

ITEM 8

ILLAWARRA REGIONAL INFORMATION SERVICE RESEARCH FUNDING AGREEMENT -  
1 JULY 2017 TO 30 JUNE 2021

Wollongong City Council has been providing funding to Illawarra Regional Information Service Limited (IRIS) since 1982. The current funding agreement commenced on 1 July 2011, and concludes on 30 June 2017.

This report proposes a new four year funding agreement between Wollongong City Council and IRIS, to commence on 1 July 2017. It is proposed the new funding agreement will include two biennial community surveys as well as Omnibus surveys, online surveys, research support and in-house training.

### RECOMMENDATION

- 1 Council note the report on the IRIS Research Funding Agreement - 1 July 2017 to 30 June 2021.
- 2 In accordance with Section 55(3) of the Local Government Act 1993, Council resolves that due to the extenuating circumstances as outlined in this report, being:
  - a the extent of the services to be provided to Council, as detailed in the Agreement;
  - b the developed and rapid lines of communication between Council and the Illawarra Regional Information Service Limited; and
  - c the commercially favourable terms negotiated between Council and the Illawarra Regional Information Service Limited;a satisfactory result would not be achieved by inviting tenders for the services provided by the Illawarra Regional Information Service Limited.
- 3 Council enter into a new Funding Agreement with the Illawarra Regional Information Service Limited.
- 4 Council delegate the finalisation of the new Funding Agreement with the Illawarra Regional Information Service Limited for the period of 1 July 2017 to 30 June 2021 to the General Manager, subject to the funding arrangements not exceeding the current adopted budget.

### REPORT AUTHORISATIONS

Report of: Clare Phelan, Executive Strategy Manager  
Authorised by: David Farmer, General Manager

### ATTACHMENTS

- 1 Draft Illawarra Regional Information Service Limited Funding Agreement - 1 July 2017 to 30 June 2021

### BACKGROUND

Illawarra Regional Information Service Limited (IRIS) was established in 1981 as a company limited by guarantee and not having a share capital. Wollongong City Council is a founding member of IRIS, and has been providing funding to them since this time.

In 2008-09, Council and IRIS moved from payment-on-invoice arrangement to a funding agreement which specifies the funding schedule, key deliverables and increased accountability for the effective governance of the grant. As part of this arrangement, IRIS submitted a funding application each year under the Financial Assistance to External Entities Program. In July 2011, the annual agreement moved to a three year funding agreement, with the inclusion of the 2012 biennial community survey.

Following the adoption of the Delivery Program 2012-17 at the Ordinary Council Meeting of 17 February 2014, which identified the ongoing funding contribution to IRIS in the adopted budget, an extension of the funding agreement was endorsed by EMC in 1 April 2014.

## PROPOSAL

The current Agreement is due to expire on 30 June 2017, and as such, officers met with IRIS' Chief Executive to discuss a new four year Agreement. The proposed four year Agreement includes the following:

- two biennial community surveys and all associated costs (including any award rate increases for CATI interviewers over the next four years)
- increased clarity around service specifications which allows closer monitoring of services provided by IRIS
- inclusion of timeframes for the renewal of the Agreement prior to expiration of the current term, to mitigate any potential issues with audit and going-concern considerations
- transition to average annual payments ie amount of funding does not fluctuate in the years where the community survey is conducted.

It is envisaged the proposal to enter into a four year Funding Agreement will deliver efficiencies in budgeting and administering of the funding, and certainty for IRIS with guaranteed funding (subject to satisfying conditions of the Agreement) for four years.

In addition to the two biennial community surveys, other services provided under the Funding Agreement include:

- one Omnibus survey (quantitative market research where data on a wide variety of subjects is collected during the same interview) and one online survey per year – up to 12 questions in each
- in-house survey design support
- up to three in-house market research training events per year
- 10% discount on additional survey consultancies
- up to 10 hard copies of each publication and unlimited (currently 33 recipients) actuated digital copies:
  - CSM Illawarra (4 per year)
  - CSM Western Sydney (4 per year)
  - Real Estate Report (4 per year)
  - Profile Illawarra (4 per year)
  - Illawarra Statistical Guide (1 per year).

As the proposed Funding Agreement between Council and IRIS constitutes a 'contract', it is therefore necessary to consider Section 55 (Tendering) of the Local Government Act 1993. Generally, Section 55 requires Council to invite tenders for any contract involving an estimated expenditure or receipt of an amount of more than \$150,000. However, Section 55(3)(i) provides that the requirement does not apply to contracts where:

*'because of extenuating circumstances, remoteness of locality or the unavailability of competitive or reliable tenders, a council decides by resolution (which states the reasons for the decision) that a satisfactory result would not be achieved by inviting tenders.'*

Due to the extenuating circumstances relating to the current arrangements Council has in place with IRIS, including Council's status as a member of the organisation, it is considered a satisfactory result would not be achieved by inviting tenders for the services conducted by IRIS.

This report seeks endorsement of a new four year Funding Agreement between Council and IRIS. The new Agreement will include all costs associated with two biennial community surveys.

## CONSULTATION AND COMMUNICATION

Advice was sought from Council's Corporate Legal Services in drafting the new Funding Agreement.

Discussions were also held with IRIS' Chief Executive to determine and clarify service specifications, and the inclusions and exclusions of the drafting Funding Agreement.

## PLANNING AND POLICY IMPACT

This report contributes to the delivery of Wollongong 2022 Goal 2 "*We have an innovative and sustainable economy*".

It specifically delivers on core business activities as detailed in the Corporate Strategy Service Plan 2016-17.

