

Department of Resources, Energy and Tourism

Contract for the Provision of Services number [insert]

Commonwealth of Australia (**Commonwealth**)

The Boston Consulting Group Pty Ltd (**Contractor**)

Note to the Contractor:

This Contract outlines the rights and obligations of you and the Commonwealth (represented by the Department of Resources, Energy and Tourism) (**RET**) in relation to the performance of the Services.

If this Contract has been issued following a tender process, the terms and conditions contained in clauses 1 to 29 should be the same as those in the draft contract provided as an attachment to the Request for Tender document, other than any amendments agreed between you and RET during contract negotiations. Please read any amended provisions (such as the descriptions of the Services and the Milestone Dates and Performance Criteria (if any)) carefully to ensure that they are correct.

The effect and purpose of the clauses are explained in the User Notes available on RET's website at User Notes. Where relevant, the User Notes contain a description of the purpose and operation of specific clauses.

The Commonwealth Representative specified in this Contract is prepared to discuss any aspect of this Contract with you, but if you are still unsure about any aspect of this Contract you should seek independent legal advice before signing.

This Contract has been sent to you in duplicate. If the Contract is acceptable, please complete the signing page at the end of the Contract and return both signed copies to RET. RET will then sign and date the copies and return one original copy to you. This process must be completed before work may commence.

Contract for the Provision of Services

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Agreed Terms

Part 1 – Services

1. Definitions and interpretation

1.1 Definitions

In this Contract, except where the contrary intention is expressed, the following definitions are used:

Accounting Standards	means the standards of that name maintained by the Australian Accounting Standards Board (created by section 226 of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth)) or other accounting standards which are generally accepted and consistently applied in Australia.
Advisers	(a) the financial or legal advisers of a party; and (b) the respective officers and employees of those financial or legal advisers.
Agency	(a) a body corporate or an unincorporated body established or constituted for a public purpose by Commonwealth legislation, or an instrument made under that legislation (including a local authority); (b) a body established by the Governor-General or by a Minister of the Commonwealth including departments; or (c) an incorporated company over which the Commonwealth exercises control.
Agency Order Form	the form specified by the Commonwealth.
Agreed Terms	clauses 1 to 29 of this Contract, which set out terms and conditions agreed by the parties.
Australian Government Protective Security Manual	the <i>Australian Government Protective Security Manual 2005</i> , as amended or replaced from time to time.
Business Day	a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the act is to be performed or where the Notice is received.
Business Hours	from 9.00am to 5.00pm on a Business Day, unless specified otherwise in item 5 of the Contract Details.
Commencement Date	the date on which this Contract commences, as specified in item 6 of the Contract Details.
Commonwealth	the Commonwealth as specified in item 1 of the Contract Details.
Commonwealth Confidential Information	Confidential Information that belongs to or is provided by the Commonwealth and extends to information derived from or during the Stakeholder engagement meetings referred to in Schedule 2, Part 2, Table Line 1.

Commonwealth Material	any Material provided to the Contractor by the Commonwealth, including the Material (if any) specified in item 14 of the Contract Details.
Commonwealth Representative	the person identified in item 3 of the Contract Details.
Confidential Contract Provisions	the provisions identified in Schedule 5.
Confidential Information	information that is by its nature confidential and: <ul style="list-style-type: none"> (a) is designated by a party as confidential and is described in Schedule 5 of this Contract; or (b) a party knows or ought to know is confidential, but does not include: <ul style="list-style-type: none"> (c) information that is or becomes public knowledge otherwise than by breach of this Contract or any other confidentiality obligation.
Contract	this agreement between the Commonwealth and the Contractor, as amended from time to time in accordance with clause 29.2, and includes its schedules and any attachments.
Contract Details	the details set out in Schedule 1.
Contract Material	any Material created by the Contractor on or following the Commencement Date, for the purpose of or as a result of performing its obligations under this Contract and includes any modifications that may be required under clause 12.6(b).
Contractor	the party specified in item 2 of the Contract Details and includes its subcontractors and Personnel.
Contractor Representative	the person identified in item 4 of the Contract Details.
Contract Period	the Initial Contract Period plus any extension in accordance with clause 3.2.
Corporations Act	the <i>Corporations Act 2001</i> (Cth).
Deliverable	any Contract Material or other item or element of a Service to be provided by the Contractor under this Contract.
RET	the Department of Resources, Energy and Tourism.
Initial Contract Period	the period of time for which this Contract is intended to continue, as specified in item 7 of the Contract Details.

Intellectual Property Rights	<p>all intellectual property rights, including:</p> <ul style="list-style-type: none"> (a) copyright, patents, trademarks, designs, trade secrets, know how, and any right to have confidential information kept confidential; (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere, <p>whether or not such rights are registered or capable of being registered.</p>
Law	any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and rules of equity as applicable from time to time.
LEADR	the dispute resolution association with that name and the Australian Business Number 69 008 651 232.
Material	includes property, information, documentation or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.
Milestone Date	any fixed date to be met by the Contractor in performing any of its obligations under this Contract, as specified in Schedule 2.
Moral Rights	the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the <i>Copyright Act 1968</i> (Cth).
Nominated Agency	an Agency, listed in item 10 of the Contract Details, which may require the provision of Services under this Contract.
Notice	a notice, demand, consent, approval or communication issued under this Contract.
Performance Criteria	the requirements set out in item 4 of Schedule 2 for each Service and Deliverable and if none are set out (or it states not applicable or anything to the same effect) the requirements in clauses 6.1(c) and 6.1(e).
Personnel	in relation to a party, any natural person who is an employee, officer, agent, or professional advisor of that party, and in the case of the Contractor, of any subcontractor.

Pre-existing Material	Material owned by a party before execution of this Contract, including the Material specified in Schedule 6.
Schedules	the schedules to this Contract.
Service Charges	the charges payable to the Contractor in accordance with Schedule 3.
Services	the services to be provided by the Contractor, as specified in Schedule 2 and includes the provision of the Deliverables.
Specified Personnel	the Contractor's subcontractors and Personnel specified in item 13 of the Contract Details.
Third Party Material	Material owned by a third party that is: <ul style="list-style-type: none"> (a) included, embodied in or attached to the Contract Material; or (b) used as part of the performance of the Services.

1.2 Interpretation

In this Contract, except where the contrary intention is expressed:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph or schedule is to a clause or paragraph of, or schedule to, this Contract, and a reference to this Contract includes any schedule;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Canberra, Australia time;
- (g) a reference to a party is to a party to this Contract, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (k) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (l) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;

- (m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Contract or any part of it;
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (p) headings are for ease of reference only and do not affect interpretation.

1.3 Completion of Schedules

To the extent that the parties have not completed items in a Schedule, unless otherwise stated in the Schedule, those items will be taken to be 'not applicable' for the purpose of this Contract.

2. Priority of Contract documents

If there is inconsistency between any of the documents forming part of this Contract, those documents will be interpreted in the following order of priority to the extent of any inconsistency:

- (a) Agreed Terms;
- (b) Schedules;
- (c) any attachments to the Schedules; and
- (d) documents incorporated by reference in this Contract.

3. Duration of Contract

3.1 Initial Contract Period

This Contract begins on the Commencement Date and continues for the duration of the Contract Period unless terminated in accordance with clause 24.3 or clause 26.

3.2 Option to extend Contract Period

- (a) The Contract Period may be extended by the Commonwealth for further period(s), specified in item 8 of the Contract Details (each an **Option Period**), on the terms and conditions then in effect, by giving written notice to the Contractor. Such notice must be given at least:
 - (i) 30 days; or
 - (ii) such other period specified in item 9 of the Contract Details (**Option Notice Period**),
 before the end of the current Contract Period.
- (b) Any extension in accordance with this clause 3.2 takes effect from the end of the then current Contract Period.

