

Purchase Order Terms and Conditions – WA, NT, SA, NSW, QLD

BGC Contracting

Date – As per Purchase Order

1. Definitions

BGC means the BGC entity named in the Purchaser Order, and its authorised agents, employees, heirs and successors.

Building Code means the *Code for the Tendering and Performance of Building Work 2016* (as in force and varied from time to time) and as applicable to "building work" as defined in the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

Consequential Loss means any indirect or consequential loss or damage arising from a breach of contract, in tort (including negligence), in law, in equity or under statute, including without limitation; loss of use, loss of profit, loss of production, loss of business, loss of opportunity, loss of chance, loss of goodwill, loss of business reputation, loss of access to markets or market share.

Defective means Goods and/or Services (or any aspect of them) which are not in accordance with the Purchase Order or which are damaged, deficient, faulty, inadequate or incomplete.

Delivery Address means the address described as the address to 'Ship To' in the Purchase Order.

Delivery Date means the delivery date specified on the Purchase Order.

Goods means the goods, if any, described on the Purchase Order in the Item Description.

"GST", "GST law" and other terms used in clause 15 have the meanings given to them by the *A New Tax System* (Goods and Services Tax) Act 1999 (as amended from time to time).

Law means:

- (a) Commonwealth, State and local government legislation including regulations, bylaws, orders, awards and proclamations;
- (b) common law and equity;
- (c) Authority requirements and consents, certificates, licences, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals) applicable in connection with the Purchase Order and these terms and conditions, including but not limited to applicable codes of practice and supporting guidelines, employment, industrial relations and workplace relations legislation (including but not limited to the *Fair Work Act 2009*), work health and safety laws and applicable obligations under the *Migration Act 1958* (Cth) and the *Privacy Act 1988* (Cth) and any subordinate legislation; and
- (d) guidelines of Authorities with which the Vendor is legally required to comply.

Purchase Order means the purchase order for Goods and/or Services issued by BGC to the Vendor from time to time containing, amongst other things, a description of the Goods and/or Services.

Price means the price set out in the Purchase Order which is exclusive of GST, but is inclusive of all other costs and charges.

Services means the services, if any, described on the Purchase Order in the Item Description.

SOPA means the security of payment legislation (as amended from time to time) applicable to 'construction work' being undertaken in the State in which the Goods or Services were supplied or performed:

- (a) *Building and Construction Industry Payments Act 2004* (Qld) and *Queensland Building and Construction Commission Act 1991* (QLD);
- (b) *Building and Construction Industry Security of Payment Act 1999* (NSW);
- (c) *Building and Construction Industry Security of Payment Act 2009* (SA);
- (d) *Construction Contracts (Security of Payments) Act 2004* (NT); or
- (e) *Construction Contracts Act 2004* (WA).

Vendor means the party named in the box 'Vendor's name and address' in the Purchase Order.

Vendor Personnel means the Vendor's employees, agents, suppliers or subcontractors.

Warranty Period means the period of 12 months commencing on the date of delivery of the Goods and/or 12 months from the date on which the Services are performed.

2. Supply of Goods or Services

- 2.1. In consideration of payment of the Price by BGC, the Vendor must supply to BGC the Goods and/or perform the Services in accordance with the Purchase Order.
- 2.2. To the extent the Vendor's terms and conditions are supplied with the Goods or Services (including as printed on consignment notes or other documents), those terms and conditions will be of no legal effect and will not constitute part of this Purchase Order (even if any of representative of BGC signs those terms and conditions or annexes the terms and conditions to this Purchase Order).
- 2.3. The parties' relationship is one of principal and independent contractor, not employer and employee, principal and agent or partnership and no contractual relations will arise between any of the Vendor's employees, agents or subcontractors and BGC as a result of the Vendor's and BGC's relationship, and the Vendor does not have the right or authority to act on behalf of or bind BGC unless the Vendor has been expressly authorised by BGC in writing.

3. Delivery

- 3.1. The Vendor must deliver the Goods to the Delivery Address by the Delivery Date.

4. Time for Performance

- 4.1. The Vendor must supply the Goods and/or Services in accordance with the terms of this Purchase Order by the Delivery Date. If the Vendor does not supply the Goods and/or Services by the Delivery Date, BGC, in addition to all other rights and remedies available to BGC, may set off against the Price any additional costs reasonably incurred by BGC (with the exception of those costs excluded under clause 12) as a consequence of the Vendor's failure to supply the Goods and/or Services by the Delivery Date.

5. Title and Risk

- 5.1. Title in the Goods passes to BGC upon the earlier of payment of the Price or delivery of the Goods to the Delivery Address.
- 5.2. Risk in the Goods passes to BGC when the Goods are delivered to the Delivery Address.
- 5.3. If BGC pays any deposit or other part payment of the Price prior to delivery of the Goods to BGC, then the Vendor charges the Goods (and any materials purchased for incorporation into the Goods) with the obligations owed or which may be owed by the Vendor to BGC under or in respect of this Purchase Order, including any obligation to repay any sums paid by BGC in the event of non-delivery of the Goods.
- 5.4. The Vendor shall not part with possession of the Goods, except by delivery to or at the direction of BGC.
- 5.5. The Vendor consents to BGC registering its interest in the Goods on the Personal Property Securities Register. The Vendor shall sign all documents and provide all information and assistance required to effect that registration. The Vendor waives the right to receive a verification statement in relation to any such registration.

6. Price

- 6.1. BGC must pay the Vendor the Price for the Goods and/or Services.
- 6.2. The Price is inclusive of all costs incurred by the Vendor in the supply of the Goods and/or performance of the Services including all charges for taxes, packing, insurance and delivery of the Goods and the cost of any items used or supplied in the performance of the Services.
- 6.3. The Price is inclusive of all taxes and duties, except GST.
- 6.4. Upon supply of the Goods or performance of the Services in accordance with a Purchase Order, the Vendor will submit a claim for payment in the form of a tax invoice.
- 6.5. BGC will pay any undisputed portion of the tax invoice within 45 calendar days from invoice date month unless the Goods or Services is 'construction work' as that term or a similar term is defined in respective State security of payment legislation ("**SOPA**"). With respect to Goods or Services subject to SOPA, payment terms are as follows:
 - (a) WA – payment to be made within 42 days after payment is claimed;
 - (b) NT – payment to be made within 28 days after payment is claimed;

- (c) SA – payment to be made within 15 business days after payment is claimed;
- (d) NSW – payment to be made within 30 business days after payment is claimed;
- (e) QLD – payment to be made within 15 business days after payment is claimed.

6.6. Payment shall not constitute an acceptance by BGC that the Services or Goods are not Defective and shall not in any way effect BGC's rights under the Purchase Order including but not limited to those rights set out in clauses 7 and 9.

7. Quality

- 7.1. The Goods and/or Services must match the description (if any) referred to in the Purchase Order.
- 7.2. If the Vendor gave BGC a sample of the Goods or a demonstration of the Services, the Goods and/or Services must be of the same nature and quality as the sample or demonstration given.
- 7.3. The Goods and/or Services must be fit for the purpose for which Goods and/or Services of the same kind are commonly supplied or bought and for any other purpose BGC specifies.
- 7.4. The Goods must be of merchantable quality, unencumbered and, unless otherwise specified in the Purchase Order, must be new.
- 7.5. All Services provided by the Vendor must be undertaken by persons who are appropriately licensed, qualified and/or trained to provide those Services.
- 7.6. If the Goods are found to be Defective or otherwise do not comply with this clause 7, the Vendor must replace the Goods at the Vendor's cost.
- 7.7. If the Goods are Defective or otherwise do not comply with this clause 7, BGC may hold the Goods for the Vendor at the Vendor's risk. The Goods will be returned at the Vendor's cost.
- 7.8. If the Services are Defective or otherwise do not comply with this clause 7, the Vendor must, if requested by BGC, re-perform the Services at the Vendor's cost.

8. Warranties

- 8.1. The Vendor warrants that:
 - (a) it will provide the Goods and/or Services in a safe manner free from risks to health and safety including (without limitation) in compliance with all safety Laws in the performance of the Services;
 - (b) the Vendor and all Vendor Personnel have the appropriate level of skill, training and competence to perform the Services safely and to a reasonable standard of workmanship expected in the profession or industry of the Vendor and the Vendor Personnel;
 - (c) the Vendor and all Vendor Personnel will comply will all relevant Laws, and policies and procedures of BGC, in the performance of the Services and/or supply of Goods;
 - (d) the Vendor, and all Vendor Personnel, will act consistently with the Building Code in respect of the performance of the Services and the supply of Goods;
 - (e) there is no prohibition, exclusion sanction, restriction or other obligation which would preclude, prevent or hinder the Vendor or the Vendor Personnel from providing the Goods and/or Services in accordance with these Terms, including in respect of the Building Code;
 - (f) it will take all steps needed to ensure that BGC is not subject to any claim or finding that the Vendor and/or any Vendor Personnel are deemed to be employees of BGC;
 - (g) information, documentation and certification provided to BGC are accurate, valid and in good order;
 - (h) the Vendor will not engage in any action that could conflict with BGC's rights or with the Vendor's obligations under these terms and conditions; and
 - (i) the Vendor is aware that BGC is relying on these warranties.

9. Warranty Period

9.1. If, during the Warranty Period, any of the Goods or Services are found to be Defective, and BGC notifies the Vendor accordingly, the Vendor must as soon as practicable:

- (a) repair or replace the Defective Goods; or
- (b) re-perform or make good the Defective Services.

9.2. If the Vendor fails to rectify the Defective Goods or Services, BGC may:

- (a) return the Defective Goods to the Vendor at the Vendor's cost;
- (b) reject the Defective Services;
- (c) replace, repair or make good the Defective Goods or procure a third party to do so; or
- (d) re-perform or make good the Defective Services or procure a third party to do so,

and the Vendor shall reimburse BGC for the reasonable costs incurred by BGC in repairing, replacing, re-performing or making good (as the case may be) any Defective Goods or Services.

9.3. The Vendor must assign the benefits of any warranties provided by manufacturers of the Goods or materials and other components which are used in the performance of this Purchase Order where BGC will ultimately take ownership of those Goods, materials or components.

10. Indemnities

10.1. The Vendor must indemnify BGC and agrees to hold BGC harmless from all claims for:

- (a) injury to or death of any person;
- (b) damage to or destruction of any property belonging to any person,

arising out of or in connection with the supply of Goods or Services, except to the extent that BGC caused or contributed to such injury, death, damage or destruction.

11. Insurance

11.1. The Vendor must obtain and maintain the following insurances:

- (a) if the Vendor is supplying Goods, materials, plant and equipment insurance, including all constructional plant and equipment, in relation to the Goods to be supplied for not less than full replacement value;
- (b) if the Vendor is supplying Goods, transit (all risk) insurance covering transit, loading and unloading of the Goods for not less than full replacement value;
- (c) Workers compensation and employer's liability insurance, covering all claims and liabilities in respect of any statutory or common law liability for the death, injury or illness of or to any person employed by (or deemed to be employed by), the Vendor;
- (d) Public and products liability insurance for an amount not less than \$5,000,000 for any one occurrence (and in the annual aggregate in respect of products liability insurance); and
- (e) any other insurance which is required by law for the time being in force in the State of Western Australia.

11.2. All insurance policies to be obtained by the Subcontractor under this Subcontract must be with an insurer authorised by the Australian Prudential Regulation Authority, with a financial security rating of A- or better by Standard & Poors, or the equivalent rating with another recognised rating agency.

