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LPINZ Limited

PO Box 21-872, Henderson, Auckland, New Zealand
Phone:+64 9 833 5749
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Web: www.lpinz.co.nz

LPINZ LIMITED

DEED OF GUARANTEE AND INDEMNITY

To: **LPINZ Limited** ("**LPINZ**")

Full Name of Purchaser: ______________________________ ("**Purchaser**")
Address of Purchaser: ______________________________

Full Legal Name of Guarantor: ______________________________
Address of Guarantor: ______________________________

Full Legal Name of Guarantor: ______________________________
Address of Guarantor: ______________________________

Full Legal Name of Guarantor: ______________________________
Address of Guarantor: ______________________________

(together the "**Guarantors**") hereby **covenants and undertakes and if more than one, jointly and severally, as follows:**

1. DEFINITIONS AND INTERPRETATION

1.1 In this deed:

"**Contract**" means LPINZ's terms and conditions of sale together with any quotation, order, invoice or other document or amendments expressed or implied to be supplemental to the contract and includes, without limitation, any contract or agreement between LPINZ and the Purchaser in respect of the purchase of Goods from LPINZ or the supply of Goods, Services and/or Works by LPINZ of which LPINZ's terms and conditions of sale will form part;

"**Goods**" means all goods supplied by LPINZ to the Purchaser (and where the context so permits includes any supply of Services and Works) and as are described in any invoices or other forms issued by LPINZ to the Purchaser for the supply of Goods, Services and/or Works;

"**Parties**" means LPINZ, the Purchaser and the Guarantor, and "**Party**" means either one of them;

"**Services**" means all services supplied by LPINZ to the Purchaser and includes any advice or recommendations (and where the context so permits shall include any supply of Goods and completion of Works) and are as otherwise described on the invoices, quotes, work authorisations, orders or any other forms as provided by LPINZ to the Purchaser;

"**Works**" means all works undertaken by LPINZ for the Purchaser and includes labour, construction and ancillary works (and where the context so permits shall include any supply of Goods and Services) and are as otherwise described on the invoices, quotes, work authorisations, orders or any other forms as provided by LPINZ to the Purchaser.

1.2 Unless the contrary intention appears, a reference to:

- **(a)** this guarantee and indemnity, or another document includes any variation or replacement of it, notwithstanding any change in the identity of the Parties;
- **(b)** the singular includes the plural and vice versa;
- **(c)** a right includes a benefit, remedy, authority, discretion, or power;
- **(d)** a person includes a natural person, partnership, body corporate, association, joint venture, governmental or local authority or agency, or other entity;
- **(e)** a person includes the person's successors, executors, administrators, substitutes (including a person who becomes a party by novation) and assigns; and
- **(f)** any statute, ordinance, code, or other law includes regulations and other statutory instruments under any of them and consolidations, amendments, re-enactments, or replacement of any of them.

1.3 Headings are for convenience only and will not affect the interpretation of this deed.

1.4 The meaning of general words is not limited by specific examples introduced by including, for example, or similar expressions.

1.5 The expressions "in writing" or "written" means any expression of information in words, numbers, or other symbols, which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

1.6 Where two or more persons are defined as a Party in this deed, that term means each of the persons jointly, each of them severally, and any two or more of them jointly.

1.7 An agreement, covenant, obligation, representation, or warranty on the part of two or more persons binds them jointly and severally and an agreement, covenant, obligation, representation, or warranty in favour of two or more persons is for the benefit of them jointly and severally.

1.8 Unless specified otherwise, all reference to sums of money is in terms of New Zealand currency (NZD), and all documents and correspondence between the Parties must be in the English language.

~~1.8~~1.9 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

2. CONSIDERATION

2.1 In consideration of LPINZ extending or agreeing to extend credit or further credit to the Purchaser at the Guarantors' request (testified by the Guarantors' execution of the Contract and/or this deed of guarantee and indemnity) for Goods sold or to be sold from time to time or Services provided or to be provided or Works undertaken or to be undertaken, the Guarantors guarantee payment to LPINZ of all money which is now or at any time in the future becomes due and payable to LPINZ by the Purchaser on any account or accounts whether now existing or which may in the future be opened or in any manner whatsoever, including but not limited to amounts payable by the Purchaser to LPINZ arising out of a relationship of trustee and beneficiary.