4. Services to other Agencies

4.1 Obligation to provide Services

The Contractor offers to provide the Services to any Nominated Agency in accordance with the requirements set out in this clause 4.

4.2 Request

A Nominated Agency may request the supply of Services in accordance with clause 4.1, by giving the Contractor a completed Agency Order Form.

4.3 Separate contracts

Each Agency Order Form agreed with the Contractor in accordance with this Contract will create a separate contract between the Contractor and:

- (a) the Commonwealth represented by the Nominated Agency (where that Agency is subject to the *Financial Management and Accountability Act 1997* (Cth)); or
- (b) the Nominated Agency,

as the case requires, for the supply by the Contractor of the requested Services to the Nominated Agency. For the sake of clarity, the terms and conditions governing each such separate contract will be the same as the provisions of this Contract.

5. General obligations of the Contractor

The Contractor will, at all times:

- (a) act reasonably in performing its obligations and exercising its rights under this Contract; and
- (b) diligently perform its obligations under this Contract.

6. Provision of Services

6.1 Service obligations

The Contractor must supply the Services:

- (a) to the reasonable satisfaction of the Commonwealth Representative;
- (b) with due skill and care and to the best of the Contractor's knowledge and expertise;
- (c) to a high standard and in accordance with the professional standards of conduct applying to the relevant industry;
- (d) in accordance with the Performance Criteria;
- (e) in accordance with relevant Australian industry standards, best practice and guidelines or where none apply, relevant international industry standards, best practice and guidelines, including any specified in item 11 of the Contract Details;
- (f) using the Specified Personnel (if any);
- (g) in accordance with all applicable Laws;
- (h) in accordance with Commonwealth policies and specific requirements set out in Schedule 7;
- (i) in accordance with any directions in relation to the Services given by the Commonwealth from time to time;
- (j) so as to meet the Milestone Dates and other project plan requirements, and where no Milestone Dates or project plan requirements are specified, promptly and without delay;
- (k) in accordance with the same standards and obligations that are imposed on Commonwealth Personnel under the *Occupational Health and Safety Act 1991* (Cth);

- (l) so as to keep accurate and auditable records relating to the performance of the Services;
and
- (m) otherwise in accordance with the provisions of this Contract.

6.2 Contractor warranties

The Contractor represents and warrants that:

- (a) it has the right to enter into this Contract;
- (b) it has all rights, title, licences, interests and property necessary to lawfully perform the Services;
- (c) it and its subcontractors and Personnel, including its Specified Personnel, have the necessary experience, skill, knowledge, expertise and competence to perform the Services and (where appropriate) will hold such licences, permits or registrations as are required under any State, Territory or Commonwealth legislation to perform the Services, and are fit and proper people;
- (d) the Services shall conform with the requirements of the Contract;
- (e) the Services will be complete and accurate;
- (f) any materials that the Contractor incorporated in the Services are free from defects in design, performance and workmanship;
- (g) all work performed under this Contract 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;
- (h) all insurance policies required to be held by the Contractor under this Contract:
 - (i) will remain in effect as provided for in this Contract; and
 - (ii) will not be varied by the Contractor without the Commonwealth's written consent;
and
- (i) if the Contractor is a trustee, it enters this Contract personally and in its capacity as trustee and has the power to perform its obligations under this Contract.

6.3 Access to Commonwealth's premises

The Commonwealth must cooperate with the Contractor by providing access to its premises and facilities as reasonably necessary to enable the Contractor to provide the Services.

6.4 Conduct at Commonwealth's premises

Without limiting clause 21, the Contractor must, if using or accessing the Commonwealth's premises or facilities, comply with all reasonable directions and procedures relating to occupational health and safety and security in operation at those premises or facilities whether specifically drawn to the attention of the Contractor or as might reasonably be inferred from the circumstances.

6.5 Cultural Diversity

The Contractor should be aware of the Charter of Public Service in a Culturally Diverse Society. The Contractor must be sensitive to cultural diversity and, where the Services involve the provision of services to the public, must have regard to the principles set out in that charter.

6.6 Subcontracting

- (a) The Contractor must:
- (i) not subcontract any aspect of the provision of the Services other than to those entities set out in item 12 of the Contract Details without the prior written approval of the Commonwealth, which will not be unreasonably withheld;
 - (ii) not, in any event, enter into a subcontract under this Contract with a subcontractor named by the Director of Equal Opportunity for Women in the Workplace in a report to the responsible Minister as an employer currently not complying with the reporting requirements of the *Equal Opportunity for Women in the Workplace Act 1999* (Cth); and
 - (iii) ensure that any subcontractor approved under this Contract complies with:
 - (A) Clause 17 (Insurance);
 - (B) Clause 18 (Confidentiality and privacy);
 - (C) Clause 19 (Protection of personal information);
 - (D) Clause 20 (Conflict of interest);
 - (E) Clause 21 (Security); and
 - (F) Clause 23 (Audit and access).
- (b) The Contractor is fully responsible for the performance of the Services even if the Contractor subcontracts any aspect of the provision of the Services.

7. Co-operation with Personnel and contractors

The Contractor must in the performance of the Services under this Contract:

- (a) fully co-operate with the Commonwealth's Personnel and other contractors; and
- (b) use its best efforts to coordinate its activities so as to support and facilitate, in the Commonwealth's best interests, the timely and efficient completion of all work and other activities to be performed for the Commonwealth by any person.

8. Monitoring progress

8.1 Progress meetings

The parties will meet at the times and manner set out in Schedule 2 (or otherwise as agreed in writing between the parties) to discuss any issues in relation to the provision of the Services. The Contractor must ensure that the Contractor Representative, and the Commonwealth must ensure the Commonwealth Representative, is reasonably available to attend such meetings and answer any queries relating to the provision of the Services raised by either party.

8.2 Reporting

The Contractor must provide the Commonwealth with reports in accordance with Schedule 2.

9. Performance assessment

9.1 Assessment of Services

Without limiting any other obligation of the Contractor, each element of the Services is subject to assessment by the Commonwealth against the relevant Performance Criteria.

9.2 Notice of non-compliant Services

If the Commonwealth considers that all or part of the Services do not meet the Performance Criteria, the Commonwealth must provide the Contractor with notice of that fact and include reasons for the Services not meeting the Performance Criteria.

9.3 Rectification of non-compliant Services

If the Commonwealth notifies the Contractor that all or part of the Services do not meet the Performance Criteria, the Contractor must:

- (a) take all necessary steps to ensure that the Services are promptly corrected;
- (b) give notice to the Commonwealth when the Services have been corrected; and
- (c) allow the Commonwealth to repeat the assessment of all or part of the Services against the Performance Criteria,

within five Business Days after the date of the notice or such other time as agreed between the parties in writing.

9.4 Right to terminate

If any part of the Services does not meet the Performance Criteria on two or more occasions, the Commonwealth may terminate this Contract immediately under clause 26.2 by giving the Contractor written notice.

9.5 Other Rights

Clauses 9.2, 9.3 and 9.4 do not limit in any way any other right, remedy or recourse of the Commonwealth.

10. Personnel

10.1 Use of Specified Personnel

The Contractor must:

- (a) provide the Services or any part of the Services to which their particular expertise relates, with the active involvement of, and using the expertise of, the Specified Personnel; and
- (b) ensure that each of the Specified Personnel is aware of and complies with the Contractor's obligations in providing the Services.

10.2 If the Specified Personnel are not available

Where one or more of the Specified Personnel is or will become unable or unwilling to be involved in providing the Services, the Contractor must notify the Commonwealth immediately.

