

# Legislative Assembly (Members' Staff) Members' Hiring Arrangements Approval 2016 (No 1)

Disallowable instrument DI2016-275

made under the

**Legislative Assembly (Members' Staff) Act 1989, s 10 (3) (Members may employ staff) and s 20 (4) (Members may engage consultants and contractors)**

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## 1 Name of instrument

This instrument is the *Legislative Assembly (Members' Staff) Members' Hiring Arrangements Approval 2016 (No 1)*.

## 2 Commencement

This instrument commences on the day after its notification day.

## 3 Notes

A note included in this instrument is explanatory and is not part of this instrument.

*Note* See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

## 4 Definition

In this instrument:

*Act* means the *Legislative Assembly (Members' Staff) Act 1989*.

*member* means a member of the Legislative Assembly other than an office-holder.

## 5 Revocation

The following instrument is revoked:

- Disallowable instrument DI2015-73: *Legislative Assembly (Members' Staff) Members' Hiring Arrangements Approval 2015 (No 1)*.

## 6 Approval for Act, s 10 and s 20

This instrument approves arrangements and conditions in accordance with which members may, on behalf of the Territory, employ part 3 employees, or engage contractors or consultants, under the Act, section 10 or section 20.

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## **7 Staff employment**

A member may only employ a part 3 employee under an agreement substantially in the form set out in schedule 1.

*Note* Employees are also employed subject to conditions of employment under any award or enterprise agreement under the *Fair Work Act 2009* (Cth) that applies to members' staff.

## **8 Re-engagement**

A part 3 employee whose employment is terminated by the operation of subsection 13(1) of the Act, and who receives a termination payment under the applicable enterprise agreement, shall not recommence employment under the Act before the expiry of the period of time, in weeks and days, that is equivalent to the termination payment.

*Example* Where an employee is in receipt of a termination payment equal to six weeks' pay, not including superannuation or any other payment, the exclusion period is equal to six weeks.

*Note* There is nothing to prevent new employment arrangements being settled during the exclusion period with a view to employment recommencing immediately following the expiration of the exclusion period.

## **9 Contractor and consultant engagements**

- (1) A member may only engage a consultant or contractor under an agreement substantially in the form set out in schedule 2.
- (2) A contract for services by which a member engages a consultant or a contractor—
  - (a) must be endorsed by the Clerk of the Legislative Assembly, or a person authorised by the Clerk for this purpose, before execution by the parties; and
  - (b) must be in accordance with guidelines issued by the ACT Government Procurement Board.

Dated 3 November 2016.

Andrew Barr  
*Chief Minister*

## **Schedule 1 Staff employment**

(see cl 7)

## EMPLOYMENT AGREEMENT – STAFF OF MEMBERS

Note: This Agreement is of no legal effect without the prior endorsement of the Clerk of the Legislative Assembly, or a person authorised by the Clerk for that purpose.

This Agreement sets out the terms on which I will employ you, pursuant to subsection 10(1) of the *Legislative Assembly (Members' Staff) Act 1989*.

### 1. DEFINITIONS

1.1 In this Agreement, the following words have the following meanings:

- (a) “Act” means the *Legislative Assembly (Members' Staff) Act 1989*;
- (b) “Agreement” means this Agreement and includes any attachments or schedules;
- (c) “Award” means the Australian Capital Territory Public Sector Enterprise Award 2016 as varied from time to time;
- (d) “Enterprise Agreement” means the applicable industrial agreement made under the *Fair Work Act 2009* which applies to and covers persons engaged under the Act;
- (e) “Determination” means any relevant determination made pursuant to the Act;
- (f) “Direction” means any relevant direction given pursuant to the Act;
- (g) “I” means the person specified in item 2 of the Attachment to this Agreement, on behalf of the Australian Capital Territory, and “my”, “mine” and “me” have corresponding meanings;
- (h) “You” means the person specified in item 1 of the Attachment to this Agreement and “your” and “yours” have corresponding meanings.

### 2. APPLICATION

2.1 The terms and conditions of your employment are as set out in:

- (a) the Enterprise Agreement;
- (b) the Award;
- (c) the Act;
- (d) any Determinations or Directions;
- (e) this Agreement; and
- (f) other applicable laws.

### **3. OBLIGATIONS**

#### **3.1 In performing the duties, you will:**

- (a) comply with the requirements of the applicable code of conduct for staff of members and ministers of the ACT Legislative Assembly as varied from time to time;
- (b) comply with the terms and conditions of your employment;
- (c) notify me of any illness or medical condition affecting you which substantially affects your ability to carry out your duties or obligations under this Agreement;
- (d) notify me of any restrictions by statute, court order, contract, or deed on your legal capacity to perform the full range of duties;
- (e) comply with any lawful and reasonable direction given by a person having authority to give the direction;
- (f) not harass a member of the public or another public employee, whether sexually or otherwise.

### **4. EMPLOYEE WARRANTIES**

#### **4.1 You warrant that you:**

- (a) are and will continue to be a fit and proper person to be an employee under this Agreement; and
- (b) have discussed with me the issue of prior criminal convictions and have disclosed to me your convictions, other than spent convictions. I agree to keep such information strictly confidential.

