

# Legislative Assembly (Members' Staff) Office-holders' Hiring Arrangements Approval 2021 (No 1)

Disallowable instrument DI2021-180

made under the

**Legislative Assembly (Members' Staff) Act 1989, s 5 (3) (Office-holders may employ staff) and s 17 (4) (Office-holders may engage consultants and contractors)**

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## 1 Name of instrument

This instrument is the *Legislative Assembly (Members' Staff) Office-holders' Hiring Arrangements Approval 2021 (No 1)*.

## 2 Commencement

This instrument commences on 1 July 2021.

## 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* ('the Act').

*office-holder* means an office-holder of the Legislative Assembly as defined in the *Legislative Assembly (Members' Staff) Act 1989*.

## 5 Revocation

DI2016-299 is revoked.

## 6 Approval for Act, s 5 and s 17

This instrument approves arrangements and conditions in accordance with which office-holders may, on behalf of the Territory, employ part 2 employees, or engage contractors or consultants, under the Act, section 5 or section 17.

## 7 Staff employment

An office-holder may only employ a part 2 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 the staff of office-holders.

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## **8 Re-engagement**

A part 2 employee whose employment is terminated by the operation of subsection 8(1) or 8(2) 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) An office-holder 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 an office-holder engages a consultant or a contractor—
  - (a) must be endorsed by the Chief Minister, or a person authorised by the Chief Minister for this purpose, or if the contract relates to the engagement of consultants and contractors by the Speaker, 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 1 July 2021

Andrew Barr  
*Chief Minister*

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## Schedule 1 Staff employment

(see cl 7)

## EMPLOYMENT AGREEMENT – STAFF OF OFFICE-HOLDERS

Note: This Agreement is of no legal effect without the prior endorsement of the Chief Minister, or a person authorised by the Chief Minister for that purpose, or, if it relates to the employment of staff by the Speaker, 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 5(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* (‘the Act’);
- (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 where applicable;
- (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 OTHER EMPLOYMENT FOR LEAVE ACCRUAL**

- 6.1 I may agree to recognise your employment with an Australian parliamentarian or with a Commonwealth department or instrumentality for the purpose of determining the accrual of certain leave 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) the employment must have been as a staff member of a Member or Senator of an Australian parliament, or as an employee or officer of a Commonwealth department or instrumentality;
  - (b) the employment may count towards the accrual of annual leave, personal leave and long service leave subject to availability under item 11 of the Attachment to this Agreement;
  - (c) leave entitlements for which a payment has, or should have, been made shall not be recognised except in relation to relevant qualifying periods;
  - (d) if ceased, in order to be recognised, the employment must have terminated no more than:
    - (i) part of a working day prior to the commencement of employment under the Act in relation to annual leave benefits; and
    - (ii) two (2) months prior to commencement of employment under the Act in relation to personal leave benefits; and
    - (iii) one (1) year prior to commencement of employment under the Act 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.

## **8. TERMINATION OF EMPLOYMENT**

- 8.1 You may terminate this Agreement in accordance with the Act and the Enterprise Agreement where applicable.
- 8.2 Subject to the Act, this Agreement terminates automatically if any of the circumstances specified in subsection 8(1) or 8(2) of the Act apply.
- 8.3 I may terminate this Agreement in accordance with the Act, the Enterprise Agreement where applicable, 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 Office-holder

In the presence of

Signed by the employee

In the presence of

Signed                      Chief Minister  
                                    or Clerk of the Legislative Assembly  
                                    (or authorised person)\*  
                                    *\*delete whichever is appropriate*

Date

(To be signed and dated by the Chief Minister, or a person authorised by the Chief Minister for that purpose, before execution by the Parties, or, if this agreement relates to the employment of staff by the Speaker, 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).



