

## **TERMS AND CONDITIONS FOR CANDIDATES FOR DBYD CERTIFIED LOCATOR PROGRAM**

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### **1. Preamble**

- 1.1 The DBYD Certified Locator program is operated by DBYD Certification Ltd ABN: 88 617 374 946 (DCL) under license from the owner Dial Before You Dig (Qld) Ltd ABN: 34 464 054 437 (DBYDQ).

### **2. Definitions**

- 2.1 In these Terms, unless otherwise provided, the following words have the following meanings:
- ACL** means the Australian Consumer Law Schedule to the *Competition and Consumer Act 2010* (Cth) and its associated Regulations as amended;
- Agreement** means any agreement for the provision of the Program by DCL to the Candidate;
- Candidate** means you, the individual person who has registered for enrolment and participation in the Program;
- Certified Locator** refers to a Candidate who has successfully demonstrated the threshold competency requirements prescribed for recognition as a Certified Locator in the Program;
- consumer** is as defined in the ACL and in determining if the Candidate is a consumer, the determination is made if the Candidate is a consumer under the Agreement;
- Fee** means the fees and charges payable by the Candidate to DCL from time to time, as set in relation to the Candidate's enrolment and participation in each of the various components of the Program. The relevant Fee will be set by DCL from time to time and displayed on the Website at the time of the Candidate's enrolment into the Program;
- GST** means the goods and services tax within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and its associated Regulations as amended;
- Program** means the DCL Certified Locator Competency Assessment Program for Candidates;
- services** means the services supplied by DCL to the Candidate in relation to the Program;
- Terms** means these terms and conditions for enrolment as a Candidate and participation in the Program;
- Website** means the website established for and related to the provision and operation of the Program, located at [www.dbydlocator.com](http://www.dbydlocator.com).

### **3. Basis of Agreement**

- 3.1 Unless otherwise agreed by DCL in writing, the Terms apply exclusively to every Agreement and cannot be varied or replaced by any other terms.
- 3.2 An Agreement is accepted by DCL when DCL accepts, in writing or electronic means, a registration request from the Candidate to enrol and participate in the Program.
- 3.3 DCL may refuse to accept any Candidate's registration and enrolment request in its sole discretion.
- 3.4 DCL reserves the right to record, via video and/or audio, assessment sessions for recording and quality assurance purposes and to provide feedback support to the Candidate.
- 3.5 The Candidate's enrolment and participation in the Program is not transferable. By accepting these Terms, the Candidate warrants that it is the person enrolling and participating in, and seeking to complete, the Program.

### **4. DCL obligations**

- 4.1 Subject to these Terms, DCL agrees to:
- (a) provide the Candidate with access to the Website to undertake the competency assessment review with a view to the Candidate becoming recognised as a Certified Locator;
  - (b) assess the Candidate's competency to be recognised as a Certified Locator; and
  - (c) if the Candidate successfully demonstrates the threshold competency requirements prescribed in the Program, to register the Candidate's name and contact details on the DCL register of Certified Locators.
- 4.2 By registering and seeking to enrol in the Program, the Candidate accepts the following terms and conditions.

### **5. Candidate obligation**

- 5.1 The Candidate:
- (a) agrees that it will pay all Fees required to be paid by the Candidate to register, enrol and participate in each component of the Program, including any applicable renewal process;
  - (b) agrees that it will undertake the competency assessment review in a responsible manner ensuring that the Candidate has read and understood the material;
  - (c) agrees that it will personally undertake the assessment review;

- (d) warrants that the information it has provided to DCL, whether directly or indirectly, or through the Website is:
  - (i) provided in good faith; and
  - (ii) true and correct to the best of the Candidate's knowledge, information and belief;
- (e) agrees that it will provide a current and accessible email address at which the Candidate can be contacted for the duration of the Program;
- (f) agrees that it is entirely responsible for maintaining the confidentiality of the Candidate's User Name and Password for the Website and the Program;
- (g) agrees that it is entirely responsible for any and all activities that occur under the Candidate's User Name and Password on the Website and in the Program;
- (h) agrees that it will notify DCL immediately of any unauthorised use of the Candidate's User Name and Password or any other breach of security;
- (i) agrees that it will comply with the DCL Website Terms of Use which can be located on [www.dbylocator.com](http://www.dbylocator.com)
- (j) undertakes that it will not engage in conduct which does or tends to defeat or compromise the purposes of the Program including:
  - (i) cheating;
  - (ii) failing to comply with instructions;
  - (iii) copying or reproducing the Program or any part of it;
  - (iv) using reproducing or adapting the work of another person;
  - (v) representing the work of another person as the Candidate's own work; and
  - (vi) misrepresenting, falsifying, misstating or fabricating data, results or information used for assessment purposes;
- (k) agrees that it may be refused the right, in DCL's sole discretion, to participate in the Program, or be provided with the outcome of the competency assessment as a Certified Locator if the Candidate breaches these obligations or these Terms.

