

Australian Capital Territory

Legislative Assembly (Members' Staff) Members' Hiring Arrangements Approval 2003 (No 1)

Disallowable instrument DI2003-317

made under the

Legislative Assembly (Members' Staff) Act 1989, s 10 (2) (Members may employ staff) and s 20 (3) (Members may engage consultants and contractors)

1 Name of instrument

This instrument is the *Legislative Assembly (Members' Staff) Members' Hiring Arrangements Approval 2003 (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:

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

5 Revocation

The following instruments are revoked:

- DI1999-178
- DI2002-209.

6 Approval for Act, s 10 and s 20

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

7 Staff employment

A member may only employ staff under an agreement substantially in the form set out in schedule 1.

Note Staff are also employed subject to conditions of employment under any award or certified agreement under the *Workplace Relations Act 1996* (Cwlth) that applies to members' staff.

8 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 Assembly, or a person delegated by the clerk for this purpose, before execution by the parties; and
 - (b) must represent value for money for the Territory.

Dated signed on 4 December 2003.

Jon Stanhope
Chief Minister

Schedule 1 Staff employment

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 delegated 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 ACT Legislative Assembly Members' Staff Award 2003 as varied from time to time;
- (d) “Certified Agreement” means the ACT Legislative Assembly Members' Staff Certified Agreement 2003–2004 and any further certified agreement which replaces that agreement;
- (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 Certified Agreement;
- (b) the Award;
- (c) the Act;
- (d) any Determinations or Directions;
- (e) this Agreement; and
- (f) other applicable laws.

3. TYPE AND TERM OF EMPLOYMENT

3.1 Your type of employment is as specified in item 3 of the Attachment to this Agreement.

3.2 This Agreement is for the period specified in item 4 of the Attachment to this Agreement unless terminated earlier in accordance with this Agreement, the Certified Agreement, the Act or the Award; or extended in accordance with any Determination or Direction.

4. PROBATION

4.1 If I determine that a probationary period is to apply to your employment, the period of probation is as specified in item 5 of the Attachment to this Agreement.

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- 4.2 During the probationary period I will assess whether your work performance is satisfactory and your conduct is consistent with this contract.

5. DUTIES

- 5.1 Your duties, as appropriate for your classification, are:
- (a) as specified in item 6 of the Attachment to this Agreement; and
 - (b) such other duties as may be specified by me from time to time having regard to your skills, competence and training.

6. CLASSIFICATION AND SALARY

- 6.1 You are employed at the classification specified in item 7 of the Attachment to this Agreement.
- 6.2 Your salary (excluding allowances) is as specified in item 8 of the Attachment to this Agreement.

7. OBLIGATIONS

- 7.1 In performing the duties specified in accordance with clause 5.1, you will:
- (a) be punctual;
 - (b) act with propriety, honesty and integrity;
 - (c) act with fidelity and good faith to me;
 - (d) perform your duties diligently and to the best of your skill and ability;

- (e) obey all lawful directions reasonably incidental to your position or the performance of your duties;
- (f) comply with the terms and conditions of your employment;
- (g) notify me of any illness or medical condition affecting you which reduces your ability to carry out your duties or obligations under this Agreement;
- (h) notify me of any restrictions by statute, court order, contract, or deed on your legal capacity to perform the full range of duties specified in accordance with clause 5.1;
- (i) not misuse or misappropriate Territory property;
- (j) not harass a member of the public or another public employee, whether sexually or otherwise.

8. EMPLOYEE WARRANTIES

8.1 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.

9. EXCLUSIVE EMPLOYMENT

9.1 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.

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9.2 You must not accept any payment or other benefit in money or in kind from any person as an inducement or reward for any act or forbearance in connection with your employment.

9.3 You must avoid any conflict of interest and advise me of any actual or potential conflict situation. You must comply with any requirement that I give to eliminate or otherwise deal with that situation.

10. DISCLOSURE

10.1 You will not, except so far as is necessary and proper to perform your duties under this Agreement, or as required by law or by me, make public or disclose to any person any information relating to:

- (a) me and my affairs; or
- (b) the Australian Capital Territory and its affairs.

10.2 You will use your best endeavours to prevent the use or disclosure by third parties of any information referred to in clause 10.1.

10.3 Upon cessation of your employment, you will hand over to me all information of the kind specified in clause 10.1 in your possession or control.

11. HOURS OF WORK AND WORKING PATTERN

11.1 You are employed to work the number of hours per fortnight set out in item 9 of the Attachment to this Agreement.

11.2 If employed on a regular part-time basis, you will work in accordance with the working pattern set out in item 10 of the Attachment to this Agreement, unless otherwise agreed by me.