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**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 Office-holder:****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 where applicable.*

**Item 7**

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

**Item 8**

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

*(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 Employment with an Australian Parliamentarian or with a Commonwealth department or instrumentality for the accrual of annual leave, personal leave and long service leave**

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

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

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

(see cl 9 (1))

# AGREEMENT

Date

Parties

[INSERT OFFICE-HOLDER'S  
NAME]

AND

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

[INSERT BRIEF TITLE OF SERVICES]

**Note to users:** any text in red is for your attention. When using this template to prepare an agreement you will need to complete and/or follow any user prompts and also read the instructional notes.

DELETE this note, all prompts and other notes before finalising the agreement

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**PARTIES:**            **[INSERT OFFICE-HOLDER'S NAME]** of Legislative Assembly Building, Civic Square, London Circuit, Canberra City, on behalf of the Australian Capital Territory pursuant to section 17 of the *Legislative Assembly (Members' Staff) Act 1989* (ACT) (**Office-holder**)

**[INSERT FULL NAME, INCLUDING ACN FOR A COMPANY OR ABN FOR OTHER ORGANISATION AND CHECK IT IS A LEGAL ENTITY]** of **[INSERT address (of registered office if for a company)]** (**Contractor**).

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## BACKGROUND

- A.     The Office-holder is an office-holder of the Legislative Assembly.
  - B.     Section 17 of the *Legislative Assembly (Members' Staff) Act 1989* (ACT) allows an office-holder 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 Office-holder 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 Office-holder 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.

|                            |  |
|----------------------------|--|
| <b>Clerk</b>               | has the meaning given in the <i>Legislative Assembly (Office of the Legislative Assembly) Act 2012</i> (ACT).  |
| <b>Confidential Text</b>   | any text of this Agreement that, for the purposes of the Procurement Act, either party proposes should not be published and which is specified in <b>Item 7 Schedule 1</b> . |
| <b>Contractor Material</b> | all material owned by the Contractor and used for the purpose of providing the Services, including documents, information and data stored by any means.                      |

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|                                |  |
|--------------------------------|--|
| <b>Contract Material</b>       | all material created, written or otherwise brought into existence as part of, or for the purpose of performing the Services including all reports (whether in draft or final form), documents, information and data stored by any means.   |
| <b>Contract Officers</b>       | in relation to each party, the representatives whose names and contact details are specified in <b>Item 1 Schedule 1</b> , or as notified from time to time by one party to the other.   |
| <b>Contract Information</b>    | <p>the kind of information that:</p> <ul style="list-style-type: none"> <li>(1) is or relates to documents, submissions, consultations, policies, strategies, practices and procedures of the Office-holder or the Territory which are by their nature confidential;</li> <li>(2) is notified (whether in writing or not) by the Office-holder to the Contractor as being confidential;</li> <li>(3) is specified in <b>Item 6 Schedule 1</b>; or</li> <li>(4) is Personal Information,</li> </ul> <p>but does not include information that:</p> <ul style="list-style-type: none"> <li>(5) is or becomes public knowledge other than by breach of this Agreement;</li> <li>(6) has been independently developed or acquired by the Contractor; or</li> <li>(7) has been notified by the Office-holder to the Contractor as not being confidential.</li> </ul> |
| <b>Contract Price</b>          | the amounts specified in, or calculated in accordance with, <b>Item 3 Schedule 1</b> .   |
| <b>GST</b>                     | has the same meaning as in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).  |
| <b>Information Privacy Act</b> | the Information Privacy Act 2014 (ACT).  |
| <b>Insolvency Event</b>        | <p>in respect of a natural person:</p> <ul style="list-style-type: none"> <li>(a) any orders, agreements or arrangements are made in respect of the affairs of the person in accordance with the Bankruptcy Act 1966 (Cth); or</li> </ul>  |

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- 
- (b) in the reasonable opinion of the Office-holder the person is likely to be declared bankrupt or lose control of the management of their financial affairs; or
  - (1) in respect of all other entities:
    - (a) any of the events listed in sub-sections 459C(2)(a) to (f) of the Corporations Act 2001 (Cth) occur in respect of the entity; or
    - (b) any other event occurs which, in the reasonable opinion of the Office-holder is likely to result, or has resulted, in the:
      - (i) insolvency;
      - (ii) winding up; or
      - (iii) appointment of a controller (as that term is defined in the Corporations Act 2001 (Cth)) in respect of part or all of the property,
- of the entity.

