**PANEL AGREEMENT – PROFESSIONAL SERVICES**

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**Background**

1.1 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 Services specified in the Statement of Requirements;
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:
4. this Agreement; and
5. AS 4122 - 2010 General Conditions of Contract for the Engagement of Consultants.

**Quotations**

1.2 The Principal may:

1. request that all or any members of the Panel provide the Services or provide a quotation for the provision of the Services (“**Request for Quotation**”), 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.

1.3 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, any pre-agreed rates forming part of this Agreement will apply to payment for the Services.

**Term**

1.4 This Agreement commences on the date of execution of this Agreement and ends on the Expiry Date specified in the Annexure unless terminated earlier. The Principal may extend the Term for the period specified in the Annexure by giving 3 months written prior notice to the Contractor.

1.5 The Principal may, at its sole and unfettered discretion, terminate this Agreement for its convenience, in which case the Principal must pay the Contractor all payment due at the date of termination and any costs and expenses reasonably incurred by the Contractor by reason of the termination.

**2. DEFINITIONS AND INTERPRETATION**

**“Business Day”** excludes 27, 28, 29, 30 and 31 December.

**"Contractor"**means the Consultant.

**"Deliverables"** includes plans, outputs, drawings, reports, records, sketches, photographs, designs, estimates, specifications, calculations and models, but excludes the Contractor’s internal administrative records.

**"Principal"** means the Client.

**"Provisional Sum"** means a monetary sum that may be included in the payment schedule(s) for specific services that will only be undertaken by the Contractor if directed by the Principal’s Representative.

**“WHS Act”**means the *Work Health and Safety Act 2012* (SA).

**“WHS Regulations”** means the *Work Health and Safety Regulations 2012* (SA).

Unless the context requires otherwise, any term defined in AS 4122 - 2010 has the same meaning in this Agreement. In the event of an inconsistency, this Agreement shall take precedence over the AS 4122 - 2010 to the extent of that inconsistency.

Unless stated otherwise, a reference to a document (such as an Australian Standard) in this Agreementis a reference to the edition of that document current at the date 14 days prior to the date of submission of tender.

**3. CONFIDENTIAL INFORMATION AND PUBLICITY**

3.1 Clause 23.1 of AS 4122 - 2010 is replaced with:

Subject to Clause 23.2, the Contractor must treat as confidential:

(a) all Documents generated by this Agreement; and

(b) all other information which of its nature is confidential or which the Contractor ought reasonably to know is confidential.

The Principal is not obliged to treat the Deliverables as confidential, but will treat other Documents as confidential.

3.2 Notwithstanding Clause 23.3 of the General Conditions of Contract, the Contractor must not permit or contribute to any publicity in respect of this Agreement or any related matter unless the Contractor has obtained the Principal's approval, which may be withheld at the Principal’s sole and unfettered discretion.

**4. INSURANCE**

The last sentence of Clause 30.4 of AS 4122 - 2010, beginning with “The policy must include…” is deleted from this Agreement.

**5. 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* (SA)) 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.

**6. CONTRACTOR’S REPRESENTATIVE**

The Contractor’s Representative must have the authority to make binding decisions on behalf of the Contractor and at a minimum, must be contactable by the Principal at any time during normal business hours.

**7. DELIVERABLES**

7.1 Unless specified otherwise, the Contractor is entitled to retain the original Deliverables.

7.2Deliverables must be provided to the Principal in hard copy and in editable electronic files. The electronic files must be in a format which is acceptable to the Principal.

7.3 The Contractor agrees and acknowledges that the Principal, in its absolute discretion, may provide the Deliverables to third parties.

**8.** **WORK HEALTH AND SAFETY**

8.1 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 WHS Act and the WHS Regulations.

8.2 If requested by the Principal, the Contractor must:

1. provide evidence satisfactory to the Principal of its capacity to comply with the WHS 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 Return To Work SA Registration Number.

8.3 If all or part of the work under this Agreement is to be provided on the premises of the Principal and under the direction of the Principal, the Contractor must comply with the Principal’s Work Health and Safety policies, procedures and instructions while on the Principal’s premises. 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.

**9. THE CONTRACTOR’S PERSONNEL**

9.1 The Contractor warrants that the key personnel (including any subcontractor’s key personnel) nominated in the Contractor’s tender will perform the Services, unless they are on leave or have resigned from the Contractor’s or subcontractor’s employment. The skills and experience of the alternative personnel must not be less than the personnel that they are replacing.

9.2 The Contractor acknowledges and agrees that:

1. there is no contract of any nature in existence pursuant to this Agreementbetween the Principal and any person employed or engaged by the Contractor for purposes of this Agreement;
2. the Contractor is liable for all remuneration, claims and other entitlements payable to the Contractor's personnel; and
3. the Contractor is responsible for complying with the requirements with the *Income Tax Assessment Act 1936* (Cwth) pursuant to this Agreementto the extent that the Principal is not thereby required to make PAYE deductions from any amount payable for the *Services*.

