

STANDARD PROCUREMENT TERMS AND CONDITIONS

COVALENT LAND AUSTRALIA PTY LTD ABN 86 651 229 622

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PART A – GENERAL TERMS AND CONDITIONS**1 DEFINITIONS AND INTERPRETATIONS**

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

Additional IP has the meaning given to that term in clause 15.6.

Agreement means the agreement between Covalent and the Supplier for the supply of Goods and / or Services comprising of:

- (a) the general terms and conditions contained within this document as amended from time to time in accordance with clause 25 (**Conditions**);
- (b) the Purchase Order; and
- (c) any Specifications.

Anti-Bribery and Corruption Laws means all Applicable Laws and regulations prohibiting bribery and corrupt business practices.

Applicable Laws means all laws (including legislation, regulations, instruments and any principle or rule of common law or equity, and any relevant policy statements, circulars, codes, practice, or directives issued by any professional or industry association, or Government Agency) relevant to the performance of the duties and obligations of a party to this Agreement including the Corporations Act, the *Australian Securities and Investments Commission Act 2001* (Cth) and the GST Act.

Applicable Trade Control Laws means any sanctions, export control, or import laws, or other regulations, orders, directives, designations, licences, or decisions relating to the trade of goods, technology, software and services which are imposed, administered or enforced from time to time by Australia, the United States, the United Kingdom, the European Union, European Union Member States, Switzerland, the United Nations or United Nations Security Council and also includes United States antiboycott laws and regulations.

Background IP means any Intellectual Property Rights of a party existing prior to the Commencement Date and all Intellectual Property Rights that are created independent of this Agreement.

Breaching Party has the meaning given in clause 13.6.

Business Days means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general business in the Australian Capital Territory.

Change of Control is deemed to occur on the earliest of:

- (a) the date that any one person, or more than one person acting as a group (the **Purchaser**), acquires ownership of shares in the Supplier that, together with shares held by such person or group, constitutes more than 50 percent of the total voting power of those shares; or
- (b) the date that the Purchaser acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person) a majority of the assets of the Supplier or assets of the Supplier's business.

Commencement Date has the meaning set out in clause 3.2.

Conditions has the meaning set out in the definition of 'Agreement' in this clause 1.1.

Confidential Information in relation to any person means any and all confidential and / or proprietary knowledge, data or information which is in the knowledge, possession or control of that person (or any employee or agent of that person), including:

- (a) this Agreement;
- (b) all and every part of the information regarding that party's business affairs obtained or disclosed during the course of negotiation and implementation of this Agreement;
- (c) Intellectual Property Rights, trade secrets, inventions, mask works, ideas, processes, formulas, source and object codes, data, programs, other works of authorship, know-how, improvements

(including without limitation improvements in process), discoveries, developments, drawings, designs and techniques; and

- (d) information regarding plans for research, development, new products, marketing and selling, business plans, budgets and unpublished financial statements, licences, prices and costs, Customers, suppliers and Covalent's other business information.

Contractor means any contractor or subcontractor engaged in connection with the Supplier's performance of the Goods and / or Services.

Corporations Act means the *Corporations Act 2001* (Cth) and all laws and regulations made pursuant to that act.

Covalent means Covalent Land Australia Pty Ltd ABN 86 651 229 622.

Covalent Data means all data, content, materials, methods of working, documents and Intellectual Property Rights and information (including Personal Information) owned, held, used or created by or on Covalent's behalf that is stored using, inputted otherwise transmitted to the Supplier for the provision of the Goods and / or Services.

Customer means any individual or body corporate to whom Covalent provides goods or services.

Customer Contract has the meaning given in clause 22.4.

Customer Policies means the Customer's policies, plans and procedures which Covalent is required to comply with, and which are communicated in writing to the Supplier by Covalent.

Deliverable means all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Delivery Dates mean the dates given in the Purchase Order.

Disbursement means any cost or expense incurred by the Supplier on behalf of Covalent for the purpose of providing the Professional Services.

End Date means the end date set out in the Purchase Order.

Force Majeure Event means any catastrophic event, and includes fire, flood, drought, earthquake, pandemic, epidemic, zoonotic disease, hurricane, adverse weather conditions or any natural disaster, war, terrorism, blockade or embargo, act of civil or military authority, or interruption or failure of utility Goods and / or Services including electric power, air, telecommunications or water.

Goods means the goods (or any part of them) set out the Purchase Order.

Goods and / or Services means the Goods and / or Services and any Deliverables as outlined in the Purchase Order (or any part of them).

Goods and / or Services IP means any and all Intellectual Property Rights arising from or created in the course of the Supplier (or any of its subcontractors, agents or employees) providing the relevant activities associated with the Goods and / or Services, preparing the Deliverables or undertaking obligations under or connection with this Agreement, excluding any Background IP.

Goods Specification means any specification for the Goods, including any related plans and drawings, that is agreed in writing by Covalent and the Supplier whether or not contained within the Purchase Order.

Government Agency means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.

GST means the goods and services tax imposed under the GST Act (or a successor act).

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

Intellectual Property Rights or **Intellectual Property** means all intellectual property rights and interests throughout the world whether registered or unregistered, including trade marks, designs, patents,

inventions, copyrights and analogous rights, trade secrets, know how processes, concepts, Confidential Information and all other intellectual property.

Key Personnel means an employee of the Supplier specified in Item 5 of the services section of the Purchase Order or such other person nominated by the Supplier and agreed to by Covalent (in Covalent's sole discretion) from time to time.

Location has the meaning given in Item 4 of the services section of the Purchase Order.

Material has the meaning given in clause 23.3.

Maximum Hours has the meaning given in Item 3 of the Purchase Order.

Moral Rights has the meanings given in the *Copyright Act 1968* (Cth).

Non Breaching Party has the meaning given in clause 13.6.

Paths of Entry means the gates, roads, and tracks within the Site or as otherwise specified by Covalent in the Purchase Order.

Performance Guarantee has the meaning given in clause 6.

Personal Information has the meaning given to it in section 6 of the Privacy Act.

Personnel means a party's employees, directors, officers and contractors.

Policies means Covalent's policies and codes Covalent provides to the Supplier or makes available to the Supplier whether via <https://covalentland.au/> or by other means.

Privacy Act means the *Privacy Act 1988* (Cth) as amended from time to time.

Price means the price payable for the supply of the respective Goods and / or performance of the Services determined by clauses 13.1 and 13.2, plus all properly incurred expenses.

Professional Services includes consulting services, professional services, or other similar services including those that require the Supplier's, or the Supplier's personnel's skill, knowledge, expertise or personal exertion.

Purchase Order means Covalent's order for the supply of Goods and / or Services agreed to upon acceptance of the Services by both parties in a form that is the same as or similar to that contained in Schedule 1, together with any subsequent order or plan agreed to and signed by both parties from time to time.

Purchaser has the meaning set out in the definition of 'Change of Control' in this clause 1.1.

Related Bodies Corporate has the meaning given in the Corporations Act.

Repair Notice has the meaning given in clause 10.3(a).

