

Approved form for under section 70(1) of the *Aboriginal Heritage Act 2006*

Aboriginal Heritage Agreement for the purposes of the *Aboriginal Heritage Act 2006*

Foreword

- This approved form is to be used by parties negotiating a cultural heritage agreement under Part 5 of the *Aboriginal Heritage Act 2006* (“the Act”).
- Pursuant to s. 69(2) of the Act, at least one of the parties to a cultural heritage agreement must be a registered Aboriginal party under Part 10 of the Act. Any other person may also be a party, including the Secretary to the Department of Planning and Community Development, a Crown land manager, or a private land owner.
- Given the broad possible content of, and range of parties to, a cultural heritage agreement, parties will need to adapt this approved form for their purposes. Except where otherwise indicated, clauses contained within the agreement are generally applicable to any type of cultural heritage agreement.
- Clauses highlighted in blue are optional, depending on who the parties to the agreement are and what the content of the agreement is. Locations where information is required to be inserted into the text are highlighted in orange.
- 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. When completing the Schedules, parties may need to delete one or more of Schedules 1, 2 and 3 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 Planning and Community Development recommends that parties seek their own legal advice when making a cultural heritage agreement.

Cultural Heritage Agreement
Part 5 Aboriginal Heritage Act 2006

between

<insert name/s of RAP/s>

and

<insert names of other party/parties>

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Items**Item 1****Agreement area**

The <whole/part> of the area described below, and further depicted (where applicable) in **Schedule 2**:

<if the agreement area is private land:>

Certificate of Title Volume <insert #> Folio <insert #> being <insert Lot and Plan/CA/CP #.>, Parish of <insert> County of <insert> and known as <insert address of land>.

<if the agreement area is Crown land, insert Crown land description>

Item 2**Commencement Date (clause 2.1)**

<insert commencement date >

Item 3**Termination Date (clause 2.2)**

<insert termination date >

Item 4**Review (clause 13.1)**

On or before the 2nd anniversary of the commencement of this agreement.

Item 5**Aboriginal place/Aboriginal object (Schedule <?>)**

<insert brief description of Aboriginal object or place with reference to relevant Schedule containing obligations regarding the object or place>

1. Introduction

- 1.1 <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'*).
- 1.2 <insert name of other RAP/s where more than one is registered over same area> is also a RAP, pursuant to a determination made by the Council on <insert date>.
- 1.3 The area of responsibility for the RAP named in clause 1.1 includes or <The areas of responsibility for the RAPs named in clauses 1.1 and 1.2 include> the area of land <where an Aboriginal place the subject of this agreement is located> or <in which an Aboriginal object the subject of this agreement is reasonably believed to have originated> and which is described in Item 1 ('agreement area'*).
- 1.4 <insert name of private land owner> ('the land owner'*) is the registered proprietor or entitled to be registered as the proprietor of an estate in fee simple of land described Item 1. The land owner is a party to this agreement pursuant to section 69(1)(c) of the AHA.
- 1.5 <insert name of private owner of Aboriginal object/s> is the legal owner of the Aboriginal object/s described in Item 5, and is a party to this agreement pursuant to section 69(1) of the AHA.
- 1.6 <The <insert name of Crown land manager> ('the land manager') is responsible for the management of the Crown land* described in Item 1, pursuant to <insert relevant legislation>, and is a party to this agreement pursuant to section 69(1)(b) of the AHA.>
- 1.7 <The Secretary of the Department of Planning and Community Development ('Secretary') is a party to this agreement pursuant to section 69(1)(a) of the AHA.>
- 1.8 <insert clause describing scope/content/purpose of agreement and linking this description with the relevant applicable Schedule number.> <Eg: The parties have agreed that the Aboriginal place/object described in Item 5 and Schedule <?> should be preserved and maintained for current and future generations. This agreement records the parties' agreement as to how this will occur.....>
- 1.9 This agreement is a cultural heritage 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

2.1 Subject to clause 19, this agreement takes effect: ~~<delete those not applicable – only one clause should be used>~~

2.1.1 from the day it is executed by all parties; or

2.1.2 when the following event occurs: <insert specified event and describe when it will occur> or on <insert specified date> , whichever occurs earlier; or

2.1.3 on <insert specific date>.

2.2 This agreement is terminated ~~<in whole/in part/or as to any part of the land>~~: ~~<delete those not applicable>~~

2.2.1 by the agreement in writing of the parties; or

2.2.2 when the following event occurs: ~~<insert specified event and describe when it will occur>~~; or

2.2.3 if the registration of all the RAPs which are a party to this agreement is revoked by the Council under Part 10 AHA. (To avoid doubt, if there is more than one RAP which is a party to this agreement, then only the RAP whose registration is revoked will cease to be party to this agreement. The agreement will otherwise continue.)