11.3. The Vendor shall provide evidence, to BGC's satisfaction, that it has obtained the insurances that it is obliged to obtain pursuant to these Purchase Order Terms and Conditions.

11.4. Each party must produce evidence to the other party's satisfaction that the insurances required under these Purchase Order Terms and Conditions have been obtained and are being properly maintained.

12. Consequential Loss

12.1. Despite any other provision in these Purchase Order Terms and Conditions, neither party is liable for any Consequential Loss suffered by the other party.

13. Jurisdiction

- 13.1. These Purchase Order Terms and Conditions shall be governed by and construed with reference to the laws of the State or Territory in which the Goods and/or Services are provided.
- 13.2. The parties submit to the non-exclusive jurisdiction of the Courts of that State or Territory.

14. Dispute Resolution

- 14.1. If a dispute or difference arises between BGC and the Vendor in respect of any fact, act, matter or thing arising out of or in any way connected with the Purchase Order and one party requires the dispute or difference to be resolved, then that party shall promptly give the other party a written notice giving details of the dispute.
- 14.2. Within 14 days of a party receiving a notice referred to in clause 14.1, BGC and the Vendor and/or their delegates must meet and attempt to resolve the dispute in good faith.
- 14.3. Any party may, but need not, appoint a delegate/representative of their choice for the purposes of the procedures in this clause.
- 14.4. If, within 14 days of the meeting referred to in clause 14.2, the dispute is still not resolved, then either party may proceed to litigation.
- 14.5. This clause does not prevent a party from electing to follow a process in the applicable SOPA in relation to a dispute about payments in the event that mediation is unsuccessful.

15. Cancellation, Breach and Termination

- 15.1. BGC may for its convenience and in its sole and absolute discretion, cancel all or any portion of a Purchase Order upon 14 days written notice to the Vendor. In the event of cancellation, BGC will be liable for:
- (a) Goods delivered or Services provided before the date of cancellation, the amount which would have been payable if the Purchase Order had not been cancelled;
 - (b) the Vendor's reasonable actual demobilisation costs (not including any amount for overheads or profit);
 - (c) the reasonable costs of goods or materials reasonably ordered by the Vendor for the Goods, provided that the value of the goods or materials is not included in clause 14.1(a) and the title in the goods or materials will vest in BGC on payment; and
 - (d) the costs reasonably incurred by the Vendor in preparing for the supply of Services or in part-performing the Services, provided that the value of those preparatory or part-performed Services is not included in clause 15.1(a).
- 15.2. If the one party commits a breach of the Purchase Order ("**Defaulting Party**") then without limiting any other rights of the other party ("**Affected Party**") upon breach or repudiation by the Defaulting Party, the Affected Party may by notice in writing serve a notice entitled 'Default Notice' on the Defaulting Party. The Default Notice shall:
- (a) state that it is a notice under this clause;
 - (b) specify the breach upon which it is based; and
 - (c) if the default is capable of rectification, specify the time (which must be reasonable in the circumstances) within which the default must be rectified.
- 15.3. If the Defaulting Party does not remedy a breach to the Affected Party's reasonable satisfaction within the time prescribed in a Default Notice, the Affected Party may:
- (a) in the case of substantial breach terminate the Purchase Order immediately by written notice to the Defaulting Party;
 - (b) in all other cases, carry out or engage others to carry out the obligation on the Defaulting Party's behalf and any costs incurred shall be a debt due by the Defaulting Party to the Affected Party; or
 - (c) take such alternative action as it sees fit.
- 15.4. The parties' respective rights and remedies under clause 15 are without prejudice to any other rights and remedies they may have under the Purchase Order or at law.

16. Goods and Services Tax (GST)

- 16.1.** Unless otherwise stated, the Price or any other amounts payable by BGC to the Vendor, is exclusive of GST.
- 16.2.** If a Supply under this agreement is subject to GST, BGC will pay to the Vendor an additional amount equal to the amount of the Price multiplied by the prevailing GST rate.
- 16.3.** The additional amount under clause 16.2 is payable at the same time as the amount payable for the Supply is to be paid. However, the GST need not be paid until the Vendor provides a Tax Invoice to BGC.
- 16.4.** If the amount of GST payable in accordance with clause 16.3 is found to differ from the amount paid in relation to a Supply then:
- (a) If the amount of GST paid is more than is required under the GST law the Vendor shall refund the excess amount to BGC;
 - (b) If the amount of GST paid is less than is required under the GST law, BGC shall pay the Vendor the difference.
- 16.5.** For the purposes of calculating further variations under clause 16.4, any additional amount referred to in clause 16.2 is taken to be amended by the amount of any earlier variation made under clause 16.4.
- 16.6.** If either BGC or the Vendor is entitled to be reimbursed or indemnified under these Purchase Order Terms and Conditions, the amount to be reimbursed or indemnified by either party is to be the GST exclusive amount. For the avoidance of doubt, the amount of any reimbursement does not include any amount attributable to GST for which either BGC or the Vendor is entitled to an Input Tax Credit.



SPECIAL CONDITIONS OF PURCHASE

for use with Purchase Order Terms and
Conditions

DELAMERE WORKS PROJECT
Civil Works Internal

BGC Contracting Pty Ltd [ABN: 88 008 766 407] (**BGC**)

[Insert name of Vendor] [ABN] (**Vendor**)

Contents

SC01 – Definitions in Purchase Order Terms and Conditions.....	4
SC02 – Confidentiality.....	8
SC03 – Vendor’s Obligations.....	8
SC04 – Vendor Insurance Obligations.....	8
SC05 – Access to Premises and Project Documents.....	8
SC06 – Not Used.....	9
SC07 – Subcontracting.....	9
SC08 – Vendor and Sub-Vendor Warranties.....	9
SC09 – Not Used.....	9
SC10 – Work Health and Safety Management.....	9
SC11 – The Environment.....	11
SC12 – Not Used.....	12
SC13 – Not Used.....	12
SC14 – BGC’s Entitlements after Termination.....	12
SC15 – Workplace Gender Equality.....	12
SC16 – Long Service Leave.....	12
SC17 – Sub-Purchase Orders.....	13
SC18 – Classified Information.....	14
SC19 – PPSA.....	14
SC20 – Not Used.....	15
SC21 – State Code.....	15
SC22 – Not Used.....	17
SC23 – Integrity.....	17
SC24 – Warranty Period.....	22
SC25 – Head Contract Special Conditions.....	23
SC26 – Vendor’s Warranties.....	25
SC27 – Notice of Potential Claims on an Insurance Policy.....	25
SC28 – Payment of Workers and Sub-Vendors.....	25
SC29 – Safe Base Alert State System.....	26
SC30 – Protection of Personal Information.....	26
SC31 – Not Used.....	28
SC32 – Building Code 2016.....	28
SC33 – Not Used.....	30
SC34 – Discrepancies.....	30
SC36 – Not Used.....	30

SC37 - Not Used	30
SC38 – Not Used.....	30
SC39 – Not Used.....	30
SC40 – Not Used.....	30
ANNEXURE A – COLLATERAL WARRANTY	31
ANNEXURE B – NOT USED.....	32
ANNEXURE C – NOT USED.....	33
ANNEXURE D – VENDOR DEED OF COVENANT	34
ANNEXURE E – NOT USED.....	43
ANNEXURE F - PROFORMA BUILDING CODE 2016 PURCHASE ORDER PROVISIONS.....	44

The following Special Conditions apply to this Purchase Order;

SC01 – Definitions in Purchase Order Terms and Conditions.

In these Special Conditions, unless the context indicates otherwise:

- (a) if a term is defined in these Special Conditions and also defined in the Purchase Order Terms and Conditions, the definition in these Special Conditions applies throughout the Purchase Order and the definition of that term in the Purchase Order Terms and Conditions is deemed to be deleted;
- (b) if a term is defined in the Purchase Order Terms and Conditions but not defined in these Special Conditions, the term as defined in the Purchase Order Terms and Conditions has the same meaning in these Special Conditions;
- (c) reference to GC is a reference to a clause in the Purchase Order Terms and Conditions.

The following additional definitions apply;

Approval means any licence, permit, consent, approval, determination, certificate, notice or other requirement of any Commonwealth, State, Territory or local authority, body or other organisation having any jurisdiction in connection with the Site, the Goods or the Services or under any other applicable Law, which must be obtained or satisfied to:

- (a) carry out the Services; or
- (b) service, occupy and use the completed Goods and Services.

BGC means BGC Contracting Pty Ltd.

Building Code 2016 means the Code for the Tendering and Performance of Building Work 2016 made under section 34 of the Building and Construction Industry (Improving Productivity) Act 2016.

Claim means any claim for:

- (a) an extension of the time within which the Vendor must deliver Goods, complete Services, or perform any obligation under or in connection with this Purchase Order;
- (b) a declaration or order to the effect that time is at large;
- (c) adjustment to the Price or any other consideration payable by BGC for Services; or
- (d) recovery of any costs, loss, damages, liabilities, expenses or other amounts of any kind arising:
 - (i) under this Purchase Order;
 - (ii) out of or in connection with the Services;
 - (iii) to the extent permitted by law, under any Law; or
 - (iv) relief from any of the Vendor's obligations or liabilities under this Purchase Order,

whether under this Purchase Order or otherwise at law or in equity (including under statute, in tort (including negligence), quantum meruit, unjust enrichment or restitution).

Collateral has the meaning given in the PPSA.

Collateral Warranty means a warranty in the form set out in Annexure A.

Commonwealth means Commonwealth of Australia

Contamination means the presence in, on or under land, air or water of a substance (whether a solid, liquid, gas, odour, heat, sound, vibration or radiation) at a concentration above the concentration at which the substance is normally present in, on or under land, air or water in the same locality, that presents a risk of Environmental Harm, including harm to human health or any other aspect of the Environment, or could otherwise give rise to a risk of non-compliance with any Law for the protection of the Environment.

Contractor Risks means any one of:

- (a) war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection or military or usurped powers, martial law or confiscation by order of any government or public authority;
- (b) the use or threat of unlawful violence against persons or property which does not arise out of any individual relationship between the perpetrator and the victim, or for purposes of robbery, but which is directed at victims as members of a class, race, organisation, nationality, religious or ethnic group, or which is intended to intimidate, coerce or inflict revenge upon any civilian population, government, institution or corporation; and
- (c) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Vendor or any Sub-vendor or any of their employees or agents.

Date of MCC Works Completion means the date on which Lendlease brings the MCC Works, or a relevant stage of the MCC Works to completion (as defined in the Managing Contractor Contract).

Defence Environmental Management System means the environmental management system applicable to the Site (if any) available from the Commonwealth's regional environmental officer.

Defence Environmental Plan means the environmental plan applicable to the Site (if any) available from the Commonwealth's regional environmental officer.

Defence Environmental Requirements means the Defence Environmental Management System and Defence Environmental Plan which relate to the Site or the Services and includes any procedures, instructions, requirements and standing orders which have been developed or issued under the Defence Environmental Management System or Defence Environmental Plan (as the case may be).

Defence Requirements includes all policies, plans, manuals, guidelines, instructions (including departmental procurement policy instructions) and other Commonwealth or Department of Defence requirements which are, or may become, applicable to the Site, or the Services. To the extent that any of the requirements would require or suggest the insertion of provisions into this Purchase Order, then:

- (a) those provisions will be incorporated by reference into this Purchase Order; and
- (b) any ambiguity, discrepancy or inconsistency arising out of the incorporation by reference will be resolved by the MCC Contract Administrator.

