

**PANEL AGREEMENT**

**FOR**

**THE PROVISION OF PLANT HIRE**

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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 hire of plant as described in the Specification;
2. The Principal may select any member of the Panel to provide the Services; and
3. If selected by the Principal, the Contractor must provide the Services upon the terms and conditions of this Agreement.
4. **DEFINITIONS AND INTERPRETATIONS**

In this Agreement:

**"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 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.

**"Services"** includes the hire of plant for construction or maintenance and may be with or without an operator.

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”.
3. **QUOTATIONS**

The Principal may:

1. request that all or any members of the Panel provide a quotation for the provision of the Services, notwithstanding that pre-agreed rates may form part of this Agreement;
2. seek quotations 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 Services during the term of this Agreement. If the Principal engages the Contractor to provide Services and does not seek a quotation, the Services will 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.

1. **ASSIGNMENT AND SUBCONTRACTING**

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

1. **INSURANCE**

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 for the term of this Agreement. 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. **CONTRACTOR’S CONDUCT**

The Contractor must 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.

The Principal is a public authority for the purposes of the *Independent Commissioner Against Corruption Act* *2012* (SA) (“ICAC Act”). For the term of this Agreement the Contractor is considered a public officer under the ICAC Act and must comply with the ICAC Act and the directions and guidelines published by the Independent Commissioner Against Corruption.

1. **PROVISION OF PLANT**

The Contractor must:

1. comply with all legislative and DPTI Work Health and Safety requirements, including:

* equipping the plant with an audible reversing warning device and any other safety equipment necessary to comply with AS 1742.3 or applicable legislation;
* providing Safe Operating Procedures for the plant;

1. ensure that the plant is registered and fitted with registration plates to clearly identify it if the plant is to be driven on public roads;
2. undertake scheduled servicing and maintenance off site and outside normal working hours ensuring the plant maintains productivity and operational efficiency;
3. make available daily check sheets for each day the plant is engaged;
4. make available upon request service records relating to the maintenance, servicing and operation of the plant; and
5. supply and store all fuel, oil, grease, replacement parts and all other things necessary for the continuous and efficient operation of the plant.
6. **OPERATION OF PLANT**

Where plant is provided with an operator, the Contractor must ensure that all operators:

1. comply with DPTI safety systems, procedures and any site specific Hazard Management Plans or Safety Plans included in this contract;
2. are supplied with personal protective equipment and the operators wear the equipment;
3. have all appropriate licences and certificates and are trained in the operation of the plant;
4. comply with the requirements of all relevant legislation, awards and the lawful requirements of the public or other authorities affecting the work under this Agreement;
5. minimise detrimental effects on the environment and work in accordance with DPTI “Environmental Code of Practice for Construction” and any DPTI Environmental Management Plan; and
6. co-operate with any other contractors and DPTI employees during the course of work.
7. **CHANGE OF PLANT OR OPERATOR**

Where the Services include the provision of an operator, the Contractor must use its best endeavours to provide the nominated operator. The Contractor must notify the Principal of any change of the nominated operator.

The Contractor must not remove the operator or plant from a worksite without the approval of the Principal.

The Contractor may only change the nominated plant for mechanical or other bona fide reasons approved by the Principal and only after ensuring that:

1. the Principal has been notified in writing of a proposed change, indicating registration numbers for both the plant being replaced and its replacement; and
2. the replacement plant is of at least equal capacity to the one being replaced.

The replacement plant must operate at the rates tendered for the original one. Any plant used as a replacement must be inspected and approved by the Principal prior to use. A further inspection may also be undertaken during the term of the Agreement.

1. **TERM**

This Agreement commences on the date of execution of this Agreement and expire upon the Expiry Date as specified in the Annexure, unless terminated earlier in accordance with this Agreement. The parties may extend the Agreement by mutual agreement.

1. **PAYMENT**

The Principal will pay the Contractor an amount ascertained by multiplying the applicable rate in the Schedule of Rates by the quantities certified by the Principal on timesheets or cart notes. Unless specified otherwise in the Schedule of Rates, rates include all associated running costs (e.g. accommodation and establishment).

Payment will not be made for any period the plant is rendered idle due to breakdown, damage, theft, servicing and repairs or for reasons within the Contractor's control.

Unless the Principal agrees otherwise, the Contractor must submit invoices at monthly intervals. Within 14 days of receipt of a claim, the Principal must:

1. assess the claim;
2. determine the value of the Services provided by the Contractor; and
3. advise the Principal of the amount to be paid.

Within 28 days of the receipt of the claim the Principal must pay the Contractor the amount so determined.

Adjustment to payment for rise and fall will not be made unless specified otherwise in the Specification.

1. **GOODS AND SERVICES TAX**

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

1. **CO-OPERATING WITH OTHERS**

The Contractor must:

1. cooperate in a courteous manner with DPTI employees, members of the public, business proprietors and all other contractors during the course of work.
2. Maintain good behavior acceptable to the Principal during working hours and, if applicable, outside working hours when in DPTI camp / arranged accommodation.

Failure to comply with these requirements may result in the Contractor being removed from the Panel.

1. **MEETINGS**

The Contractor will attend any meetings as reasonably required by the Principal. During these meetings the Contractor’s performance, WH&S, Environmental and any other relevant issues may be discussed.

1. **CONTRACTOR PERFORMANCE**

At any time the Principal may undertake an evaluation of the Contractor’s performance using the Contract Performance Evaluation Procedure. A copy of the procedure will be made available to the Contractor if requested. The evaluation, 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. **TERMINATION**

This Agreement 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 whether or not written notice of the breach has been given to the Contractor;
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 Work Health and Safety.

If the Principal terminates this Agreement, it will pay the Contractor for that part of the Services authorised by the Principal and performed by the Contractor up to the termination date.

1. **DISPUTES**

Any dispute arising out of this Agreement must be referred to the other party and the parties must attempt to resolve the dispute or agree upon other means to resolve the dispute.

If within 14 days of the dispute being referred to the other party, 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 healthy and safe working environment and expects the Contractor to demonstrate the same level of commitment to Work Health and Safety. The Contractor must comply with the Work Health and Safety Act 2012 (SA) and the Work Health and Safety Regulations 2012 (SA).

If requested by the Principal, the Contractor must:

1. provide evidence satisfactory to the Principal of its capacity to comply with the Work Health and Safety Act;
2. provide evidence that its Personnel, agents and subcontractors have received appropriate training in and are aware of their legal obligation and responsibilities in relation to Work Health and Safety; and
3. provide the Contractor’s Workcover Registration Number.

The Contractor must permit the Principal to carry out any inspections the Principal deems necessary to ensure that the Contractor is complying with the Work Health and Safety practices referred to in this Contract. If all or part of the work under this Agreement 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 Work Health and Safety 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. **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 Services, 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 Services.

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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 SA 5000 |
| The Principal’s Authorised Person is: (Clause 3) | Director, Contracting  DPTI  77 Grenfell Street,  ADELAIDE SA 5001. |
| Public Liability Insurance: (Clause 6 ) | $10 000 000. |
| Expiry Date: (Clause 10) | *......years from the date of this Agreement*  *May include an option to extend for a further …..* |

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