2.2.4 on ~~<insert specific date>~~.

2.3 Except where the Secretary is a party to this agreement, the RAP must:

2.3.1 lodge a copy of this agreement with the Secretary within 7 days of its commencement under clause 2.1; and

2.3.2 notify the Secretary in writing that this agreement has ended within 7 days of its termination under clause 2.2.

2.4 Any outstanding liability and obligations which accrue up to the date of termination of the agreement will survive any termination of this agreement.

3. Consent of Registered Aboriginal Party

3.1 In accordance with section 72 of the AHA, each RAP which is a party to this agreement consents to the making of this agreement.

4. Obligations of RAP

4.1 The RAP covenants and agrees that it will:

4.1.1 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>;

4.1.2 co-operate with the other parties 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:

4.1.2.1 its intention (if any) to apply for an interim or ongoing protection declaration under Part 7 of the AHA in relation to the agreement area;

4.1.2.2 any variation to the boundaries of the area for which the RAP is registered under s.155 of the AHA, where those boundaries affect the agreement area;

4.1.2.3 any suspension or revocation of the RAP's registration by the Council under Part 10 of the AHA; and

4.1.3 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 a cultural heritage agreement under Part 5 of the AHA.

5. Obligations of Other Parties

5.1 The <insert party/parties names> covenants and agrees that it/they will:

5.1.1 diligently and expeditiously perform all its/their 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>;

5.1.2 co-operate with the other parties 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;

5.1.3 <insert other relevant obligations>; and

5.1.4 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 a cultural heritage agreement under Part 5 of the AHA.

6. Parties' Warranties

- 6.1 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).
- 6.2 <The <insert non-government party/parties> represents and warrants that it/they is/are authorised and has/have capacity to execute this agreement and to bind itself/themselves and will comply with all liabilities and obligations imposed upon it/them by this agreement.> <delete if not applicable>
- 6.3 <The Secretary and the land manager represents and warrants that they are authorised and have capacity to execute this agreement and to bind themselves and will comply with all liabilities and obligations imposed upon them by this agreement.> <delete if not applicable>
- 6.4 <The land owner further warrants that apart from himself/herself and any other person (eg mortgagee) who has consented in writing to this agreement, no other person has any interest, either legal or equitable, in the agreement area.> <delete if not applicable>

7. Native Title

- 7.1 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 area, or with the *Native Title Act 1993* (Cth) ('NTA')
- 7.1.1 In this section, 'affect' has the same meaning as in the NTA.
- 7.2 The execution of this agreement does not constitute an acknowledgment by any party that native title rights and interests exist in the agreement area.
- 7.3 The RAP acknowledges that another party to this agreement may be or may seek to become a respondent to any native title determination application which is made under section 61 of the NTA over the agreement area.
- 7.4 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.

8. Confidentiality

- 8.1 The following information is confidential information:
- 8.1.1 information provided by a party to another party, which the first mentioned party requests be treated as confidential; and
 - 8.1.2 information that has been given to another party concerning any Aboriginal cultural heritage that is expressly specified by the RAP <or a Liaison Officer – see Schedule 1> as confidential information.
- 8.2 The parties agree not to disclose any of the confidential information referred to in clause 8.1 except:
- 8.2.1 to the officers, employees, members, directors, servants, agents, contractors and sub-contractors of the parties whose duties require such disclosure;
 - 8.2.2 to the parties' accountants, legal advisers, auditors or other professional advisers;
 - 8.2.3 to the extent necessary to comply with any applicable laws and the Rules of the Australian Stock Exchange;
 - 8.2.4 where disclosure is necessary in performing obligations or enforcing rights under this agreement;
 - 8.2.5 to the extent that such information is already part of the public domain otherwise than by breach of this clause;
 - 8.2.6 with the prior written approval of the other parties.
- 8.3 Each party shall take all steps reasonably necessary to ensure that the confidential information referred to in clause 8.1 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 8.2, 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.
- 8.4 If the rest of the agreement is terminated:
- 8.4.1 the RAP shall (subject to clause 8.2) 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

8.4.2 the other party/parties shall continue to treat as confidential information obtained by it/them under this agreement with respect to the locations of, and traditions associated with Aboriginal cultural heritage that have been specified as confidential under clause 8.1.2. If requested by the RAP, the other party/parties 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 purposes of this agreement.

9. Communications and Notices

9.1 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:

9.1.1 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

9.1.2 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).

