Aboriginal Affairs Victoria/ Heritage Victoria

Significance Assessment Case Study Project

1. Introduction

The Victorian Government is aware that hundreds of heritage collections are held in local museums, historical societies, Aboriginal keeping places, mechanics institutes, archives and genealogical societies across the State. These collections contain material that is valued by local communities, and may be significant at a broader level.

A joint project is currently being undertaken by two State Government agencies within the Department of Planning and Community Development, Aboriginal Affairs Victoria and Heritage Victoria, to determine how community collections holding Aboriginal cultural material can be better understood, managed, and used by local communities.

The Department is becoming increasingly aware of the large number of community organisations that hold Aboriginal material, and believes that many of these organisations are unaware of their responsibilities concerning the custodianship of cultural material of this nature. This project is being undertaken in the north-east of Victoria, and will involve a community-managed heritage collection.

The Significance Assessment Case Study project (‘the project’) aims to support the community museum sector by working collaboratively with community museums that hold both Aboriginal and non-Aboriginal material. The project will have three main components:

1. Significance assessment of a heritage collection holding Aboriginal material;
2. Development of guidance material to assist community heritage collectors with their management and curatorial responsibilities; and
3. Identification of issues that need to be considered by heritage practitioners when assessing heritage collections that contain Aboriginal cultural material.
(Note: Future consideration will be given to developing training material for heritage practitioners, based on the outcomes of this project).

2. Significance Assessment Project

2.1 Project Owners

Aboriginal Affairs Victoria and Heritage Victoria will jointly manage the project.

Aboriginal Affairs Victoria (AAV) is the Victorian Government's central point of advice on all aspects of Aboriginal affairs in Victoria. AAV is often the first point of call by members of the Aboriginal community and its organisations requiring information on a wide range of issues. An important aspect of the work of AAV is to promote knowledge and understanding about Victoria's Aboriginal people within the wider community. AAV also administers the Aboriginal Heritage Act 2006, legislation that protects Aboriginal cultural heritage in Victoria. This function relies on close co-operation with the various Aboriginal communities around the State. AAV also supports the work of the Victorian Aboriginal Heritage Council.

Heritage Victoria assists in identifying, protecting and interpreting Victoria's most significant cultural heritage places and objects. It advises private owners, local and State government,
industry and the general community on heritage matters. It administers the *Heritage Act 1995* and maintains the Victorian Heritage Register. Heritage Victoria supports the work of the Heritage Council of Victoria, an independent statutory authority.

### 2.2 Background and Issues

Heritage Victoria administers collections management grants as part of the ‘*Victoria’s Heritage Grants Program: community collections*’, which provides funding to community based organisations to build their collections management capabilities. This stream of funding has had a strong focus on delivering funds for significance assessments of community heritage collections. A requirement of the funding is that significance assessments are undertaken by suitably qualified heritage specialists.

Heritage Victoria anticipates that significance assessments of community heritage collections will result in nominations to the Victorian Heritage Register, if objects and collections are identified as having State-wide cultural heritage values. Accordingly, a requirement of the funding is that significance assessments are undertaken using the assessment criteria of the Heritage Council of Victoria.

For collections that include Aboriginal material, it is appropriate that any significance assessment of that part of the collection be undertaken by an Aboriginal person with knowledge of the material, or through consultation and negotiation with the appropriate registered Aboriginal party or traditional owner group.

Both Aboriginal Affairs Victoria and Heritage Victoria wish to see a standard methodological approach developed for assessing the significance of heritage collections containing Aboriginal material. It is hoped that this case study will contribute to the development of this approach.

An additional issue that informs the scope of this project is the lack of awareness by many collecting organisations as to their responsibilities for the care and management of Aboriginal material. This project will deliver guidance for community collecting organisations to ensure the appropriate management of any Aboriginal material in their collections.

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**Applicants are encouraged to seek partnering opportunities with other heritage practitioners to ensure that the project’s requirements (see 2.3 below) are fully met. On this basis, an extended period of time has been allowed to respond to this brief to enable practitioners to explore partnering opportunities.**

### 2.3 Requirements

#### 2.3.1 Significance Assessment

The Significance Assessment component requires appropriately skilled and experienced contractor/s to assess the significance of the Burke Museum collection in Beechworth. This regional museum holds an important collection of Aboriginal artefacts, along with an extensive library of documents, records and photographs relating to the settlement and development of the local township, as well as collections relating to gold mining, and Chinese settlement.