Sanctioned Jurisdiction means any country or territory against which comprehensive sanctions are imposed, administered or enforced from time to time by Australia, the United States, the United Kingdom, the European Union, any European Union Member States, Switzerland, the United Nations or United Nations Security Council, or any other country with jurisdiction over the activities undertaken in connection with this Agreement.

Sanctioned Party means:

- (a) any person or entity that is designated for export controls or sanctions restrictions under any Applicable Trade Controls Laws, including but not limited to those designated under the U.S. List of Specially Designated Nationals and Blocked Persons, Foreign Sanctions Evaders List, Entity List, Denied Persons List, Debarred List, Australia's Consolidated List, the UK Consolidated List and the European Union Consolidated List of Persons, Groups, and Entities Subject to European Union Financial Sanctions; and
- (b) any entity 50% or more owned or any entity which is controlled, directly or indirectly, by one or more of the persons or entities in paragraph (a) above.

Service Specification means the description or specification for Services agreed in writing by Covalent and the Supplier whether or not contained within the Purchase Order.

Services means the services, including any Deliverables and Professional Services, to be provided by the Supplier set out in the Purchase Order and / or in the Service Specification.

Site means the location or address where the Goods are to be delivered and / or the Services are to be performed, as set out in the Purchase Order or as otherwise notified in writing by Covalent.

Special Laws means the Applicable Trade Control Laws, Modern Slavery Laws and Anti-Bribery and Corruption Laws.

Specifications means the goods specifications and services specification contained in the Purchase Order or otherwise agreed to by the parties.

Start Date means the start date set out in the Purchase Order.

Supplier means any provider of the Goods and / or Services from time to time, including the party set out in the Purchase Order.

Term means the term of this Agreement as determined pursuant to clause 22.1.

Third Party Intellectual Property has the meaning given in clause 15.5.

Third Party Material means any Deliverable, provided by or on behalf of the Supplier in connection with a Purchase Order, which incorporates Intellectual Property owned by a third party, including any modifications and enhancements to those Deliverables.

Variation Order means an agreement between the parties varying the terms and conditions of a Purchase Order in a form substantially similar to that contained in Schedule 2.

WHS Law means all Australian State, Territory and Federal work health and safety laws and regulations, including the *Work Health and Safety Act 2011* (ACT) or equivalent legislation, and any regulations.

Work Health and Safety Policy means Covalent's Work Health and Safety Policy, as amended from time to time.

1.2 (Interpretation): In this Agreement unless the contrary intention appears:

- (a) Headings are for convenience only and do not form part of this Agreement or affect its interpretation.
- (b) A reference to any legislation includes regulations and other instruments under it and any variation or replacement of any of them.
- (c) The singular includes the plural and vice versa, and words importing any gender include the other genders.
- (d) References to any instrument are to that instrument as it may from time to time be amended or extended in accordance with its terms.
- (e) A reference to a clause, paragraph, schedule, or annexure is to a clause, paragraph, schedule, or annexure in or to this Agreement.
- (f) Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.
- (g) The meaning of general words is not limited by specific examples introduced by "including", "for example", "such as" or similar expressions.
- (h) A reference to a "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or any authority.
- (i) References to dollars or \$ is a reference to Australian dollars.

1.3 (Binding nature of Agreement): Each party agrees that this Agreement is binding on their legal personal representative, heirs, successors and permitted assigns.

1.4 (Drafting responsibility): No provision of this Agreement is to be construed against a party because that party (or that party's adviser) was responsible for drafting it.

1.5 (Exclusion of agency and partnership): Nothing in this Agreement is to be treated as creating a partnership, joint or co-venture or fiduciary obligation between the parties, or any two or more of them,

under the laws of any applicable jurisdiction and, except as specifically provided in this Agreement, no party may act or has any authority to act as agent of or trustee for or in any way bind or commit any other party to any obligation.

2 NATURE OF THIS AGREEMENT

To the extent of any conflict or inconsistency between these Conditions, any Purchase Order, or any Specifications, the conflict or inconsistency must be resolved by giving precedence in the following order:

- (a) any special conditions set out in clause 7 of any Purchase Order (excluding any other terms in the Purchase Order);
- (b) any Purchase Order;
- (c) these Conditions;
- (d) any Specifications; and
- (e) any other terms or conditions agreed to by Covalent.

3 PURCHASE ORDERS AND THE BASIS OF THE AGREEMENT

3.1 (Provision of Goods and / or Services): The Purchase Order constitutes an offer by Covalent to purchase Goods and / or Services from the Supplier in accordance with these Conditions.

3.2 (Commencement Date): The Purchase Order is deemed to be accepted on the earlier of:

- (a) the Supplier accepting the Purchase Order, including acceptance by way of checkbox acceptance or written agreement;
- (b) any act by the Supplier consistent with fulfilling the Purchase Order;
- (c) the provision of Services or Goods by the Supplier to Covalent; and
- (d) the Start Date set out in the Purchase Order,

at which point and on which date the Agreement shall come into existence (**Commencement Date**).

3.3 (Excluded terms): These Conditions apply to the Agreement to the exclusion of any other terms that the Supplier seeks to impose or incorporate (including any terms or conditions contained in any correspondence, or quotations from the Supplier), or which are implied by trade, custom, practice or course of dealing. Any terms or conditions attached to any Purchase Order issued by Covalent in respect of the Goods and Services (other than these Conditions) will not form part of the Agreement unless such conditions are expressly accepted by Covalent in writing.

3.4 (Goods and Services): These Conditions apply to the supply of both Goods and Services except where the application to one or the other is specified.

3.5 (Non-exclusive): Covalent's receipt of the Goods and / or Services is non-exclusive and nothing in this Agreement prevents Covalent from acquiring the Goods and / or Services or any Deliverables from any other person in any other location.

3.6 (Special conditions): Notwithstanding any other term in this Agreement, the Supplier must comply with any special conditions set out in clause 7 of any Purchase Order.

4 SUPPLY OF GOODS

4.1 (Supply of Goods): The Supplier must ensure that the Goods are supplied in accordance with this Agreement. The Supplier represents and warrants that the Goods:

- (a) are new, unused and correspond with their description and any applicable Goods Specification;
- (b) are of a high quality are fit for any purpose held out by the Supplier or made known to the Supplier by Covalent, expressly or by implication, and in this respect, Covalent relied on the Supplier's skill and judgement;

- (c) are free from defects and remain so for 12 months after delivery;
- (d) comply with all Applicable Laws, including as it relates to the manufacture, labelling, packaging, storage, handling and delivery of the Goods; and
- (e) are free from all encumbrances, including any mortgages, charges, or liens.

4.2 (Inspection and testing): Covalent may inspect and test the Goods at any time before delivery. The Supplier must provide all necessary assistance with any inspection and / or test. The Supplier will remain fully responsible for the Goods despite any inspection or testing and any inspection or testing will not reduce or otherwise affect the Supplier's obligations under this Agreement.

4.3 (Delivery): The Supplier must ensure that:

- (a) the Goods are properly packed and secured in a manner that enables the Goods to reach their destination in good condition;
- (b) the Goods are delivered to the Site by the date specified in the Purchase Order or, if no date is specified, within 30 days of the date of the Purchase Order; and
- (c) the Goods are not delivered in instalments unless otherwise agreed by Covalent.