### **5. EXCLUSIVE EMPLOYMENT**

#### **5.1 During the period of this Agreement, you must not be employed or engaged by any other person in any other capacity without my prior written approval nor will you engage in any business or undertaking without my prior written approval.**

**6. RECOGNITION OF PREVIOUS EMPLOYMENT WITH AN AUSTRALIAN PARLIAMENTARIAN**

6.1 I may agree to recognise your previous employment with an Australian parliamentarian for the purpose of determining the accrual of certain entitlements. My agreement shall be set out in item 11 of the Attachment to this Agreement or otherwise provided to you in writing.

6.2 My agreement as provided in clause 6.1 is subject to the following conditions:

- (a) previous service must have been as a staff member of a Member or Senator of an Australian parliament;
- (b) previous service may count towards the accrual of personal leave and long service leave subject to availability under item 11 of the Attachment to this Agreement;
- (c) previous service for which a payment has, or should have, been made shall not be recognised except in relation to relevant qualifying periods;
- (d) in order to be recognised, the previous service must have terminated no more than:
  - (i) two (2) months prior to commencement of employment under the *Legislative Assembly (Members' Staff) Act 1989* in relation to personal leave benefits; and
  - (ii) one (1) year prior to commencement of employment under the *Legislative Assembly (Members' Staff) Act 1989* in relation to long service leave benefits,

unless the Chief Minister agrees that an alternative period is appropriate in the circumstances.

**7. PAID PARKING**

7.1 To remove any doubt, you do not have any automatic entitlement to paid parking.

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## 8. TERMINATION OF EMPLOYMENT

- 8.1 You may terminate this Agreement in accordance with the Act and the Enterprise Agreement.
- 8.2 Subject to the Act, this Agreement terminates automatically if any of the circumstances specified in subsection 13(1) of the Act apply.
- 8.3 I may terminate this Agreement in accordance with the Act, the Enterprise Agreement, the Award and the *Fair Work Act 2009* (Cth).
- 8.4 On termination of employment, however occurring, you will immediately deliver to me all work-related property belonging to me or to the Australian Capital Territory which is in your possession or control.

## 9. NO WAIVER

- 9.1 Failure or omission by either of us to enforce or require strict or timely compliance with any provision of this Agreement will not affect or impair that provision in any way or the rights of either of us to seek redress for any breach of any such provision.

## 10. GOVERNING LAW

- 10.1 This Agreement is to be governed by the law of the Australian Capital Territory.

## 11. NOTICES

- 11.1 All notices, consents, approvals, agreements or other communications by or to the respective parties to the Agreement will be in writing and addressed to the relevant party at their usual address, or such other address as may from time to time be specified by the party in writing.
- 11.2 All notices, consents, approvals, agreements or other communications delivered in accordance with clause 11.1 are deemed to be duly given or made as follows:
- (a) if delivered by hand, upon delivery;
  - (b) if sent by prepaid mail, upon the expiration of four days after the date on which it was so sent;
  - (c) if sent by facsimile, upon the sender's facsimile machine recording that the facsimile has been successfully and properly transmitted to the recipient's address;
  - (d) if sent by electronic mail, upon the sender's computer recording that the message has been successfully transmitted to the recipient's electronic mail address.

Dated \_\_\_\_\_ of \_\_\_\_\_  
(date) (month) (year)

Signed by the Member

In the presence of

Signed by the employee

In the presence of

Signed \_\_\_\_\_ Clerk of the Legislative Assembly  
(or authorised person)

Date

(To be signed and dated by the Clerk of the Legislative Assembly, or a person authorised by the Clerk for that purpose, before execution by the Parties).

**ATTACHMENT TO THE EMPLOYMENT AGREEMENT****Item 1** [Clause 1.1(h)]

- (a) **Name of employee:**
- (b) **Address of employee:**
- (c) **Date of Birth of employee:**

**Item 2** [Clause 1.1(g)]**Name of Member:****Item 3****Type of Employment:** (Eg. “fixed term”, “casual”)*Note: Casual employees are not entitled to be paid a LAMS Allowance.***Item 4****Period of Agreement:****Item 5****Period of Probation (must be specified where the employment is subject to probation):***Note: The probationary period would normally be 6 months or less.***Item 6****Duties (must be consistent with the classification and salary specified in Items 7 and 8):***Note: (1) Specify the key duties from the relevant Work Level Standard; or*

- (2) *If the person is engaged to undertake a specified project, provide a description of the project and/or scope of the project; and*
- (3) *Specify the Identified duties to be performed where a Specialist Duties Payment is to be paid in accordance with the Enterprise Agreement.*

**Item 7**

**Classification (must be in accordance with the Enterprise Agreement):**

**Item 8**

*Note: (1) Specify the relevant annual salary and salary point in accordance with the Enterprise Agreement.*

*(2) The annual salary includes any non-cash benefits to which the employee is entitled under flexible remuneration arrangements, but excludes any long service leave allowance and leave loading.*

*(3) Specify the relevant Specialist Duties Payment, where applicable, in accordance with the Enterprise Agreement.*