For the purpose of subparagraph (2)(b), subsections 459C(2)(a) to (f) Corporations Act 2001(Cth) are to be read as if applying to all incorporated entities.

### Invoice

an invoice that:

- (1) if GST is payable in respect of the provision of the Services, is a valid tax invoice for the purposes of the A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- (2) clearly sets out details of the Services provided and of 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) 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** (if any) and addressed to the Office-holder's Contract Officer.

### Office-holder Material

any material provided by the Office-holder to the Contractor for the purposes of this Agreement including documents, equipment, information and data stored by any means.

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|                             |   |
|-----------------------------|---|
| <b>Personal Information</b> | <p>is personal information as defined in section 8 of the Information Privacy Act, namely, information or an opinion about an identified individual or an individual who is reasonably identifiable:</p> <ol style="list-style-type: none"><li>(1) whether the information is true or not; and</li><li>(2) whether the information or opinion is recorded in a material form or not,</li></ol> <p>but does not include personal health information (as defined in the Health Records (Privacy and Access) Act 1997 (ACT)) about the individual.</p> |
| <b>Prescribed Insurer</b>   | <p>an insurer that is authorised by the Australian Prudential Regulation Authority to conduct new or renewal insurance business in Australia and rated at AA or better by Standard &amp; Poor's.</p>  |
| <b>Procurement Act</b>      | <p>the Government Procurement Act 2001 (ACT).</p>   |
| <b>Services</b>             | <p>the services described in <b>Schedule 2</b>.</p>   |
| <b>Special Condition</b>    | <p>any provision set out in <b>Schedule 3</b>.</p>  |
| <b>Specified Personnel</b>  | <p>any person named in <b>Item 4 Schedule 1</b>, or any other employee or agent of the Contractor, who is approved by the Office-holder from time to time for the purpose of <b>clause 6</b>.</p>   |
| <b>Term</b>                 | <p>the term specified in <b>Item 2 Schedule 1</b>, and if extended, the initial term and the extended term.</p>   |
| <b>Territory</b>            | <p>when used:</p> <ol style="list-style-type: none"><li>(1) in a geographical sense, the Australian Capital Territory; and</li><li>(2) in any other sense, the body politic established by section 7 of the Australian Capital Territory (Self-Government) Act 1988 (Cth).</li></ol>  |
| <b>TPPs</b>                 | <p>the Territory Privacy Principles provided for in section 13 and set out in Schedule 1 of the Information Privacy Act.</p>  |
| <b>TPP Code</b>             | <p>a code of practice about information privacy which, having regard to section 21(1) and (3) of the Information Privacy Act, binds an agency that engages the Contractor in the provision of the Services.</p>   |

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## 1.2 General

In this Agreement, unless a contrary intention is expressed:

- (1) references to “Contractor” include 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;
- (3) words in the singular include the plural and vice versa;
- (4) headings are for convenience only and do not affect the construction or interpretation of this Agreement;
- (5) an obligation imposed on more than one person binds them jointly and severally; and
- (6) the word “include” and any derivation is not to be construed as a word of limitation.

## 2. Services

The Consultant must perform the Services in accordance with the provisions of this Agreement and to a standard of care, skill and diligence expected of a person who regularly acts in the capacity in which the Consultant is engaged.

## 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 Chief Minister, or if this Agreement relates to the engagement of consultants and contractors by the Speaker, 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 Chief Minister, or if this Agreement relates to the engagement of consultants and contractors by the Speaker, 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.

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### 3.3 Extension

This Agreement ends on the date specified in **Item 2 Schedule 1** to this Agreement unless extended under **clause 12.7** or terminated under the provisions of this Agreement.