The contractor/s will be required to assess the significance of the collection, factoring in specific requirements for the assessment of both Aboriginal and non-Aboriginal heritage.

The contractor should describe the methodology they will use to inform and develop the assessment of the Aboriginal significance of this collection. This may include, but not be limited to, reference to:

- Guidelines and Information on the *Aboriginal Heritage Act 2006* (see aboriginalaffairs.vic.gov.au)
The Beechworth collection of Aboriginal artefacts, an essay submitted in partial fulfilment of BA (Hons), ANU, 1975 (held at the Australian Institute of Aboriginal and Torres Strait Islander Studies and the Australian Museum Research Library).

In addition, the contractor will use, but not be limited to, the following material to guide the overall significance assessment:
- Reference to Victoria’s Heritage Grants: Community Collections Guidance for significance assessments of cultural heritage objects (Appendix 1)
- The Heritage Council of Victoria Significance assessment criteria (Appendix 2)
- Reference to draft Victoria’s Framework of Historical Themes – see below (Executive Summary attached as Appendix 3)

A succinct Statement of Significance will be developed for the entire collection. The statement should identify:
- **What** is significant (a brief description of the collection, its components and themes),
- **How** it is significant (the categories or values of significance represented by the collection, including any identified/recommended thresholds of significance of the collection and/or any of its components) and;
- **Why** it is significant (a description of why the categories, values or thresholds have been assigned to the collection – eg, it is of historical significance as the oldest known surviving example of …”).

**Victoria’s Framework of Historical Themes**
One aim of the project is to improve understanding of heritage collections and their significance. Heritage Victoria recently commissioned ‘Victoria’s Framework of Historical Themes’ (the Framework) which is intended as a practical tool to assist in the identification, assessment, interpretation and management of Victoria’s diverse heritage places, collections and objects. The Framework is currently in draft format and is being considered by the Victorian Aboriginal Heritage Council and the Heritage Council of Victoria. This project will trial the use of the Framework to assess the significance of a community heritage collection with Aboriginal and non-Aboriginal material.

**2.3.2 Guidance**
The project has two components requiring the development of guidance – this is further detailed in sections 2.4.2 and 2.4.3 below. Separate pieces of guidance will be developed for use by community collecting organisations and heritage practitioners, although the latter will involve the identification of issues and an approach rather than the development of rigorous guidance.

The guidance developed for community collecting organisations will provide definitive advice on the legal responsibilities of custodians of Aboriginal material, and more general collections management advice, e.g. appropriate display and interpretation of Aboriginal material. For heritage practitioners, the guidance will exist in a less prescriptive form, and will identify the issues involved in undertaking significance assessments of collections that hold both Aboriginal and non-Aboriginal material.

**2.4 Tasks**

**2.4.1 Collection assessment**
This task is estimated to be 40% of the overall project effort.
The contractor is required to assess the collections held by the Burke Museum, Beechworth. The assessment will be provided in the form of a report containing:
- a description of the organisation and its collections, including background and provenance of the collections
- identification of the range of themes (using draft Victoria’s Framework of Historic Themes) illustrated by the collection
• identification of any aspects of the collection that have local and/or state significance, using the Heritage Council of Victoria’s assessment criteria
• a succinct Statement of Significance for the collection and identification of any ‘outstanding’ aspects
• brief recommendations for future management of the collection, including interpretation/exhibition opportunities
• the contractor may also identify potential management/conservation issues that require further consideration by a professional conservator

2.4.2 Guidance Material for community heritage custodians
This task is estimated to be 40% of the overall project effort.
The contractor is required to develop guidance material that will assist people in understanding their responsibilities under the Aboriginal Heritage Act 2006, as well as providing practical advice on managing collections with Aboriginal material including information on display and interpretation, issues around repatriation and guidance for engaging with local Aboriginal communities. It is envisaged that the guidance material will have broad application across the numerous collecting organisations across Victoria. This will typically include historical societies; local museums and community collecting organisations; culturally diverse heritage groups; RSL and veterans groups; community groups with heritage records (e.g. sporting, scouts, local history, amateur archaeology, architecture and natural history groups); cemetery trusts, family history and genealogy groups.