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12 RECORDS OF ATTENDANCE

- 12.1 You are required to maintain a record of your attendance in a form agreed by me, except where I agree in writing that your duties do not warrant the keeping of such records.
- 12.2 Any agreement by me that you are not required to maintain records of attendance shall be set out in item 11 of the Attachment to this Agreement, or otherwise provided to you in writing.

13. RECOGNITION OF PREVIOUS AUSTRALIAN PARLIAMENTARY SERVICE

- 13.1 I may agree to recognise your previous Australian parliamentary service for the purpose of determining the accrual of certain entitlements. My agreement shall be set out in item 12 of the Attachment to this Agreement or otherwise provided to you in writing.
- 13.2 My agreement as provided in clause 13.1 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 sick leave and long service leave subject to availability under item 12 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;

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- (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 sick 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.

14. TERMINATION BY YOU

- 14.1 You may terminate this Agreement in accordance with the Act.

15. AUTOMATIC TERMINATION

- 15.1 Subject to the Act, this Agreement terminates automatically if any of the circumstances specified in subsection 13(1) of the Act apply.

16. TERMINATION BY THE EMPLOYER

- 16.1 I may terminate this Agreement in accordance with the Act, the Certified Agreement, the Award and the *Workplace Relations Act 1996* (Cwlth).
- 16.2 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.

17. SUSPENSION

17.1 I may by written notice suspend you from duty with or without pay in accordance with the Certified Agreement if in my reasonable opinion you are or may be guilty of misconduct.

18. DISCIPLINE

18.1 If in my reasonable opinion you have committed a serious breach of the terms and conditions of this Agreement or you are guilty of misconduct, I may discipline you in accordance with the Certified Agreement.

19. NO WAIVER

19.1 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.

20. GOVERNING LAW

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

21. NOTICES

21.1 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.

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- 21.2 All notices, consents, approvals, agreements or other communications delivered in accordance with clause 21.1 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 two 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 delegate)

Date

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

Attachment**ATTACHMENT TO THE EMPLOYMENT AGREEMENT****Item 1** [Clause 1.1(h)]**Name of employee:****Address of employee:****Date of Birth of employee:****Item 2** [Clause 1.1(g)]**Name of Member:****Item 3** [Clause 3.1]**Type of Employment:** (Eg. "fixed term", "casual")**Item 4** [Clause 3.2]**Period of Agreement:****Item 5** [Clause 4.1]**Period of Probation (must be specified where the employment is subject to probation):**

Note: The probationary period would normally be 3 months, or up to a maximum of 12 months if this is deemed reasonable having regard to the nature and circumstances of the employment.

Item 6 [Clause 5.1(a)]**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.*

Item 7 [Clause 6.1]

Classification (must be in accordance with the Certified Agreement):

Item 8 [Clause 6.2]

Salary (full-time equivalent):

- Note: (1) Specify the relevant annual salary in accordance with the Certified 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.*

Item 9 [Clause 11.1]

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

Item 10 [Clause 11.2]

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

Item 11 [Clause 12.2]

Records of Attendance (must be maintained where the employee has access to paid overtime or time off in lieu):

Is the employee exempt from maintaining records of attendance?

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

Item 12 [Clause 13.1]

Recognition of Previous Australian Parliamentary Service

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

If yes, supply details of previous employment.

Schedule 2 **Contractor and consultant
engagements**

(see cl 8 (1))

Date _____

AGREEMENT

BETWEEN

[INSERT MEMBER'S NAME]

AND

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

**[INSERT BRIEF TITLE OF
SERVICES]**

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THIS AGREEMENT is made on **[INSERT DATE]**

BETWEEN:

[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")

AND:

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

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 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 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.
-

IT IS AGREED by the parties as follows:

1. Definitions and Interpretations

1.1 In this Agreement, unless the context otherwise requires:

"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 of 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 of Schedule 1 to this Agreement;

“**Member Material**” means any material provided by the Member to the Contractor for the purposes of this Agreement including, but not limited to, 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;

“**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 Item 7 of Schedule 1 to this Agreement;

“**Specified Personnel**”, if applicable, means the person(s) named in Item 4 of Schedule 1 to this Agreement or such other employees or agents of the Contractor, as approved by the Member from time to time for the purpose of clause 8;

“**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* (Cwlth).

1.2 In this Agreement, unless the context otherwise requires:

- (1) references to “Contractor” includes any employees, agents or subcontractors of the Contractor;
- (2) words importing a gender include the others; words in the singular number include the plural and vice versa; and 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; and
- (3) clause headings are for convenient reference only and have no effect on the interpretation of the provisions to which they refer.