## FINANCIAL IMPLICATIONS

If approved, the overall cost of the four year Funding Agreement will be \$352,926 (excluding GST), which equates to an annual payment of \$88,231.54. The current long term model includes a budget of \$377,101 across the next four financial years for IRIS membership. It also provides total funding of \$115,029 for community surveys. If the draft Funding Agreement is executed as is, Council will realise savings of \$139,204 across the term of the Agreement. It is proposed these recurrent savings will be considered as part of the next Quarterly Review.

## CONCLUSION

This report seeks to renew a Funding Agreement with IRIS for four years, and confirm delivery of the two community surveys.

# **WOLLONGONG CITY COUNCIL**

**and**

# **ILLAWARRA REGIONAL INFORMATION SERVICE LTD**

**Trading as IRIS Research**

# **AGREEMENT**



## AGREEMENT

**THIS AGREEMENT** is made on the \_\_\_\_\_ day of \_\_\_\_\_ 2017

**BETWEEN**

**WOLLONGONG CITY COUNCIL**

**(“the Council”)**

**AND**

**ILLAWARRA REGIONAL INFORMATION SERVICE LTD ACN 002278793 (‘IRIS Research’)**

### **BACKGROUND**

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- A The Council is a local government authority under the Local Government Act 1993 and has funded IRIS Research since 1982.
- B The Council adopted the Wollongong 2022 Our Community Strategic Plan, supported by the Delivery Program (adopted 17 February 2014) which seeks to:
- › Increase local employment opportunities within a strong local economy through:
    - ‘supporting regional activities and partnerships that result in increased business investment and jobs growth’
    - ‘building on partnerships which enable the retention of local talent’
  - › Have the trust of the community through:
    - ‘working together, levels of service are established and services continuously improve and offer best value for money’
    - ‘policies and procedures are simplified to ensure transparency and efficiency’
    - ‘finances are managed effectively to ensure long term financial sustainability’
  - › Enable residents to have their say through increased engagement opportunities and take an active role in decisions that affect our city through:
    - ‘engagement activities by all levels of government are enhanced and improved to achieve diverse community representation and encourage participation’
    - ‘our Council plans, intentions, actions and progress are clearly communicated to the community and other stakeholders’
- C In consideration of the funding provided in this Agreement, IRIS have agreed to provide the Services in accordance with this Agreement.

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## OPERATIVE PROVISIONS

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### 1 INTERPRETATION

#### 1.1 Definitions

In this Agreement, except where the context otherwise requires:

“**Agreement**” means this Agreement including the Schedules;

“**Business Day**” means a day which is not a Saturday, Sunday or public holiday in Sydney, New South Wales;

“**Code of Conduct**” means the Council’s code of conduct applicable from time to time.

“**Commencement Date**” means the date specified in Item 2 of Schedule 1;

“**Confidential Information**” means any information that is by its nature confidential; and

(a) is designated by a Party as confidential; or

(b) a Party knows or ought to know is confidential;

but does not include information which is or becomes public knowledge other than by breach of this Agreement;

“**Creditable Acquisition**” has the same meaning given to it in GST Law;

“**Financial Year**” means each year commencing on 1 July and ending on 30 June in the following year;

“**Funding**” means the Funding provided by the Council to IRIS Research under this Agreement specified in Schedule 2 and varied from time to time under the provisions of this Agreement;

“**GST**” means a tax, levy, duty, charge, or deduction imposed by the GST Law calculated by reference to the value of anything supplied but does not include any related additional tax, interest, penalty, fine, or other charge imposed in relation to the late or incorrect payment of GST, and means the tax payable on Taxable Supplies under the GST Law;

“**GST Law**” means *A New Tax System (Goods & Services Tax) Act 1999*, and any related Act or regulation imposing such tax or legislation that is enacted to validate, recapture or recoup such tax;

“**Input Tax Credit**” has the same meaning given to it in GST Law;

“**Instalment**” means an instalment of the Funding;

“**Intellectual Property**” includes all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, confidential information, know-how, designs, semi-conductor or circuit layout rights, trade, business or company names or other proprietary rights and any rights to registration of such rights, whether created before or after the Commencement Date in Australia or elsewhere;

“**Law**” means the requirements of statute, rule, regulation, proclamation, declaration, order or by-law in force during the Term, whether State, Federal or otherwise.

“**Moral Rights**” means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968* (Cth), and rights of a similar nature anywhere in the world whether existing at the Commencement Date or which may come into existence on or after the Commencement Date;



**“Party” or “Parties”** means a party or parties to this Agreement;

**“Report” or “Reports”** means the report or reports required to be prepared by IRIS Research in accordance with clause 8;

**“Services”** means the Services described in Schedule 3 and which IRIS Research is funded to provide under this Agreement as varied from time to time;

**“Services Materials”** means all material created by or on IRIS Research’s behalf for the purpose of the Services, including documents, software and data stored by any means;

**“Schedule”** means a schedule to this Agreement;

**“Supply”** has the same meaning given to it in the GST Law;

**“Tax Invoice”** means a request for payment that meets the requirements specified in Item 4 of Schedule 1, and the requirements of the GST legislation;

**“Taxable Supply”** has the meaning given to it in the GST Law; and

**“Term”** means four years from the Commencement Date or until the date on which this Agreement is terminated, whichever occurs first.

## 1.2 Interpretation

(a) In this Agreement, except where the context otherwise requires:

- (1) A singular word includes the plural, and vice versa.
- (2) If a word is defined, another part of speech has a corresponding meaning.
- (3) Any person or company means and include the legal personal representative, successor in title, and permitted assigns of such person or company as the circumstances may require.
- (4) Words and expressions importing natural persons include partnerships, bodies corporate, associations and governmental and local authorities and agents.
- (5) A reference to legislation (including subordinate legislation) is to legislation in force from time to time.
- (6) A Party to this Agreement includes a permitted assignee of that Party.
- (7) A reference to a month is a reference to a calendar month.
- (8) A reference to a year is a reference to twelve consecutive calendar months.
- (9) A reference to this Agreement or another document includes any document which varies, supplements, replaces, assigns or novates this Agreement or that other document.