Environmental Clearance Certificate is the Environmental Clearance Certificate issued by the Commonwealth relating to the MCC Works or the Services and any conditions incorporated in that certificate.

Environmental Harm means any actual or threatened adverse impact on, or damage to, the Environment.

Environmental Incident means any Environmental Harm or Contamination caused by or in relation to the Services.

Environmental Objectives

The Environmental Objectives are to:

- (a) encourage best practice environmental management through planning, commitment and continuous improvement;
- (b) prevent and minimise adverse impacts on the Environment;
- (c) identify the potential for, and respond to, Environmental Incidents, accidents and emergency situations and take corrective action;
- (d) identify and control possible environmental hazards associated with the Services;
- (e) establish procedures to ensure that no hazardous substance is stored on Commonwealth land without approval;
- (f) recognise and protect any special environmental characteristics of the Site (including cultural heritage significance);
- (g) define roles and responsibilities for personnel;
- (h) ensure environmental training and awareness programmes are provided to employees and Sub-Vendors;
- (i) ensure Sub-Vendors implement the Environmental Management Plan;
- (j) define how the management of the Environment during the Services is reported and performance evaluated;
- (k) describe all monitoring procedures required to identify impacts on the Environment as a result of the Services;
- (l) implement complaint reporting procedures and maintain records of complaints and response to complaints; and
- (m) establish and maintain programs and procedures for periodic Environmental Management Plan audits to be carried out.

Environmental Requirements includes:

- (a) the Environmental Clearance Certificate;
- (b) the Defence Environmental Requirements; and
- (c) any other matter or requirement specified in the Purchase Order.

Law – amend the definition in GC1 by adding the following:

- (d) Defence Requirements; and
- (e) Environmental Requirements.

Lendlease means Lendlease Building Pty Limited and is the Principal.

Managing Contractor Contract (MCC) is the contract between Lendlease and the Commonwealth described as (MCC-1 2003) – R8092 Growler Airborne Electronic Attack Capabilities Project (incorporating R8097 Delamere Works Project via Deed of Amendment No. 2).

MCC Contracts Administrator administers the Managing Contractor Contract and is RPSPM Pty Ltd.

MCC Works means the works to be performed by Lendlease pursuant to the MCC.

OMM means Operation and Maintenance Manual.

PPSA means the Personal Property Securities Act 2009 (Cth).

PPS Register means the Personal Property Securities Register established under the PPSA.

Project Documents means any and all documents provided to or prepared by the Vendor in connection with the Purchase Order including but not limited to drawings, specifications, project plans, procedures, manuals, approvals, IT systems, software, reports, invoices, warranties, correspondence and the like.

Related Entity/ Entities has the meaning in the Building Code 2016.

SC means Special Condition.

Security of Payment Act means the *Building and Construction Industry Payments Act 2004 (Qld)*.

Security Interest has the meaning given in the PPSA.

Sub-Purchase Order means a contract between the Vendor and a Sub-Vendor.

Sub-Vendor means any vendor engaged by the Vendor to perform any part of the Services on the Vendor's behalf and includes that vendor's agents, employees and consultants.

Vendor Deed of Covenant means a Vendor deed of covenant in the form attached in Annexure D.

Warranty Period means the period which commences on the Delivery Date and/or from the date on which the Services are performed, and which continues for 12 months from the Date of MCC Works Completion, as extended in SC24.2.

WHS Legislation means:

- (a) Work Health and Safety Act 2011 (NSW) and Work Health and Safety Regulation 2011 (NSW);
- (b) Work Health and Safety Act 2011 (QLD) and Work Health and Safety Regulation 2011 (QLD);
- (c) Work Health and Safety Act 2011 (ACT) and Work Health and Safety Regulation 2011 (ACT);
- (d) Work Health and Safety (National Uniform Legislation) Act 2011 (NT) and Work Health and Safety (National Uniform Legislation) Regulations 2011 (NT);
- (e) Work Health and Safety Act 2011 (Cth) and Work Health and Safety Regulations 2011 (Cth);
- (f) Work Health and Safety Act 2012 (SA) and Work Health and Safety Regulations 2012 (SA);
- (g) Work Health and Safety Act 2012 (TAS) and Work Health and Safety Regulations 2012 (TAS);
- and
- (h) any legislation in other States and Territories of Australia addressing work health and safety.

SC02 – Confidentiality

This Purchase Order and the Project Documents are confidential. The Vendor must:

- (i) not disclose any of the Purchase Order or the Project Documents without the prior written consent of BGC except to the extent that the disclosure is required for the Vendor to carry out its obligations under the Purchase Order; and
- (ii) ensure that any Sub-Purchase Order in connection with this Purchase Order is required to comply with the Vendor's obligations arising under this SC02 as if the Sub-Vendor were the Vendor.

SC03 – Vendor's Obligations

The Vendor acknowledges and agrees that it will comply with all Project Documents and the requirements of the Purchase Order and that it shall perform all of the Services so as to ensure that they comply with the requirements of, and BGC discharges its obligations under, the Head Contract.

SC04 – Vendor Insurance Obligations

Vendor must ensure that each of its Sub-Vendors that are legally required to do so, has Workers Compensation Insurance covering the Sub-Vendors in respect of its statutory liability to employees, in the same manner as the Vendor is required to do so under the Purchase Order.

SC05 – Access to Premises and Project Documents

The Vendor must:

- (a) at the request of BGC at any time during the performance of the Purchase Order and the period of 10 years following the end of the Warranty Period:
 - (i) provide access to its premises and make the Project Documents available for inspection and copying by BGC or any other person nominated by BGC;
 - (ii) provide to BGC such copies of the Project Documents as BGC or any nominated person may require;
 - (iii) provide all such facilities and assistance and answer all questions of BGC or any nominated person; and
 - (iv) make available any officers, employees, agents or Sub-Vendors for interviews with BGC or any nominated person;
- (b) ensure that any Sub-Purchase Order made in connection with this Purchase Order contains enforceable obligations requiring the Sub-Vendor to comply with the Vendor's obligations arising under this SC05 as if the Sub-Vendor were the Vendor.

SC06 – Not Used

SC07 – Subcontracting

The Vendor must not without the prior written approval of BGC, subcontract any part of the Services to a Sub-Vendor.

The Vendor:

- (a) will remain responsible for all Sub-Vendors and for all Goods and Services which are or may be the subject of a Sub-Purchase Order, as if it was itself supplying the Goods or performing the Services, whether or not any Sub-Vendors default or otherwise fail to observe any of the requirements of the relevant Sub-Purchase Order;
- (b) will be vicariously liable to BGC for all acts, omissions and defaults of its Sub-Vendors;
- (c) must ensure that each Sub-Purchase Order contains provisions:
 - (i) which bind the Sub-Vendor to participate in any novation required by BGC if BGC terminates the Purchase Order for any reason; and
 - (ii) as otherwise required by this Purchase Order.

SC08 – Not Used

SC09 – Not Used

SC10 – Work Health and Safety Management

Without limiting the provisions of the Purchase Order:

- (a) Vendor must ensure that in carrying out the Services:
 - (i) it complies with:
 - A. all Law;
 - B. the requirements of Lendlease's Global Minimum Requirements;
 - C. BGC's Site Specific Health and Safety requirements as per the Work Health and Safety Plan; and
 - D. all other requirements of the Purchase Order for work health and safety management;
 - (ii) all Sub-Vendors comply with the requirements referred to in this SC10; and
 - (iii) it complies with its duty under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
- (b) without limiting the Vendor's obligations under this Purchase Order or at Law, notify BGC immediately (and in any event within 8 hours of such matter arising) of all work health and

safety matters arising out of, or in any way in connection with, the Services, including the occurrence of notifiable incidents within the meaning of the WHS Legislation;

- (c) if applicable, comply with all requirements of and maintain accreditation under the OHS Accreditation Scheme;
- (d) institute systems to obtain regular written assurances from each Sub-Vendor about their ongoing compliance with the WHS Legislation including the due diligence obligation contained in the WHS Legislation;
- (e) provide the written assurances obtained under paragraph (d), together with written assurances from the Vendor about the Vendor's ongoing compliance with the WHS Legislation, to BGC;
- (f) if and when required by BGC, provide BGC with a written report on all work health and safety matters (including matters concerning or arising out of, or in connection with, this SC10), or any other relevant matters as BGC may require from time to time, including a summary of the Vendor's compliance with the WHS Legislation;
- (g) exercise a duty of the utmost good faith to BGC, Lendlease and the Commonwealth in carrying out the Services to enable BGC to discharge their duties under the WHS Legislation;
- (h) ensure its Sub-Purchase Orders include provisions equivalent to the obligations of the Vendor in this SC10;
- (i) ensure that, if any Law, including in the State or Territory in which the Delivery Address is situated or the Services are carried out (as the case may be), requires that:
 - (i) a person:
 - A. be authorised or licensed (in accordance with the WHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; or
 - B. has prescribed qualifications or experience, or if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or
 - (ii) a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;
- (j) not direct or allow a person to carry out work, or use plant or a substance at a workplace unless the authorisation, licensing, prescribed qualifications or experience required by any Law and paragraph (i) are met;
- (l) without limiting the Vendor's obligations under this Purchase Order or at Law:
 - (i) provide any information or copies of documentation held by the Vendor or a Sub-Vendor to BGC within 12 days of a request by BGC (and in the case of notifiable incidents, immediately and if not immediately, as soon as that information is in the possession of the Vendor), to enable BGC, Lendlease and the Commonwealth to comply with their obligations under the WHS Legislation; and

- (ii) provide copies of:
 - A. all notices and communications issued by a regulator, agent of the regulator or a health and safety representative to the Vendor or a Sub-Vendor; and
 - B. all notices, communications and undertakings given by the Vendor or a Sub-Vendor to the regulator, agent of the regulator or a health and safety representative,

in connection with or related to the Services to BGC within 14 days of receipt or submission of the notice, communication or undertaking by the Vendor or Sub-Vendor (as the case may be); and
- (m) if requested by BGC or required by the WHS Legislation, produce evidence of any Approvals including any authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of BGC before the Vendor or any Sub-Vendor commences such work.

SC11 – The Environment

The Vendor must:

- (a) ensure that in carrying out the Services:
 - (i) other than to the extent identified in writing by BGC, it complies with all Law and other requirements of the Purchase Order for the protection of the Environment;
 - (ii) it does not cause any Environmental Incident;
 - (iii) without limiting subparagraph (ii), it does not cause or contribute to Contamination of the Site or any other land, air or water, or cause or contribute to any Contamination emanating from the Site;
 - (iv) it immediately notifies BGC of:
 - A. any non-compliance with the requirements of this SC11;
 - B. a breach of any Law for the protection of the Environment;
 - C. any Environmental Incident; or
 - D. the receipt of any notice, order or communication received from an authority for the protection of the Environment; and
 - (v) its Sub-Vendors comply with the requirements referred to in this SC11; and
- (b) clean up and restore the Environment, including any Contamination or Environmental Harm, arising out of, or in any way in connection with, the Services, whether or not it has complied with all Law or other requirements of the Purchase Order for the protection of the Environment.

