise.
- (i) The singular includes the plural and the converse.
 - (ii) A gender includes all genders.
 - (iii) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
 - (iv) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
 - (v) A reference to a clause, annexure or schedule is a reference to a clause of, or annexure or Schedule to, this Agreement.
 - (vi) A reference to a party to this Agreement or another agreement or document includes the party's successors and permitted substitutes or assigns.
 - (vii) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation, statutory instrument, code or other thing issued under it.
 - (viii) A reference to **writing** includes an email, a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
 - (ix) A reference to **conduct** includes an omission, statement or undertaking, whether or not in writing.
 - (x) Each paragraph of a list is to be construed independently. None limits any other.
 - (xi) All references to time are to Sydney time.

2 Conditions precedent

- (a) This Agreement shall have no force or effect in respect of the External Administrators and a Relevant Entity, unless and until the External Administrators, if required pursuant to section 477(2B) of the Corporations Act, obtain the approval of the creditors, committee of inspection, or the Court to enter into the Agreement in respect of that Relevant Entity.

- (b) The External Administrators shall apply for the approvals as referred to in clause 2(a) as soon as practicable after the date of this Agreement.

3 Funding

3.1 Benefit of funding

Funding operates for the benefit of the External Administrators and the Relevant Entities and each of them.

3.2 Purpose of funding

- (a) Funding constitutes a loan to the External Administrators in their capacities as Liquidators and Provisional Liquidators, as applicable.
- (b) The purpose of this Agreement is to provide an interim funding arrangement by which the Funder provides to the External Administrators, funding in respect of their Remuneration and Expenses incurred in connection with the external administrations of the Relevant Entities including but not limited to, their initial investigations of the Relevant Entities and the identification of possible future sources of asset recoveries.
- (c) The External Administrators' costs of seeking any approvals pursuant to clause 2(a) will be Expenses of the External Administrations and capable of being funded pursuant to this Agreement.
- (d) The Funding includes funding in respect of the Remuneration and Expenses of the External Administrators incurred prior to the date of this Agreement, or obtaining the approvals as referred to in clause 2(a).

3.3 Drawdowns on Facility Limit

- (a) In order to drawdown on the Facility Limit, the External Administrators may from time to time submit invoices to the Funder in respect of Remuneration and Expenses incurred during the Invoice Period (even if those Invoices are submitted outside of the Invoice Period). Such invoices:
 - (i) Are to be addressed to the applicable Relevant Entity;
 - (ii) Are to nominate the bank account of the applicable Relevant Entity to which payment is to be remitted; and
 - (iii) Are to be sent to the Funder Nominated Individuals.
- (b) Upon approval by the Funder of an invoice submitted by the External Administrators:
 - (i) The External Administrators are entitled to drawdown on the Facility Limit in a sum equal to the amount of the approved invoice; and
 - (ii) When the GST amount is refunded by the Australian Taxation Office, the External Administrators shall remit the corresponding amount to the Funder in part repayment of the loan.

3.4 Interest

- (a) Interest shall be payable on the amount of any Funding which has been drawn down, charged at the Interest Rate with no fees applicable.
- (b) Interest is payable at the end of the Funding Period (subject to clause 3.5 below).
- (c) Any unpaid interest will be capitalised monthly.

3.5 Repayment of the loan

Subject to clause 3.6 below:

- (a) The Facility Limit and any such amount that has been drawn down and any interest accrued are to be, respectively, reduced and repaid once and to the extent that there are sufficient funds in any Relevant Entity and the Liquidators or Provisional Liquidators, acting reasonably, form the view that those funds are not required for the purposes of that liquidation or provisional liquidation;
- (b) The Liquidators and Provisional Liquidators of each Relevant Entity shall be jointly and severally liable for the repayment of all amounts drawn down and any interest accrued under the Facility (regardless of whether the funding was used in the liquidation or provisional liquidation of any particular Relevant Entity);
- (c) The parties acknowledge that no amounts are repayable by the External Administrators to the Funder if there are not sufficient assets available in the applicable Relevant Entities; and
- (d) To the extent that assets are available in the liquidation or provisional liquidation of the applicable Relevant Entity, the Funding will be repayable as an expense of that Liquidation.

3.6 Available Assets

- (a) To the extent there are any outstanding employee entitlements in a Relevant Entity which have priority pursuant to sections 556 and 560 of the Corporations Act, any recoveries made by that Relevant Entity (or in the course of its Liquidation) must first be applied to pay those entitlements before being available to repay any amounts owing under this Agreement.
- (b) In respect of lugis Investments, any distribution that is received by lugis Investments as a creditor of Autonomous Energy will not be available to repay any amounts owing under this Agreement, unless each creditor of lugis Investments has been paid in full.

