



**Australian  
National  
University**

# **Research Services Agreement**

**between**

**The Australian National University  
(ABN: 52 234 063 906)**

**and**

**Frontier Economics  
(ABN: 13 087 553 124)**

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## PARTIES

**THE AUSTRALIAN NATIONAL UNIVERSITY (ABN 52 234 063 906)** an educational and research institute and body corporate pursuant to the *Australian National University Act 1991* (Cth) and represented by the College of Law, of Acton in the Australian Capital Territory, 2601 (**University**)

AND

**FRONTIER ECONOMICS PTY LTD ABN (ABN 13 087 553 124)** a company incorporated in Victoria, Australia and having its registered office at Ground Floor, 395 Collins Street, Melbourne VIC 3000 (**Consultant**)

## BACKGROUND

- A. The University wishes to engage the Consultant to provide the Consultancy Services on the terms and conditions of this Agreement.
- B. The Consultant has fully informed itself on all aspects of the Consultancy Services required to be performed and has represented that it has the requisite skills and experience to perform that work.

## AGREED TERMS

### 1 Definitions and Interpretations

1.1 In this Agreement:

**Agreed Terms** means clauses 1 to 35 of the Agreement which set out terms and conditions agreed by the parties.

**Agreement** means this agreement and includes all Schedules and annexures.

**Agreement Manager** means the person holding the position as specified in clause 6.1.

**Agreement Material** means all material created or required to be developed or created as part of, or for the purpose of performing, the Consultancy Services including but not limited to documents, equipment, information and data stored by any means.

**Business Day** means, for the purposes of this Agreement, a day which is not an Australian Government gazetted public holiday, or a Saturday or Sunday, in the Australian jurisdiction in which the obligation is to be performed.

**Commencement Date** means the date on which this Agreement commences, as specified in Schedule 1.

**Confidential Information** means information that:

- (a) is by its nature confidential;
- (b) is designated by the disclosing party as confidential;
- (c) the receiving party knows or ought to know is confidential;
- (d) is comprised in or relates to University Material or Agreement Material;
- (e) is included in the terms of this Agreement,

but does not include information which:

- (f) is or becomes public knowledge other than by breach of this Agreement or any other confidentiality obligations; or

(g) has been independently developed or acquired by the Consultant, as established by written evidence.

**Consultancy Fees** means the fees payable by the University to the Consultant for the performance of the Consultancy Services as set forth in Schedule 3.

**Consultancy Milestones** means the Due Dates that the Consultant must complete each stage of the Consultancy Services and Agreement Material as detailed in Schedule 2.

**Consultancy Services** means the services to be performed under this Agreement and described or referred to in the Statement of Requirement.

**Consultant** means the party named above and its officers, employees, agents, subcontractors or invitees.

**Corporations Act** means the *Corporations Act 2001* (Cth) as amended.

**Data Breach** means:

- (a) unauthorised access to, or unauthorised disclosure of, Personal Information; or
- (b) information lost in circumstances where unauthorised access to, or unauthorised disclosure of, Personal Information is likely to occur.

**Due Dates** means any fixed date to be met by the Consultant in performing any of its obligations under this Agreement as specified in Schedule 2.

**Force Majeure Event** means any event which is not within the reasonable control of the party affected, for example an epidemic, act of God, fire, lightning, earthquake, explosion, flood, subsidence, insurrection or civil disorder or military operations or act of terrorism, expropriation, strikes, lock-outs or other industrial disputes of any kind, but does not include any act or omission of the party affected (including any of their subcontractors).

**GST** has the meaning given to it by *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Initial Term** means the period of time for which this Agreement is intended to continue, as specified in Schedule 1.

**Insolvency Event** means the happening of any of these events:

- (a) an application is made to a court for an order or an order is made that a body corporate be wound up;
- (b) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate, or one of them is appointed, whether or not under an order;
- (c) except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
- (d) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved;
- (e) a body corporate is or states that it is insolvent;
- (f) as a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth), a body corporate is taken to have failed to comply with a statutory demand;

- (g) a body corporate is or makes a statement from which it may be reasonably deduced by the University that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001* (Cth);
- (h) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate;
- (i) a person becomes an insolvent under administration as defined in section 9 of the *Corporations Act 2001* (Cth) or action is taken which could result in that event; or
- (j) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction,

but does not include any events which under the Corporations Act are unenforceable indefinitely after the expiration of a stay period.

**Intellectual Property** means all rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields (whether or not registered or registrable or having to undergo any other process for grant, registration or the like) including:

- (a) copyright (including future copyright);
- (b) inventions (including granted patents and patent applications);
- (c) trademarks (including registered trademarks and trademark applications);
- (d) designs (including registered designs and design applications);
- (e) circuit layouts and the like;
- (f) trade secrets; and
- (g) plant breeder's rights.

**Loss** means any loss, cost or expense (including legal costs and expenses on a solicitor and own client basis) or liability, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**Moral Rights** means rights of integrity or authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, and rights of a similar nature conferred by statute that exist, or may come to exist, in Agreement Material.

