

AGREEMENT FOR SUPPLY OF PRODUCTS AND SERVICES
Ref. No. [xxx]

DATED this _____ day of _____ 20____

PARTIES:

1. _____ (“**Ballance**”)
2. _____ (“**Supplier**”)

Ballance agrees to acquire the Products and/or Services from the Supplier, and the Supplier agrees to provide those Products and/or Services to Ballance, on the terms and conditions set out in this Agreement. If a guarantor is party to this Agreement, the Guarantor agrees to guarantee the performance by the Supplier of its obligations to Ballance under or in relation to this Agreement.

Signed **BALLANCE** by:

Signed: _____
(Signature)

Signed: _____
(Signature)

Name: _____
(Authorised Signatory)

Name: _____
(Authorised Signatory)

Signed by **THE SUPPLIER** by:

Signed: _____
(Signature)

Signed: _____
(Signature)

Name: _____
(Authorised Signatory)

Name: _____
(Authorised Signatory)

Signed by **THE GUARANTOR** by:

Signed: _____
(Signature)

Signed: _____
(Signature)

Name: _____
(Authorised Signatory)

Name: _____
(Authorised Signatory)

INITIALS	_____ For Ballance	_____ For the Provider	_____ For the Guarantor
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GENERAL TERMS AND CONDITIONS (Agreement for Supply of Products and Services)

1. **INTERPRETATION**

1.1 **Definitions:** In this Agreement, unless the context requires otherwise:

"**Agreement**" means these General Terms and Conditions (including the Schedules) and each Purchase Order Form, as amended from time to time in writing by Ballance and the Supplier.

"**Acknowledgement Form**" means the acknowledgement form in the form attached as Schedule 2 signed by the Supplier at or about the date of execution of this Agreement pursuant to which the Supplier acknowledges that it has received, read and understood the Health and Safety Requirements.

"**Ballance**" means Ballance entity named on the first page of this Agreement and includes any business division and/or business site to which the Products and/or Services are to be supplied and includes any related or associated company to which the Products and/or Services are to be supplied in accordance with clause 5.1.

"**Commencement Date**" means the commencement date specified in Item 1 of Schedule 1.

"**Confidential Information**" means any information, verbal or written, personal or otherwise including documents, plans, sketches, drawings, software, marketing strategies, market research data, product literature, trade secrets, processes, technical information, know-how and intellectual property of Ballance or any of its related or associated companies and any copies thereof but will not include public information (provided such information did not become public as a result of unauthorised disclosure by the Supplier), information independently developed or acquired, or information authorised in writing by Ballance for disclosure.

"**Contract Number**" means the reference number recorded on the front page of this Agreement.

"**Delivery Date**" means the date calculated in accordance with Item 4 of Schedule 1 or such other date as may be specified by Ballance in a Purchase Order Form. For the avoidance of doubt where there is a conflict between the date calculated in accordance with Item 4 of Schedule 1 and the date specified in a Purchase Order Form, the date specified in a Purchase Order Form shall prevail.

"**Delivery Destination**" means the destination for the delivery of the Products as set out in Item 5 of Schedule 1 or such other destination as may be specified by Ballance in a Purchase Order Form. For the avoidance of doubt where there is a conflict between the destination as set out in Item 5 of Schedule 1 and the destination specified in a Purchase Order Form, the destination specified in a Purchase Order Form shall prevail.

"**Environment**" has the meaning set out in Section 2 of the Resource Management Act 1991 and, as the context permits or requires, Section 2 of the Hazardous Substances and New Organisms Act 1996.

"**Environmental Law**" means any law, including any Code of Practice or guidance published by any regulatory authority, which relates in any way to:

- (a) the Environment;

- (b) the safety, health or use of land, air, water, buildings or any other property; or

- (c) substances or activities which may affect or otherwise harm the Environment or be hazardous, and including the Resource Management Act 1991, the Building Act 2004, and the Hazardous Substances and New Organisms Act 1996.

"**Environmental Requirements**" means the environmental requirements, rules, policies and procedures as listed in the Acknowledgment Form and as updated and notified by Ballance to the Supplier from time to time.

"**Force Majeure Event**" means any of the following events or occurrences and the effects thereof: act of God or public enemy, flood, earthquake, storm, cyclone, tornado, hurricane, lightning, fire, explosion, epidemic, war, embargo, riot or civil disturbance, strike or other labour dispute (other than involving the relevant party, any related or associated company of the relevant party, any Sub-Contractor, agent, supplier or any contractor who has contracted (directly or indirectly) with the relevant party or any related or associated company of the relevant party to provide plant, materials, labour or equipment in connection with the supply of the Services), sabotage, expropriation, confiscation or requisitioning of facilities, orders or temporary or permanent injunctions of any duly constituted court of competent jurisdiction and any other matter or event which is beyond the control of the relevant party and which the relevant party could not take reasonable measures to prevent or mitigate the effects of.

"**GST**" means goods and services tax payable under the Goods and Services Tax Act 1985.

"**Health and Safety Requirements**" means the Ballance health and safety requirements rules, policies and procedures as listed in the Acknowledgement Form and as updated and notified by Ballance to the Supplier from time to time.

"**Insolvency Event**" means in respect of a party (other than for the purpose of solvent reconstruction or amalgamation):

- (a) a receiver, receiver and manager, liquidator, provisional liquidator, trustee, administrator, controller, inspector appointed under any companies or securities legislation, or similar official is appointed in respect of that party or any of its property, or any security over any substantial part of its assets is enforced;
- (b) the party ceases to carry on all or substantially all of its business, is unable to pay its debts when due, or is deemed unable to pay its debts under any law, or makes an assignment for the benefit of, or enters into or makes any arrangement or compromise with, that party's creditors or threatens to do so, or stops payments to its creditors generally;
- (c) the party is, becomes, or is deemed to be insolvent or bankrupt;
- (d) a distress, attachment or other execution is levied or enforced upon or commenced against any substantial part of its assets and is not stayed within 14 days;

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- (e) anything having a similar effect to any of the events specified above happens under the law of any applicable jurisdiction; or
- (f) in the event that the person is an individual, anything having a similar effect to any of the events specified above happens in respect of that individual.

"KPI's" means the Key Performance Indicators set out in Item 7 of Schedule 1.

"Performance Standards" means the performance standards for the Services as set out in Item 7 of Schedule 1.

"Price" means the price (exclusive of GST) for each Product specified in Item 6 of Schedule 1 and/or any Purchase Order Form issued under this agreement. For the avoidance of doubt, all charges for importing Products, duty, taxes (other than GST), freight, packing, transportation, insurance and all other charges applied to the landing, delivery, unpacking and where applicable, assembly, installation and commissioning of Products, are included in the Price.