3.7 Limited recourse loan

The Funder acknowledges and agrees that:

- (a) the liability of the External Administrators in their capacities as Liquidators and Provisional Liquidators to repay the Facility Amount (or such amount that has been drawn down) and any interest accrued under this agreement is on a limited recourse basis, namely limited to the assets available in the Liquidation in accordance with clause 3.5 and clause 3.6;
- (b) to the extent that the assets available are insufficient to satisfy repayment of the Facility Limit (or such amount that has been drawn down) and any interest accrued, the External Administrators in their capacities as Liquidators and Provisional Liquidators are not liable, personally or otherwise, for any deficiency and are released by the Funder from any claim it might otherwise have; and
- (c) the Funder shall not exercise any right, power or remedy in connection with this agreement that is inconsistent with the limitation on the recovery rights of the Funder as set out in this agreement.

3.8 Funder priority

- (a) The External Administrators will use their best endeavours to support an order sought by the Funder pursuant to section 564 of the Corporations Act in respect of recoveries made by the Relevant Entity if funded (in whole or in part) by the Funder under the terms of this Agreement.
- (b) If reasonably requested to do so and if funded to do so, the External Administrators will seek an order pursuant to section 564 of the Corporations Act in respect recoveries made of Relevant Entity assets if funded (in whole or in part) by the Funder under the terms of this Agreement, if it is agreed between the parties that it would be more expedient for the External Administrators to do so (in place of the Funder).
- (c) The External Administrators acknowledge that the Funder may also have a proprietary claim to certain asset recoveries in the Liquidations.

4 Obligations of the External Administrators

- (a) Subject to their obligations under the Corporations Act, there is no obligation on the External Administrators to undertake any work which is not the subject of an Approved Request.
- (b) The External Administrators acknowledge that they will be required to obtain approvals for their Remuneration in accordance with the Corporations Act and IPSC prior to being entitled to apply any Funding under this Agreement to pay that Remuneration.

5 Limitations to funding

Nothing in the arrangement would permit the External Administrators to use any Funding:

- (a) in a manner which is, acting reasonably, adverse to the Funder's legal or commercial interests.
- (b) in respect of any Claim:
 - (i) arising:
 - (A) out of the negligence or breach of duty of the External Administrators in the exercise or attempted exercise of their powers, authorities, duties or discretions; or
 - (B) as a result of the External Administrators exceeding the scope of their powers, authorities, duties or discretions;
 - (ii) arising out of any breach by the External Administrators of the provisions of any statute, regulation or rule of law or equity which may apply; or
 - (iii) to the extent to which the External Administrators are entitled to indemnity under any contract of insurance,

even though the External Administrators suffer no loss as a result of that Claim.

6 Reporting

- (a) From time to time, the Funder may submit a request, for the External Administrators consideration, that the External Administrators undertake certain investigations or tasks in relation to the Relevant Entities.
- (b) In respect of all Approved Requests:

- (i) The External Administrators are to regularly (at least weekly) report to the Funder in relation to the progress of work referable to the approved request;
- (ii) Once the scope of work in respect of an Approved Request is complete, the External Administrators will provide a final report to the Funder detailing its findings and conclusions;
- (iii) all non-privileged work product relating to that approved request, which the External Administrators are satisfied (acting reasonably) is subject to a valid claim for common interest privilege will be provided to the Funder on request.

7 Accession of other funders

- (a) Subject to the written agreement of both the Funder and the External Administrators, at the Funder's election, SMBC and/or SocGen may be given an opportunity to accede as a funder to this Agreement for the purpose of their investigations into Relevant Entities and/or in furtherance of their respective proceedings against Relevant Entities.
- (b) Any accession in accordance with clause 7(a) will require the new funder to, among other things:
 - (i) Enter into an Accession Deed in the form as agreed between the Funder, the External Administrators and the new funder;
 - (ii) Agree to being a party to this Agreement;
 - (iii) Acquire all rights and benefits of, and agree to comply with and be bound by all present and future obligations of, the Funder under this Agreement as a party to this Agreement; and
 - (iv) Agree to do all things that the Funder is required to do under this Agreement.

8 GST

- (a) All payments to be made by the parties under or in connection with this Agreement have been calculated without regard to GST.
- (b) If all or part of any payment is the consideration for a taxable supply for GST purposes then, when the payment made for the taxable supply by the relevant party:
 - (i) it must pay to the other party an additional amount equal to that payment (or part) multiplied by the appropriate rate of GST (currently 10%); and
 - (ii) the other party will promptly provide to the relevant party a tax invoice complying with the relevant GST legislation.