**(a) Salary (full-time equivalent):**

**(b) Salary Point (1<sup>st</sup>, 2<sup>nd</sup> or 3<sup>rd</sup>):**

**(c) Specialist Duties Payment (full-time equivalent), if applicable:**

**Item 9**

**Fortnightly Hours of Work (standard full-time hours are 73.5 hours per fortnight):**

**Item 10**

**Working Pattern (days and commencing and finishing times that work will be performed if less than full time):**

**Item 11 [Clause 6.1]**

**Recognition of Previous Employment with an Australian Parliamentarian**

**(a) Yes/No (strike out the answer that does not apply)**

**(b) If Yes, supply details of previous employment:**

## **Schedule 2 Contractor and consultant engagements**

(see cl 9 (1))

Date \_\_\_\_\_

# AGREEMENT

BETWEEN

**[INSERT MEMBER'S NAME]**

AND

**[INSERT FULL NAME OF CONTRACTOR  
INCL. ACN IF COMPANY]**

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**[INSERT BRIEF TITLE OF  
SERVICES]**

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**PARTIES:**

[**INSERT MEMBER'S NAME**] of Legislative Assembly Building, Civic Square, London Circuit, Canberra City, on behalf of the Australian Capital Territory pursuant to section 20 of the *Legislative Assembly (Members' Staff) Act 1989* ("Member")

[**INSERT FULL NAME, INCLUDING ACN FOR A COMPANY OR ABN FOR OTHER ORGANISATION**] of [**INSERT ADDRESS (OF REGISTERED OFFICE IF FOR A COMPANY)**] ("Contractor").

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**BACKGROUND**

- A. The Member is a member of the Legislative Assembly.
  - B. Section 20 of the *Legislative Assembly (Members' Staff) Act 1989* allows a member to engage a consultant or contractor for the provision of services necessarily incidental to the performance of his or her ministerial or parliamentary duties.
  - C. The Member is satisfied that the services set out in this Agreement are necessarily incidental to the performance of his or her ministerial or parliamentary duties.
  - D. The Member has agreed to purchase, and the Contractor has agreed to provide, the services on the terms and conditions in this Agreement.
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**IT IS AGREED** by the parties as follows:

**1. Interpretation**

**1.1 Definitions**

The following definitions apply in this Agreement, unless the context otherwise requires:

"**Confidential Text**" means any text of this Agreement that:

- (1) either party proposes should not be disclosed (including on a public contract register); and
- (2) is specified in **Item 7 Schedule 1** to this Agreement.

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“**Contract Information**” means the kind of information that:

- (1) is or relates to documents, submissions, consultations, policies, strategies, practices and procedures of the Member or the Territory which are by their nature confidential;
- (2) is notified (whether in writing or not) by the Member to the Contractor as being confidential;
- (3) is specified in **Item 6 Schedule 1** to this Agreement; or
- (4) is Personal Information,

but does not include information that:

- (5) is or becomes public knowledge other than by breach of this Agreement;
- (6) has been independently developed or acquired by the Contractor; or
- (7) has been notified in writing by the Member to the Contractor as not being confidential.

“**Contract Material**” means all material created, written or otherwise brought into existence as part of, or for the purpose of performing the Services including, but not limited to, all reports (whether in draft or final form), documents, equipment, information and data stored by any means.

“**Contract Officers**” means, in relation to each party, the representatives whose names, addresses and contact details are specified in **Item 1 Schedule 1** to this Agreement, or as notified in writing from time to time by one party to the other.

“**Contract Price**” means the amounts specified in, or calculated in accordance with, **Item 3 Schedule 1** to this Agreement.

“**GST**” has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

“**Invoice**” means an invoice that:

- (1) is a valid tax invoice (if GST is payable in respect of the provision of the Services);
- (2) clearly sets out the amount that is due for payment, is correctly calculated and is in respect of Services that have been performed in accordance with this Agreement;
- (3) sets out details of the Services provided, and sets out or is accompanied by any other details or reports required under this Agreement; and
- (4) is rendered at the times specified in **Item 3 Schedule 1** to this Agreement (if any), and addressed to the Member’s Contract Officer.

“**Member Material**” means any material provided by the Member to the Contractor for the purposes of this Agreement including documents, equipment, information and data stored by any means.

“**Personal Information**” 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 a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

“**Procurement Act**” means the *Government Procurement Act 2001* (ACT).

“**Services**” means the services described in **Schedule 2** to this Agreement.

“**Special Conditions**”, if any, mean the conditions agreed by the parties and set out in **Schedule 3** to this Agreement.

“**Specified Personnel**”, if applicable, means the person(s) named in **Item 4 Schedule 1** to this Agreement, or any other employee or agent of the Contractor, who is approved by the Member from time to time for the purpose of **clause 7.2**.

“**Term**” means the term specified in **Item 2 Schedule 1** to this Agreement, or if extended under **clause 13.5**, that extended term.

“**Territory**” means:

- (1) when used in a geographical sense, the Australian Capital Territory; and
- (2) when used in any other sense, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth).

## 1.2 General

In this Agreement, unless a contrary intention is expressed:

- (1) references to “Contractor” includes any employees, agents or subcontractors of the Contractor;
- (2) references to legislation or to provisions in legislation include references to amendments or re-enactments of them and to all regulations and instruments issued under the legislation;

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- (3) words importing a gender include the others; words in the singular number include the plural and vice versa; and where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
  - (4) “include” is not to be construed as a word of limitation;
  - (5) clause headings are for convenient reference only and have no effect on the interpretation of the provisions to which they refer; and
  - (6) an obligation imposed by this Agreement upon more than one person binds them jointly and severally.