## **6. Program Fee & Terms of Payment**

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- 6.1 DCL will charge the Candidate the Fee.
- 6.2 The Fee charged for the Candidate's enrolment and participation in the Program is exclusive of GST, which is additionally to be paid by the Candidate.
- 6.3 Payment of the Fee is due immediately upon the Candidate's registration for enrolment and participation in each component of the Program.
- 6.4 The Candidate is responsible to provide and pay for any and all hardware, software and any equipment required to enable the Candidate to enrol and participate in the Program, and for all of the Candidate's own fees and costs associated with undertaking the Program. This includes but is not limited to the Candidate supplying its own equipment as described in the Self Assessment section of the Program.
- 6.5 Subject to clause 6.6, DCL reserves the right to increase the Fee for enrolment and participation in the Program (in whole or in part), at any time in its sole discretion.
- 6.6 Notwithstanding clause 6.5, the Candidate will be granted a period of three (3) months from the date on which DCL notifies the Candidate of the future Fee increase to complete the Program with the current Fee applied. The Candidate otherwise agrees to be subject to the effects of the Fee increase and agrees to pay DCL any outstanding Fee component owing as a result of the Fee increase.
- 6.7 If a Candidate fails to pay any part of the Fee for their enrolment and participation in the Program, DCL reserves the right to:
  - (a) restrict online access to that Candidate;
  - (b) withhold the making any assessment of competency for that Candidate;
  - (c) withhold the release of any assessment of competency for that Candidate;
  - (d) withhold the registering that Candidate's name on the DCL register of Certified Locators;
  - (e) recover any portion of the outstanding Fee owed by the Candidate as a debt due to DCL; and
  - (f) charge the Candidate for, and the Candidate must indemnify DCL from, all costs and expenses (including without limitation all legal costs and expenses) incurred by DCL resulting from the Candidate's failure to pay the Fee or resulting from DCL taking action to enforce the Candidate's compliance with the Agreement.

## **7. Timeframes**

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- 7.1 The Candidate must:
  - (a) attempt the theory examination component of the Program within thirty (30) days of the date of registration;

- (b) attempt the first practical assessment within six (6) months of the date of registration;
  - (c) attempt a second assessment (if required) within six (6) months of the date of the first practical assessment; and
  - (d) successfully demonstrate all of the threshold competency requirements prescribed in the Program within eighteen (18) months of the date of registration.
- 7.2 If the Candidate fails to satisfy the above timelines, it will be considered to have abandoned or failed the Program.
- 7.3 If a Candidate repeatedly does not respond to reasonable attempts by DCL to contact it, the Candidate will be deemed to have withdrawn from or abandoned the Program.
- 7.4 Requests for any full or partial refund of the Fee paid by the Candidate will be handled in accordance with DCL's policy as set out in these Terms.
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- 8. Cancellations and Refund Notifications**
- Notification of withdrawal, cancellation and/or requests for refunds must be made by the Candidate in writing to DCL at [info@dbydlocator.com](mailto:info@dbydlocator.com). The Candidate may alternatively call DCL on 1300 340 017 to discuss the Candidate's options.
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- 9. Cancellation**
- 9.1 If the Candidate elects to cancel the practical assessment component of the Program after it has been booked in and confirmed by DCL, a re-assessment fee of \$595 (excluding GST) will apply. If a replacement can be arranged and booked in, the re-assessment fee will be waived and an administration fee of \$195 (excluding GST) will apply instead.
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- 10. Non-Attendance (No Show)**
- 10.1 If the Candidate fails to attend an assessment for whatever reason, the Fees will not be refunded or allocated to another assessment and a re-assessment fee of \$595 (excluding GST) will apply.
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- 11. Substitutions**
- 11.1 Requests for substitutions are to be made in writing to [info@dbydlocator.com](mailto:info@dbydlocator.com) or by calling DCL on 1300 340 017.
- 11.2 All requests must be made up to 48 hours prior to the practical assessment. DCL reserves the right to refuse any request for substitution made within 48 hours of the practical assessment.
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- 12. Refunds**
- 12.1 The Candidate enrolled after 1 March 2017:
- (a) is eligible for a registration refund of \$1,000 (excluding GST) of the Fee, if the Candidate withdraws in writing prior to commencing an attempt of the theory assessment component of the Program. Such refunds will incur an administration fee of \$195 (excluding GST).
  - (b) is eligible for a refund of \$595.00 (excluding GST) of the Fee, for a practical assessment not being undertaken only if notification is received in writing by DCL of the Candidate withdrawing from the Program prior to the practical assessment being arranged.
  - (c) is eligible for a theory re-sit refund of 50% of the re-sit Fee paid by the Candidate, provided notification is received in writing by DCL prior to attempting the re-sit of the theory assessment.
  - (d) is eligible to apply for a refund due to extenuating circumstances. Supporting documentation is required to show proof of the Candidate's circumstances. The DCL CEO will determine if such extenuating circumstances warrant a full or partial refund and the CEO's decision is final. The Candidate should contact DCL directly for further information.
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- 13. Abandonment**
- 13.1 No refunds of the Fee will be made for abandonment of the Program.
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- 14. Failure**
- 14.1 No refunds of the Fee will be made where a Candidate has completed the Program but has failed to successfully demonstrate all of the threshold competency requirements prescribed in the Program.
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- 15. Applying for a Refund**
- 15.1 To apply for a refund, a written claim must be submitted to [info@dbydlocator.com](mailto:info@dbydlocator.com).
- 15.2 An application for a refund will be processed within 4 weeks after a claim has been received by DCL from the Candidate. Refunds are assessed on a case by case basis.
- 15.3 Where a Fee refund is due to a Candidate, such a refund will be provided within 30 days of refund approval.
- 15.4 Refunds will only be refunded to the person who entered into the Agreement with DCL and will not be provided to a third party.
- 15.5 All refunds will be paid electronically; no refunds will be made in cash.