2.4.3 Guidance for heritage practitioners
This task is estimated to be 20% of the overall project effort.
A component of the project is developing an approach that will allow heritage practitioners engaged in significance assessment activities to assess Aboriginal cultural heritage material as part of an overall significance assessment process. This task will identify issues that may need to considered in developing an integrated approach to assessing Aboriginal cultural heritage as part of the overall process for assessing heritage collections. Issues that might be explored in this task include how consultation and negotiation is undertaken with the appropriate registered Aboriginal party or traditional owner group, use of criteria and significance thresholds.

3. Timelines and deliverables
The project is to be undertaken between January and April 2009.
Services to be delivered by the contractor include;
• Preparation and delivery of a significance assessment report written in plain English for the Burke Museum Collection
• Preparation and delivery of guidance material for managing heritage collections containing Aboriginal material.
• Identification of issues to be considered by heritage practitioners undertaking significance assessments of heritage collections containing Aboriginal and non-Aboriginal material.

4. Resources
• Project team: Aboriginal Affairs Victoria and Heritage Victoria will form a project team and be available to assist the contractor/s. Both organisations will assist in providing access to relevant files and reports.
• Steering Committee: A steering committee will be established to receive and review the deliverables. Membership of the steering committee will be drawn from the project
team and other organisations with a key interest in museums practice and Aboriginal heritage.

5. Submissions

Submissions to undertake the project will be received and evaluated by the project team. The Submission should include:

- An outline of experience in the undertaking and delivery of significance assessments of heritage collections
- An outline of experience in working with Aboriginal heritage matters, particularly related to objects and collections
- An outline of experience in community consultation
- Availability
- Proposed project plan, including key deliverables, effort per deliverable and personnel involved
- Fixed price quotation for the project, including a breakdown of costs for the significance assessment, and the guidance material
- A proposed costing schedule that identifies payments against key milestones
- Hourly rates (excl. GST) for work, travel costs and the personnel who will work on this project including their qualifications, experience and insurances must be included in the Expression of Interest. Office accommodation, transport, equipment, IT and communications infrastructure is to be provided by the contractor.
- Knowledge of thematic frameworks and their application to understanding and managing collections will be favourably viewed.

6. Appointment of Contractor

Submissions will be assessed on a price/quality split. The successful tender will be determined on the basis of the contractor’s demonstrated experience and the submitted quote and pricing model.

The appointment will be in accordance with the Department of Planning and Community Development One-off Agreement for the Provision of General Services Short-Form Contract (Attachment 1). Payment will be in accordance with delivery and acceptance of agreed milestones.

7. Budget

A budget of up to $10,000 has been made available for this project.
8. Submissions

Submissions must be received by: 12 noon on 12 January 2009.

Expressions of Interest will be accepted electronically and should be sent to amanda.bacon@dpcd.vic.gov.au and joy.elley@dpcd.vic.gov.au; or in hardcopy to the Heritage Victoria Reception Desk, Level 4, 55 Collins Street, Melbourne.

Enquiries

<table>
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<th>Heritage Victoria (until 24 December 2008)</th>
<th>Aboriginal Affairs Victoria</th>
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Appendices:
- Victoria’s Heritage Grants: Community Collections Guidance for significance assessments of cultural heritage objects (Appendix 1)
- Heritage Council of Victoria Significance assessment criteria (Appendix 2)
- Victoria’s Framework of Historical Themes Executive Summary (Appendix 3)
Appendix 2:
Heritage Council of Victoria Significance assessment criteria

Criteria for assessing cultural heritage significance
(Criteria adopted by the Heritage Council on 7 August 2008 pursuant to Sections 8(1)(c) and 8(2) of the Heritage Act 1995).

Criterion A:
Importance to the course, or pattern, of Victoria’s cultural history.

Criterion B:
 Possession of uncommon, rare or endangered aspects of Victoria’s cultural history.

Criterion C:
 Potential to yield information that will contribute to an understanding of Victoria’s cultural history.

Criterion D:
 Importance in demonstrating the principal characteristics of a class of cultural places and objects.