**Personal Information** has the same meaning as in the Privacy Act.

**Privacy Act** means the *Privacy Act 1988* (Cth).

**Specified Personnel** means the personnel specified in Schedule 1.

**Statement of Requirement** means the description of the Consultancy Services required to be performed by the Consultant as detailed in Schedule 1.

**Tax Invoice** means a tax invoice complying with the requirements in Schedule 3.

**Taxable Supply** has the meaning given to it by *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Term** means the Initial Term plus any extension in accordance with clause 4.1.

**University** means the Australian National University.

**University Material** means any material, including Confidential Information, provided by or on behalf of the University to the Consultant in connection with this Agreement including, but not limited to, documents, equipment, information and data stored by any means.

- 1.2 Words importing a gender include any other gender. Words in the singular number include the plural and words in the plural number include the singular.
- 1.3 This clause 1 will survive the expiration or termination of this Agreement.

## **2 Priority of Documents**

- 2.1 If there is inconsistency between any of the documents forming part of this Agreement, those documents will be interpreted in the following order of priority to the extent of any inconsistency:
  - 2.1.1 Agreed Terms;
  - 2.1.2 Schedules;
  - 2.1.3 any attachments to the Schedules; and
  - 2.1.4 documents incorporated by reference in this Agreement.

## **3 Provision of Consultancy Services**

- 3.1 The Consultant must perform the Consultancy Services as described in the Statement of Requirement during the Term of the Agreement.
- 3.2 The Consultant must provide the Consultancy Services to meet the Consultancy Milestones detailed in Schedule 2 and in the manner required by the University, and where no Consultancy Milestones are specified, promptly and without delay.
- 3.3 Without limiting any other rights available to the University under this Agreement, where the Consultant is unable to provide the Consultancy Services within the University's specified timeframe as a result of an act or omission of the Consultant, or as a result of the breach by the Consultant of this Agreement, the University may:
  - 3.3.1 withhold any payment otherwise due under this Agreement until such time as the delay or breach is rectified to the satisfaction of the University; and
  - 3.3.2 in the event that such failure lasts more than 30 days (or longer period notified by the University in writing), terminate this Agreement and pursue any remedies available under this Agreement or at Law.

## **4 Term**

- 4.1 This Agreement begins on the Commencement Date and will continue for the Term unless terminated earlier in accordance with clauses 23 or 24.
- 4.2 Option to extend Term
  - 4.2.1 The Term may be extended by the University for further period(s), specified in Schedule 1 (each an **Option Period**), on the terms and conditions then in effect, by giving 30 days written notice to the Consultant before the end of the current Term of the University's wish to extend the Term.
  - 4.2.2 If the Consultant agrees to the extension of the Term in writing, the extension takes effect from the end of the then current Term.

## **5 Consultant Personnel**

- 5.1 The Consultant must ensure that the Consultancy Services are only performed by the Specified Personnel, and must notify the University immediately if that person ceases (or those persons cease) to be engaged or employed by the Consultant. If the Consultant is unable to provide suitable replacement personnel, the University may terminate this Agreement under clause 24.

## **6 Agreement Manager of the University**

- 6.1 The person holding, occupying or performing the duties of Professor, Andrew Macintosh, will be the Agreement Manager with responsibility for supervision of this Agreement on behalf of the University.

## **7 Consultancy Fees**

- 7.1 Subject to clause 7 and 8 and the Consultant meeting the Consultancy Milestones and the requirements set out in this Agreement, the University will pay the Consultant the Consultancy Fees as set out in Schedule 3.
- 7.2 The Consultant is not entitled to payment of the Consultancy Fees (in whole or in part) if the Consultant has failed to meet each stage of the Consultancy Milestones or remedy a defect, complete provision of the Consultancy Services or failed to redo the Consultancy Services as required under clause 11.2 or has failed to meet Performance Requirements applied in accordance with clause 21.
- 7.3 The Consultancy Fees of the Consultancy Services include:
- 7.3.1 all charges for the performance of the Consultancy Services; and
  - 7.3.2 no extra charges for testing, inspection, packing, delivery or otherwise.
- 7.4 For the avoidance of doubt, the University will not be liable for any other payment to the Consultant other than the Consultancy Fees specified in this clause 7.

## **8 Invoice Procedure**

- 8.1 Subject to the Consultant complying with the provisions of this Agreement (including clause 21), the Consultancy Fees are payable by the University to the Consultant in arrears, and within 30 days of receipt by the Agreement Manager of a correctly rendered Tax Invoice.
- 8.2 The Consultant must provide a correctly rendered Tax Invoice to the University for the Consultancy Fees in accordance with the requirements specified in Schedule 3.
- 8.3 If a Tax Invoice is found to have been rendered incorrectly after payment, any underpayment or overpayment will be recoverable by or from the Consultant, as the case may be, and, without limiting recourse to other available means, may be offset against any amount subsequently due by the University to the Consultant under this Agreement.

