

**GENERAL TERMS AND CONDITIONS
(Services Agreement)**

1. INTERPRETATION

1.1 In this Agreement, unless the context requires otherwise:

"Agreement" means this agreement, including the Schedules, as amended from time to time in writing by Ballance and the Provider.

"Acknowledgement Form" means the acknowledgement form attached to the Health and Safety Requirements pursuant to which the Provider acknowledges that it has received, read and understood the Health and Safety Requirements.

"Ballance" means the Balance entity named on the first page of this Agreement and includes any business division and/or business site to which the Services are to be supplied and includes any related or associated company to which the Services are to be supplied in accordance with clause 4.1.

"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 Provider), information independently developed or acquired, or information authorised in writing by Ballance for disclosure.

"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 health and safety requirements, rules, policies and procedures set out in Schedule 2, as updated and notified by Ballance to the Provider 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;
- (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.

"Performance Standards" means the performance standards for the Services as set out in item 4 of Schedule 1.

"Service Fee" means the service fee specified in item 6 of Schedule 1.

"Service Specifications" means the specifications for the Services as set out in item 4 of Schedule 1.

"Services" means the work to be undertaken by the Provider, as specified in item 3 of Schedule 1 and will include (where relevant) any goods to be provided by or on behalf of the Provider in providing the Services or otherwise in relation to the fulfillment of the Provider's obligations under this Agreement.

"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.

1.2 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

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

(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 will continue in full force and effect for the duration specified in item 2 of Schedule 1 or until this Agreement is terminated in accordance with section 12 or clause 13.2. If no such period is specified, either Ballance or the Provider may terminate this Agreement by not less than one month's notice in writing.

3. SERVICE FEE AND PAYMENT

3.1 Service Fee and payment: In consideration of the Provider providing the Services, Ballance will pay to the Provider the Service Fee in accordance with item 6 of Schedule 1. Unless otherwise authorised by Ballance in writing, such fee will apply without increase. Where the Service Fee is calculated on an hourly basis, the Provider will maintain a record of the time spent by the Provider in performing the Services. If requested, the Provider will furnish to Ballance such record.

4. PROVIDER'S OBLIGATIONS

4.1 Provision of Services: The Provider will provide the 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 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.

4.2 Standard of Services: The Provider 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.

4.3 Reliance: The Provider acknowledges that Ballance is relying on the expertise of the Provider in providing the Services.

4.4 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 Provider specified in item 5 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 Provider 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.

4.5 Degree of care and skill: In addition to performing the Services in accordance with the Performance Standards, the Provider 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 Provider's profession or industry.

4.6 Employees, sub-contractors and agents: The Provider 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 respect of the performance of such Services.

4.7 Interests of Ballance: The Provider 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.

4.8 Timelines: The Provider will perform the Services with all due expedition and at the times and in the manner directed by Ballance from time to time.

5. SITE COMPLIANCE AND EQUIPMENT

5.1 Access to Site: If access to any Site is necessary for the provision of Services to Ballance in accordance with this Agreement, Ballance will allow the Provider access at reasonable times, as necessary for the provision of those Services.

5.2 General: Where the Provider has access to any Site, the Provider will, and will ensure that its employees, agents and sub-contractors (if any), at all times comply with:

- (a) the Health and Safety Requirements;
- (b) Ballance's security, operational and site requirements, rules, policies and procedures as notified by Ballance to the Provider from time to time; and
- (c) all relevant legislation and regulations in force including, but not limited to, the Health and Safety in Employment Act 1992 and the Resource Management Act 1991.

5.3 Acknowledgement Form: The Provider 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 Provider commencing to provide Services to Ballance pursuant to this Agreement; and
- (b) promptly upon receipt of updated Health and Safety Requirements notified by Ballance to the Provider.

5.4 Health and Safety: The Provider will be responsible for the health and safety performance of its employees, agents and sub-contractors.

5.5 Environmental and other risks management: To the extent the Services to be performed by the Provider involve environmental or other risks, the Provider will take all possible steps to minimise such risks.

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

6. WARRANTIES

6.1 Provider's warranties: The Provider will ensure, and 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

INITIALS	_____	_____	_____
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a proper, professional and workmanlike manner and in accordance with the Performance Standards.

7. CONFIDENTIAL INFORMATION

7.1 Confidentiality: Except as required by law or by the rules of any applicable Stock Exchange, the Provider 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 Provider or the Guarantor pursuant to this Agreement, without the prior written consent of Ballance.

8. INTELLECTUAL PROPERTY

8.1 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.

8.2 Modifications and additions: Intellectual Property, including any modification or addition to Current Intellectual Property, which is created, made or discovered by the Provider in the course of the Provider 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 Provider 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 Provider prior to the date of this Agreement; or
- (b) developed by the Provider during the term of this Agreement and relate to standard practises adopted within the profession or industry to which the Services relate.

8.3 Applications and instruments required: The Provider, 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 world for any such invention, improvement, design, process, system, copyright or proprietorial 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.

