Approved Form

Aboriginal Cultural Heritage Land Management Agreement

For the purposes of Regulation 73 of the Aboriginal Heritage Regulations 2018 and Division 1A of Part 5 of the *Aboriginal Heritage Act 2006*

This form, approved by the Secretary, Department of Premier and Cabinet, specifies the format in which an Aboriginal cultural heritage land management agreement (ACHLMA) must be prepared in order to comply with the *Aboriginal Heritage Act 2006* (“the AHA”) and the Aboriginal Heritage Regulations 2018 (“the Regulations”). The form is intended to assist public land managers as defined by the AHA and Registered Aboriginal Parties (“RAPs”) to negotiate the parameters of such an agreement, by ensuring ACHLMAs are complete and consistently presented, and to facilitate the lodgement of negotiated ACHLMAs and relevant documentation with the Secretary, Department of Premier and Cabinet.

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| **Status of this Form** |
| This approved form must be used by parties wishing to enter into an ACHLMA in accordance with Division 1A of Part 5 of the AHA. Negotiating parties may, in particular circumstances, prepare an ACHLMA in an amended format. Both parties must agree on the amended format and obtain the approval of the Secretary in writing. Any such amended format must still comply with the prescribed standards for the purposes of section 74B of the AHA and adequately address the matters set out in Section 74C of the AHA. |
| **Foreword** |
| * This approved form must be used by parties negotiating an ACHLMA under Division 1A of Part 5 of the AHA. * Pursuant to section 74A of the AHA, at least one of the parties to an ACHLMA must be a Registered Aboriginal Party (RAP) under Part 10 of the AHA. The other party must be a public land manager as defined by the AHA. * Given the broad possible content of an ACHLMA, parties will need to adapt clauses in the schedules included in this form for their purposes. Except where otherwise indicated, clauses contained within the agreement are generally applicable to any type of ACHLMA. * Clauses highlighted in blue are optional, depending on who the parties to the agreement are and what the content of the agreement is, or signify matters which are to be completed by negotiation. Locations where information is required to be inserted into the text are highlighted in orange. Green text provides examples. * An asterisk following a word or phrase signifies that it is a defined term in the ‘Definitions and Interpretation’ clause. * This document consists of an Information Table, Agreement, and attached Schedules. Parties may need to insert additional schedules depending on the content of their agreement. * Please note that amendments, additions and deletions from the document will affect the clause numbering, page numbering, cross-referencing of clause numbers within the agreement, and the table of contents. All will need to be carefully checked and updated before finalising. * This document is not intended as legal advice, and the Department of Premier and Cabinet recommends that parties seek their own legal advice when entering into an ACHLMA. |

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| *For Aboriginal Victoria use only* | | | |
| *Received:* |  | *Added to VAHR:* |  |
| *Agreement ID:* | | | |

**Aboriginal Cultural Heritage Land Management Agreement**

Division 1A of Part 5 *Aboriginal Heritage Act 2006*

**between**

<insert name of RAP>

**and**

<insert name of public land manager>

**EXECUTIVE SUMMARY**

An Aboriginal cultural heritage land management agreement (ACHLMA) must commence with an executive summary that briefly describes the nature and extent of the proposed land management activity/activities covered by the ACHLMA, the results of the cultural heritage assessment and a brief summary of the cultural heritage management approach. The executive summary must succinctly set out:

* the location of the agreement area;
* the Aboriginal cultural heritage in the agreement area;
* the land management activity/activities covered under the agreement; and
* the cultural heritage management approach.

*(Note: The specific details of the above are to be established in the included schedules).*