"Products" means the products described in Item 3(a) of Schedule 1 and/or any Purchase Order Form issued under this agreement. For the avoidance of doubt where there is a conflict between the products as set out in Item 3(a) of Schedule 1 and the products specified in a Purchase Order Form, the products specified in a Purchase Order Form shall prevail.

"Purchase Order Form" means a document (whether in written or electronic form) issued by Ballance to the Supplier which:

- (a) is named as a purchase order;
- (b) states a purchase order number;
- (c) is dated;
- (d) sets out full particulars of the Products and/or Services to be provided by the Supplier including relevant dates for provision of the Products and/or Services;
- (e) identifies the person at Ballance who is requisitioning the Products and/or Services;
- (f) sets out price for the Products and/or Services, or the manner in which the price is to be determined; and
- (g) sets out the terms on which the price for the Products and/or Services is to be paid.

"Purchase Order Number" means the purchase order number recorded on a Purchase Order Form.

"Service Fee" means the service fee specified in Item 9 of Schedule 1 and/or any Purchase Order Form issued under this agreement.

"Service Specifications" means the specifications for the Services as set out in Item 7 of Schedule 1 and/or any Purchase Order Form issued under this agreement.

"Services" means the work to be undertaken by the Supplier, as specified in Item 3(b) of Schedule 1 and/or any Purchase Order Form issued under this agreement and will include (where relevant) any goods to be provided by or on behalf of the Supplier in providing the services or otherwise in relation to the fulfillment of the Supplier's obligations under this Agreement. For the avoidance of doubt where there is a conflict between the work to be undertaken, as set out in Item 3(b) of Schedule 1 and the work to be undertaken as specified in a Purchase Order Form, the work to be undertaken as specified in a Purchase Order Form

shall prevail.

"Site" means any sites owned, leased or rented by Ballance and any other sites where goods, products, equipment or material owned or leased by Ballance may be situated from time to time.

"Sub-Contractor" means any party engaged by the Supplier in the delivery of the products and services and includes all employees or workers of the Sub-Contractor.

"Term" means the term specified in Schedule 1.

"working day" means a day (beginning at 8 am and ending at 5 pm) other than a Saturday or Sunday or statutory holiday observed in Auckland, New Zealand.

1.2 **Interpretation:** In this Agreement, unless the context otherwise requires:

- (a) a reference to a statute includes all regulations under and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated;
- (b) headings are inserted for convenience only and are to be ignored in construing this Agreement;
- (c) all amounts are in New Zealand dollars unless expressly stated otherwise;
- (d) the singular includes the plural and vice versa; and
- (e) the word "person" includes a natural person and any body or entity whether incorporated or not.

2. **TERM**

2.1 **Term of this Agreement:** This Agreement will take effect from the Commencement Date and unless terminated in accordance with its provisions will continue in full force and effect for the period specified in Item 2 of Schedule 1. If this Agreement runs on after the end of the Term without any further express agreement between the parties this Agreement will continue in effect between the parties until terminated by either of them giving not less than six months' written notice to the other.

3. **BALLANCE'S OBLIGATIONS**

3.1 **Purchase Order:** Ballance will confirm orders for Products and/or Services by issuing to the Supplier a Purchase Order Form. All Purchase Orders Forms shall include a Purchase Order Number.

3.2 **Timing of Purchase Order delivery:** Ballance shall send all Purchase Order Forms to the Supplier at least before midday (12pm) on the working day before the Delivery Date set out in the relevant Purchase Order Form.

3.3 **Late Purchase Order delivery:** If the Purchase Order Form is sent after midday (12pm) on the working day before the Delivery Date set out in the relevant Purchase Order Form, the Supplier shall use its best endeavours to complete the delivery of the Products, or to provide Service(s) during the following working day, but the due date for completion of the delivery of the Products or the provision of the Services shall be the working day thereafter.

3.4 **Conflict of dates/destination:** Where Ballance specifies in a Purchase Order a Delivery Date or Delivery Destination which conflicts with the Delivery Date or Delivery Destination set out in Items 4 and 5 respectively of Schedule 1, the Supplier shall have 2 working days from the date of the Purchase Order

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Form in which to decline, by notice in writing to Ballance to accept the Purchase Order Form. If the Supplier does not decline to accept such Purchase Order Form within that time, the Purchase Order Form (and the Delivery Date and/or Delivery Destination specified in the Purchase Order Form) are deemed to be accepted by the Supplier.

3.5 **No Guaranteed Volume:** Other than as specifically set out in this Agreement and/or a Purchase Order Form, Ballance does not guarantee the Supplier any specific volume of business under this Agreement. All estimates provided to the Supplier by Ballance are estimates only, and the Supplier confirms that these estimates will not be relied on in any circumstances.

4. **PRICE, SERVICE FEE AND PAYMENT**

4.1 **Price and payment:** In consideration of the Supplier supplying the Products and/or Services, Ballance will pay to the Supplier:

- (a) the Price plus GST (if any) in accordance with Item 6 of Schedule 1; and/or
- (b) the Service Fee in accordance with Item 9 of Schedule 1.

Unless otherwise authorised by Ballance in writing, such Price and/or Service Fee will apply without increase.

4.2 Where the Service Fee is calculated on an hourly basis, the Supplier will maintain a record of the time spent by the Supplier in performing the Services. If requested, the Supplier will furnish to Ballance such record.

4.3 The Supplier acknowledges that Ballance is not obliged to pay for any Products or Services for which no Purchase Order Number has been issued.

5. **SUPPLIER'S GENERAL OBLIGATIONS**

5.1 **Provision of Products and/or Services:** The Supplier will provide the Products and/or Services to Ballance, or such of Ballance's related or associated companies as directed by Ballance, in accordance with the terms of this Agreement. In the event that the Products and/or Services are to be provided to a related or associated company of Ballance, the parties agree that the provisions of this Agreement are also for the benefit of, and are intended to be enforceable by, such related or associated company under the Contracts (Privity) Act 1982.

5.2 **Standard of Services:** The Supplier will, and will ensure that its employees, agents and Sub-Contractors (if any), perform the Services in a proper, professional and workmanlike manner and in accordance with the Performance Standards.

5.3 **Reliance:** The Supplier acknowledges that Ballance is relying on the expertise of the Supplier in providing the Services.

5.4 **Specified service provider:** Ballance reserves the right to stipulate that the Services (or any part thereof) will be provided by a specific service provider, being an employee, Sub-Contractor or principal of the Supplier specified in Item 8 of Schedule 1. Where Ballance has specified a service provider, it will be a fundamental term of this Agreement that the specified service provider carries out the Services, and the Supplier will not attempt to carry out or perform the Services through or using any other principal, Sub-Contractor or employee without the prior written consent of Ballance.

5.5 **Degree of care and skill:** In addition to performing the Services in accordance with the Performance

Standards, the Supplier will exercise, and will ensure that its employees, agents and Sub-Contractors (if any) exercise, that degree of care, skill, diligence and foresight in performing its obligations under this Agreement which would reasonably and ordinarily be expected from a skilled and experienced operator in the Supplier's profession or industry.