## **9 GST**

- 9.1 Unless stated otherwise in this Agreement, the amount payable for the supply of any goods, services or other things under or in connection with this Agreement is stated as exclusive of GST.
- 9.2 The party liable to pay for a taxable supply to which this clause applies must also pay the amount of any GST payable in respect of the taxable supply on the date that the payment for the taxable supply is due.
- 9.3 A party need not make a payment for a taxable supply made under or in connection with this Agreement until it receives a Tax Invoice for the supply to which the payment relates.

## **10 Performance and Delivery**

- 10.1 The performance of all Consultancy Services must be made at the time, place, and in the manner stated in this Agreement and as defined in the Statement of Requirement.



- 10.2 The University may reasonably specify in writing to the Consultant another time, place or manner for performance of all Consultancy Services, in which case that other time, place or manner applies in place of that stated in this Agreement.

## **11 Inspection and Acceptance of Consultancy Services**

- 11.1 The University may inspect the performance and outcome of the Consultancy Services at any time, and for that purpose exercise the University's rights under clause 22.
- 11.2 If the Consultancy Services do not meet each stage of the Consultancy Milestones, or are defective, incomplete or do not meet their purpose, or are not in accordance with this Agreement, the University may by notice require the Consultant to remedy, complete or redo the Consultancy Services at no additional cost to the University.
- 11.3 Where the Consultant fails to remedy a defect notified by the University under clause 11.2 complete the Consultancy Services, or redo the Consultancy Services, within 14 days after notification by the University under this clause 11, the University may perform or have performed the necessary work and recover the cost from the Consultant without prejudice to any other rights or remedies the University may have.

## **12 Variation of Agreement**

- 12.1 No agreement or understanding that varies or extends this Agreement (including in particular the scope or performance of the Consultancy Services, or the Consultancy Fees) and which would result in an increase in the monies payable by, or other liability of the University, will be legally binding upon either party unless in writing and signed by both parties.
- 12.2 This Agreement is the entire agreement between the parties and supersedes all previous correspondence, contracts and arrangements between the parties relating to the Consultancy Services except to the extent they are incorporated in this Agreement in accordance with clause 4.

## **13 Standard of Care**

- 13.1 The Consultant in performing the Consultancy Services must:
- 13.1.1 exercise skill, care and diligence to a professional standard;
  - 13.1.2 ensure that the Consultancy Services are fit for their intended purpose, are complete and are performed in a manner that achieves all standards of performance included in or referred to in this Agreement;
  - 13.1.3 at all times exercise the utmost good faith in the best interests of the University and must keep the University fully and regularly informed as to all matters affecting or relating to the Consultancy Services;
  - 13.1.4 have the skills, qualifications and experience to perform the Consultancy Services in an efficient and controlled manner, with a high degree of quality and responsiveness and to a standard that at a minimum complies with this Agreement;
  - 13.1.5 continuously seek to improve the quality, effectiveness and efficiency, including cost effectiveness, of the Consultancy Services and must inform the University of reduced costs as they occur;
  - 13.1.6 use adequate numbers of appropriately qualified personnel to perform the Consultancy Services in accordance with this Agreement;

- 13.1.7 ensure that all information provided to the University, including in reports and documents provided to the University, is correct, complete and not misleading in any respect;
  - 13.1.8 comply with the University's policies and procedures, as applicable;
  - 13.1.9 comply with any reasonable directions in relation to the Consultancy Services given by the University from time to time;
  - 13.1.10 meet the Consultancy Milestones;
  - 13.1.11 comply with any requirements relating to the Consultancy Services as stated in this Agreement; and
  - 13.1.12 be free from defects in performance, meet their purpose and be complete.
- 13.2 The Consultant must not sub-contract the performance of the Consultancy Services without the written consent of the University.

## **14 Intellectual Property**

- 14.1 The title to and ownership of Intellectual Property (including copyright) in all Agreement Material will vest immediately upon its creation in the University.
- 14.2 This Agreement does not affect the ownership of Intellectual Property rights in any pre-existing material. However, the Consultant grants to the University a permanent, irrevocable, royalty-free, non-exclusive licence to use, reproduce, publish, adapt and exploit the pre-existing material in the Agreement Material anywhere in the world.
- 14.3 The Consultant must ensure that all Agreement Material is neatly and legibly compiled and contains adequate information to demonstrate the nature and extent of the Consultancy Services, and to support all conclusions, findings and opinions.
- 14.4 The Consultant warrants that the Agreement Material, and the University's use of the Agreement Material, will not infringe the Intellectual Property rights of any person.
- 14.5 If someone claims, or the University reasonably believes that someone is likely to claim, that all or part of the Agreement Material infringes their Intellectual Property rights, the Consultant must, in addition to the indemnity under clause 25 and to any other rights that the University may have against it, promptly, at the Consultant's expense:
- 14.5.1 use its best efforts to secure the rights for the University to continue to use the affected Agreement Material free of any claim or liability for infringement; or
  - 14.5.2 replace or modify the affected Agreement Material so that the Agreement Material or the use of it does not infringe the Intellectual Property rights of any other person without any degradation of the performance or quality of the affected Agreement Material.
- 14.6 To the extent permitted by law, the Consultant unconditionally and irrevocably consents, and will ensure that its employees and subcontractors consent, to any act or omission that would otherwise infringe its or their Moral Rights in this Agreement Material, including any act or omission that may have taken place before this consent and in particular:
- 14.6.1 consents to the following acts:
    - (a) any alteration to or deletion from this Agreement Material;
    - (b) any use of this Agreement Material that does not identify the author;
    - (c) any use of this Agreement Material under an organisational banner; and
    - (d) use of the Agreement Material in a different context to that originally envisaged,

where it is reasonable in the circumstances, but does not include derogatory treatment or false attribution of authorship.