3. GUARANTEE AND INDEMNITY

3.1 The Guarantors agree to guarantee and indemnify LPINZ against all losses, damages or expenses that LPINZ may suffer as a result, either directly or indirectly, of any failure by the Purchaser to make due payment of any money owing to LPINZ whether for Goods sold, Services provided, Works undertaken or otherwise or to observe the terms of any agreement between the Purchaser and LPINZ, including costs on a full indemnity basis of any attempt or attempts to recover from the Purchaser or any Guarantor and whether successful or not or whether frustrated by the Purchaser or Guarantor or by operation of law and including costs ordered by a court to be paid by LPINZ to the Purchaser or to any Guarantor including the costs of lodging and withdrawing caveats and/or obtaining injunctions and enforcing any security over real and personal property given to LPINZ.

3.2 This guarantee and indemnity is a continuing guarantee and indemnity and will not be considered as wholly or partially satisfied or discharged by any money which may at any time or times in the future be received or applied by LPINZ to the credit of any account of the Purchaser or the Guarantors, or deemed to be held on trust by the Purchaser for LPINZ, and will be available as a guarantee and indemnity for the whole of the sums referred to in clauses 2.1 and 3.1 of this deed of guarantee and indemnity.

3.3 Where two or more persons execute this guarantee and indemnity, the guarantees, covenants and obligations in this guarantee and indemnity given or undertaken by the Guarantors will be deemed to bind the Guarantors jointly and each of the Guarantors severally and LPINZ will be entitled to seek payment in full from any one or more of the Guarantors without seeking payment from the other Guarantors.

3.4 LPINZ will have the right to enforce this guarantee and indemnity, irrespective of whether LPINZ has sought to recover the amounts guaranteed from the Purchaser and with or without notice to the Purchaser, as if the primary liability for any money owing was the Guarantors' own. Further, LPINZ may proceed against the Guarantors (or any one of them) notwithstanding any other rights it may have in relation to the recovery of the amounts hereby guaranteed.

3.5 This guarantee and indemnity will continue in force until such time as LPINZ releases all of the Guarantors in writing, and notwithstanding the fact that the Guarantors are no longer directors, shareholders, or owners of the Purchaser.

3.6 This guarantee and indemnity is without prejudice to and will not be affected by nor will the rights or remedies of LPINZ against the Guarantors or any of the Guarantors be in any way prejudiced or affected by:

- **(a)** any other security taken by LPINZ from the Purchaser or from any other person;
- **(b)** any waiver or indulgence, whether as to time or otherwise, given to the Purchaser or to the Guarantors or any one or more of the Guarantors;
- **(c)** by any other act, matter, or thing which under the law relating to sureties would or might but for this provision release the Guarantors or any of the Guarantors from all or any part of the Guarantors obligations contained in this guarantee and indemnity; or
- **(d)** any person named in this guarantee and indemnity as Guarantor failing to execute this guarantee and indemnity or failing or ceasing to be bound by the terms of this guarantee and indemnity.

4. RIGHT OF SUBROGATION

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4.1 In the event of a Guarantor making any payment in respect to an obligation of the Purchaser whether under a guarantee or indemnity or otherwise, the Guarantors will not exercise any rights of subrogation against any other Guarantors or the Purchaser unless and until LPINZ has been paid in full.

4.2 In the event of the Purchaser going into liquidation, the Guarantors will be prohibited from proving in competition with LPINZ unless and until LPINZ has been paid in full.

5. INSOLVENCY OF PURCHASER

5.1 No sum of money which the Purchaser pays to LPINZ and LPINZ later pays, is obliged to pay, allows in account or is obliged to allow in account to a liquidator, administrator, receiver or trustee in bankruptcy of the Purchaser, or otherwise will, for the purpose of this guarantee and indemnity, be considered as discharging or diminishing the Guarantors' liability and this guarantee and indemnity will continue to apply as if the said sum(s) had at all times remained owing by the Purchaser.

6. COSTS

6.1 LPINZ is at liberty from time to time to charge the account of the Purchaser with all costs, charges, and expenses, legal or otherwise that LPINZ incurs in connection with:

(a) the account of the Purchaser;
(b) this guarantee and indemnity;
(c) any other security in respect of the indebtedness of the Purchaser to LPINZ;
(d) the preparation and completion of this deed; or
(e) the exercise or attempted exercise of any right, power or remedy conferred on LPINZ under or by virtue of this deed,

and the same will be part of the monies secured by this deed.

