

**PANEL AGREEMENT**

**FOR**

**THE PROVISION OF MINOR CONSTRUCTION AND SERVICES**

1. **OBJECTIVE AND SCOPE**

The Parties agree that:

1. The Contractor is a member of Panel of Providers (**"Panel"**) that has been established by the Principal to provide the Works as described in the Specification;
2. The Principal may select any member of the Panel to provide the Works; and
3. If selected by the Principal, the Contractor shall execute and complete the Works upon the terms and conditions of this Agreement and in accordance with any direction given by the Superintendent.
4. **DEFINITIONS AND INTERPRETATIONS**

In this Contract:

**"Agreement"** means the agreement between the Principal and the Contractor, and comprises of the documents listed in the “Schedule of Agreement Documents”.

**"Contractor"** means the natural person, firm, partnership, company or other legal entity who as a party to this Agreement is bound to execute the service in accordance with this Agreement.

**"Principal"** means the person so described in the Annexure.

**“Principal’s Authorised Person”** means the person named in the annexure.

**"Works"** means the whole of the work, construction, goods and/or service to be executed in accordance with the Contract, including variations provided for in the Contract.

1. **NATURE OF AGREEMENT**

The Principal may:

1. request that all or any members of the Panel provide a quotation for the provision of the Works, notwithstanding that pre-agreed rates may form part of this Agreement;
2. seek quotation from providers not on the Panel; and
3. appoint new providers as members of the Panel.

The Principal is not obliged to engage the Contractor to provide any Works during the term of this Agreement. If the Principal engages the Contractor to provide Works and does not seek a quotation, the Works shall be paid for at any pre-agreed rates forming part of this Agreement.

Notwithstanding any methodology of allocating work or ranking Panel members which has been specified in the Specification, the Principal may adjust the methodology or ranking as a consequence of the Contractor’s performance or availability to perform the Works.

This Agreement expires on the Expiry Date unless agreed otherwise by the parties.

1. **PRINCIPAL’S AUTHORISED PERSON**

The Principal must:

1. ensure that there is a person appointed to act as the Principal’s Authorised Person at all times; and
2. promptly notify the Contractor if the name and/or contact details of the Principal’s Authorised Person change.

The Principal’s Authorised Person:

1. is authorised to act on behalf of the Principal; and
2. by notice in writing to the Contractor, may further delegate any of the Principal’s functions and powers under the Contract, except those under Clause 18 “Termination”.

Any reference to the Superintendent in the Specification or Statement of Requirements is a reference to the Principal’s Authorised Person.

1. **ASSIGNMENT AND SUBCONTRACTING**

The Contractor must not assign the Contract or subcontract the whole or any part of the work under the Contract without the prior written approval of the Principal. Subcontracting does not relieve the Contractor of its responsibility and liability under the Contract.

1. **INSURANCE**

Unless advised otherwise by the Principal, the Contractor, before commencing work on the site, must hold or effect a policy of insurance covering public liability to an amount of not less than the amount stated in the Annexure.

The policy must be maintained until the Works have been completed. The Contractor must, on request of the Principal, promptly produce evidence of the insurance required under this Clause. If the Contractor does not provide satisfactory evidence of compliance, the Principal may effect the relevant insurances and any costs and expenses incurred by the Principal in doing so will be a debt due and payable from the Contractor to the Principal. The Principal may withhold payment until evidence of compliance with the Contractor’s obligations under this clause is produced by the Contractor.

1. **PROTECTION OF PERSONS AND PROPERTY**

Unless directed otherwise by the Principal, the Contractor:

1. must provide all things and take all measures necessary to protect people and property in connection with the Works, including erection, maintenance and removal of barricades and signs where necessary for the safety and convenience of the public and others;
2. must avoid unnecessary interference with the passage of people and vehicles;
3. must prevent nuisance and unreasonable noise and disturbance;
4. is responsible for the care of the whole of the work under the Contract from the commencement until the Works are completed and handed over to the Principal; and
5. must make good at its own cost any loss or damage for which the Contractor is responsible.

The Contractor is liable for any death, personal injury or loss / damage to the Works arising out of, or as a consequence of, the Contractor carrying out the work under the Contract, but the contractor’s liability under this clause shall be reduced proportionately to the extent that the Principal, Principal or the employees, agents, consultants or contractors of the Principal contributed to death, personal injury or loss / damage to the Works.