SC12 – Not Used

SC13 – Not Used

SC14 – BGC’s Entitlements after Termination

Nothing in GC14 or that BGC does or fails to do pursuant to GC14 will prejudice the right of BGC to exercise any right or remedy (including recovering damages) which it may have where the Vendor breaches (including repudiates) the Purchase Order.

If BGC terminates the Purchase Order pursuant to GC14 or if the Supplier repudiates the Purchase Order and BGC otherwise terminates the Purchase Order:

- (a) BGC will:
 - (i) be entitled to take over and use, or require the Supplier to remove from the Site, the Goods and all materials, equipment and other things intended for the performance of the Services;
 - (ii) be entitled to require the Vendor to novate to BGC or the BGC’s nominee, any or all Sub-Purchase Orders between the Vendor and its Sub-Vendors as required by BGC;
 - (iii) to the extent permitted by the relevant Security of Payment Act, not be obliged to make any further payments to the Vendor, including any money the subject of a payment claim or a payment statement under the Purchase Order; and
 - (iv) be entitled to recover from the Vendor any costs, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, such termination; and
- (b) the Vendor must immediately hand over to BGC all copies of:
 - (i) documents provided by BGC in connection with the Purchase Order; and
 - (ii) Project Documents prepared by the Vendor to the date of termination (whether complete or not).

SC15 – Workplace Gender Equality

The Vendor must:

- (a) comply with its obligations under the Workplace Gender Equality Act 2012 (Cth); and
- (b) not enter into a Sub-Purchase Order made in connection with this Purchase Order with a Sub-Vendor named by the Workplace Gender Equality Agency as an employer currently not complying with the Workplace Gender Equality Act 2012 (Cth).

SC16 – Long Service Leave

SC16 only applies if any relevant Long Service Leave Legislation applies to the Services.

- (a) Without limiting its other obligations or liabilities under this Purchase Order or otherwise, the Vendor must comply with its obligations under any relevant Long Service Leave Legislation.

- (b) If required by any relevant Long Service Leave Legislation, the Vendor must pay any levy, charge, contribution or associated amount in respect of the Services.
- (c) Any amount paid by the Vendor under paragraph (b) is deemed to be included in the Purchase Order Price and the Vendor will have no Claim against BGC arising out of or in connection with its obligations under this SC16 or any other obligation under the relevant Long Service Leave Legislation.
- (d) In this SC16, Long Service Leave Legislation means:
 - (i) Long Service Leave (Portable Schemes) Act 2009 (ACT);
 - (ii) Building and Construction Industry Long Service Payments Act 1986 (NSW);
 - (iii) Construction Industry Long Service Leave and Benefits Act 2005 (NT);
 - (iv) Building and Construction Industry (Portable Long Service Leave) Act 1991 (Qld);
 - (v) Construction Industry Long Service Leave Act 1987 (SA);
 - (vi) Construction Industry (Long Service) Act 1997 (Tas);
 - (vii) Construction Industry Long Service Leave Act 1997 (Vic);
 - (viii) Construction Industry Portable Paid Long Service Leave Act 1985 (WA);
 - (ix) the long service leave obligations in the National Employment Standards in the Fair Work Act 2009 (Cth); and
 - (x) any Act in a State or Territory of Australia addressing long service leave in the building and construction industry.

SC17 – Sub-Purchase Orders

- (a) If the Vendor subcontracts the Services (or part of the Services) or engages a labour hire firm to provide labour in connection with the Services in accordance with SC07, the Vendor must:
 - (i) ensure that it obtains from any person to whom it subcontracts the Services (or a part of the Services) or the labour hire firm it engages to provide labour in connection with the Services:
 - A. written confirmation in the form of a statutory declaration that all remuneration and other entitlements payable to, or on behalf of, the employees engaged in the performance of the Services have been paid; and
 - B. written evidence of the currency of the workers compensation insurance;
 - (ii) have a written evaluation process for the appointment of labour hire firms to provide labour in connection with the Services, including ensuring that:
 - A. any registration or licences required to undertake the relevant task (if applicable) are in place;
 - B. the labour hire firm has a commitment to operating incident and injury free.
- (b) The Vendor must ensure that equivalent obligations to those contained in this SC17 are imposed in any Sub-Purchase Orders in connection with the performance of the Services. The

Vendor must provide to BGC upon request, copies of the documents described above, together with such other documents as BGC may reasonably request in relation to the engagement by the Vendor of any Sub-Vendor or a labour hire firm to provide labour in connection with the Services.

SC18 – Classified Information

- (a) At the request of BGC, the Vendor must:
 - (i) comply with the Commonwealth's security clearance process;
 - (ii) obtain the level of security clearance requested by the Commonwealth; and
 - (iii) comply with all security policies and procedures notified by the Commonwealth from time to time.
- (b) Without limiting SC02, the Vendor must not disclose any Classified Information unless the disclosure:
 - (i) is strictly in accordance with the provisions of the Defence Security Manual (available upon request); and
 - (ii) has first been approved in writing by BGC.
- (c) In giving any approval to the Vendor under paragraph (b), BGC may impose such conditions as BGC thinks fit, including conditions requiring any recipient of Classified Information to obtain a level of security clearance and to enter into a deed in a form acceptable to BGC.
- (d) Without limiting clause SC02, the Vendor must handle and store any Classified Information in its possession or control strictly in accordance with the provisions of the Defence Security Manual.
- (e) The Vendor must ensure that any Sub-Purchase Order made in connection with this Purchase Order contains enforceable obligations requiring the Sub-Vendor to comply with the Vendor's obligations arising under this clause SC18 as if the Sub-Vendor were the Vendor.
- (f) For the purposes of this SC18:
 - (i) Classified Information includes:
 - A. any Commonwealth document marked with a national security classification; and
 - B. any information or document that the Vendor knows or ought to know is subject to, or ought to be treated in accordance with, the provisions of the Defence Security Manual; and
 - (ii) Defence Security Manual is a reference to that document as amended from time to time.

SC19 – PPSA

- (a) If the Vendor believes that a Security Interest arises under this Purchase Order it must notify BGC at least 7 days before the Vendor takes steps to register such Security Interest on the PPS Register.
- (b) Within 12 days of the earlier of:

- (i) the expiry or termination of this Purchase Order; or
- (ii) receipt of the Price,

the Vendor will at its cost procure the removal from the PPS Register each Security Interest it has registered in respect of the Goods or the Services, and must provide BGC with verification of the removal of the Security Interests pursuant to section 157 of the PPSA.

- (c) The parties agree that for the purposes of section 115 of the PPSA, the following sections of the PPSA will not apply to any Collateral which is the subject of a Security Interest:
 - (i) section 120 (enforcement of liquid assets);
 - (ii) section 126 (apparent possession); and
 - (ii) section 128 (secured party may dispose of collateral).

SC20 – Not Used

SC21 – State Code

- (a) The provisions of this clause SC21 apply if the Purchase Order is in relation to, or is connected with, building work to which the State Code and State Guidelines apply. Copies of the State Code and State Guidelines are available on the State Industrial Relations Website.

Primary Obligation

- (b) To the maximum extent permitted by law, the Vendor must comply with, and meet any obligations imposed by, this SC21 and the State Code and State Guidelines.
- (c) The Vendor must immediately notify BGC and the State Code Monitoring Group of any alleged breaches of the State Code and State Guidelines and of any voluntary remedial action taken.
- (d) The Vendor must ensure that all Sub-Purchase Orders it enters into impose obligations on Sub-Vendors equivalent to the obligations imposed on the Vendor under this SC21.
- (e) The Vendor must not appoint or engage a Sub-Vendor where that appointment or engagement would breach a sanction imposed on the Sub-Vendor in relation to the State Code or State Guidelines.

Access and Information

- (f) The Vendor must maintain adequate records of compliance with the State Code and State Guidelines by it, its Sub-Vendors and Related Entities.
- (g) The Vendor must allow, and take reasonable steps to facilitate, BGC and State Government authorised personnel (including personnel of the State Code Monitoring Group) to:
 - (i) enter and have access to sites and premises controlled by the Vendor;
 - (ii) inspect any work, material, machinery, appliance, article or facility;
 - (iii) access information and documents;
 - (iv) inspect and copy any records relevant to the project;
 - (v) have access to personnel; and

(vi) interview any person,

as is necessary for the authorised personnel to monitor and investigate compliance with the State Code and State Guidelines by the Vendor, its Sub-Vendors and Related Entities.

(h) The Vendor must (and must ensure that its Sub-Vendors and Related Entities) comply with any requests from BGC or State Government authorised personnel (including personnel of the State Code Monitoring Group) for the production of specified documents by a certain date, whether in person, by post or electronic means.

Sanctions

(i) The Vendor warrants that at the time of entering into this Purchase Order, neither it, nor any of its Related Entities, was subject to a sanction in connection with the State Code or State Guidelines that would have precluded it from tendering for work to which the State Code and State Guidelines apply.

(j) The Vendor acknowledges and agrees that if it does not comply with, or fails to meet any obligation imposed by, the State Code or State Guidelines, a sanction may be imposed against it in connection with the State Code or State Guidelines.

(k) The Vendor acknowledges and agrees that where a sanction is imposed against it in connection with the State Code or State Guidelines:

(i) it is without prejudice to any rights that would otherwise accrue; and

(ii) the State Government (through its agencies, Ministers and the State Code Monitoring Group) is entitled to:

A. record and disclose details of non-compliance with the State Code or State Guidelines and the sanction; and

B. take details of non-compliance with the State Code or State Guidelines and the sanction into account in the evaluation of future expressions of interest or tender responses that may be lodged by the Vendor or its Related Entities in respect of work to which the State Code and State Guidelines apply.

Compliance

(l) The Vendor:

(i) bears the cost of ensuring its compliance with the State Code and State Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the State Code and State Guidelines; and

(ii) is not entitled to make any claim for reimbursement of time or costs from BGC or the State Government.

(m) Compliance with the State Code and the State Guidelines does not relieve the Vendor from responsibility to perform the Services in accordance with the Purchase Order, or from any other obligation under the Purchase Order, or from any other legal liability whether or not arising from its compliance with the State Code and State Guidelines.

- (n) Where a change in the Purchase Order or the Services is proposed and that change would, or would be likely to, affect compliance with the State Code and State Guidelines, the Vendor must immediately notify BGC of the change, or likely change, and specify:
- (i) the circumstances of the proposed change;
 - (ii) the extent to which compliance with the State Code and State Guidelines will, or is likely to, be affected by the change; and
 - (iii) what steps the Vendor proposes to take to mitigate any adverse impact of the change;
- and BGC will direct the Vendor as to the course of action it must adopt in relation to the proposed change.
- (o) In this SC21:
- (i) **“State Code”** means, to the extent applicable to the Services, the New South Wales Code of Practice for Procurement: Building and Construction or the Queensland Code of Practice for the Building and Construction Industry.
 - (ii) **“State Code Monitoring Group”** means the unit established to monitor compliance with and receive reports of alleged breaches of the State Guidelines, including, to the extent applicable to the Services the Construction Compliance Unit (New South Wales) or the Building and Construction Code Branch (Queensland).
 - (iii) **“State Guidelines”** means, to the extent applicable to the Services, the Implementation Guidelines to the New South Wales Code of Practice for Procurement: Building and Construction, or the Implementation Guidelines to the Queensland Code of Practice for the Building and Construction Industry.
 - (iv) **“State Industrial Relations Website”** means, to the extent applicable to the Services, <http://www.industrialrelations.nsw.gov.au> or <http://www.justice.qld.gov.au/building-and-construction-industry-guidelines>.