(b) Headings are for convenience only and do not affect interpretation.

(c) No rule of construction operates to the detriment of a Party only because that Party was responsible for the preparation of this Agreement or any part of it.

(d) If a day on or by which a Party must do something under this Agreement is not a Business Day the Party must do it on or by the next Business Day.

(e) Monetary references are references to Australian currency.

## 2 TERM OF THE AGREEMENT

### 2.1 Term

This Agreement commences on the Commencement Date and continues for the Term.

## 2.2 Renewal

- (a) Subject to clause 2.2 (c) – (e) inclusive, the Parties may agree, not less than fifteen (15) months prior to the completion of the Term, to renew this Agreement for a further period of not greater than two (2) years (the “Further Term”) on the same or such other terms and conditions as are agreed in writing between the Parties prior to the completion of the Term.
- (b) Where Funding, which has been provided to IRIS Research during the Term for a particular Service, will continue being provided into the Further Term, the terms of the renewed Agreement as from the commencement date will apply to the provision of that Funding.
- (c) Renewal of this Agreement is subject to the Parties agreeing on the nature, quantity, location and continuous quality improvement strategies for the Services to be provided by IRIS Research during the Further Term.
- (d) This Agreement will not be renewed if the Parties cannot agree on the matters in clause (c), or where action has been taken to suspend or end the Agreement.
- (e) IRIS Research agrees that nothing in this clause 2.2 obliges the Council to renew this Agreement and it is agreed that the Council may in its discretion determine whether or not to renew, whether at the end of the Term to call competitive tenders for the Services and enter arrangements with other providers or make other arrangements for the provision of the Services.

## 3 PROVISION OF FUNDING

### 3.1 Instalments

The Council will provide the Funding in Instalments in accordance with and subject to the terms of this Agreement. Funds will be paid or provided on an annual basis commencing on 1 July each year and subject to compliance with Schedule 3.

### 3.2 Conditions for Payment

Payment of each Instalment of the Funding is conditional upon:

- (a) IRIS Research having met each and every obligation imposed on IRIS Research under this Agreement (including the Performance Measures) to the Council's satisfaction.

### 3.3 Right to withhold Funding

Without limiting the Council's rights under this Agreement, if:

- (a) IRIS Research fails to comply with one or more of its the Services listed under Schedule 3 to the Council's satisfaction; or
- (b) the Council has a reasonable basis to believe that a Services listed under Schedule 3 will not be met;

the Council may, upon notice detailing either the compliance failure or the reasonable basis for its belief, withhold payment of the relevant Funding (or any part of it) until:

- (a) the Council is otherwise satisfied that the services listed under Schedule 3 Part A will be met by IRIS Research in accordance with this Agreement; or
- (b) this Agreement is terminated by the Council under clause 20.

#### **4 CLAIMING A PAYMENT**

##### **4.1 Conditions to be satisfied for payment of Funding**

- (a) Payment of each Instalment of the Funding is conditional upon:
  - (1) IRIS Research delivering each and every service listed under Schedule 3 to the satisfaction of the Council, in its (Council's) sole discretion.

##### **4.2 Payment of Instalment**

Subject to this Agreement, the Council will pay each Instalment to IRIS Research on or before the expiry of 14 days after the commencement of each financial year of the Term commencing 1 July 2017.

#### **5 USE OF THE FUNDING**

##### **5.1 Expenditure of the Funding**

- (a) IRIS Research must not enter into any arrangements or commitments in relation to the Services that are incompatible or inconsistent with the purpose of the Funding.

##### **5.2 Delayed or Inactive Services**

IRIS Research must notify the Council immediately if Services (or a component thereof):

- (a) will not commence within 60 days of the Commencement Date; or
- (b) have been inactive for a period of 60 days or more.

##### **5.3 Repayment of the Funding**

- (a) IRIS Research must repay immediately (or within such other time as may be agreed) any part of the Funding spent on purposes not approved by this Agreement.
- (b) IRIS Research must, within 14 days of the expiry or termination of this Agreement, repay to the Council any unexpended part (or the whole) of the Funding paid to IRIS Research.

#### **6 PERFORMANCE OF THE SERVICES**

##### **6.1 General**

- (a) IRIS Research must provide the Services in accordance with any other requirements of this Agreement.
- (b) In providing the Services IRIS Research must use its best endeavours to achieve the outcomes and objectives underlying the Services to the satisfaction of the Council.
- (c) The Services must be provided within the timeframes specified under this Agreement.
- (d) IRIS Research must comply with all:
  - (1) Law;
  - (2) Relevant Council policies and requirements including:
    - (A) Council's Code of Business Ethics.

##### **6.2 Commencement of Services**

IRIS Research will commence the provision of those Services from the Commencement Date.

### 6.3 Monitoring and evaluation

- (a) The Council will monitor and evaluate the Services against:
  - (1) The Services listed under Schedule 3, and
  - (2) IRIS Research's compliance with this Agreement.
- (b) IRIS Research:
  - (1) acknowledges that the Council will maintain regular contact with IRIS Research to monitor the implementation of the Services and the Agreement; and
  - (2) agrees to cooperate with the Council in the performance of this role.

## 7 ANNUAL REVIEW

### 7.1 Annual Review

An annual review of the Services delivered as identified in Schedule 3 will be undertaken in May of each year under this Agreement. The Services must be delivered to the satisfaction of the Council.