14.7 On the earlier of the expiration or termination of this Agreement, or on any date specified in this Agreement for delivery of Agreement Material, the Consultant must deliver to the University all Agreement Material.

14.8 This clause 14 will survive the expiration or termination of this Agreement.

## **15 Confidentiality and Disclosure of Information**

15.1 A party, its employees, agents or subcontractors must not disclose or make public any Confidential Information provided by the other party without the prior approval in writing of the other party.

15.2 On the earlier of the expiration or termination of this Agreement, the Consultant must deliver to the University (and not retain any copies of) all material forms of Confidential Information provided to the Consultant by the University and allow the University to audit its compliance with this clause.

15.3 A party is permitted to disclose any Confidential Information:

15.3.1 to the extent required by law or by a lawful requirement of any government or governmental body, authority or agency having authority over the party;

15.3.2 if required in connection with legal proceedings;

15.3.3 for public accountability reasons, including a request for information by parliament or a parliamentary committee;

15.3.4 for any other reporting requirements of the party; or

15.3.5 to the party's staff and contractors on a need-to-know basis.

15.4 This clause 15 will survive the expiration or termination of this Agreement.

## **16 Privacy, Data Breaches and Freedom of Information**

16.1 The Consultant acknowledges that the University is subject to the provisions of the Privacy Act. The Consultant must ensure that its collection, retention, access to, correction, use and security of any Personal Information will be made, as the case may be:

16.1.1 only for the purposes of fulfilling its obligations under this Agreement; and

16.1.2 in accordance with the procedures from time to time requested by the University, but otherwise at least in accordance with the Australian Privacy Principles as set out in the Privacy Act, to the extent that the content of those Principles apply to the types of activities the Consultant is undertaking under this Agreement.

16.2 The Consultant must:

16.2.1 not do any act, or engage in any practice, that would be a breach of the Australian Privacy Principles or the Privacy Act

16.2.2 not disclose any Personal Information obtained in connection with this Agreement without the written authority of the University and must immediately notify the University where it becomes aware or ought reasonably to have become aware that a disclosure of Personal Information may be required by law; and

16.2.3 co-operate and comply with any reasonable requests or directions of the University arising directly from or in connection with the exercise or the functions of the Privacy Commissioner under the Privacy Act or otherwise.

- 16.3 The Consultant must ensure that any record as defined in the Privacy Act containing Personal Information provided to or obtained by the Consultant pursuant to this Agreement is, at the expiration or termination of this Agreement, either returned to the University or deleted or destroyed in the presence of a person duly authorised by the University to oversee such deletion or destruction.
- 16.4 If the Consultant becomes aware that there are reasonable grounds to suspect a Data Breach has occurred in relation to any Personal Information held by the Consultant as a result of this Agreement or its provision of the Services, the Consultant agrees to:
- 16.4.1 notify the University in writing as soon as possible, which must be no later than within 3 days; and
  - 16.4.2 provide the University with all information requested by the University about the Data Breach;
  - 16.4.3 co-operate and comply with any reasonable requests or directions of the University so that the University can carry out an assessment of the Data Breach in accordance with its obligations under the Privacy Act.
- 16.5 Where the Consultant notifies the University of a Data Breach in accordance with clause 16.4, or where the University notifies the Consultant that there has been a Data Breach in relation to any Personal Information held by the Consultant as a result of this Agreement or its provision of the Services, the Consultant will:
- 16.5.1 take all reasonable action to mitigate the risk of the Data Breach causing serious harm to any of the individuals to whom the compromised information relates;
  - 16.5.2 unless otherwise directed by the University, take all other action necessary to comply with the requirements of the Privacy Act; and
  - 16.5.3 take any other action as reasonably directed by the University.
- 16.6 In the event that the University receives a request under Freedom of Information legislation for access to a document, information or government information created by, or in the possession of, the University that relates to the performance of this Agreement, the Consultant must, if required by the University, immediately assist the University in relation to the request (including by providing any document, information or government information that it holds to the University). The terms, 'document', 'information' and 'government information' have the same meaning as they have in any Freedom of Information legislation.
- 16.7 The Consultant must ensure that each subcontract imposes obligations on the subcontractor equivalent to the obligations under this clause 16.
- 16.8 The Consultant must notify the University as soon as reasonably practicable if it becomes aware of a breach or possible breach of the obligations contained in this clause 16.
- 16.9 This clause 16 will survive the expiration or termination of this Agreement.