1. **MATERIALS AND QUALITY OF WORK**

Unless otherwise specified, materials incorporated into the Works must be new and suitable for the purpose and consistent with the nature and character of the Works.

Unless otherwise specified, construction methods and standards of finish must be in accordance with relevant Australian Standards.

All work must be carried out by experienced and qualified persons in accordance with recognised methods.

1. **COMMENCEMENT AND COMPLETION OF WORKS**

The Contractor must commence and complete the Works in accordance with this Agreement within the time stated with each quotation. To be complete, the Works must be free of defects and comply with the Specification. During the Defects Liability Period, the Contractor must repair any defect so that the Works comply with the specification. The Defects Liability Period is 12 months, unless specified otherwise.

1. **CONTRACTOR’S CONDUCT**

The Contractor warrants, represents and undertakes to the Principal that it will conduct itself in a manner that does not invite, directly or indirectly, the Principal’s officers, employees or agents or any public sector employee (as defined in the Public Sector Act 2009) to behave unethically, to prefer private interests over the Principal’s interests or to otherwise contravene the Code of Ethics for the South Australian Public Sector.

1. **VARIATIONS**

The Principal may direct the Contractor to vary the work under the Contract or execute additional work. Unless the Principal and the Contractor agree on the price for a variation, the variation must be valued or determined by the Principal using reasonable rates and prices.

1. **PAYMENT**

Unless the Principal directs otherwise, the Contractor must submit payment claims to the Principal at monthly intervals. Within 10 business days of receipt of a claim, the Principal will:

1. assess the claim,
2. determine the value of the work satisfactorily carried out by the Contractor, and
3. advise the Principal of the amount to be paid.

Within 30 days of the receipt of the claim, the Principal will pay the Contractor the amount determined by the Principal. If the payment will be less than the amount specified on the Contractor’s payment claim, the Principal will provide a payment schedule which includes the reasons for withholding payment.

Payment shall be payment on account only and shall not be evidence that the work has been carried out satisfactorily.

1. **GOODS AND SERVICES TAX**

Payment from the Principal to the Contractor will include the GST payable. Any invoice for payment under this Contract must be a Tax Invoice in accordance with *A New Tax System (Goods and Services Tax) Act 1999 (Cth).* The Principal is not obliged to make any payment under this Contract unless the Contractor has provided a Tax Invoice in respect of that payment.

1. **CLEANING OF SITE**

The Contractor must:

1. ensure that the site remains in a condition no worse than that encountered at the commencement of this Contract;
2. keep the site tidy and regularly remove any rubbish or surplus material arising from the execution of the work under the Contract from the site; and
3. on completion of the Works, remove from the site:
   1. all construction plant and temporary works; and
   2. all rubbish and surplus material resulting from the execution of the work under the Contract.
4. **CO-OPERATING WITH OTHERS**

The Contractor must cooperate in a courteous manner with the Principal’s employees, members of the public, business proprietors and all other contractors during the course of work. The Contractor must permit the execution of work on the site by other contractors engaged by the Principal.

1. **MEETINGS**

The Contractor must attend any meetings as reasonably required by the Principal. During these meetings the Contractor’s performance, Work Health and Safety, Environmental matters and any other relevant issues may be discussed.

1. **CONTRACTOR PERFORMANCE**

At any time during the term of this Contract, the Principal may undertake:

1. surveillance and / or audit of the Contractor’s compliance with any requirement of this Contract or applicable laws; and
2. an evaluation of the Contractor’s performance using a DPTI contractor performance evaluation procedure.

A copy of the evaluation procedure will be made available to the Contractor if requested. Any evaluation report, which will include reasons for any below acceptable scores, will be forwarded to the Contractor when completed. If the Contractor disagrees with the evaluation, they may forward a request to the Principal for a review, along with reasons why it should be reviewed. Following reasonable consideration of the request, the Principal’s decision will be final. The evaluation may be taken into account in the assessment of future tenders.

1. **REMEDIES**

If:

1. the Contractor fails to execute the Works to the standard required under this Contract:
2. notice has been given to the Contractor to rectify the default and it has not been rectified within 14 days of the notice or such other time as permitted by the Principal; or
3. the standard of performance in executing the Works is such that the Principal’s efficiency or the proper, safe and cost effective performance of the Principal’s functions is affected,

the Principal may engage another contractor to execute the Works or any part of the Works. In this event, the cost of having the Works so carried out will be deducted from the amount owing to the Contractor.