The Contractor must:

- (a) if requested by the Commonwealth, provide a replacement person of suitable ability and qualifications at no additional charge and at the earliest opportunity; and
- (b) obtain the Commonwealth's written consent prior to appointing any such replacement person. The Commonwealth's consent will not be unreasonably withheld.

10.3 Commonwealth may request replacement of Personnel

The Commonwealth may at any time request the Contractor to remove from work in respect of this Contract any of the Specified Personnel or any of the Contractor's subcontractors or Personnel. The Contractor must promptly arrange for the removal of such subcontractors or Personnel and their replacement in accordance with the process outlined in clause 10.2.

11. Commonwealth Material

The Commonwealth will provide to the Contractor the Commonwealth Material and the Contractor must ensure that the Commonwealth Material is used strictly in accordance with any conditions or restrictions specified in item 14 of the Contract Details and any direction by the Commonwealth.

12. Intellectual Property Rights

12.1 Pre-existing Material and Third Party Material

This clause 12 does not affect the ownership of the Intellectual Property Rights in any Pre-existing Material or Third Party Material.

12.2 Third Party Material

The Contractor must obtain all necessary copyright and other Intellectual Property Rights permissions before including any Third Party Material in the Contract Material or using Third Party Material as part of the Services.

12.3 Selecting an ownership model for Intellectual Property Rights in Contract Material

- (a) The ownership model for Intellectual Property Rights in Contract Material is the model set out in item 15 of the Contract Details.
- (b) Each party must, at its own cost, do all things and execute all documents necessary or convenient to give effect to the ownership model.

12.4 Contractor ownership of Intellectual Property Rights in Contract Material

- (a) If specified in item 15 of the Contract Details, all Intellectual Property Rights in the Contract Material vest in the Contractor on creation.
- (b) Unless otherwise specified in item 16 of the Contract Details, to the extent that:
 - (i) the Commonwealth needs to use any of the:
 - (A) Pre-existing Material or Third Party Material provided by the Contractor;
or
 - (B) Contract Material,

to receive the full benefit of the Services, the Contractor grants to, or must obtain for, the Commonwealth for the period specified in item 16 of the Contract Details a world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify, distribute and communicate that Material; or
 - (ii) the Contractor needs to use any of the Commonwealth Material for the purpose of performing its obligations under this Contract, the Commonwealth grants to the Contractor, subject to any conditions or restrictions specified in item 14 of the Contract Details and any direction by the Commonwealth, a world-wide, royalty-free, non-exclusive, non-transferable licence (including the right to sublicense) to

use, reproduce, adapt, modify and communicate such Material solely for the purpose of providing the Services.

- (c) The licence granted to the Commonwealth under clause 12.4(b)(i) does not include a right to exploit the Pre-existing Material, Third Party Material or the Contract Material for the Commonwealth's commercial purposes.
- (d) Where the Commonwealth wishes to disclose the Contract Material to any person the Commonwealth must first obtain the consent of the Contractor which the Contractor will not unreasonably withhold.

12.5 Warranty

The Contractor warrants that:

- (a) the Pre-existing Material, Third Party Material, the Deliverables and the Contract Material (**Warranted Materials**) and the Commonwealth's use of the Warranted Materials will not infringe the Intellectual Property Rights of any person; and
- (b) it has the necessary rights to vest the Intellectual Property Rights and grant the licences as provided for in this clause 12.

12.6 Remedy for breach of warranty

If someone claims, or the Commonwealth reasonably believes that someone is likely to claim, that all or part of the Warranted Materials infringe their Intellectual Property Rights, the Contractor must, in addition to the indemnity under clause 16 and to any other rights that the Commonwealth may have against it, promptly, at the Contractor's expense:

- (a) use its best efforts to secure the rights for the Commonwealth to continue to use the affected Warranted Materials free of any claim or liability for infringement; or
- (b) replace or modify the affected Warranted Materials so that the Warranted Materials or the use of them does not infringe the Intellectual Property Rights of any other person without any degradation of the performance or quality of the affected Warranted Materials.

12.7 Delivery of Contract Material

- (a) On the expiry or termination of this Contract or on such earlier date as may be specified by the Commonwealth, the Contractor must deliver to the Commonwealth Representative all Contract Material.
- (b) The Contractor will be permitted to retain one copy of all letters, proposals, presentations and contract materials for its own confidential record keeping.

13. Moral Rights

13.1 Obtaining consents

To the extent permitted by applicable Laws and for the benefit of the Commonwealth, the Contractor must:

- (a) give, where the Contractor is an individual, in a form acceptable to the Commonwealth;
- (b) use its best endeavours to ensure that each of the Personnel used by the Contractor in the production or creation of the Contract Material gives, in a form acceptable to the Commonwealth; and
- (c) use its best endeavours to ensure that any holder of Moral Rights in Third Party Material included in the Contract Material gives,

genuine consent in writing to the use of the Contract Material for the Specified Acts, even if such use would otherwise be an infringement of its or their Moral Rights.

13.2 Specified Acts

(a) In this clause 13, unless otherwise specified in item 17 of the Contract Details, **Specified Acts** means:

- (i) falsely attributing the authorship of any Contract Material, or any content in the Contract Material (including without limitation literary, dramatic, artistic works and cinematograph films within the meaning of the *Copyright Act 1968* (Cth));
- (ii) materially altering the style, format, colours, content or layout of the Contract Material and dealing in any way with the altered Contract Material;
- (iii) reproducing, communicating, adapting, publishing or exhibiting any Contract Material; and
- (iv) adding any additional content or information to the Contract Material.

(b) For the purposes of clause 13.2(a), **Contract Material** includes any Pre-existing Material and Third Party Material to the extent that it is included in, forms part of or is attached to the Contract Material.

Part 2 – General requirements

14. Payment

14.1 Obligation to pay charges

Subject to this clause 14 and the Services meeting the requirements of this Contract including the Performance Criteria, the Commonwealth must pay to the Contractor the Service Charges as set out in Schedule 3.

14.2 Contractor to provide invoice

The Contractor must provide a correctly rendered invoice to the Commonwealth for the Service Charges in accordance with the requirements specified in Schedule 3.

14.3 Due date for payment

Unless otherwise specified in Schedule 3, the Commonwealth must make payment of a correctly rendered invoice within 30 days after receiving the invoice.

14.4 Incorrect invoices, under/over payment

If an invoice is found to have been rendered incorrectly after payment, any underpayment or overpayment will be recoverable by or from the Contractor, as the case may be, and, without limiting recourse to other available means, may be offset against any amount subsequently due by the Commonwealth to the Contractor under this Contract.

14.5 Expenses

Unless specified otherwise in Schedule 3, the Contractor must not charge the Commonwealth for any fees, charges or expenses (including travel and accommodation, document reproduction, transportation and courier charges, and telecommunications charges) in addition to the Service Charges. The Commonwealth is under no obligation to pay any amount in excess of the Service Charges.

14.6 Taxes

The Contractor must pay all:

- (a) stamp duty (including penalties and interest) assessed or payable in respect of this Contract and the undertaking of the Services; and
- (b) subject to clause 15, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Contract.

15. GST

15.1 Interpretation

In this clause 15, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.

15.2 GST gross up

If a party (**Supplier**) makes a supply under or in connection with this Contract in respect of which GST is payable, the recipient of the supply (**Recipient**) must pay to the Supplier an additional amount equal to the GST payable on the supply (**GST Amount**).

15.3 Reimbursements

If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with clause 15.2.

15.4 Exclusion of GST from calculations

If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment will be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of GST.