9 Entire Agreement

- (a) This Agreement supersedes any previous arrangement between the parties in relation to the matters dealt with in this Agreement and constitutes the entire agreement and understanding between the parties with respect to all matters referred to herein.
- (b) Any amendment or variation to Agreement (including in relation to the amount of Funding or the period for which it is intended to be provided) must be in writing and signed by all parties to this Agreement.

10 Severability

10.1 Construction

The parties agree that a construction of this Agreement that results in all provisions being enforceable is to be preferred to a construction that does not so result.

10.2 Severance

If, despite the application of clause 10.1, a provision of this Agreement is illegal or unenforceable:

- (a) if the provision would not be illegal or unenforceable if a word or words were omitted, that word or those words are severed; and
 - (b) in any other case, the whole provision is severed,
- and the remainder of this Agreement continues in force.

11 Counterparts

This Agreement may be executed in any number of counterparts. Exchange may be effected by email pdf copy.

12 Jurisdiction

This deed is governed by the law of New South Wales and the Commonwealth of Australia and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Court.

Schedule 1

Item	Capacity
1	<p>Jason Preston and Jason Ireland as joint and several liquidators of:</p> <ul style="list-style-type: none"> • Forum Finance Pty Ltd ACN 153 301 172 (In Liquidation) • 14 James Street Pty Ltd ACN 638 449 206 (In Liquidation) • 26 Edmonstone Road Pty Ltd ACN 622 944 129 (In Liquidation) • 5 Bulkara Street Pty Ltd ACN 630 982 160 (In Liquidation) • 6 Bulkara Street Pty Ltd ACN 639 734 473 (In Liquidation) • Aramia Holdings Pty Ltd ACN 114 958 717 (In Liquidation) • Eros Management Pty Ltd ACN 622 298 346 (In Liquidation) • Forum Direct Pty Ltd ACN 054 890 710 (In Liquidation) • Forum Fleet Pty Limited ACN 155 440 994 (In Liquidation) • Forum Group Pty Ltd ACN 153 336 997 (In Liquidation) • Forum Group (QLD) Pty Ltd ACN 103 609 678 (Receivers Appointed) (In Liquidation) • Forum Group (VIC) Pty Ltd ACN 153 062 018 (In Liquidation) • Imagetec Financial Services Pty Ltd ACN 111 978 182 (In Liquidation) • Imagetec Solutions Australia Pty Ltd ACN 074 715 718 (In Liquidation) • Intrashield Investment Group Pty Ltd - ACN 645 578 829 (In Liquidation) • Intrashield Pty Ltd ACN 133 426 534 (In Liquidation) • Iugis Investments Pty Ltd ACN 647 627 745 (In Liquidation) • Iugis Pty Ltd ACN 632 882 243 (In Liquidation) • Iugis Waste Services Pty Ltd ACN 647 212 299 (In Liquidation) • Onesource Australia Holdings Pty Limited ACN 120 463 541 (In Liquidation) • Orca Enviro Solutions Pty Ltd ACN 626 552 645 (In Liquidation) • Orca Enviro Systems Pty Ltd ACN 627 597 782 (In Liquidation) • Smartprint Fleet Management Pty Ltd ACN 132 807 080 (Receivers Appointed) (In Liquidation) • Spartan Consulting Group Pty Ltd ACN 168 989 544 (In Liquidation) • The Forum Group of Companies Pty Limited ACN 151 964 626 (In Liquidation)
2	<p>Jason Preston and Jason Ireland as provisional liquidators of:</p> <ul style="list-style-type: none"> • Forum Enviro (Aust) Pty Ltd ACN 607 484 364 (Provisional Liquidators Appointed) • Forum Enviro Pty Ltd ACN 168 709 840 (Provisional Liquidators Appointed) • Forum Group Financial Services Pty Ltd ACN 623 033 705 (Provisional Liquidators Appointed)

EXECUTED as a deed.

Signed sealed and delivered on behalf of
Westpac Banking Corporation
ABN 33 007 457 141 by its attorney under power
of attorney dated 17 January 2001, book 4299
No. 332 in the presence of

By executing this document the attorney states
that the attorney has received no notice of
revocation of the power of attorney.

Witness (signature)

Attorney (signature)

Witness (print name)

Name of Attorney (print)

TIER ONE ATTORNEY

Signed sealed and delivered by Jason Preston
in the presence of

Signature of witness

Signature of Jason Preston

Name of witness (print)

Signed sealed and delivered by Jason Ireland
in the presence of

Signature of witness

Signature of Jason Ireland

Name of witness (print)