**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:

**Agency** has the meaning given to that term in the Directions.

**Asbestos Inspection and Hygiene Services** means any service relating to the identification of health risks (asbestos specifically), and provision of advice on how to manage, avoid, eliminate and resolve risks.

**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.

**DG Act** means the *Dangerous Goods Act 1985* (Vic)*.*

**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).

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

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

**Portfolio Department** has the meaning given to that term in the Directions.

**Project** means a construction or infrastructure project on which the Supplier has been engaged by a Portfolio Department or Agency as a result of a Public Construction Procurement.

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

**Relevant Experience** means experience in the provision of Asbestos Inspection and Hygiene Services, to the satisfaction of the Department, which includes but is not limited to being able to complete Relevant Functions.

**Relevant Function** means the same as described in OHS Regulations **section 207(2)**.

**Relevant Qualification** means membership of an asbestos industry association, or asbestos inspection training, to the satisfaction of the Department, which includes but is not limited to-

1. Member of the Faculty of Asbestos Management of Australia & New Zealand (FAMANZ) (Full/Member Risk Management or Technical Member); or
2. Member of the Faculty of Asbestos Assessment and Management/FAAM) (Full, Fellow or Technician member) of the British Occupational Hygiene Society; or
3. Member of the Australian Institute of Occupational Hygienists (AIOH) (Full or Provisional); or
4. Member of the New Zealand Occupational Hygiene Society (NZOHS) or any other professional bodies registered by the Health and Safety Association of New Zealand (HASANZ); or
5. Member of any other professional society with an International Occupational Hygiene Association (IOHA) National Accreditation Recognition (NAR) Scheme; or
6. Evidence of qualifications that includes completion of training including the following or equivalent:
   * CPCCDE 5001 Air monitoring and clearance inspection for asbestos removal or CPCCBC4051A (NZQA 29767) Supervise Asbestos Removal; or
   * Completion of at least one of the following or equivalent BOHS International Proficiency Qualifications courses:
   * IP402 (P402) Surveying and sampling strategies for asbestos in buildings
   * IP403 Asbestos fibre counting (PCM) as revised for Australia
   * IP404 (P404) Air monitoring, clearance inspections for reoccupation of buildings following asbestos removal; and
   * IP405 (P405) Management of Asbestos in Buildings.

**Supervising Employee** has the meaning given to it in clause 2(a)(i)(C).

1. Undertaking on compliance

The Supplier undertakes to the Department that:

* + 1. if it is engaged to provide Asbestos Inspection and Hygiene Services on a Project, it will:
       1. ensure that any Employee undertaking the Asbestos Inspection and Hygiene Services:
          1. has a Relevant Qualification; or
          2. has Relevant Experience; or
          3. only undertakes the Asbestos Inspection and Hygiene Services under the direct supervision of an Employee who has:
* a Relevant Qualification; or
  + - * Relevant Experience (the Supervising Employee); and
    1. it will, if requested by a Portfolio Department or Agency provide full details of:
       1. its compliance with the OH&S Act and OH&S Regulations;
       2. its compliance with the DG Act;
       3. its compliance with the EP Act and EP Regulations;
       4. each Employee who is involved in a Project to deliver Asbestos Inspection and Hygiene Services, including but not limited to:
       5. whether the Employee is undertaking the Asbestos Inspection and Hygiene Services, and
       6. if the Employee is undertaking the Asbestos Inspection and Hygiene Services, whether they have a Relevant Qualification or 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 Qualification or Relevant Experience; or
       7. if the Employee is undertaking the Asbestos Inspection and Hygiene Services and does not have a Relevant Qualification or Relevant Experience, the identity of the Supervising Employee and evidence of their Relevant Qualification or Relevant Experience; and
       8. any other information requested by the Department and/or the relevant Portfolio Department or Agency;
    2. 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
    3. 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**

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| --- | --- | --- |
| **[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: / / |