4.4 (Title and Risk): Title and risk in the Goods passes to Covalent from the Supplier upon the Goods being delivered to the Site.

5 SUPPLY OF SERVICES

5.1 (Supply of Services): The Supplier must, from the Commencement Date and for the duration of the Agreement, supply the Services to Covalent in accordance with the terms of the Agreement.

5.2 (Performance dates): The Supplier must perform the Services expeditiously and meet any performance dates for the Services that Covalent notifies to the Supplier. Time is of the essence in relation to any of those performance dates.

5.3 (Professional Services): If the Supplier is providing Professional Services, the terms set out in Part B will apply.

5.4 (Licences): At the request of Covalent, the Supplier must provide Covalent with a copy of any current applicable licence to perform the Services.

5.5 (Covalent's Policies):

- (a) **(Confirmation):** Prior to providing any Services, the Supplier and its Key Personnel must read Covalent's Policies (including Work Health and Safety Policy and procedures) relevant to the provision of the Services or Professional Services, and must confirm that the Supplier and its Key Personnel have understood these documents.
- (b) **(Notification):** The Supplier must immediately notify Covalent if, at the commencement of the provision of the Services, or during the Term of this Agreement, it appears that the Supplier's or Key Personnel's working environment has become unsafe for any reason.

5.6 (Conflict of interest): The Supplier shall immediately disclose to Covalent any conflict of interest which arises in relation to the provision of the Services as a result of any present or future appointment, employment or other interest of the Supplier.

5.7 (Warranties): In providing the Services, the Supplier represents and warrants that the Supplier will:

- (a) co-operate with Covalent in all matters relating to the Services, and comply with all instructions of Covalent;
- (b) perform the Services with due care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (c) use personnel who are suitably skilled, experienced, and qualified to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;

- (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose that Covalent expressly or impliedly makes known to the Supplier;
- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to Covalent, will be free from defects in workmanship, installation and design;
- (g) comply with all Applicable Laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services; and
- (h) observe all health and safety rules and regulations and any other security requirements that apply at any of Covalent's premises.

5.8 (Health and Safety):

- (a) **(Health and safety procedures):** The Supplier must ensure that the Supplier and all personnel, consultants, subcontractors, and assigns, comply with the Work Health and Safety Policy, WHS Law, and reasonable directions of Covalent which are notified to the Supplier and the Key Personnel from time to time. In particular, the Supplier must ensure that the Key Personnel agree to maintain a safe working environment in accordance with applicable health and safety laws at the Location.
- (b) **(Testing):** Subject to WHS Law, the Supplier and any Key Personnel will consent to Covalent directing the Supplier and any Key Personnel to submit to a drug or alcohol test prior to or during the Term of this Agreement. The Supplier and any Key Personnel agree that the ongoing appointment of the Supplier under this Agreement may be subject to the Supplier and any Key Personnel's submission to, and passing of, the drug and alcohol tests.

5.9 (Safety and Security): The Supplier will:

- (a) be required to comply with all security and safety requirements of Covalent and as otherwise notified by Covalent to the Supplier;
- (b) ensure that at all times, so far as reasonably practicable, any Supplier workplace is a safe place of work for the Supplier. If the Supplier is working at Covalent's premises, then the Supplier must take reasonable steps to work with Covalent to ensure a safe place of work for the Supplier;
- (c) not carry out any act or do anything whereby Covalent or Covalent's reputation may be prejudicially affected; and
- (d) not commit any act of a criminal nature, or that is dishonest, unsafe, fraudulent or that constitutes malicious conduct in the course of providing the Services.

5.10 (Accreditations, training and professional development of Supplier): The parties acknowledge and agree that the Supplier will remain responsible for maintaining the Supplier's professional accreditations, registrations and memberships, including all those necessary for the performance of the Supplier's roles and responsibilities under the Agreement.

5.11 (Bullying and other acts): The Supplier and any Key Personnel must not engage in any bullying, sexual harassment, discrimination, adverse action or victimisation prohibited under equal opportunity or other relevant legislation including legislation dealing with anti-discrimination, workplace rights, adverse action, bullying or sexual harassment, as well as guidance set out at <http://respectatwork.gov.au>.

6 PERFORMANCE GUARANTEE

If agreed to in the Purchase Order, the Supplier will guarantee to Covalent that the Goods, Services or Deliverables will meet the Specifications and be delivered in accordance with the Purchase Order (**Performance Guarantee**). If the Supplier breaches the Performance Guarantee, the Supplier will pay to Covalent all damages, losses, costs and expenses incurred by Covalent, as a direct result of breaching the Performance Guarantee.

7 NOTIFICATION

The Supplier agrees to promptly notify Covalent, and to keep Covalent informed, of any breach of any term of this Agreement or of the Supplier's appointment by Covalent and / or the occurrence of an event or circumstance which:

- (a) in the Supplier's reasonable opinion, could adversely affect the performance of the Supplier's obligations and duties under this Agreement; or
- (b) is likely to give rise to any material investigation, prosecution or litigation of the Supplier or Covalent, including without limitation, any potential action which is reasonably likely to jeopardise Covalent's reputation or status in the marketplace.

8 LAND ACCESS AND LAND USE

- 8.1 (Access):** Covalent shall use its best endeavours to provide or cause third parties to provide the Supplier access to all necessary Paths of Entry and to the Site to enable the Supplier to perform its obligations in accordance with this Agreement.
- 8.2 (Permitted activities):** The Supplier must not conduct any activities other than to provide the Services or deliver the Goods within the Site, including erecting any signage, without the prior written consent of Covalent.
- 8.3 (First meeting):** At Covalent's request, the Supplier on first accessing the Site must meet with Covalent to discuss and agree on matters in relation to accessing the Site and receive a briefing on potential hazards specific to the Paths of Entry and Site.
- 8.4 (Maintenance):** If requested by Covalent, the Supplier must maintain the Paths of Entry to the standard discussed in clause 8.3 when accessing the Site.
- 8.5 (Services Area):** Unless prior written consent is obtained from Covalent, the Supplier must not perform any Services or other activities associated with the Services in any area other than the Site.
- 8.6 (Records):** At Covalent's request, the Supplier must keep:
- (a) a record of all equipment, vehicles, chemicals and material that is brought onto or leaves the Site and Paths of Entry. The Supplier must make such records available to Covalent for viewing and / or auditing; and
 - (b) a daily record of each person entering and exiting the Site and Paths of Entry, including the name of the person, the person's position and the time entered and exited,
- at any time during the Term. These records must be available for viewing and / or audit by Covalent at any time during the currency of this Agreement.

9 CONDITIONS OF LAND ACCESS

- 9.1 (Compliance with laws and licences):** To the extent a Purchase Order requires granting the Supplier access to the Site, the Supplier must comply with all requirements imposed by Applicable Laws and any relevant licence.
- 9.2 (Services):** The Supplier should perform the Services in a manner so as to:
- (a) minimise any damage to
 - (i) existing vegetation, plants, crops or pastures (unless otherwise approved in writing by Covalent);
 - (ii) the surface of the Site and Paths of Entry; and
 - (iii) buildings and improvements on the Site and Paths of Entry; and
 - (b) leave all gates as found, whether open or shut.
- 9.3 (Emergency policy):** At the request of Covalent, the Supplier must provide Covalent with a copy of their emergency response management procedure (including fire management) for the Site.