SC22 – Not Used

SC23 – Integrity

23.1 Representations, warranties and undertakings

- (a) The Vendor warrants and represents that:
- (i) it is a Fit and Proper person to enter into the Purchase Order, and to perform the services in connection with the Purchase Order and to its knowledge, having made reasonable enquiries, its Associated Persons are Fit and Proper persons;
 - (ii) to its knowledge, having made necessary enquiries, it is in compliance with all Applicable Anti-corruption Laws and is not the subject of any Applicable Sanctions or located, organised or resident in a country or territory that is the subject of any Applicable Sanction;
 - (iii) prior to the date of the Purchase Order, including any procurement, tender process and/or negotiations preceding the Purchase Order, it has not committed any act or

- omission which causes or could cause it or BGC to breach, or commit an offence under Applicable Anti-corruption Laws;
- (iv) it has no Government Officials as direct or indirect owners, officers or employees at the date of the Purchase Order;
 - (v) neither the Vendor nor any of its Associated Persons, to the best of its knowledge and belief having made reasonable enquiries:
 - A. has been convicted of any offence involving money laundering or sanctions, bribery or corruption, fraud or dishonesty, including under Applicable Anti-corruption Laws, or admitted to such conduct;
 - B. has been or is listed by any government agency as being excluded, debarred, suspended, proposed for exclusion, suspension or debarment, or otherwise ineligible to undertake work funded by any government; or
 - C. has been disqualified from managing corporations under relevant laws, or has been found to be in breach of statutory and other obligations of directors and office holders under relevant laws.
- (b) The Vendor warrants that in relation to its performance under the Purchase Order it will:
- (i) comply with all Applicable Anti-corruption Laws and the Lendlease Code of Conduct, and ensure that its employees and Associated Persons understand and comply with Applicable Anti-corruption Laws and the Lendlease Code of Conduct;
 - (ii) not, for the avoidance of doubt, either directly or indirectly, offer, make, cause to be made or accept any form of bribe, kickback, Facilitation Payment or political donation in connection with the Purchase Order or otherwise for or on behalf of BGC;
 - (iii) immediately report to BGC any request or demand for any undue financial or other advantage of any kind received by the Vendor, or any offer of undue financial or other advantage of any kind to the Vendor, in connection with the performance of the Purchase Order;
 - (iv) immediately notify BGC in writing if:
 - A. it becomes aware of, or suspects, any breach of the representations, warranties and undertakings in this SC23;
 - B. a Government Official or family member of a Government Official becomes an officer or employee of the Vendor or acquires a direct or indirect interest in the Vendor;
 - C. it becomes aware that a Probity Event has occurred or is likely to occur.
- (c) All notices required by clause SC23(b)(iv) above must, at a minimum, describe the relevant event, when it occurred or is likely to occur and the circumstances giving rise to the actual or likely occurrence of the relevant event.
- (d) Where requested by BGC, within twelve months of the Commencement Date, and annually thereafter during the term, the Vendor must certify to BGC in writing compliance with this

clause SC23 by the Vendor and its Associated Persons. The Vendor shall provide such supporting evidence of compliance as BGC may reasonably request.

23.2 Assignment, subcontracting and delegation

(a) Subject to SC17, the Vendor will not, without prior written consent of BGC, assign or delegate any of its rights or obligations under the Purchase Order to a third party or Sub-Vendor or otherwise enter into any arrangement to share the obligations or fees under the Purchase Order.

(b) The Vendor will ensure that:

(i) all Associated Persons;

(ii) and any other person which the Vendor may engage,

who performs services or provides goods in connection with this Purchase Order does so only on the basis of a written contract which must include the same terms as those imposed on the Vendor in SC23.

(c) The Vendor is responsible for ensuring all Associated Persons and other persons it engages who performs services or provides goods in connection with this Purchase Order observe, perform and discharge the obligations in SC23, and the Vendor is directly liable to BGC for any breach of those terms by those persons.

23.3 Books and records

(a) The Vendor will keep and maintain proper, accurate and reasonably detailed books and records in connection with its performance under, and payments made in connection with the Purchase Order and all transactions which relate in any way to the Purchase Order and ensure that such books and records present a true and fair view of those payments and transactions.

(b) The Vendor will implement and at all times maintain appropriate internal controls to ensure that any payments or transactions which relate to the Purchase Order or the performance of it are properly, accurately and completely recorded.

23.4 Audit rights

(a) Upon request, BGC shall have the right to:

(i) conduct a Probity Investigation; or

(ii) audit and examine relevant books and financial records in the possession, custody or control of the Vendor to test compliance with the Purchase Order, and the representations, warranties and undertakings in SC23.1.

(b) The Vendor will provide any information and assistance reasonably required by BGC in connection with a Probity Investigation or an audit, including access to its key personnel.

(c) Upon receipt of notice by BGC of its intention to conduct a Probity Investigation, the Vendor must within 4 business days of receipt of such notice procure the written consent, as required by law, to a Probity Investigation of each person in respect of whom BGC advises the Vendor it requires a Probity Investigation.

- (d) BGC may at any time require the Vendor to conduct a Probity Investigation in respect of an Associated Person, and the Vendor must conduct such Probity Investigations within a reasonable time as specified by BGC.
- (e) Without limiting GC14, if:
 - (i) despite having used its best endeavours to obtain the consent of an Associated Person to a Probity Investigation, the Vendor has been unable to obtain such consent; or
 - (ii) a Probity Investigation conducted by BGC or the Vendor in accordance with the Purchase Order gives rise to an adverse finding against an Associated Person,the Vendor shall comply with any direction of BGC to facilitate compliance with SC23.1, or remedy the Probity Event which may include a direction to remove any Associated Person from their involvement in the Project.

23.5 Breach and remedy provisions

- (a) Without limiting GC14, if BGC receives notice of a Probity Event or otherwise becomes aware of a Probity Event which relates to the Vendor or if a Probity Investigation conducted by BGC gives rise to an adverse finding against the Vendor, and:
 - (i) the Probity Event or adverse finding is, in BGC's absolute discretion, incapable of being remedied, BGC may terminate the Purchase Order immediately by written notice to the Vendor; or
 - (ii) the Probity Event or adverse finding is, in BGC's absolute discretion, capable of being remedied, the Vendor shall comply with any direction of BGC to remedy the Probity Event or facilitate compliance with SC23.1.
- (b) In the event of a breach of any of the representations, warranties or undertakings in SC 23.1 or other breach of Applicable Anti-Corruption Laws, any claims for payment, including claims for services previously rendered, shall be void to the extent permitted by law and the Vendor shall indemnify and hold harmless BGC against any and all claims, losses or damages arising from or related to such breach.
- (c) Without limiting GC14, if BGC receives notice of a Probity Event or otherwise becomes aware of a Probity Event which relates to any of the Vendor's Associated Persons, BGC may give a notice to the Vendor referring to the Probity Event and setting out the action that BGC requires the Vendor to take to prevent, or address the adverse effects of the Probity Event. Such action may include terminating any Sub-Purchase Order or contract of employment, or otherwise removing any Associated Person from their involvement in the MCC Works.
- (d) Where a Probity Investigation conducted by BGC or the Vendor in accordance with the Purchase Order gives rise to an adverse finding against the Vendor or an Associated Person, any costs incurred by BGC in conducting such Probity Investigation shall become a debt due and payable by the Vendor to BGC.

23.6 Definitions

Unless the context otherwise indicates, whenever used in this SC23, each word or phrase in the headings in this SC23.6 has the meaning given to it under the relevant heading.

Applicable Anti-corruption Laws

Includes all applicable anti-bribery and anti-corruption laws including but not limited to Australian Criminal Code Act 1995 (Cth), the UK Bribery Act 2010, the US Foreign Corrupt Practices Act 1977 as amended, legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and/or the United Nations Convention Against Corruption and other comparable laws that may apply.

Applicable Sanctions

Means any financial or economic sanction, or sanction related to trade, import or export of goods or provision of any service, administered or enforced by any official body within Australia, the United States of America, the United Kingdom, the European Union or the United Nations, including but not limited to the Australian Government, the United Nations Security Council, the Office of Foreign Assets Control of the Department of the Treasury of the United States of America, the European Union or the Treasury of the United Kingdom.

Associated Persons

Means directors, officers, employees, consultants, agents, representatives, subsidiaries, Sub-Vendors and any other person or entity who performs services for or on behalf of the Vendor in connection with the Purchase Order.

Facilitation Payments

Means any payment, benefit or other advantage provided, directly or indirectly, to a Government Official, which is made for the purposes of expediting or securing the performance of a routine government action.

Fit and Proper

Means the Vendor:

- (a) has the financial capacity, experience and capability to perform the obligations under the Purchase Order;
- (b) maintains conduct consistent with Lendlease's core values of Respect, Integrity, Innovation, Collaboration, Excellence and Trust, the Lendlease's Code of Conduct and reasonable standards of ethical behaviour;
- (c) maintains conduct consistent with the avoidance of conflicts of interest which will have an adverse effect on the ability of the Vendor to perform and observe its obligations under the Purchase Order; and
- (d) demonstrates behaviour consistent with public confidence in the MCC Works or the reputation of BGC, Lendlease and the Commonwealth and is otherwise a fit and proper person to enter into the Purchase Order.

Government Official

Includes any of the following both within Australia or overseas:

- (a) an executive, official, employee or agent of a governmental department, agency or instrumentality;
- (b) director, officer, employee or agent of a wholly or partially government owned or controlled company or business;

- (c) a political party or official thereof, or candidate for political office; or
- (d) an executive, official, employee or agent of a public international organisation.

Lendlease Code of Conduct

Means any code of conduct prepared by Lendlease which supports Lendlease's core values of Respect, Integrity, Innovation, Collaboration, Excellence and Trust which is provided to the Vendor by BGC from time to time (available upon request)

Probity Event

Means an event, matter or thing which may:

- (a) have an adverse impact upon the character, honesty or integrity of the Vendor or its Associated Persons;
- (b) have an adverse impact upon public confidence in the MCC Works or the reputation of BGC, Lendlease or the Commonwealth; or
- (c) involves a failure to achieve or maintain conduct consistent with the Lendlease's Code of Conduct, reasonable standards of ethical behaviour or the avoidance of conflicts of interest which will have an adverse effect on the ability of the Vendor to perform and observe its obligations under the Purchase Order.

Probity Investigation

Means investigations:

- (a) in response to a Probity Event; or
- (b) to report on the character, honesty and integrity of the Vendor or its Associated Persons, for the purpose of ensuring that the Vendor and its Associated Persons are Fit and Proper for its proposed or continued involvement in Services,

in each case, as is required by law or BGC from time to time

SC24 – Warranty Period

24.1 Maintenance during the Warranty Period

The Vendor shall carry out all planned and unplanned maintenance in accordance with manufacturer's requirements and the Vendor's Operations and Maintenance Manual throughout the Warranty Period.

24.2 Extension of the Warranty Period

If:

- (a) BGC gives the Vendor an instruction requiring the Vendor to correct Defective Goods or Services, and specifying the time within which this must occur; and
- (b) the Vendor is responsible for the Defective Goods or Services,

the Warranty Period will be extended for the work required by the instruction by 12 months, commencing upon completion of the correction of the Defective Goods or Services (as the case may be).