5.6 **General:** The Supplier shall at all times:

- (a) ensure that it and any Sub-Contractor of the Supplier, including all workers of the Supplier or Sub-Contractor shall comply with all relevant legislation, industry codes of practice and regulations, including without limitation, the Civil Aviation Act 1990, the Resource Management Act 1991, the Hazardous Substances and New Organisms Act 1996, and the Health and Safety At Work Act 2015.
- (b) obtain and maintain at its own cost, any and all licences, consents, authorisations and approvals necessary to lawfully provide the Products or Services to Ballance;
- (c) be responsible for ensuring that its Sub-Contractors have all licences, consents, authorisations and approvals necessary to deliver the Products or provide the Services and that all employees, employed or engaged by the Sub-Contractors have all the necessary licences, consents, authorisations and approvals that they require in relation to the delivery of the Products or the provision of the Services;
- (d) be available and ensure that any employee or Sub-Contractor is available, for such periods at such times and in such places as required to:
 - (i) assist with the delivery of the Products or the provision of the Services.
 - (ii) receive training on systems and procedures which the Supplier and/or any employee or Sub-Contractor must follow in order to meet the Suppliers obligations under this Agreement; and
 - (iii) meet with Ballance on any matter in such forum as Ballance considers appropriate;
- (e) permit a Ballance representative, to inspect, test or examine (at any reasonable time) any item of plant, or equipment, (including a vehicle and its contents) of the Supplier or of any Sub-Contractor, upon such request being made; and
- (f) ensure, that no employee or Sub-Contractor, while working for Ballance, or while at any Site, operates any vehicle (or other mobile plant) or is otherwise at the workplace while over any threshold values set out in AS/NZS4308:2008 relating to drugs or alcohol.

5.7 Notify Ballance immediately in the event that it receives any order or enforcement notice or similar (including without limitation under the Health and Safety at Work Act 2015 or their regulations).

5.8 Any act or omission by any employee or Sub-Contractor used for the delivery of the Products or the provision of the Services is deemed to be an act or omission of the Supplier and the Supplier shall take full responsibility for that act or omission.

5.9 **Employees, Sub-Contractors and agents:** The Supplier will ensure that all persons engaged by it in the performance of this Agreement, whether as employees, Sub-Contractors, agents or otherwise, are appropriately skilled and qualified for the performance of the Services and hold all relevant certifications in

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respect of the performance of such Services.

- 5.10 **Interests of Ballance:** The Supplier will ensure that it and all persons engaged by it in the performance of this Agreement, whether as employees, agents, Sub-Contractors or otherwise, promote and advance the interests and reputation of Ballance and will not do anything that may harm, or is contrary to, the interests of Ballance.
- 5.11 **Timelines:** The Supplier will perform the Services with all due expedition and at the times and in the manner directed by Ballance from time to time.
- 5.12 **Notification of Problems:** The Supplier must advise Ballance promptly in writing:
 - (a) of anything which may or is likely to materially reduce or affect the Supplier's ability to supply or deliver the Products or provide the Services, including anything relating to any premises or equipment used by the Supplier;
 - (b) if the Supplier materially fails to comply with any of its obligations under this Agreement;
 - (c) of any serious complaints or disputes which directly or indirectly relate to the Products and/or the supply of Products; and
 - (d) of any issues concerning Products that might have media or public interest.

6. DELIVERY AND RISK

- 6.1 **Delivery note:** A delivery note quoting the Contract Number and the Purchase Order Number will accompany each supply of Products to Ballance, unless otherwise agreed by the parties.
- 6.2 **Timing of Product delivery:** The Supplier will deliver Products:
 - (a) to Ballance by the Delivery Date. If no Delivery Date is specified, any Purchase Order Form sent to the Supplier before midday (12pm) on a working day, the Supplier shall deliver the Products on the following working day. If the Purchase Order is sent after midday (12pm), the Supplier shall use its best endeavours to complete the delivery of the Products on the following working day. If the Products cannot be delivered that following day, the Supplier shall deliver the Products on the next following working day;
 - (b) to Ballance with all reasonable speed and due diligence; and
 - (c) to the Delivery Destination.
- 6.3 **No acceptance:** The signing of a delivery note by a Ballance representative will not be taken as acceptance of either the quality or quantity of the Products and acceptance by Ballance of the Products will be subject to subsequent inspection by a Ballance representative and use of the Products.
- 6.4 **Quantities:** Quantities of Products delivered must conform to the quantities ordered by Ballance.
- 6.5 **Part deliveries:** Ballance will only accept part deliveries and interim invoices if agreed to in writing prior to delivery.
- 6.6 **Incorrect deliveries:** Ballance may return any Products incorrectly delivered. The cost of return freight is payable by the Supplier.
- 6.7 **Risk:** Risk in any Products and unencumbered title in any Products will pass to Ballance upon signing of the delivery note accompanying the Products or if the parties have agreed that a delivery note will not

accompany the Products.

7. PACKAGING

- 7.1 **Packaging:** The Supplier will package Products in an appropriate manner having regard to the type of Products and the method of transport used.
- 7.2 **Disposal of packaging:** On delivery of Products to Ballance, the Supplier will remove all packaging not required by Ballance and the Supplier will be responsible for the disposal of that packaging, at its cost.

8. NON-COMPLYING PRODUCTS

- 8.1 **Notice of recalls:** The Supplier must give Ballance written notice immediately if it:
 - (a) is required for any reason to recall or modify all or any of the Products; or
 - (b) becomes aware of any non-compliance that affects or has the potential to affect the safety of all or any of the Products.
- 8.2 **Consultation:** If any of the events referred to clause 8.1 occur, the Supplier shall:
 - (a) consult with Ballance; and
 - (b) if required by Ballance, use its best endeavours to provide replacement Products to Ballance as soon as possible.
- 8.3 **Alternative products:** Notwithstanding clause 8.2, Ballance reserves its rights to purchase alternative products elsewhere and recover from the Supplier any difference between the Price and the actual cost of purchase of alternative products, if the cost of the alternative products is higher than the Price.