- 9.4 (Waste disposal):** The Supplier will manage garbage, hydrocarbons, waste, and other refuse in accordance with the terms of any applicable licence and is to place any garbage, waste or empty containers in suitable receptacles and remove them from the Site and Paths of Entry each day, or as soon as practicable.
- 9.5 (Further conditions):** The Supplier must comply with any additional terms or conditions set out in the Purchase Order and any reasonable direction by Covalent from time to time.
- 10 SITE REPAIRS**
- 10.1 (Rehabilitation and make good obligations):** To the extent a Purchase Order requires the Supplier to perform Services on the Site, upon completing the Services or termination of this Agreement the Supplier will:
- (a) remove all of the Supplier's equipment from the Site;
 - (b) repair all damage to the Site caused by the Supplier as soon as practicable;
 - (c) repair any damage to any Paths of Entry caused by the Supplier; and
 - (d) rehabilitate any material damage to vegetation, plants, crops or pastures, which has not been approved pursuant to clause 9.2(a)(i), by reseeding,
- to the satisfaction of Covalent, acting reasonably.
- 10.2 (Completion):** At Covalent's request, the Supplier must organise a time for Covalent to inspect the Site and Paths of Entry once the Services are complete to discuss any remaining issues under this Agreement.
- 10.3 (Failure to repair):** If the Supplier does not carry out the repair required under clause 10.1 then:
- (a) Covalent may serve written notice to the Supplier setting out the repairs required to be carried out under this Agreement (**Repair Notice**); and
 - (b) if a period of 30 days lapses after the Supplier receives the Repair Notice and fails to comply with the Repair Notice, Covalent may carry out or have someone carry out the repair. The Supplier must pay all of Covalent's reasonable expense and costs of carrying out the repair in accordance with this clause 10.2.
- 11 VARIATION ORDER**
- 11.1 (Variation):**
- (a) A Purchase Order shall not be modified, the Supplier shall not implement any change and Covalent shall not be liable for any change, unless a form substantially similar to the pro forma Variation Order at Schedule 2 is agreed to in writing by both parties. No oral agreement or conversation between the parties shall affect or modify any of the terms or obligations contained in a Purchase Order.
 - (b) If the parties are unable to agree a Variation Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 26.
- 11.2 (Variation by Covalent):** Covalent may vary the scope of the Purchase Order by issuing a draft Variation Order to the Supplier. Within 5 Business Days of the draft Variation Order being received by the Supplier, the Supplier must respond either to accept the draft Variation Order or propose amendments to the draft Variation Order. The parties shall negotiate an equitable adjustment to the aspects of the Purchase Order affected by such draft Variation Order and formalise it in a signed Variation Order. Failure by the Supplier to respond within the prescribed time limit will be deemed an acceptance of the terms of the Variation Order.
- 11.3 (Variation by the Supplier):** The Supplier may, in writing, propose a change to the scope of a Purchase Order and submit a draft Variation Order accordingly, with a price breakdown to support Covalent's evaluation of any proposed draft Variation Order. If Covalent agrees with the request, the parties shall negotiate an equitable adjustment to the provisions of the Purchase Order affected by such draft Variation Order and formalise the agreed variations in writing.

11.4 (Urgent variation): Covalent may require the Supplier to commence work prior to entering into a written Variation Order in which case the latest price submission made by the Supplier shall be considered as a not-to-exceed price to be finally negotiated in good faith by the parties within 60 days or such other period as the parties may agree.

12 REMEDIES

12.1 (Right to inspect Goods or Services): Covalent may inspect the Goods and / or Services after delivery, and may give written notice to the Supplier of any claim that the Goods and / or Services are not in accordance with this Agreement.

12.2 (Rights to restrict): Without limiting any other right or remedy available to Covalent, Covalent may restrict or suspend payment for the Goods and / or Services if Covalent considers that the Supplier (including any of its end users or personnel) has:

- (a) provided Goods and / or Services that do not comply with any Purchase Order or this Agreement (including clause 4 or clause 5);
- (b) transmitted to, inputted or stored any data in Covalent's systems for the purpose of supplying the Goods and / or Services that breaches or may breach this Agreement or any third party right (including Intellectual Property Rights and privacy rights), or that is or may be objectionable, incorrect or misleading; or
- (c) otherwise materially breached the Agreement.

12.3 (Remedies of Covalent): If the Supplier fails to perform any of its obligations in accordance with this Agreement, Covalent will, without limiting or affecting other rights or remedies available to it have one or more of the following rights:

- (a) in the event of any claim by Covalent against the Supplier, withhold payment of any amount owing by Covalent to the Supplier on any account until such claim is resolved;
- (b) to refuse to accept any subsequent performance of the Services and / or delivery of the Goods which the Supplier attempts to make delivery, or otherwise attempts to make repairs or replacements;
- (c) to recover from the Supplier any costs incurred by the non-breach party in obtaining substitute Goods and / or Services from a third party;
- (d) to require the Supplier to repair or replace the rejected Goods and / or Services;
- (e) to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and / or Goods that it has not delivered;
- (f) to claim damages for any additional costs, loss or expenses incurred by Covalent which are directly attributable to the Supplier's failure to meet any Delivery Dates;
- (g) to reject the Goods and / or Services (in whole or in part), whether or not title has passed, and to return them to the Supplier at the Supplier's own risk and expense any Goods; and
- (h) to obtain a full refund of the Price from the Supplier for rejected Goods and / or Services.

12.4 (Remedies of the Supplier): If Covalent fails to perform any of its obligations in accordance with this Agreement, the Supplier will, without limiting or affecting other rights or remedies available to it have one or more of the following rights:

- (a) in the event of any claim by the Supplier against Covalent, suspend the delivery of Goods or performance of Services, under any Purchase Order, until such claim is resolved;
- (b) to refuse to accept any additional Purchase Order submitted by Covalent to the Supplier; and
- (c) to claim against Covalent any costs incurred by the Supplier in recovering any amount owing.

12.5 (Repairs inclusive): These Conditions shall extend to any substituted or remedial Services and / or repaired or replacement Goods supplied by the Supplier.

12.6 (Third party warranties): To the extent that any of the Goods delivered or Services provided are subject (in whole or in part) to a warranty provided by a third party, the Supplier must ensure that Covalent has, and that the Supplier makes use of, the benefits offered by that warranty.

12.7 (No limitation): For the avoidance of doubt, Covalent's rights under this Agreement are in addition to its rights and remedies implied by statute and common law.

13 PRICE

13.1 (Price for Goods): The Price for the Goods is:

- (a) the Price set out in the Purchase Order; and
- (b) inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges will be effective unless agreed in writing and signed by Covalent.

13.2 (Price for Services): The Price for the performance of the Services is:

- (a) the Price set out in the Purchase Order; and
- (b) the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by Covalent, the price includes every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

13.3 (Invoicing): Unless otherwise agreed to between the parties within the Purchase Order:

- (a) in respect of the Goods, the Supplier may invoice Covalent on or at any time after completion of delivery; and
- (b) in respect of Services, the Supplier may invoice Covalent on completion of the Services.

