

**IMPORTANT—READ CAREFULLY:** This End-User Licence Agreement (**EULA**) is a legal agreement between You and DBYD Certification Ltd ABN 88 617 374 946 (**DCL**) for the use of the Australian Certification Trade Mark No. 1725828 (shown to the right) (**Logo**).

**YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA BY DOWNLOADING, OBTAINING, OR USING THE LOGO. IF YOU DO NOT AGREE, DO NOT DOWNLOAD, OPEN, OR USE THE LOGO; YOU MAY RETURN IT TO DCL OR DELETE IT PERMANENTLY FROM YOUR DEVICE(S).**

## 1. DEFINITIONS

**Certification Process** means the process an individual must undertake in order to become a Certified Locator, as set out in the Certification Trade Mark Rules;

**Certification Trade Mark Rules** means the certification rules for Australian Registered Trade Mark No 1725828;

**Certified Locating Organisation (CLO)** means a legal entity with a current signed certification agreement with DCL;

**Certified Locator** means an individual who has successfully completed the Certification Process and is either an employee or appointed contractor of a CLO ;

**Employee** means a Certified Locator (including any Suspended Certified Locator) employed by You

**Services** means scientific and technological services, namely locating subterranean objects, underground cables, underground pipelines, underground assets and utilities (including pipe and cable networks); location of utility lines (mapping services); providing information relating to the location of utility lines or the aforementioned services; and

**Suspended Certified Locator** means a Certified Locator that has been suspended, or had his/her certification cancelled, by DCL

**Term** means the period commencing on your acceptance of this EULA and ending on the date that this EULA is terminated in accordance with clause 6.

**You (Your)** means the CLO that uses, or proposes to use, the Logo in conjunction with the provision of the Services.

## 2. GRANT OF LICENCE

- a. DCL grants to You a non-exclusive, revocable, limited right to use the Logo solely in relation to the provision of the Services for the Term, provided You –
  - i. have complied, and are complying, with the Logo Rules;
  - ii. ensure any Certified Locator permitted by You to perform the Services under or in association with the Logo, has a valid and current CLO card;
  - iii. where an independent third party determines You're responsible for an incorrect location of subsurface assets, You must notify DCL in writing within 10 business days from Your receipt of that determination, the details of any subsurface damage caused by any or all of Your Certified Locators to DCL. Such details must include the extent of the damage, the individual(s) name(s) that didn't correctly locate subsurface assets, and your thoughts on the cause of the damage;
  - iv. permit DCL, upon thirty (30) days written notice, to conduct practical re-assessments of any or all of Your Certified Locators at DCL's cost;
  - v. don't permit a Suspended Certified Locator to –
    - use the certified trade mark; or
    - conduct the Services as Your employee, or contractor, in association with the

certified trade mark;

- vi. always have at least one Certified Locator in Your employment;
- vii. ensure all Certified Locators in Your employment are registered in the relevant CLO program.
- viii. subject to clause 2.a.vi., only allow Certified Locators to provide the Services in association with the Logo; and
- ix. permit DCL to conduct, and comply with any reasonable direction or request of DCL when conducting, random audits of You or an Employee. For the avoidance of doubt, DCL may conduct a random inspection with –
  - less than twenty four (24) hours' notice where there is notification of a critical or serious incident that in DCL's sole discretion requires an immediate inspection;
  - with at least seven (7) days' notice for all other inspections.

## 3. Inspection of CLO or Employee

- a. Any inspection conducted by DCL pursuant to clause 2.a.ix., may involve –
  - i. You or an Employee proving the accuracy and reliability of any equipment used by You or that Employee in the provision of the Services;
  - ii. a practical re-assessment of any Employee – DCL will provide a minimum of thirty (30) days' notice when conducting this type of inspection; or
  - iii. You or an Employee providing information to DCL, including in relation to a critical or serious incident.
- b. For the avoidance of doubt, if You or an Employee refuses to –
  - i. allow an inspection to be conducted by DCL in accordance with clause 2i; or
  - ii. You or an Employee refuses to answer any questions of DCL,then DCL may, in its sole discretion, immediately terminate Your licence to use the Logo in relation to the provision of the Services.
- c. If an Employee fails the practical re-assessment then that Employee will become a Suspended Certified Locator.

## 4. Suspension or cancellation of Certified Locators

- a. Where a Certified Locator employed by You has not correctly located subsurface assets in the performance of the Services, DCL in its sole discretion may suspend, or cancel, the certification of that Certified Locator until such time as that Certified Locator undertakes additional training to the satisfaction of DCL, which may include a practical re-assessment (Remedial Training).
- b. Where DCL requires a Suspended Certified Locator to undertake Remedial Training, DCL will notify You in writing of the Remedial Training that must be done, at Your cost, by that Certified Locator to have his/her certification reinstated.
- c. For the purposes of clause 2g, a Suspended Certified Locator is not considered a Certified Locator.