**TABLE OF CONTENTS**

|  |  |  |
| --- | --- | --- |
| **Information Table** | | **Pg.** |
| **Items** | |  |
| **1** | **Introduction** |  |
| **2** | **Commencement and Term** |  |
| **3** | **Agreement Area** |  |
| **4** | **Land management activities to which this Agreement applies** |  |
| **5** | **Emergency Situations** |  |
| **6** | **Obligations of RAP** |  |
| **7** | **Obligations of Other Parties** |  |
| **8** | **Parties’ Warranties** |  |
| **9** | **Native Title** |  |
| **10** | ***Traditional Owner Settlement Act 2010*** |  |
| **11** | **Confidentiality** |  |
| **12** | **Communications and Notices** |  |
| **13** | **Failure to implement this agreement** |  |
| **14** | **Resolving Disputes** |  |
| **15** | **Force Majeure** |  |
| **16** | **Review and Amendment** |  |
| **17** | **Assignment** |  |
| **18** | **Severance** |  |
| **19** | **Entire Agreement** |  |
| **20** | **Governing Law** |  |
| **21** | **Counterparts** |  |
| **22** | **Waiver** |  |
| **23** | **Independent Legal Advice** |  |
| **24** | **Relationship** |  |
| **25** | **Further co-operation** |  |
| **26** | **Agreement to benefit and bind successors** |  |
| **27** | **Costs** |  |
| **28** | **Indemnity** |  |
| **29** | **Default** |  |
| **30** | **Goods and Services Tax** |  |
| **31** | **Definitions and Interpretation** |  |
| **Schedule 1: Agreement Area** | |  |
| **Schedule 2: Aboriginal Cultural Heritage Assessment** | |  |
| **Schedule 3: Land Management Activity/Activities**  **Schedule 4: Payments**  **Schedule 5: Cultural heritage management actions**  **Schedule 6: Consultation** | |  |
| **Schedule 7: Other matters** | |  |
| **References** | |  |
| **Appendices** | |  |

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| **Information Table** | |  |
|  |  |  |
| **Date** |  |  |
|  | <date of agreement> |  |
|  |  |  |
| **Parties** |  |  |
|  |  |  |
| **Name:** |  |  |
|  | <name of Registered Aboriginal Party> |  |
| **Short form name:** |  |  |
|  | <short form name of Registered Aboriginal Party> |  |
| ABN / ACN: |  |  |
|  | <ABN / ACN information of Registered Aboriginal Party> |  |
| Notice details: |  |  |
|  |  |  |
|  |  |  |
|  | <address, email, phone numbers, and fax details for notices> |  |
| Attention: |  |  |
|  | <name of relevant office holder and office holder’s position> |  |
|  |  |  |
| ***and*** |  |  |
|  |  |  |
| **Name:** |  |  |
|  | <name of public land manager> |  |
| **Short form name:** |  |  |
|  | <short form name of public land manager> |  |
| ABN / ACN: |  |  |
|  | <ABN / ACN information of public land manager> |  |
| Notice details: |  |  |
|  |  |  |
|  |  |  |
|  | <address, email, phone numbers, and fax details for notice> |  |
| Attention: |  |  |
|  | <name of relevant office holder and office holder’s position> |  |

|  |  |
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| **Items** |  |
| **Item 1** | **Agreement area (Schedule 1)**  The <whole/part> of the area described below, and further depicted in Schedule 1:  <insert a summary description of the agreement area and the boundaries of that area, including the location of the agreement area in a regional context. |
| **Item 2** | **Commencement Date (clause 2.1)**  <from the day it is executed by all parties / on the happening of a specified event / at a specified time> <delete whichever is not applicable and specify details of the applicable event> |
| **Item 3** | **Termination Date (clause 2.2)**  <on the happening of a specified event / at a specified time / by agreement between the parties> <delete whichever is not applicable and specify details of the applicable event> |
| **Item 4** | **Review (clause 16.1)**  <insert review timeline e.g. “on or before the 2nd anniversary of this agreement”> |
| **Item 5** | **Aboriginal cultural heritage assessment (Schedule 2)**  <insert brief description of the method by which the Aboriginal cultural heritage present in the agreement area was assessed> |
| **Item 6** | **Land Management Activities (Schedule 3)**  <insert brief description of the activities covered by this agreement> |
| **Item 7** | **Aboriginal cultural heritage management conditions (Schedule 5)**  <insert brief description of the approach and conditions for Aboriginal cultural heritage management in the agreement area. The Aboriginal cultural heritage management ‘approach’ could be based on the nature of the land management activity and/or the nature of the Aboriginal cultural heritage> |