6.2 The Guarantors agree to pay LPINZ's costs and disbursements incurred in recovering monies secured by this guarantee and indemnity, including debt recovery agency and collection fees and legal costs on a full indemnity basis.

7. SECURITY / CHARGE

7.1 The Guarantors charge in favour of LPINZ all of their estate and interest in any real property, whether held in its own right or as capacity as trustee, the Guarantors own at present and in the future with all monies which are now or in the future become owing by the Guarantors to LPINZ, including all amounts referred to in clauses 2.1 and 3.1.

7.2 The Guarantors charge in favour of LPINZ all of their estate and interest in any personal property, whether held in its own right or as capacity as trustee, the Guarantors own at present and in the future with all monies which are now or in the future become owing by the Guarantors to LPINZ, including all amounts referred to in clauses 2.1 and 3.1.

7.3 As security for the payment of the amount of the indebtedness to LPINZ from time to time, the Guarantors irrevocably appoint as their duly constituted attorney LPINZ's director from time to time to execute in the Guarantors' names and as the Guarantors' act and deed any real property mortgage, bill of sale or consent to any caveat LPINZ may choose to lodge against real property that the Guarantors may own in New Zealand, even though the Guarantors may not have defaulted in carrying out their obligations hereunder.

7.4 This guarantee and indemnity secures the repayment of all monies owed by the Purchaser whatsoever, and this deed constitutes the entire guarantee.

7.5 Where the Guarantors have previously entered into an agreement with LPINZ by which the Guarantors have granted a charge, mortgage, or other security over real or personal property, those charges, mortgages, or other security interests will continue and co-exist with the obligations and security interests created in this deed and will secure all indebtedness and obligations of the Guarantors under this guarantee and indemnity. LPINZ may, at its election, vary the terms of such previous charges, mortgages, or other securities to reflect the terms herein.

8. VARIATION

8.1 The Guarantors authorise LPINZ to give time or any other indulgence or consideration to the Purchaser in respect of compliance with its obligations to LPINZ, even if giving time or any other indulgence or consideration has the effect of increasing the Guarantors' liability under this guarantee and indemnity.

8.2 The Guarantors agree that this guarantee and indemnity will not be avoided, released, or affected by LPINZ making any variation or alteration in the terms of its agreement(s) with the Purchaser, even if such variation or alteration has the effect of increasing the Guarantors' liability under this guarantee and indemnity.

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9. SEVERANCE

9.1 If any provision of this guarantee and indemnity is not enforceable in accordance with its terms, other provisions which are self-sustaining are and continue to be enforceable in accordance with their terms.

10. PERSONAL PROPERTY SECURITIES ACT

10.1 For the avoidance of any doubt, the security interest(s) created by this instrument in favour of LPINZ constitutes security interests pursuant to the Personal Property Securities Act 1999.

10.2 The Guarantors waive any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.

11. NOTICES

11.1 The Guarantors agree to accept service of any document required to be served, including any notice under this deed or the Personal Property Securities Act 1999 or any originating process, by email, or by prepaid post at any address nominated by the Guarantors or any other address later notified to LPINZ by the Guarantors or the Guarantors' authorised representative.

12. JURISDICTION

12.1 The Guarantors acknowledge and agree that this guarantee and indemnity is governed by the laws of New Zealand.

12.2 The parties to this guarantee and indemnity submit to the non-exclusive jurisdiction of the courts of New Zealand.

Signed, sealed and delivered at (place) ______________________________ Dated ______________________________20

1. **Guarantor's name**: ____ SIGNED: ____________________________________

In the presence of:

Witness name: ____ SIGNED: ____________________________________
Witness address: ____ Witness occupation: __________________________

2. **Guarantor's name**: ____ SIGNED: ____________________________________

In the presence of:

Witness name: ____ SIGNED: ____________________________________
Witness address: ____ Witness occupation: __________________________

3. **Guarantor's name**: ____ SIGNED: ____________________________________

In the presence of:

Witness name: ____ SIGNED: ____________________________________
Witness address: ____ Witness occupation: __________________________

The Purchaser and the Guarantors have a right to access and correct their respective personal information held by LPINZ under the Privacy Act 2020.

I/we have read and understood this Guarantee and Indemnity and LPINZ Terms and Conditions of Sale. I agree to be bound by the terms of this Guarantee and Indemnity and the Terms and Conditions of Sale and have the power and authority to assent to and sign it.