## **17 Modern Slavery**

- 17.1 In performing its obligations under this Agreement, the Consultant must:
- 17.1.1 Comply with all applicable modern slavery laws, statutes, regulations and codes from time to time in force (including but not limited to the *Modern Slavery Act 2018 (Cth)*);
  - 17.1.2 have and maintain throughout the term of this Agreement its own policies and procedures to ensure its compliance;

- 17.1.3 not engage in any activity, practice or conduct that would constitute an offence under Division 270 or Division 271 of the Schedule to the *Criminal Code Act 1995 (Cth)* if such activity, practice or conduct were carried out in Australia;
  - 17.1.4 ensure that each of its subcontractors and suppliers will comply with all applicable modern slavery laws, statutes, regulations and codes from time to time in force;
  - 17.1.5 notify the University as soon as it becomes aware of:
    - (a) any breach, or potential breach, of this clause 17.1; or
    - (b) any actual or suspected modern slavery in a supply chain which has a connection with this Agreement.
  - 17.1.6 maintain a complete set of records to trace the supply chain of all Goods and Services provided to the University in connection with this Agreement;
  - 17.1.7 permit the University and its third party representatives, on reasonable notice during normal business hours (but without notice in case of any reasonably suspected breach of this clause 17.1), to have access to and take copies of the Consultant's records and any other information and to meet with the Consultant's personnel to audit the Consultant's compliance with its obligations under this clause; and
  - 17.1.8 implement annual audits of its compliance (and its subcontractors' and suppliers' compliance) with all applicable modern slavery laws, statutes, regulations and codes from time to time in force.
- 17.2 If requested by the University, the Consultant will, subject to any existing confidentiality requirements and any relevant legislative requirement, take all reasonable steps to provide the University with any information, reports or documents in relation to any Modern Slavery Offence or any risk of a Modern Slavery Offence within its organisation or supply chain, in relation to the Consultancy Services, including if required the completion of a self-assessment questionnaire.

## **18 Conflict of Interest**

- 18.1 The Consultant warrants that, at the date of entering into this Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement which has not already been advised to the University in writing and consented to by the University.
- 18.2 If, during the term of this Agreement, a conflict or risk of conflict of interest arises, the Consultant undertakes to notify the University immediately in writing of that conflict or risk and to take such steps as the University may reasonably require to resolve or deal with the conflict as required. If the Consultant is unable or unwilling to resolve or deal with the conflict as required, the University may terminate this Agreement in accordance with clause 24.

## **19 Compliance with the University's Policies**

- 19.1 The Consultant must, when using the University's premises or facilities, comply with all reasonable directions of the University and all procedures and policies of the University relating to occupational health (including no smoking), safety and security in effect at those premises or in regard to those facilities, as set out at <https://policies.anu.edu.au/> and as might reasonably be inferred from the use to which the premises or facilities are being put.

## **20 Negation of Employment and Agency**

- 20.1 The Consultant must not represent itself, and must ensure that its employees do not represent themselves, as being employees, partners or agents of the University unless specifically required to under the Statement of Requirement.

20.2 The Consultant will not, by virtue of this Agreement, or for any purpose be deemed to be an employee, partner or agent of the University unless specifically specified as such in the Statement of Requirement.

## **21 Performance Evaluation**

21.1 The Consultant's performance will be monitored by the Agreement Manager systematically throughout the term of this Agreement. Performance indicators will include:

21.1.1 timeliness;

21.1.2 provision of regular project reports;

21.1.3 performance of all tasks included in the performance of the Consultancy Services;

21.1.4 satisfactory standards of workmanship and achievement of all performance standards included in this Agreement;

21.1.5 provision of advice which enables effective action to be taken by the University;

21.1.6 adherence to budget; and

21.1.7 ability to respond effectively to the requirements of the Agreement Manager under the terms and conditions of this Agreement (Performance Evaluation).

21.2 The Consultant must comply with any reasonable direction given by the Agreement Manager on behalf of the University, within the general scope of the administration of this Agreement, including in respect of any rectification or improvement of the Consultancy Services to meet the Performance Evaluation or otherwise comply with this Agreement.

## **22 Audit**

22.1 The University, its nominee, the Commonwealth Auditor-General, the Commonwealth Privacy Commissioner, or a delegate of the Auditor-General or the Privacy Commissioner, for the purpose of ensuring the proper performance of this Agreement and/or performing the Auditor-General's or the Privacy Commissioner's statutory functions, may at reasonable times and on giving reasonable notice to the Consultant:

22.1.1 require the provision by the Consultant, its employees, agents or subcontractors of records and information which are related to this Agreement;

22.1.2 have access to the premises of the Consultant for the purposes of inspecting and copying documentation and records, however stored, in the custody or under the control of the Consultant, its employees, agents or subcontractors which are related to this Agreement; and

22.1.3 where relevant, inspect the University assets held on the premises of the Consultant.

22.2 The Consultant must comply with the University's requests under clause 22 at no additional cost to the University.

22.3 The Consultant must promptly take, at no additional cost to the University, corrective action to rectify any error, non-compliance or inaccuracy identified in any audit in the way the Consultant has under this Agreement:

22.3.1 performed the Consultancy Services; or

22.3.2 calculated any Consultancy Fees or any other amounts billed to the University.

22.4 Clause 22 applies for the term of this Agreement and for a period of seven years from the date of expiration or termination of this Agreement.