1.3 An obligation imposed by this Agreement upon more than one person binds them jointly and severally.

2. Provision of Services

- 2.1 The Member engages the Contractor to perform the Services on the terms set out in this Agreement.
- 2.2 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.

3. Duration

- 3.1 This Agreement commences on the date:
- (1) specified in Item 2 of Schedule 1 to this Agreement; or
 - (2) on which the Clerk of the Legislative Assembly, or an officer authorised for this purpose, endorses it,
- whichever is later.
- 3.2. This Agreement does not have effect until the Clerk of the Legislative Assembly, or an officer 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 This Agreement ends on the date specified in Item 2 of Schedule 1 to this Agreement unless extended under clause 14.2 or terminated under the provisions of this Agreement.

4. Contract Price

- 4.1 The Member will pay the Contractor the Contract Price following receipt of a correctly rendered invoice.
- 4.2 An invoice is correctly rendered if:

-
- (1) a goods and services tax (“GST”) is payable by virtue of the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth) (“GST Act”) in respect of the provision of the Services, the Contractor has rendered to the Member a 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 by this Agreement; and
 - (4) the invoice is rendered at the times specified in Item 3 of Schedule 1 to this Agreement and addressed to the Member’s Contract Officer or such other officer notified by the Member to the Contractor to receive invoices for payment.
- 4.3 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 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.
- 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 Title to, and ownership of any intellectual property rights (including copyright) in all Contract Material will vest upon its creation in the Member.
- 6.2 The Contractor will 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 For the purpose of clause 6.2, use (including used) includes supply, reproduce, publish, perform, communicate, adapt and copy.
- 6.4 On the expiration or earlier termination of this Agreement, the Contractor will deliver to the Member all Contract Material.
- 6.5 The Contractor must 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.
- 6.6 The Contractor will procure that all authors of any work that comprises or forms part of the Contract Material genuinely consent to the Member:
- (1) attributing the authorship of the work to the Member;
 - (2) not attributing the authorship of the author when communicating, exhibiting or performing the work to the, or in, public and when reproducing, copying, publishing and adapting the work; and
 - (3) materially altering the work in any way.

7. Member Material and Contractor's Material

- 7.1 Member Material will remain the property of the Member and the Contractor will use that material only for the purpose of providing the Services and otherwise in accordance with any conditions notified to it by the Member.
- 7.2 The Contractor will be responsible for the safe keeping and maintenance of Member Material and, on the expiration or earlier termination of this Agreement, the Contractor will return to the Member all Member Material.
- 7.3 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 use or communicate the Contract Material.

8. Specified Personnel

- 8.1 The Contractor will ensure that the Services are performed by Specified Personnel or such other persons approved in writing by the Member.
- 8.2 If Specified Personnel are unable to perform any of the Services, the Contractor will provide replacement personnel acceptable to the Member at no additional charge and at the earliest opportunity.
- 8.3 The Contractor will 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.

9. Non-Disclosure of Contract Information

- 9.1 For the purposes of this Agreement “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) may be specified in Item 6 of Schedule 1 to this Agreement; or
 - (4) is Personal Information,
- but does not include information which:
- (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 being not confidential.
- 9.2 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 where 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.

9.3 The Contractor will take all reasonable measures to ensure that Contract Information accessed or held by it in connection with this Agreement is protected against loss, and against unauthorised access, use, modification, disclosure or other misuse in accordance with reasonable procedures for that purpose, and that only authorised personnel have access to the Contract Information.

9.4 The Contractor will:

- (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* (Cwlth) as if they were terms of this Agreement;
- (3) not transfer Contract Information held in connection with this Agreement outside the Territory, or allow any person outside the Territory to have access to it, without the prior approval of the Member; and
- (4) without limiting clause 13.2, 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 9.

10. Conflict of Interest

10.1 The Contractor 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.

10.2 If, during the term of the Agreement, a conflict or risk of conflict of interest arises, the Contractor will notify the Member immediately in writing of that conflict or risk and will comply with any requirement of the Member to eliminate or otherwise deal with that conflict or risk of conflict.

11. No Employment, Partnership or Agency Relationship

11.1 The Contractor will not represent itself, and will ensure its employees, agents

and subcontractors do not represent themselves, as being employees, partners or agents of the Member or the Territory.

- 11.2 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.

12. Security

The Contractor will, when using the Member's or Territory's premises or facilities, comply with all security and office regulations in effect at those premises or in regard to those facilities, as notified by the Member.