## 2 Services

### 2.1 Performance of Services

The Member engages the Contractor to perform the Services in accordance with the provisions of this Agreement.

### 2.2 Care and skill

The Contractor must perform the Services to the standard of care and skill expected of a person who regularly acts in the capacity in which the Contractor is engaged and who possesses the knowledge, skill and experience of a person qualified to act in that capacity.

### 2.3 Equipment

The Contractor must provide all equipment in performing the Services, unless otherwise stated in this Agreement, or unless approval has been given by the Member to use specified Territory equipment.

### 2.4 Progress of Services

The Contractor must provide a written report to the Member on the progress of the Services as requested by the Member from time to time.

## 3 Term

### 3.1 Commencement

This Agreement commences on the date:

- (1) specified in **Item 2 Schedule 1** to this Agreement; or
- (2) on which the Clerk of the Legislative Assembly, or a person authorised for this purpose, endorses it,

whichever is later.

### 3.2. Endorsement

This Agreement does not have effect until the Clerk of the Legislative Assembly, or a person authorised for this purpose, endorses it. Until this Agreement is endorsed, neither party may:

- (1) exercise any rights under this Agreement;
- (2) enforce any obligations under this Agreement;
- (3) perform Services under this Agreement; or
- (4) in any way act pursuant to this Agreement.

### 3.3 Extension

This Agreement ends on the date specified in **Item 2 Schedule 1** to this Agreement unless extended under **clause 13.5** or terminated under the provisions of this Agreement.

## 4 Contract Price

### 4.1 Invoice

The Member must pay the Contractor the Contract Price following receipt of a correctly rendered invoice and otherwise in accordance with **Item 3 Schedule 1** to this Agreement.

### 4.2 Correctly rendered invoice

An invoice is correctly rendered if:

- (1) GST is payable in respect of the provision of the Services, the Contractor has rendered to the Member a valid tax invoice as required by the GST Act;
- (2) the amount claimed in the invoice is due for payment, is correctly calculated and is in respect of Services which have been performed in accordance with this Agreement;
- (3) the invoice sets out details of the Services provided, and sets out or is accompanied by any other details or reports required under this Agreement; and
- (4) the invoice is rendered at the times specified in **Item 3 Schedule 1** to this Agreement and addressed to the Member's Contract Officer or such other person notified by the Member to the Contractor to receive invoices for payment.

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### 4.3 Incorrect payments

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

### 4.4 Deferral of payment

The Member may, without limiting any other right he or she may have, defer payment of the Contract Price payable to the Contractor until the Contractor has completed the Services to the satisfaction of the Member.

## 5 No Assignment or Subcontracting

5.1 The Contractor will not subcontract the performance of the Services or assign the whole or part of this Agreement without the prior written consent of the Member. In giving consent, the Member may impose any conditions the Member considers appropriate.

5.2 For the purpose of **clause 5.1**, a change of ownership or underlying control of the Contractor of more than 50 per cent is deemed an assignment.

## 6 Contract Material

### 6.1 Ownership of Contract Material

Ownership of all Contract Material, including any intellectual property rights, vests on its creation in the Member.

### 6.2 Use of Contract Material

The Contractor must ensure that:

- (1) the Contract Material is used only for the purpose of this Agreement;
- (2) the use of any Contract Material will not infringe the intellectual property rights of any third party; and
- (3) no fees, royalties or other payments are payable in respect of any third party rights as a result of the Member's (or any permitted user's) use of any Contract Material.

### **6.3 Moral rights**

The Contractor must:

- (1) use its best endeavours to include in the Contract Material an attribution of all authors of any work that comprises or forms part of the Contract Material; and
- (2) procure from all authors of any work that comprises or forms part of the Contract Material, their genuine written consent for the Member to:
  - (a) attribute the authorship of the work to the Member;
  - (b) not attribute the authorship of the author when using the work (including exhibiting or performing the work in, or to the, public); and
  - (c) materially altering the work in any way.

### **6.4 Member Material**

Member Material will remain the property of the Member and the Contractor must use that material only for the purpose of providing the Services or otherwise in accordance with any conditions notified to it by the Member.

### **6.5 Contractor's Material**

Material owned by the Contractor and used for the purpose of providing the Services remains the property of the Contractor and the Contractor grants to the Member a perpetual, royalty-free licence to use the Contractor's material to the extent necessary for the Member to obtain the full intended benefit of the Services including the use of Contract Material.

### **6.6 Safekeeping and preservation of material**

The Contractor must ensure the safe keeping and proper preservation of Contract Material and Member Material in its possession or control.

### **6.7 Delivery of material to Member**

On the expiration or earlier termination of this Agreement, the Contractor must deliver to the Member all Contract Material and Member Material (other than copies of material that the Member has authorised the Contractor to retain).

### **6.8 Meaning of "use"**

For the purpose of **clause 6**, "use" includes supply, reproduce, publish, perform, communicate, broadcast, adapt and copy.