- (a) The documents referred to this clause 7.1 are referred to as 'Review' documents.
- (b) The Review Documents for each subsequent year of the Term are to be determined as follows:
  - (1) not later than the end of May of each year of the Term the Parties must meet to discuss the development of the Review for the following Financial Year;
  - (2) the Parties must negotiate in good faith to agree, as soon as reasonably practicable, the final form of the Review to allow them to be put to the Council for final approval not later than the end of June in each year of the Term;
  - (3) upon final approval by the Council of the Review they become applicable for the relevant year of the Term and replace the review criteria which were applicable for the prior year of the Term.
  - (4) the Council's approval under clause 7.1(b)(3) maybe given or withheld in its discretion.

### 7.2 Variations

The Parties agree that:

- (a) Due to the length of the Term it is reasonably likely in order to ensure the objectives of this Agreement, as set out in the Background, continue to be achieved that adjustment and variation from time to time during the Term may be required to:
  - (1) the nature and extent of the Services required to be provided by IRIS Research under this Agreement;
  - (2) the amount of Funding required to provide such Services; and
  - (3) any other provisions of this Agreement.

In this clause 7.2 referred to as "Variations":

- (b) The Parties may propose Variations as part of the review process set out in clause 7.1 and the Parties must negotiate in respect of such proposed Variations.
- (c) The Council reserves the right in its sole discretion to determine whether or not any proposed Variation to this Agreement is to be implemented.

- (d) To the extent, if any, that the Council determines that a proposed Variation is to be implemented then the Variation must be made in writing under clause 17.
- (e) The procedures set out in this clause are in addition to and do not derogate from the provisions of clause 17.

## **8 REPORTS AND RECORDS**

### **8.1 Reports**

IRIS Research must provide to the Council:

- (a) A copy of the agendas and minutes of IRIS Research Annual General Meeting and regular Board meetings, and
- (b) Copies of the IRIS Research annual audited accounts as submitted to ASIC.

### **8.2 Independent verification of Reports**

- (a) IRIS Research must arrange for:
  - (1) the IRIS Research annual audited accounts referred to in clause 8.1(b) to be audited by a qualified public or chartered accountant and for the person conducting the audit to complete an independent auditor's report. Unless IRIS Research obtains the prior written approval of the Council, the qualified accountant must not be one of IRIS Research's officers or employees;
  - (2) an independent third person acceptable to the Council to verify any information contained in a Report if the Council considers that there is a significant error, omission or anomaly in the Report.
- (b) IRIS Research must promptly provide all assistance and information required by the independent third person for the purpose of verifying information in a Report.
- (c) Except where otherwise determined by the Council, IRIS Research is responsible for:
  - (1) its own costs in providing assistance and information under clause 8.2(b); and
  - (2) the costs of the independent auditor or independent third person under clause 8.2(a).

### **8.3 Presentation to the Council**

IRIS Research must on request of the Council make a presentation to the Council on its annual audited accounts and information relating to Services listed under Schedule 3.

### **8.4 Additional Information**

If further information is required by Council in respect of a report provided by IRIS Research it must be provided within 14 days of request.

## **9 AUDIT**

- (a) An audit of any aspect of the Services or IRIS Research's compliance with this Agreement may be conducted at any time by the Council or any person authorised by the Council.
- (b) The Council must give IRIS Research reasonable notice of its requirements in relation to an audit and use its reasonable endeavours to minimise disruption and interference to IRIS Research's performance of its obligations under this Agreement arising from an audit.

- (c) Except where otherwise determined by the Council, IRIS Research is responsible for its own costs of participating in an audit.
- (d) IRIS Research must promptly take any reasonable action required by the Council to rectify any error, non-compliance or inaccuracy identified in an audit in relation to the Services or IRIS Research's performance of this Agreement.
- (e) IRIS Research is not entitled to any delay costs or other costs or expenses of whatever nature relating in any way to an audit.

## **10 RESEARCH AND SURVEYS**

IRIS Research is required to participate and contribute to requests for the provision of statistical and program information for the purpose of research and surveys conducted by the Council.

## **11 COMPLIANCE WITH THE LAW**

IRIS Research must:

- (a) obtain and hold all rights, licences and consents required to conduct the Services and otherwise fulfil IRIS Research's obligations under the Agreement;
- (b) comply with all applicable laws and regulations in relation to the Services; and
- (c) not do anything that would cause the Council to breach its obligations under any agreement or law.

## **12 PUBLICITY**

### **12.1 Acknowledgement**

IRIS Research must acknowledge the financial support it has received or will receive from the Council under this Agreement in all relevant public statements about the Services.

### **12.2 Form of acknowledgement**

The form of the acknowledgement must be in accordance with a format approved by the Council from time to time in its discretion.

### **12.3 Particular Acknowledgements**

Without derogating from clauses 12.1 and 12.2, IRIS Research agrees to acknowledge the Council's support in the following:

- (a) IRIS Research Website  
IRIS Research will provide Wollongong City Council:
  - › Exclusive member access to the IRIS Research website. A number of archived research publications are available for download from the website.
  - › A link from the IRIS Research website to the Council site.
- (b) Promotion Using the Grant Sponsors Name  
IRIS Research to promote Council as a sponsor to the community by recognising Council as a founder contributor to IRIS Research at the following functions:
  - › The annual economic outlook luncheon attended by representatives from the community, business and government sectors.
  - › The IRIS bi-annual breakfast industry update and research news forums.

- (c) IRIS Research's acknowledgement of Council's support is published in the IRIS Research Membership brochure and Annual Report. Both reports are distributed widely amongst the local community.
- (d) invitations to major functions/events; and
- (e) reference to Council support in media releases and speeches when appropriate (may exclude events where special sponsorship arrangements apply).