## 4. Contract Price

### 4.1 Invoice

The Office-holder must pay the Contractor the Contract Price following its receipt of an Invoice and otherwise in accordance with **Item 3 Schedule 1**.

### 4.2 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 Office-holder to the Contractor under this Agreement.

## 5. Ownership and use of material

### 5.1 Ownership of material

Ownership of:

- (1) all Contract Material, including any intellectual property rights, vests on its creation in the Office-holder;
- (2) all Office-holder Material, including any intellectual property rights, remains with the Office-holder; and
- (3) all Contractor Material, including any intellectual property rights, remains with the Contractor.

### 5.2 Licence of material

The Office-holder grants to the Contractor a royalty-free, limited licence to use the Contract Material and Office-holder Material for the Term.

- (1) The Contractor grants to the Office-holder a royalty-free, perpetual, limited licence to use the Contractor Material.
- (2) For the purpose of this clause, “use” includes:
  - (a) such uses as are reasonably necessary for the Office-holder to obtain the full benefit of the Services, including use of the Contract Material; and
  - (b) such uses as are reasonably necessary for the Contractor to undertake the Services or as otherwise agreed by the Office-holder, and may include supply, reproduce, publish, perform, communicate, broadcast, adapt and copy as the context requires.

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### 5.3 Third party rights

The Contractor must ensure:

- (1) the use of any Contract Material or Contractor Material will not infringe the intellectual property rights of any third party; and
- (2) no fees, royalties or other payments are payable in respect of any third party rights as a result of the Office-holder's (or its agents') use of any Contract Material or Contractor Material.

### 5.4 Moral rights

The Contractor must, in relation to the authors of any work that comprises or forms part of the Contract Material:

- (1) use its best endeavours to include in the Contract Material an attribution of those authors; and
- (2) procure from those authors their genuine written consent for the Office-holder to:
  - (a) attribute the authorship of the work to the Office-holder or a third party where that attribution was inadvertent;
  - (b) not attribute the authorship of the author when using the work (including exhibiting or performing the work in or to the public); and/or
  - (c) materially alter the work in any way.

### 5.5 Safekeeping and preservation of material

The Contractor must ensure the safe-keeping and proper preservation of Contract Material and Office-holder Material in its possession or control and deliver to the Office-holder all Contract Material and Office-holder Material on the expiration or termination of this Agreement (other than copies of material that the Office-holder has authorised the Contractor to retain).

## 6. Contractor's personnel

The Contractor must:

- (1) in performing the Services, engage only persons who have the skills, training and expertise appropriate for the Services;
- (2) comply with all reasonable requirements notified by the Office-holder regarding the suitability and fitness of persons engaged by the Contractor for the performance of Services;
- (3) ensure the Services are performed by Specified Personnel (if any) and provide replacement personnel acceptable to the Office-holder at no additional charge and at the earliest opportunity if the Specified Personnel are unable to perform any of the Services; and

- 
- (4) if the Office-holder requires, ensure that each person engaged in the performance of the Services executes a deed of confidentiality in a form acceptable to the Office-holder (including with respect to not accessing or otherwise safeguarding Personal Information as applicable), and provide those executed deeds to the Office-holder in accordance with any requirements that the Office-holder notifies.

## **7. Non-disclosure of Contract Information**

### **7.1 Contractor's use of Contract Information**

The Contractor must:

- (1) use Contract Information held in connection with this Agreement only for the purposes of fulfilling its obligations under this Agreement;
- (2) not transfer Contract Information held in connection with this Agreement outside the Territory or the Office-holder, or allow any person (other than its authorised personnel) outside the Territory or the Office-holder to have access to it, without the prior approval of the Office-holder;
- (3) notify the Office-holder immediately if the Contractor becomes aware that a disclosure of Contract Information is required by law, or an unauthorised disclosure of Contract Information has occurred; and
- (4) in respect of any Personal Information held in connection with this Agreement:
  - (a) comply with the TPPs and any applicable TPP Code and must not (and procure that any subcontractor engaged by the Contractor under this Agreement does not) act or engage in a practice that breaches a TPP or a TPP Code; and
  - (b) co-operate with any reasonable requests or directions of the Office-holder arising directly from, or in connection with, the exercise of the functions of the information privacy commissioner under the Information Privacy Act.