1. **TERMINATION**

This Contract may be terminated by the Principal if, in its opinion, any of the following events occur:

1. a substantial, repeated or persistent breach by the Contractor of any provision of the Agreement;
2. the Contractor has failed to effect specific remedial action within the time specified by the Principal in a written notice that monitoring of the Contractor’s performance has detected a deficiency in execution of the Works;
3. the Contractor suffers or is in jeopardy of becoming subject to any form of Insolvency Administration; or
4. the Contractor fails to comply with any of its obligations in relation to occupational health, safety and welfare.

If the Principal terminates this Contract, it must pay the Contractor for that part of the Works authorised by the Principal and performed by the Contractor up to the termination date.

1. **ISSUES AND DISPUTES**

The Contractor may dispute an assessment, determination or instruction of the Principal, or seek resolution of an unresolved claim, by giving notice to the Principal’s Authorised Person within 28 days after notification of the assessment, determination or instruction, or within 28 days after it becomes an unresolved claim.

If the matter has not been resolved within 28 days of the notice being given to the Principal’s Authorised Person, each party must submit the dispute to one of its senior executives who has not previously been involved in the within 7 days of the dispute arising and has the authority to resolve the dispute.

The senior executives must meet as soon as possible to resolve the dispute, but in any case within 7 days of its reference to them. Each party must authorise and inform its senior executives sufficiently so that he or she can undertake that meeting without detailed reference to another person.

If within 28 days of the dispute being referred to the senior executives, the dispute is not resolved by agreement or a means to resolve the dispute agreed upon, either party may refer the dispute to the Chairperson or President for the time being of the Institute of Arbitrators and Mediators Australia (SA Chapter) to appoint an arbitrator and determine the rules to conduct an arbitration to resolve the matter.

1. **WORK HEALTH AND SAFETY**

The Principal is committed to the provision of a safe working environment and expects the Contractor to accept the same commitment to Work Health and Safety (‘**WHS**”). The Contractor must:

1. comply with the *Work Health and Safety Act 2012* (SA) and the *Work Health and Safety Regulations 2012* (SA);
2. comply with any reasonable instruction issued by the Principal in relation to WHS;
3. if requested by the Principal, provide evidence satisfactory to the Principal of its capacity to comply with *the Work Health and Safety Act*(including the provision of any Safe Work Method Statements); and
4. provide the Contractor’s Workcover Registration Number.

The Contractor must permit the Principal to carry out any inspections which are reasonably necessary to verify that the Contractor is complying with the *Work Health and Safety Act*.

If all or part of the work under this Contract is to be provided on a site controlled by the Principal or under the direction of the Principal, the Contractor must comply with the Principal’s WHS policies, procedures and instructions. If the Contractor becomes aware of any potentially hazardous situation on the premises of the Principal, the Contractor must immediately bring it to the Principal’s attention for a direction regarding the matter.

1. **CONSTRUCTION INDUSTRY TRAINING FUND**

For construction contracts valued over $15 000, attention is drawn to the Construction Industry Training Fund Act 1993 which imposes a levy of 0.25% of the value of building and construction works. Payment of this levy shall be the responsibility of the Contractor. Proof of payment of the levy may be required prior to the first or any progress payment being made under this Contract.

1. **RESPECTFUL BEHAVIOUR**

The Contractor acknowledges the Principal’s zero tolerance towards men’s violence against women in the workplace and the broader community.

The Contractor agrees that, in performing the Works, the Contractor*’s* personnel will at all times:

1. act in a manner that is non-threatening, courteous, and respectful; and
2. comply with any instructions, policies, procedures or guidelines issued by the Principal regarding acceptable workplace behaviour.

If the Principal believes that the Contractor*’s* personnel are failing to comply with the behavioural standards specified in this clause, then the Principal may in its absolute discretion:

1. prohibit access by the relevant Contractor’s personnel to the Principal’s premises;  and
2. direct the Contractor to withdraw the relevant Contractor’s personnel from providing the Works.

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**ANNEXURE TO THE AGREEMENT**

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| The Principal is: (Clause 2) | Minister for Transport, Infrastructure and Local Government Roma Mitchell House  136 North Terrace  ADELAIDE 5000 |
| The Principal’s Authorised Person is: (Clause 4) | The person occupying the position of Director Construction Contracting , DPTI  of 77 Grenfell Street, ADELAIDE SA 5000 |
| Public Liability Insurance: (Clause 6) | $10 000 000. |
| Expiry Date: (Clause 3) | *Insert Date or period* |

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