**AGREED TERMS**

1. **Introduction**
   1. <insert name of RAP> is the registered Aboriginal party (‘RAP’\*), pursuant to a determination made by the Aboriginal Heritage Council (‘Council’\*) on <insert date> under section 151(1) of the *Aboriginal Heritage Act 2006* (Vic) (‘AHA’\*).
   2. The area of responsibility for the RAP named in clause 1.1 includes the area of land where the Aboriginal cultural heritage that is the subject of this agreement is located and which is described in Item 1 (‘agreement area’\*).
   3. The <insert name of public land manager> (‘the public land manager’) is a party to this agreement pursuant to section 74A(1) of the AHA and is responsible for the management of the land described in Item 1, and/or responsible for carrying out of works and activities on the land described in Schedule 1 including any land management activities described in Schedule 3 and cultural heritage management actions described in Schedule 5.
   4. <insert clause describing scope/content/purpose of agreement and linking this description with the relevant applicable Schedule number/s.> <Eg: The parties have agreed that the land management activities described in Schedule 3 can be undertaken in accordance with the conditions outlined in Schedule 5. This agreement records the parties’ agreement as to how this will occur.>
   5. This agreement is an Aboriginal cultural heritage land management agreement made pursuant to Part 5 of the AHA and is intended to achieve or advance the objectives set out in section 3 of the AHA.
2. **Commencement and Term**
   1. Subject to Clause 22, this agreement takes effect on the Commencement Date described in Item 2.
   2. This agreement is terminated in whole/in part/or as to any part of the land: <delete those not applicable>
      1. on the Termination Date described in Item 3;< or
      2. if the registration of the RAP which is a party to this agreement is revoked by the Council under Part 10 of the AHA, on the date the registration is revoked.
   3. Pursuant to section 74E of the AHA, the public land manager must:
      1. lodge a copy of this agreement, together with a copy of the relevant documentation, with the Secretary for registration on the Victorian Aboriginal Heritage Register within 14 days of its commencement under clause 2.2; and
      2. notify the Secretary in writing that this agreement has ended within 14 days of its termination under clause 2.3.
   4. Any outstanding liability and obligations which accrue up to the date of termination of the agreement will survive any termination of this agreement
3. **Agreement Area**
   1. The agreement applies to the area/areas specified in Schedule 1.
4. **Land management activities to which this Agreement applies**
   1. This agreement only applies to the activities listed under Item/s < numbers > of Schedule 3.
5. **Emergency situations**
   1. Pursuant to section 29(c) of the AHA this agreement is not to be taken to prevent or impose any conditions on the carrying out of any activity by the public land manager or by any agency, body, Department or other person comprising the emergency management sector as defined by the *Emergency Management Act 2013*  in an emergency for the purpose of protecting life, property or the environment.
   2. The public land manager will make reasonable efforts to inform the <insert name of RAP> in relation to any activities to which clause 5.1 applies as soon as practicable.
6. **Obligations of RAP**
   1. The RAP covenants and agrees that it will:
      1. diligently and expeditiously perform all its tasks and obligations under this agreement in accordance with its terms, and including <insert reference to relevant Schedule/s where the RAP’s specific obligations are recorded>;
      2. co-operate with the other Party to this agreement and assist them to comply with the AHA and other applicable laws\* insofar as they may be applicable to the agreement area, including without limitation, notifying parties of:
         1. its intention (if any) to apply for an interim or ongoing protection declaration under part 7 of the AHA in relation to any Aboriginal place or object in the agreement area;
         2. any variation to the boundaries of the area for which the RAP is registered under section155 of the AHA, where those boundaries affect the agreement area;
         3. any suspension or revocation of the RAP’s registration by the Council under Part 10 of the AHA; and
      3. not take any action which challenges or disputes, or has the effect of challenging or disputing the validity of this agreement, or that this agreement constitutes an Aboriginal cultural heritage land management agreement under Division 1A of Part 5 of the AHA.
7. **Obligations of Other Party**
   1. The <insert party name> covenants and agrees that it will:
      1. diligently and expeditiously perform all its tasks and obligations under this agreement in accordance with its terms, and including <insert reference to relevant Schedule/s where the party’s specific obligations are recorded>;
      2. co-operate with the other party to this agreement and assist them to comply with the AHA and other applicable laws\* insofar as they may be applicable to the agreement area;
      3. <insert other relevant obligations>; and
      4. not take any action which challenges or disputes, or has the effect of challenging or disputing the validity of this agreement, or that this agreement constitutes an Aboriginal cultural heritage land management agreement under Division 1A of Part 5 of the AHA.
8. **Parties’ Warranties**
   1. The RAP represents and warrants that it is authorised to execute this agreement for and on behalf of its members in accordance with its constitution or rules of association (as the case may be).
   2. The public land manager represents and warrants that it is authorised and has capacity to execute this agreement and to bind itself/themselves and will comply with all liabilities and obligations imposed upon them by this agreement.
9. **Native Title**
   1. Nothing in this agreement is intended to affect or be inconsistent with any native title rights and interests\* which may exist or be recognised in the agreement areas, or with the *Native Title Act 1993* (Cth) (‘NTA’\*).
      1. In this section, ‘affect’ has the same meaning as in the NTA.
   2. The execution of this agreement does not constitute an acknowledgement by any party that native title rights and interests exist in the agreement area.
   3. The RAP acknowledges that another party to this agreement may be required to negotiate with one or more Aboriginal groups (for example, a native title claim group\*) in respect of the agreement area. If this occurs, the relevant party will provide the RAP with a written notice advising them of this fact as soon as practicable after it has commenced negotiations with the Aboriginal group/s.
10. ***Traditional Owner Settlement Act 2010***
    1. The parties do not intend this agreement to result in any inconsistencies with the *Traditional Owner Settlement Act 2010* (‘TOSA’) and procedures or instruments pursuant to that Act.
    2. If any matter arises in connection with this agreement that is covered by the TOSA or a procedure or an instrument made pursuant to that statute, then the parties:
       1. acknowledge that the relevant procedures under the TOSA regarding that matter will apply; and
       2. agree not to duplicate or seek to duplicate any of the procedures referred to in clause 10.2.1.
    3. For the avoidance of doubt, to the extent that the TOSA deals with matters relating to Recognition and Settlement Agreements – including Land Use Activity Agreements – any protection given under that Act against prosecution will only apply where parties have complied with the requirements of the TOSA.
11. **Confidentiality**
    1. The following information is confidential information:
       1. information provided by a party to another party, which the first mentioned party requests to be treated as confidential;
       2. information that has been given to another party concerning any Aboriginal cultural heritage that is information that is sensitive in accordance with section 146A of the AHA.
    2. The parties agree not to disclose any of the confidential information referred to in clause 11.1 except:
       1. to the officers, employees, members, directors, servants, agents, contractors and sub-contractors of the parties whose duties require such disclosure;
       2. to the parties’ accountants, legal advisors, auditors or other professional advisers;
       3. where disclosure is necessary in performing obligations or enforcing rights under this agreement;
       4. to the extent that such information is already part of the public domain otherwise than by breach of this clause;
       5. with the prior written approval of the other parties; or
       6. where Aboriginal heritage information is sensitive, in accordance with section 146A(2) of the AHA.
    3. Each party shall take all steps reasonably necessary to ensure that the confidential information referred to in clause 11.1 is known only to such persons as may reasonably require knowledge thereof in the course of their duties or functions and, notwithstanding the provisions of clause 11.2, each party shall, to the extent permitted by law, require any person to whom it intends to disclose such information (who is not under a statutory, professional or contractual duty to keep such information or data confidential) to give an undertaking to keep such information confidential.
    4. If the rest of the agreement is terminated:
       1. the RAP shall (subject to clause 11.2) continue to treat as confidential all categories of information obtained by them under this agreement that are requested to be kept confidential by another party; and
       2. the other party shall continue to treat as confidential information obtained under this agreement with respect to the locations of, and traditions associated with, Aboriginal cultural heritage that have been specified as confidential under clause 11.1.2. If requested by the RAP, the other party shall deliver all such information to the RAP (to the extent it is capable of delivery) as soon as it is no longer required for the purpose of this agreement.
12. **Communications and Notices**
    1. Subject to this agreement, any notice, request, consent, proposal, or other communication (‘notice, etc’) must be in writing and signed by the party giving it. A notice, etc is only given or made if it is:
       1. delivered or posted to that party at the address in the Information Table (or such other address as notified and set out in the Information Table from time to time); or
       2. faxed to that party at the fax number in the Information Table (or such other address as notified and set out in the Information Table from time to time).
    2. Parties must notify each other within 7 days of any change of address or fax details.
    3. A notice, etc. is to be treated as given or made at the following time:

● *If it is delivered*, when it is left at the relevant address;

● *If it is sent by post*, 2 business days after it is posted;

● *If it is sent by fax*, as soon as the sender receives from the sender’s fax machine a report of an error free transmission to the correct fax number.

● *If it is sent by email*, as soon as the sender receives a read receipt or within x number of days from the date the email is sent <delete as applicable > as agreed to by the parties.

If a notice, etc is delivered, or an error-free transmission report in relation to it is received by a party after business hours\*, it will be treated as having been given or made at the beginning of normal business hours on the next business day.

1. **Failure to implement this agreement**
   1. If either party to this agreement:
      1. does not participate in the implementation of an aspect of this agreement in accordance with its requirements; and
      2. the failure to participate is not due to the fault of another party or due to a Force Majeure Event\* to which clause 12 applies;

then the other party may continue to implement the relevant aspects of this agreement without further reference to that party, provided it does so in accordance with the AHA and other applicable laws.

1. **Resolving Disputes**
   1. Where any party considers that a dispute has arisen regarding the interpretation or implementation of this agreement, that dispute must be referred to VCAT\* for resolution to the extent (if any) required by the AHA. Where the dispute is not referrable to VCAT under the AHA, the party claiming the dispute must give a notice to the other party setting out the full details of the dispute (‘first dispute notice’). The parties will then follow the processes set out in this clause 14 below.