Every invoice issued by the Supplier must include all supporting information required by Covalent to verify the accuracy of the invoice, including the relevant Purchase Order number and project name if applicable.

13.4 (Payment): In consideration of the supply of Goods and / or Services by the Supplier, Covalent will pay the invoiced amounts within 20 calendar days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.

13.5 (Records): The Supplier must maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier must allow Covalent to inspect such records at all reasonable times on request.

13.6 (Set off): If a party is in breach of this Agreement (**Breaching Party**), the party that is not in breach of this Agreement (**Non Breaching Party**) may at any time set off, as against any money owed to the Breaching Party, any liability incurred by that Non Breaching Party as a result of the breach caused by the Breaching Party, provided to the extent such liability is present, liquidated, and whether or not either liability arises under this Agreement. Any exercise by either party of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.

14 GOODS AND SERVICES TAX

14.1 (GST):

- (a) Unless otherwise expressly agreed to in writing between Covalent and the Supplier, all amounts agreed by Covalent under this Agreement are stated exclusive of GST. Where a Taxable Supply is made under this Agreement by the Supplier to Covalent, Covalent must, on receipt of a valid Tax Invoice from the Supplier, pay to the Supplier such additional amounts in respect of GST as are chargeable on the supply of the Goods and / or Services at the same time as payment is due for the supply of the Goods and / or Services.
- (b) Where the Supplier provides a valid Tax Invoice or invoice to Covalent which is exclusive of GST, and the Tax Invoice or invoice is accepted by Covalent and paid in accordance with this Agreement, the Supplier may not issue a second or substitute Tax Invoice for any GST amounts which would have been payable but which were not included in the first Tax Invoice.

- 14.2 (Reimbursement):** If one party reimburses another party for an amount incurred by the other party, that amount must exclude any amount for which the other party is entitled to an Input Tax Credit.
- 14.3 (Undefined terms):** Unless otherwise defined in this Agreement, capitalised terms in this clause 14, have the same meaning as those same words in the GST Act.
- 15 INTELLECTUAL PROPERTY RIGHTS**
- 15.1 (Background IP):** Each party retains all right, title and interest in and to its own Background IP.
- 15.2 (Goods and / or Services IP):** Upon its creation, all rights, interests and title to all Goods and / or Services IP vests in and remains the property of Covalent (and its licensors) and, to the extent permitted by law, the Supplier assigns all rights, title and interest in such Goods and / or Services IP to Covalent.
- 15.3 (Licence):** Title to, and all Intellectual Property Rights in, Covalent's Background IP and Covalent Data remains Covalent's property. Subject to clause 15.2, Covalent grants the Supplier for the Term, with no right to sub-licence, a royalty-free, worldwide, revocable, non-exclusive licence to use the Goods and / or Services IP, Covalent's Background IP, and Covalent's Data for the sole purpose of providing the Goods and / or Services to Covalent. The Supplier must not store, copy, modify, make available, or communicate Covalent Data, unless by Covalent's written consent.
- 15.4 (Covalent licence):** Title to, and all Intellectual Property Rights in the Supplier Background IP remains the Supplier's property. The Supplier grants Covalent a worldwide, non-exclusive, fully paid up, transferable, irrevocable licence to use, store, copy, modify, make available and communicate the Supplier Background IP for any purpose in connection with the receipt, exercise or use of the Goods and / or Services.
- 15.5 (Third party intellectual property):** To the extent that Third Party Materials are incorporated into the Goods or Services or are otherwise provided to Covalent by the Supplier under a Purchase Order, the Supplier must procure for Covalent:
- (a) rights in respect of the Intellectual Property Rights and Third Party Materials (**Third Party Intellectual Property**) no less extensive than the rights granted to Covalent under clause 15.4; or
 - (b) such other licence rights in respect of the Third Party Intellectual Property as agreed in writing by the parties.
- 15.6 (Additional IP):** If, during the term of this Agreement, Covalent generates any Intellectual Property Rights independently of this Agreement which have direct application to the Goods and / or Services (**Additional IP**), all rights, interests and title to such Additional IP will vest in and remain the property of Covalent upon its creation.
- 15.7 (Royalty-free):** For the avoidance of any doubt, nothing in this clause 15 requires Covalent to pay any amount in addition to the Price for the Intellectual Property Rights required to enable the Supplier to perform the Goods and / or Services in accordance with this Agreement.
- 15.8 (Works and Moral Rights):** To the full extent permitted under Part IX of the *Copyright Act 1968* (Cth), the Supplier voluntarily and unconditionally consents (and procures such consent from its personnel) to all or any acts or omissions by Covalent, or persons authorised by Covalent, concerning any and all works made or to be made by the Supplier or the Supplier's personnel (whether before or after this consent is given) in the course of the engagement which would otherwise infringe the Supplier's or the Supplier's personnel's Moral Rights. The Supplier and the Supplier's personnel also waive any and all existing and future Moral Rights in the works and acknowledges that this consent has been given voluntarily and without reliance on any statement or representation made by Covalent, or anyone acting on their behalf.
- 16 SUBCONTRACTING AND ASSIGNMENT**
- 16.1 (No assignment without consent):** Neither party may assign, novate, subcontract or transfer any right or obligation under this Agreement without the prior written consent of the other party. Each party remains liable for its own obligations under this Agreement despite any approved assignment, subcontracting or transfer. Any assignment, novation, subcontracting or transfer must be in writing.

16.2 (Change of Control): Any Change of Control of a party is deemed to be an assignment of this Agreement for which the other party's prior written consent is required under clause 16.1.

17 COMPLIANCE WITH POLICIES

17.1 (Compliance with laws and policies): In performing its obligations under this Agreement, the Supplier:

- (a) must comply with:
 - (i) the relevant Policies; and
 - (ii) the relevant Customer Policies, to the extent they were provided to the Supplier by Covalent in writing; and
- (b) must ensure that Contractors or any other third party used by the Supplier in the provision of the Goods and / or Services complies with the Policies and Customer Policies (if any). For the avoidance of doubt, use of Contractors or a third party by the Supplier for the provision of Goods and / or Services must be authorised by Covalent in accordance with clause 16.1.

17.2 (Third parties): To the extent that the Supplier is authorised by Covalent pursuant to clause 16.1 to engage Contractors or any other third party in the supply of the Goods and / or Services, the Supplier represents, warrants, and guarantees the quality, suitability, and other aspects of the Goods and / or Services comply with the requirements in this Agreement and:

- (a) does not infringe any Applicable Law, Policies, relevant Customer Policies or relevant industry code; and
- (b) does not infringe the Intellectual Property Rights of any person.

18 PRIVACY

Each party:

- (a) warrants that it complies with and will continue to comply with the Privacy Act and all other applicable privacy laws;
- (b) agrees to provide such assistance as may be reasonably requested by another party for the purposes of complying with any Privacy Laws in relation to the Personal Information disclosed under this Agreement;
- (c) will ensure that its Personnel who are required to handle Personal Information in the course of this Agreement are made aware of the obligations of that party in this clause 18; and
- (d) acknowledges it is responsible for the acts and omissions of its respective Personnel, and a breach by any such Personnel is a breach by that party.

