

SAFETY SCHEMES IN PROCUREMENT - COMPETENCE FORUM

“DEEM TO SATISFY AGREEMENT”



SAFETY
SCHEMES IN
PROCUREMENT

Heads of Terms – SSIP

This agreement (the “Agreement”) is entered into on this [day] of [month].
.....[year].....

Parties

This Agreement is made between the parties identified in Schedule 1 (the “Parties”), as at the commencement date and as amended from time to time.

Whereas

1. The parties above want to work together for the benefit of health & safety compliance to CDM ACOP and ability to recognise the schemes of others as are in the business of assessing Refer to Terms of Reference
2. SSIP is intended to be an ‘umbrella’ body that facilitates mutual recognition between health and safety pre-qualification schemes, which the parties wish to do wherever it is practicable to do so.
3. A matrix of the equivalence of health & safety certification, to be published and maintained on the SSIP website, in the manner in which the parties

It is now agreed as follows:

1 Definitions and interpretation

1.1 In this Agreement, the following terms shall have the following meanings:

Affiliate Member – An organisation or individual who wishes to support the SSIP aims, objectives and ethos.

Assessor – A person who with the relevant combination of skills, knowledge experience and qualification for them to undertake assessments / audits to the threshold standard.

Co-opted Member – An organisation or individual who has a special interest in promoting, improving or enhancing health and safety competence in procurement.

Equivalence – The comparison (deem to satisfy) of registered members schemes and the competencies assessed by those schemes.

Forum – The body of representatives, including founder members, registered and affiliate members. It includes other organisations who will play a part in promoting, improving or enhancing health and safety competence in procurement.

Forum Management Group (FMG) – The executive body responsible for establishing the essential elements of the management of SSIP and its day-to-day activities and reporting its activities to the Forum quarterly meetings.

Membership Fee – The fee charged for annual membership of SSIP where applicable and as may be published from time to time.

Registered Member – A provider of health and safety competence assessments, who have satisfied the SSIP entry requirement.

Registered (Founder) Member - A provider of health and safety competence assessments who has been instrumental in the design and development of the SSIP.

SSIP - The umbrella organisation (forum) whose purpose is to facilitate mutual recognition of health and safety assessments between pre-qualification schemes.

SSIP Co-ordinator – The individual employed by the SSIP to manage the day-to-day business and administration of the Forum.

Terms of Reference – shall mean the terms made available by the FMG, carrying the title “Terms of Reference”, as amended from time to time, that describe (without limitation) the operation of SSIP and any additional terms of membership.

1.2 In this Agreement:

- 1.2.1 The use of the singular shall be construed as the plural, and vice versa, as the context so requires;
- 1.2.2 The use of the masculine shall be interpreted as the feminine or the neuter, and vice versa, as the context so requires;
- 1.2.3 A reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- 1.2.4 Headings and titles are for convenience only and do not affect the interpretation of this Agreement;
- 1.2.5 General words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words;
- 1.2.6 The schedules form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement and any reference to this agreement shall include the schedules;
- 1.2.7 To the extent that there is an inconsistency between the terms of the body of this Agreement and its schedules or the SSIP terms of reference, the terms of the body of this Agreement shall prevail.
- 1.2.8 Where there is reference in the Agreement to a Party providing reasonable assistance, it shall be construed as providing reasonable assistance at that Party’s own cost (unless stated otherwise).

2 Agreement and Term

2.1 This agreement be made by the Parties on the date of signature , and shall remain in force between any one Party and the other Parties until the earlier of the following event occurs:

- 2.1.1 SSIP is dissolved or the FMG decides to suspend activities under the SSIP brand;
- 2.1.2 The Party ceases to be compliant with the SSIP requirements set out herein or such requirements as are otherwise notified (such non-compliance being material and irremediable);
- 2.1.3 Until the Agreement with that Party is terminated in accordance with the termination provisions of the Agreement.
- 2.1.4 During the term, each Party agrees that it may be publicly identified by SSIP as being a member of the SSIP scheme, and the type of membership that it has, and that such identification may be withdrawn on termination or expiry of the Agreement.

2.2 As between SSIP (acting through this Agreement between the Parties) and each individual Party, the Agreement may be terminated without affecting the existence of the Agreement in respect of the remaining Parties, which shall remain in full force and effect.