***Discussions***

* 1. The parties to the dispute agree to first meet and hold good faith discussion as soon as practicable after receiving the first dispute notice. The parties must attempt to resolve the dispute within 28 days of the first dispute notice being served.

***Mediation***

* 1. If the dispute is not resolved under clause 14.2 within 28 days of the date of the first dispute notice being served, any party to the dispute must give the other party or parties a second dispute notice requiring that an attempt be made to resolve the dispute with the assistance of a mediator to be appointed by the agreement of the parties. If the parties do not agree on a mediator within 7 days after the second dispute notice is given, a request shall be made by any party to the Chairman of the Victorian Chapter of the Institute of Arbitrators and Mediators Australia to appoint a mediator suitable expert in the matter subject to dispute. The mediation will be conducted in accordance with clauses 14.4 and 14.5.
  2. The mediator will decide how to enquire into the matter and, acting as an independent expert and not an arbitrator, the mediator will (for the purposes of assisting the parties to resolve the dispute) give the parties to the dispute a written report within 14 days of being appointed or within such further time as those parties may agree.
  3. The parties to the dispute must co-operate fully with any reasonable requests of the mediator and must pay an equal share of the mediator’s fees and expenses, unless the mediator otherwise directs.

***Arbitration***

* 1. If the dispute is not resolved within 14 days of a report being given to the parties under clause 14.4, any party to the dispute must give the other party or parties to the dispute a third dispute notice requiring that the dispute be resolved by an arbitrator suitably expert in the matters subject to dispute to be appointed by the Chairman of the Victorian Chapter of the Institute of Arbitrators and Mediators Australia.
  2. The arbitration is to be conducted in accordance with the Institute’s Rule for the Conduct of Commercial Arbitrations. Those rules and the arbitrator’s decision are binding on the parties to the dispute, who agree to accept and comply in good faith with the arbitrator’s decision.
  3. Each of the parties to the dispute must co-operate fully with any reasonable requests of the arbitrator and must pay an equal share of the arbitrator’s fees and expenses, unless the arbitrator directs otherwise.

***Rights to other relief***

* 1. Except in circumstances where a binding arbitrated decision has been given under clause 14.7, the parties agree that any dispute resolution process undertaken by them in accordance with this clause 14 shall be without prejudice to the parties’ rights to apply for any other order, relief or remedy (including injunctive or declaratory relief) against each other and any other person that may be available to them at law or in equity.

1. **Force Majeure**
   1. If a party is unable, as a result of a Force Majeure Event, to wholly or in part perform any obligation under this agreement, that party must give notice to the other party of that Force Majeure Event outlining reasonably full particulars of the Force Majeure Event in which case the obligation is suspended for the duration of the Force Majeure Event.
   2. A party claiming to be affected by a Force Majeure Event must use reasonable diligence and employ all reasonable means to remedy or abate the Force Majeure Event as expeditiously as possible.
2. **Review and Amendment**
   1. Commencing on or before the on the happening of a specified event / at a specified time / by agreement between the parties <delete whichever is not applicable and specify details of the applicable event e.g. the 2nd anniversary of the making of this agreement>, the parties shall meet to determine the need for a review of the agreement (and such meeting shall not be subject to clause 15). The purpose of any agreed review will be to ascertain whether or not the agreement needs to be amended.
   2. Apart from clause 16.1, the agreement can only be amended by written agreement of the Parties.
   3. The parties acknowledge that an amendment to the agreement must comply with sections 74D and 74E of the AHA.
3. **Assignment**
   1. Subject to any applicable laws, any party may, in agreement with the other party, assign, transfer or novate the whole or any part of its rights and obligations under this agreement, provided that the assignee first executes a deed under which it is bound by this agreement and its covenants. Where such a deed is executed, the relevant party will provide a copy of that deed to the other party.
4. **Severance**
   1. If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
   2. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from the agreement, but the rest of the agreement is not affected.
5. **Entire Agreement**

This agreement supersedes any prior representation, understanding or arrangements made by the parties in relation to its subject matter, whether orally or in writing.

1. **Governing Law**

This agreement is governed by and is to be conducted in accordance with the laws of the State of Victoria and the Commonwealth of Australia. The parties submit to the non-exclusive jurisdiction of the courts of Victoria and any other courts competent to hear appeal from those courts. Any proceedings commenced relating to this agreement will be issued in the State of Victoria.