19 SPECIAL LAWS

19.1 (Special Laws): The Supplier must:

- (a) not:
 - (i) without Covalent's prior written consent, provide to Covalent any Services and/or Deliverables that have been produced, sourced, extracted or processed in whole or in part from a Sanctioned Jurisdiction or Sanctioned Party; or
 - (ii) engage in any conduct that would breach *Modern Slavery Act 2018* (Cth) if the conduct took place in a jurisdiction subject to *Modern Slavery Act 2018* (Cth);
- (b) implement, maintain, keep up to date and enforce its own Policies to ensure its compliance with the Special Laws;
- (c) take reasonable steps to ensure that the Supplier and all its Related Bodies Corporate comply with these obligations; and
- (d) promptly notify Covalent of any actual or suspected breach of this clause 19.

19.2 (Modern slavery): The Supplier agrees that the Supplier will comply with all obligations under the *Modern Slavery Act 2018* (Cth), and agrees to do all things reasonable to ensure that Covalent complies with the *Modern Slavery Act 2018* (Cth), including to provide any and all information in relation to the supply, creation, or performance of the Goods and / or Services as reasonably requested by Covalent.

19.3 (Special laws warranties): The Supplier represents and warrants during the Term of any Purchase Order that it:

- (a) is not a Sanctioned Party;
- (b) is not organised under the laws of, or located or ordinarily a resident in, a Sanctioned Jurisdiction;
- (c) is not part of, owned, or controlled by the government of a Sanctioned Jurisdiction; and
- (d) will not take any actions that cause it to become a Sanctioned Party or otherwise to become sanctioned, restricted, or designated under Applicable Trade Controls Laws during the Term of this Agreement.

19.4 (Notification of Covalent): If the Supplier becomes or expects to become a Sanctioned Party or otherwise becomes sanctioned, restricted, or designated, the Supplier must notify Covalent as soon as possible.

20 CONFIDENTIALITY

20.1 (Confidential Information): Subject to clause 20.2, each party must:

- (a) treat all Confidential Information as secret and confidential and not use such Confidential Information for any unauthorised purpose;
- (b) not disclose any Confidential Information to any person other than to:
 - (i) an employee; or
 - (ii) a party's professional advisors to the extent required to enable that party to enforce the provisions of this Agreement,

who requires that information to effectively perform their respective duties, who are aware the information is Confidential Information and who are bound to treat it as such; and

- (c) not use any Confidential Information for its own purposes, or for the benefit of any third party, except as expressly authorised under this Agreement or with the consent of the other parties.

20.2 (Exception): Nothing in this clause 20 prevents a party from disclosing Confidential Information:

- (a) to comply with any relevant law or requirement of any regulatory body, except that in that case, to the extent permitted, the party that is required to make the disclosure must notify the other parties as soon as reasonably practicable after it becomes aware that disclosure is required and take reasonable steps to prevent or restrict the disclosure of that information; or
- (b) with the prior written consent of the other party.

21 INSURANCE

21.1 (Insurances): The Supplier will ensure that at all relevant times it holds adequate insurances including all insurances as may be required pursuant to any legislation, including:

- (a) public liability insurance (on an occurrence basis) for at least \$20,000,000 per occurrence and in the aggregate;
- (b) professional indemnity insurance for at least \$10,000,000 per occurrence and in the aggregate;
- (c) workers' compensation insurance in accordance with Applicable Laws;
- (d) appropriate vehicle and equipment insurance; and
- (e) such other insurances as agreed between the parties in writing.

- 21.2 (Copies of policies):** Upon Covalent's request, the Supplier must promptly give Covalent information concerning the scope of such insurances in accordance with clause 21.1 (including any certificates of currency).
- 22 TERM, TERMINATION AND SUSPENSION**
- 22.1 (Duration):** This Agreement:
- (a) starts on the Commencement Date; and
 - (b) continues until the End Date, unless otherwise terminated in accordance with these Conditions.
- (the **Term**).
- 22.2 (Cancellation of Purchase Orders):** Without affecting any other right or remedy available to it and notwithstanding clause 22.3, a party may cancel a Purchase Order at any time with immediate effect by giving written notice to the other party if:
- (a) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under this Agreement has been placed in jeopardy;
 - (b) the Supplier commits a breach of clause 4 or clause 5 that is not remedied within 7 Business Days of the breach occurring; or
 - (c) Covalent commits a breach of clause 13.4 that is not remedied within 7 Business Days of the breach occurring.
- 22.3 (Termination):** Subject to clause 22.2 and without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- (a) a Purchase Order is cancelled pursuant to clause 22.2;
 - (b) the other party commits a breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified in writing to do so;
 - (c) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
 - (d) there is a Change of Control of the other party;
 - (e) a Force Majeure Event affects the ability of the Supplier to perform the Purchase Order in accordance with the timing or if the effect is, or is foreseen by the parties to delay such performance by more than 90 days or permanently prevent the Supplier from performing the Purchase Order; or
 - (f) the Supplier or the Supplier's employee, contractors or agents, conducts themselves in manner that brings or is likely to bring Covalent into disrepute.
- 22.4 (Termination for convenience):** Covalent may cancel a Purchase Order and terminate this Agreement at any time (acting reasonably) by giving the Supplier 14 days written notice, including where, if the Supplier has been engaged by Covalent to service a contract with a third party (**Customer Contract**):
- (a) all or part of the Customer Contract has been or is likely to be terminated, outside of Covalent's control;
 - (b) in Covalent's reasonable opinion, the Goods / Services to be provided under this Agreement are no longer required; or
 - (c) the provision of the Goods / Services under this Agreement will not satisfy Covalent's obligations under a Customer Contract.

22.5 (Consequences of termination):

- (a) Termination or expiry of this Agreement does not affect either party's rights and obligations that accrued before that termination or expiry.
- (b) On termination or expiry of this Agreement:
 - (i) The Supplier must immediately deliver to Covalent all Deliverables whether or not then complete.
 - (ii) The Supplier is entitled to invoice Covalent for all Deliverables provided but not yet invoiced.
 - (iii) All existing Purchase Orders will automatically terminate.
 - (iv) Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination (or expiry) of this Agreement shall remain in full force and effect.

22.6 (Return of Covalent Data): The Supplier must return or destroy any Covalent Data in the Supplier's possession within 30 days of termination or expiry of this Agreement, if requested in writing by Covalent.

22.7 (Obligations continuing): Clauses which, by their nature, are intended to survive termination or expiry of this Agreement, including clause 4 (Supply of Goods), clause 5 (Supply of Services), clause 15 (Intellectual Property Rights), clause 20 (Confidentiality), clause 22 (Term, Termination and Suspension), clause 23 (Indemnity and Liability), clause 24 (Force Majeure), clause 25 (Amendment), clause 26 (Dispute Resolution), clause 16 (Subcontracting and Assignment) and clause 27 (General Provisions) to be inserted once the Agreement is in final draft form, continue in force.

23 INDEMNITY AND LIABILITY

23.1 (Indemnification): Notwithstanding anything else in this Agreement, each party must at all times indemnify and hold harmless the other party and its officers, employees, contractors and agents from and against any direct loss (including legal costs and, where the Supplier is the indemnifying party, the Performance Guarantee) incurred or suffered by the indemnified party arising from any claims against the indemnified party where such loss or liability arises out of or in respect of this Agreement, except to the extent such caused by gross negligence or wilful misconduct of the other party.