9. SITE COMPLIANCE AND EQUIPMENT

- 9.1 **Access to Site:** If access to any Site is necessary for the supply of Products and/or the provision of Services to Ballance in accordance with this Agreement, Ballance will allow the Supplier access at reasonable times, as necessary for the supply of those Products and/or the provision of Services.
- 9.2 **Refusal to Site:** Ballance may at its complete and unfettered discretion, refuse the Supplier entry on to Site, including any employee, vehicle or Sub-Contractor, if it considers it unsafe to do so, or that the employee, vehicle or Sub-Contractor does not comply with the requirements of this Agreement.
- 9.3 **General:** Where the Supplier has access to any Site, the Supplier will, and will ensure that its employees, agents and Sub-Contractors (if any), at all times comply with:
 - (a) the Health and Safety Requirements; and
 - (b) the relevant Site's security and, operational requirements, rules, policies and procedures, as notified by Ballance to the Supplier from time to time.
- 9.4 **Acknowledgement Form:** The Supplier shall sign, date and return to Ballance the Acknowledgement Form:
 - (a) contemporaneously with an executed copy of this Agreement and in any event prior to the Supplier commencing to supply Products and/or provide Services to Ballance pursuant to this Agreement; and
 - (b) promptly upon receipt of updated Health and Safety Requirements notified by Ballance to the Supplier.

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	For Ballance	For the Provider	For the Guarantor

10. HEALTH AND SAFETY

10.1 **Responsibility:** The Supplier will be responsible for the health and safety performance of its employees, agents and Sub-Contractors.

- 10.2 **Warranties:** The Supplier hereby warrants that:
- (a) all the information the Supplier has provided to Ballance prior to the signing of this Agreement regarding its health and safety policies and systems is true and correct;
 - (b) its employees and Sub-Contractors will have successfully completed any specific training required in before entering a Ballance Site;
 - (c) any calibrated equipment is available for use, and the Supplier's employees and Sub-Contractors have been trained in its safe use prior to the commencement of this Agreement; and
 - (d) it has a drug and alcohol policy in place that includes pre-employment drug and alcohol testing of its employees, and also allows for random, reasonable cause or post incident testing of its employees and Sub-Contractors and their employees by third parties such as Ballance, if those third parties have designated all or part of their sites as being safety-sensitive areas.

10.3 **Status of warranties:** The Supplier acknowledges that these warranties are essential to Ballance's decision to award the contract to the Supplier, and that if Ballance finds the Supplier is in breach of any of the warranties it may terminate this Agreement immediately without notice.

10.4 **Health and Safety:** The Supplier shall take all reasonably practicable steps and do everything reasonably practicable to ensure the health and safety of its employees, Sub-Contractors and any other person involved in the delivery of the Products or the provision of Services by the Supplier.

10.5 **General:** Without limiting its obligations under the previous clause, the Supplier shall:

- (a) comply with the Health and Safety at Work Act 2015, and all Codes of Practice and guidance published by Worksafe NZ.
- (b) comply with the Health and Safety Requirements as amended by notification in writing to the Supplier from time to time;
- (c) notify Ballance of any reasonably foreseeable risks to health and safety of the Supplier's employees and Sub-Contractors, to Ballance employees or to any other person at any Site;
- (d) ensure that all its employees or Sub-Contractors who are providing Services are adequately trained and supervised in the safe use of all machinery, tools, processes, substances, protective clothing and other equipment that may be required to provide the Services;
- (e) notify Ballance as soon as possible following a "notifiable event" (as defined by the Health and Safety at Work Act 2015) or any lost time event or any medical treatment injury event, occurring at a Site or in the course of delivering the Products or providing the Services. Notification to Ballance under this Agreement may be made by telephone or in

writing (including by email or other electronic means), and must be given by the fastest possible means in the circumstances (but in any event not later than 24 hours after the event).

10.6 **Duty to consult, co-operate and co-ordinate:** The Supplier shall fully co-operate with:

- (a) Ballance and any other party as is necessary to ensure that all reasonably foreseeable risks to health and safety arising out of the delivery of Products or provision of Services to or at any Site are eliminated or adequately controlled. This includes attendance at and active participation in any meeting called for this purpose;
- (b) any monitoring or review by Ballance of the Suppliers health and safety systems;
- (c) any accident investigation, or incident review or duty-holder review carried out by Ballance;
- (d) any accident investigation, or incident review or duty-holder review carried out by any third party on any Site if the accident or incident involves the Suppliers' employees or Sub-Contractors.

10.7 **Drug and alcohol:** Ballance may, at its option and at any time, require that any employee, Sub-Contractor or other person engaged by the Supplier in the delivery of the Products or provision of Services, undergoes drug and alcohol testing in a manner required by Ballance and that the results of such testing are immediately made available to Ballance. Without limiting the extent of this testing, Ballance may conduct random, post-incident, or reasonable cause testing for drugs or alcohol. Ballance may carry out the testing using its own employees or Sub-Contractors, or may require the Supplier to carry out the testing. Without limitation, Ballance may declare that any employee or Sub-Contractor is not to be engaged in the delivery of any Products or the provision of any Services and may withdraw its consent to any employee or Sub-Contractor. Where Ballance considers, acting reasonably, that the performance of that employee or Sub-Contractor is affected by drugs or alcohol. It is the Supplier's responsibility to ensure that the employment agreements and Sub-Contractor agreements of the relevant employees or Sub-Contractors contain provisions authorising drug and alcohol testing as required by this Agreement.

10.8 **Other obligations:** The Supplier shall:

- (a) have a Drug and Alcohol policy and process which complies with standard AS/NZS 4308:2008 or better;
- (b) ensure that none of its employees or Sub-Contractors, and none of the employees of its Sub-Contractors, shall operate any Ballance plant or equipment unless expressly authorised in writing by Ballance to operate that plant or equipment on that Site;
- (c) on or before the 5th working day of each month, provide to Ballance the hours worked for Ballance in the preceding month and a list of all incidents, accidents, near miss events or other health, safety or environmental reports as specified in the KPI's. To avoid doubt, this will be a single detailed list and will be in addition to reporting incidents or events as they happen (within 24 hours of the incident occurring);

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(d) The supplier will also notify Ballance of every occasion of any enforcement actions by Worksafe NZ or any other regulator relevant to this Agreement.

11. ENVIRONMENTAL AND OTHER RISK MANAGEMENT

11.1 **Environmental risk mitigation:** To the extent the Products and/or Services to be supplied by the Supplier involve environmental or other risks, the Supplier will take all possible steps to minimise such risks.

11.2 **Provision and maintenance:** Unless otherwise agreed to in writing by Ballance, the Supplier will, at its own cost and expense, provide the labour and provide and maintain any equipment and materials as may be necessary for the Supplier to carry out and perform the Services in a proper, professional and workmanlike manner.

11.3 Without limiting its obligations under any other provision of this Agreement the Supplier shall:

- (a) comply with Environmental Law;
- (b) comply with the Environmental Requirements;
- (c) ensure that all its employees and Sub-Contractors who are providing Services are adequately trained and supervised.