- d. For the purposes of 2b, immediately upon a Certified Locator being designated as a Suspended Certified Locator, his/her CLO card becomes invalid.

#### 5. Issuance of CLO card

- a. All Certified Locators employed by You will be issued with a CLO card. This card will –
  - i. state You as the organisation that employs the Certified Locator;
  - ii. state the access permissions for the Certified Locator; and
  - iii. show a photo of the Certified Locator.
- b. The CLO card will only be valid while the Certified Locator is –
  - i. employed by You; and
  - ii. not a Suspended Certified Locator.
- c. All CLO cards are the property of DCL.
- d. Within five (5) business days of an Employee –
  - i. ceasing his/her employment by You; or
  - ii. becoming a Suspended Certified Locator, You will obtain and either –
    - iii. return to DCL; or
    - iv. destroy,

the CLO card of the Employee. Where you have destroyed the CLO card, You must notify DCL in writing that you have destroyed it and the name of the Employee to whom the CLO card was issued.

- e. In the event You are unable to comply with clause 4.4, You must immediately inform DCL in writing of –
  - i. non-compliance with clause 4.4;
  - ii. the name of the Employee; and
  - iii. if known, the new employer of the Certified Locator.
- f. Upon employing an Employee, You must notify DCL of this hiring within thirty (30) days of it occurring. Provided the Employee is a Certified Locator, and not a Suspended Certified Locator, DCL will issue a new CLO card for the Employee within seven (7) days of receiving this written notification.

#### 6. RESERVATION OF RIGHTS AND OWNERSHIP

- a. DCL reserves all rights not expressly granted to You in this EULA. The Logo is an Australian registered certified trade mark. You acknowledge DCL's ownership of and title to all intellectual property rights (including copyright and trade mark rights) in the Logo, including any and all common law and registered rights throughout the world. **The Logo is licensed, not sold.**
- b. This EULA does not grant you any rights to the Logo or other intellectual property of DCL except for a non-exclusive licence to display the Logo provided that the Logo is displayed as indicated in this EULA and is not altered in any way.
- c. You must not challenge or in any manner impugn the validity or, where applicable, the registration of the Logo trade mark, ownership by DCL of the intellectual property in the Logo or the exclusive rights of DCL to take appropriate measures for the protection of the Trade Marks.

#### 7. DISPLAY OF LOGO

You acknowledge and agree that Your licence to use and display the Logo is conditional upon You complying strictly with the following requirements with respect to display and use of the Logo:

- a. The Logo must be 8cm high by 6cm wide, or

equivalent proportions thereto (e.g. 4cm x 3cm; 16cm x 12cm, etc.);

- b. Subject to 4.c, the height of the Logo must be at least, the lesser of:
  - i. one third of the height of the object on which it is placed; or
  - ii. 30cm;
- c. DCL may approve smaller dimensions, in its sole discretion. Such approval will only be provided in writing;
- d. The Logo must be clear, legible and not pixelated or obstructed;
- e. The Logo may only appear in the colours red, black, white and grey as shown in the representation above;
- f. You must not modify or adapt the Logo or remove, alter or obscure any intellectual property notices or other symbols, notices, marks or serial numbers on or relating to the Logo; and
- g. The Logo may only be displayed within the geographic region of Australia.

You agree to submit to, and cooperate fully with, such compliance audits in respect of your use of the Logo as may be required by DCL from time to time.

#### 8. NO PROVISION TO THIRD PARTIES

- a. Subject to 5.b, You must not authorise a third party or any associated entities of You to use the Logo (or any part thereof), without the prior written consent of DCL.
- b. You may authorise Your Certified Locators to use the Logo in conjunction with providing the Services, provided that such Certified Locator meets the requirements outlined in 2.a, 2.b and 2.c, has not had its certification suspended or cancelled by You or DCL and agrees in writing to be bound by the terms of this EULA.

#### 9. TERMINATION

Without prejudice to any other rights, DCL may terminate this EULA by immediate notice in writing to You if:

- a. You fail to comply with the terms and conditions of this EULA;
- b. You are no longer a CLO; or
- c. You, or any of your Certified Locators, bring DCL, the DCL business or the goodwill associated with the Logo into disrepute.

Either party may terminate this EULA by giving not less than 30 days notice in writing to the other party for any reason whatsoever.