13. Insurance and Indemnity

- 13.1 The Contractor will effect and maintain all insurance coverage required to be effected by it by law and the insurance policies specified in Item 5 of Schedule 1 to this Agreement with an insurer having a Standard and Poor's or Best's rating of A- or better and will produce evidence of such insurance.
- 13.2 The Contractor will be responsible for and will indemnify 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.
- 13.3 The amount of all claims, loss, damage, costs and expenses the subject of the indemnity in clause 13.2 will be made good at the Contractor's expense and may be deducted by the Member from any moneys due or becoming due to the Contractor.

14. Entire Agreement, Variation and No Waiver

- 14.1 This Agreement comprises the entire agreement between the parties and supersedes any prior representations, negotiations, writings, memoranda and agreements.
- 14.2 This Agreement may be varied only by the written agreement of the parties. A variation does not have effect until the Clerk of the Legislative Assembly, or an officer authorised for this purpose, endorses it. Until the Clerk, or an officer 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.

14.3 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 any such provision.

15. Termination

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

- (1) the Contractor 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) the Contractor fails to commence timely provision of the Services or to meet any timeframes specified in this Agreement; or
- (3) the Contractor fails to remedy a breach of a term of this Agreement within the period specified in a written notice by the Member.

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

- (1) the Member will be liable only for:
 - (a) payments under the payment provisions of this Agreement for Services rendered before the effective date of termination; and
 - (b) subject to clause 15.2(3) any reasonable costs incurred by the Contractor and directly attributable to the termination or partial termination of this Agreement, but not in respect of loss of prospective profits;
- (2) upon receipt of a notice of termination the Contractor will:
 - (a) stop work as specified in the notice;
 - (b) take all available steps to minimise loss resulting from that termination to protect Member Material and Contract Material;

and

(c) continue to perform any part of the Services not affected by the notice;

(3) in the event of partial termination 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.

15.3 Nothing in this clause 15 prejudices any other rights or remedies of the Member in respect of any breach of this Agreement.

16. Notices

Any notice, or other communication required or otherwise to be given or sent to the Member or to the Contractor under this Agreement must be in writing and will be deemed to have been given:

- (1) if delivered by hand, upon delivery;
- (2) if sent by prepaid mail, upon the expiration of two days after the date on which it was so sent;
- (3) 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;
- (4) 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,

to the persons and addresses or facsimile numbers set out in Item 1 of 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.

17. Severability

Any provision of this Agreement which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability without invalidating the remaining provisions of this Agreement.

18. Applicable Law

18.1 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 jurisdiction of the courts of the Territory.

18.2 The Contractor will ensure that the Services performed under this Agreement

comply with the laws from time to time in force in the Territory.

19. Dispute Resolution

- 19.1 If a difference or dispute (“Dispute”) arises in relation to this Agreement or the Services, then either party may give written notice to the other that a Dispute exists and giving details of the Dispute. The parties agree that, following the issue of such a notice, they will endeavour to resolve the Dispute by negotiations.
- 19.2 If the Dispute has not been resolved pursuant to clause 19.1 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.
- 19.3 Nothing in this clause 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.

20. 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.

21. Survival of Clauses

Clauses 9, 13.2 and 13.3 will survive the expiration or earlier termination of this Agreement.

22. 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.



SCHEDULE 1 TO THE AGREEMENT

Item 1. Contract Officers:

[Clauses 1.1, 4.2(4), 16]

For the Member:

For the Contractor:

Item 2. Duration:

[Clauses 3.1, 3.3]

Commencement date:

End date:

Item 3. Contract Price:

[Clauses 1.1, 4]

Item 4. Specified Personnel:

[Clauses 1.1, 8]

Item 5. Insurances:

[Clause 13.1]

Item 6. Contract Information:

[Clause 9]

Item 7. Special Conditions:

[Clause 1.1, 20]

SCHEDULE 2 TO THE AGREEMENT

THE SERVICES

The Contractor will:

SIGNED on the date first above written.

SIGNED for and on behalf of)
[INSERT MEMBERS NAME])
by)
)
)

PRINT FULL NAME)
Signature of Member

in the presence of:)
)

.....
Signature of Witness

.....
Name of Witness

SIGNED for and on behalf of)
[NAME & ACN OF CONTRACTOR] by)
)
)
)

PRINT FULL NAME)
Signature of Director/Contractor

in the presence of:)
)

.....
Signature of Director/Secretary/Witness

.....
Name of Director/Secretary/Witness

OR-

The COMMON SEAL of)
PTY LIMITED)

ACN)
was hereunto affixed by authority of)
the Board of Directors in the presence of:)
)
)

..... Signature of Director/Secretary
Signature of Director