Criterion E:
 Importance in exhibiting particular aesthetic characteristics.

Criterion F:
 Importance in demonstrating a high degree of creative or technical achievement at a particular period.

Criterion G:
 Strong or special association with a particular community or cultural group for social, cultural or spiritual reasons. This includes the significance of a place to Indigenous peoples as part of their continuing and developing cultural traditions.

Criterion H:
 Special association with the life or works of a person, or group of persons, of importance in Victoria’s history.
Department of Sustainability and Environment’s One-off Agreement for the Provision of General Services short-form contract

1. Interpretation

1.1 In these Conditions unless the context otherwise requires:

“Agreement” means any agreement for the Purchase of Services of which these conditions form part;

“Business Day” means a day that is not a Saturday, Sunday or a public holiday appointed under the Public Holidays Act 1993 (Victoria) including any day appointed by the Minister under Section 7 (1) (a) of the Act applicable to the Melbourne metropolitan area;

“Code of Practice” means a code of practice as defined in, and approved under, the Information Privacy Act 2000 (Vic);

“Conditions” means these general conditions for the provision of Services;

“Contractor” means the person providing Services in accordance with these Conditions;

“Date for Delivery” is the date stated in the Purchase Order by which the provision of Services must be effected by the Contractor;

“Department” means the Department, Body or Agency of the State placing a Purchase Order and any reference to the Department shall be read and construed as a reference to the State;

“GST” means any tax imposed under any GST Law and includes GST within the meaning of the GST Act;

“GST Act” means the A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth) as amended;

“GST Law” means the GST Law as defined in the GST Act and includes any Act of the Parliament of Australia that imposes or deals with GST;

“GST Related Tax Reform” includes any changes, reductions, or abolition of any State, Territory or Commonwealth taxes, excise, fees or imposts including, but not limited to, financial transactions tax, wholesale sales tax, stamp duty, debits tax, associated with the introduction of the GST Law;

“Information Privacy Principles” means the Information Privacy Principles set out in the Information Privacy Act 2000 (Vic.);

“Information” means all information, documents or data however held, stored or recorded including drawings, plans, specifications, calculations, reports, models, concepts, source codes, files, computerised data, or photographic recordings, audio or visual recordings;

“Intellectual Property” includes all proprietary rights in relation to Information including copyright and all neighbouring rights, and all proprietary rights in relation to inventions (including patents) registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know how) and circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

“Purchase Order” means an order from the Department for the provision of Services which incorporates these Conditions;

“Services” means the services to be performed by the Contractor which shall conform to the Specification and these Conditions;

“Service Fee” shall be the lump sum stated in the Purchase Order or if no lump sum is so stated the amount ascertained by applying the Service Rate set out in the Purchase Order to the appropriate total units of time properly and reasonably incurred by the Contractor in the provision of the Services;

“Service Rate” means the rate payable to the Contractor (per units of time) for the provision of the Services as identified in the Purchase Order;

“Specification” means the statement of the Department specifying and describing the Services set out in the Purchase Order or otherwise incorporated into the Agreement;

“State” means the Crown in right of the State of Victoria.

“Systems or Equipment” means any systems or equipment used by or on behalf of the Contractor for the purpose of the provision of Services and includes any software, data base, hardware or other systems or equipment containing any of them or any micro-processing technology;

“Tax Invoice” has the same meaning as in the GST Act;

1.2 In these Conditions and any Agreement, unless a contrary intention appears to the reference to:

(a) “$” means Australian dollars;

(b) any legislation shall include any Act of Parliament and any subordinate legislation, rule, regulation, order or instrument made thereunder and shall include any statutory modification, substitution or re-enactment of such legislation;

(c) an individual or person includes a corporation, partnership, joint venture, association, governments, local government authorities and agencies;

(d) a recital, clause, schedule or annexure is a reference to a recital, clause, schedule or annexure to the Agreement and each of them forms part of the Agreement;

(e) a party to the Agreement includes the executors, administrators, successors and permitted assigns of that party.

1.3 In these Conditions clause headings are for convenience of reference only and have no effect in limiting or extending the language of the provisions to which they refer.

1.4 If a party to these Conditions consists of more than one person those persons shall be bound jointly and severally by these Conditions.