15.5 Adjustments

- (a) If the GST payable by a Supplier on any supply made under or in connection with this Contract varies from the GST Amount paid or payable by the Recipient under clause 15.2 such that a further amount of GST is payable in relation to the supply or a refund or credit of GST is obtained in relation to the supply, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.
- (b) Any payment, credit or refund under this clause 15.5 is deemed to be a payment, credit or refund of the GST Amount payable under clause 15.2.
- (c) If an adjustment event occurs in relation to a supply, the Supplier must issue an adjustment note to the Recipient in relation to that supply within 14 days after becoming aware of the adjustment.

15.6 Tax invoice

A party need not make a payment for a taxable supply made under or in connection with this Contract until it receives a tax invoice for the supply to which the payment relates.

16. Indemnity

16.1 Indemnity

- (a) The Contractor will at all times indemnify, hold harmless and defend the Commonwealth, its officers and employees (referred to in this clause 16.1 as those indemnified) from and against any loss or liability, including:
 - (i) loss of, or damage to, property of the Commonwealth;

- (ii) claims by any person in respect of personal injury or death;
- (iii) claims by any person in respect of loss of, or damage to, any property; and
- (iv) costs and expenses including the costs of defending or settling any claim referred to in clause 16.1(a)(ii) or clause 16.1(a)(iii),

arising out of or as a consequence of:

- (v) an infringement, or an alleged infringement, of the Intellectual Property Rights of any person, which occurred by reason of an act done by the Commonwealth in relation to any part of the Services;
 - (vi) any actual, likely or threatened breach of the Contractor's or subcontractor's obligations relating to Confidential Information or personal information; or
 - (vii) without limiting the preceding paragraphs, any breach of this Contract by the Contractor, or negligence on the part of the Contractor, its Personnel or subcontractors or wrongful or unlawful act or omission on the part of the Contractor, its Personnel or subcontractors.
- (b) The Contractor's liability to indemnify those indemnified under clause 16.1(a) will be reduced proportionally to the extent that any negligent act or omission of those indemnified contributed to the loss.
 - (c) The Contractor will at all times indemnify, hold harmless and defend the Commonwealth against any compensation, remuneration or other amount payable to a third party for the use or exploitation of the Contract Material (or any of it), or exercise of any Intellectual Property Right of a third party embodied in the Contract Material, by the Commonwealth (or any person authorised by the Commonwealth) in circumstances where that use, exploitation or exercise is permitted under legislation without infringing the third party's Intellectual Property Right, and against all loss, liability, cost and expense arising out of or in connection with a claim for payment of any such compensation, remuneration or other amount.
 - (d) The Contractor's liability will be limited to the amount of fees paid for the services except for claims arising under Clause 16.1 (a) (i) through (vii)

17. Insurance

17.1 Obligation to maintain insurance

In connection with the provision of the Services, the Contractor must have and maintain:

- (a) for the Contract Period, valid and enforceable insurance policies for:
 - (i) public liability;
 - (ii) either professional indemnity or errors or omissions;
 - (iii) workers' compensation as required by Law; and
 - (iv) any additional types specified in item 18 of the Contract Details; and
- (b) for seven years following the expiry or termination of this Contract, valid and enforceable insurance policies for either professional indemnity or errors or omissions, unless otherwise specified in item 18 of the Contract Details,

in the amounts specified in item 18 of the Contract Details.

17.2 Certificates of currency

The Contractor must, on request by the Commonwealth, provide current relevant confirmation of insurance documentation from its insurers or insurance brokers certifying that it has insurance as required by clause 17.1.

18. Confidentiality and privacy

18.1 Prohibition on disclosure

- (a) Subject to clause 18.3, the Contractor must not, without the prior written consent of the Commonwealth disclose any Commonwealth Confidential Information to a third party.
- (b) Subject to clause 18.3, the Commonwealth must not, without the prior written consent of the Contractor disclose any Contractor Confidential Information to a third party.

18.2 Conditions of approval

In giving written consent to use or disclose Commonwealth Confidential Information, the Commonwealth may impose such conditions as it thinks fit. The Contractor must comply with any term or condition imposed by the Commonwealth under this clause 18.2.

18.3 Exceptions to obligations

The obligations on each party under clause 18.1 or 18.9 will not be taken to have been breached to the extent that Confidential Information of the other party:

- (a) is disclosed by a party to its Advisers or employees solely in order to comply with obligations, or to exercise rights, under this Contract;
- (b) is disclosed to a party's internal management personnel, solely to enable effective management or auditing of activities related to this Contract;
- (c) is disclosed by the Commonwealth to the responsible Minister;
- (d) is disclosed by the Commonwealth, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- (e) is shared by the Commonwealth within RET, or with another Agency, where this serves the Commonwealth's legitimate interests;
- (f) is disclosed by the Commonwealth to the Auditor General, Ombudsman or Privacy Commissioner;
- (g) is required by Law, to be disclosed; or
- (h) is in the public domain otherwise than due to a breach of this Contract.

18.4 Obligation on disclosure

Where a party discloses Confidential Information of the other party to another person:

- (a) pursuant to clauses 18.3(a), (b) or (e), the disclosing party must:
 - (i) notify the receiving person that the information is Confidential Information; and
 - (ii) not provide the information unless the receiving person agrees to keep the information confidential, including in the case of Commonwealth Confidential Information, the receiving person giving the Commonwealth a legally binding undertaking to that effect substantially in the form set out in Schedule 4; or

- (b) pursuant to clauses 18.3(c) and (d), the disclosing party must notify the receiving party that the information is Confidential Information of the other party.

18.5 Additional confidential information

- (a) The parties may agree in writing after the date of this Contract that certain additional information is to constitute Confidential Information for the purposes of this Contract.
- (b) Where the parties agree in writing after the date of this Contract that certain additional information is to constitute Confidential Information for the purposes of this Contract, this documentation is incorporated into, and becomes part of this Contract, on the date by which both parties have signed this documentation.

18.6 Period of confidentiality

The obligations under this clause 18 continue, notwithstanding the expiry or termination of this Contract:

- (a) in relation to an item of information described in Schedule 5, for the period set out in that schedule in respect of that item; and
- (b) in relation to any information which the parties agree in writing after the date of this Contract is to constitute Confidential Information for the purposes of this Contract, for the period agreed by the parties in writing in respect of that information.

18.7 No reduction in privacy obligations

Nothing in this Contract derogates from any obligation which either party may have under the *Privacy Act 1988* (Cth) as amended from time to time, in relation to the protection of personal information as defined in that Act or information that is protected by the *Census and Statistics Act 1905* (Cth), or any other Act, regulation or other legislative instrument requiring secrecy or confidentiality in dealing with information.

18.8 Return of information

At the Commonwealth's request or on the expiry or termination this Contract, the Contractor must promptly return all of the Commonwealth's physical and written records containing Commonwealth Confidential Information, and all documentation relating to that Commonwealth Confidential Information (including copies), to the Commonwealth in a form reasonably requested by the Commonwealth. Alternatively, if requested by the Commonwealth, the Contractor must destroy such items in the manner specified by the Commonwealth and promptly certify to the Commonwealth in writing that it has done so.

18.9 Confidential Contract Provisions

Notwithstanding any other provision of this Contract, the Commonwealth may disclose the provisions of this Contract except the Confidential Contract Provisions.

19. Protection of personal information

19.1 Application of this clause

This clause 19 applies only where the Contractor deals with personal information when, and for the purpose of, providing Services under this Contract.