23.2 (No indirect loss): To the extent that either party is liable for breach of contract in connection with the supply of Goods or Services, each party excludes liability for loss of profit, revenue, business, savings, data or product, loss of production, loss of contract, business interruption costs, loss from delay or delay costs, pure economic loss, increased cost of production, loss of customer goodwill, or other special punitive, indirect, exemplary or consequential loss or damage of any kind howsoever arising and whether or not arising from one or more event and whether or not such loss or liability was foreseeable and whether or not beyond the ordinary measure of loss.

23.3 (IP infringement indemnification):

- (a) If a third party makes a claim against Covalent or the Supplier that any information, design, specification, instruction, software, services, data, or material (**Material**) furnished by the Supplier and used by Covalent infringes its intellectual property rights, the Supplier, at its sole cost and expense, will defend Covalent against the claim and indemnify Covalent from the damages, liabilities, costs and expenses awarded to the third-party claiming infringement or for any settlement.
- (b) The Supplier shall not settle any claim for which Covalent may otherwise be indemnified against under this clause 23.3 without Covalent's written consent if such settlement:
 - (i) affects any rights of Covalent with respect to any other Intellectual Property;
 - (ii) imposes any liability upon Covalent not subject to indemnification under this clause 23.3; or

- (iii) contains or implies any wrongful action or inaction or any admission of wrongdoing (other than with respect to acknowledging Covalent's inadvertent use of the relevant Material), by or with respect to Covalent.

23.4 (Mitigation): Each party must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of any act or omission by the other party under or in connection with the Agreement.

24 FORCE MAJEURE

24.1 (Notification):

- (a) Neither party shall be liable nor be deemed to be in default for any failure to perform, nor for any delay in performance hereunder to the extent that such default is caused directly and solely by a Force Majeure Event duly notified as follows.
- (b) If a Force Majeure Event occurs, the affected party shall:
 - (i) Notify the other party in writing of the Force Majeure Event within 5 Business Days of the occurrence of the Force Majeure Event.
 - (ii) As soon as possible, but in any event within 5 Business Days after the end of the Force Majeure Event, notify the other party in writing that the Force Majeure Event has ended and promptly resume performance of its obligations under the Purchase Order.
- (c) The affected obligations of that party shall be suspended for the duration of the Force Majeure Event.

24.2 (Mitigation): Notwithstanding the occurrence of such Force Majeure Event, the affected party shall use all reasonable endeavours to mitigate the effects of the Force Majeure Event.

24.3 (Right to terminate): Either party shall have the right to terminate a Purchase Order without incurring any liability whatsoever, as a result of a Force Majeure Event in the circumstances contemplated in clause 22.3(d).

25 AMENDMENT

25.1 (Amendment): This Agreement may only be varied by written agreement between the parties from time to time.

25.2 (Effectiveness): Any amendment of this Agreement in accordance with clause 25.1 will have full force and effect as if it was contained in the Agreement on the date that it is signed by the parties.

26 DISPUTE RESOLUTION

26.1 (Informal resolution): The parties will initially attempt to resolve any dispute that may arise between them in relation to the performance of the obligations set out in this Agreement, by informal means and at a time and in a manner acceptable to all parties.

26.2 (Issue of notice): If the parties are not able to resolve their dispute by informal means, either party may issue a notice requiring the dispute be resolved in accordance with this clause 26.

26.3 (Mediation): If, after 7 days from the date of the notice given in accordance with clause 26.2, the parties' dispute remains unresolved, the parties agree to submit to mediation of the dispute.

26.4 (Terms of Mediation): Any mediation of the dispute must:

- (a) take place within the Australian Capital Territory, Australia; and
- (b) be conducted by a mediator selected by the parties, or if no agreement can be reached, by a mediator selected by the President of the Law Society of the Australian Capital Territory.

26.5 (Cost): The cost of mediating the dispute will be borne equally by all parties.

26.6 (Urgent relief): This clause 26 does not prevent any party from seeking urgent injunctive, declaratory or other interlocutory relief.

26.7 (No relief from obligations): Notwithstanding that a negotiation, or mediation of the dispute may have commenced, nothing in this clause is intended to relieve any party from providing their obligations under this Agreement.

27 GENERAL PROVISIONS

27.1 (Notice):

(a) A notice required to be given under this Agreement must be in writing and delivered using any of the following means:

- (i) hand delivery;
- (ii) courier;
- (iii) facsimile transmission; or
- (iv) e-mail,

in each case to the addresses agreed to between the parties to this Agreement from time to time.

(b) A notice is deemed to be received:

- (i) if given by hand delivery, upon delivery during business hours of the recipient;
- (ii) in the case of prepaid post (airmail if applicable), 2 Business Days after the date of dispatch;
- (iii) if sent by courier, on the second Business Day after the date of posting; or

(c) if sent by facsimile transmission or email, on the date that the facsimile or email was sent, provided that the sender receives no notification that the facsimile or email was not successfully received by the recipient or the recipient is 'out of office'.

27.2 (Severance): Any provision of this Agreement which is invalid or unenforceable in a particular jurisdiction, may be read down or severed to the extent of the invalidity or unenforceability in that jurisdiction only. The invalidity or unenforceability of a provision of this Agreement in one jurisdiction does not affect the:

- (a) application of that provision in any other jurisdiction in which it is valid and enforceable; or
- (b) remaining provisions of this Agreement.

27.3 (Authority): Unless this Agreement expressly provides otherwise, no party has the authority to act for, or incur any obligation on behalf of, the other parties.

27.4 (Counterparts): This Agreement may be executed in any number of counterparts which:

- (a) may be executed electronically or in handwriting;
- (b) when taken together constitute one document;
- (c) once executed, are each an effective instrument; and
- (d) will be deemed an original whether kept in electronic or paper form, and all of which taken together will constitute one and the same document.

27.5 (Entire agreement): This Agreement contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations, and commitments, expressed or implied, affecting this subject matter are superseded by this Agreement and have no effect.

27.6 (No merger): On completion or termination of this Agreement, the rights and obligations of the parties set out in this Agreement will not merge and any provision that has not been fulfilled remains in force.

27.7 (Reliance): Each party acknowledges that they have entered this Agreement:

- (a) without reliance on any representation made by Covalent or its officers or agents; and
- (b) having made their own investigation and analysis of all matters relevant to this Agreement.

- 27.8 (Cumulative):** The rights, remedies and powers of the parties under this Agreement are cumulative and not exclusive of any rights, remedies or powers provided to the parties by law.
- 27.9 (Waiver):**
- (a) A right granted to one party under this Agreement may only be waived by that party giving notice in writing to the other party. A party does not waive any right granted under this Agreement merely by not exercising that right immediately.
 - (b) No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.
- 27.10 (Jurisdiction):** This Agreement is governed by the laws in force in the Australian Capital Territory and the parties submit to the exclusive jurisdiction of the Australian Capital Territory Supreme Court (or other appropriate equivalent forum) to decide any dispute between them in relation to this Agreement.