12. WARRANTIES

12.1 **Product warranties:** The Supplier warrants to Ballance that:

- (a) clear title to all Products supplied by it will pass to Ballance at the time title passes;
- (b) ownership, possession, use or resale of any Products by Ballance will not infringe any proprietary or other intellectual property right or interest of any person;
- (c) all:
 - (i) facts, information, representations and statements made or given to Ballance or its employees, agents, representatives or advisers by the Supplier's employees, agents and Sub-Contractors (if any) are true and accurate in all respects and there is no information or circumstance pertaining to the Products that has not been disclosed to Ballance; and
 - (ii) information published in whatever form but not given directly to Ballance or its employees, agents, representatives or advisers by the Supplier's employees, agents and sub- contractors (if any) is true, complete and accurate;
- (d) all Products supplied by the Supplier:
 - (i) are of merchantable quality and are fit for their intended purpose; and
 - (ii) comply in all respects with all applicable laws and standards both in New Zealand and overseas;
 - (iii) conform to the design, quality, quantity, configuration and description specified to Ballance and to the samples (if any) provided to Ballance;
 - (iv) are free from any defect (including any latent defect) in design, materials and

workmanship and/or faults;

(v) are appropriately packed and shall be securely stored until completion of delivery and installation (if applicable) to minimise damage, deterioration and theft; and

(vi) are new and unused on delivery unless otherwise agreed with Ballance, and if a shelf life is applicable, at least 95% of that shelf life remains on delivery; and

(vii) it will ensure that the designer, manufacturer or supplier of the Products, so far as is reasonably practicable, ensured that the product, plant, substance, or structure is designed, manufactured, supplied, installed or commissioned to be without risks to the health and safety of persons in accordance with legislative requirements.

(viii) it will notify Ballance of all of the reasonably foreseeable hazards and risks associated with the Products or Services, including but without limiting legislative requirements, must provide all instructions, relating to the installation, commissioning, use, storage, handling, transportation, cleaning and maintenance of the Products or Services.

(ix) it will carry out, or arrange the carrying out of, any calculations, analysis, testing, or examination that may be necessary for the performance of the Products and Services to the standards requested by Ballance or by legislation and must ensure that the Products and Services are fit for the purpose for which they were intended and are able to be used in a workplace without risk.

(x) the manufacturer will give to each person to whom the manufacturer provides the plant, substance, or structure adequate information concerning—

(a) each purpose for which the plant, substance, or structure was designed or manufactured; and

(b) the results of any calculations, analysis, testing, or examination referred to in subsection (ix), including, in relation to a substance, any hazardous properties of the substance identified by testing; and

(c) any conditions necessary to ensure that the plant, substance, or structure is without risks to health and safety when used for a purpose for which it was designed or manufactured or when carrying out any activity referred to in subsection 12.1(d).

(xi) it will carry out its obligations under this Agreement with reasonable care, skill and diligence and will employ techniques of a high quality and standard and in accordance with best industry practices.

12.2 **Service warranties:** The Supplier will ensure, and

INITIALS	_____	_____	_____
	For Ballance	For the Provider	For the Guarantor

warrants, that all of the Services performed under this Agreement will comply strictly with the relevant Service Specifications and with all other terms of this Agreement, and that such Services will be fit for the purpose intended by Ballance and will be performed in a proper, professional and workmanlike manner and in accordance with the Performance Standards.

12.3 **Warranties Additional:** The warranties set out in this Agreement are additional to any other warranties and guarantees given by the Supplier or implied by law.

13. **WARRANTY CLAIMS**

13.1 **Remedy:** If Ballance notifies the Supplier in writing of a breach of warranty, the Supplier shall, at its expense, promptly remedy each claim to Ballance's satisfaction.

13.2 **Failure to remedy:** If the Supplier fails to promptly remedy a warranty claim or if Ballance determines that an urgent or other situation so justifies, Ballance may itself or via a third party, remedy the breach and recover the cost of doing so from the Supplier.

13.3 **Report:** Upon request, the Supplier shall promptly, at its own cost, supply Ballance with a report describing the work carried out in the remediation or rectification of any warranty claim.

14. **THIRD PARTY WARRANTIES**

14.1 **Third party:** The Supplier will pass to Ballance, or if the Supplier is unable to do so will hold for Ballance's benefit, all warranties provided by third parties in respect of any Products supplied by a third party.

14.2 **Third party claims:** If the Supplier is unable to pass a third party warranty to Ballance, the Supplier shall be responsible for making all or any warranty claims on any Products supplied by third parties to Ballance at no cost to Ballance.

15. **LIABILITY AND INSURANCE**

15.1 **Supplier's indemnity:** In addition to the indemnity contained in clause 17.6, the Supplier agrees to indemnify Ballance for any liability incurred by Ballance in respect of any action, suit, claim, demand, cost or expense (including, without limitation, damage to property, plant or equipment) arising as a direct or indirect result of any act or omission by the Supplier or the Supplier's employees, agents or Sub-Contractors in breach of any warranty or obligation under this Agreement, any legislation, regulation, bylaw, code or standard or out of or referable to any damage, injury or loss caused by or resulting from any willful act, omission or negligence or recklessness of the Supplier or its employees, agents or sub-contractors.

15.2 **Insurances:** The Supplier will carry the insurances specified as being required in Item 11 of Schedule 1. In each case, the insured sum will be not less than the relevant figure specified in Item 11 of Schedule 1 being the amount that may be paid out arising out of one single accident or event.

15.3 **Evidence of insurances:** The Supplier will (on request by Ballance) provide evidence of the insurances required pursuant to clause 15.2 in a form satisfactory to Ballance.

15.4 **Ballance's Limited Liability:** Except to the extent of direct damage or loss to the Supplier caused by a breach of this Agreement by Ballance and to the extent allowed by law, Ballance has no liability (in contract, tort, or equity, including negligence) to the Supplier or any other person in respect of this Agreement.

16. **CONFIDENTIAL INFORMATION**

16.1 **Confidentiality:** Except as required by law or by the rules of any applicable stock exchange, the Supplier and the Guarantor will ensure that neither they nor any of their employees, agents or Sub-Contractors will, during or after the term of this Agreement, make any announcement or disclosure as to the subject matter or any of the terms of this Agreement, or use, exploit or disclose to any person any Confidential Information supplied directly or indirectly by Ballance or any of its related or associated companies, or otherwise acquired by the Supplier or the Guarantor pursuant to this Agreement, without the prior written consent of Ballance.

17. **INTELLECTUAL PROPERTY**

17.1 **Licences and Authorisations:** Where any licence or any other authorisation from any person is required to own, possess, use or resell any Products, the Supplier must inform Ballance of the requirements prior to the supply of any Products and:

- (a) if Ballance is not prepared to accept those requirements, then Ballance may terminate this Agreement without any compensation to the Supplier and the Supplier shall refund any amount paid under this Agreement to Ballance; or
- (b) at Ballance's request, the Supplier will, within the Price, procure an irrevocable licence (on a non-exclusive and transferable basis) for Ballance to own, possess, use and resell any Products on an unrestricted basis.