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## **7. Contractor's Personnel**

### **7.1 Suitability of personnel**

The Contractor must:

- (1) ensure the Services are performed by persons who are fit and suitable to perform the Services; and
- (2) comply with all reasonable requirements notified by the Member regarding the suitability and fitness of persons engaged by the Contractor for the performance of the Services.

### **7.2 Specified Personnel**

The Contractor must:

- (1) ensure that the Services are performed by Specified Personnel (if any) or such other persons approved in writing by the Member; and
- (2) if Specified Personnel are unable to perform any of the Services, provide replacement personnel acceptable to the Member at no additional charge and at the earliest opportunity.

### **7.3 Security**

The Contractor must, if using the Member's or Territory's premises or facilities to perform the Services, comply with all security and office regulations in effect at those premises or regarding those facilities, as notified or directed by the Member.

### **7.4 Employee and industrial relations obligations**

The Contractor must, if required by the Member or the Territory, provide verification of the Contractor's compliance with its employee and industrial relations obligations for the purpose of the Procurement Act.

## **8. Non-Disclosure of Contract Information**

### **8.1 Contractor must not disclose Contract Information**

Except as provided in this Agreement, the Contractor must not disclose Contract Information to any person without the prior written consent of the Member except to the extent that the Contract Information is:

- (1) required or authorised to be disclosed by law;
- (2) disclosed to the Contractor's solicitors, auditors, insurers or advisers;
- (3) generally available to the public; or
- (4) in the possession of the Contractor without restriction in relation to disclosure before the date of receipt from the Member.

## 8.2 Contractor to protect Contract Information

The Contractor must take all reasonable measures to ensure that:

- (1) Contract Information accessed or held by it in connection with this Agreement is protected against loss, unauthorised access, use, modification, disclosure or other misuse in accordance with reasonable procedures for that purpose; and
- (2) only authorised personnel have access to the Contract Information.

## 8.3 Contractor's use of Contract Information

The Contractor must:

- (1) use Contract Information held in connection with the Agreement only for the purposes of fulfilling its obligations under this Agreement;
- (2) comply with the "Information Privacy Principles" set out in the *Privacy Act 1988* (Cth) as if they were provisions of this Agreement;
- (3) not transfer Contract Information held in connection with this Agreement outside the Territory, or allow any person (other than authorised personnel) outside the Territory to have access to it, without the prior approval of the Member; and
- (4) without limiting **clause 10.2**, indemnify the Member and the Territory against any successful claim or proceeding made against the Member or the Territory resulting from the Contractor's breach of its obligations under this **clause 8**.

## 8.4 Contractor must notify the Member

The Contractor must immediately notify the Member if the Contractor becomes aware that:

- (1) a disclosure of Contract Information may be required by law; or
- (2) unauthorised disclosure of Contract Information has occurred.

## 8.5 Acknowledgement of effect of Crimes Act

The Contractor acknowledges that the publication or communication of any fact or document by a person which has come to its knowledge or into its possession or custody by virtue of the performance of this Agreement (other than to a person to whom the Contractor is authorised to publish or disclose the fact or document) may be an offence under section 153 of the *Crimes Act 1900* (ACT), the maximum penalty for which is 2 years imprisonment.

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## 9. Non-Disclosure of Confidential Text

### 9.1 Member may make Agreement publicly available

In giving effect to the principles of open and accountable government, the Member may disclose documents and information unless he or she has otherwise agreed, or is otherwise required under law, to keep the information confidential. In accordance with those principles, this Agreement may be a notifiable contract under the Procurement Act and, if so, the Member will be required to make the text of this Agreement available to the public, including by publication on a public contracts register.

### 9.2 Confidential Text

**Clause 9.3** will apply if Confidential Text is specified in **Item 7 Schedule 1** to this Agreement. If the Agreement is a notifiable contract under the Procurement Act, the grounds on which the text is confidential are set out in **Item 8 Schedule 1** to this Agreement.

### 9.3 Member must not disclose Confidential Text

Except as provided in this Agreement, the Member must not disclose Confidential Text to any person except to the extent that Confidential Text:

- (1) is text that the Contractor has requested to be kept confidential and the Contractor has given its prior written consent to the disclosure (which consent will not be unreasonably withheld);
- (2) is required or authorised to be disclosed under law;
- (3) is reasonably necessary for the enforcement of the criminal law;
- (4) is disclosed to the Member's solicitors, auditors, insurers or advisers;
- (5) is generally available to the public;
- (6) is in the possession of the Member without restriction in relation to disclosure before the date of receipt from the Contractor;
- (7) is disclosed by the responsible Minister in reporting to the Legislative Assembly or its committees; or
- (8) is disclosed to the ombudsman or for a purpose in relation to the protection of the public revenue.

## 10. Insurance and Indemnity

### 10.1 Contractor's insurance

The Contractor must effect and maintain for the Term:

- (1) all insurance coverage required to be effected by it by law;

- (2) public liability insurance with coverage determined in accordance with the Financial Management Guidelines (Public Liability Insurance) and the Financial Management (Public Liability Insurance) Determination, as varied from time to time, in respect of each claim;
- (3) professional indemnity insurance coverage in the amount of \$10 million (or any other amount specified in **Item 5 Schedule 1** to this Agreement) in respect of each claim and in the annual aggregate; and
- (4) any other insurance specified in **Item 5 Schedule 1** to this Agreement, with an insurer having a Standard and Poor's or Best's Rating A- or better and must produce evidence of that insurance as required by the Member or the Territory.