### **7.2 Contractor to protect Contract Information**

- (1) Except as provided in this Agreement, the Contractor must not disclose Contract Information to any person, nor deal with the Information in any way except for the purpose of this Agreement, without the prior written consent of the Office-holder except to the extent that the Contract Information is:
  - (a) required or authorised to be disclosed by law;
  - (b) disclosed to the Contractor's solicitors, auditors, insurers or advisers;
  - (c) generally available to the public; or
  - (d) in the possession of the Contractor without restriction in relation to disclosure before the date of receipt from the Office-holder.

- 
- (2) The Contractor must take all reasonable measures to ensure that 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 that only its authorised personnel have access to Contract Information.
  - (3) The Contractor must do all things necessary to ensure that Contract Information accessible to the Contractor and the Contractor's personnel by virtue of the performance of this Agreement is not accessed, published or communicated in any way, including imposing upon the Contractor's personnel obligations of confidentiality with respect to Contract Information.

### 7.3 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).

## 8. Confidential Text under Procurement Act

### 8.1 Office-holder may make Agreement publicly available

In giving effect to the principles of open and accountable government, the Office-holder may disclose documents and information unless it 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 Office-holder will be required to make the text of this Agreement available to the public, including by publication on a public contracts register.

### 8.2 Confidential Text

If **Item 7 Schedule 1** states that this Agreement is a notifiable contract under the Procurement Act and specifies Confidential Text, the grounds on which the text is confidential are set out in **Item 8 Schedule 1**, and **clause 8.3** applies.

### 8.3 Office-holder must not disclose Confidential Text

Except as provided in this Agreement, the Office-holder must not disclose Confidential Text to any person without the prior written consent of the Contractor (which consent will not be unreasonably withheld) except to the extent that Confidential Text:

- (1) is required or authorised to be disclosed under law;
- (2) is reasonably necessary for the enforcement of the criminal law;
- (3) is disclosed to the Office-holder's solicitors, auditors, insurers or advisers;

- 
- (4) is generally available to the public;
  - (5) is in the possession of the Office-holder without restriction in relation to disclosure before the date of receipt from the Contractor;
  - (6) is disclosed by the responsible Minister in reporting to the Legislative Assembly or its committees; or
  - (7) is disclosed to the ombudsman or for a purpose in relation to the protection of public revenue.

## **9. Insurance and indemnity**

### **9.1 Contractor's insurance**

The Contractor must effect and maintain for the Term all insurance coverage required to be effected by it by law, public liability insurance and professional indemnity insurance in amounts not less than the amounts (if any) specified by **Item 5 Schedule 1**, and any other insurance specified in **Item 5 Schedule 1** with a Prescribed Insurer.

### **9.2 Indemnity**

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

### **9.3 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 9.2** and the Office-holder may deduct the amount, or any part of it, from any moneys due or becoming due to the Contractor under this Agreement.

## **10. Termination**

### **10.1 Default**

The Office-holder may terminate this Agreement, at any time by notice to the Contractor, if the Contractor:

- (1) is the subject of an Insolvency Event;
- (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 notice by the Office-holder; or
  - (b) is not capable of being remedied.



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## 10.2 Termination for any reason or reduction of Services

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

- (1) the Office-holder will be liable only for:
  - (a) payments under this Agreement for Services rendered before the date of termination; and
  - (b) subject to **clauses 10.2(2) and 10.2(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; 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 Office-holder's liability to pay the Contract Price will, in the absence of agreement to the contrary, abate proportionately to the reduction in the Services.