## **13 INTELLECTUAL PROPERTY**

### **13.1 Ownership of Intellectual Property**

Any Intellectual Property in all Services Materials created by IRIS Research in the performance of the Services whether under this Agreement or prior agreements entered between the Council and IRIS Research, will be retained by IRIS Research, or relevant third parties, as the case may be.

### **13.2 Granting of licence**

IRIS Research's grants and will ensure third parties grant, to the Council, without cost, a non-exclusive, irrevocable, royalty free and transferable licence to use, reproduce, communicate to the public and adapt for the Council's own purposes all Intellectual Property in the Services Materials.

### **13.3 Moral Rights**

IRIS Research must hold, or obtain, consents from all authors of the Services Materials to IRIS Research's and the Council's use and adaptation, without restriction and without any requirement to attribute the Services Materials to its authors.

### **13.4 Copies of Services Materials**

If Services Materials are produced for publication as part of the Services then three (3) copies of these Services Materials will be submitted to the Council with the Annual Report.

## **14 INDEMNITY**

### **14.1 IRIS Research's Indemnity**

- (a) IRIS Research must at all times indemnify, hold harmless and defend the Council and its officers, employees and agents ("those indemnified") from and against liability or loss (including reasonable legal costs and expenses), which may be suffered or incurred by any of those indemnified by reason of or in connection with:
  - (1) any infringement of any Intellectual Property (including Moral Rights) arising from the provision of the Services other than any Intellectual Property supplied by the Council;
  - (2) any unlawful, wrongful, wilful or negligent act or omission of IRIS Research or IRIS Research's officers, employees, agents, contractors and volunteers; and
  - (3) any breach of this Agreement.

### **14.2 Reduction of Indemnity**

IRIS Research's liability to indemnify those indemnified under this Agreement is reduced proportionally to the extent that any unlawful, wrongful, wilful or negligent act or omission of those indemnified caused or contributed to the liability or loss.

### **14.3 Continuing Obligation**

The indemnity in this clause 14 is a continuing obligation of IRIS Research separate and independent of any of IRIS Research's other responsibilities and survives termination of this Agreement.

## **15 INSURANCE**

### **15.1 Obligation to insure**

IRIS Research must ensure that insurance policies specified in Item 3 of Schedule 1 are taken out and maintained with a reputable insurance company throughout the Term.

### **15.2 Production of policies**

IRIS Research must on request, produce satisfactory evidence to the Council that any or all of the insurance policies required under this Agreement are current.

## **16 CONFIDENTIALITY**

### **16.1 Obligation to keep confidential**

The Council and IRIS Research must keep confidential and not allow, make or cause any disclosure of or in relation to Confidential Information without the prior written consent of the other Party.

### **16.2 Limited Disclosure**

The obligations on the Parties under clause 16.1 will not be taken to have been breached to the extent that Confidential Information:

- (a) disclosed by a Party to its legal and other professional advisers, auditors, contractors, consultants or employees in order to comply with obligations, or to exercise rights, under this Agreement;
- (b) is disclosed to a Party's internal management personnel to enable effective management or auditing;
- (c) is disclosed by the Council to a Minister of the Crown in right of the State of New South Wales;
- (d) is disclosed by the Council in response to a resolution of a House of the Parliament of New South Wales calling for the production of the Confidential Information;
- (e) is shared by the Council with an agency or instrumentality of the State of New South Wales, where reasonably necessary for the exercise of public official functions of that agency or instrumentality;
- (f) is authorised or required by law (including under this Agreement) to be disclosed; or
- (g) is in the public domain otherwise than due to a breach of clause 16.1.

### **16.3 Obligations on disclosure**

- (a) Where a Party discloses Confidential Information to another person:
  - (1) pursuant to clauses 16.2 (a), (b) or (e), the disclosing Party must:
  - (2) notify the receiving person that the information is Confidential Information; and
  - (3) not provide the information unless the receiving person agrees to keep the information confidential; or
- (b) Pursuant to clauses 16.2 (c) and (d), the disclosing Party must notify the receiving Party that the information is Confidential Information.



## **17 VARIATION**

Except for action the Council is expressly authorised to take elsewhere in this Agreement, this Agreement can only be varied by written document executed by the Parties.

## **18 TERMINATION**

### **18.1 Termination for Breach**

The Council may immediately terminate this Agreement by written notice served on IRIS Research if any one or more of the following occurs:

- (a) IRIS Research breaches a provision of this Agreement; and
  - (1) IRIS Research fails to remedy that breach within the period specified in a notice from the Council requesting IRIS Research to remedy the breach; or
  - (2) the breach is not capable of being remedied.
- (b) IRIS Research resolves to go into liquidation or has a summons for its winding up presented to a Court or enters into any scheme or arrangement with its creditors under the Corporations Act 2001 (Cth) or any applicable insolvency law or an administrator, liquidator receiver or official manager is appointed under the Corporations Act 2001 (Cth) or any applicable insolvency law.

## **19 DISPUTE RESOLUTION**

### **19.1 Method of Dispute Resolution**

The Parties agree that any dispute arising under this Agreement will be dealt with as follows:

- (a) A Party claiming that a dispute has arisen must give written notice of the dispute to the other Party.
- (b) The Parties will seek to resolve the dispute.
- (c) If the dispute is not resolved within a fourteen (14) day period (or within such further period as the Parties agree in writing) then the dispute is to be referred to the Australian Commercial Dispute Centre (ACDC) for mediation.
- (d) The mediation is to be conducted in accordance with the ACDC Mediation Guidelines which set out the procedures to be adopted, the process of selection of the mediator and the costs involved.
- (e) If the dispute is not settled within 28 days (or such other period as agreed to in writing between the Parties) after appointment of the mediator, or if no mediator is appointed within 28 days of the referral of the dispute to mediation, the Parties may pursue any other procedure available at law for the resolution of the dispute.