8.4 Attorney: The Provider 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 8.3 as fully and effectively as the Provider, as appropriate, could do personally.

8.5 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.

8.6 Indemnity: The Provider agrees to indemnify Ballance against all liability, loss, damages, 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.

9. RELATIONSHIP

9.1 Independent Contractor: The Provider 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.

9.2 Representations: The Provider 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.

10. TAXATION

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

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

11. LIABILITY AND INSURANCE

11.1 Provider's indemnity: In addition to the indemnity contained in clause 8.6, the Provider 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 Provider or the Provider'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 wilful act, omission or negligence or recklessness of the Provider or its employees, agents or sub-contractors.

11.2 Insurances: The Provider will carry the insurances specified as being required in item 8 of Schedule 1. In each case, the insured sum will be not less than the relevant figure specified in item 8 of Schedule 1 being the amount that may be paid out arising out of one single accident or event. Notwithstanding any other provision of this Agreement limiting the liability of the Provider, the Provider shall remain liable to Ballance for not less than the extent of the insurance coverage required to be held by the Provider under this clause.

11.3 Evidence of insurances: The Provider will (on request by Ballance) provide evidence of the

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insurances required pursuant to clause 11.2 in a form satisfactory to Ballance.

12. TERMINATION

12.1 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 Provider 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 Provider acknowledges that each of the Performance Standards constitutes a material obligation of the Provider for the purposes of this Agreement.

12.2 Termination where Services no longer required: Subject to any express terms to the contrary in Schedule 1, Ballance may terminate this Agreement on one month's prior written notice to the Provider, if it no longer requires the relevant Services.

12.3 Return of information: Unless otherwise agreed to in writing by Ballance, on termination of this Agreement, the Provider will immediately deliver to Ballance 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 Provider'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 Provider will delete all such records held by the Provider on any computer system after delivering a legible written copy or machine-readable disc of such records to Ballance.

12.4 Survival: Termination of this Agreement will not affect clause 11.1 and sections 6, 7, 8, 9, 16, 17 or 18 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.

12.5 Other termination rights: The rights of termination provided for in this section 12 are in addition to the rights of termination provided for in clause 13.2 and clause 2.1 (if no duration is specified in Schedule 1).

12.6 Fraud by Provider: Ballance shall be entitled, by giving written notice to the Provider, to immediately suspend or terminate this Agreement (or part of it) if the Provider in the reasonable opinion of Ballance has or may have carried on any fraudulent activity with

respect to the Services being provided under this Agreement.

13. FORCE MAJEURE

13.1 Obligations suspended: Where either Ballance or the Provider 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 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.

13.2 Termination: If by reason of a Force Majeure Event, the delay or non-performance of either Ballance's or the Provider'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 Provider who is not relying on the Force Majeure Event may terminate this Agreement by written notice to the other party.

14. NOTICES

14.1 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 7 of Schedule 1, or such other address or facsimile number as is notified by that party to the other parties.

14.2 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.

15. ASSIGNMENT AND SUB-CONTRACTING

15.1 No assignment or sub-contracting: The Provider 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 Provider pursuant to this clause, the Provider must comply with any reasonable conditions Ballance imposes as part of that consent.

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

INITIALS	_____	_____	_____
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16. **DISPUTE RESOLUTION**

16.1 **Mediation:** Any party may require any dispute between parties arising out of or in connection with this Agreement ("Dispute"), which has not been resolved within 14 days, to be referred to mediation. The mediator will be appointed by the parties or, where the parties cannot agree on a mediator within 14 days of a party referring a Dispute to mediation, appointed by the Chairperson of LEADR New Zealand Incorporated or the Chairperson's nominee. The mediator will conduct the mediation in accordance with those guidelines agreed between the parties or, if the parties cannot agree on those guidelines within 14 days following appointment of the mediator, in accordance with the guidelines set by the mediator. The costs and expenses of the mediator will be shared by the parties equally.

16.2 **Interim or preliminary relief:** The provisions of clause 16.1 will not limit or affect the right of Ballance, the Provider or any Guarantor to apply to a court at any time for any interim or preliminary relief in respect of the Dispute.

17. **GUARANTEE**

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

- (a) guarantees to Ballance the due, punctual and proper performance and observance by the Provider 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 Provider or the Provider'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 wilful act, omission or negligence or recklessness of the Provider or its employees, agents or sub-contractors.

17.2 **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.

17.3 **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 Provider 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.

18. **GENERAL**

18.1 **Set-off:** Ballance and each of its related and associated companies may set off any sums due to

the Provider against any monies owing by the Provider to Ballance or any other business of Ballance or any of its related or associated companies.

18.2 **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 Provider directly or indirectly provides to Ballance and that such other terms and conditions are rejected by Ballance.

18.3 **Special terms to prevail:** Where there is any conflict in the interpretation or application of any special terms and conditions set out in item 9 of Schedule 1 with the general terms and conditions of this Agreement, the special terms and conditions set out in Schedule 1 shall prevail.

18.4 **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.

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

18.6 **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.

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

18.8 **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.

INITIALS	_____	_____	_____
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