9.3 The Contractor indemnifies the Principal and must keep the Principal indemnified against any claims by any person who is employed by or is an agent of the Contractor that it may be held or asserted that a relationship of employer and employee has been created under this Agreement.

9.4 If the Principal forms the reasonable opinion that any of the Contractor’s personnel do not have the capacity to adequately undertake the tasks to be performed pursuant to this Agreement or do not maintain the standard of work required by this Agreement or are responsible for any disruption of work being undertaken as part of this Agreement, the Principal may notify the Contractor accordingly, and thereupon such Contractor’s personnel must be withdrawn from undertaking further work involved in the Services.

**10. GOODS AND SERVICES TAX**

10.1 Payment from the Principal to the Contractor will include the GST payable.

10.2 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.

**11. PAYMENT**

11.1 The amount payable to the Contractor under this Agreementwill be ascertained in accordance with the following methods, as stated in Item 8:

Lump Sum

For work for which the Principal has accepted a Lump Sum, the Principal will pay the Lump Sum, adjusted by any additions or deletions made pursuant to this Agreement. Payment will not exceed the Lump Sum unless the Principal has directed a Variation.

The Lump Sum is be deemed to full payment for the provision of all supplies, tasks, services, activities, incidentals, overheads, fees and disbursements relating to the Lump Sum part of the Agreement, regardless of whether or not these are mentioned in any Schedule of Prices. If a Schedule of Prices has been provided, it will only be used for the purpose of assisting in the determination of progress payments. Unless specified otherwise, progress payments will be made as a portion of the Lump Sum commensurate with the amount of Services provided as of the date of invoice.

Schedule of Rates

For work for which the Principal has accepted a Schedule of Rates, the Principal will pay the sum ascertained by multiplying the measured quantity of each item of service actually carried out under this Agreement by the rate accepted by the Principal for the item of service, adjusted by any additions or deletions made pursuant to this Agreement.

Except where a disbursement has been specifically included in the schedules, the rates are deemed to allow for all supplies, tasks, services, activities, incidentals, overheads, fees and disbursements relating to the item of service listed in the schedule. No separate payment will be made for any work or expense required for the item of service listed in the schedule but not specifically mentioned in the description of the item of service. A change in the measured quantity provided does not entitle the Contractor to amend the applicable rate.

Upper Limiting Fee

For work for which the Principal has accepted an Upper Limiting Fee, the Principal will pay an amount ascertained on the same basis as a Schedule of Rates, up to the amount of the Upper Limiting Fee. Payment will not exceed the Upper Limiting Fee unless the Principal has directed a Variation.

11.2 The Contractor must provide written payment claims which include:

1. full details of any approved Variations which have been completed or partially completed;
2. the estimated cost to complete the Services, including approved Variations and any anticipated future Variations that the Contractor is aware of; and
3. if requested by the Principal, an Earned Value report in accordance with AS 4817 “Project Performance Measurement Using Earned Value”.

11.3 If the *Building and Construction Industry Security of Payment Act 2009* (SA) applies to the payment claim, the respondent’s address for the service of notices is the address of the Principal’s Representative or such other address advised by the Principal’s Representative.

**12. VARIATIONS**

12.1 If the Contractor:

1. becomes aware of a potential Variation; or
2. considers that additional services are required and that these services are not within the Scope of Contract and / or Statement of Requirements,

the Contractor must forthwith and before performing any services to which the potential Variation relates, give written notice thereof to the Principal. The notice must include a description of the additional services and an estimate of the value of the Variation. The Contractor must not proceed with the varied Services unless the Principal’s written approval has been provided. If requested by the Principal, the Contractor must provide a proposed Lump Sum or Upper Limiting Fee for the varied Services.

12.2 The Contractor agrees and acknowledges that:

1. the Principal is not liable to make payment to the Contractor for any of the additional services referred to in Clause 12.1 if the Contractor has not given written notice to the Principal prior to providing the services; and
2. compliance with the requirements of this Clause 12 is a condition precedent for payment for the provision of any services which are not within the Scope of Contract and / or Statement of Requirements.

**13. DISCLOSURE OF AGREEMENT**

The Contractor agrees to disclosure of this Agreementin accordance with Department of Premier and Cabinet Circular 27 (PCO27)."Disclosure of Government Contracts", available from:<http://www.premcab.sa.gov.au/dpc/publications_circulars.html>. The Contractor’s attention is drawn to the *Freedom of Information Act 1991*(SA). No exemption from the provisions of this Act applies to this Agreement.

**14. EVALUATION OF CONTRACTOR’S PERFORMANCE**

The Principal may undertake an ongoing evaluation of the Contractor’s performance in providing the Services and compliance with the requirements of this Agreement. A copy of any such evaluation will be forwarded to the Contractor. If the Contractor disagrees with the evaluation, it may forward a request to the Principal for a review, along with reasons why it should be reviewed. The Principal’s decision will then be final. The evaluation may be taken into account in the assessment of future tenders with the Principal or other government agencies.

**15. LIMITATION OF LIABILITY**

The following is added to Clause 29.2 of AS 4122 – 2010 after 29.2 (e):

(f) loss of, or damage to, tangible property.

**16. 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.