1.5 The Agreement shall be subject to and construed in accordance with the laws of the State of Victoria and the Parties submit to the exclusive jurisdiction of the courts of that State.

2. Documents forming Agreement

Any Agreement for the provision of Services of which these Conditions form part shall consist of:

(a) where these Conditions are printed on the reverse of a Purchase Order, the Conditions and the Purchase Order;

(b) where the Conditions are included in a request for quotation, any Purchase Order issued for the Services, the request for quotation and these Conditions;

(c) any document or provision, or part thereof, that the documents referred to in paragraphs (a) or (b) expressly incorporate as part of the Agreement.

3. Provision and Delivery of Services

3.1 The Contractor shall provide the Services by the Date for Delivery.

3.2 If a lump sum Service Fee is not stated in the Purchase Order or otherwise agreed, Services are to be performed on the basis of Service Rates and they shall be performed only under these Conditions and only upon and in accordance with the instructions of the Department. Service Rates are fixed for the term of the Agreement.

3.3 The Department may cancel the order for the provision of Services at any time by giving written notice to the Contractor and the Contractor shall, on receipt of such notice, immediately cease all work under the Agreement and take all appropriate action to mitigate any loss or prevent further costs being incurred with respect to the relevant Services. The Department shall pay the reasonable fees and expenses of the Contractor (based upon the Service Rates) for all work performed by the Contractor in accordance with the terminated Services but not any loss of prospective profits. In no circumstances shall the Service Fees payable for terminated Services exceed the fees that would have been paid had the relevant Services been completed.

4. Time is of the Essence - Time is of the essence in the provision of the Services

5. The Contractor shall permit an accountant or auditor on behalf of the Department from time to time during ordinary business hours and upon reasonable notice, to inspect and verify all records maintained by the Contractor for the purposes of this Agreement. The Contractor, its servants, agents and subcontractors shall give all reasonable assistance to any person authorised to undertake such audit or inspection. Any information provided, or to which an accountant or auditor has access under this clause, shall be treated as confidential information and shall not be used other than for the purposes of this Agreement or disclosed other than as required at law or to meet any requirements of the Parliament of Victoria.

The confidentiality obligations of the parties shall not extend to:

(a) Information already in the public domain other than due to a breach of this Agreement;

(b) any disclosure required by law;

(c) any disclosure reasonably required in order to comply with a request for information made by the Auditor-General for Victoria; or

(d) information reasonably required in order to publish appropriate and comprehensive performance data relating to the Goods or Services under this Agreement.

6. Invoicing and Payment

6.1 The Department will pay the Service Fee to the Contractor for the satisfactory provision of the Services in accordance with these Conditions.

6.2 The Service Fee and Service Rates are inclusive of all costs and expenses of the Contractor whether foreseen or unforeseen, including without limitation, insurance, duties, imposts and taxes and the GST (if any) which shall be paid by the Contractor.
6.3 Invoices with respect to Services shall be submitted to the Department’s Representative upon completion of the Services unless otherwise specified in the Purchase Order.

6.4 Invoices shall comply with the requirements of the GST Law (as a Tax Invoice) and shall, unless inconsistent with the GST Law, specify –
(a) the Contractor’s Australian Business Number;
(b) the Service Fee due to the Contractor and the basis for its calculation;
(c) the amount of any GST paid or payable by the Contractor with respect to the Service Fee;
(d) the date of delivery of the Services to which the invoice relates;
(e) a description (including quantity) of the Services delivered;
(f) if a discount is applicable, the discounted price;
(g) the Contractor’s address for payment; and
(h) the Department’s reference Number.

6.5 The Department shall pay to the Contractor an amount correctly invoiced within 30 days of receipt of an invoice provided that the invoice shall be certified by the Department’s Representative as correctly calculated with respect to the Services satisfactorily completed.

6.6 If the Department’s Representative disputes the invoice amount he shall certify the amount he believes is due for payment, which shall be paid by the Department and the liability for payment of the balance of the invoiced amount shall be determined, in accordance with law.

6.7 The Contractor warrants that the Contractor will not alter the fee or rates not in fixing the Service Fee or Service Rates engage in “Price Exploitation” within the meaning of section 75AU of the Trade Practices Act 1974 (Commonwealth) and that all cost savings arising from the GST Related Tax Reform, resulting directly or indirectly in a reduction in cost to the Contractor of providing the Services, have been passed through to the Department.