15.6 Agreeing to the Refund policy set out in these Terms does not restrict or remove the right of the Candidate to take further action where permitted under the ACL or to pursue other legal remedies.

## **16. Locate Management Institute – UALL Online Course Refunds**

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16.1 Locate Management Institute will accept a refund request for unopened online training courses within 30 days of the purchase date. Locate Management Institute will retain an administration fee of \$50 CAD for each applicable refunded course plus any associated service costs.

## **17. Certificate of Completion**

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17.1 DCL will supply the Candidate with a Certificate of Completion of the Program only in circumstances where the Candidate:

- (a) has successfully demonstrated all of the threshold competency requirements prescribed in the theory assessment component of the Program;
- (b) has successfully demonstrated all of the threshold competency requirements prescribed in the practical assessment component of the Program; and
- (c) paid all applicable Fees in full.

17.2 The Certificate of Completion confirms that, on the date specified in the Certificate of Completion, the Candidate successfully demonstrated to DCL the level of theoretical and practical knowledge and competency required to enable the Candidate to be recognised as a Certified Locator by DCL under the Program.

17.3 The Candidate acknowledges and agrees that:

- (a) DCL is not a Registered Training Organisation within the meaning of the *Vocational Education and Training Act 1996 (Cth)*, and the Program is not an accredited, mandated or industry-regulated program; and
- (b) completion of the Program, and the issuing or receipt of a Certificate of Completion:
  - (i) does not bestow or confer on the Candidate any kind of formal or informal accreditation or qualification;
  - (ii) does not denote any level of attainment of mandated industry-relevant or other experience or expertise;
  - (iii) does not amount to a warranty or guarantee by DCL or any other party that the Candidate possesses any particular level of experience, expertise, knowledge or skill; and
  - (iv) does not amount to a warranty or guarantee by DCL or any other party that the Candidate 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) on each attempted instance.

## **18. Changes To The Program**

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18.1 Any period or date for delivery of the Program, or any component of it, stated by DCL is an estimate only and not a contractual commitment. DCL will use its reasonable endeavours to meet any estimated dates for delivery of the Program but will not be liable for any loss or damage suffered by the Candidate or any third party for failure to meet any estimated date.

18.2 DCL reserves the right to:

- (a) change, cancel or postpone the dates on which the various components of the Program will be conducted;
- (b) change the assessors assigned to conducting the competence assessments; and
- (c) modify, cancel or limit the Program and/or its content, and the Candidate's access to it, in accordance with DCL's reasonable business requirements

18.3 DCL will notify the Candidate of any such changes, cancellation or postponement and will use reasonable endeavours to place the Candidate in any alternative dates suitably available for the resumption of the Program.

## **19. Indemnification/Liability**

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19.1 Except as the Terms specifically state, or as contained in any express warranty provided in relation to the provision of the Program, this Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, design or performance of the Program or its content, or any contractual remedy for their failure.

19.2 If the Candidate is a consumer nothing in these Terms restricts, limits or modifies the Candidate's rights or remedies against DCL for failure of a statutory guarantee under the ACL.

19.3 If clause 19.2 does not apply, then other than as stated in the Terms or any written warranty statement DCL is not liable to the Candidate or any third party in any way arising under or in

connection with the Candidate's enrolment in, participation in, cancellation of, abandonment of, withdrawal from, completion of, or non-completion of the Program.

