**Deed Poll regarding employee qualifications and compliance with *Environment Protection Act 2017* (Vic) and *Occupational Health and Safety Act 2004* (Vic) dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [month] 20XX**

Made by

**[insert supplier name and ACN/ABN]** of **[insert address]** (**Supplier**)

in favour of

**The State of Victoria** through the Department of Treasury and Finance of 1 Treasury Place, East Melbourne, Victoria 3002 (**Department**)

1. Definitions

In this Deed Poll unless inconsistent with or excluded by the context:

**CSR** means the ‘Construction Supplier Register’ administered by the Department for suppliers of construction works and construction services interested in Victorian Government construction and infrastructure projects.

**Directions** means the directions for public construction issued by the Minister responsible for Part 4 of the *Project Development and Construction Management Act 1994* (Vic)*,* as amended and updated from time to time.

**Employee** means any director, company secretary, employee or contractor of, or engaged by, the Supplier.

**EP Act** means the *Environment Protection Act 2017* (Vic).

**EP Regulations** means the *Environment Protection Regulations 2021* (Vic).

**Land Remediation Service** means any service relating to the process by which land resources are restored to their former state or baseline condition, including land management practices to remove, control or reduce environmental risk so that a site no longer poses any significant threat to human health or the environment.

**Licence** means a Class A asbestos removal licence, as defined in regulation 5 of the OH&S Regulations.

**OH&S Act** means the *Occupational Health and Safety Act 2004* (Vic).

**OH&S Arrangements** has the meaning given to it in clause 2(b)(iii).

**OH&S Regulations** means the *Occupational Health and Safety Regulations 2017* (Vic).

**Permission** has the meaning given to it in section 3 of the EP Act.

**Project** means a construction or infrastructure project on which the Supplier has been engaged by a portfolio department or agency (as both of those terms are defined in the Directions) as a result of a Public Construction Procurement.

**Public Construction Procurement** has the meaning given to that term in the Directions.

**Relevant Experience** means:

* a Bachelor of Science or Bachelor of Engineering from an Australian tertiary institution or another institution, to the satisfaction of the Department.; or
* relevant experience in the provision of Land Remediation Services, to the satisfaction of the Department.

**Supervising Employee** has the meaning given to it in clause 2(b)(ii)B.

1. Undertaking on compliance

The Supplier undertakes to the Department that:

* + 1. it holds a Licence; and
		2. if it is engaged to provide Land Remediation Services on a Project, it will ensure that:
			1. it possesses the necessary Permissions required to undertake the Land Remediation Services, including but not limited to the Permission required under s 143(1)(a) of the EP Act.
			2. any Employee undertaking the Land Remediation Services:
			3. has Relevant Experience , or
			4. only undertakes the Land Remediation Services under the direct supervision of an Employee who has Relevant Experience (the **Supervising Employee**); and
			5. any Employee undertaking the Land Remediation Services:
			6. holds a Licence; or
			7. is supervised in accordance with the requirements under the OH&S Regulations (**OH&S Arrangements**).
		3. it has the capacity, and appropriate quality assurance and management processes in place, to ensure it can provide the Land Remediation Services to a level required for the Project scale and complexity;
		4. it will, if requested by a portfolio department or agency (as both of those terms are defined in the Directions), provide full details of:
			1. its compliance with the OH&S Act and OH&S Regulations, including but not limited to:
			2. the Licences required to undertake a Project to deliver Land Remediation Services; and
			3. evidence, to the satisfaction of the Department, or of the relevant portfolio department or agency, that the Supplier is undertaking the Land Remediation Services in accordance with those Licences;
			4. its compliance with the EP Act and EP Regulations, including but not limited to:
			5. the Permissions required to undertake a Project to deliver Land Remediation Services; and
			6. evidence, to the satisfaction of the Department, or of the relevant portfolio department or agency, that the Supplier is undertaking the Land Remediation Services in accordance with those required Permissions;
			7. each Employee who is involved in a Project to deliver Land Remediation Services, including but not limited to:
			8. whether the Employee is undertaking the Land Remediation Services, and
			9. if the Employee is undertaking the Land Remediation Services, whether they have Relevant Experience. The Supplier will provide all evidence to the department, or to the relevant portfolio department or agency, necessary to satisfy that party that an Employee has the Relevant Experience; or
			10. if the Employee is undertaking the Land Remediation Services and does not have Relevant Experience, the identity of the Supervising Employee and evidence of their eligibility to provide supervision;
			11. if the Employee is undertaking the Land Remediation Services, whether they hold a Licence; or
			12. if the Employee is undertaking the Land Remediation Services and does not hold a Licence, the details of the OH&S Arrangements, including the identity of any person providing supervision under the OH&S Arrangements.
			13. any other information requested by the Department and/or the relevant portfolio department or agency;
		5. it has full power to enter into and perform its obligations under this Deed Poll and it has taken all necessary action to authorise the entry into and performance of this Deed Poll; and
		6. this Deed Poll is legal, valid, binding and enforceable against it.
1. Breach of this Deed Poll

Without limiting any other rights of the Department or the State of Victoria, the Supplier acknowledges that the Department will be entitled to suspend the Supplier from the CSR if the Supplier breaches any term of this Deed Poll, in its absolute discretion.

1. Governing law and jurisdiction

This Deed Poll is governed by the laws of Victoria.

1. Waiver and exercise of rights
	* 1. A waiver of any right, power or remedy under this Deed Poll must be in writing and signed by the Department. The fact that the Department fails to do, or delays in doing, something does not amount to a waiver of its rights under this Deed Poll.
		2. A single or partial exercise or waiver by the Department of a right relating to this Deed Poll does not prevent any other exercise of that right or the exercise of any other right.
		3. The Department is not liable for any loss, cost or expense of the Supplier caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

**Signed, sealed and delivered as a Deed Poll**

|  |  |  |
| --- | --- | --- |
| **[TO BE USED IF SUPPLIER IS A CORPORATION]**Signed, sealed and delivered by**[insert corporation name and ACN**/**ABN]** acting by the following persons or, if the seal is affixed, witnessed by the following persons in accordance with s 127 of the *Corporations Act 2001* (Cth): |  |  |
|  |  |  |
| Signature of Company Secretary/Director |  | Signature of Director |
|  |  |  |
| Name of Company Secretary/Director (print) |  | Name of Director (print) |
|  |
| Date: / / |

**[TO BE USED IF SUPPLIER IS A PARTNERSHIP]**

|  |  |  |
| --- | --- | --- |
| Signed, sealed and delivered for and on behalf of [**insert Partnership name**] by a partner of that partnership under the authority of [**insert name of authorising document**] dated [**insert date**] who has no notice of revocation of that authority in the presence of: |  |  |
|  |  |  |
| Signature of witness |  | Signature of partner |
|  |  |  |
| Name of witness (print) |  | Name of partner (print) |
|  |
| Date: / / |