19.2 Obligations

The Contractor acknowledges that it is a 'contracted service provider' within the meaning of section 6 of the *Privacy Act 1988* (Cth) (the **Privacy Act**), and agrees in respect of the provision of Services under this Contract:

- (a) to use or disclose personal information obtained during the course of providing Services under this Contract, only for the purposes of this Contract;
- (b) not to do any act or engage in any practice that would breach an IPP contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;
- (c) to carry out and discharge the obligations contained in the IPPs as if it were an agency under the Privacy Act;
- (d) to notify individuals whose personal information the Contractor holds, that complaints about acts or practices of the Contractor may be investigated by the Privacy Commissioner who has power to award compensation against the Contractor in appropriate circumstances;
- (e) not to use or disclose personal information or engage in an act or practice that would breach section 16F of the Privacy Act (direct marketing), an NPP (particularly NPPs 7 to 10) or an APC, where that section, NPP or APC is applicable to the Contractor, unless:
 - (i) in the case of section 16F – the use or disclosure is necessary, directly or indirectly, to discharge an obligation of this Contract; or
 - (ii) in the case of an NPP or an APC – where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Contract, and the activity or practice which is authorised by this Contract is inconsistent with the NPP or APC;
- (f) to disclose in writing to any person who asks, the content of the provisions of this Contract (if any) that are inconsistent with an NPP or an APC binding a party to this Contract;
- (g) to immediately notify the Commonwealth if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 19, whether by the Contractor or any subcontractor;
- (h) to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner, to the extent that they are not inconsistent with the requirements of this clause 19; and
- (i) to ensure that any employee of the Contractor who is required to deal with personal information for the purposes of this Contract is made aware of the obligations of the Contractor set out in this clause 19.

19.3 Subcontracts

The Contractor must ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the subcontractor has the same awareness and obligations as the Contractor has under this clause 19, including the requirement in relation to subcontracts.

19.4 Indemnity

- (a) The Contractor agrees to indemnify the Commonwealth in respect of any loss or liability suffered or incurred by the Commonwealth which arises directly or indirectly from a breach of any of the obligations of the Contractor under this clause 19, or a subcontractor under the subcontract provisions referred to in clause 19.3.

- (b) The Contractor's liability under Clause 19.4(a) will be limited to the amount of fees paid for the services.

19.5 Definitions

In this clause 19, the terms 'agency', 'approved privacy code' (**APC**), 'Information Privacy Principles' (**IPPs**), and 'National Privacy Principles' (**NPPs**) have the same meaning as they have in section 6 of the Privacy Act, and 'personal information', which also has the meaning it has in section 6 of the Privacy Act, means:

'information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion'.

20. Conflict of interest

20.1 Warranty that there is no conflict of interest

The Contractor warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Contract no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract.

20.2 Notification of a conflict of interest

If, during the performance of the Services a conflict of interest arises, or appears likely to arise, the Contractor must:

- (a) notify the Commonwealth immediately in writing;
- (b) make full disclosure of all relevant information relating to the conflict; and
- (c) take such steps as the Commonwealth requires to resolve or otherwise deal with the conflict.

21. Security

21.1 Australian Government Protective Security Manual

The Contractor must comply with the security requirements detailed in the Australian Government Protective Security Manual as minimum standards (to the extent applicable to the Services), any security requirements specified in item 19 of the Contract Details and any additional requirements advised by the Commonwealth from time to time.

21.2 Security clearances

- (a) If required by the Commonwealth, each of the Personnel engaged by or on behalf of the Contractor must hold an Australian Government security clearance to the level required by the Commonwealth.
- (b) The Commonwealth will facilitate the obtaining of security clearances.
- (c) The cost of security clearances will be borne by the Contractor.

21.3 Security checks

The Commonwealth may undertake any security checks it considers appropriate of the Contractor, its employees, agents and subcontractors.

21.4 Security breaches

- (a) The Contractor acknowledges that if any Personnel lose their security clearance or causes a security breach, the Commonwealth may:

- (i) after consultation with the Contractor, require the replacement of that person; or
 - (ii) immediately terminate this Contract for breach.
- (b) The Contractor must notify the Commonwealth immediately on becoming aware of any security incident or security breach. The Contractor agrees that if a security incident or a security breach occurs, the Contractor will immediately comply with all directions of the Commonwealth in order to address the incident or breach, and ensure it does not occur again.

22. Books and records

22.1 Contractor to keep books and records

The Contractor must:

- (a) keep and require its subcontractors to keep adequate books and records, in accordance with Accounting Standards, in sufficient detail to enable the amounts payable by the Commonwealth under this Contract to be determined; and
- (b) retain and require its subcontractors to retain for a period of seven years after the expiry or termination of this Contract all books and records relating to the Services.

22.2 Costs

The Contractor must bear its own costs of complying with this clause 22.

22.3 Survival

This clause 22 applies for the Contract Period and for a period of seven years from the expiry or termination of this Contract.

23. Audit and access

23.1 Right to conduct audits

The Commonwealth or a representative may conduct audits relevant to the performance of the Contractor's obligations under this Contract. Audits may be conducted of:

- (a) the Contractor's operational practices and procedures as they relate to this Contract, including security procedures;
- (b) the accuracy of the Contractor's invoices and reports in relation to the provision of the Services under this Contract;
- (c) the Contractor's compliance with its confidentiality, privacy and security obligations under this Contract;
- (d) Material (including books and records) in the possession of the Contractor relevant to the Services or this Contract; and
- (e) any other matters determined by the Commonwealth to be relevant to the Services or this Contract.

23.2 Access by the Commonwealth

- (a) The Commonwealth may, at reasonable times and on giving reasonable notice to the Contractor:
 - (i) access the premises of the Contractor to the extent relevant to the performance of this Contract;

- (ii) require the provision by the Contractor, its employees, agents or subcontractors, of records and information in a data format and storage medium accessible by the Commonwealth by use of the Commonwealth's existing computer hardware and software;
 - (iii) inspect and copy documentation, books and records, however stored, in the custody or under the control of the Contractor, its employees, agents or subcontractors; and
 - (iv) require assistance in respect of any inquiry into or concerning the Services or this Contract. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to RET), any request for information directed to the Commonwealth, and any inquiry conducted by Parliament or any Parliamentary committee.
- (b) The Contractor must provide access to its computer hardware and software to the extent necessary for the Commonwealth to exercise its rights under this clause 23, and provide the Commonwealth with any reasonable assistance requested by the Commonwealth to use that hardware and software.

23.3 Conduct of audit and access

The Commonwealth must use reasonable endeavours to ensure that:

- (a) audits performed pursuant to clause 23.1; and
 - (b) the exercise of the general rights granted by clause 23.2 by the Commonwealth,
- do not unreasonably delay or disrupt in any material respect the Contractor's performance of its obligations under this Contract or its business.

23.4 Costs

Unless otherwise agreed in writing, each party must bear its own costs of any reviews and/or audits.

23.5 Auditor-General and Privacy Commissioner

The rights of the Commonwealth under clause 23.2(a)(i) to 23.2(a)(iii) apply equally to the Auditor-General or a delegate of the Auditor-General, or the Privacy Commissioner or a delegate of the Privacy Commissioner, for the purpose of performing the Auditor-General's or Privacy Commissioner's statutory functions or powers.

23.6 Contractor to comply with Auditor-General's requirements

The Contractor must do all things necessary to comply with the Auditor-General's or his or her delegate's or the Privacy Commissioner's or his or her delegate's requirements, notified under clause 23.2, provided such requirements are legally enforceable and within the power of the Auditor-General, the Privacy Commissioner, or his or her respective delegate.

23.7 No reduction in responsibility

The requirement for, and participation in, audits does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with this Contract.

23.8 Subcontractor requirements

The Contractor must ensure that any subcontract entered into for the purpose of this Contract contains an equivalent clause granting the rights specified in this clause 23.

23.9 No restriction

Nothing in this Contract reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Privacy

Commissioner or a delegate of the Privacy Commissioner. The rights of the Commonwealth under this Contract are in addition to any other power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner.