SC25 – Head Contract Special Conditions

25.1. NOT USED

25.2. USE OF HAZARDOUS SUBSTANCES

- (a) BGC aims to ensure that its employees and others who may use or be affected by the Commonwealth's facilities are not exposed to hazardous substances without appropriate control measures being in place.
- (b) Without limiting SC25.1, the Vendor:
 - (i) must ensure that the Goods and Services do not contain any hazardous substances as defined in the National Occupation Health and Safety Commission's ("NOHSC") Guidance Notes (NOHSC 1008-2004: "Approved Criteria for Classifying Hazardous Substances" or which would breach the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 (Cth);
 - (ii) must, on request of BGC, be able to show compliance with subparagraph (i); and
 - (iii) is responsible for all materials used by its Sub-Vendors under this clause.

25.3. DRAWINGS

Without limiting its other obligations under the Purchase Order, all drawings which the Vendor is required to provide under the Purchase Order must be prepared by competent draftspersons in accordance with:

- (a) the standard prescribed under the Purchase Order (or, to the extent it is not so prescribed, a standard consistent with the best industry standard for drawings of a nature similar to those required for the Services);
- (b) all Laws;
- (c) the directions of BGC; and
- (d) to the extent that they are not inconsistent with the requirements of the Purchase Order, the requirements of all relevant standards of Standards Australia.

25.4. NOT USED

25.5. NOT USED

25.6. NOT USED

25.7. NOT USED

25.8. NOT USED

25.9. NOT USED

25.10. RAINFOREST TIMBERS

The Vendor must:

- (a) only use timber acquired from entities that have been certified as compliant with international environmental standard ISO 14000; and

- (b) comply with Australian Forestry Standard (AS 4708 2001) and any replacement, amendment or supplement to that standard.

25.11. INDIGENOUS PROCUREMENT POLICY

Definitions

In this SC25.11:

"**Indigenous Enterprises**" has the meaning given to this term in the Indigenous Procurement Policy.

"**Indigenous Participation Plan**" means the plan prepared by Lendlease, where required, in accordance with the Managing Contractor Contract. (available upon request).

"**Indigenous Procurement Policy**" means the Commonwealth's Indigenous Procurement Policy dated 1 July 2015 available at www.dpmc.gov.au/ipp.

Indigenous Procurement Policy

- (a) The Vendor must use its reasonable endeavours to increase its:
 - (i) purchasing from Indigenous Enterprises; and
 - (ii) employment of Indigenous Australians,in carrying out the Services in accordance with the Indigenous Procurement Policy.
- (b) The Vendor must:
 - (i) comply with the Indigenous Participation Plan; and
 - (ii) submit a written report:
 - A. at least quarterly; and
 - B. within 10 days of the expiry of the last Warranty Period,in such form and on such matters as BGC may require from time to time, including a detailed explanation of the Vendor's compliance with:
 - C. the mandatory minimum requirements of the Indigenous Procurement Policy (which apply on and from 1 July 2016); and
 - D. the Indigenous Participation Plan, together with an explanation of any non-compliances.
- (c) The Vendor acknowledges and agrees that the reports it submits to BGC under SC25.11:
 - (i) may be recorded in a central database accessible by the Commonwealth and the public; and
 - (ii) will not be commercial-in-confidence; and
 - (iii) may be used in the evaluation of future tenders submitted by the Vendor to BGC or the Commonwealth.

25.12. NOT USED

SC26 – Vendor’s Warranties

Without limiting GC8 or SC03, the Vendor warrants that:

- (a) without limiting the strict or absolute nature of any of its other obligations or warranties under this Purchase Order, it will exercise (and ensure that its Sub-Vendors exercise) the standard of skill, care and diligence in the performance of the Purchase Order that would be expected of an expert professional supplier of the Goods and provider of the Services;
- (b) it will exercise a duty of the utmost good faith to BGC in performing its obligations under the Purchase Order, including in making payment claims under the Purchase Order; and
- (c) without limiting its other Purchase Order obligations, it will keep BGC fully and regularly informed as to all matters affecting or relating to the Services, including any matter which may change or which has changed the nature, scope or timing of the Services or the Delivery Date for the Goods.

SC27 – Notice of Potential Claims on an Insurance Policy

The Vendor must:

- (a) as soon as possible inform BGC in writing of any occurrence that may give rise to a claim under an insurance policy required by the Purchase Order;
- (b) keep BGC informed of all significant developments concerning the claim, except in circumstances where BGC is making a claim against the Vendor; and
- (c) ensure that its Sub-Vendors similarly inform the Vendor and BGC in respect of occurrences which may give rise to claims by them.

SC28 – Payment of Workers and Sub-Vendors

The Vendor must with each payment claim under the Purchase Order provide BGC with:

- (a) a statutory declaration in the form supplied by BGC, together with any supporting evidence which may be reasonably required by BGC, duly signed by the Vendor or, where the Vendor is a corporation, by a representative of the Vendor who is in a position to know the facts declared, that, except to the extent disclosed in the statutory declaration (such disclosure to specify all relevant amounts, workers and Sub-Vendors):
 - (i) all workers who have at any time been employed by the Vendor on the Purchase Order have at the date of the payment claim been paid all moneys due and payable to them in respect of their employment on the Purchase Order;
 - (ii) all Sub-Vendors have been paid all moneys due and payable to them; and
- (b) documentary evidence that, except to the extent otherwise disclosed (such disclosure to specify all relevant amounts and workers), as at the date of the payment claim, all workers who have been employed by a Sub-Vendor have been paid all moneys due and payable to them in respect of their employment on the Sub-Purchase Order.

BGC is entitled to withhold from any payment which would otherwise be due to the Vendor under the Purchase Order the amount disclosed as unpaid under this SC28.

SC29 – Safe Base Alert State System

- (a) Nothing that the Vendor is or may be required to do under this SC29 will derogate from, or otherwise limit, the Vendor's other obligations under this Purchase Order.
- (b) The Vendor must be fully familiar with the requirements of the SAFE BASE Alert State System (SAFE BASE).
- (c) The Vendor must attend a security briefing as requested by BGC from time to time.
- (d) In performing Services on Site, the Vendor must comply with the requirements of SAFE BASE, including:
 - (i) subject to subparagraph (ii), at the level - Charlie; and
 - (ii) at any alternative level (or individual measure from a higher alert state to meet a specific threat or threats) applicable to the Site from time to time.
- (e) The Vendor will be entitled to extra costs reasonably incurred by it which arise directly from a change to the SAFE BASE level or individual measure in accordance with paragraph (d)(ii), as determined by BGC.
- (f) The Vendor's entitlement (if any) under paragraph (e) will be a limitation on BGC's liability to the Vendor arising out of, or in any way in connection with:
 - (i) BGC's direction; or
 - (ii) the application of the alternative level or individual measure of SAFE BASE to the Vendor's performance of Services on Site,and the Vendor will not be entitled to make, nor will BGC be liable upon, any Claim in these circumstances other than for the amount (if any) which is payable by BGC under paragraph (e).
- (f) The Vendor must participate in a rehearsal of SAFE BASE as directed by BGC from time to time.

SC30 – Protection of Personal Information

- (a) The Vendor agrees:
 - (i) to comply with its obligations under the Privacy Act;
 - (ii) to comply with the Australian Privacy Principles when doing any act or engaging in any practice in relation to Personal Information for the purposes of this Purchase Order, as if it were an agency as defined in the Privacy Act;
 - (iii) to use Personal Information received, created or held by the Vendor for the purposes of this Purchase Order only for the purposes of fulfilling its obligations under this Purchase Order;
 - (iv) not to disclose Personal Information received, created or held by the Vendor for the purposes of this Purchase Order without the prior written approval of BGC;
 - (v) not to collect, transfer store or otherwise use Personal Information received, created or held by the Vendor for the purposes of this Purchase Order outside Australia, or to

allow parties outside Australia to have access to it, without the prior written approval of BGC;

- (vi) to co-operate with demands or inquiries made by the Federal Privacy Commissioner or BGC in relation to the management of Personal Information in connection with this Purchase Order;
 - (vii) to ensure that any person whom the Vendor allows to access Personal Information which is received, created or held by the Vendor for the purposes of this Purchase Order is made aware of, and undertakes in writing to observe, the Australian Privacy Principles;
 - (viii) to comply with policy guidelines laid down by the Commonwealth or issued by the Federal Privacy Commissioner from time to time relating to the handling of Personal Information;
 - (ix) to ensure that records (as defined in the Privacy Act) containing Personal Information received, created or held by the Vendor for the purposes of this Purchase Order are, at the expiration or earlier termination of this Purchase Order, at BGC's election, to be either returned to BGC or deleted or destroyed in the presence of a person duly authorised by BGC to oversee such deletion or destruction;
 - (x) to the naming or other identification of the Vendor in reports by the Federal Privacy Commissioner;
 - (xi) to ensure that any Sub-Purchase Order made in connection with this Purchase Order contains enforceable obligations requiring the Sub-Vendor to comply with the Vendor's obligations arising out of this SC30, as if the Sub-Vendor were the Vendor;
 - (xii) to enforce the obligations referred to in subparagraph (xi) in accordance with such directions as BGC may give;
 - (xiii) that Personal Information collected by the Vendor in connection with the Purchase Order must not be used for, or in any way relating to, any direct marketing purpose; and
 - (xiv) to indemnify BGC against any loss, liability or expense suffered or incurred by BGC arising out of, or in connection with:
 - A. a breach of the obligations of BGC under this SC30;
 - B. a breach of a Sub-Vendor's obligations under a Sub-Purchase Order as contemplated by subparagraph (xi);
 - C. the misuse of Personal Information held in connection with this Purchase Order by the Vendor or a Sub-Vendor; or
 - D. the disclosure of Personal Information held in connection with this Purchase Order by the Vendor or a Sub-Vendor in breach of an obligation of confidence.
- (b) For the purposes of paragraph (a)(xiv), loss, liability or expense includes any compensation paid to a person by or on behalf of BGC to settle a complaint arising out of, or in any way in connection with, a breach of this SC30 by the Vendor.

- (c) The Vendor must immediately notify BGC in writing if the Vendor:
 - (i) becomes aware of a breach of the obligations under paragraph (a) by itself or by a Sub-Vendor;
 - (ii) becomes aware of a breach of a Sub-Vendor's obligations under a Sub-Purchase Order as contemplated by paragraph (a)(xi);
 - (iii) becomes aware that a disclosure of Personal Information may be required by law; or
 - (iii) is approached or contacted by, or becomes aware that a Sub-Vendor has been approached or contacted by, the Federal Privacy Commissioner or by a person claiming that their privacy has been interfered with.
- (d) The Vendor acknowledges that, in addition to the requirements of this SC30, the Vendor may also be obliged to comply with other obligations in relation to the handling of Personal Information, such as other provisions in the Privacy Act (including the National Privacy Principles) and State and Territory legislation.
- (e) Nothing in this SC30 limits any of the Vendor's other obligations or liabilities under the Purchase Order.
- (f) In this clause SC30:
 - (i) **Australian Privacy Principle** has the meaning given in the Privacy Act;
 - (ii) **Personal Information** has the meaning given in the Privacy Act;
 - (iii) **Privacy Act** means the Privacy Act 1988 (Cth); and
 - (iv) received includes collected.

SC31 – Not Used

SC32 – Building Code 2016

32.1 Definitions

In this SC32:

ABCC means the body referred to in section 29(2) of the Act.

ABC Commissioner means the Australian Building and Construction Commissioner referred to in section 15(1) of the Act.