## 10.3 No prejudice

Nothing in this **clause 10** prejudices:

- (1) any other rights or remedies of the Office-holder in respect of any breach of this Agreement; or
- (2) any rights or remedies available to the parties pursuant to Division 5.1 of the *Legislative Assembly (Members' Staff) Act 1989* (ACT).

## 11. Dispute resolution

- (1) If a difference or dispute (**Dispute**) arises in relation to this Agreement either party may give notice to the other that a Dispute exists, which specifies details of the Dispute, and the parties agree that they will endeavour to resolve the Dispute by negotiations, or, if the Dispute has not been resolved within 28 days of the issue of the notice, undertake mediation with an independent mediator, the cost to be shared by the parties unless otherwise agreed.
- (2) Nothing in this **clause 11** will prejudice the rights of either party to institute proceedings to enforce this Agreement or to seek injunctive or urgent declaratory relief in respect of any Dispute.

## **12. General**

### **12.1 Cooperation and good faith**

Each party will:

- (1) fully cooperate with each other to ensure timely progress and fulfilment of this Agreement; and
- (2) act reasonably and in good faith with respect to matters that relate to this Agreement.

### **12.2 Conflict of interest**

The Contractor warrants that no conflict of interest exists or is likely to arise in the performance of the Services and its other obligations under this Agreement and must, if a conflict or risk of conflict arises, notify the Office-holder and comply with any requirement of the Office-holder to eliminate or deal with that conflict or risk.

### **12.3 No employment, partnership or agency relationship**

Nothing in this Agreement constitutes the Contractor, or its employees, agents or subcontractors as employees, partners or agents of the Office-holder or the Territory or creates any employment, partnership or agency for any purpose and 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 Office-holder or the Territory.

### **12.4 No assignment or subcontracting**

- (1) The Contractor must not subcontract the performance of the Services or assign the whole or part of this Agreement without the prior written consent of the Office-holder. If the Office-holder gives its consent, the Office-holder may impose any conditions.
- (2) A change in the control of the Contractor or a company that controls the Contractor (except a company listed on an Australian stock exchange) is taken to be an assignment, the term “control” including the direct or indirect holding of more than 50% of the share capital of a corporation.
- (3) If the Contractor breaches **clause 12.4(1)**, the Office-holder reserves its rights, including requiring the Contractor to provide information regarding the proposed subcontractor’s or assignee’s capability to continue performing this Agreement or to provide security to ensure the proper performance of this Agreement.

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## **12.5 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.

## **12.6 Severability**

Any provision of this Agreement that 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.

## **12.7 Variation**

This Agreement may be varied or the Term extended only by the written agreement of the parties prior to the expiration of this Agreement. A variation does not have effect until the Chief Minister, or if this Agreement relates to the engagement of consultants and contractors by the Speaker, the Clerk of the Legislative Assembly, or a person authorised for this purpose, endorses it. Until the variation is endorsed, 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.

## **12.8 No waiver**

Failure or omission by the Office-holder 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 and remedies that the Office-holder may have in respect of that provision.

## **12.9 Governing law and compliance with the 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. The Contractor must comply with the laws from time to time in force in the Territory in performing the Services.

## 12.10 Notices

Any notice, including any other communication, required to be given or sent to either party 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 business 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 whichever of the following occurs first:
  - (a) the other party's acknowledgement of receipt by any means;
  - (b) the sender's electronic mail device recording that the electronic mail has been successfully transmitted to the recipient's address; or
  - (c) the expiration of two business days after the date on which it was sent without receipt of a notification that the delivery failed,

and if given in two or more ways, on the first of paragraphs (1) to (4) occurring.

## 12.11 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.

## 12.12 Survival of clauses

Clauses 7, 9.2 and 9.3 will survive the expiration or earlier termination of this Agreement.