17.2 **Current Intellectual Property:** Any intellectual property (including, without limitation, all rights to, and any interests in, any patent, design, trade mark, copyright, know-how, trade secret and any other proprietary right or form of intellectual property (whether protectable, by registration or not), customer list, agency agreement, purchase agreement, specification, formula, drawing, programme, design, system, process, logo, mark, or style) ("**Intellectual Property**") which is not developed under this Agreement but which is used for the purposes of this Agreement ("**Current Intellectual Property**"), will remain the property of its current owner.

17.3 **Modifications and additions:** Intellectual Property, including any modification or addition to Current Intellectual Property, which is created, made or discovered by the Supplier in the course of the Supplier designing or producing any Products specifically for Ballance, or providing the Services to Ballance, will be disclosed to Ballance and will be the absolute property of Ballance without the need for any party to execute any further document, provided that nothing in this clause will vest in Ballance any proprietary rights in, or prevent the Supplier from using, either for Ballance or any other customer, any techniques, knowledge, information, practices or codes which are:

- (a) generic in nature and were known to the Supplier prior to the date of this Agreement; or
- (b) developed by the Supplier during the term of this Agreement and relate to standard practices adopted within the Supplier's profession or industry.

Applications and instruments required: The Supplier, if and whenever required to do so (whether during or after termination of this Agreement), will at the expense of Ballance apply or join in applying for letters patent, registration, filing or other similar protection in New Zealand or any other part of the

INITIALS	_____	_____	_____
	For Ballance	For the Provider	For the Guarantor

world for any such invention, improvement, design, process, system, copyright or proprietary works created, made or discovered and execute all instruments and deal with things necessary for vesting the relevant letters patent or other similar protection being obtained and all right, title and interest in and to the same in Ballance absolutely and as sole legal and beneficial owner.

17.4 **Attorney:** The Supplier irrevocably appoints Ballance as its attorney with full power to act in the name and on its behalf in fulfilling all of the matters set out in clause 17.3 as fully and effectively as the Supplier, as appropriate, could do personally.

17.5 **No transfer:** The parties agree that except as is expressly provided for in this Agreement, use by one party of Intellectual Property provided by the other party pursuant to this Agreement will not transfer any right, title or interest therein.

17.6 **Indemnity:** The Supplier agrees to indemnify Ballance against all liability, loss, damages, expenses, fees and costs arising out of any claim, settlement or proceedings brought by any third party against Ballance where use or development of any Intellectual Property constitutes an infringement of copyright or any other Intellectual Property rights of a third party.

18. **RELATIONSHIP**

18.1 **Independent Contractor:** The Supplier acknowledges that it is an independent contractor to Ballance and nothing in this Agreement may be construed to make a party a partner, servant, agent, employer or employee of the other.

18.2 **Representations:** The Supplier acknowledges that, except to the extent otherwise expressly provided in this Agreement, it has no right or authority to assume or create any obligations of any kind or to make any representations or warranties, whether express or implied, for or on behalf of Ballance or to bind Ballance in any respect.

19. **TAXATION**

19.1 **GST and other taxes and duties:** The rates of remuneration specified in Items 6 and 9 of Schedule 1 are all exclusive of GST and all other taxes or duties levied or assessed in connection with the supply of the Goods and/or Services, unless otherwise expressly stated. Ballance will pay to the Supplier any GST payable in respect of remuneration paid or payable to the Supplier.

19.2 **Supplier's outgoings and liabilities:** The Supplier will be wholly responsible for the Supplier's own outgoings and liabilities including, but not limited to, income tax, GST and Accident Rehabilitation and Compensation Insurance Corporation premiums, payments and levies.

20. **TERMINATION**

20.1 **General rights of termination:** Without prejudice to any other right or remedy it may have, whether under this Agreement, under statute or otherwise, either Ballance or the Supplier may terminate this Agreement by written notice to the other party if

- (a) the other party breaches any material obligation of that party under this Agreement and;
 - (i) the breach is not capable of being remedied; or
 - (ii) the breach is capable of being remedied and the defaulting party fails to remedy the breach to the non-

defaulting party's satisfaction within 14 days after notice in writing has been given to the defaulting party requiring such breach to be remedied; or

- (b) an Insolvency Event occurs in respect of the other party.

For the avoidance of doubt, the Supplier acknowledges that each of the Performance Standards constitutes a material obligation of the Supplier for the purposes of this Agreement.

20.2 **Termination where Products and/or Services no longer required:** Subject to any express terms to the contrary in Schedule 1, Ballance may terminate this Agreement by giving one month's prior written notice to the Supplier, if it no longer requires the relevant Products and/or Services.

20.3 **Return of information:** Unless otherwise agreed to in writing by Ballance, on termination of this Agreement, the Supplier will immediately deliver to all books, records, software, documents, plans, letters, papers and other material of any description and in every format whether written, contained on magnetic tape, disc or stored in any computer or otherwise which relate to Ballance or any related or associated company of Ballance (including all copies of or extracts from the same within the Supplier's possession or control relating to the business, affairs, property, customers, clients, suppliers or principals of Ballance or any related or associated company of Ballance) and in respect of computer records, the Supplier will delete all such records held by the Supplier on any computer system after delivering a legible written copy or machine-readable disc of such records to Ballance.

20.4 **Survival:** Termination of this Agreement will not affect clauses 13, 14, 15, 16, 17, 22, 23 24, 25, or 26 or any other provisions of this Agreement which are intended to continue after termination and will also be without prejudice to any claim by any party against any other party arising out of any breach or non-performance by a party of any obligations assumed by or imposed on that party under this Agreement at any time prior to termination.

20.5 **Other termination rights:** The rights of termination provided for in this section 20 are in addition to the rights of termination provided for in clauses 17.1(a) and 21.2 and clause 2.1 (if no duration is specified in Schedule 1).

20.6 **Fraud by Supplier:** Ballance shall be entitled, by giving written notice to the Supplier, to immediately suspend or terminate this Agreement (or part of it) if the Supplier in the reasonable opinion of Ballance has or may have carried on any fraudulent activity with respect to the Products and/or Services being provided under this Agreement.

20.7 **Additional Rights of Ballance:** Without prejudice to any other right or remedy it may have, whether under this Agreement, under statute or otherwise, where:

- (a) any Products:
 - (i) are not delivered by the Delivery Date or to the Delivery Destination (subject to clause 3.3, 3.4 and 6.2);
 - (ii) fail to comply with the requirements of this Agreement or the Sale of Goods Act 1908;
 - (ii) are destroyed or damaged prior to acceptance by Ballance; or
- (b) any warranty claim is not promptly dealt with by the Supplier,

Ballance may exercise any of the following rights:

INITIALS	_____	_____	_____
	For Ballance	For the Provider	For the Guarantor

- (c) withhold any payment otherwise due to the Supplier until the matter is resolved to Ballance's satisfaction.
- (d) return to the Supplier any Products already delivered, at the Supplier's risk and expense. If Products are returned to the Supplier, Ballance:
 - (i) will no longer be obliged to pay for them; or
 - (ii) if paid for, shall receive a refund (without any deduction) from the Supplier or may set-off the amount paid against any amount Ballance may owe the Supplier;
- (e) suspend (in whole or in part) this Agreement immediately by written notice to the Supplier;
- (f) purchase alternative products elsewhere and recover from the Supplier any difference between the Price and the actual cost of purchase of alternative products, if the cost of the alternative products is higher than the Price.