### **19.2 Obligation to continue performance**

The Parties must continue performing their obligations under this Agreement while the dispute is being resolved, to the extent practicable to do so.

### **19.3 No Court proceedings**

- (a) A Party must attempt to settle any dispute in relation to this Agreement in accordance with this clause 19 before resorting to court proceedings or other dispute resolution process.
- (b) Nothing in this clause 19 will prevent either Party from seeking urgent interlocutory relief.

## **20 NOTICES**

### **20.1 How to give notice**

A notice, consent or other communication under this Agreement is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) directed to the representative of the other Party as set out in Item 1 of Schedule 1; and
- (c) forwarded to the address, facsimile number or the email address of that representative as set out in Item 1 of Schedule 1.

### **20.2 When a notice is given**

A notice, consent or other communication that complies with this clause is regarded as given and received:

- (a) in the case of delivery in person – when delivered to the Party's address for service and a signature received as evidence of delivery;
- (b) in the case of delivery by registered mail – within three (3) Business Days of posting;
- (c) in the case of delivery by facsimile – at the time of dispatch if the sender receives a transmission report which confirms that the facsimile was sent in its entirety to the facsimile number of the other Party; or
- (d) in the case of delivery by email – on receipt of confirmation by the sender that the other Party has received the email.

### **20.3 Delivery late in the day**

Notwithstanding the provisions of this clause 20 (Notices), if delivery or receipt of a communication is on a day which is not a Business Day in the place to which the communication is sent or is later than 5pm (local time in that place) it will be deemed to have been duly given or made at 9am (local time in that place) on the next Business Day in that place.

## **21 GST**

- (a) Notwithstanding any other provision of this Agreement, if any Supply by one Party to the other pursuant to this Agreement is deemed to be a Taxable Supply for the purposes of the GST Law and that Party is or becomes liable to pay GST in respect of such Supply:
  - (1) The Funding will, subject to the other requirements of this clause 21, be increased (if GST is payable by IRIS Research) or decreased (if GST is payable by the Council) by any such GST liability provided the Supply is deemed to be a Creditable Acquisition so that the Party who is the recipient of the Supply is or will be entitled to receive an Input Tax Credit; and
  - (2) the Party liable for payment of GST must issue to the Party who is the recipient of the Supply a tax invoice in respect of such Taxable Supply.
- (b) Where the invoice relates to a taxable supply made under this Agreement, the invoice must comply with the requirement for a tax invoice as defined in the GST Act.
- (c) IRIS Research warrants and undertakes that at the time any Supply on which GST is imposed is made by it to the Council under this Agreement, it is or will be registered under the GST Law. If the Council requests written evidence of registration, IRIS Research must promptly produce evidence satisfactory to the Council.

- (d) IRIS Research agrees and acknowledges that in the event it is not registered under the GST Law it will not in any circumstances be entitled to receive the increase in the Funding in accordance with clause 21(a)(1) by any amount of GST liability.

## **22 GENERAL**

### **22.1 Governing law**

- (a) This Agreement is governed by the law in force in the State of New South Wales.
- (b) Each Party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the State of New South Wales, and the courts of appeal therefrom.

### **22.2 Non-waiver**

No failure or delay by the Council in exercising any right power or remedy under this Agreement and no course of dealing or Funding by the Council to IRIS Research of any time or other consideration, operates as a waiver of the breach or a default by IRIS Research. Any waiver by the Council of a breach of this Agreement is not to be construed as a waiver of any further breach of the same or any other provision.

### **22.3 Entire Agreement**

- (a) This Agreement contains the entire agreement between the Parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.
- (b) Any right that a person may have under this Agreement is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

### **22.4 Operation of indemnities**

- (a) Each indemnity in this Agreement survives the expiry or termination of this Agreement.
- (b) A Party may recover a payment under an indemnity in this Agreement before it makes the payment.

### **22.5 Consents**

Where this Agreement contemplates that the Council may determine, agree or consent to something (however it is described), the Council may:

- (a) determine, agree or consent, or not determine, agree or consent, in its absolute discretion; and
- (b) determine, agree or consent subject to conditions, unless this Agreement expressly contemplates otherwise.

### **22.6 Inconsistency**

In the event of any conflict or inconsistency between the terms of this Agreement, for the purpose only of resolving the inconsistency, the documents that comprise this Agreement are to be considered in the following order of decreasing priority:

- (a) the operative provisions of this Agreement; and
- (b) the Schedules.

### **22.7 Conflict of interest**

IRIS Research warrants that at the date of this Agreement, no conflict of interest exists or is likely to arise in relation to execution of this Agreement or its subject matter. IRIS Research undertakes to notify the Council, in writing, immediately upon becoming aware of the existence, or possibility, of a conflict of interest and agrees to comply with any reasonable directions of the Council to appropriately manage the conflict of interest, within the reasonable time frame stipulated by the Council in writing.

### **22.8 Relationship**

- (a) Nothing in this Agreement is intended to create a partnership, joint venture or agency relationship between the Parties.
- (b) IRIS Research will not hold IRIS Research itself out to be an employee, partner, agent or representative of the Council.
- (c) All work performed by IRIS Research and all contracts made by IRIS Research to carry out the Services must be performed and made by IRIS Research as principal and not as agent for the Council. In all dealings in relation to the Services IRIS Research must act solely on IRIS Research's own account.