## 13. Legislative Assembly (Members' Staff) Act 1989

This Agreement is subject to Division 5.1 of the *Legislative Assembly (Members' Staff) Act 1989 (the Act)*, which forms part of this Agreement. In the event of any inconsistency between a term of this Agreement and a provision of Division 5.1 of the Act then, to the extent of any inconsistency, the Act will prevail.

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## SCHEDULE 1

### CONTRACT DETAILS

**Item 1. Contract Officers***See clauses 1.1 and 12.10*

For the Office-holder:

[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 and 3*

From [eg. the date of this Agreement]

until [INSERT end date, note pursuant to section 18(6) of the *Legislative Assembly (Members' Staff) Act 1989* (ACT), the term is limited to a maximum of 3 years].**Item 3. Contract Price***See clauses 1.1 and 4*

(1) Contract Price:           \$[INSERT]           (GST inclusive).

(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.

| Instalment | 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 Office-holder 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) [INSERT details if disbursements are to be paid in addition to the Contract Price, eg. specify categories of disbursements and upper limit payable by the Office-holder or whether disbursements are to be approved in advance before the Office-holder becomes liable].

**Item 4. Specified Personnel**

See clauses 1.1 and 6

Not applicable.

[OR, INSERT names if relevant.]

**Item 5. Other amounts and insurance**

See clause 9.1

- (1) Public liability insurance: [INSERT amount, eg. \$20 million] (in respect of each claim).
- (2) Professional indemnity insurance: [INSERT amount, eg. \$10 million] (in respect of each claim) and [INSERT amount, eg. \$10 million or a different amount] (in the annual aggregate).
- (3) [INSERT other type of insurance, if any].

[Note: The level of public liability insurance under this Agreement must be based on an assessment of risk.

Advice from the ACTIA may be obtained regarding whether professional indemnity insurance is required for the purposes of the Agreement and the appropriate level.

If professional indemnity insurance is required, the Contractor may be subject to a professional standards scheme created under the Civil Law (Wrongs) Act 2002 (ACT), which must be applied in determining the level of professional indemnity insurance for the Agreement. Seek ACTGS advice regarding how the Scheme affects the professional indemnity insurance requirements in the Agreement.

If professional indemnity insurance is required, consideration should be given to whether “run-off” cover is necessary. If so, the following words may be included in this Item 5: “The Contractor must maintain the professional indemnity insurance coverage required under this **Item 5** for an additional period of 6 years from the expiration of the Term. This Item survives the expiration or earlier termination of this Agreement.”

**Item 6. Contract Information**  
See clauses 1.1 and 7

Item 6 not used.

[OR, INSERT details of any information (other than Confidential Text) that the Office-holder 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 “Item 6 not used”.]

**Item 7. Confidential Text**  
See clauses 1.1 and 8

Item 7 not used.

[OR, INSERT “This Agreement is a “notifiable contract” under the Procurement Act and the following is Confidential Text” and then INSERT details of any text in the Agreement that either party requires the Office-holder to keep confidential, eg. name and other personal details of Contract Officers or Specified Personnel, hourly rates or other individual components of the 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 Office-holder 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 Procurement Act. The relevant grounds should be specified in Item 8 below.]

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

Item 8 not used.

[OR, MODIFY this Item as appropriate (see text below) and insert here.

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

**EXAMPLE ONLY**

- (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.”]

[**Note:** if the Agreement is a “notifiable contract” under the Procurement Act, in order for the Confidential Text to be kept confidential, the Office-holder 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.

Also, note that if Item 7 is used, Item 8 must also be completed.]



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## SCHEDULE 2

### THE SERVICES

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

| Item Number | Details of Services   | Timeframe for Completion |
|-------------|---|--------------------------|
| 1           | [INSERT full details of Services to be performed including, eg. 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 full details of Services to be performed including, eg. hold meetings (including meetings relating to planning, review and issue resolution) as necessary and report to the other on a regular basis in order to keep the other fully informed of the progress of work required under the Agreement.] |                          |
| 3           | [INSERT details as required.]   |                          |
| 4           | [INSERT details as required.]   |                          |

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## SCHEDULE 3

### SPECIAL CONDITIONS

*See clause 12.11*

[If there are no Special Conditions, DELETE the following Items and INSERT “Not Used”.]