2.3 Each Party recognises that other Schemes may apply to join SSIP, and so be required to become a Party to this Agreement. Provided that the above SSIP requirements, as set or amended by the FMG, are met, it is deemed that the existing Parties grant their agreement to such other Schemes becoming a Party. Any new Party shall be notified by the FMG to the existing Parties, and included in the list of SSIP members.

3 Deem to Satisfy

3.1 The Parties that are Registered Members and Founder Members hereby agree to recognise the health & safety certifications awarded by each other's Schemes, to the extent that they are deemed to have Equivalence under this Agreement.

3.2 In order to be recognised as having Equivalence, each Founder Member and Registered Member shall;

3.2.1 Be audited by the Independent Auditor at the prescribed intervals, with the results of such being agreed by the FMG to allow membership of SSIP; and

3.2.2 Pay the Membership Fee; and

3.2.3 At all times comply with the Terms of Reference and any other notice or instruction or decision of the FMG; and

3.2.4 Act in accordance with the terms and spirit of this Agreement.

3.3 Each Party warrants to the others that, in issuing any certificate of competence under its own Scheme that might be recognised as having Equivalence, it uses all due diligence, complies with good industry practice, and does not knowingly or negligently do or omit to do anything that is likely to cause damage to any other

party. All further warranties, including fitness of any supplier or standard for a particular purpose, are hereby excluded.

3.4 It shall be for each Party to verify for itself that a certificate presented to it in relation to Equivalence under SSIP was issued by another Party, and is a genuine certificate.

4 Assessments

4.1 All assessments shall be in accordance with the threshold (stage 1) described in appendix 4 of the Construction (Design and Management) Regulations 2007 Approved Code of Practice.

4.2 Additional requirements for assessments may be implemented by SSIP through the FMG, as are considered required to further the aims of SSIP.

5 Relationship of the Parties

5.1 Each Party enters into this Agreement as a counter-party, and this Agreement does not create any relationship of servant or employee, joint venture, partnership, or any similar relationship.

5.2 Except as expressly stated in this Agreement or as explicitly delegated by the FMG, no party shall deal with any third party representing or on behalf of SSIP, or have the power to enter into any agreement on behalf of, or in any other way bind, any other Party (or purporting to do any of the foregoing).

6 Payment

6.1 It is a condition of membership of SSIP that (subject to the terms of the Agreement) the Membership Fee be paid in advance at the rate designated from time to time for each calendar year's membership.

6.2 Where an invoice for the Membership Fee remains outstanding for a period of greater than forty-five (45) calendar days after issue, and notwithstanding the signature by a Party of this Agreement, then membership (if commenced) shall be considered suspended forthwith.

6.3 The Membership Fee and other monies due to SSIP shall be paid to the London Borough of Merton, which has offered to act on behalf of the Parties in the capacity of SSIP financial body. Any change to this arrangement shall be made via the FMG and made available to all Parties.

7 Data Protection and Freedom of Information

7.1 The Parties recognise that an individual Party, being a public body, might be subject to the Freedom of Information Act 2000. Each Party undertakes to provide reasonable assistance to any other Party subject to a request under that Act, and any Party subject to such a request undertakes to coordinate assistance from other Parties via the FMG.

7.2 All Parties shall comply with their obligations under the Data Protection Act 1998, including:

7.2.1 Ensuring that it is correctly and appropriately registered with the Information Commissioner's Office; and

7.2.2 Implementing appropriate technical and organisational measures against unauthorised or unlawful processing, and against accidental loss of or destruction of, or damage to, personal data.

7.3 All Parties recognise and agree to the FMG (through any Party that is a member of the FMG or that has authority delegated to it by the FMG) using any data, including personal data, provided by any other Party in furtherance of the aims or administration of the SSIP.

8 Dispute Resolution

8.1 All Parties shall use their best endeavours to resolve any disputes arising between them.

8.2 It is recognised and agreed that the FMG shall implement dispute management and/or complaints processes, and that these shall be the sole recourse of the members in the event of dispute.

8.3 The FMG shall, as part of the resolution of any dispute or complaint, take into account the views and evidence of all relevant parties, and shall act proportionately and fairly.