1. **Counterparts**

This agreement is properly executed if each party executes either this agreement, or identical counterpart agreements. In the latter case, this agreement takes effect when the separately executed agreements are exchanged between the parties. All counterparts taken together will constitute one instrument.

1. **Waiver**

The failure of a party at any time to require performance of any obligation under this agreement is not a waiver of that party’s right:

* 1. to insist on performance of, or to claim damages for breach of, that obligation unless that party acknowledges in writing that the failure is a waiver; and
  2. at any other time to require performance of that or any other obligation under this agreement.

1. **Independent Legal Advice**

The parties acknowledge that they have had opportunity to seek the benefit of independent legal advice with respect to all aspects of this agreement.

1. **Relationship**

This agreement does not create a relationship of employment, agency or partnership between the parties.

1. **Further Co-operation**

The parties must do anything (including executing any agreement) which another party reasonably requires of them in order to give full effect to this agreement and the transactions it contemplates.

1. **Agreement to benefit and bind successors**

This agreement continues for the benefit of, and binds, a successor in title of a party, including a person to whom a party’s rights and obligations are assigned, transferred or novated in accordance with this agreement.

1. **Costs**

Except for clauses 14.5 and 14.8, unless otherwise agreed by the parties, each party will pay their own legal costs and other expenses for an incidental to the preparation, negotiation, and completion of this agreement.

1. **Indemnity**
   1. The <insert party>, in consideration of this agreement, hereby indemnifies the <RAP and/or the public land manager> for any liability the <RAP and/or the public land manager> may incur to any person, any native title claim group, or any native title holders, and for any damage, costs, expenses, loss or damage the <RAP and/or the public land manager> may incur, and in relation to all the actions, proceedings, claims or demands whatsoever whichever may be brought or made against the <RAP and/or the public land manager> arising out of or connected with this agreement, including:
      1. by virtue of or as a consequence of the breach, default or failure by the <insert party> to perform or observe any covenant, term, or condition on the part of the <insert party> contained or implied in this agreement;
      2. the late performance or observance of any covenant, term or condition b the <insert party>; and
      3. the effect of this agreement on any native title rights and interests.
2. **Default**

None of the parties may terminate this agreement for substantial breach by the other party without first giving written notice of that breach to the other party or parties and allowing the other party or parties a reasonable period to remedy such a breach or offer reasonable compensation in lieu.

1. **Goods and Services Tax**

*GST to be added to amounts payable*

* 1. If GST is payable on a Taxable Supply made under, be reference to or in connection with this agreement, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly stated to be GST inclusive.

*Liability net of GST*

* 1. Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense of other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.

*Timing of the payment of the GST Amount*

* 1. The GST Amount is payable on the date 10 Business Days after the date on which a Tax Invoice is issued in relation to the Taxable Supply.

*Cost exclusive of GST*

* 1. Any reference in this agreement (other than in calculation of Consideration) to cost, expense or other similar amount (Cost), is a reference to that Cost exclusive of GST.

*GST obligations to survive termination*

* 1. This clause will continue to apply after the expiry or termination of this agreement.

*Registration for GST*

* 1. The RAP acknowledges that it <is/is not> registered for GST when it enters into this agreement, and that it will notify the <insert party> if it <ceases to be registered/becomes registered> in the future.
  2. The <insert party> agrees that if it is registered for GST when it enters into this agreement, it will notify the RAP if it ceases to be so registered.

*Meaning of terms*

* 1. In this clause:

**“Consideration”** has the meaning given by the GST Law.

**“GST”** has the meaning given by the GST Law.

**“GST Amount”** means in relation to a Taxable Supply the amount of GST payable in respect of that Taxable Supply.

**“GST Group”** has the meaning given by the GST Law.

**“GST Law”** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or, if that Act does not exist means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

**“Input Tax Credit”** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

**“Tax Invoice”** means a document that constitutes a tax invoice under the GST Law.

**“Taxable Supply”** has the meaning given by the GST Law excluding the reference to section 845 of the *A new Tax System (Goods and Services Tax) Act 1999* (Cth).

1. **Definitions and Interpretation**
   1. In this agreement the following definitions together with those in the Information Table apply unless the context or an express provision in this agreement requires otherwise:

“**Aboriginal cultural heritage**” means Aboriginal places\*, Aboriginal objects\* and Aboriginal human remains\*.

“**Aboriginal Ancestral Remains**” has the same meaning given to that term in section 4 of the AHA.

“**Aboriginal object**” has the same meaning given to that term in section 4 of the AHA.

“**Aboriginal place**” has the same meaning given to that term in section 5 of the AHA.