## **23 Termination for Convenience**

- 23.1 The University may, at any time, by written notice to the Consultant, terminate this Agreement in whole or in part or reduce the scope of the Statement of Requirement.
- 23.2 Upon such notice being given the Consultant must:
- 23.2.1 cease or reduce work according to the tenor of the notice;
  - 23.2.2 immediately do everything possible to mitigate or minimise any losses resulting from that termination and to protect the Agreement Material; and
  - 23.2.3 continue work on any part of the Consultancy Services not affected by the notice.
- 23.3 If this Agreement is terminated under clause 23.1, the University is liable only for:
- 23.3.1 payment of Consultancy Fees for Consultancy Services performed before the effective date of termination, provided those Consultancy Services performed have been performed in accordance with this Agreement and the Consultant is not otherwise in breach of this Agreement; and
  - 23.3.2 subject to this clause 23, any reasonable costs (excluding consequential loss) in respect of unavoidable Loss sustained or incurred by the Consultant and directly attributable to the termination or partial termination of this Agreement, provided that the costs are fully substantiated to the University. These costs under clause 23.3.2 must not exceed total Consultancy Fees paid under this Agreement up to and including the effective date of termination.
- 23.4 In the event of partial termination, the University's liability to pay the Consultancy Fees, in the absence of agreement to the contrary, will abate proportionately to the reduction in the Consultancy Services and the meeting of the Consultancy Milestones.
- 23.5 The Consultant is not entitled to compensation for loss of prospective profits.

## **24 Termination for Default**

- 24.1 Without limiting any other rights or remedies the University may have against the Consultant arising out of or in connection with this Agreement, the University may, by notice in writing to the Consultant, terminate this Agreement immediately (or at the expiration of a stay period that applies to an Insolvency Event under the Corporations Act) in whole or in part and recover from the Consultant any loss or damage suffered by the University if:
- 24.1.1 the Consultant suffers an Insolvency Event;
  - 24.1.2 the Consultant ceases, or threatens to cease, to carry on its business;
  - 24.1.3 the Consultant commits a breach of this Agreement which is not, in the opinion of the University, capable of rectification;
  - 24.1.4 the Consultant breaches this Agreement where such breach is, in the opinion of the University, capable of rectification and the Consultant does not rectify the breach within 14 days after receiving a notice from the University requiring the Consultant to rectify the breach; or
  - 24.1.5 a delay or failure of the Consultant to perform its obligations which exceeds 30 days, due to a Force Majeure Event.
- 24.2 Where, before termination of this Agreement under clause 24.1, the University has made any payment in advance to the Consultant for which it has not received Consultancy Services, the amount of that payment must be repaid by the Consultant to the University immediately on termination and, if not repaid, is recoverable by the University from the Consultant as a debt.

- 24.3 If this Agreement is terminated under this clause 24:
- 24.3.1 subject to this Agreement, the parties will be relieved from future performance, without prejudice to any right of action that has accrued at the date of termination;
  - 24.3.2 the University's rights to recover damages are not affected;
  - 24.3.3 the Consultant must comply with all obligations in this Agreement relating to Agreement Material.
- 24.4 On termination of this Agreement, the Consultant must:
- 24.4.1 stop work on the Consultancy Services;
  - 24.4.2 deal with Agreement Material as reasonably directed by the University; and
  - 24.4.3 subject to clause 15.2, return all the University's Confidential Information to the University.

## **25 Indemnity**

- 25.1 Subject to clause 25.2, the Consultant must at all times indemnify the University, its officers, employees, students and agents (**those indemnified**) from and against all Loss (including legal costs and expenses on a solicitor and own client basis) or liability whatsoever incurred or suffered by any of those indemnified or arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such Loss or liability was caused or contributed to in any way:
- 25.1.1 by any wrongful, unlawful or negligent act or omission of the Consultant, or its officers, employees, agents, subcontractors or invitees, in performing the Consultancy Services in connection with this Agreement;
  - 25.1.2 by arising out of an allegation that any Consultancy Services or Agreement Material (including the use of any Agreement Material by the University or its employees, agents or subcontractors) infringes the Intellectual Property rights or Moral Rights of the third party; or
  - 25.1.3 by any act or omission by the Consultant causing death, personal injury or property damage.
- 25.2 The Consultant's liability to indemnify the University under clause 25.1 will be reduced proportionally to the extent that any act or omission of the University or its employees or agents contributed to the Loss.
- 25.3 The University may enforce the indemnity in clause 25.1 in favour of the persons specified in clause 25.1 for the benefit of each of such persons in the name of the University or of such persons.
- 25.4 If payment under an indemnity to the University gives rise to a liability for the University to pay GST, the Consultant must pay and indemnify the University against the amount of such GST.
- 25.5 This clause 25 will survive the expiration or termination of this Agreement.