9.2 Parties must notify each other within 7 days of any change of address or fax details.

9.3 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 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.

10. Failure to implement this agreement

10.1 If the RAP:

10.1.1 does not participate in the implementation of an aspect of this agreement in accordance with its requirements; and

10.1.2 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 RAP, provided it does so in accordance with the AHA and other applicable laws.

- 10.2 To avoid doubt, if there is more than one RAP which is a party to this agreement, clause 10.1 only applies to the RAP which has failed to implement an aspect of this agreement.

11. Resolving Disputes

- 11.1 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 referable 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 11 below.

Discussions

- 11.2 The parties to the dispute agree to first meet and hold good faith discussions 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

- 11.3 If the dispute is not resolved under clause 11.2 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 suitably expert in the matters subject to dispute. The mediation will be conducted in accordance with clauses 11.4 and 11.5.
- 11.4 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.
- 11.5 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

- 11.6 If the dispute is not resolved within 14 days of a report being given to the parties under clause 11.4, 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.
- 11.7 The arbitration is to be conducted in accordance with the Institute's Rules 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 to comply in good faith with the arbitrator's decision.
- 11.8 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

- 11.9 Except in circumstances where a binding arbitrated decision has been given under clause 11.7, the parties agree that any dispute resolution process undertaken by them in accordance with this clause 11 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.

12. Force Majeure

- 12.1 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.
- 12.2 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.

13. Review and Variation

- 13.1 Commencing on or before 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 11). The purpose of any agreed review will be to ascertain whether or not the agreement needs to be varied.
- 13.2 Apart from clause 13.1, the agreement can only be varied by written agreement of the parties.

- 13.3 Unless the Secretary is a party to this agreement, the RAP must notify the Secretary in writing of any variation to this agreement under clauses 13.1 or 13.2 within 7 days of that variation being made, and provide the Secretary with a copy of the amending agreement.
- 13.4 The parties acknowledge that in accordance with clause 72 of the AHA, any variation to this agreement will not take effect until the RAP consents in writing to that variation.

<Note: clause 14 below applies where the agreement relates to land and one of the parties is a land owner, and parties wish to include provisions requiring recording of the agreement on the Register. Note that recording of this agreement may mean that it is difficult to amend the agreement under clause 13>

14. Recording of Agreement

- 14.1 The land owner consents and will do all things necessary to enable the Secretary to make an application under section 76 of the AHA to the Registrar* to make a recording of this agreement on the land owner's folio of the Register, including making available the Certificate of Title at the Office of Titles or to the Registrar if necessary, the signing of any further agreement, acknowledgement or other document, and the procuring of the unconditional consent of any mortgagee or caveator to enable the recording to be made.
- 14.2 Without limiting the operation or effect of this agreement, until such time as this agreement is recorded on the relevant folio under clause 14.1, the land owner must not sell or otherwise deal with its interest in the agreement area without first complying with clause 15.
- 14.3 Prior to the recording of this agreement under clause 14.1, the land owner must notify in writing all prospective purchasers, lessees, mortgagees, chargees, transferees and assigns of the agreement area of the existence of this agreement.

15. Assignment

Subject to any applicable laws, any party (other than the RAP) may at its absolute discretion, 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, as if it were a party to it. Where such a deed is executed, the relevant party will provide a copy of that deed to the RAP.

16. Severance

- 16.1 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.

16.2 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.

17. **Entire Agreement**

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

18. **Governing Law**

18.1 This agreement is governed by and is to be construed 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 appeals from those courts. Any proceedings commenced relating to this agreement will be issued in the State of Victoria.

19. **Counterparts**

19.1 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.

20. **Waiver**

20.1 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:

20.1.1 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

20.1.2 at any other time to require performance of that or any other obligation under this agreement.

21. **Independent Legal Advice**

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

22. Relationship

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

23. Further co-operation

25.1 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.

24. Agreement to benefit and bind successors

26.1 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.

25. Costs

25.1 Except for clauses 11.5 and 11.8, unless otherwise agreed by the parties, each party will pay their own legal costs and other expenses for and incidental to the preparation, negotiation, and completion of this agreement.

26. Indemnity

26.1 The <insert party>, in consideration of this agreement, hereby indemnifies the <RAP and/or the Secretary and/or the land manager> for any liability the <RAP and/or the Secretary and/or the land manager> may incur to any person, any native title claim group, or any native title holders, and for any damages, costs, expenses, loss or damage the <RAP and/or the Secretary and/or the land manager> may incur, and in relation to all actions, proceedings, claims or demands whatsoever which may be brought or made against the <RAP and/or the Secretary and/or the land manager> arising out of or connected with this agreement, including:

26.1.1 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;

26.1.2 the late performance or observance of any covenant, term or condition by the <insert party>;
and

26.1.3 the effect of this agreement on any native title rights and interests.