### **22.9 Access to Information: Government Information (Public Access) Act 2009 (NSW) ("GIPA Act, s.121")**

- (a) IRIS Research must, within 7 days of receiving a written request by the Council, provide the Council with immediate access to the following information contained in records held by IRIS Research:
  - (1) information that relates directly to the performance of the Services;
  - (2) information received by IRIS Research from the Council to enable it to provide the Services.
- (b) For the purposes of clause 22.9(a)(1), information does not include:
  - (1) information that discloses or would tend to disclose IRIS Research's financing arrangements, financial modelling, cost structure or margin;
  - (2) information that IRIS Research is prohibited from disclosing to the Council by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or
  - (3) information that, if disclosed to the Council, could reasonably be expected to place IRIS Research at a substantial commercial disadvantage in relation to the Council, whether at that time or in the future.
- (c) IRIS Research must provide copies of any of the information in clause 22.9(a)(1), as requested by the Council, at IRIS Research's own expense.
- (d) Any failure by IRIS Research to comply with any request pursuant to clause 22.9(a)(1) will be considered a breach of an essential term and will allow the Council to terminate the Contract under clause 18.1.

### **22.10 Consultation (GIPA Act, s. 54)**

- (a) The Council will take reasonably practicable steps to consult with IRIS Research before providing any person with access to information relating to IRIS Research, in response to an access application under the Government Information (Public Access) Act 2009 (GIPA Act), if it appears that:
  - (1) the information:
    - (A) includes personal information about IRIS Research or its employees;

- (B) concerns IRIS Research's business, commercial, professional or financial interests; or
  - (C) concerns research that has been, is being, or is intended to be, carried out by or on behalf of IRIS Research.
- (2) IRIS Research may reasonably be expected to have concerns about the disclosure of the information; and
- (3) those concerns may reasonably be expected to be relevant to the question of whether there is a public interest consideration against disclosure of the information.
- (b) If, following consultation between the Council and IRIS Research, IRIS Research objects to disclosure of some or all of the information, IRIS Research must provide details of any such objection (including the information objected to and the reasons for any such objection) within 5 days of the conclusion of the consultation process.
- (c) In determining whether there is an overriding public interest against disclosure of government information, the Council will take into account any objection received by IRIS Research.
- (d) If IRIS Research objects to the disclosure of some or all of the information but the Council nonetheless decides to release the information, the Council must not provide access until it has given IRIS Research notice of the Council's decision and notice of IRIS Research's right to have that decision reviewed.
- (e) Where the Council has given notice to IRIS Research in accordance with clause 22.10(d), the Council must not provide access to the information:
  - (1) before the period for applying for review of the decision under Part 5 of the GIPA Act has expired; or
  - (2) where any review of the decision duly applied for is pending.
- (f) The reference in clause 22.10(e)(1) to the period for applying for review of the decision under Part 5 of the GIPA Act does not include the period that may be available by way of extension of time to apply for review.

#### **22.11 Warranties**

The persons executing this Agreement on behalf of any of the parties warrant that they have authority to do so.

This agreement is executed on

**2017**

**Execution by the COUNCIL:**

**SIGNED** for and on behalf of Wollongong City Council in accordance with authorities delegated under the Local Government Act 1993, and not withdrawn:

.....  
(Signature of authorised Officer)

.....  
(Signature of Witness)

.....  
(Print name of Authorised Officer in full)

.....  
(Print name of Witness in full)

**Executed by ILLAWARRA REGIONAL )**  
**INFORMATION SERVICE LTD ACN )**  
**002278793 in accordance with Section 127 of )**  
the Corporations Act, 2001 (Cth) by:

.....  
(Signature of Director)

.....  
(Signature of Witness)

.....  
(Print name of Director in full)

.....  
(Print name of Witness in full)

## SCHEDULE 1 - AGREEMENT DETAILS

This Schedule forms part of the Agreement between the Council and IRIS Research.

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### Item 1 Contact Details

<b>the Council:</b>	contact name: Fiona Rudd contact address: Lock Bag 8821, WOLLONGONG NSW 2500 contact telephone: 02 4227 7674 contact facsimile: 02 4227 7580 contact email: frudd@wollongong.nsw.gov.au
<b>IRIS Research:</b>	contact name: Mr Peter Watts contact address: Level 1, iC Central, Innovation Campus, Squires Way, NORTH WOLLONGONG NSW 2500 contact telephone: 02 42 85 4446 contact facsimile: 02 42 85 4448 contact email: peter_watts@iris.org.au

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### Item 2 Term

<b>Commencement Date:</b>	1 July 2017
<b>Duration:</b>	Four years from the Commencement Date unless terminated earlier.

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### Item 3 Insurance

- 1 Insurance policies**
  - (a) adequate broad form public liability insurance to cover, as a minimum, all of IRIS Research's obligations and liabilities under this Agreement;
  - (b) workers' compensation insurance in accordance with applicable legislation in respect of all of IRIS Research's employees; and
  - (c) where appropriate, professional indemnity insurance.
- 2 Additional terms**
  - (a) The minimum cover for public liability insurance is \$20,000,000.
  - (b) The minimum cover for professional indemnity insurance (if applicable) is \$2,000,000.





## SCHEDULE 2 - FUNDING

This Schedule forms part of the Agreement between the Council and IRIS Research.

### PART A: COUNCIL FUNDING

#### 1. Schedule of Payments

	Contribution
1 July 2017	\$88,231.54
1 July 2018	\$88,231.54
1 July 2019	\$88,231.54
1 July 2020	\$88,231.54

\* All figures require an additional payment of 10% GST

## SCHEDULE 3 - SERVICES

This Schedule forms part of the Agreement between the Council and IRIS Research.

Terms in bold and italics are defined at Part B of this Schedule.