## **26 Insurance**

- 26.1 The Consultant must, at its own expense, effect and maintain with a reputable insurance company from the date of Commencement of this Agreement:
- 26.1.1 Public & products liability insurance in the amount of \$20 million per occurrence and in the aggregate;



- 26.1.2 Professional indemnity insurance in the amount of \$20 million per occurrence and in the aggregate;
- 26.1.3 Workers compensation insurance as required by law.
- 26.2 Any insurance policies held by the Consultant that provide cover on a 'claims made' basis must be maintained for no less than seven (7) years after the completion of the Agreement. Any insurance policies that provide cover on an 'occurrence' basis must be maintained during the term of this Agreement.
- 26.3 The Consultant must provide evidence without delay of its insurance under clause 26.1 on request by the University.

## **27 Applicable Law**

- 27.1 This Agreement will be governed by and construed in accordance with the law for the time being in force in the Australian Capital Territory and the parties agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

## **28 Notices**

- 28.1 Notices under this Agreement may be delivered by prepaid postage, by hand, by facsimile or by e-mail transmission to each of the parties at the following address:

**University:**

College of Law Research Office  
The Australian National University  
5 Fellows Road, ACTON ACT 2600  
[research.law@anu.edu.au](mailto:research.law@anu.edu.au)

**Consultant:**

Danny Price  
[Danny.Price@frontier-economics.com.au](mailto:Danny.Price@frontier-economics.com.au)

or such other address as either party may specify by notice in writing to the other.

## **31 Force Majeure Event**

- 31.1 A party (the **non-performing party**) will not be liable to the other party in respect of the consequences of any non-compliance with its obligations under this Agreement (other than an obligation to pay money) if and to the extent such non-compliance is caused by a Force Majeure Event, provided the non-performing party:
- 31.1.1 is without fault in causing the Force Majeure Event or resulting non-compliance;
- 31.1.2 could not have prevented or reasonably circumvented the Force Majeure Event or resulting non-compliance by taking reasonable precautions, or through the use of alternative sources, work-around plans or other means;
- 31.1.3 as soon as practicable, notifies the other party of the Force Majeure Event and details of any non-compliance;
- 31.1.4 continues to use its best endeavours to recommence performance whenever and to whatever extent possible without delay; and
- 31.1.5 keeps the other party informed of steps taken to address the non-compliance.
- 31.2 Without limiting the University's right to terminate pursuant to clause 24.1.5, during any period in which the Consultant is not performing obligations because of a Force Majeure Event, the University:

31.2.1 is relieved from the obligation to pay the Consultant to the extent that the Consultant has not performed its obligations in accordance with this Agreement; and

31.2.2 may (but need not) make alternative arrangements for the performance, whether by another person or otherwise, of any obligation that the Consultant is not performing without incurring any liability to the Consultant.

## **32 Warranty**

32.1 The Consultant warrants and represents to the University that:

32.1.1 the Consultant has the right and authority to enter into this Agreement;

32.1.2 the Consultant has all rights, titles, licences, interests and property necessary to lawfully perform the Consultancy Services;

32.1.3 the Consultant and the Specified Personnel have the necessary experience, skill, knowledge, expertise and competence to perform the Consultancy Services;

32.1.4 the Consultancy Services will be fit for the purpose:

32.1.5 the Consultancy Services will be complete and accurate;

32.1.6 it conducts its business in a manner that is consistent with all applicable modern slavery laws, statutes, regulations and codes from time to time in force including but not limited to the *Modern Slavery Act 2018 (Cth)*;

32.1.7 all work performed under this Agreement will be carried out and completed in a proper and workmanlike manner and in the most cost-effective manner and using materials suitable for the purpose; and

32.1.8 the person who signs this Agreement for and on behalf of the Consultant has the requisite authority to do so, and if that person is acting under a power of attorney that the power of attorney is in force and in existence and has not been revoked.

32.2 This clause 32 will survive the expiration or termination of this Agreement.

## **33 Dispute Resolution**

33.1 A party must not start court proceedings (except proceedings seeking interlocutory relief) about a dispute arising out of this Agreement unless it has complied with this clause 33.

33.2 A party claiming that a dispute has arisen must notify the other party giving details of the dispute ('Notification').

33.3 On receipt of a Notification, each party must negotiate in good faith to resolve the dispute and, if necessary to resolve the dispute, involve the relevant senior officers of the parties directly in those negotiations.

33.4 If a dispute is not resolved within 30 days (or longer period agreed between the parties), the parties will refer the dispute for mediation by the Australian Disputes Centre Limited (ADC) for resolution in accordance with the ADC guidelines for commercial mediation.

33.5 If a dispute is not resolved under clause 33.4 within 90 days after referral (or longer period agreed between the parties) a party may initiate court proceedings.

## **34 Assignment and Novation**

34.1 The Consultant must not assign in whole or in part or novate the Agreement without obtaining the prior written consent of the University, which consent may be withheld in its discretion.

34.2 The Consultant acknowledges that the University may conduct financial or other inquiries or checks on the entity proposing to take over the Agreement before determining whether or not to give consent to an assignment or novation.

### **35 Counterparts**

35.1 This Agreement may be signed in any number of counterparts (including electronically signed counterparts) and all such signed counterparts, taken together, shall be deemed to constitute one and the same instrument even though both parties may not have signed each separate counterpart.