26.2 <In clause 26.1, a reference to the Secretary or the land manager includes a reference to the State.>

27. Default

27.1 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.

28. Goods and Services Tax

GST to be added to amounts payable

28.1 If GST is payable on a Taxable Supply made under, by 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

28.2 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or 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

28.3 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

28.4 Any reference in this agreement (other than in the 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

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

Registration for GST

28.6 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.

28.7 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

28.8 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).

29. Definitions and Interpretation

29.1 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 human 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 cultural heritage 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 2**.

“AHA” means the *Aboriginal Heritage Act 2006*.

“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.

<“Crown Land” means land that is, or that is by any statute deemed to be unalienated land of the Crown and includes:

- (a) land of the Crown that is reserved permanently or temporarily by or under any statute;
- (b) land of the Crown occupied by a person under a lease, licence, permit or other statutory authorisation; and
- (c) waters.>

<“earth resource authorisation” has the same meaning given to that term in section 50 of the AHA.>

“environment” includes all aspects of the surroundings of human beings, whether affecting human beings as individuals or social groupings, including the physical, biological, economic, cultural and social aspects; and **“environmental”** has a corresponding meaning.

“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 owner” means the person or persons described in the Information Table and registered or entitled from time to time to be registered by the Registrar of Titles as proprietor or proprietors of an estate in fee simple of the agreement area or any part of it and includes a Mortgagee in possession.>

“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.

<“**non-ground disturbing activity**” includes aerial surveys and ground based geophysical surveys, geological surveys and survey fieldwork that does not involve clearing* or the excavation of soil or rock to expose underlying strata. Within this definition, “**clearing**” means:

- (a) in the case of grass, scrub or bush, the removal of vegetation by disturbing root systems and exposing underlying soil, but does not include:
- (i) the flattening or compaction of vegetation by vehicles where the vegetation remains living;
 - (ii) the slashing or mowing of vegetation to facilitate access tracks (provided root systems remain in place and vegetation remains living); or
 - (iii) the clearing of noxious or introduced plant species;
- (b) in the case of trees, the cutting down, ringbarking or pushing over, of trees.>

“**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.

“**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.

“**Registrar**” means the Registrar of Titles under the *Transfer of Land Act 1958*.

“**Significant ground disturbance**” has the same meaning given to that term in the *Aboriginal Heritage Regulations 2007*.

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

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

29.2 In the agreement, unless the contrary intention appears:

- the definitions contained in clause 29.1 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.

29.3 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 < # > 20

<Note: insert parties' execution clauses>

<Note: If a delegate signs on behalf of the Secretary evidence of the delegation needs to be attached to the agreement and provided to the Office of Titles>

Schedule 1: Agreement Relating to an Aboriginal Place

*Note: parties negotiating an agreement relating to an **Aboriginal place** are requested to insert relevant key operative provisions in this Schedule 1. If the agreement relates to an **Aboriginal object**, delete Schedules 1 and 2 and go to Schedule 3. Parties are reminded to renumber the Schedule, references to the Schedule within the agreement, and the table of contents.*

Note that section 68(2) provides that a cultural heritage agreement may deal with any matter, including any of the following matters relating to an Aboriginal place:

- (a) protection and maintenance of use of land containing an Aboriginal place;*
- (b) rights of access to, or use of, an Aboriginal place by Aboriginal people;*
- (c) the rehabilitation of Aboriginal places.*

By way of suggestion parties might consider clauses relating to:

Use of land

- provisions by which the land owner or land manager agrees to refrain from activity, or activity of a specified kind, that would adversely affect the Aboriginal place, or provisions imposing conditions upon which such activity can take place.
- specified works for the management, use, development, preservation or conservation of the Aboriginal place, including details of who will carry out and pay for such works.

Protection, Maintenance

- provisions by which the land owner agrees to restrict entry of livestock to the agreement area, or the parties agree to prevent the introduction of non-indigenous fauna or specified animals (eg any dog), to the agreement area.
- provisions restricting the destruction, removal or lopping of any native trees, plants or grasses (eg prohibiting application for a permit under the *Planning and Environment Act 1987* to remove, destroy or lop native vegetation from the agreement area), or the planting of any trees, plants or grasses other than local indigenous flora.
- where the agreement area is adjacent to an area being grazed, requirements to erect and maintain fences and gates between such area and the agreement area in good stock proof repair, order and condition at all times.