### Part A: RESEARCH SERVICES AND PUBLICATIONS

#### 1. Community Satisfaction Survey (Biennial)

Two community surveys to be undertaken over the term of the Agreement

Each survey to include:

- ▶ **Questionnaire design**
- ▶ **Sample size** of 600
- ▶ Representative sample of the Wollongong Local Government Area by age and gender
- ▶ Length of survey – up to 18 minutes
- ▶ **Data collection** (CATI)
- ▶ **Editing, data quality control**
- ▶ **Data analysis**
- ▶ **Reporting**

#### 2. Omnibus

One per annum

Each survey to include:

- ▶ Up to 12 questions, including two open-ended
- ▶ **Sample size** of 400
- ▶ **Design**
- ▶ **Data collection** (CATI)
- ▶ **Editing, data quality control**
- ▶ **Data analysis**
- ▶ **Reporting**

#### 3. Online Survey

One per annum

Each survey to include:

- ▶ Up to 12 questions, including two open-ended
- ▶ **Sample size** – undetermined; voluntary participation only
- ▶ **Design**
- ▶ **Data collection** (online, using IRIS Research's online panel asset)
- ▶ **Editing, data quality control**
- ▶ **Data analysis**
- ▶ **Reporting**

#### 4. Desktop Research Support

Up to 10 hrs per month (120 hrs pa)

Support to include:

- ▶ General statistical research of IRIS Research or free, publically available data sources (eg. ABS)
- ▶ Support provided by Junior Analyst

#### **5. In-House Survey Design Support**

Up to 48 hours per annum

Support provided on Wollongong City Council originated, delivered and analysed community-based surveys only.

Survey design includes clarifying purpose, sample, data collection method and questionnaire design

Advice, assistance and review of draft questionnaires developed by Wollongong City Council.

Support provided by Senior Analyst

#### **6. In-House Market Research Training**

Training includes:

- ▶ One half-day (3 hour) training session per annum
- ▶ Up to 10 attendees per training session
- ▶ Senior Analyst
- ▶ Delivered either at IRIS Research or Council facilities in Wollongong.

#### **7. Provision of training materials:**

- ▶ Development and composition of training materials (one round of edits)
- ▶ Supply in .pdf soft copy format

#### **8. General Enquiries**

Up to 36 hours per annum

General enquiries related to IRIS Research business, research activities, University of Wollongong general market research information needs.

#### **9. Publications**

Up to 10 hard copies of each publication and unlimited actuated digital copies.

Additional hard copies are charged at \$10 (exc GST) each per publication.

- ▶ CSM Illawarra - 4 per annum
- ▶ CSM Western Sydney - 4 per annum
- ▶ Real Estate Report - 4 per annum
- ▶ Profile Illawarra - 4 per annum
- ▶ Illawarra Statistical Guide - 1 per annum

#### **10. Other**

##### **DISCOUNT**

- ▶ 10% discount on any additional survey consultancies (in addition to research services listed above)

##### **ACCOUNT MANAGEMENT**

A professional account management approach to ensure not only a close relationship as a trusted advisor to council on social and extra-regional information, but one where IRIS Research also effectively plan the delivery of research services on an ongoing basis.

Features include:

- ▶ Dedicated IRIS Research Account Manager, Chief Executive
- ▶ Quarterly management meetings with Council Senior Management

#### ADMINISTRATION OF RESEARCH PROJECTS

- ▶ Project Management and reporting
  - Daily management of the project (schedule, issues)
  - Formal weekly reporting
  - Client liaison, including formal meetings
- ▶ Finance and Administration support
  - Administrative support directly related to the research (including account management, casual staff time management, casual staff payment processing, directed support for the research team, coding, data management, focus group management, etc)
  - and effective daily operation of IRIS Research

#### 23 COUNCIL REPRESENTATION ON IRIS RESEARCH BOARD

Current arrangements per the Memorandum of Association are maintained.

### Part B: SPECIFICATIONS AND DEFINITIONS

#### **Design**

Sample design and methodology

- ▶ Planning
- ▶ Quotas
- ▶ Draw number sample - (sample frame development)
- ▶ Pre-dialling (including software maintenance and QA)
- ▶ Other methodology
- ▶ Client data base manipulation

#### **Questionnaire design**

- ▶ Meeting (one face to face meeting) - discuss aims, objectives.
- ▶ Initial design
- ▶ Produce draft questionnaire
- ▶ Enter questionnaire, test and online
- ▶ Test, staff pilot and review
- ▶ Refine final design (one round of edits)
- ▶ Produce Final questionnaire with client sign-off

#### **Sample Size**

- ▶ Sample size refers to actual number of completed survey collected.
- ▶ Representative sample means the sample size is representative of the target population by defined demographic.

#### **Data Collection**

- ▶ Fieldwork preparation and interviewer training
- ▶ Preparation of materials - instructions, work plans, etc
- ▶ Training on questionnaire
- ▶ Interviewing (CATI) - refers to Computer Aided Telephone Interviewing.

***Editing, Data Quality Control***

- ▶ Data entry and verification
- ▶ Quality control, edit and correct data response
- ▶ Coding of open-ended response

***Data Analysis***

- ▶ Preparation of SPSS/Q/Smart PLS/other software syntax files
- ▶ SPSS/Q/Smart PLS/other software Data analysis
- ▶ Weighting of data - refers to statistical weighting of the sample size back to the representative target population.
- ▶ Data quality control
- ▶ Peer review

***Reporting***

- ▶ Preliminary discussion, plan and outline
- ▶ Writing of draft report
- ▶ Final data tables (proofing)
- ▶ Report review and finalisation (maximum two rounds of edits)
- ▶ Compile detailed management report (provision of one colour, hard copy of final report and .pdf softcopy version – formatted in either .word or .ppt format)
- ▶ Provision of one data set (either .xls or .SPSS format)
- ▶ Presentation of results includes preparation of presentation materials (PowerPoints, etc) (maximum of two presentations to Council senior management and/or councillors, within six weeks of submission of final report).