23.10 Survival

This clause 23 applies for the Contract Period and for a period of seven years from the expiry or termination of this Contract.

24. Unforeseen events

24.1 Occurrence of unforeseen event

Subject to clause 24.2, a party (**Affected Party**) is excused from performing its obligations under this Contract to the extent it is prevented by circumstances beyond its reasonable control (other than lack of funds for any reason or any strike, lockout and labour disputes in respect of the Contractor only), including acts of God, natural disasters, acts of war, riots and strikes outside the Affected Party's organisation.

24.2 Notice of unforeseen event

When the circumstances described in clause 24.1 arise or are reasonably perceived by the Affected Party as an imminent possibility, the Affected Party must give notice of those circumstances to the other party as soon as possible, identifying the effect they will have on its performance. An Affected Party must make all reasonable efforts to minimise the effects of such circumstances on the performance of this Contract.

24.3 Termination

If non-performance or diminished performance by the Affected Party due to the circumstances under clause 24.1 continues for a period of more than 30 consecutive days or other period as specified in item 20 of the Contract Details, the other party may terminate this Contract immediately by giving the Affected Party written notice.

24.4 Consequences of termination

If this Contract is terminated under clause 24.3:

- (a) each party will bear its own costs and neither party will incur further liability to the other; and
- (b) where the Contractor is the Affected Party, it will be entitled to payment for Services rendered in accordance with this Contract prior to the date of intervention of the circumstances described in clause 24.1.

25. Dispute resolution

25.1 No arbitration or court proceedings

If a dispute arises in relation to the conduct of this Contract (**Dispute**), a party must comply with this clause 25 before starting arbitration or court proceedings (except proceedings for urgent interlocutory relief). After a party has sought or obtained any urgent interlocutory relief that party must follow this clause 25.

25.2 Notification

A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.

25.3 Parties to resolve Dispute

During the 14 days after a notice is given under clause 25.2 (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts through a meeting of CEOs (or their nominees) to resolve the Dispute. If the parties cannot resolve the Dispute within that period, they must refer the Dispute to a mediator if one of them requests.

25.4 Appointment of mediator

If the parties to the Dispute cannot agree on a mediator within seven days after a request under clause 25.3, the chairperson of LEADR or the chairperson's nominee will appoint a mediator.

25.5 Role of mediator and obligations of parties

The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a party to the Dispute except if the party agrees in writing. Unless agreed by the mediator and parties, the mediation must be held within 21 days of the request for mediation in clause 25.3. The parties must attend the mediation and act in good faith to genuinely attempt to resolve the Dispute.

25.6 Confidentiality

Any information or documents disclosed by a party under this clause 25:

- (a) must be kept confidential; and
- (b) may only be used to attempt to resolve the Dispute.

25.7 Costs

Each party to a Dispute must pay its own costs of complying with this clause 25. The parties to the Dispute must equally pay the costs of any mediator.

25.8 Termination of process

A party to a Dispute may terminate the dispute resolution process by giving notice to each other party after it has complied with clauses 25.1 to 25.5. Clauses 25.6 and 25.7 survive termination of the dispute resolution process.

25.9 Breach of this clause

If a party to a Dispute breaches clauses 25.1 to 25.8, the other party does not have to comply with those clauses in relation to the Dispute.

26. Termination

26.1 Termination and reduction for convenience

- (a) The Commonwealth may, at any time, by notice, terminate this Contract or reduce the scope of the Services, including for a machinery of government change and where there is an assessment, based on the stakeholder consultations, that the Global Initiative or Global Institute is not viable because of a lack of interest on the part of international stakeholders.
- (b) On receipt of a notice of termination or reduction the Contractor must:
 - (i) stop work as specified in the notice;
 - (ii) take all available steps to minimise loss resulting from that termination and to protect Commonwealth Material and Contract Material; and
 - (iii) continue work on any part of the Services not affected by the notice.
- (c) If this Contract is terminated under this clause 26.1, the Commonwealth is liable only for:

- (i) payments under clause 14 for Services rendered in accordance with this Contract before the effective date of termination; and
 - (ii) reasonable costs actually incurred by the Contractor and directly attributable to the termination.
- (d) If the scope of the Services is reduced, the Commonwealth's liability to pay the Service Charges or to provide Commonwealth Material abates in accordance with the reduction in the Services.
- (e) The Commonwealth is not liable to pay compensation under clause 26.1(c)(ii) for an amount which would, in addition to any amounts paid or due, or becoming due, to the Contractor under this Contract, exceed the total Service Charges payable under this Contract.
- (f) The Contractor is not entitled to compensation for loss of prospective profits.

26.2 Termination for default

- (a) Without limiting any other rights or remedies the Commonwealth may have against the Contractor arising out of or in connection with this Contract, the Commonwealth may terminate this Contract effective immediately by giving notice to the Contractor if:
- (i) the Contractor breaches a material provision of this Contract where that breach is not capable of remedy;
 - (ii) the Contractor breaches any provision of this Contract and fails to remedy the breach within 14 days after receiving notice requiring it to do so; or
 - (iii) an event specified in clause 26.2(c) happens to the Contractor.
- (b) Without limitation, for the purposes of clause 26.2(a), each of the following constitutes a breach of a material provision:
- (i) breach of warranty under clause 6.2 (Contractor warranties);
 - (ii) a failure to comply with clause 10 (Personnel);
 - (iii) a failure to comply with clause 12 (Intellectual Property Rights);
 - (iv) a failure to comply with clause 17 (Insurance);
 - (v) a failure to comply with clause 18 (Confidentiality and privacy);
 - (vi) a failure to comply with clause 19 (Protection of personal information); and
 - (vii) a failure to notify the Commonwealth of a conflict of interest under clause 20 (Conflict of interest).
- (c) The Contractor must notify the Commonwealth immediately if:
- (i) the Contractor being a corporation, there is any change in the direct or indirect beneficial ownership or control of the Contractor;
 - (ii) the Contractor disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
 - (iii) the Contractor ceases to carry on business;
 - (iv) the Contractor ceases to be able to pay its debts as they become due;
 - (v) the Contractor being a company enters into liquidation or has a controller or managing controller or liquidator or administrator appointed;

- (vi) the Contractor being a natural person is declared bankrupt or assigns his or her estate for the benefit of creditors; or
- (vii) where the Contractor is a partnership, any step is taken to dissolve that partnership.

In this clause 26.2, **controller**, **managing controller** and **administrator** have the same meanings as in the Corporations Act.

26.3 After termination

On termination of this Contract the Contractor must:

- (a) stop work on the Services;
- (b) deal with Contract Material in accordance with clause 12.7;
- (c) deal with Commonwealth Material as reasonably directed by the Commonwealth; and
- (d) return all the Commonwealth's Confidential Information to the Commonwealth.

26.4 Termination does not affect accrued rights

Termination of this Contract does not affect any accrued rights or remedies of a party.

27. Survival

The following clauses survive the expiry or termination of this Contract:

- (a) Clause 12 (Intellectual Property Rights);
- (b) Clause 13 (Moral Rights);
- (c) Clause 15 (GST);
- (d) Clause 16 (Indemnity);
- (e) Clause 17 (Insurance) to the extent it relates to professional indemnity or errors or omissions insurance;
- (f) Clause 18 (Confidentiality and privacy);
- (g) Clause 19 (Protection of personal information);
- (h) Clause 21 (Security);
- (i) Clause 22 (Books and records); and
- (j) Clause 23 (Audit and access).

28. Notices and other communications

28.1 Service of notices

A Notice must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post or facsimile to the recipient's address for Notices specified in item 21 of the Contract Details, as varied by any Notice given by the recipient to the sender.