Act means the Building and Construction Industry (Improving Productivity) Act 2016.

Building Contractor has the same meaning as in the Act.

Building Industry Participant has the same meaning as in the Act.

Building Work has the same meaning as in section 3(4) of the Building Code 2016.

Enterprise Agreement has the same meaning as in the Fair Work Act 2009.

Exclusion Sanction has the same meaning as in section 3(3) of the Building Code 2016.

Related Entity has the same meaning as in section 3(2) of the Building Code 2016.

32.2 Vendor's obligations under the Building Code 2016

The Vendor:

- (a) declares as at the date of commencement of this Purchase Order in relation to the Services; and
- (b) must ensure that during the term of this Purchase Order in relation to the Services, that it and its Sub-Vendors:
 - (c) comply with the Building Code 2016;
 - (d) are not covered by, and do not have Related Entities covered by, an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code 2016;
 - (e) are not subject to an Exclusion Sanction; and
 - (f) unless approved otherwise by the ABC Commissioner, are not excluded from performing Building Work funded by a state or territory government.

32.3 Remedial action

Without limiting and notwithstanding SC32.2(c), the Vendor will ensure that remedial action is taken to rectify any behaviour on the part of it and its Sub-Vendors that is non-compliant with the Building Code 2016.

32.4 Responsibility not Affected

Compliance with the Building Code 2016 does not relieve the Vendor from responsibility to perform this Purchase Order, or from liability for any defect in the Goods or Services arising from compliance with the Building Code 2016.

32.5 Notification of Breach or Suspected Breach

The Vendor must notify the ABCC of any breach or suspected breach of the Building Code 2016 as soon as practicable but no later than 2 working days after becoming aware of the breach or suspected breach and of the steps proposed to be taken to rectify the breach.

32.6 Access and Documents

The Vendor acknowledges the powers and functions of the ABC Commissioner and the ABCC under the Act and the Building Code 2016 and will ensure that it and its Sub-Vendors comply with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including but not limited to requests for entry under section 72 of the Act, requests to interview any person under section 74 of the Act, requests to produce records or documents under sections 74 and 77 of the Act, and requests for information concerning matters relating to the Building Code 2016 under subsection 7(c) of the Building Code 2016.

32.7 Sub-Purchase Orders

- (a) If the Vendor issues any request for tenders or expressions of interest in relation to a Sub-Purchase Order, the Vendor must include in the request for tenders or expressions of interest clauses in substantively the same form as Annexure F (including the Declaration of Compliance).

- (b) The Vendor must only enter into a Sub-Purchase Order where the Sub-Purchase Order contains clauses in substantively the same form as this SC32 applicable to the Vendor in relation to the Building Code 2016.
- (c) The Vendor must ensure that it and its Sub-Vendors comply with clauses contained in the Sub-Purchase Order referred to in SC32.7(b).

SC33 – Not Used

SC34 – Discrepancies

If a party discovers any ambiguity, discrepancy or inconsistency in the documents which make up the Purchase Order:

- (i) the party discovering it must promptly give notice to the other;
- (ii) subject to paragraphs (iii) and (iv), BGC will direct the Vendor as to the interpretation of the documents and the approach the Vendor must take to address the ambiguity, discrepancy or inconsistency;
- (iii) the order of precedence set out in the Purchase Order will apply; and
- (iv) the most stringent conditions shall apply.

The Vendor is not entitled to make, and BGC is not liable for, any Claim in connection with the ambiguity, discrepancy or inconsistency in the documents or the direction given by BGC pursuant to SC34(ii).

SC36 – Not Used

SC37 - Not Used

SC38 – Not Used

SC39 – Not Used

SC40 – Not Used

ANNEXURE A – NOT USED

ANNEXURE B – NOT USED

ANNEXURE C – NOT USED

ANNEXURE D – VENDOR DEED OF COVENANT

VENDOR DEED OF COVENANT

Deed made at on, 20.....

Parties **Commonwealth of Australia ("Commonwealth")**
[INSERT NAME, ABN AND ADDRESS OF PRINCIPAL] ("Principal")
[INSERT NAME, ABN AND ADDRESS OF CONTRACTOR] ("Contractor")
[INSERT NAME, ABN AND ADDRESS OF VENDOR] ("Vendor")

Recitals

- A. The Commonwealth has engaged the Principal under the contract described in Item 1 of the Schedule ("MC Contract") to effect certain works, brief particulars of which are set out in Item 2 of the Schedule ("Works").
- B. The Principal has engaged the Contractor under the contract described in Item 3 of the Schedule ("Head Contract") to effect certain works, brief particulars of which are set out in Item 4 of the Schedule ("Head Contract Works").
- C. The Contractor and the Vendor have entered into the Purchase Order described in Item 5 of the Schedule ("Purchase Order") to supply Goods and perform Services, brief particulars of which are set out in Item 6 of the Schedule ("Goods and Services"), which Goods and Services forms part of the Principal's obligations under the MC Contract and the Contractor's obligations under the Head Contract.
- D. The MC Contract, the Head Contract and the Purchase Order require the Contractor and the Vendor to enter into this Deed.

This Deed provides

1. Interpretation

1.1 Definitions

In this Deed, terms defined in the MC Contract and not otherwise defined in this Deed have the same meanings and the following terms have the following meanings unless the context otherwise requires.

"Attorney" means any attorney and agent appointed under clause 8.

"Event of Termination" means that:

- (a) the Commonwealth has issued a notice under clause 6.6(a)(ii)A or 6.6(a)(iii)B of the MC Contract;
- (b) an event has occurred which under clause 14 of the MC Contract entitles the Commonwealth to terminate the MC Contract (subject to the issue of all notices required by that clause); or

- (c) the Commonwealth has given notice to the Principal under clause 14.7 of the MC Contract terminating the MC Contract.

"**Nominee**" means the person, firm or corporation (if any) nominated by the Commonwealth under Clause 23.5(b).

1.2 General

In this Deed, unless the context otherwise indicates:

- (a) words in the singular include the plural and vice versa;
- (b) references to a person include an individual, firm, corporation or unincorporated body;
- (c) headings are for convenience only and do not affect the interpretation of this Deed;
- (d) references to any legislation or to any section or provision of any legislation include any:
 - (i) statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
 - (ii) ordinances, by-laws, regulations and other statutory instruments issued under that legislation, section or provision;
- (e) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (f) references to any document (including this Deed) include any amendment to or substitute for such document; and
- (g) references to any party to or in this Deed or any other document include its successors or permitted assigns.

1.3 This Deed Prevails

To the extent of any inconsistency between this Deed, the MC Contract, the Head Contract or the Purchase Order, this Deed prevails unless the parties expressly agree otherwise.

2. VENDOR'S COVENANTS

The Vendor undertakes to the Commonwealth to complete the design (if any) and construction of the Goods and perform the Services:

- (a) in a thorough and tradesmanlike manner;
- (b) with materials of merchantable quality and which are fit for their purpose;
- (c) with proper skill and care;
- (d) so that they are fit for their intended purpose; and
- (e) in accordance with the Purchase Order.

Where there is any inconsistency or ambiguity between the requirements of paragraphs (a) to (d) and paragraph (e), whichever is the higher standard will apply to the extent of the inconsistency or ambiguity.

3. GENERAL COVENANTS AND ACKNOWLEDGEMENTS

Notwithstanding any provision of the MC Contract, the Head Contract or the Purchase Order, each of the Contractor and the Vendor acknowledges and agrees for the benefit of the Commonwealth that:

- (a) they will duly and punctually perform their respective obligations under the Head Contract and the Purchase Order;
- (b) they will notify the Commonwealth of any dispute or difference between the Contractor and the Vendor;
- (c) the Vendor will notify the Commonwealth of a default by the Contractor under the Purchase Order and the Vendor will give 30 days' prior written notice ("Termination Notice") to the Commonwealth of its intention to terminate the Purchase Order;
- (d) the Vendor will not terminate the Purchase Order if before the expiry of the Termination Notice, the Commonwealth has:
 - (i) in the case of a payment default, paid all moneys required to remedy the default; or
 - (ii) in the case of any other default, undertaken to remedy it within a reasonable time after the Termination Notice's expiry having regard to the nature and extent of the default or, where the default is incapable of being remedied, to compensate the Vendor for the default for an agreed amount or, in the absence of agreement, for an amount determined by the dispute resolution process in the Purchase Order;
- (e) the dispute resolution clause of the Purchase Order will apply to any dispute resolution under paragraph (d)(ii) as if all references in that clause to the Contractor were references to the Commonwealth;
- (f) they will not without the prior written consent of the Commonwealth amend, rescind, grant or accept any waiver or discharge of the Purchase Order, or otherwise alter the obligation under the Purchase Order whether by the doctrine of estoppel or (without limitation) pursuant to any other principle of law; and
- (g) the Commonwealth owes no obligation to the Vendor unless it otherwise agrees in accordance with this Deed.

4. INSURANCES

- (a) Notwithstanding anything else, the Vendor will:
 - (i) take out all insurances as are required under the Purchase Order; and
 - (ii) otherwise comply with all of its obligations in relation to insurance in the Purchase Order.
- (b) The Contractor and the Vendor must ensure that it does not do or omit to do anything or does not permit anything to be done or omitted to be done whereby any insurance policy may be prejudiced.
- (c) If any default is made by the Vendor in effecting or maintaining such insurance policy or if any such insurance policy becomes void or voidable, the Commonwealth may (but is not

obliged to) effect or maintain that insurance policy at the cost of the Vendor or, failing it, the Contractor.

- (d) The Contractor and the Vendor will do all things necessary and provide all documents, evidence and information necessary to enable the Commonwealth to collect or recover any moneys due or to become due in respect of any insurance policy at the cost of the Vendor or, failing it, the Contractor.
- (e) Without prejudice to the above requirements, neither the Contractor nor the Vendor will cause or take any steps to bring about the cancellation, lapse, material change, reduction or any rescinding of any such insurance policy unless it has first obtained the written consent of the Commonwealth after giving 60 days prior written notice to the Commonwealth.
- (f) The Contractor and the Vendor will immediately notify the Commonwealth of any cancellation, lapse, material change, reduction, or any rescinding of any such insurance policy, and of the occurrence of any event giving rise to any claim under any such insurance policy in respect of the Purchase Order Works.

5. NOT USED

6. ENFORCEMENT

6.1 Request for Information

The Commonwealth may at any time after an Event of Termination has occurred give a notice in writing to the Vendor ("**Request**") requesting it to advise of any claims outstanding between the Contractor and the Vendor. The Vendor will within 7 days of the Request give the Commonwealth a written notice ("**Advice**") advising:

- (a) the sum claimed against the Contractor and then outstanding pursuant to the terms of the Purchase Order;
- (b) the sum claimed against the Contractor as a result of breaches of the Purchase Order by the Contractor; and
- (c) the sum claimed pursuant to any other principle of law (including any claim in negligence). The Advice must specifically identify the legal basis of the claims and the amounts claimed on that basis.

6.2 Notice of intention to complete

The Commonwealth may after receipt of the Advice give written notice ("Notice") to the Vendor stating:

- (a) the intention of the Commonwealth to require the Vendor to complete construction of the Purchase Order Works; and
- (b) the name of the person, firm or corporation (if any) which is to be a party to the new contract referred to in the Purchase Order.