“**Aboriginal tradition**” has the same meaning given to that term in section 4 of the AHA.

“**agreement**” means this Aboriginal cultural heritage land management agreement including its Schedules and the Information Table, and any amending agreement made pursuant to clause 13.

“**agreement area**” means the area described in Item 1, and where applicable, depicted on the map in **Schedule 1**.

**“AHA”** means the *Aboriginal Heritage Act* *2006* (Vic).

“**applicable laws**”means every law and regulation (whether of the Commonwealth or of the State\*) from time to time in operation in the State which is applicable to Aboriginal cultural heritage, and without limiting the generality of the foregoing, includes any laws relating to the environment\*.

“**business hours**”means the hours between 9.00 a.m. and 5.00 p.m. Victorian time, excluding weekends and Victorian public holidays.

**“Council”** means the Aboriginal Heritage Council established under Part 9 of the AHA.

**“dispute”** means a dispute relating to the interpretation and operation of this agreement.

“**Force Majeure Event**” means an event or circumstance which is beyond the reasonable control of the party affected by the event or circumstance including war, insurrection, civil disturbance, blockade, riot, embargo, earthquake, storm, flood, drought, explosion, fire or lightning, ceremony or other cultural activity according to Aboriginal tradition\*, and government action or inaction (including change of law).

### **“land management activity”** means an activity described in Item 6, and where applicable, specified in Schedule 3.

### **“Aboriginal cultural heritage management action”** means an action described in Item 7, and where applicable, specified in Schedule 5.

### **“law”** means:

### a) common law; and

### b) Commonwealth, Victorian or local Government legislation, regulations, by-laws and other subordinate regulations.

“**native title claim group”** has the same meaning given to that term in section 253 of the NTA.

“**native title rights and interests**” has the same meaning given to that term in section 223 of the NTA.

“**NTA**” means the *Native Title Act* *1993* (Cth).

“**party**” or “**parties**” means a party or parties to this agreement. “**Party**” or “**parties**” also includes that party’s or parties’ successors, permitted assignees, executors, administrators and substitutes.

**“Public land manager”** has the same meaning given to that term in section 4 of the AHA.

“**RAP**”means the Registered Aboriginal Party pursuant to the AHA which is a party to this agreement. If more than one RAP is a party to this agreement, a reference in this agreement to ‘the RAP’ includes all of the RAPs which are a party to this agreement, unless specified otherwise.

“**State**” means the State of Victoria and all its instrumentalities.

**“TOSA”** means the *Traditional Owner Settlement Act 2010* (Vic).

**“Victorian Aboriginal Heritage Register”** has the same meaning as in section 144 of the AHA.

“**VCAT**” means the Victorian Civil and Administrative Tribunal.

* 1. In the agreement, unless the contrary intention appears:

### the definitions contained in clause 32.1 apply to the Information Table, the agreement and its Schedules;

### an asterisk following a word in this agreement signifies that it is a defined term listed in the ‘Definitions and Interpretation’ clause;

### if a party consists of more than one person this agreement binds them jointly and each of them severally.

### a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;

### the meaning of general words is not to be limited by the meaning of accompanying specific words;

### the singular includes the plural and vice versa;

### a reference to an individual or person includes a company, corporation, partnership, firm, joint venture, association (whether incorporated or not), body, authority, trust, state, or government and vice versa;

### a reference to a clause or Schedule is to a clause or Schedule of or to this agreement;

### the Introduction forms part of this agreement;

### the Schedules and the Information Table form part of this agreement;

### a reference to any agreement, document or deed is to that agreement, document or deed (and where applicable, any provisions) as amended, novated, supplemented or replaced from time to time;

### where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;

### headings are for convenience or reference only and do not affect the interpretation of this agreement;

### a reference to the Secretary, department, authority, body or person includes the Secretary, department, authority, body or person for the time being performing the functions of such Secretary, department, authority, body or person; and

### monetary references are to Australian currency.

* 1. The agreement shall be governed by and construed in accordance with applicable laws and the terms and conditions of the agreement shall apply to the full extent that they are capable of operating concurrently with applicable laws.

**Executed by the Parties as an Agreement this < # > day of < month > 20<#>**

*<Note: insert parties’ execution clauses>*

An Agreement must be signed by whoever has the appropriate authority for both parties.

(Note: signature indicates endorsement of the agreement).

**SCHEDULE 1: AGREEMENT AREA**

A description of the agreement area and the boundaries of that area, including a map, location of the agreement area in a regional context, and a list of prominent structures, natural features and infrastructure within the agreement area.