28.2 Effective on receipt

A Notice given in accordance with clause 28.1 takes effect when it is taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia); or
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

29. Miscellaneous

29.1 Ownership of Contract

All copyright and other Intellectual Property Rights contained in this Contract remain the property of the Commonwealth.

29.2 Variation

No agreement or understanding varying or extending this Contract is legally binding upon either party unless the agreement or understanding is in writing and signed by both parties.

29.3 Approvals and consents

Except where this Contract expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Contract.

29.4 Assignment and novation

A party may only assign its rights or novate its rights and obligations under this Contract with the prior written consent of the other party.

29.5 Costs

Each party must pay its own costs of negotiating, preparing and executing this Contract.

29.6 Counterparts

This Contract may be executed in counterparts. All executed counterparts constitute one document.

29.7 No merger

The rights and obligations of the parties under this Contract do not merge on completion of any transaction contemplated by this Contract.

29.8 Entire agreement

This Contract constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

29.9 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Contract and any transaction contemplated by it.

29.10 Severability

A term or part of a term of this Contract that is illegal or unenforceable may be severed from this Contract and the remaining terms or parts of the terms of this Contract continue in force.

29.11 Waiver

Waiver of any provision of or right under this Contract:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

29.12 Relationship

- (a) The parties must not represent themselves, and must ensure that their officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.
- (b) This Contract does not create a relationship of employment, agency or partnership between the parties.

29.13 Announcements

- (a) The Contractor must, before making a public announcement in connection with this Contract or any transaction contemplated by it, obtain the Commonwealth's written agreement to the announcement, except if required by Law or a regulatory body (including a relevant stock exchange).
- (b) If the Contractor is required by Law or a regulatory body to make a public announcement in connection with this Contract or any transaction contemplated by this Contract, the Contractor must, to the extent practicable, first consult with and take into account the reasonable requirements of the Commonwealth.

29.14 Governing law and jurisdiction

This Contract is governed by the law of the Australian Capital Territory and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

Schedule 1 – Contract Details

Item number	Description	Clause Reference	Details
1.	Commonwealth	1.1	Commonwealth of Australia as represented by the Department of Resources, Energy and Tourism 10 Binara Street Canberra City, ACT 2601 ABN 46 252 861 927
2.	Contractor	1.1	The Boston Consulting Group Pty Ltd Level 28 Chifley Tower 2 Chifley Square Sydney NSW 2000 ACN 007 347 131
3.	Commonwealth Representative	1.1	Ms Kathine Harman Manager Global CCS Initiative Resources Division Department of Resources, Energy and Tourism
4.	Contractor Representative	1.1	Mr Ross Love Senior Partner and Managing Director of the Sydney office of the Boston Consulting Group Pty Ltd
5.	Business Hours	1.1	Not Applicable
6.	Commencement Date	1.1 and 3.1	14 August 2008.
7.	Initial Contract Period	1.1 and 3.1	31 October 2008.
8.	Option Period	3.2	One Period being until 11 January 2009.
9.	Option Notice Period	3.2	Not Applicable
10.	Nominated Agency	1.1 and 4	Not Applicable
11.	Relevant Industry Standards	6.1(e)	No additional standards, practice or guidelines apply.

Item number	Description	Clause Reference	Details
12.	Subcontractors	6.6	Not Applicable
13.	Specified Personnel	1.1 and 10	<p>Mr Balu Balagopal Partner and Managing Director, The Boston Consulting Group, Houston Office</p> <p>Mr Ross Love Senior Partner and Managing Director, The Boston Consulting Group, Sydney Office</p> <p>Mr Larry Kamener Senior Partner and Managing Director, The Boston Consulting Group, Melbourne Office</p> <p>Mr Philip Hirschhorn Principal, The Boston Consulting Group, Sydney Office</p> <p>Mr Paul Tranter Principal, The Boston Consulting Group, Sydney Office</p>
14.	Commonwealth Material	1.1 and 11	None specified.
15.	Intellectual Property Rights – ownership of Contract Material	12.3(a)	Clause 12.4 (Contractor ownership of Intellectual Property Rights in Contract Material) is to apply.
16.	Intellectual Property Rights – licences	12.4(b)	<p>Where clause 12.4 (Contractor ownership of Intellectual Property Rights in Contract Material) is to apply:</p> <p>1. Period of Commonwealth's licence is: Perpetual</p>
17.	Moral Rights – Specified Acts	13.2	Not Applicable
18.	Insurance	17.1	<p>Workers compensation insurance as required by law.</p> <p>Public liability insurance for an insured amount of \$10 million per claim.</p> <p>Professional indemnity or errors and omissions insurance for an insured amount of \$10 million per claim.</p> <p>Any subcontractors engaged by the tenderer will be subject to the same insurance requirements.</p>

Item number	Description	Clause Reference	Details
19.	Security	21	Not Applicable
20.	Unforeseen events termination period	24.3	Not Applicable
21.	Address for Notices	28.1	<p>Commonwealth:</p> <p>Ms Katherine Harman Manager Global CCS Initiative Resources Division Department of Resources, Energy and Tourism</p> <p>GPO Box 1564 Canberra ACT 2601 10 Binara Street Canberra ACT 2601 Phone: 02 6213 7936 Fax: 02 6213 6094</p> <p>Contractor:</p> <p>Mr Ross Love Senior Partner and Managing Director The Boston Consulting Group Pty Ltd Level 28 Chifley Tower 2 Chifley Square Sydney NSW 2000 Telephone +61 2 9323 5600 Fax +61 2 9323 5666</p>

Schedule 2 – Services

1. Purpose (clause 6.2)

Transformational technologies such as carbon capture and storage (CCS) will be critical for Australia to meet its domestic emissions target and to drive an effective global mitigation effort. Identifying, developing, demonstrating and commercialising these technologies require major investment and a concerted and coordinated international effort.

In June 2008, the Australian Government agreed to consider the development of a significant global initiative – the Global CCS initiative – to deliver the concerted and coordinated international effort needed to advance the development and industrial-scale demonstration of carbon capture and storage technologies, with a primary focus on the coal-fired power sector.

There are two main elements to the proposed Global CCS Initiative:

- (a) an international research and development program; and
- (b) a proposed package of Global CCS Flagship projects (located around the world), which aim to address the pre-commercial status of the technology.

The Global Carbon Capture and Storage Institute would facilitate and support activities in these areas, including the development of expertise and the international sharing of knowledge, lessons learnt and technology.

The Institute will bring representatives of member countries together to provide international policy and management oversight to the Global Initiative; it will develop and implement an international research and development program based on a network of research ‘nodes’ across the world; and it will facilitate the development of global flagship projects.

The Institute will be headquartered in Australia.

The Department requires the Boston Consulting Group Pty Ltd to develop a Business Model for the Global CCS Institute, to establish the governance and implementation body for the global initiative

The business model has to be robust enough for presentation to an international Global CCS Initiative preparatory meeting proposed to be held in Australia late in 2008, as well as ready for implementation once agreed. It will be initially tested with Australian business leaders ahead of the international preparatory meeting.

The Department requires the delivery of a Business Model which addresses the following aspects:

- (a) structural arrangements for the Institute;
- (b) the Institute’s objectives and potential research, development and demonstration themes;
- (c) funding models for the headquarters, the research network and flagship program, including leveraging significant funding from other governments and industry for the research program and flagship projects;
- (d) location, staffing, structure, accountabilities, targets and management for the headquarters;
- (e) key international stakeholders to be consulted in the development of the Global Initiative;
- (f) governance, accountabilities and measurement models for the Institute, the global network and its research program;

- (g) procedures for project management of funded activities, including monitoring and reporting; and risk management, including assessment of exit strategies at the point at which individual projects become unviable;
- (h) financial management, procedures and auditing arrangements;
- (i) necessary systems and processes (including MIS and IT systems) to underpin successful establishment of the Institute;
- (j) issues associated with managing and sharing intellectual property (IP), including the protocols for handling IP; and
- (k) in relation to the Institute's research functions,
 - i. options for research network design;
 - ii. identification of initial research nodes plus a model for identifying, and membership criteria for adding, new nodes;
 - iii. research methodologies and models for network collaboration; and
 - iv. options for the dissemination and commercialisation of research, including the design and utilisation of an investment fund held by the Institute.