- 19.4 DCL is not liable for any indirect or consequential losses or expenses suffered by the Candidate or any third party, howsoever caused, including but not limited to loss of turnover, profits, business, assets or goodwill, or any liability to any other party, except to the extent of any liability imposed by the ACL.
- 19.5 DCL excludes to the maximum extent permitted by law, and any and all liability that may arise to the Candidate or any third party, as a result of the operation of the Candidate's own business and/or the provision of asset locating services offered by the Candidate to customers.
- 19.6 The Candidate acknowledges and agrees that:
- (a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by DCL in relation to the Program or its use, application or utility;
  - (b) it has not made known, either expressly or by implication, to DCL any purpose for which it seeks to be recognised as a Certified Locator, and it has the sole responsibility of satisfying itself that the Program is suitable for the Candidate's use;
  - (c) it is responsible for the operation of its own business and the provision of asset locating services that it offers to its customers;
  - (d) it will indemnify and keep DCL indemnified from and against any and all actions, claims, damages, expenses or loss of any kind whatsoever that DCL may suffer or incur as a result of the Candidate's:
    - (i) advertisement, branding, promotion or representation of itself as a Certified Locator;
    - (ii) provision of any incorrect or incomplete information provided by the Candidate to any third party;
    - (iii) failure or inability 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); and
    - (iv) acts, omissions or negligence in the course of carrying out its provision of asset locator services for its customers.
- 19.7 Nothing in the Terms is to be interpreted as excluding, restricting or modifying the application of any State or Federal legislation relevantly applicable to the supply of goods or services which cannot be so excluded, restricted or modified.

## **20. Modification Of Terms And Conditions**

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- 20.1 DCL reserves the right to update and change these Terms from time to time upon providing notice to the Candidate.
- 20.2 The Candidate's enrolment and participation in the Program shall be subject to these Terms as updated and changed from time to time and in force at the time of the Candidate's enrolment or re-enrolment, as appropriate, in any component of the Program.

## **21. Copyright**

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- 21.1 All content on the Website and in the Program is copyright © Dial Before You Dig (Qld) Ltd and/or ©DBYD Certification Ltd unless otherwise stated. This includes, but is not limited to: all text, images, graphics, visual presentations and any Program-related files.
- 21.2 Material from the Website and the Program cannot be copied, reproduced or distributed in any form without prior written consent from the relevant owner.
- 21.3 All material provided and presented during the Program is for the sole use of the Candidate, and only for the purposes of the Candidate successfully demonstrating or attempting to successfully demonstrate the threshold competency requirements prescribed in the Program.

## **22. Warranty**

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- 22.1 To the extent permitted by law, no warranties or guarantees (whether express or implied) are made in relation to any of the Program information and material including as to its accuracy, currency, completeness or suitability.
- 22.2 By using any of the Program information and material provided, the Candidate accepts to the extent permitted by law all liability for its actions.

## **23. Force Majeure**

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- 23.1 Neither DCL nor the Candidate are liable in any way howsoever arising under this Agreement to the extent that it is prevented from acting by events beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts or threats of terrorism or war.

- 23.2 If an event of force majeure occurs, DCL or the Candidate (as applicable) may suspend or terminate the Agreement by written notice to the other party.
- 23.3 This right does not extend to any obligation to pay money.

**24. Miscellaneous**

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- 24.1 The law of the State of Queensland, Australia from time to time governs these Terms. The parties agree to the non-exclusive jurisdiction of the courts of the State of Queensland, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 24.2 DCL's failure to enforce any of these Terms shall not be construed as a waiver of any of DCL's rights.
- 24.3 If a clause of this Agreement (or part of it) is unenforceable it must be read down to the extent required for it to be enforceable or, if it cannot be read down, the clause (or part of it) must be severed from the clause, without affecting the enforceability of the remaining Terms.

**25. Privacy Notification Statement**

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- 25.1 DCL is required to collect the Candidate's personal information for the purposes of enabling the Candidate's registration, enrolment and participation in the Program, delivery of the Program content and, upon successful completion of the Program, displaying the Candidate's name and contact details as a Certified Locator on the Website.
- 25.2 DCL's Privacy Policy details why it collects the Candidate's personal information, who DCL may disclose it to (including whether DCL is likely to disclose it to overseas recipients), and the main consequences (if any) if DCL does not collect the Candidate's personal information. DCL's Privacy Policy also contains information about how the Candidate may seek access to, or correction of, the personal information held about it, and DCL's complaint resolution procedures. DCL's Privacy Policy is available at <http://www.dbydlocator.com/privacy-statement/>, or by request to DCL.

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