Upon termination of this EULA, all rights granted to You under this EULA will immediately cease, You must immediately discontinue all use of the Logo and destroy all copies of the Logo and any physical samples relating thereto and direct that your Certified Locators do the same.

#### 10. EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND CERTAIN OTHER DAMAGES

To the maximum extent permitted by applicable law, in no event shall DCL be liable for any special, incidental, punitive, indirect, or consequential damages whatsoever (including, but not limited to, damages for loss of profits or confidential or other information, for business interruption, for personal injury, for loss of privacy, for failure to meet any duty including of good faith or of reasonable care, for negligence, and for any

other pecuniary or other loss whatsoever) arising out of or in any way related to the use of or inability to use the Logo, the provision of or failure by DCL to provide support or other services to You, information, and related content arising out of the use of the Logo, or otherwise under or in connection with any provision of this EULA, even in the event of the fault, tort

(including negligence), misrepresentation, strict liability, breach of contract or breach of warranty of DCL, and even if DCL has been advised of the possibility of such damages.

#### **11. LIMITATION OF LIABILITY**

To the maximum extent permitted by applicable law and except as provided herein, DCL shall not be liable for any damages whatsoever (including without limitation, damages for loss of business profits, business interruption, loss of business information or other pecuniary loss) arising out of the use or inability to use the Logo, even if DCL has been advised of the possibility of such damages. In any case, DCL's entire liability under any provision of this EULA shall be limited to the amount actually paid by You to use the

Logo. These limitations do not apply to any liabilities that cannot be excluded or limited by applicable laws.

#### **12. APPLICABLE LAW –**

This EULA is governed by the laws of Queensland, Australia; and, in respect of any dispute which may arise under this EULA, you consent to the jurisdiction of the courts of Queensland and/or the Federal courts of Australia.

#### **13. ENTIRE AGREEMENT; SEVERABILITY**

This EULA is the entire agreement between You and DCL relating to the Logo. It supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to the Logo or any other subject matter covered by this EULA. To the extent the terms of any DCL policies or materials conflict with the terms of this EULA, the terms of this EULA shall prevail. If any provision of this EULA is held to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect.

## LEGAL LIABILITY DISCLAIMER

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DBYD Certification Ltd ABN 88 617 374 946 (**DCL**) is not a Registered Training Organisation within the meaning of the *Vocational Education and Training Act 1996* (Cth), and is not authorised to, and does not, conduct accredited or registered training programs.

The Certified Locator competency assessment program (**Program**) offered by DCL is designed to assess the level of an asset locator's theoretical knowledge and practical competency as at the date the assessment is conducted. DCL recognises asset locators who have successfully completed the Program as "Certified Locators", and lists the name and contact details of the Certified Locating Organisation that employs the Certified Locator on this website. The Program is supported and recognised by various owners of infrastructure assets.

Certificates of Completion issued to Certified Locators by DCL denote only that Certified Locators have, on the date specified in the Certificate of Completion, demonstrated to DCL the level of theoretical and practical knowledge and competency required to be recognised as a Certified Locator by DCL.

The Program is not an accredited, mandated or industry-regulated program. Completion of, or participation in, the Program by a Certified Locator does not bestow or confer on the Certified Locator any formal accreditation or qualification. DCL does not guarantee or warrant the experience, expertise, knowledge or skill of the Certified Locator, nor that the Certified Locator is (or remains) qualified to provide its asset location services, nor that the Certified Locator will be able to correctly or accurately locate underground infrastructure, assets and utilities (including but not limited to infrastructure for electricity, gas, telecommunications, water, network cabling, drainage, sewerage, irrigation and heritage trees) (**Assets**) on each attempted instance.

To the maximum extent permitted by law, DCL and its employees, agents, contractors and consultants, expressly exclude all liability for any actions, claims, costs, demands, damages, expenses, liabilities or losses of any kind whatsoever incurred or suffered by any party arising from or in any way connected or related to:

- a. a Certified Locating Organisation's, or a Certified Locator's use of DCL's certification trade mark, or any other device or statement signifying that the Certified Locator is a Certified Locator;
- b. a Certified Locator's completion of, or participation in, the Program;
- c. reliance on a Certificate of Completion issued by DCL to a Certified Locator, or the Certified Locator's completion of, or participation in, the Program;
- d. the provision of any incorrect or incomplete information by a Certified Locating Organisation, or a Certified Locator, to any third party;
- e. the failure or inability of a Certified Locator to correctly or accurately locate Assets; or
- f. any act, omission, negligence, representation or statement of a Certified locating Organisation, or a Certified Locator in the course of advertising, promoting or carrying out or providing its asset locator services.