2. Services (clauses 1.1 and 6)

	Description of Services	Milestone Date
1.	<p>Prepare draft report developing the Business model for the Global CCS Institute. The draft report should include development of a draft:</p> <ul style="list-style-type: none"> • institute mandate; • design of Institute - including governance options; high-level organisational structure; location and Global CCS Institute Headquarters funding model. • research program design and the identification of program priorities including R&D technology priorities; flagship priorities / likely sites; policy / economic priorities. <p>Undertake internal and external stakeholder consultations and develop engagement plan</p>	15 August 2008
2.	Provide the Department with final marketing package for stakeholder consultations	22 August 2008
3.	Finalise draft report on the Global CCS Initiative.	29 August 2008
4.	<p>In consultation with the Commonwealth, the consultant will finalise development of the Global CCS Initiative Business Model including finalising:</p> <ul style="list-style-type: none"> • the Global CCS Institute mandate; • development of the detailed design of the Global CCS Institute – including detailed governance options, organisation structure; roles and responsibilities and budget 	1 October 2008

	Description of Services	Milestone Date
	<ul style="list-style-type: none"> the Flagship program design and funding model; the R&D network design, including membership rules; models for collaboration; commercialisation model; and Intellectual Property protocols stakeholder engagement process – including accompanying the Commonwealth to international meetings with relevant stakeholders. 	
5.	Prepare and deliver presentation and documentation for the international Global CCS Initiative preparatory meeting	24 October 2008
6.	Incorporate outcomes of international Global CCS Initiative preparatory meeting into final Business model	Within 5 calendar days of the international Global CCS Initiative preparatory meeting
7.	Prepare and deliver a final report to the Commonwealth (if required and if we do not proceed with a Phase 3 through to the end of 2008)	28 November 2008

3. Deliverables (clause 1.1)

	Deliverables	Milestone Date
1.	Draft report developing the Business model for the Global CCS Institute.	15 August 2008
2.	Provide the department with final marketing package for stakeholder consultations.	22 August 2008
3.	Final draft report on the Global CCS Initiative.	29 August 2008
4.	Finalise development of the Global CCS Initiative Business Model	1 October 2008
5.	Prepare and deliver presentation and documentation for the international Global CCS Initiative preparatory meeting	24 October 2008
6.	Incorporate outcomes of international Global CCS Initiative meeting into final business model	Within 5 calendar days of the international Global CCS Initiative preparatory meeting
7.	Prepare and deliver a final report to the Commonwealth (if required and if we do not proceed with a Phase 3 through to the end of 2008)	28 November 2008

4. Performance Criteria (clauses 1.1 and 9)

In addition to the requirements of clauses 6.1 (c) and 6.1 (e) of this Contract a performance criteria is delivery of deliverables in this Schedule Part 3 on or before the milestone dates.

5. Progress meetings (clause 8.1)

Not Applicable

6. Reporting (clause 8.2)

Not Applicable

Schedule 3 – Payment

1. Fixed charges (clause 14)

Not Applicable

2. Hourly rates (clause 14)

Not Applicable

3. Daily rates (clause 14)

Not Applicable.

4. Milestone payments (clause 14)

Milestone Date	Milestone/Deliverable	Milestone payment (exclusive of GST)
14 August 2008	On Execution of Contract	██████████
29 August 2008	On delivery of the final draft report on the Global CCS Initiative and prior delivery to the Department of the final marketing package for stakeholder consultations.	██████████
1 October 2008	Finalise development of the Global CCS Initiative Business Model	██████████
31 October 2008 or within 5 calendar days of the international Global CCS Initiative preparatory meeting	On incorporation of the outcomes of international Global CCS Initiative preparatory meeting into the final business model and following the preparation and delivery of the presentation and documentation for the international Global CCS Initiative preparatory meeting.	██████████
Subtotal		1,377,500
Add GST		137,750
TOTAL		1,515,250

5. Invoicing requirements (clause 14.2)

The invoice must meet the requirements of a tax invoice as set out in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and in a form approved by the Commonwealth which sets out:

- (a) the details of the amount of time spent by each of the persons including Specified Personnel on the Services for the period to which the invoice relates and a record detailing how the relevant Milestone Dates have been met;
- (b) the contract or project number;
- (c) the amount of any allowances and costs to be paid by the Commonwealth together with any substantiating material required;
- (d) the name of the Commonwealth Representative; and
- (e) such other information as the Commonwealth requires.

Invoices should be submitted to:

Ms Katherine Harman
Manager
Global CCS Initiative
Resources Division
Department of Resources, Energy and Tourism

GPO Box 1564
Canberra ACT 2601
10 Binara Street
Canberra ACT 2601

6. Payment period (clause 14.3)

Not Applicable

7. Expenses (clause 14.5)

The Commonwealth will not pay any travel, accommodation or other fees, charges or expenses, other than those already agreed in the tender price.

Schedule 4 – Confidentiality and privacy undertaking

Schedule 5 – Designated Confidential Information

1. Confidential information of the Commonwealth (clause 1.1 and 18)

1.1 Contract provisions / Schedules

Item	Period of Confidentiality
[insert relevant items]	

1.2 Contract-related Material

Item	Period of Confidentiality
[insert relevant items]	

2. Confidential information of the Contractor (clause 1.1 and 18)

2.1 Contract provisions / Schedules

Item	Period of Confidentiality
[insert relevant items]	

2.2 Contract-related Material

Item	Period of Confidentiality
[insert relevant items]	

Schedule 6 – Pre-existing Material

1. Commonwealth's Pre-existing Material (clause 12)

Item number	Item	Description	Date created

2. Contractor's Pre-existing Material (clause 12)

Item number	Item	Description	Date created
1.	Global CCS Database	Database providing estimated costs for applying CCS to ~8000 largest stationary GHG emitters Series of graphs displaying analysis of the database	2007

Schedule 7 – Commonwealth requirements

The Commonwealth requires that all of the Contractor's locally engaged staff be Australian national or permanent residents.

Signing page

EXECUTED as an agreement.

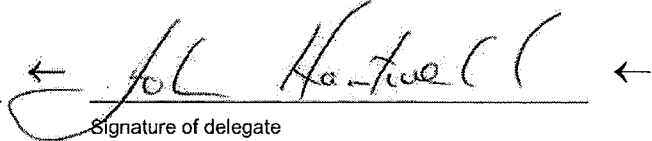
Signed for and on behalf of the
Commonwealth of Australia as
represented by the Department of
Resources, Energy and Tourism by its
duly authorised delegate in the presence of



Signature of witness

NICHOLAS BIRCH

Name of witness (print)



Signature of delegate

Mr John Hartwell

JOHN HARTWELL

Name of delegate (print)

Head of Division - Resources

Resources, Energy and Tourism

HEAD OF DIVISION, RESOURCES

Position of delegate (print)

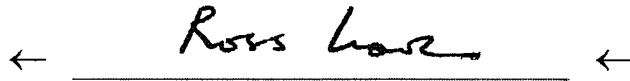
Signed by
in the presence of



Signature of witness

PHILIP HIRSCHHORN

Name of witness (print)



Signature of Contractor