6.3 Continued performance of Vendor's obligations

As from the date of receipt by the Vendor of a Notice:

- (a) the Contractor and the Vendor will be deemed to have terminated the Purchase Order;

- (b) the Commonwealth or the Nominee (as the case may be) and the Vendor will be deemed to have entered into a new contract on the same terms and conditions as the Purchase Order, save and except that:
 - (i) the Commonwealth or the Nominee (as the case may be) will be named therein in lieu of the Contractor;
 - (ii) subject to the next paragraph, the rights, obligations and liabilities of the Commonwealth or the Nominee (as the case may be) and the Vendor will be as if the Commonwealth or the Nominee (as the case may be) had executed the Purchase Order in lieu of the Contractor; and
 - (iii) the liability (if any) of the Commonwealth or the Nominee (as the case may be) to the Vendor in respect of any fact, matter or thing arising before the date of the Request will not exceed the amount referred to in the Advice given to the Commonwealth and if the Vendor has not given an Advice to the Commonwealth, the Vendor will have no right to make a claim against the Commonwealth or the Nominee (as the case may be) in respect of any fact, matter or thing arising before the date of the Request to the extent permitted by law; and
- (c) the Vendor will indemnify the Commonwealth against all claims, costs, expenses, losses or damages suffered or incurred by the Commonwealth arising out of or incidental to any work which may have been performed by the Vendor under the Purchase Order with the Contractor prior to its termination.

7. NOT USED

8. POWER OF ATTORNEY

- (a) All things which the Contractor is obliged to do under or in connection with the Purchase Order or this Deed may be done (at the cost of the Contractor) by any Attorney at any time after a Notice has been issued, in the name of the Contractor or the Commonwealth or the Attorney.
- (b) The Contractor irrevocably and for value appoints the Contract Administrator as its agent and attorney for the purposes set out in paragraph (a). Without limiting the generality of the powers of the Attorney, the Attorney may at any time and at the cost of the Contractor:
 - (i) do anything necessary or as the Attorney considers expedient for enforcing, complying with or implementing the Purchase Order or this Deed;
 - (ii) execute, perform or enforce any document or agreement to which the Contractor is a party or is required to be a party pursuant to or as a consequence of this Deed, the Contract or the Purchase Order;
 - (iii) subject to the prior termination of the Purchase Order, enter into on behalf of the Contractor any agreement for the construction or completion of construction of the Purchase Order Works with any person; or
 - (iv) novate the Purchase Order in favour of any person on such terms and conditions as may be required by the Commonwealth.

9. NOTICES

9.1 Address for Service

Any notice to be given or served under or arising out of a provision of this Deed must:

- (a) be in writing;
- (b) be delivered by hand, sent by prepaid post or sent by fax, as the case may be, to the relevant address or fax number:
 - (i) stated in Item 7 of the Schedule; or
 - (ii) last notified in writing to the party giving or serving the notice, for the party to whom or upon which the notice is to be given or served; and
- (c) be signed by the party giving or serving the notice or (on the party's behalf) by the solicitor for or attorney, director, secretary or authorised agent of the party giving or serving the notice.

9.2 Deemed Receipt

A notice given or served in accordance with clause 9.1 is taken to be received by the party to whom or upon whom the notice is given or served in the case of:

- (a) delivery by hand, on delivery;
- (b) prepaid post sent to an address in the same country, on the third day after the date of posting;
- (c) prepaid post sent to an address in another country, on the fifth day after the date of posting; and
- (d) fax, at the time in the place to which it was sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent.

10. WAIVERS, REMEDIES CUMULATIVE

10.1 No waiver

No failure to exercise and no delay in exercising, on the part of the Commonwealth, any right or remedy under this Deed will operate as a waiver, nor will any single or partial exercise of any right or remedy preclude any other or further exercise, of that or any other right or remedy.

10.2 Remedies cumulative

The rights and remedies provided in this Deed are cumulative and are not exclusive of any rights or remedies provided by law or any other such right or remedy.

11. STAMP DUTY

The Contractor must pay all stamp and other duties (together with any fines or penalties for late payment) on or in connection with the execution, delivery and performance of this Deed and the transactions contemplated by this Deed which may be payable in any State or Territory of Australia and whether assessable against itself or any other person.

12. MORATORIUM LEGISLATION

Unless application is mandatory by law, any present or future law will not apply to this Deed so as to abrogate or otherwise prejudicially affect any rights, powers, remedies or discretions given or accruing to the Commonwealth.

13. SEVERANCE

Any provision of this Deed which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Deed or affecting the validity or enforceability of such provision in any other jurisdiction.

14. ASSIGNMENT

Except as expressly contemplated by this Deed, neither the Contractor nor the Vendor may assign or transfer any of its rights or obligations under this Deed or the Purchase Order.

15. FURTHER ASSURANCES

The Contractor and the Vendor undertake upon request by the Commonwealth to execute all documents and do all things necessary to vest in the Commonwealth or its Nominee (as the case may be) the Purchase Order or otherwise to give effect to the terms of this Deed.

16. GOVERNING LAW AND JURISDICTION

This Deed will be governed by and construed in accordance with the laws applicable to the Contract.

17. COUNTERPARTS

This Deed may be executed in any number of counterparts and all of such counterparts taken together will be deemed to constitute one and the same instrument.

18. SET-OFF

Without limiting the Commonwealth's rights under the MC Contract, all moneys which the Commonwealth may pay or incur and for which the Contractor is liable under the terms of the Head Contract or in respect of which it is under this Deed liable to make reimbursement to or indemnify the Commonwealth, may be deducted by the Commonwealth from all moneys due, becoming due or to become due from it to the Contractor under the Head Contract or may be recovered by the presentation of any unconditional undertaking which may have been provided by the Contractor under the Head Contract or may be recovered from the Contractor by action at law or otherwise.

19. Attorneys

Each of the attorneys executing this Deed states that they have no notice of the revocation of their power of attorney.

Schedule

Item 1 (Recital A)	MC Contract	[Head/ Managing Contractor/Medium Works] Contract for [INSERT] dated [INSERT]
Item 2 (Recital A)	Services	[INSERT BRIEF DESCRIPTION]
Item 3 (Recital B)	Head Contract	[Medium Works Contract for [insert] dated [insert]
Item 4 (Recital B)	Head Contract Services	[INSERT BRIEF DESCRIPTION]
Item 5 (Recital C)	Purchase Order	[INSERT BRIEF DESCRIPTION]
Item 6 (Recital C)	Goods and Services	[INSERT BRIEF DESCRIPTION]
Item 7 (Clause 9.1(b)(i))	Notices	[INSERT ADDRESS & FAX NUMBER FOR EACH PARTY]

Executed as a Deed.

Signed sealed and delivered for and on behalf
of the **Commonwealth of Australia** by or in the
presence of:

Signature of Witness

Signature of Authorised Officer

Name of Witness in full

Name and Position of Authorised Officer

[INSERT APPROPRIATE SIGNING BLOCKS FOR PRINCIPAL, CONTRACTOR AND VENDOR]

ANNEXURE E – NOT USED

ANNEXURE F - PROFORMA BUILDING CODE 2016 PURCHASE ORDER PROVISIONS

##. Building Code 2016

F.1 Definitions

In this Annexure:

ABCC means the body referred to in section 29(2) of the Act.

ABC Commissioner means the Australian Building and Construction Commissioner referred to in section 15(1) of the Act.

Act means the Building and Construction Industry (Improving Productivity) Act 2016.

Building Contractor has the same meaning as in the Act.

Building Industry Participant has the same meaning as in the Act.

Building Work has the same meaning as in section 3(4) of the Building Code 2016.

Enterprise Agreement has the same meaning as in the Fair Work Act 2009.

Exclusion Sanction has the same meaning as in section 3(3) of the Building Code 2016.

Related Entity has the same meaning as in section 3(2) of the Building Code 2016.

F.2 Compliance with the Building Code 2016

F.2.1 The Building Code 2016 applies to the Services.

F.2.2 As part of their tender, Tenderers must submit a signed "Declaration of Compliance" which is attached to this Request for Tender.

F.2.3 BGC will only enter into a Purchase Order in relation to the Services if:

- (a) the successful Tenderer and its Related Entities are not covered by an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code 2016; and
- (b) the successful Tenderer is not subject to an Exclusion Sanction.

F.2.4 BGC will exclude Tenderers from further consideration if at any time before a Purchase Order is executed in relation to the Services, if BGC considers that they do not comply with the requirements in clause F.2.3.

F.2.5 BGC may exclude Tenderers from further consideration if at any time before a contract is executed in relation to the Services they are excluded from performing Building Work funded by a state or territory government, unless approval otherwise is given by the ABC Commissioner.

DECLARATION OF COMPLIANCE

Declaration of Compliance with the Building Code 2016

In this Declaration of Compliance:

ABCC means the body referred to in section 29(2) of the Act.

ABC Commissioner means the Australian Building and Construction Commissioner referred to in section 15(1) of the Act.

Act means the Building and Construction Industry (Improving Productivity) Act 2016.

Building Code 2016 means the Code for the Tendering and Performance of Building Work 2016.

Building Contractor has the same meaning as in the Act.

Building Industry Participant has the same meaning as in the Act.

Building Work has the same meaning as in section 3(4) of the Building Code 2016.

Enterprise Agreement has the same meaning as in the Fair Work Act 2009.

Exclusion Sanction has the same meaning as in section 3(3) of the Building Code 2016.

Related Entity has the same meaning as in section 3(2) of the Building Code 2016.

[Insert Tender Name, Project Number and Name of Project]

[Insert Name of Tenderer, ABN and ACN] (Tenderer):

The Tenderer:

- (a) acknowledges that it and its Related Entities must comply with the Building Code 2016 in relation to all Building Work described in Schedule 1 of the Building Code 2016 for which an expression of interest or request for tender (however described) is called on or after the date that the Building Code 2016 commenced (being 2 December 2016); and, should it be the successful Tenderer, in relation to the Services;
- (b) undertakes to ensure that it and its Sub-Vendors, should it be the successful Tenderer, comply with the Building Code 2016;
- (c) acknowledges the powers and functions of the ABC Commissioner and the ABCC under the Act and the Building Code 2016 and undertakes to ensure that it and its Sub-Vendors will comply with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including but not limited to requests for entry under section 72 of the Act, requests to interview any person under section 74 of the Act, requests to produce records or documents under sections 74 and 77 of the Act, and requests for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code;
- (d) declares that where it proposes to subcontract any of the Services, should it be the successful Tenderer, it will:
 - (i) not enter into a Sub-Purchase Order with a Sub-Vendor who:

- (A) is covered by, or has a Related Entity covered by, an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code;
 - (B) is subject to an Exclusion Sanction; or
 - (C) unless approved otherwise by the ABC Commissioner, is excluded from performing Building Work funded by a state or territory government; and
- (ii) only enter into a Sub-Purchase Order where:
- (A) the Sub-Vendor has submitted a declaration of compliance in substantively the same form as the model declaration of compliance applicable to the Vendor in relation to the Building Code 2016; and
 - (B) the Sub-Purchase Order with the Sub-Vendor contains clauses in substantively the same form as the model contract clauses applicable to the Vendor in relation to the Building Code 2016.
- (e) declares that:
- (i) it, and its Related Entities, are not covered by an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code;
 - (ii) it is not subject to an Exclusion Sanction;
 - (iii) unless approved otherwise by the ABC Commissioner, is not excluded from performing Building Work funded by a state or territory government.

[To be signed by the Tenderer—insert appropriate signature block.]