- arrangements to prevent the spread of, and as far as possible eliminate, established pest animals from the agreement area.
- actions to eradicate regionally prohibited weeds and prevent the growth and spread of regionally controlled weeds in the agreement area, or to prevent the growth and spread of any other high-threat weeds identified by the land owner or land manager.
- restrictions on the erection of any signs, notices or advertising material on the agreement area.
- prohibiting the dumping of any rubbish or storage of any other materials on the agreement area.
- prohibiting the erection of any buildings or the giving of consent to any subdivision over the agreement area.
- regulating the operation of any trade, industry or business, including recreational uses such as use of trail bikes or 4wd motor vehicles, within the agreement area.
- (except as required by law), the undertaking (or granting of permission to undertake by a third party) of any significant ground disturbance* on the agreement area including transmission lines or other public works, or activities comprising an earth resource authorisation (exemptions should apply for non-ground disturbing activity*).
- exemptions in relation to actions which are carried out to keep vegetation clear of existing transmission lines, where vegetation presents an immediate risk of personal injury or damage to property, or if the removal etc of vegetation is necessary for fire control, or in cases of emergency.
- arrangements for any proponent or developer to provide a safety induction for the RAP and any representatives of the RAP who may be engaged to undertake works or other activities at the Aboriginal place.
- requirements for all parties, their employees and agents to comply with the Occupational Health and Safety Act and the Accident Compensation Act and all associated regulations.

Notification and Communication

- notifying the RAP before any party takes any action under the AHA.
- providing the RAP with a copy of any relevant documentation (eg copies of licences, permits, authorisations granted in relation to the agreement area).
- appointment by the RAP and each party of a representative to act as a liaison officer ('Liaison

Officer') between the RAP and the other parties in relation to all communications - contact details for the Liaison Officer can be listed in the Information Table.

Access to the agreement area

- provisions by which the land owner or land manager agrees to allow access to the agreement area for purposes of inspection; conduct of maintenance, preservation or conservation activities; conduct of cultural activities, educational programs, etc.
- times when the agreement area can or cannot be accessed (eg months of year; days of week).
- rules about methods of access – eg number of people; management of vehicles; does permission need to be sought or advance notice provided, and if so, how?
- specifications relating to insurances required for persons entering the agreement area (professional indemnity, public liability, etc), or which the land owner must obtain to indemnify the Secretary or the RAP against losses arising out of any injury sustained during access to the agreement area.

Payments

- provisions regarding any benefits to be paid to any party for services performed under this agreement.

Cultural Awareness Programs

Arrangements between the parties and the RAP to develop and deliver an Aboriginal cultural heritage awareness training program for all parties' employees and their agents to:

- familiarise such persons with local Aboriginal traditions and Aboriginal cultural heritage located on the agreement area and in surrounding areas;
- promote knowledge, understanding and respect for Aboriginal cultural heritage;
- foster good relations between the parties and the RAP; and
- ensure that such persons understand relevant parts of this agreement and the related cultural heritage management obligations and procedures.

Schedule 2: Description of Agreement Area for an Aboriginal Place

*Note: if this agreement relates to an **Aboriginal place**, in addition to the description in Item 1 of the Information Table, parties must include a map and plan, or description of the boundaries of the land affected by this agreement (s.70(3) of the AHA). Any map included must comply with prescribed standards (s.70(4)). Parties are referred to Part 4 of the Aboriginal Heritage Regulations.*

Schedule 3 – Agreement Relating to an Aboriginal Object

*Note: parties negotiating an agreement relating to an **Aboriginal object** are requested to insert relevant key operative provisions in this Schedule 3. An Aboriginal object does **not** include Aboriginal human remains. Section 68(2) provides that a cultural heritage agreement may deal with any matter, including any of the following matters relating to an Aboriginal object:*

- (a) protection, maintenance or use of Aboriginal objects;*
- (b) rights of access to, or use of, Aboriginal objects by Aboriginal people;*
- (c) the rehabilitation of Aboriginal objects.*

By way of guidance, parties might consider clauses relating to:

- description of the object (include photos if possible).
- details of its history and where it originated from – has it been removed from an Aboriginal place?
- processes for disturbing or moving or handling the object.
- can the object be bought, sold, or loaned to anyone else? If so, what rules will apply?
- rules regarding access for Aboriginal people to the object. When can it be accessed? Are there any 'no-go' times/seasons? Does permission need to be sought?
- prohibitions re destroying, damaging or defacing the object. If the object is harmed in any way, how will it be rehabilitated?
- transfer of the object to the RAP or another party for safekeeping.
- consultation process between the party and the RAP regarding the object.