6.8 The Department may, at any time, require the Contractor to submit evidence of the financial impact of GST Related Tax Reform on the cost of the Services and the Contractor shall give the Department access to such information and records as the Department reasonably requires to enable the Department to make its own assessment of such financial impact.

6.9 Notwithstanding clause 6.7, if the Department believes that the Service Fees or Service Rates do not reasonably reflect the financial impact of GST Related Tax Reform on the Service Fee or Service Rates, the Department may propose such reduction in the fees or rates as it considers reasonable. Such proposal may be made by the Department at any time where the Contractor has failed to make a reduction or any reduction is no longer considered to be adequate. The proposal for reduction shall be in writing and include the basis for its calculation. If the Contractor does not dispute the proposed variation within the period set out in the notice (which shall be not less than 28 days), the variation in the fees or rates shall apply from the date of the notice. Any dispute under this clause shall be referred for resolution by an Expert who shall be nominated by the President of the Law Institute of Victoria.

6.10 The Department may set off against any sum owing to the Contractor any amount owing by the Contractor to the Department.

7. Contractor’s Warranties
The Contractor warrants that all Services provided shall conform to the Specification and shall be carried out with all due skill and care and in accordance with all applicable standards, principles and practices.

8. Confidentiality and Privacy

8.1 All Information provided to the Contractor by or on behalf of the Department under the Agreement shall be treated as confidential by the Contractor. In this clause 7 this Information is referred to as “Confidential Information”.

8.2 The Contractor its employees, agents, directors, partners, shareholders or consultants shall not disclose to any person, any Confidential Information or Information relating to the Department or the affairs of others which may have come to its or their knowledge as a result of any Agreement.

8.3 The Contractor shall be bound by the Information Privacy Principles and any applicable Code of Practice with respect to any act done or practice engaged in by the Contractor for the purposes of this Agreement in the same way and to the same extent as the Department would have been bound by the Information Privacy Principles and any applicable Code of Practice in respect of that act or practice had it been directly done or engaged in by the Department.

8.4. The Contractor consents to the Department publishing (on the internet or otherwise) the name of the Contractor and the contract value together with the conditions of this Agreement generally.

9. Intellectual Property

9.1. Warranty and Indemnity by Contractor - The Contractor warrants that it is entitled to use any Intellectual Property used by it in connection with the provision of Services under the Agreement. The Contractor shall indemnify and shall at all times keep the Department and the State indemnified against any action, claim, suit or demand, including a claim, suit or demand for or liability to pay compensation or damages and costs or expenses arising out of or in respect of any breach of any third party’s Intellectual Property rights relating to the provision of Services under the Agreement or a Purchase Order Contract.

9.2. The ownership of all Intellectual Property in all Information created as a result of the provision of Services shall vest in the State. The Contractor hereby assigns ownership of all Intellectual Property rights in such Information to the State and will ensure that its employees, subcontractors and agents execute all documents necessary to assign to the State all such rights.

10. Indemnity
The Contractor indemnifies the Department its employees and agents against all damages, costs, expenses, loss or damage which they may incur or sustain, actions, proceedings, claims and demands whatsoever which may be brought or made against them by any person in respect of or by reason of or arising out of:
(a) the performance by or on behalf of the Contractor of the Services;
(b) any negligence or other wrongful act or omission of the Contractor or its employees, agents or sub-contractors, or of any other persons for whose acts or omissions the Contractor is vicariously liable;
(c) any negligence or other wrongful act or omission of the Contractor’s visitors, invitees or licensees;
(d) death, injury, loss or damage to the Contractor, the Contractor’s employees, agents, visitors, invitees, licensee or sub-contractors; and
(e) any breach of the Agreement by the Contractor.

11. Insurance

11.1 Before the Contractor commences work under the Agreement the Contractor shall effect and maintain a public liability policy of insurance for an amount, in respect of any one occurrence, not less than $10,000,000 and professional indemnity insurance for an amount not less than that specified in the Purchase Order. Professional indemnity insurance shall be maintained until the expiration of three years commencing from the completion of the Services.