PART B – PROFESSIONAL SERVICES

28 DUTIES OF THE SUPPLIER APPLICABLE TO PROFESSIONAL SERVICES

- 28.1 (Key Personnel):** The Supplier may arrange for some or all of the Professional Services to be provided by one or more Key Personnel provided such Key Personnel have been specified in the Purchase Order and approved by Covalent in its sole discretion. Key Personnel may be varied by written agreement between the parties or by the issuing of a Variation Order in the form set out in Schedule 2.
- 28.2 (Characterisation of Supplier and Key Personnel):** Any Key Personnel provided by the Supplier under this Agreement remains an employee of the Supplier for all purposes. At no time do Key Personnel become the employee(s) of Covalent, and Covalent has no obligation to satisfy any remuneration or other entitlements of the Key Personnel.
- 28.3 (Engagement):** The Supplier is engaged on the basis of an independent contractor and Covalent makes no offer of formal or informal employment to the Supplier.
- 28.4 (Obligations):** The Supplier agrees with Covalent:
- (a) to perform its obligations under this Agreement in a competent and professional manner and to ensure that the Supplier and its Key Personnel are appropriately qualified and skilled;
 - (b) to devote sufficient time and attention to the Services so that the Services are provided, or the contract completed in a timely manner in accordance with Covalent's requirements;
 - (c) to comply with any reasonable requests by Covalent in relation to the provision of the Professional Services;
 - (d) to clearly identify itself as an independent contractor to Covalent when communicating through telephone, email or any other communication tool in the course of providing the Professional Services; and
 - (e) to provide accurate information to Covalent in relation to the Professional Services.
- 28.5 (Location):** Covalent may require the Professional Services to be provided or delivered by the Supplier at the Location or another location notified to the Supplier in Covalent's sole discretion.
- 28.6 (Resources):** The Supplier must use Covalent's resources only for the strict purposes of providing the Professional Services to Covalent; take good care of Covalent's resources; and, at the termination date (or earlier if requested) return them to Covalent in good condition, fair wear and tear excepted.

29 OBLIGATIONS ON COVALENT

Covalent agrees to take all reasonable steps to facilitate the provision of the Professional Services by the Supplier under this Agreement, including providing access to Covalent's systems and resources, to the extent deemed necessary and appropriate by Covalent (in its sole discretion) from time to time.

30 PAYMENT AND DISBURSEMENTS

- 30.1 (Invoicing of Professional Services):** Unless otherwise agreed to between the parties within the Purchase Order or a Variation Order every invoice issued by the Supplier must include all supporting information, including timesheets (which show the number of billable hours spent on each task), invoices or such other documentation as required by Covalent to verify the accuracy of the invoice.
- 30.2 (Failure to provide):** If the Supplier fails to provide timesheets (or any other supporting documentation as requested by Covalent) in accordance with clause 30.1 within 5 Business Days of Covalent requesting such information, then the Supplier will waive any right to claim payment (including any claims in relation to delayed payment) for the relevant Services until the timesheets / supporting documentation are provided.
- 30.3 (Maximum fees):** Notwithstanding anything else in this Agreement, the maximum fees a Supplier may invoice Covalent for is the Price.
- 30.4 (Disbursements):** Covalent will not generally reimburse the Supplier for any Disbursements incurred in providing the Professional Services. Any Disbursements incurred by the Supplier on behalf of Covalent in the provision of the Professional Services, and for which Covalent is to be responsible, must be agreed in

writing by a director or an authorised representative of Covalent in advance of being incurred by the Supplier.

- 30.5 (Invoicing of Disbursements):** Unless otherwise agreed between Covalent and the Supplier, the Supplier will notify Covalent of any agreed Disbursements on the last day of each calendar month and, except where the amount of any Disbursements claimed is disputed by Covalent, Covalent shall reimburse the Supplier within 20 calendar days of receipt of the notice.

SCHEDULE 1 – PURCHASE ORDER SPECIFICATION

PURCHASE ORDER NUMBER: [INSERT NUMBER]

1 PARTIES

COVALENT:

Company name	COVALENT LAND AUSTRALIA PTY LTD
ABN	86 651 229 622
Address for service	
Contact person	
Contact email	
Contact phone number	

SUPPLIER:

Company / entity / person name ('Supplier')	
ABN	
Address for service	
Contact person	
Contact email	
Contact phone number	

2 BACKGROUND

Covalent wishes to appoint the Supplier to perform the Services and / or provide the Goods for the Price set out in this Purchase Order and the Supplier wishes to accept that appointment.

3 GENERAL TERMS

- (a) This Purchase Order made pursuant to clause 3.1 of the Conditions.
- (b) The parties agree that this Purchase Order is entered into subject to the terms and obligations in the Conditions.
- (c) This Purchase Order, once executed, will form an enforceable term of the Conditions and the parties agree that they will perform, or procure the performance of, the terms contained in this Purchase Order in accordance with the Conditions.
- (d) Unless expressly defined within this Purchase Order, all other capitalised terms in this Purchase Order have the meaning set out in the Conditions.

4 INVOICING

[insert particulars for invoicing, if any].

5 GOODS

Item	Description
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1.	Goods and Specifications of Goods	
2.	Delivery Dates	
3.	Site	[insert location Goods / Deliverables to be delivered to]
4.	Price (ex. GST)	
5.	Performance guarantee	[Yes / No]

6 SERVICES

Item	Description	
1.	Services and Specifications of Services	[insert description of Services or Professional Services including any Deliverables]
2.	Hours of work (applicable to Professional Services)	[insert the applicable hours of work]
3.	Maximum Hours (applicable to Professional Services)	[insert maximum hours authorised to provide the Professional Services]
4.	Location (applicable to Professional Services)	[specify the location where the Professional Services must be provided OR leave blank if not applicable]
5.	Key Personnel	[Specify names of any Key Personnel required for the Services]
6.	Start Date	[insert specific date OR if no specific start date state "Upon receipt of Purchase Order"]
7.	End Date	[insert specific date OR if no specific end date state "Until Services are performed"]
8.	Performance guarantee	[Yes / No]
9.	Site	[insert location at which Services are to be performed and Deliverables arising from the Services are to be delivered to]
10.	Price (ex. GST)	

7 SPECIAL CONDITIONS

[insert any terms which deviate from the standard terms and conditions, including, for example, intellectual property sharing and co-development]

SCHEDULE 2 – VARIATION ORDER

Item	Details	
1.	Supplier	Address: [Insert] Contact person: [Insert] Email: [Insert] Phone: [Insert]
2.	Covalent	Address: Unit 6, Level 2, 40 Blackall Street, Barton, ACT, 2600 Contact person: [Insert] Email: [Insert] Phone: [Insert]
3.	Purchase Order to be varied	[insert Purchase Order number]
4.	Goods or Services to be varied	[insert]
5.	Deliverables to be varied	[insert]
6.	Key Dates to be varied	Start Date [insert]
		End Date [insert]
		Milestones [insert]
7.	Price to be varied	[insert]
8.	Payment dates to be varied	[insert] or [N/A]
9.	Relevant Policies and / or Customer Policies	[insert]
10.	Special conditions	[insert]