## 10.2 Indemnity

The Contractor indemnifies the Member, the Territory, their employees and agents against liability in respect of all claims, costs and expenses and for all loss, damage, injury or death to persons or property caused by the Contractor, its employees, agents or contractors in connection with the provision of the Services, except to the extent that the Member or the Territory caused the relevant loss, damage or injury.

## 10.3 Claims to be made good

The Contractor must, at its expense, make good the amount of all claims, loss, damage, costs and expenses the subject of the indemnity in **clause 10.2** and the Member may deduct the amount, or any part of it, from any moneys due or becoming due to the Contractor.

## 11. Termination

### 11.1 Default

The Member may terminate this Agreement at any time by written notice to the Contractor, if the Contractor:

- (1) is or becomes bankrupt or insolvent, enters into voluntary administration or makes any arrangement with its creditors or takes advantage of any statute for the relief of insolvent debtors;
- (2) fails to commence timely provision of the Services or to meet any timeframes specified in this Agreement; or
- (3) is in breach of a provision of this Agreement, where that breach:
  - (a) if capable of being remedied, is not remedied within the period specified in a written notice by the Member, or
  - (b) is not capable of being remedied.

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## 11.2 Termination for any reason or reduction of Services

The Member may, at any time by written notice to the Contractor, terminate this Agreement or reduce the Services for any reason, and in that event:

- (1) the Member will be liable only for:
  - (a) payments under this Agreement for Services rendered before the date of termination; and
  - (b) subject to **clauses 11.2(2) and 11.2(3)**, any reasonable costs incurred by the Contractor and directly attributable to the termination or reduction of Services, but not in respect of loss of prospective profits;
- (2) on receipt of a notice of termination or reduction, the Contractor must:
  - (a) stop work as specified in the notice;
  - (b) take all available steps to minimise loss resulting from that termination or reduction of Services to protect Member Material and Contract Material; and
  - (c) continue to perform any part of the Services not affected by the notice; and
- (3) in the event of a reduction of the Services, the Member's liability to pay the Contract Price will, in the absence of agreement to the contrary, abate proportionately to the reduction in the Services.

## 11.3 No prejudice

Nothing in this **clause 11** prejudices any other rights or remedies of the Member in respect of any breach of this Agreement.

## 12. Dispute Resolution

### 12.1 Negotiation of Dispute

If a difference or dispute ("Dispute") arises in relation to this Agreement, then either party may give written notice to the other that a Dispute exists, which specifies details of the Dispute. The parties agree that, following the issue of that notice, they will endeavour to resolve the Dispute by negotiations, including by referring the Dispute to persons who have authority to intervene and direct some form of resolution.

## 12.2 Mediation of Dispute

If the Dispute has not been resolved pursuant to **clause 12.1** within 28 days of the notice of the Dispute, then the parties agree that they will undertake a mediation process. The mediator will be an independent mediator agreed by the parties or, failing agreement, nominated by the chairperson of The Institute of Arbitrators and Mediators Australia, ACT Chapter. Unless otherwise agreed, the parties will share the costs of the engagement of the mediator.

## 12.3 No prejudice

Nothing in this **clause 12** will prejudice the rights of either party to institute proceedings to enforce the Agreement or to seek injunctive or urgent declaratory relief in respect of any Dispute.

## 13. General

### 13.1 Conflict of Interest

The Contractor:

- (1) warrants that, at the date of entering into this Agreement, no conflict of interest exists or is likely to arise in the performance of the Services and of its other obligations under this Agreement; and
- (2) must, if a conflict, or risk of conflict, of interest arises during the Term:
  - (a) notify the Member immediately in writing of that conflict or risk, and
  - (b) comply with any requirement of the Member to eliminate or otherwise deal with that conflict or risk.

### 13.2 No employment, partnership or agency relationship

- (1) Nothing in this Agreement constitutes the Contractor, or its employees, agents or subcontractors as employees, partners or agents of the Member or the Territory or creates any employment, partnership or agency for any purpose.
- (2) The Contractor must not represent itself, and must ensure its employees, agents and subcontractors do not represent themselves, as being employees, partners or agents of the Member or the Territory.

### 13.3 Entire Agreement

This Agreement comprises the entire agreement between the parties in relation to the Services and supersedes any prior representations, negotiations, writings, memoranda and agreements.

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**13.4 Severability**

Any provision of this Agreement which is illegal, void or unenforceable will not form part of this Agreement to the extent of that illegality, voidness or unenforceability. The remaining provisions of this Agreement will not be invalidated by an illegal, void or unenforceable provision.

**13.5 Variation**

This Agreement may be varied only by the written agreement of the parties prior to the expiration of this Agreement. A variation does not have effect until the Clerk of the Legislative Assembly, or a person authorised for this purpose, endorses it. Until the Clerk, or a person authorised for this purpose, endorses the variation, neither party may:

- (1) exercise any rights under the variation;
- (2) enforce any obligation under the variation;
- (3) perform Services under the variation; and
- (4) in any way act pursuant to the variation.