21. FORCE MAJEURE

21.1 Obligations suspended: Where either Ballance or the Supplier is unable, wholly or in part, by reason of a Force Majeure Event, to carry out any obligation under this Agreement and:

- (a) that party (upon becoming aware of the Force Majeure Event) gives the other party immediate written notice of the nature and expected duration of, and the obligation affected by, the Force Majeure Event; and
- (b) that party uses all reasonable endeavours to:
 - (i) mitigate the effects of the Force Majeure Event on that party's obligations under this Agreement; and
 - (ii) perform that party's obligations under this Agreement despite the Force Majeure Event,

that obligation is suspended so far as it is affected by the Force Majeure Event during its continuance.

21.2 Termination: If by reason of a Force Majeure Event, the delay or non-performance of either Ballance's or the Supplier's obligations will continue for more than 20 consecutive days, or for an aggregate of 20 days in any 12 month period, whichever of Ballance or the Supplier who is not relying on the Force Majeure Event, may terminate this Agreement by written notice to the other party and the Guarantor.

22. NOTICES

22.1 Service: Every notice or other communication given under or in connection with this Agreement will be in writing and addressed to the relevant party and delivered personally, posted by pre-paid mail or sent by facsimile to the address or facsimile number of that party specified in Item 10 of Schedule 1, or such other address or facsimile number as is notified by that party to the other parties.

22.2 Receipt: Notices or other communications are deemed served:

- (a) when given personally, upon delivery;
- (b) when sent by prepaid mail, three days after

posting; and

- (c) when sent by facsimile, upon receipt of the correct answerback or receipt acknowledgement.

23. ASSIGNMENT AND SUB-CONTRACTING

23.1 No assignment or sub-contracting: The Supplier may not assign or sub-contract any of its rights or obligations under this Agreement, except with the prior written consent of Ballance. If Ballance consents to an assignment or sub-contracting by the Supplier pursuant to this clause, the Supplier must comply with any reasonable conditions Ballance imposes as part of that consent.

23.2 Continuation of services: The Supplier acknowledges that approval of a new contractor or a Sub-Contractor by Ballance may not be immediate and that pending approval the supplier must continue to provide the services. Ballance reserves the right to engage another provider to provide the Services if the Supplier fails to do so and the Supplier shall upon demand reimburse Ballance for any costs it incurs. This clause does not limit any other claims Ballance may have under this Agreement or otherwise.

23.3 Consent to assignment: Consent to assignment of this Agreement will not be unreasonably withheld, except that Ballance is entitled to withhold its consent in the case of an assignment or proposed assignment to any person which is a competitor of Ballance. The restriction in this clause does not apply to permitted sub-contracting to an approved Sub-Contractor.

23.4 Supplier's obligations continue: The assignment or sub-contracting by the Supplier of any of its rights or obligations under this Agreement in whole or in part will not relieve the Supplier in any way whatsoever from its responsibility for due performance of this Agreement in accordance with its terms and conditions.

24. DISPUTE RESOLUTION

24.1 Any difference, disagreement or dispute between the parties in relation to this Agreement or any of its terms or as to any of the parties respective obligations under this Agreement shall be dealt with in accordance with this clause 24.

24.2 In the first instance the dispute shall be referred to a meeting between representatives of the parties which shall be held within 10 Business Days. If that meeting cannot resolve the dispute within that time period the dispute shall be escalated to a meeting of the Chief Executives of the Supplier and Ballance, or their delegates (who shall have authority from the Chief Executive to resolve the dispute), such meeting to be held within a further 10 Business Days.

24.3 If the meeting of Chief Executives or their delegates cannot resolve the dispute within a further 5 Business Days, either party shall be free to take such action as it sees fit, including the commencement of court proceedings.

24.4 Nothing in this clause 24 applies to any dispute arising in connection with any attempted renegotiation of this Agreement or an application by either party for urgent interlocutory relief.

24.5 Interim or preliminary relief: The provisions of clause 24.1 will not limit or affect the right of Ballance, the Supplier or any Guarantor to apply to a court at any time for any interim or preliminary relief in respect of the Dispute.

25. GUARANTEE

INITIALS	_____	_____	_____
	For Ballance	For the Provider	For the Guarantor

25.1 **Guarantee and indemnity:** In consideration for Ballance agreeing to enter into this Agreement with the Supplier, the Guarantor unconditionally and irrevocably:

- (a) guarantees to Ballance the due, punctual and proper performance and observance by the Supplier of all its obligations and warranties under or in relation to this Agreement; and
- (b) indemnifies Ballance from and against any liability incurred by Ballance in respect of any action, suit, claim, demand, cost or expense (including, without limitation, damage to property, plant or equipment) arising as a direct or indirect result of any act or omission by the Supplier or the Supplier's employees, agents or Sub-Contractors in breach of any warranty or obligation under this Agreement, any legislation, regulation, bylaw, code or standard or out of or referable to any damage, injury or loss caused by or resulting from any willful act, omission or negligence or recklessness of the Supplier or its employees, agents or Sub-Contractors.

25.2 **Liability of Guarantor:** The liability of the Guarantor under this guarantee will constitute a principal obligation of the Guarantor and such liability will not be relieved or in any way affected in a manner prejudicial to Ballance by any granting of time, waiver or forbearance to sue by Ballance or by any other act, omission, matter, circumstance or law whereby the Guarantor as a surety only would, but for the provisions of this clause, have been released from liability.

25.3 **Continuing guarantee:** This guarantee will be a continuing guarantee and will remain in full force and effect until all the obligations now or at any time hereafter liable to be satisfied by the Supplier under this Agreement have been fully satisfied, including obligations the satisfaction of which is subsequently avoided or affected in any way, whether under any statutory provision or otherwise, so as to deprive Ballance of the full benefit of such satisfaction.

26. **GENERAL**

26.1 **Set-off:** Ballance and each of its related and associated companies may set off any sums due to the Supplier against any monies owing by the Supplier to Ballance or any other business of Ballance or any of its related or associated companies.

26.2 **United Nations Convention on Contracts:** The parties agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

26.3 **Entire agreement:** This Agreement constitutes the entire agreement of the parties about its subject matter and any previous agreements, understandings and negotiations on that subject matter cease to have any effect. The parties agree that, unless otherwise specifically agreed in writing, the terms and conditions of this Agreement will prevail over any existing or subsequent terms and conditions set out in any document, which the Supplier directly or indirectly provides to Ballance and that such other terms and conditions are rejected by Ballance.