#### Item 1. Changes in control of Contractor

[**Note:** Only use this Special Condition if **clause 12.4(2)** is not sufficient and a wider set of circumstances in which a change in control of the Contractor is deemed to occur is required.]

In addition to the circumstances set out in **clause 12.4(2)**, for the purposes of **clause 12.4**, “control” includes the direct or indirect possession of the power (whether or not having statutory, legal or equitable force, and whether or not based on statutory, legal or equitable rights) to:

- (1) directly or indirectly control the membership of the board of directors of the corporation; or
- (2) otherwise directly or indirectly direct or cause the direction of the management and policies of that corporation,

whether by means of trusts, agreements, arrangements, understandings, practices, greater industry experience, the ownership of any interest in shares or stock of that corporation or otherwise.

#### Item 2. Audit

[**Note:** Only use this Special Condition in circumstances where, in addition to the Auditor-General’s powers, there may be a special need for the Office-holder to conduct audits and checks in relation to the Contractor’s provision of the Services and compliance with the Agreement]

Without limiting the powers of the Territory’s Auditor-General under the *Auditor-General Act 1996* (ACT) the Office-holder (or its nominated representative) may, at its cost, inspect records kept by the Contractor and conduct audits and other checks, to monitor the Contractor’s delivery of the Services and compliance with this Agreement. The Contractor must act reasonably to cooperate with persons authorised to conduct an audits or checks.

#### Item 3. Complaints in relation to interference with privacy

[**Note:** it is recommended that this Special Condition be included in Schedule 3 until agencies that will be using this template have implemented TPP policies or codes of practice that make provision for the handling of complaints in relation to the handling of Personal Information by non-government agencies, such as the Contractor]

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- 3.1 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 Office-holder in accordance with the following procedures, unless otherwise provided for in a TPP privacy policy made under TPP 1.3 which applies to a Territory agency as relevant to this Agreement:
- (1) if the Office-holder receives a Complaint it 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 Office-holder of the nature of the Complaint but will only release Personal Information to the Office-holder concerning the complainant with that person's consent; and
  - (3) after the Office-holder has given or been given notice under (1) or (2), it will keep the Contractor informed of all progress with the Complaint concerning the actions of the Contractor.
- 3.2 This item survives the expiry or earlier termination of this Agreement.

**SIGNED** for and on behalf of the )  
**[INSERT OFFICE-HOLDER’S NAME]** )  
in the presence of: )  
) Signature of Office-holder / 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 director / secretary /witness\*

\*delete whichever is not applicable (see note below)

.....

Print name

.....

Signature of second authorised officer\*

\*only use if Incorporated Association (see note below)

.....

Print name

.....



|                           |  |
|---------------------------|--|
| 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.  |
| Company:                  | Must be signed in accordance with section 127 of the <i>Corporations Act 2001</i> (Cth), for example, by 2 directors or a director and a secretary. Common seal may be required under the Contractor's constitution. |
| 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.  |

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**ENDORSEMENT**

Disallowable Instrument DI [INSERT NUMBER] provides that an agreement under section 17 of the *Legislative Assembly (Members' Staff) Act 1989*, must be endorsed by the Chief Minister, or a person authorised by the Chief Minister for this purpose, or if the agreement relates to the engagement of consultants and contractors by the Speaker, the Clerk of the Legislative Assembly, or a person authorised by the Clerk for this purpose, before execution by the Parties.

The Chief Minister (or authorised person), or the Clerk of the Legislative Assembly (or authorised person), endorses this Agreement:

.....  
Signature of Chief Minister (or authorised person) or the Clerk of the Legislative Assembly (or authorised person)\*

*\*delete whichever is not applicable*

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

.....  
Date of endorsement