11.2 The Department’s Representative may require the Contractor to provide proof that insurance, required by the Agreement to be effected by the Contractor, has been effected and is being maintained.

12. Sub-contracting or Assignment
The Contractor shall not without the prior written approval of the Department sub-contract or assign any performance of rights or obligations under the Agreement. In giving written approval the Department may impose such terms and conditions as it considers appropriate.

13. Compliance with Laws
The Contractor shall ensure that in carrying out the Agreement it shall comply with the requirements of the provisions of all Acts of the Parliament of Victoria and of the Parliament of the Commonwealth and with the requirements of all ordinances, regulations, by-laws, orders and proclamations made or issued under any such Acts or Ordinances and with the lawful requirements of public and other authorities in any way affecting or applicable to the provision of the Services.

14. Conflict of Interest

14.1 The Contractor warrants that it does not hold any office or possess any property, is not engaged in any business, trade or calling and does not have any obligations by virtue of any contract whereby, directly or indirectly, duties or interests are or might be created in conflict with or might appear to be created in conflict with its duties and interests under the Agreement.

14.2 The Contractor shall inform the Department of any matter which may give rise to an actual or potential conflict of interest at any time during the term of the Agreement and the Department shall regard a conflict of interest as a breach of a fundamental term of the Agreement and may elect to terminate the Agreement.

15. Ethical Employment
The Contractor shall comply with the ethical employment conditions set out in the Schedule.
SCHEDULE

1 ETHICAL PURCHASING POLICY
1.1 Definitions
For the purpose of this clause, the following definitions apply.

Adverse Assessment means an assessment by the Department pursuant to the Ethical Purchasing Policy that, in the opinion of the Department, the Contractor does not satisfy the Ethical Employment Standard.

Applicable Industrial Instruments and Legislation means all Applicable Industrial Instruments and all Applicable Legislation.

Applicable Legislation means:
• Federal Awards (Uniform System) Act 2003 (Vic)
• Outworkers (Improved Protection) Act 2003 (Vic)
• Dangerous Goods Act 1985 (Vic)
• Equipment (Public Safety) Act 1994 (Vic)
• Occupational Health and Safety Act 1985 (Vic)
• Workplace Relations Act 1996 (Cwlth)
• Long Service Leave Act 1992 (Vic)
• similar Acts in States and Territories other than Victoria
• any other legislation designated by the Victorian Government as Applicable Legislation under the Ethical Purchasing Policy from time to time.

Award means any award of the Australian Industrial Relations Commission or any tribunal empowered to make industrial awards for Victorian employees or employees in any other State or Territory.

Enterprise Agreement means any certified agreement of the Australian Industrial Relations Commission or State industrial authority.

Ethical Employment Standard is the requirement for persons that supply or propose to supply goods and services to the Victorian Government to demonstrate to the reasonable satisfaction of the government buyer, and in accordance with the requirements of the Ethical Purchasing Policy, that the relevant contracting or tendering entity meets its obligations to its employees under Applicable Industrial Instruments and Legislation at the time a contract is awarded and continues to meet such obligations during the term of that contract.

Ethical Employment Reference Register has the meaning attributed to it in the Ethical Purchasing Policy.

Ethical Employment Statement has the meaning attributed to it in the Ethical Purchasing Policy.


Full Details means details of:
• the nature of the breach or offence or alleged breach or offence;
• any conviction recorded or adverse finding made in respect of the breach or offence;
• any penalty or orders imposed by a court, tribunal, commission or board in respect of the breach or offence and the maximum penalty that could have been imposed under the Applicable Industrial Instruments and Legislation;
• the name of the court, tribunal, commission or board, the State or Territory in which the proceeding or prosecution is brought, the date on which the proceeding or prosecution was commenced and the number or description assigned to the proceeding or prosecution by the court, tribunal, commission or board;
• the name of the entity against which the finding or conviction was made or the proceeding or prosecution was initiated;
• this Contract; and
• further information about any of the above, if required by the Department

Law means the law in force in the jurisdiction in which the obligations under this Contract are to be performed including without limitation, common or customary law, equity, judgment, legislation, orders, regulations, statutes, by-law, ordinances or other legislative or regulatory measures and includes any amendment, modification or re-enactment of them.