**EXECUTED AS AN AGREEMENT**

**SIGNED**

for and on behalf of the **Australian National University ABN 52 234 063 906** by an authorised officer in the presence of:

**s47F**  
[Redacted Signature]

(Signature of witness)

Phillip Tweedie

(Printed name of witness)

**s47F**  
[Redacted Signature]

(Signature of authorised officer)

Professor Sally Wheeler

(Printed name of authorised officer)

13/10/21

Date

**SIGNED**

for and on behalf of **Frontier Economics ABN 13 087 553 124** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

**s47F**  
[Redacted Signature]

(Signature of Director)

Danny Price

(Printed name of Director)

11/10/21

Date

(Signature of Company Secretary)

Kim Woods

(Printed name of Company Secretary)

11/10/21

Date

## Schedule 1 Statement of Requirement

<b>Consultancy Services</b>	<p>The Australian National University (ANU) has received a donation to support research on the greenhouse and economic impacts of stopping native forest harvesting in the Southern Forest Region of New South Wales.</p> <p>As part of this program of work, the ANU wants to engage Frontier Economics to undertake a cost-benefit analysis on the cessation of native forest harvesting in the region to quantify to the impact of the project on social welfare.</p> <p>The report must:</p> <ul style="list-style-type: none"> <li>• quantitatively evaluate the impact that stopping harvesting will have on net greenhouse gas emissions, as reflected in Australia's and NSW's greenhouse gas accounts;</li> <li>• quantitatively evaluate the number of carbon credits that could be generated by undertaking the project;</li> <li>• estimate the number of people employed in native forestry, and manufacturing related to native forestry, in the Southern Forestry Region;</li> <li>• outline the method used to prepare the cost-benefit analysis; and</li> <li>• present the results of the cost-benefit analysis.</li> </ul> <p>For the avoidance of doubt, the ANU will be responsible for modelling the greenhouse gas impacts if native forestry is stopped in the Southern Forest Region and providing these to Frontier Economics as an input to the cost-benefit analysis.</p> <p>The body of the report should be approximately 20-30 pages in length and, where relevant, include appendices to present key data inputs and assumptions, and additional results.</p> <p>The analysis should be based on a comparison of a base case, where native forestry continues in the Southern Forestry Region, with a scenario where native forestry is shut down completely in 2022.</p>
<b>Commencement Date</b>	On execution of this agreement
<b>Initial Term</b>	Until 15 November 2021
<b>Option Term</b>	N/a
<b>Place to be performed</b>	N/a
<b>Manner to be provided</b>	Electronic
<b>Specifications</b>	The body of the report should be approximately 20-30 pages in length and, where relevant, include appendices to present key data inputs and assumptions, and additional results.
<b>Standards</b>	To the satisfaction of the ANU Agreement Manager
<b>Specified Personnel</b>	Deirdre Rose

## Schedule 2 Consultancy Milestones

Consultancy Milestone Description	Due Date	Consultancy Fees
Initiation Meeting	On execution of contract	s47G
Draft Report	5 October 2021	
Final Report	2 November 2021	

## Schedule 3      Consultancy Fees

### 1. Fixed Charges

The Consultancy Fees are fixed as follows:

	Consultancy Services	Fixed Consultancy Fees	Maximum Charges (exclusive of GST)
1.	Initiation Meeting		s47G
2.	Draft Report		
3.	Final Report		

### 2. Invoicing requirements

The invoice must be in a form approved by the University and must:

- (a) contain the Consultant's name, address and ABN;
- (b) contain pre-GST amounts, the amount of GST applied (where applicable) and the total price payable by the University;
- (c) contain the contract number, purchase order number or UID provided by the University (if any);
- (d) contain the name of the University Contract Manager;
- (e) contain an itemised list of the Consultancy Fees payable together with any substantiating material required and a record detailing how the relevant Due Dates have been met;
- (f) contain an itemised list of the amount of any allowances and costs to be paid by the University together with any substantiating material required;
- (g) comply with the requirements of the GST law;
- (h) specify the period covered by the invoice; and
- (i) contain any other information reasonably requested by the University from time to time.

#### Address All Invoices To:

<b>CI</b>	Andrew Macintosh
<b>College</b>	College of Law
<b>Address</b>	The Australian National University, Canberra ACT 2600 Australia
<b>Email</b>	Invoice.workflow@anu.edu.au
<b>Invoice Reference No</b>	Aries ID-40652

**3. Fees**

- (a) The Consultancy Fees are payable by the University within 30 days of receipt by the University's Contract Manager of a correctly rendered Tax Invoice.
- (b) If an invoice is found to have been rendered incorrectly after payment, any underpayment or overpayment will be recoverable by or from the Consultant, as the case may be, and, without limiting recourse to other available means, may be offset against any amount subsequently due by the University to the Consultant under this Agreement.
- (c) Unless specified otherwise in this Schedule 3 the Consultant must not charge the University for any fees, charges or expenses (including travel and accommodation, document reproduction, transportation and courier charges, and telecommunications charges) in addition to the Consultancy Fees. The University is under no obligation to pay any amount in excess of the Consultancy Fees.