**13.6 No Waiver**

Failure or omission by the Member at any time to enforce or require strict or timely compliance with any provision of this Agreement will not affect or impair that provision in any way or the rights of the Member to avail him or herself of the remedies he or she may have in respect of that provision.

**13.7 Governing law**

This Agreement is governed by and construed in accordance with the law for the time being in force in the Territory and the parties submit to the non-exclusive jurisdiction of the courts of the Territory.

**13.8 Compliance with laws**

The Contractor must comply with the laws from time to time in force in the Territory in performing the Services.

**13.9 Notices**

Any notice, including any other communication, required to be given or sent to the Member or to the Contractor under this Agreement must be in writing and given to the relevant Contract Officer. A notice will be deemed to have been given:

- (1) if delivered by hand, on delivery;
- (2) if sent by prepaid mail, on the expiration of two days after the date on which it was sent;

- (3) if sent by facsimile, on the sender's facsimile machine recording that the facsimile has been successfully and properly transmitted to the recipient's address; or
- (4) if sent by electronic mail, on the other party's acknowledgement of receipt by any means,

to the relevant Contract Officer set out in **Item 1 Schedule 1** to this Agreement or such other person, address or facsimile number as may be notified by a party to the other from time to time.

### **13.10 Special Conditions**

In the event of any inconsistency between any Special Condition and any other provision of this Agreement then, to the extent of any inconsistency, the Special Condition will prevail.

### **13.11 Survival of clauses**

**Clauses 8, 10.2 and 10.3** will survive the expiration or earlier termination of this Agreement.

## **14. Legislative Assembly (Members' Staff) Act 1989**

This Agreement is subject to Division 5.2 of the *Legislative Assembly (Members' Staff) Act 1989*, which forms part of this Agreement.



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## SCHEDULE 1

### CONTRACT DETAILS

**Item 1. Contract Officers**

See clauses 1.1 and 13.9

For the Member:

[Insert name of Contract Officer]

[Insert contact details – address and facsimile]

For the Contractor:

[Insert name of Contract Officer]

[Insert contact details – address and facsimile]

**Item 2. Term**

See clauses 1.1, 3 and 13.5

From [eg. the date of this Agreement]

until [Insert end date]

**Item 3. Contract Price**

See clauses 1.1 and 4

(1) Total Contract Price:        \$[Insert]

(2) If the Contract Price is payable:

(a) as a lump sum, an Invoice may only be rendered following completion of the Services; or

(b) by instalments, Invoices may only be rendered in accordance with the following.

Amount	When Invoice may be rendered
	[If appropriate, the instalments may be linked to the completion of milestones listed in Schedule 2. If Contract Price is not payable by instalments, insert “Not used”.]

(3) Except if otherwise stated in this Agreement, the Contract Price is:

(a) payable within 30 days of receipt by the Member of an Invoice;

(b) inclusive of GST and all other taxes, duties and charges; and

(c) inclusive of all disbursements, including out-of-pocket expenses incurred by the Contractor.

- (4) [If disbursements are to be paid, insert details eg. specify categories of disbursements and upper limit payable by the Member or whether disbursements are to be approved in advance before the Member pays].

**Item 4. Specified Personnel**

See clauses 1.1 and 7.2

Not applicable. [Insert names if relevant]

**Item 5. Other amounts and Insurance**

See clause 10.1

Not used, see clause 10.1.

[Only complete if insurance requirements differ from, or are in addition to, the default provisions in clause 10.1. **Note:** advice from the ACT Insurance Authority should be obtained before changing insurance requirements]

**Item 6. Contract Information:**

See clauses 1.1 and 8

Not used.

[Only insert details of any information (other than Confidential Text) that the Member requires the Contractor to keep confidential in addition to what is already set out in the definition of Contract Information. If details in the definition of Contract Information are sufficient, retain “Not used”]

**Item 7. Confidential Text:**

See clauses 1.1 and 9

Not used.

[Only insert details of any text in the Agreement that either party requires the Member to keep confidential. For example, name and other personal details of Contract Officers or Specified Personnel; hourly rates or other individual components of the total Contract Price.

**Note:** If the Agreement is a notifiable contract under the Procurement Act, text may only be deleted from the public text of the Agreement if the Member is permitted to not disclose the text on the basis of one or more of the grounds set out in section 35(1) of the Act and specified in Item 8 below]

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**Item 8. Grounds for confidentiality of****Confidential Text**

See clause 9

Not used.

[Only complete this Item if the Agreement is a

“notifiable contract” under the Procurement Act and Confidential Text is to be kept confidential. In that case, the Member must be satisfied that at least one of the grounds for confidentiality set out in section 35(1) of the Act applies to the Confidential Text. The following paragraph must be modified as appropriate and inserted here]

“The Procurement Act, part 3 (Notifiable Contracts) applies to this Agreement. The Member is satisfied that the Confidential Text is “confidential information” for the purposes of that Act because disclosure of the text would:

[FOR EXAMPLE

- (1) be an unreasonable disclosure of personal information about a person; or
- (2) be an unreasonable disclosure of information about the business affairs of a person.]”