26.4 **Special terms to prevail:** Where there is any conflict in the interpretation or application of any special terms and conditions set out in Item 12 of Schedule 1 with the general terms and conditions of this Agreement, the special terms and conditions set out in Item 12 of Schedule 1 shall prevail.

26.5 **Waiver:** No waiver of any breach of, or failure to enforce any provision of, this Agreement at any time by

any party will in any way limit the right of such party thereafter to enforce and compel strict compliance with the provisions of this Agreement.

26.6 **Variations:** No party will vary this Agreement except in writing signed on behalf of Ballance and the Supplier.

26.7 **Severance:** Any illegality, unenforceability or invalidity in this Agreement will not affect the rest of this Agreement which will remain in full force and effect unless the commercial interests of a party are materially and adversely affected.

26.8 **Counterparts:** This Agreement may be executed in two or more counterparts (including facsimile or email pdf copies) and provided that every party has executed a counterpart, the counterparts shall together constitute a binding and enforceable agreement between the parties.

26.9 **Governing law and jurisdiction:** This Agreement will be governed by and construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

27. **KEY PERFORMANCE INDICATORS**

27.1 This clause 27 applies only if there are Key Performance Indicators (KPI's) listed in Item 7 of Schedule 1. The Supplier acknowledges that the KPIs have the following purposes:

- (a) enabling Ballance to measure the productivity, effectiveness, health, safety and efficiency in relation to the Supplier's performance; and
- (b) setting performance targets for the Supplier, the achievement of which will assist to ensure that Ballance meets its obligations to its customers and at law.

27.2 The KPIs will be measured in accordance with Item 7 of Schedule 1.

27.3 The Supplier shall promptly notify Ballance of any failure by the Supplier to meet any KPIs.

27.4 Without limitation to any other rights or remedies of Ballance under this Agreement, the following shall apply if the Supplier fails to achieve any KPIs:

- (a) with 10 Business Days of the date on which either party notifies the other of a failure by the Supplier to meet any KPI, Ballance may, by written notice, require the Supplier to attend a meeting with Ballance on a date and at a location nominated by Ballance; and
- (b) at that meeting, the parties shall:
 - (i) each ensure that it is represented by a person with sufficient authority to bind that party in the manner contemplated in this clause; the Suppliers failure to achieve the KPIs;
 - (ii) discuss the reasons for the Suppliers failure to achieve the KPIs;
 - (iii) use their reasonable endeavours to agree on the remedial actions that the Supplier shall take to ensure that it is able to meet the KPIs;
 - (iv) minute the meeting and each sign a copy of those minutes as an agreed record of the meeting.

27.5 Without limitation to any other rights or remedies of Ballance under this Agreement, if the supplier fails to comply with its obligations to meet any of the KPIs on a total of at least three occasions (whenever occurring and irrespective of which KPIs the Supplier has failed

INITIALS	_____	_____	_____
	For Ballance	For the Provider	For the Guarantor

to comply with on each occasion) and Ballance has requested the Supplier to attend a meeting for the purposes of clause 27.4(a) in respect of at least two failures occurring prior to the third or later failure, the Supplier shall be deemed to have committed a breach of this Agreement entitling Ballance to terminate this Agreement under clause 20.1 (a) and (b).

27.6 Without limiting any rights or obligations of Ballance in relation to the KPIs, the Supplier and Ballance will review performance under this agreement on a quarterly basis against the KPIs and discuss any areas of improvement required.

INITIALS	_____	_____	_____
	For Ballance	For the Provider	For the Guarantor

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SCHEDULE 1

Item 1 – Commencement Date:
(Refer to clauses 1.1 and 2.1)

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Item 2 – Term:
(Refer to clause 2.1)

--

Item 3(a) – Products:
(Refer to clause 1.1)

--

Item 3(b) – Services:
(Refer to clause 1.1)

--

Item 4 – Delivery Date:
(Refer to clauses 1.1, 3.1-3.4 and 6.2)

--

Item 5 – Delivery Destination (if any):
(Refer to clauses 1.1, 3.1-3.4 and 6.2)

--

Item 6 – Price (including method and terms of payment):
(Refer to clauses 1.1 and section 4)

--

Item 7 – Service Specifications and Performance Standards (if any):
(Refer to clauses 1.1, 5.2 and 5.5)

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INITIALS	_____	_____	_____
	For Ballance	For the Provider	For the Guarantor

Service Specifications:

Performance Standards:

Item 8 – Specified Service Provider (if any):

(Refer to clause 5.4)

Item 9 – Service Fee (including method and terms of payment):

(Refer to clauses 1.1 and Item 3(b))

Item 10 – Notices:

(Refer to clause 20.1)

Balance	⇒	Address: Contact person: Phone no: Email:
Supplier	⇒	Address: Contact person: Phone no: Email:
Guarantor	⇒	Address: Contact person: Phone no: Email:

INITIALS	_____ For Balance	_____ For the Provider	_____ For the Guarantor
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Item 11 – Insurances:
 (Refer to clause 15.2)

	Yes	Not Applicable	Minimum

Item 12 – Special Terms:

(The following special terms refer to the relevant clause in the General Terms and Conditions)

INITIALS	_____ For Ballance	_____ For the Provider	_____ For the Guarantor
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SCHEDULE 2

HEALTH, SAFETY AND ENVIRONMENTAL REQUIREMENTS ACKNOWLEDGEMENT FORM

Ballance recognizes that for a contractor to comply with Ballance health and safety and environmental policies and procedures, the Supplier must have copies of these documents. This form is intended to be a record of receipt of those documents. Please indicate the documents received before signing and returning the document to the Ballance contract manager.

To:

Attention:

Contract Number:

Name of Supplier:

Address of Supplier:

1. I/We confirm that I/we have received, read and understood the documents listed below which for the purposes of this Agreement comprise the Health and Safety Requirements and the Environmental Requirements and agree that where I/we have access to any Site I/we:

- (a) will; and
- (b) will ensure that my/our workers, agents and Sub-contractors (if any);

at all times comply with the Health and Safety Requirements and the Environmental Requirements.

1.1 Ballance Health and Safety Policy.

1.2 Ballance Health and Safety Manual Sections: *Tick to confirm*

(i) []

(ii) []

1.3 Ballance Site-specific Manual Sections:

(i) []

(ii) []

1.4 [Ballance Environmental documentation].

2. Words and phrases which are defined in the Agreement for Supply of Products and/or Services Ref. No. shall have the same meaning when used in this Acknowledgement Form unless the context otherwise requires.

Signed by:
(print name)

Signature

Authorised signatory Yes/No

Date

Company

INITIALS	_____ For Ballance	_____ For the Provider	_____ For the Guarantor
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