**SCHEDULE 2 – ABORIGINAL CULTURAL HERITAGE ASSESSMENT**

|  |
| --- |
| **Assessment** |
| **An assessment must consist of a desktop assessment.**   1. An assessment may also consist of—   (a) a standard assessment; or  (b) a complex assessment; or  (c) a standard assessment and a complex assessment.   1. For the purposes of s 74B of the AHA, a desktop assessment of an agreement area must include research into information relating to Aboriginal cultural heritage in or associated with the agreement area, including the following—   (a) a search of the Register for information relating to the agreement area;  (b) an identification and determination of the geographic region of which the agreement area forms a part that is relevant to the Aboriginal cultural heritage that may be present in the agreement area;  (c) a review of reports and published works about Aboriginal cultural heritage in the geographic region referred to in paragraph (b);  (d) a review of historical and ethno-historical accounts of Aboriginal occupation of the geographic region referred to in paragraph (b);  (e) a review of the landforms or geomorphology of the agreement area;  (f) a review of the history of the use of the agreement area.   1. A standard assessment of an agreement area under this regulation is the same as a standard assessment of an activity area under Reg. 59. 2. A complex assessment of an agreement area under this regulation is the same as a complex assessment under Reg. 61.   **Details of assessment:**   1. The method by which the Aboriginal cultural heritage present in the agreement area was assessed. 2. The names of the persons involved in the assessment. 3. A summary of any information provided by a representative of a relevant registered Aboriginal party or other person about the Aboriginal cultural heritage in the agreement area. 4. An accurate transcript of any oral information provided by a representative of a relevant registered Aboriginal party, or other person, about the Aboriginal cultural heritage in the agreement area, if the person who provided the information consents. 5. Details of any obstacles encountered in completing the assessment.   **Details of subsurface testing and excavation**  If the cultural heritage assessment included subsurface testing or excavation—   1. the method used for subsurface testing or excavation; 2. the location of subsurface testing or excavation pits or transects, including transect start and end points; 3. the names of persons taking part in the subsurface testing or excavation; 4. the name of the person responsible for supervising the subsurface testing or excavation; 5. any physical or other obstacles to the carrying out of the subsurface testing or excavation; 6. the results of the subsurface testing or excavation including the results of radiometric dating. |
| **Aboriginal cultural heritage** |
| 1. A detailed description of any Aboriginal cultural heritage found in the agreement area, including the registration number of that Aboriginal cultural heritage on the Register. 2. A statement of the cultural heritage significance of that Aboriginal cultural heritage. 3. A concise map or maps of the agreement area which show the location of that Aboriginal cultural heritage. |

**SCHEDULE 3 – LAND MANAGEMENT ACTIVITY/ACTIVITIES**

A list of land management activities which are permissible under the agreement, including for each activity:

1. a description of the activity;
2. a description of permissible ancillary works associated with the activity; and
3. a description of the likely impact on the land of the activity and any associated ancillary works.

**SCHEDULE 4 – PAYMENTS**

Details of any payments required to be made by the public land manager to a Registered Aboriginal Party. Schedules of periodic payments should be included in this Schedule.

**SCHEDULE 5 – CULTURAL HERITAGE MANAGEMENT ACTIONS**

Enter details of any cultural heritage management actions required to be undertaken by the public land manager or any other person.

Detail the approach and conditions for Aboriginal cultural heritage management in the agreement area. **SCHEDULE 6 – CONSULTATION**

Details of any consultation that must be undertaken by the public land manager or some other person with the Registered Aboriginal Party.

**SCHEDULE 7 – OTHER MATTERS**

Details of any other matters agreed between the parties to this agreement.

**References**

The References section of the ACHLMA must list all reports, articles, primary sources, maps or books referred to in the agreement and be presented in accordance with standard referencing conventions, such as those set out in the *Australian Style Manual*[[1]](#footnote-1).

**Appendices**

The following documents must be appended to the ACHLMA:

* the Notice of Intent to Prepare an Aboriginal cultural heritage land management agreement (including the map) provided by the RAP to the Secretary, DPC under section 74D of the Act;
* A glossary listing simple explanations for any technical terms specifically used in the agreement;
* A Gazetteer of all Aboriginal cultural heritage found, discovered or subject to investigation in the activity area indexed by Victorian Aboriginal Heritage Register numbers; and
* Any catalogues of data recorded about Aboriginal cultural heritage, such as site cards

1. 2002 *Australian Style Manual, for Authors, Editors and Printers*, Department of Information, Communication Technology and the Arts, Wiley Australia. [↑](#footnote-ref-1)