1.2 Supplier to satisfy the Ethical Employment Standard

Without limiting or derogating from the Contractor’s obligation to comply with any Law, the Contractor must satisfy the Ethical Employment Standard at all times during the Term of this Contract.

1.3 Satisfaction of the Ethical Employment Standard
The Department may make an Adverse Assessment if, at any time during the Term of the Contract:

(a) a court, tribunal, commission or board makes a finding of a serious breach of an Applicable Industrial Instrument against the Contractor or convicts the Contractor of a serious offence under Applicable Legislation; or
(a) a court, tribunal, commission or board makes a finding of a breach of an Applicable Industrial Instrument against the Contractor or convicts the

Contractor of an offence under Applicable Legislation that is part of a pattern of repeated or ongoing breaches or offences; or

(b) the Contractor fails to meet is disclosure obligations under clause 1.4

1.4 Obligation to disclose during the term of the Contract
The Contractor must, on request by the Department and within the time period required by the Department in writing (which must not be less than 30 days) provide an up-to-date Ethical Employment Statement setting out Full Details of:

(a) any adverse finding against the Contractor by a court, tribunal, commission or board in respect of a breach of an Applicable Industrial Instrument;
(b) any conviction by a court, tribunal, commission or board of an offence committed by the Contractor under Applicable Legislation; and
(c) any proceeding or prosecution against the Contractor in respect of a breach of an Applicable Industrial Instrument or an offence under Applicable Legislation instituted since the Commencement Date of the Contract which has not previously been disclosed to the Department.

The up-to-date Ethical Employment Statement may, at the option of the Contractor, also include details of remedial measures implemented to ensure future compliance with Applicable Industrial Instruments and Legislation.

2. TERMINATION FOR FAILURE TO SATISFY ETHICAL EMPLOYMENT STANDARD

2.1 Ethical Employment Standard Not Satisfied

(a) If at any time during the term of the Contract, the Department notifies the Contractor in writing that it has made an Adverse Assessment pursuant to clause 1.3 the Contractor must, within 14 days of receipt of such notice, or such longer period agreed by the Department, provide a statutory declaration from a director or company secretary of the Contractor setting out:
   (i) any additional information which in the opinion of the Contractor is relevant to the Adverse Assessment, including the Contractor's grounds for any objection to the Adverse Assessment;
   (ii) details of any information on which the Adverse Assessment is based which in the opinion of the Contractor is incorrect, incomplete or otherwise unfairly prejudicial to the Contractor;
   (iii) any existing or planned remedial measures which the Contractor has taken or will be taking to prevent a breach or offence similar to the breach or offence on which the Adverse Assessment is based from recurring.

(b) Following the receipt of the statutory declaration or expiration of the period described in paragraph (a) whichever comes first, the Department may, in its discretion, do one or more of the following:
   (i) request the Contractor show cause as to why this Contract should not be suspended or terminated with effect from 14 days; and/or
   (ii) suspend the operation of this Contract for a specified period of up to 6 months with 14 days notice; and/or
   (iii) terminate this Contract with 14 days notice;

(c) In exercising its discretion under paragraph (b), the Department will take into consideration:
   (i) whether the Contractor has taken or will take measures which, in the reasonable opinion of the Department, are commensurate with the breach or the offence on which the Adverse Assessment is based and can be reasonably expected to prevent such breach or offence from recurring; or
   (ii) whether the Department is otherwise satisfied that the Contractor has shown good cause why the Contract should not be suspended or terminated.

(d) The remedies under this clause are in addition to and do not limit any other rights or remedies of the State under this document or otherwise at law.

2.2 Ethical Employment Reference Register

The parties acknowledge and agree the following:

(d) If this Contract is terminated pursuant to this clause, the Contractor's name and details (including its Australian Business Number) will be included in the Ethical Employment Reference Register for a period of 24 months from the date termination takes effect.

(e) Victorian Government departments will access the Ethical Employment Reference Register for the purpose of applying the Ethical Purchasing Policy.

(f) Inclusion of any details in the Ethical Employment Reference Register is one factor in the assessment process of whether a tenderer satisfies the Ethical Employment Standard, and will not automatically exclude the Contractor from participation in future Tender Processes.