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**SCHEDULE 2****THE SERVICES**

The Contractor must provide the Services as follows within any specified timeframes.

<b>Item Number</b>	<b>Details of Services</b>	<b>Timeframe for Completion</b>
1	[Insert full details of Services to be performed including, eg. objectives, methodology, consultations, reports to be prepared and any timeframes for the performance of the Services eg. provision of draft and final reports etc]	
2	[Insert details as required]	
3	[Insert details as required]	
4	[Insert details as required]	

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## SCHEDULE 3

### SPECIAL CONDITIONS

See clause 13.10

[If there are no Special Conditions, insert “Not used”.]

#### **Item 1. Privacy of Personal Information**

[This Special Condition should only be used in circumstances where the Contractor has access to Personal Information as part of the Services and more extensive privacy provisions are warranted. If the Contractor is unlikely to have access to Personal Information in performing the Services, or access to insignificant amounts of Personal Information, then the standard provisions in clause 8 should be sufficient and this Special Condition should not be included in the Agreement.]

##### **1.1 Additional privacy obligations**

The following obligations are in addition to those set out in **clause 8**.

##### **1.2 Employee awareness**

The Contractor must ensure that any employee of the Contractor or any subcontractor, requiring access to any Personal Information held in connection with this Agreement:

- (1) makes an undertaking in writing in a form prescribed by the Member to not access, use, disclose or retain Personal Information except in performing their duties of employment or contractual obligations; and
- (2) is informed that failure to comply with this undertaking may be a criminal offence and may also lead the Contractor to take disciplinary action against the employee or subcontractor.

##### **1.3 Reasonable requests, directions and guidelines**

The Contractor must, in respect of any Personal Information held in connection with this Agreement, co-operate with any reasonable requests or directions of the Member arising directly from, or in connection with the exercise of the functions of the Privacy Commissioner under the *Privacy Act 1988* (Cth) or otherwise, including the issuing of any guidelines concerning the handling of Personal Information.

#### 1.4 Indemnity and compensation

- (1) The Contractor indemnifies the Member and the Territory in respect of any liability, loss or expense incurred arising out of or in connection with a breach of the obligations of the Contractor under this Item or for a breach of the *Privacy Act 1988* (Cth).
- (2) In this Item “liability, loss or expense” includes any amount paid by the Member, or the Territory, on behalf of the Commonwealth for an interference with the privacy of an individual being a reasonable amount as compensation for loss or damage for which the Commonwealth would have been liable under the *Privacy Act 1988* (Cth) if that breach had been that of the Member or the Territory.

#### 1.5 Handling of complaints

A complaint alleging an interference with the privacy of an individual in respect of any Services performed by the Contractor (“Complaint”) will be handled by the Member and in accordance with the following procedures:

- (1) if the Member receives a Complaint the Member will immediately notify the Contractor of only those details of the Complaint necessary to minimise any breach or prevent further breaches of this Agreement;
- (2) if the Contractor receives a Complaint it must immediately notify the Member of the nature of the Complaint but will only release Personal Information to the Member concerning the complainant with that person’s consent; and
- (3) after the Member has given or been given notice in accordance with **paragraphs (1) or (2)** above, the Member will keep the Contractor informed of all progress with the Complaint concerning the actions of the Contractor.

#### 1.6 Survival of Item

This Item survives the expiry or earlier termination of this Agreement.

**DATE OF THIS AGREEMENT**

**SIGNED** for and on behalf of the )  
**[INSERT MEMBER’S NAME]** )  
in the presence of: ) .....  
) Signature of Member/authorised person\*  
) \*delete whichever is not applicable  
) .....  
Signature of Witness )  
) Print name  
) .....  
Print name )  
)

**SIGNED** for and on behalf of )  
**[NAME & ACN OF CONTRACTOR]** )  
in the presence of: ) .....  
) Signature of Contractor or authorised  
) officer\*  
) \*delete whichever is not applicable (see note below)  
) .....  
Signature of Witness )  
) Print name and position  
) .....  
Print name )  
)

) .....  
) Signature of second authorised officer\*  
) \*see note below  
) .....  
) Print name and position  
)



**Note:**

- Date: Must be dated on the date the last party signs the Agreement or, if signed counterparts of the Agreement are exchanged, the date of exchange. Also date the cover page.
- Individual: Must be signed by the individual Contractor and witnessed.
- Incorporated Association: Must be signed in accordance with the Contractor’s constitution, which may or may not require the common seal to be affixed. As a minimum, 2 authorised officers must sign.
- Company: Must be signed in accordance with section 127 of the *Corporations Act 2001* (Cth), for example, by 2 directors or a director and a secretary. Common seal may be affixed if required under the Contractor’s constitution.

**ENDORSEMENT**

Disallowable Instrument DI2015- **[INSERT NUMBER]** provides that an agreement under section 20 of the *Legislative Assembly (Members' Staff) Act 1989*, must be endorsed by the Clerk, or a person authorised by the Clerk for this purpose, before execution by the Parties.

The Clerk (or authorised person) endorses this Agreement:

.....  
Signature of Clerk (or authorised person)\*  
*\*delete whichever is not applicable*

\_\_\_\_\_  
PRINT FULL NAME

.....  
Date of endorsement