9 Variation

9.1 The position of the FMG in the management of SSIP is recognised by all Parties, and it is agreed that the FMG may amend the Terms of Reference, the terms of this Agreement, or implement any further requirements in the interests of SSIP, always provided that such is carried out in accordance with the prescribed FMG decision making processes and is within the aims of SSIP. This may extend to the termination of this Agreement, and the reinstatement of SSIP as a separate legal entity or entities, or similar.

9.2 The Agreement shall not be varied except as set out in clause 9.1, or as required by any court or regulator of competent jurisdiction.

9.3 In the event that a Party does not find any amendment, decision or implementation of the FMG acceptable, its sole remedy shall be to terminate this Agreement between itself and the other Parties. Such notice shall become effective when received by a representative of the FMG.

9.4 Notwithstanding anything else in this Agreement, should any term in this Agreement or any other document, decision or enactment incorporated into it be found to be illegal or unenforceable, such term shall be struck from the Agreement and the remaining terms shall remain in full force and effect.

10 Termination of SSIP

10.1 The SSIP constituted under this Agreement shall cease to exist in the case that:

10.1.1 The FMG decides to terminate or suspend the functioning or existence of SSIP, and announces such to the Parties; or

10.1.2 Two (2) or more Founder Members have stood down from the FMG or are otherwise no longer a Party to this Agreement; or

- 10.1.3 The FMG elects to reconstitute SSIP as a company, charity, or any other body or entity that the FMG deems suitable (whether or not having legal personality); or
- 10.1.4 This Agreement is found for any reason not to be illegal or unenforceable, and such reason is not able to be addressed by amendment of the Agreement.
- 10.2 In the situation described in 10.1.3, the Parties shall provide all reasonable assistance and cooperation, and do all things reasonably necessary, to procure and assist in the reconstitution of SSIP in the form and on the terms elected by the FMG.
- 10.3 From the date of termination of the Agreement, no Party shall hold itself out as a member of SSIP, or seek to represent itself as having any interest in or acting on behalf of SSIP, except as properly in accordance with the terms of any body reconstituted by the FMG or the Health and Safety Executive of Great Britain.
- 10.4 Any and all rights, goodwill, intellectual property and any benefits or assets of any kind related specifically to the operation or existence of SSIP as an organisation shall be assigned by the SSIP members to the succeeding entity nominated by the FMG.
- 10.5 In the absence of any nomination otherwise by the FMG as anticipated in clause 10.4, the Health and Safety Executive of Great Britain shall take title to any and all rights, goodwill, intellectual property and any benefits or assets of any kind. The Parties shall provide reasonable assistance in giving effect to this.

11 Intellectual Property Rights

- 11.1 Any intellectual property and rights therein created by any Party in the course of this Agreement, or provided under this Agreement, shall remain the property of that Party, and no transfer of title is intended.
- 11.2 Where intellectual property is created by the use in conjunction of existing intellectual property, such results (subject to prior separate agreement of those Parties) shall vest equally in the Parties providing the originating intellectual property.
- 11.3 In the event that any Party owns SSIP-specific intellectual property that it has no use for outside of SSIP (including logos, website urls, and similar), it shall assign full and unfettered title in such to any further party that the FMG might specify, in the event of the termination of this Agreement.
- 11.4 Each Party hereby grants a licence to the other Parties to use for SSIP purposes any materials provided by that Party for use for SSIP purposes, and warrants that it will only provide such materials where it has all necessary rights to do so.

12 Contract (Rights of Third Parties) Act 1999

- 12.1 Except as specifically set out in this Agreement, the rights of third parties to enforce any term of this Agreement under the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.

13 Law and Jurisdiction

13.1 This Agreement is governed by and shall be construed in accordance with the laws of England and Wales, and the Parties hereby submit to the exclusive jurisdiction of the English courts.

14 Entire Agreement

14.1 This Agreement constitutes the entire agreement of the Parties in respect of the subject matter hereof, and supersedes all prior representations and warranties (unless made fraudulently).

Please complete, sign and return the section below and return a copy of the whole document to the SSIP Coordinator, 3rd floor, Merton Civic Offices, London Road, Morden SM4 5DX.

Organisation name and address

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Contact:

Signature:

Print Name:

Position:

Date: