

28 March 2013
Bendigo, Victoria



Recognition and Settlement Agreement - Volume 2 of 2

under the *Traditional Owner Settlement Act 2010 (Vic)*

between Dja Dja Wurrung Clans Aboriginal Corporation

and The State of Victoria



Dja Dja Wurrung Clans
Aboriginal Corporation



Cover artwork by Dja Dja Wurrung artist, Sam Kerr, entitled
'Mindye's pathway guides us though our struggles'. © Sam Kerr

Victorian Traditional Owners Trust Participation Agreement

**The Dja Dja Wurrung Clans Aboriginal Corporation ICN
4421,
for and on behalf of the Dja Dja Wurrung People**

and

State of Victoria

and

**Victorian Traditional Owners Funds Limited ACN 153 198
791, as Trustee of the Victorian Traditional Owners Trust**

Table of Contents

1.	Definitions and Interpretation	2
1.1	Definitions	2
1.2	Interpretation	3
2.	Commencement	3
3.	Purpose	4
4.	Nominations for purposes of Traditional Owners Trust Deed	4
5.	Payment of Settlement Sum and Economic Development Funds to Trust.....	4
6.	Application by Entity to become a party to Trust Deed	4
7.	Obligations of Entity.....	5
8.	Obligations of Trustee	5
9.	Traditional Owners Account Policies	6
9.1	Traditional Owners Account Distribution Policy	6
9.2	Traditional Owners Account Investment Policy.....	6
10.	Resignation of Entity	7
11.	Replacement of Entity	7
12.	Notices and general	8
13.	Review.....	8
14.	Variation.....	8
15.	GST	8

IMPORTANT DISCLOSURE NOTICE

The Trust is established as a single fund which is divided into Traditional Owners Accounts attributable to individual Traditional Owners Groups who become participating beneficiaries. This single fund structure is necessary for the Trust to enjoy the status of a tax exempt entity under the tax law.

If losses or liabilities are incurred by the Trustee which accrue or arise in respect of any one or more individual Traditional Owner Accounts, the Trustee may be entitled to indemnity against those losses or liabilities from the Trust as a whole, if they exceed the balance or value of the individual Traditional Owner Account or Accounts.

The Trustee would not be entitled to indemnity from the Trust as a whole if the loss or liability was attributable to:

- the dishonesty of the Trustee (or the relevant officer, agent or employee of the Trustee); or
- the wilful commission or omission of an act known by the Trustee (or the relevant officer, agent or employee of the Trustee) to be fraudulent breach of trust in bad faith.

A person dealing with the Trustee may have rights against the Trustee where for example, in respect of an investment made by the Trust on behalf of a Traditional Owner Account:

- Additional funding was required to maintain the viability or liquidity of the investment and the relevant Traditional Owners Account lacked sufficient additional funds.
- The investment is real estate, and a person is injured while present on that property or the Trustee has to clean up a discovered environmental hazard on the property.
- A purchaser of an investment sold by the Trustee becomes entitled to claim damages under the contract of sale.

If any of these circumstances were to arise, and the Trustee cannot be reimbursed solely from that single account, then the Trustee would be entitled to reimburse itself from the single fund of the whole trust even though the loss may have arisen from an investment made for an individual Traditional Owners Account.

These risks are borne first by the relevant Traditional Owners Account, but when that account cannot meet the liability, they are shared and borne by all of the Traditional Owners Accounts.

How are these risks intended to be managed and negative outcomes avoided?

The State has appointed a professional board of independent and experienced Directors to the Trustee Company to manage risks.

The Trustee must invest sufficiently conservatively so that the Minimum Annual Funding Amount for each Traditional Owners Account is reasonably expected to be satisfied in each year.

The Trust will not be a trading entity or able to borrow, but will be a passive investor in fully funded investments which may include equities.

It is also intended that the Trustee will obtain and keep current sufficient levels of professional indemnity and public risk insurances to make good losses or liabilities which may be incurred and claimed against those insurance policies.

Accumulation of Income

For the Trust to continue to enjoy the status of a tax exempt entity under the tax law, the Trust fund must be applied for charitable purposes.

This means that the Trustee must avoid excessive accumulation of the Trust income because when accumulation of the Trust's income occurs, it is not being applied for charitable purposes as the law requires. This requires that the majority of the Trust's income must be distributed for charitable purposes each year, unless the ATO has endorsed an accumulation plan that provides for some accumulation in the short-to-medium term.

Accumulation may start to occur if:

- a Traditional Owners Group is temporarily not represented by a Traditional Owner Group Entity resulting in distributions being suspended until another Traditional Owner Group Entity is appointed; or
- the Traditional Owner Group Entity ceases to apply the distributions for charitable purposes resulting in the Trustee having to suspend distributions to that Entity to preserve the status of the Trust as a whole.

If either of these situations arose, the first step would be for the Trustee and or the State and the Traditional Owners Group and/or Traditional Owner Group Entity to work together to rectify the situation. The Trustee may also elect to make arrangements with the Australian Taxation Office to agree to a temporary accumulation plan. The Trust Deed does make provision for periods of accumulation that may become necessary from time to time.

Date

2013

**The Dja Dja Wurrung Clans Aboriginal Corporation ICN 4421, for
and on behalf of the Dja Dja Wurrung People**

(Entity)

and

State of Victoria

(State)

and

**Victorian Traditional Owners Funds Limited ACN 153 198 791, as
Trustee of the Victorian Traditional Owners Trust**

(Trustee)

Recitals

- A. The Dja Dja Wurrung have appointed the Entity as the Traditional Owner Group Entity to represent them in relation to the land which is the subject of the Recognition and Settlement Agreement (**RSA**) for the purposes of the *Traditional Owner Settlement Act 2010* (Vic) (**Act**).
- B. The Minister and the Entity for and on behalf of the Dja Dja Wurrung have entered into the RSA on 28 March 2013 pursuant to the Act.
- C. The State has established the Victorian Traditional Owners Trust (**Trust**) to hold and invest funds paid by the State pursuant to the RSA and other recognition and settlement agreements to be applied for Charitable Purposes for the benefit of Traditional Owners on the terms of the Trust deed dated 3 October 2011 between the Hon Robert Clark MP, Attorney-General, for and on behalf of the State of Victoria, and the Trustee (**Trust Deed**).
- D. The Minister has approved the Trust for the purposes of section 78(2) of the Act.
- E. The Entity for and on behalf of the Dja Dja Wurrung People has resolved to apply to become a party to the Trust Deed as a Traditional Owner Group Entity and to request the Trustee to establish a Traditional Owners Account with respect to the Dja Dja Wurrung on the terms of the Trust Deed.
- F. The State has agreed to be a Contributor under the Trust Deed with respect to the Dja Dja Wurrung on the terms of this agreement (**Participation Agreement**).

Operative Parts

1. Definitions and Interpretation

1.1 Definitions

In this agreement:

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

Distribution means a distribution made to the Entity by the Trustee from the Trust Fund.

Dja Dja Wurrung and **Dja Dja Wurrung People** have the same meaning as in the Recognition and Settlement Agreement.

Economic Development Funds means any amount payable by the State under clause 5.1 (c) of the RSA.

Indigenous Land Use Agreement has the same meaning as in the Recognition and Settlement Agreement.

Minimum Annual Funding Amount means the amount set out in Schedule 2 of this Participation Agreement.

Participation Agreement has the meaning given to that term in the Recitals.

Parties means the parties to this Participation Agreement.

Recognition and Settlement Agreement or **RSA** means the recognition and settlement agreement entered into by the Corporation and the State under s 4 of the *Traditional Owner Settlement Act 2010* (Vic) dated 28 March 2013;

Register of Indigenous Land Use Agreements has the same meaning as in s 253 of the *Native Title Act 1993* (Cth).

Settlement Package means the agreements entered into by the Parties in settlement of the Native Title determination applications in the Federal Court proceeding numbers VID6006/1998, VID6001/1999, VID6003/1999 and VID6001/2000, being the Indigenous Land Use Agreement, the Recognition and Settlement Agreement, and the Traditional Owner Land Management Agreement.

Settlement Sum means the amount payable by the State under clause 5.1 (b) of the RSA.

Traditional Owner Group Entity has the same meaning as in the Act.

Traditional Owner Land Management Agreement has the same meaning as in the Recognition and Settlement Agreement.

Trust Deed means the deed dated 3 October 2011 establishing the Victorian Traditional Owners Trust.

Capitalised terms which are not otherwise defined in this Participation Agreement which are defined in the Trust Deed have the same meaning as in the Trust Deed unless a contrary intention appears.

1.2 Interpretation

In this Participation Agreement, unless the contrary intention appears:

- (a) reference to any person includes a reference to that person's personal representatives, successors and transferees (whether by assignment, novation or otherwise pursuant to law);
- (b) a reference to any group includes a reference to the members of the group from time to time;
- (c) 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;
- (d) the meaning of general words is not to be limited by the meaning of accompanying specific words;
- (e) the singular includes the plural and vice versa;
- (f) 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;
- (g) a reference to a clause, sub-clause, schedule or attachment is to a clause, sub-clause, schedule or attachment of or to this Participation Agreement;
- (h) the schedules form part of this Participation Agreement;
- (i) the recitals form part of this Participation Agreement;
- (j) a reference to any agreement, arrangement, understanding, document, deed or protocol is to that agreement, arrangement, understanding, document, deed or protocol (and, where applicable, any provisions of any of them) as amended, novated, supplemented or replaced from time to time;
- (k) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and
- (l) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally.

2. Commencement

- (a) It is a condition precedent to the formation of this Participation Agreement that the RSA becomes contractually binding on the parties, being, the date that the Indigenous Land Use Agreement is registered on the Register of Indigenous Land Use Agreements.
- (b) Once it is formed, this Participation Agreement commences immediately.

3. Purpose

The purpose of this Participation Agreement is to facilitate the preservation and prudent investment of the Settlement Sum until it is applied under the Trust Deed for the Charitable Purposes with respect to the Dja Dja Wurrung.

4. Nominations for purposes of Traditional Owners Trust Deed

The Entity is nominated as the initial Traditional Owner Group Entity for the Traditional Owners Account established by entry into this Participation Agreement and the Dja Dja Wurrung are the Traditional Owners Group associated with it.

5. Payment of Settlement Sum and Economic Development Funds to Trust

- (a) The Entity directs the State to pay the Settlement Sum to the Trustee as an addition to the Trust Fund to be held on the terms of the Trust Deed in a Traditional Owners Account with respect to the Dja Dja Wurrung.
- (b) The State agrees to pay the Settlement Sum to the Trustee to be held on the terms of the Trust Deed in a Traditional Owners Account with respect to the Dja Dja Wurrung.
- (c) The Trustee:
 - (i) accepts the Settlement Sum to be held on the terms of the Trust Deed in a Traditional Owners Account with respect to the Dja Dja Wurrung; and
 - (ii) recognises the Entity as the initial Traditional Owner Group Entity under the Trust Deed.
- (d) The Entity directs the State to pay any Economic Development Funds that remain unpaid as at 1 July 2017 to the Trustee as an addition to the Trust Fund to be held on the terms of the Trust Deed in a Traditional Owners Account with respect to the Dja Dja Wurrung People.
- (e) The State agrees to pay any Economic Development Funds that remain unpaid as at 1 July 2017 to the Trustee to be held on the terms of the Trust Deed in a Traditional Owners Account with respect to the Dja Dja Wurrung People.
- (f) The Trustee accepts any Economic Development Funds that remain unpaid as at 1 July 2017 to be held on the terms of the Trust Deed in a Traditional Owners Account with respect to the Dja Dja Wurrung.

6. Application by Entity to become a party to Trust Deed

- (a) The Entity for and on behalf of the Dja Dja Wurrung hereby applies to the Trustee to become a party to the Trust Deed and agrees to be bound by the Trust Deed as a Traditional Owner Group Entity.

7. Obligations of Entity

- (a) The Entity must act in its capacity as the Traditional Owner Group Entity under the Trust Deed in a manner which is culturally appropriate, transparent, fair and representative of all the members of the Traditional Owners Group.
- (b) The Entity must ensure that its rules:
 - (i) make provision for the matters set out in Schedule 5; and
 - (ii) are culturally appropriate, transparent, fair and representative of all members of the Traditional Owners Group.
- (c) The Entity must, at the request of the Trustee:
 - (i) provide to the Trustee, on or before 30 June each relevant year, or such other time as the Trustee determines, a certificate by a Chartered Accountant stating the amount of Distributions spent, or committed to be spent;
 - (ii) keep financial accounts and records relating to the use of Distributions to enable:
 - (A) all income and expenditure in connection with a Distribution to be identified in the Entity's accounts and records;
 - (B) the preparation of financial statements in accordance with Australian Accounting Standards; and
 - (C) the audit of those accounts and records in accordance with Australian Accounting Standards;
 - (iii) provide all information, records and documents as may be reasonably requested by the Trustee from time to time and work co-operatively and in good faith with the Trustee to endeavour to resolve any issues that may arise from time to time in the performance of this Participation Agreement and in relation to the relevant Traditional Owners Account within the Trust; and
 - (iv) report to the Trustee within 12 months of a Distribution, detailing the outcome of the Distribution and comparing that outcome with its objectives.

8. Obligations of Trustee

- (a) The Trustee must provide the State, as Contributor, with all reports provided to the Traditional Owner Group Entity under clause 4.2(h), Part 9 and clause 13.4 of the Trust Deed for the period of the Minimum Annual Funding Amount, as set out in Schedule 2.
- (b) The Trustee must notify and consult with the State if:
 - (i) the Trustee proposes to amend the Trust Deed; or

- (ii) the Trustee is notified that the status of the Trust as a tax concession charity or deductible gift recipient is subject to review or revoked by the Commissioner of Taxation under the Tax Law.

9. Traditional Owners Account Policies

9.1 Traditional Owners Account Distribution Policy

- (a) The first Traditional Owners Account Distribution Policy applicable to the Traditional Owners Account with respect to the Dja Dja Wurrung (if any) is set out in Attachment 1.
- (b) If there is no initial Traditional Owners Account Distribution Policy set out at Attachment 1, the Trustee must, at the Entity's request, develop a Traditional Owners Account Distribution Policy for the relevant Traditional Owners Account in consultation with the Entity having regard to the matters set out in Schedule 3.
- (c) The Entity must participate in good faith in the consultation process and provide its recommendations (if any) in relation to the Traditional Owners Account Distribution Policy to the Trustee in a timely manner.
- (d) Provided that clauses 2.3, 2.4, and 7.1 of the Trust Deed are observed and that the Trustee does not consider that the endorsement of the Trust by the Commissioner of Taxation for the purposes of clause 2.3(c) of the Trust Deed would be adversely affected, the Trustee must accept and carry out any recommendations made by the Entity in relation to the content and application of the Traditional Owners Account Distribution Policy.
- (e) Subject to clause 9.1(f), the Trustee may at any time review or amend the Traditional Owners Account Distribution Policy, provided that the reviewed or amended Traditional Owners Account Distribution Policy is consistent with:
 - (i) Charitable Purposes;
 - (ii) clause 2.3(d) and 7.1 of the Trust Deed; and
 - (iii) this Participation Agreement and the Trust Deed.
- (f) The Trustee must consult with and obtain the agreement of the Entity before amending a Traditional Owners Account Distribution Policy.

9.2 Traditional Owners Account Investment Policy

- (a) The Trustee must, at the Entity's request, provided the balance of the Traditional Owners Account makes it cost-effective to do so, develop a Traditional Owners Account Investment Policy specific to the Traditional Owners Account.
- (b) A Traditional Owners Account Investment Policy (as amended from time to time) replaces the General Investment Policy in relation to the Traditional Owners Account.

- (c) A Traditional Owners Account Investment Policy must be consistent with the principles on Asset Allocation set out in the General Investment Policy and must cover the matters set out in paragraph (a) of Schedule 4.
- (d) The Trustee may consult with and seek recommendations from the Entity with respect to the content of a Traditional Owners Account Investment Policy and must have regard to any recommendations made by the Entity in developing the Traditional Owners Account Investment Policy.
- (e) The Trustee may at any time review the Traditional Owners Account Investment Policy having regard, without limitation, to the matters set out in paragraph (b) of Schedule 4 and may, if the Trustee considers it appropriate or necessary, amend the Traditional Owners Account Investment Policy.
- (f) The Entity must participate in good faith in the consultation process and provide its recommendations (if any) in relation to the content of the Traditional Owners Account Investment Policy or amendment of the Traditional Owners Account Investment Policy in a timely manner.

10. Resignation of Entity

The Entity may resign as the Traditional Owner Group Entity for the Traditional Owners Account by no less than 30 days notice in writing to the Trustee and the State.

11. Replacement of Entity

- (a) If:
 - (i) the Entity resigns as the Traditional Owner Group Entity; or
 - (ii) the Traditional Owners Group revokes its appointment of the Entity as the Traditional Owner Group Entity; or
 - (iii) the Entity goes into liquidation or a receiver and manager or mortgagee's or chargee's agent is appointed or becomes subject to any form of insolvency administration or arrangement

the State must liaise with the Traditional Owners Group as soon as possible to facilitate the appointment of a new Traditional Owner Group Entity.

- (b) The State must notify the Trustee in writing within 7 days of the State being satisfied that a new Traditional Owner Group Entity has been validly appointed by the Traditional Owners Group.
- (c) The Trustee is entitled to accept a notification by the State as conclusive evidence that the new Traditional Owner Group Entity has been duly appointed by the Traditional Owners Group.
- (d) The Entity will do all things that the State or the Trustee reasonably requires it to do to ensure that any entity that succeeds the Entity as the Dja Dja Wurrung Traditional Owner Group Entity becomes bound by and has the benefit of this Participation Agreement and the Trust Deed.

12. Notices and general

- (a) The Parties' contact details are set out in Schedule 1. A Party may change its contact details from time to time by notice in writing to the other Parties.
- (b) This Participation Agreement is governed by and construed in accordance with the law of Victoria.
- (c) The terms and conditions of this Participation Agreement apply to the full extent that they are capable of operating concurrently with applicable laws. If the whole or any part of a provision of this Participation Agreement is void, unenforceable or illegal, it is severed. The remainder of this Participation Agreement has full force and effect. This clause has no effect if the severance alters the basic nature of this Participation Agreement or is contrary to public policy.
- (d) This Participation Agreement may consist of several counterparts. They make one original instrument.

13. Review

The parties agree that this Participation Agreement will be reviewed as part of:

- (a) the initial outcomes review under clause 11.2 of the RSA; and
- (b) a periodic outcomes review under clause 11.3 of the RSA.

The terms of those clauses apply to the relevant review of this Participation Agreement, with necessary adjustments.

14. Variation

- (a) This Participation Agreement may only be varied by the Parties by agreement in writing.
- (b) Without derogating from clause 14(a), the Parties may vary any deadlines in this Participation Agreement by an exchange of letters.

15. GST

- (a) An amount payable under this Participation Agreement by a Party to the other party, in respect of a *supply* which is a *taxable supply*, represents the GST exclusive value of the *supply*.
- (b) The party who receives a *taxable supply* under this Participation Agreement from the supplier must, upon receipt of a *tax invoice* from the supplier, pay GST to the supplier in addition to the GST exclusive value for the *supply*.
- (c) Any penalty or interest payable as a result of late payment of any GST payable under this Participation Agreement is payable by the Party who causes the late payment.
- (d) In this clause, expressions set out in italics have the meaning given to those expressions in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

EXECUTED as an agreement on this day of 2013.

Signed, sealed and delivered for and on behalf of **Dja Dja Wurrung Clans Aboriginal Corporation** (ICN 4421) in accordance with section 99-5 of the *Corporations (Aboriginal And Torres Strait Islander) Act 2006* (Cth)

Signature of Director

Signature of Director

Full Name of Director (Printed)

Full Name of Director (Printed)

Date

Date

By the **Honourable Robert Clark MP, Attorney General** for and on behalf of the **State Of Victoria** in the presence of:

Witness (Signature)

Name of Witness (Printed)

Date

The **Seal** of Victorian Traditional Owners Funds Limited ACN 153 198 791 as Trustee of the Victorian Traditional Owners Trust is affixed in accordance with its Constitution in the presence of:

Signature of Director

Signature of Director

Full Name of Director (Printed)

Full Name of Director (Printed)

Signature of Director

Full Name of Director (Printed)

Schedule 1 Contact Details

State Representative (as at the execution date of this Participation Agreement) (clause 12(a))

Name/Position	Contact Details
Manager Native Title Unit Department of Justice	Department of Justice Level 24, 121 Exhibition Street Melbourne VIC 3000 Ph 03 8684-7523 Fax 03 8684-1044 Email nativetitle@justice.vic.gov.au

Entity Representative (as at the execution date of this Participation Agreement) (clause 6.1)

Name/Position	Contact Details
Chief Executive Officer Dja Dja Wurrung Clans Aboriginal Corporation (ICN 4421)	Address: 473 Hargreaves Street, Bendigo, VIC, 3552 Ph 03 5444-2888 Fax 03 5441-6472 Email barbara@ddwcac.com.au

Trustee Representative (as at the execution date of this Participation Agreement) (clause 6.1)

Name/Position	Contact Details
Company Secretary Victorian Traditional Owners Funds Limited (ACN 153 198 791)	C/ Moore Stephens Level 10, 530 Collins Street Melbourne VIC 3000 Ph 03 8635 1800 Fax 03 8102 3400

Schedule 2 Minimum Annual Funding Amount

The minimum annual funding amount is [\$_____ per annum], adjusted for inflation in accordance with the Trust Deed, for a minimum of twenty years from the date of this Participation Agreement.

In the event that any Economic Development Funds are paid into the Trust Fund under clause 5 of this Participation Agreement, the Minimum Annual Funding Amount and minimum term of the Traditional Owners Account will be adjusted so as to preserve the capital value, in real terms, of the Economic Development Funds until such time as agreement is reached between the Entity, the State, and the Trustee, as to an appropriate use of those funds.

Schedule 3

Matters to be covered in Traditional Owners Account Distribution Policy

- (a) The extent to which capital might be distributed, including whether any limits are to apply (such as a maximum proportion of capital), and any circumstances in which all of the capital might be applied.
- (b) The extent to which income in excess of that required in each year to meet the Minimum Annual Funding Amount might be distributed.
- (c) The extent to which income may be accumulated, and any limitation to apply in respect of a recommendation of the Entity to accumulate.
- (d) The frequency with which Distributions might be made and any timetable which is to apply.
- (e) What information the Trustee would require from the Entity in order that it could be satisfied as to the matters specified in clause 7.2(c) of the Trust Deed.

Schedule 4

(a) Matters to be covered in Traditional Owners Account Investment Policy

- (i) The investment objective for the Traditional Owners Account.
- (ii) The risk-return profile for the Traditional Owners Account.
- (iii) Noting the need for consistency with the principles on 'Asset Allocation' in the General Investment Policy (clause 8.3(c) of the Trust Deed), specific asset allocation benchmarks and rebalancing rules.
- (iv) Whether any particular investment or class of investment is to be excluded.
- (v) Whether investments are to be confined to particular asset class or classes.
- (vi) Whether particular investments are to be made.
- (vii) Whether an investment can be made if it would result in more than a specified percentage of the funds standing to the credit of the Traditional Owners Account being exposed to a single asset, and any other diversity considerations.
- (viii) Whether the Trustee is to take into account social, environmental or other specified considerations in making an investment consideration.

(b) Matters to be taken into account by Trustee in considering changes to the Traditional Owners Account Investment Policy

- (i) Whether the economic environment or any other circumstance has changed so as to make any aspect of the Traditional Owners Account Investment Policy no longer appropriate.
- (ii) Whether or not the application of the Traditional Owners Account Investment Policy has given rise to satisfactory returns.
- (iii) The views of the Entity.

Schedule 5 Matters to be included in rules of Traditional Owner Group Entity

- (a) The methods of appointment and removal of members of the governing body of the Traditional Owner Group Entity.
- (b) The conduct for proceedings of the Traditional Owner Group Entity.
- (c) The proposed functions of the Traditional Owner Group Entity.
- (d) The matters to which the Traditional Owner Group Entity must have regard in carrying out its functions.
- (e) If the Traditional Owner Group Entity is to be a body corporate, anything else which legislation governing that type of body corporate requires to be included in its constitution or rules.

Attachment 1 Traditional Owners Account Distribution Policy

Grant Funding Agreement 2013-2017

between

**the State of Victoria through the Native Title Unit, a
business unit of the Department of Justice**

and

**The Dja Dja Wurrung Clans Aboriginal Corporation ICN
4421, for and on behalf of the Dja Dja Wurrung People**

Table of Contents

1.	Definitions	3
2.	Interpretation	5
3.	Term of the Agreement	6
4.	The Project.....	6
5.	Provision of Funds	6
	5.1 Payment of Funds	6
	5.2 Invoicing and GST	7
	5.3 Conditions of Payment	7
	5.4 Suspension of payment of Funds.....	7
6.	Use of Funds.....	8
	6.1 Funds to be used for Project	8
	6.2 Keeping of Funds.....	8
7.	Repayment of Funds	8
	7.1 Repayment	8
	7.2 Repayment if ILUA remains unregistered.....	8
	7.3 Failure to repay Funds	9
	7.4 Remaining Funds	9
8.	Compliance with Laws and policies	9
9.	Project Material.....	9
10.	Notifiable events.....	9
11.	Project Assets.....	10
	11.1 Acquisition and ownership of Project Assets	10
	11.2 Use of Project Assets.....	10
	11.3 Sale or disposal of or damage to Project Assets	10
12.	Records.....	11
13.	Reporting, audit or review	11
14.	Indemnity	12
15.	Insurance	12
16.	Employment of persons.....	12
17.	Separate entity.....	12
18.	Dispute resolution	13
	18.1 Parties to meet	13
	18.2 Mediation.....	13
	18.3 Arbitration or litigation.....	13

18.4	Performance during dispute resolution.....	13
19.	Termination.....	13
19.1	Termination for default.....	13
19.2	Department may terminate by written notice	14
19.3	The Department's rights on termination	14
19.4	Payment of interest.....	15
19.5	Preservation of other rights	15
20.	Agreement to bind the Corporation's successors	15
21.	State's Obligations Conditional.....	15
22.	Interaction with ILUA.....	15
23.	Confidentiality and privacy.....	15
23.1	Confidentiality.....	15
23.2	Disclosure by the Corporation	15
23.3	Disclosure by the Department.....	16
23.4	Privacy	16
23.5	Corporation to assist Department	16
24.	Conflict of Interest.....	16
25.	Notices	16
26.	Subcontracting	17
27.	General.....	17
27.1	Waiver.....	17
27.2	Severance	17
27.3	Stamp duty, taxes and other charges.....	17
27.4	Governing law and jurisdiction.....	17
27.5	Assignment.....	17
27.6	Counterparts.....	18
27.7	Entire Agreement and variation	18
27.8	Status of Corporation	18
27.9	Surviving Obligations	18
	Schedule	19
	Annexure 1.....	25

**THE DJA DJA WURRUNG CLANS ABORIGINAL CORPORATION
(SUPPORTING CORPORATE CAPACITY)
GRANT FUNDING AGREEMENT**

This Agreement is made between:

The State of Victoria through the Native Title Unit (a business unit of the Department of Justice)

of Level 24,121 Exhibition Street, Melbourne, Victoria, 3000 (**Department**)

and

The Dja Dja Wurrung Clans Aboriginal Corporation ICN 4421

of 473 Hargreaves Street, Bendigo, Victoria, 3552 (**Corporation**).

Background

- A. The Dja Dja Wurrung People have appointed the Corporation as the Traditional Owner Group Entity to represent them in relation to the land which is the subject of the Recognition and Settlement Agreement, for the purposes of the Act.
- B. The State and the Corporation have entered into the Recognition and Settlement Agreement.
- C. Clause 5.1 of the Recognition and Settlement Agreement provides that the State will provide the Corporation with the Funds, for the purposes set out in clause 5.1 of the RSA (**Project**).
- D. The Corporation agrees to accept the Funds subject to the terms and conditions of this Agreement.

<p>Signed for and on behalf of the Department of Justice; Signed</p>	 Signature of Authorised Officer	<p>Name: Marisa De Cicco</p> <p>Title: Executive Director, Strategic Policy and Legislation</p>
<p>Witness</p>	<p>in the presence of:</p>  Signature of witness	<p>DEAN COWIE</p> <p>Name of witness:</p>
<p>Date</p>		

Signed, sealed and delivered for and on behalf of Dja Dja Wurrung Clans Aboriginal Corporation (ICN 4421) in accordance with section 99-5 of the Corporations (Aboriginal And Torres Strait Islander) Act 2006 (Cth)



 Signature of Director

Graham Atkinson

 Full Name of Director (Printed)

24/3/13

 Date



 Signature of Director

RONALD THOMAS KERR

 Full Name of Director (Printed)

 Date

Agreed terms

1. Definitions

In this Agreement, unless the contrary intention appears:

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

Agreement means this agreement (as amended from time to time in accordance with its terms) and includes all schedules, annexures, attachments, plans, specifications and exhibits to it and any documents incorporated by reference.

Annexure means any annexure as identified in Item 13 of the Schedule.

Applicants means the applicants in Federal Court proceedings VID6006/1998, VID6001/1999, VID6003/1999 and VID6001/2000.

Auditor General means the Victorian Auditor General's Office established under the *Constitution Act 1975* (Vic) and includes any other entity that may, from time to time, perform the functions of that office.

Business Day means a day which is not a Saturday, Sunday or a public holiday in Melbourne, Victoria.

Commencement Date means the commencement date of this Agreement as set out in Item 4 of the Schedule.

Completion Date means the completion date of this Agreement as set out in Item 5 of the Schedule.

Corporation means the Dja Dja Wurrung Clans Aboriginal Corporation (ICN 4421) or successor entity, being a Traditional Owner Group Entity.

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

Confidential Information means the information as detailed in clause 23.1.

Corporation's Representative means the person set out in Item 2 of the Schedule or any replacement representative nominated by the Corporation and notified to the Department from time to time.

Data means all data or information which is:

- (a) provided or made accessible to the Corporation by the Department under this Agreement; or
- (b) collected, captured, compiled or generated by the Corporation in the course of the Corporation:
 - (i) receiving the Funds; and
 - (ii) discharging its obligations under this Agreement.

Department's Representative means the person set out in Item 3 of the Schedule or any replacement representative nominated by the Department and notified to the Corporation from time to time.

Dja Dja Wurrung has the same meaning as in the Recognition and Settlement Agreement.

Existing Intellectual Property Rights means all Intellectual Property Rights in existence prior to the Commencement Date.

Funds means the funds to be provided by the Department to the Corporation under this Agreement as specified in Item 6 of the Schedule.

GST has the same meaning as given to that term in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

ILUA means the Indigenous Land Use Agreement entered into between the Applicants, the Corporation and the State under the *Native Title Act 1993* (Cth) dated 28 March 2013.

Information Privacy Principles means the information privacy principles set out in the *Information Privacy Act 2000* (Vic).

Intellectual Property Rights includes all present and future copyright and neighbouring rights, all proprietary rights in relation to inventions (including patents), registered and unregistered trademarks, trade secrets, know how, registered designs, circuit layouts and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Interest means interest calculated at an interest rate equal to the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic).

Item means the relevant item of the Schedule to this Agreement.

- (a) **Law** means common law and equity; and
- (b) Commonwealth, Victorian or local government legislation, regulations, by-laws and other subordinate regulations.

Participation Agreement means the Victorian Traditional Owners Trust Participation Agreement between the Corporation, the State and the Victorian Traditional Owners Funds Limited ABN 95 153 198 791, as trustee of the Victorian Traditional Owners Trust, dated 28 March 2013.

Parties means severally the Department and the Corporation.

Payment Plan means the plan set out in Item 7 of the Schedule which specifies:

- (i) the amount of the Funds or each instalment of the Funds payable to the Corporation;
- (ii) the date(s) on which the Funds or instalments of the Funds will be paid; and
- (iii) the conditions precedent (if any) to payment of the Funds or an instalment of the Funds.

Project means the project described in Item 8 of the Schedule, and the Annexure.

Project Assets means any item of property, purchased, leased, hired, financed, created (except in the case of Intellectual Property Rights) or otherwise brought into existence either wholly or in part with use of the Funds, which has a value of over **\$5,000** exclusive of GST, but excludes Intellectual Property Rights.

Project Budget means the amount of funds assigned to the Project.

Project Material means all materials (including text and non-text documents and data in paper, electronic form or other medium including presentations) created or brought into existence for the purposes of the Project and includes the Promotional Material and Data.

Project Milestones means the major achievements attained during the delivery of the Project specified in Item 8 of the Schedule.

Promotional Material means any Project Material that advertises, promotes or otherwise provides information to the public relating to the Project.

Recognition and Settlement Agreement means the agreement entered into between the Corporation and the State under the Act dated 28 March 2013.

Records includes documents, information and data stored by any means, and all copies and extracts of the same.

Register of Indigenous Land Use Agreements has the meaning given to that term in s 253 of the *Native Title Act 1993* (Cth).

Registration Date means the date that the ILUA is registered on the Register of Indigenous Land Use Agreements.

Schedule means the Schedule to this Agreement.

State means the State of Victoria.

Tax Invoice has the same meaning as given to that term in the GST Act.

Term means the period set out in clause 3.

Termination Notice means written notice from the Department to the Corporation that the Agreement is terminated by the Department under clause 19.1 or 19.2 (as the case may be), specifying the date on and from which the Agreement is terminated.

Traditional Owner Group Entity has the same meaning as in the Act.

2. Interpretation

- (a) In this Agreement, unless the context otherwise requires:
- (i) words importing any gender include the other gender;
 - (ii) the plural includes any singular and vice versa;
 - (iii) a reference to a person includes any other entity recognised by law and vice versa;
 - (iv) a reference to a statute, ordinance, code or other law includes subordinate legislation, consolidations, amendments, re-enactments, and replacements of it;
 - (v) a reference to a Party to this Agreement includes the executors, administrators, successors and permitted assigns of that Party;
 - (vi) a reference to an individual or person includes a corporation, partnership, joint venture, association, governments, local government authorities and agencies;
 - (vii) a reference to 'dollars' or '\$' is a reference to the lawful currency of Australia;
 - (viii) a reference to a recital, clause, schedule or annexure is a reference to a recital, clause, schedule or annexure to this Agreement, each of which forms a part of this Agreement;
 - (ix) where a party to this Agreement consists of more than one person those persons shall be bound jointly and severally by this Agreement;
 - (x) headings are for guidance only and do not affect the interpretation of this Agreement; and
 - (xi) where a term is defined, the definition includes all grammatical forms of that term.
- (b) If there is any conflict or inconsistency between:
- (i) the terms and conditions contained in the clauses of this Agreement and any part of the Schedule, then the terms and

conditions of the clauses will prevail to the extent of the conflict or inconsistency;

- (ii) the terms and conditions contained in the clauses of this Agreement and any part of the Annexures (if any), then the terms and conditions of the clauses will prevail to the extent of the conflict or inconsistency;
- (iii) any part of the Schedule and any part of the Annexures (if any), then the Schedule will prevail to the extent of the conflict or inconsistency.

3. Term of the Agreement

This Agreement commences on the Commencement Date and ends on the Completion Date, unless terminated earlier in accordance with this Agreement or the Parties otherwise agree in writing to extend the Term.

4. The Project

The Corporation is to undertake the Project:

- (a) subject to the terms and conditions of this Agreement;
- (b) diligently, effectively and to a high standard that may be reasonably expected of a skilled person suitably qualified and experienced in the performance of such tasks; and
- (c) in accordance with applicable professional ethics, principles and standards.

5. Provision of Funds

5.1 Payment of Funds

- (a) The Parties agree that, subject to clause 5.1(c), the Department is under no obligation to pay the Funds in whole or in part until the Registration Date.
- (b) Subject to compliance by the Corporation with this Agreement, the Department must pay the Funds to the Corporation at the times specified in the Payment Plan.
- (c) If before the Registration Date the Corporation demonstrates to the Department's reasonable satisfaction that it does not have access to sufficient funding to continue its normal operations at a level that corresponds with the description for Year 1 of the Project titled 'Supporting the corporate capacity of the Corporation', the Department may, at its absolute discretion, commence payment under clause 5.1(b) of part or all of the Funds designated for Year 1 of that Project before the Registration Date.
- (d) If the Department makes a payment as described in clause 5.1(c), but does not pay all of the designated Funds referred to, the balance of those Funds will only become payable in accordance with the Payment Plan or otherwise at the Department's discretion.
- (e) The Corporation acknowledges that:
 - (i) the Funds constitute the full extent of the Funds available to the Corporation from the Department for the Project;
 - (ii) it is not entitled to claim from the Department any sums additional to the Funds in relation to the Project; and
 - (iii) it is responsible for providing any additional funds that may be required to complete the Project.

5.2 Invoicing and GST

- (a) The Corporation must, not less than fifteen Business Days before the time specified in the Payment Plan for payment of the Funds, provide the Department with a Tax Invoice for the payment of the Funds or an instalment of the Funds.
- (b) If the Department decides to make a payment as described in clause 5.1(c), the Department must give a notice to the Corporation requiring the Corporation to provide a Tax Invoice to the Department by a particular date before the payment is to be made, and the Corporation must comply with that requirement.
- (c) Unless otherwise stated, and subject to clause 5.2(f), the Funds are provided for a supply of services by the Corporation that is a taxable supply for which GST is payable by the Department.
- (d) All Funds in this Agreement are shown inclusive of GST unless otherwise stated.
- (e) If GST is payable and the Corporation has not entered into a recipient created tax invoice agreement (**RCTI agreement**) with the Department or received an invoice containing an embedded RCTI agreement from the Department, the Corporation must issue Tax Invoices to the Department prior to receiving Funds.
- (f) If the Corporation is not making a taxable supply, clause 5.2(c) will not apply and the Department will not pay GST in respect of a supply by the Corporation under this Agreement.
- (g) Terms used in this clause 5.2 which are defined in the GST Act have the same meaning in this clause 5.2.

5.3 Conditions of Payment

Without limiting clauses 5.1, 5.2 and 5.4, the payment of the Funds is conditional upon:

- (a) achievement by the Corporation of all reporting requirements set out in clause 13, by the dates specified in Item 11 of the Schedule; and
- (b) the Department being satisfied that any Funds previously paid to the Corporation have been applied exclusively towards the Project; and
- (c) the Corporation providing to the State an executed counterpart of the Participation Agreement.

5.4 Suspension of payment of Funds

- (a) The Department may, in addition to any other rights the Department may have under this Agreement, withhold or suspend any payment of Funds in whole or in part until the Corporation has performed its obligations under this Agreement.
- (b) Without limiting clause 5.4(a), the Department may withhold or suspend an instalment of the Funds, in whole or in part if, at the time specified for payment of the instalment in the Payment Plan, the Corporation has not expended or cannot demonstrate commitment of, any instalment of the Funds previously received for the Project.
- (c) Without limiting clause 5.4(a) or clause 5.4(b), the Department may withhold or suspend an instalment of the Funds, in whole or in part if it has made a payment as described in clause 5.1(c), and the Registration Date has not occurred on or after 27 January 2014.

- (d) For the avoidance of doubt, the Department may withhold or suspend an instalment of the Funds under clause 5.4(c) even if it has made payments under this Agreement on or after 27 January 2014.
- (e) Clause 5.4(c) ceases to operate on the Registration Date.

6. Use of Funds

6.1 Funds to be used for Project

- (a) The Corporation undertakes to use the Funds exclusively for the purposes of the Project and in accordance with the terms and conditions of this Agreement.
- (b) The Corporation must not use the Funds, this Agreement or the Project Assets for any other purpose whatsoever, including as security for the purpose of obtaining any form of finance, or for meeting existing debts, liabilities or obligations.

6.2 Keeping of Funds

The Corporation must identify the receipt and expenditure of the Funds separately in the Corporation's accounts so that the Funds are identifiable at all times and otherwise comply with any additional obligations specified in Item 9 of the Schedule.

7. Repayment of Funds

7.1 Repayment

If at any time during the term of this Agreement the Department forms the reasonable opinion that any Funds:

- (a) contrary to the terms and conditions of this Agreement, remain unspent or uncommitted; or
- (b) have been used, spent or committed by the Corporation other than in accordance with this Agreement,

the Department may at its discretion, by written notice to the Corporation, require the Corporation to repay that part of the Funds, and the Corporation must repay to the Department the amount set out in the notice, within twenty Business Days of receipt of the notice.

7.2 Repayment if ILUA remains unregistered

- (a) If the Department has made a payment as described in clause 5.1(c), and the Registration Date has not occurred on or after 1 October 2013, then, without limitation to clause 7.1, the Department may at its discretion, by written notice to the Corporation, require the Corporation to repay part or all of the Funds that have been paid under this Agreement, and the Corporation must repay to the Department the amount set out in the notice, within twenty Business Days of receipt of the notice.
- (b) For the avoidance of doubt, the Department may require the repayment of Funds under clause 7.2(a) even if it has made payments under this Agreement on or after 1 October 2013.
- (c) Clause 7.2(a) ceases to operate on the Registration Date.

7.3 Failure to repay Funds

If the Corporation fails to repay the Funds in accordance with a notice issued under clause 7.1 or 7.2:

- (a) the Corporation must pay the Department Interest on the amount set out in the Notice from the date it was due, for the period it remains unpaid;
- (b) the amount set out in the notice, and Interest owed under this clause 7.3 will be recoverable by the Department as a debt due to the Department by the Corporation; and
- (c) the Corporation acknowledges that Interest payable under this clause 7.3 represents a reasonable pre-estimate of the loss incurred by the Department as a result of the loss of investment opportunity for, or the reasonable cost of borrowing other money in place of, the amount which should have been repaid.

7.4 Remaining Funds

- (a) If at the Completion Date or upon earlier termination of this Agreement, the Corporation has remaining Funds (which does not include any Funds legally committed for expenditure in accordance with this Agreement and which fall for payment after the Completion Date) and wishes to retain those Funds, the Corporation agrees to seek the Department's written consent to retain the Funds and to use them only for purposes agreed by the Department. The Department may grant or withhold its consent, or grant its consent subject to conditions, at its absolute discretion.
- (b) If the Department does not agree to the Corporation retaining the Funds under clause 7.4(a) the Corporation agrees to return the Funds to the Department within twenty Business Days of the Department's notice requiring the Corporation to return the Funds.

8. Compliance with Laws and policies

In implementing the Project and carrying out its obligations under this Agreement, the Corporation must comply with:

- (a) all applicable Laws; and
- (b) any policies or guidelines in relation to the Funds as notified, referred to or made available by the Department to the Corporation (including by reference to a website).

9. Project Material

- (a) The Corporation will ensure that for so long as the Project Material is in the possession or control of the Corporation, the Project Material will be stored in a secure environment, such as a secure network file system, locked drawer or locked filing cabinet.
- (b) The Corporation must not publish or make available to the public, any Project Material without the prior written approval of the Department, which approval will not be unreasonably withheld.

10. Notifiable events

The Corporation must notify the Department in writing as soon as reasonably practicable should any of the following events occur or seem likely to occur:

- (a) there is a change in the Corporation's legal status or business structure;
- (b) there is a change in ownership of the Corporation;

- (c) any event occurs which may have, or may reasonably be expected to have, an impact on the Corporation's ability to carry out its obligations under this Agreement;
- (d) any significant financial or other event occurs which is likely to adversely affect satisfactory completion of the Project; or
- (e) any contractor, agent, volunteer or employee of the Corporation is found guilty of misconduct in relation to the performance of the Project.

11. Project Assets

11.1 Acquisition and ownership of Project Assets

- (a) The Corporation agrees not to use the Funds to acquire or create any Project Asset apart from those detailed in Item 10 of the Schedule without obtaining the Department's prior written approval. Approval may be given subject to any conditions the Department may impose.
- (b) Unless it is specified in Item 10 of the Schedule that the Department or a third party owns a Project Asset or the Department provides written consent to a third party owning the Project Asset, then the Corporation must ensure that it owns any Project Asset acquired with the Funding.

11.2 Use of Project Assets

During the term of this Agreement, the Corporation agrees to:

- (a) use any Project Asset in accordance with this Agreement and for the purposes of the Project;
- (b) not encumber or dispose of any Project Asset or use any Project Asset other than in accordance with this clause 11;
- (c) hold all Project Assets securely and safeguard them against theft, loss, damage or unauthorised use;
- (d) maintain all Project Assets in good working order in compliance with the manufacturers requirements;
- (e) maintain all appropriate insurances for all Project Assets to their full replacement cost;
- (f) if required by law, maintain registration and licensing of all Project Assets;
- (g) be fully responsible for, and bear all risks relating to, the use or disposal (where approved by the Department) of all Project Assets;
- (h) maintain a Project Assets register which contains the details, if any, specified in the Schedule; and
- (i) as and when requested by the Department, provide copies of the Project Assets register to the Department.

11.3 Sale or disposal of or damage to Project Assets

- (a) If the Corporation disposes of a Project Asset during the term of this Agreement, the Corporation must use the funds obtained from the disposal of the Project Asset for the same Project Budget to which the Project Asset was applied.
- (b) If any of the Project Assets are lost, damaged or destroyed, the Corporation agrees to promptly reinstate that Project Asset from the proceeds of the insurance and this clause 11 will continue to apply to the reinstated Project Assets.

12. Records

- (a) The Corporation must keep or cause to be kept full and accurate accounts, Records and supporting data (**Accounts**) in relation to the expenditure of the Funds in accordance with generally accepted accounting principles and as required by Law. The Corporation must also keep Records in relation to the acquisition of any Project Assets.
- (b) The Corporation shall, if required, provide the Auditor General with access to its accounts, Records and any other documentation in respect of the Funds provided under this Agreement.

13. Reporting, audit or review

- (a) The Corporation must:
 - (i) submit to the Department any progress report(s) and financial report(s) as specified in Item 11 of the Schedule; and
 - (ii) provide more detailed information on the conduct of the Project and achievement of its objectives if requested to do so at any time by the Department.
- (b) Where an audited statement or report is required under Item 11 of the Schedule, the audited statement or report must be prepared by a person who is not a member, officer or employee of the Corporation but is a person who is registered as a company auditor under a law in force in the State of Victoria or is a member of the Institute of Chartered Accountants in Australia or of the Australian Society of Certified Practising Accountants.
- (c) The Department may, at its own expense, audit the expenditure of the Funds by the Corporation and/or conduct a performance review of the Corporation's obligations under this Agreement at any time.
- (d) The Corporation must:
 - (i) cooperate with the Department in relation to the conduct of any audit or performance review conducted pursuant to paragraph 13(c);
 - (ii) grant the person conducting the audit or performance review reasonable access to the Corporation's premises;
 - (iii) permit the person conducting the audit or performance review to inspect and make copies of the Corporation's Records relevant to the Project and the performance of the Agreement; and
 - (iv) make available to the Department all relevant information and documents required for the purposes of the audit or performance review within ten Business Days of a written request by the Department or as otherwise agreed with the Department.
- (e) The Department may, following an audit, direct the Corporation as to the Corporation's accounting practices with regard to the Funds and/or expenditure of the Funds and the Corporation must comply with such directions.
- (f) The Corporation must promptly take any reasonable action required by the Department to rectify any error, non-compliance or inaccuracy identified in an audit or performance review in relation to the Project or the Corporation's performance of the Agreement.

14. Indemnity

- (a) The Corporation acknowledges that it enters into this Agreement in reliance on its own judgment and that it has not relied on any conduct, statements, warranties or representations made to the Corporation or to any other person by or on behalf of the Department or any of its representatives, officers, employees, contractors or agents.
- (b) The Corporation indemnifies (and keeps indemnified) the Minister, the Department and the Department's representatives, officers, employees, contractors and agents from and against any:
 - (i) cost or liability incurred by the Department;
 - (ii) loss of or damage to the Department's property; or
 - (iii) loss or expense incurred by the Department in dealing with any claim against the Department, including legal costs and expenses on a solicitor/own client basis and cost of time spent, resources used, or disbursements paid by the Department;arising from:
 - (iv) any act or omission by the Corporation or any of the Corporation's employees, agents, volunteers or subcontractors in connection with this Agreement, where there was a fault on the part of the person whose conduct gave rise to that liability, loss, damage or expense; or
 - (v) any breach by the Corporation of this Agreement.
- (c) The Corporation's liability to indemnify under this clause 14 will be reduced proportionally to the extent that any fault on the Department's part contributed to the relevant liability, loss, damage or expense.

15. Insurance

- (a) The Corporation must:
 - (i) effect and maintain the insurances specified in Item 12 of the Schedule; and
 - (ii) on request by the Department, provide evidence (in a form acceptable to the Department) of any insurance.
- (b) This clause 15 shall continue in operation for so long as any obligations remain in connection with this Agreement.

16. Employment of persons

- (a) If the Corporation employs any person as a result of the Funds to work in any manner on the Project, the Corporation shall be that person's employer.
- (b) The Corporation acknowledges that no contract of employment arises between the Minister or the Department on the one hand, and any person engaged by the Corporation for the purposes of carrying out the Project on the other.

17. Separate entity

- (a) The Corporation shall not represent itself, and shall ensure that its employees do not represent themselves as being employees, partners or agents of the Department or as otherwise able to bind or represent the Department.

- (b) Clause 17(a) does not apply where the Corporation has employed a person under Part 3 of the *Public Administration Act 2004 (Vic)* and the person is acting in the normal course of his or her employment.

18. Dispute resolution

18.1 Parties to meet

If any dispute arises under or in connection with this Agreement (**Dispute**) which the Parties' representatives are not able to resolve within ten Business Days of the Dispute arising, the Department's Representative and the Corporation's Representative will promptly meet and discuss in good faith with a view to resolving such Dispute.

18.2 Mediation

- (a) If any Dispute is unable to be resolved in accordance with clause 18.1 within thirty Business Days, the Parties agree to endeavour in good faith to settle the Dispute by mediation before having recourse to arbitration or litigation.
- (b) The mediation will be conducted by the Dispute Settlement Centre of Victoria.

18.3 Arbitration or litigation

- (a) If the Parties fail to settle any Dispute in accordance with clause 18.2, the parties may agree to submit the Dispute for resolution to final and binding arbitration under the Rules of Arbitration of the Institute of Arbitrators and Mediators Australia by one or more arbitrators appointed in accordance with those rules.
- (b) If the parties do not agree to refer the Dispute to arbitration in accordance with clause 18.3(a), either party may submit the dispute for resolution to the non exclusive jurisdiction of the courts of Victoria, Australia.

18.4 Performance during dispute resolution

The parties to a Dispute will continue to perform their respective obligations under this Agreement pending the resolution of the Dispute under this clause 18.

19. Termination

19.1 Termination for default

If:

- (a) the Corporation fails to fulfil, or is in breach of any of the Corporation's obligations under this Agreement, and does not rectify the omission or breach within twelve Business Days of receiving a notice from the Department to do so;
- (b) the Corporation is unable to pay all the Corporation's debts as and when they become due and payable or the Corporation fails to comply with a statutory demand within the meaning of ss 459E and 459F of the *Corporations Act 2001 (Cth)*;
- (c) proceedings are initiated with a view to obtaining an order for the Corporation's winding up or any shareholder, member or director convenes a meeting for the purpose of considering or passing of any resolution for the Corporation's winding up;
- (d) the Corporation has applied to come under, received a notice requiring the Corporation to show cause why the Corporation should not come under, or

has otherwise come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth) or the *Associations Incorporation Act 1981* (Vic) or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), or an order has been made for the purpose of placing the Corporation under external administration;

- (e) being an individual, the Corporation becomes bankrupt or enters into a scheme of arrangement with creditors;
- (f) in relation to this Agreement, the Corporation breaches any Law;
- (g) the Corporation ceases to carry on business;
- (h) the Department is satisfied that any statement made in the Corporation's application for Funds is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the Funds;
- (i) notice is served on the Corporation or proceedings are taken to cancel the Corporation's incorporation or registration or to dissolve the Corporation as a legal entity; or
- (j) the Corporation suffers a change in control which in the reasonable opinion of the Department adversely affects the ability of the Corporation to comply with its obligations under this Agreement,

then, in the case of any one or more of these events, the Department may terminate this Agreement by issuing a Termination Notice to the Corporation, such termination to be effective on and from the date specified in the Termination Notice.

19.2 Department may terminate by written notice

- (a) Notwithstanding clause 19.1, the Department may at any time issue a Termination Notice, such termination to be effective on and from the date specified in the Termination Notice, which date shall be no less than three months after the date upon which the Termination Notice is deemed to be received by the Corporation under clause 25(b).
- (b) Neither the State of Victoria nor the Department shall be liable for any loss or damage arising from or in respect of early termination of this Agreement.

19.3 The Department's rights on termination

Where the Department terminates this Agreement under clause 19.1 or 19.2 the Department:

- (a) will not be obliged to pay to the Corporation any outstanding amount of the Funds except to the extent that those monies have been legally committed for expenditure by the Corporation in accordance with this Agreement and payable by the Corporation as a current liability (written evidence of which will be required) by the date of receipt of the Termination Notice given under clause 19.1 or 19.2; and
- (b) will be entitled to recover from the Corporation any part of the Funds which:
 - (i) have not been legally committed for expenditure by the Corporation in accordance with this Agreement and payable by the Corporation as a current liability (written evidence of which will be required) by the date of receipt of the Termination Notice given under clause 19.1 or 19.2; or
 - (ii) have not, in the Department's reasonable opinion, been expended by the Corporation in accordance with the terms and conditions of this Agreement,

in which case the Department may at its discretion, by written notice to the Corporation (**Repayment Notice**), require the Corporation to repay that part of the Funds, and the Corporation must repay to the Department the amount set out in the Repayment Notice, within twenty Business Days of receipt of the Repayment Notice.

- (c) Termination of this Agreement in accordance with clause 19.1 or 19.2 will not prejudice any right of action or remedy which may have accrued to either Party prior to termination.

19.4 Payment of interest

If the Corporation does not repay the Department the amount referred to in clause 19.3(b) within ten Business Days of termination of the Agreement under clause 19.1 or 19.2, the Corporation must also pay the Department Interest on the outstanding amount. The amount set out in the Repayment Notice, and Interest owed under this clause will, without prejudice to any other rights available to the Department under this Agreement or at law or in equity, be recoverable by the Department as a debt due to the Department by the Corporation without further proof of the debt by the Department being necessary.

19.5 Preservation of other rights

Clause 19.4 does not limit or exclude any of the Department's other rights, including the right to recover any other amounts from the Corporation on termination of this Agreement.

20. Agreement to bind the Corporation's successors

The Corporation will do all things that the State reasonably requires it to do to ensure that any corporation that succeeds the Corporation and is appointed by the Dja Dja Wurrung as the Traditional Owner Group Entity becomes bound by and has the benefit of this Agreement.

21. State's Obligations Conditional

The performance of the State's obligations under this Agreement is conditional on the Corporation being the Traditional Owner Group Entity at the relevant time for the purpose of any particular obligation.

22. Interaction with ILUA

Clause 5.4, clause 7.2 and clause 7.3 are not affected by the obligations in clause 6 of the ILUA regarding the registration of the ILUA and the rectification of any deficiencies in the ILUA so that it may be registered.

23. Confidentiality and privacy

23.1 Confidentiality

Each Party will keep confidential all information of the other Party which that Party has indicated must be kept confidential (**Confidential Information**). Subject to clauses 23.2 and 23.3, the Confidential Information of a Party (**First Party**) will only be disclosed by the other Party with the written consent of the First Party, which consent will not be unreasonably withheld.

23.2 Disclosure by the Corporation

The Corporation may disclose the Department's Confidential Information:

- (a) to its officers, employees and agents who have a need to know for the purposes of this Agreement (and only to the extent that each has a need to

know), and those person must undertake to keep confidential any information disclosed to them; and

- (b) to the extent necessary to comply with any applicable Law or requirement or any regulatory body, government agency or stock exchange.

23.3 Disclosure by the Department

The Corporation consents to the Department disclosing the Corporation's Confidential Information to the extent necessary to comply with:

- (a) the *Freedom of Information Act 1982* (Vic);
- (b) the *Ombudsman Act 1973* (Vic);
- (c) the disclosure requirements of the Auditor-General; and
- (d) any requirement to make disclosure under any applicable Law.

23.4 Privacy

The Corporation acknowledges and agrees that it will be bound by the Information Privacy Principles and any applicable Code of Practice with respect to any act done in connection with the carrying out of the Project in the same way as the Department would have been bound had the relevant act been done by the Department.

23.5 Corporation to assist Department

The Corporation must use all reasonable endeavours to assist the Department in meeting its disclosure obligations under any applicable Law.

24. Conflict of Interest

- (a) The Corporation warrants to the Department that it does not, and will ensure that its employees, agents and contractors do not, hold any office or possess any property, are not engaged in any business, trade or calling and do 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 their duties and interest under this Agreement.
- (b) The Corporation must promptly inform the Department of any matter which may give rise to an actual or potential conflict of interest.
- (c) The Corporation acknowledges and agrees that failure to comply with this clause 24 will constitute a breach of a fundamental term of this Agreement.

25. Notices

- (a) A notice given under this Agreement must be in writing, addressed to the Department's Representative or the Corporation's Representative, as the case may be, signed by or on behalf of the Party giving it, and may be delivered by hand, or sent by registered mail, facsimile or electronic mail.
- (b) A notice:
 - (i) takes effect from the time it is received unless a later time is specified in it; and
 - (ii) shall be deemed to have been received by a Party:
 - (A) in the case of delivery in person, when delivered; or
 - (B) in the case of delivery by post, on the second Business Day after posting;

- (C) in the case of facsimile transmission, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the receiving Party; and
 - (D) in the case of electronic mail, on the day of transmission if the message is correctly addressed to and successfully transmitted to the receiving party's electronic mail address and an acknowledgement of receipt is recorded on the sending Party's computer.
- (c) If any notice or document is delivered or deemed to be delivered:
- (i) after 5.00pm in the place of receipt; or
 - (ii) on a day which is not a Business Day in the place of receipt, it is taken as having been delivered at 9.00am on the next Business Day.

26. Subcontracting

- (a) The Corporation must not sub-contract the performance of any part of the Project or any of its obligations under this Agreement without the prior written consent of the Department, which consent may be given or withheld by the Department in its absolute discretion.
- (b) The Corporation will not, as a result of any subcontracting arrangement, be relieved from the performance of any obligation under this Agreement and is liable for all acts and omissions of a subcontractor as though they were the acts and omissions of the Corporation.

27. General

27.1 Waiver

No right or obligation under this Agreement shall be deemed to be waived except upon written acknowledgment signed by the party waiving the right or obligation in each instance.

27.2 Severance

Any provision of this Agreement which is invalid or unenforceable will be read down, if possible, to be valid and enforceable. Where that provision cannot be read down it will, to the extent that it is capable, be severed without affecting the remaining provisions of the Agreement.

27.3 Stamp duty, taxes and other charges

Subject to clause 5.2, the Corporation shall pay any stamp duty and any other taxes, duties, or government charges which may be payable in connection with this Agreement.

27.4 Governing law and jurisdiction

This Agreement shall be governed by the laws of the State of Victoria. The Parties submit to the jurisdiction of the courts of Victoria and courts entitled to hear appeals from those courts.

27.5 Assignment

The Corporation must not assign any right, benefit, obligation or duty (or any part thereof) under this Agreement without the prior written consent of the Department which consent may be given or withheld by the Department in its absolute discretion.

27.6 Counterparts

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

27.7 Entire Agreement and variation

- (a) This Agreement records the entire agreement between the Parties as to its subject matter and supersedes all prior representations, communications, agreements, statements and understandings, whether oral or in writing.
- (b) No agreement or understanding varying or extending this Agreement will be legally binding upon either party unless in writing and signed by both parties.

27.8 Status of Corporation

The Corporation will not, by virtue of this Agreement, be deemed to be an agent, contractor or partner of the Department, or having any power or authority to bind or represent the Department.

27.9 Surviving Obligations

Clauses 9, 10, 12 and 13 of this Agreement survive the termination or expiry of this Agreement.

Schedule

Item	Description	Details
1.	Organisation	<p>The Dja Dja Wurrung Clans Aboriginal Corporation</p> <p>ABN: 52 459 162 679</p> <p>Street address: 473 Hargreaves Street, Bendigo, VIC, 3552</p> <p>Postal address: PO Box 1026, Bendigo, VIC, 3552</p> <p>Phone: (03) 5444-2888</p> <p>Fax: (03) 5441-6472</p> <p>Email: barbara@ddwcac.com.au</p>
2.	Corporation's Representative	<p>Chief Executive Officer Dja Dja Wurrung Clans Aboriginal Corporation (ICN 4421)</p> <p>Address: 473 Hargreaves Street, Bendigo, VIC, 3552</p> <p>Ph 03 5444-2888 Fax 03 5441-6472</p> <p>Email barbara@ddwcac.com.au</p>
3.	Department's Representative	<p>Manager Native Title Unit Department of Justice</p> <p>Department of Justice Level 24, 121 Exhibition Street Melbourne VIC 3000</p> <p>Ph 03 8684-7523 Fax 03 8684-1044</p> <p>Email nativetitle@justice.vic.gov.au</p>
4.	Commencement Date (clause 3)	1 July 2013.
5.	Completion Date (clause 3)	The date on which the Department is satisfied with the report submitted by the Corporation pursuant to paragraph f) of Item 11 in the Schedule.

Grant Funding Agreement

Schedule

Item	Description	Details
6.	Funds (clauses 1, 5 and 7)	\$900,000 is the total amount, exclusive of GST, being made available. This amounts to \$990,000 inclusive of GST.

Item	Description	Details
7.	<p>Payment Plan (clause 5)</p>	<p>a) The Department will make a first payment of \$291,500 (inclusive of GST) to the Corporation within 30 days of the Registration Date, provided that the Department's Native Title Unit has received an invoice for this amount which complies with the requirements of clause 5.2.</p> <p>b) The Department will make a second payment of \$137,500 (inclusive of GST) to the Corporation within 30 days of receipt by the Department's Native Title Unit of the progress report specified in item 11a) of this Schedule (due no later than 27 January 2014), provided that the Department's Native Title Unit has received an invoice for this amount which complies with the requirements of clause 5.2.</p> <p>c) The Department will make a third payment of \$291,500 (inclusive of GST) to the Corporation within 90 days of receipt by the Department's Native Title Unit of the final report specified in 11b) of this Schedule (due no later than 30 September 2014) provided that the Department's Native Title Unit has received an invoice for this amount which complies with the requirements of clause 5.2.</p> <p>d) The Department will make a fourth payment of \$137,500 (inclusive of GST) to the Corporation within 30 days of receipt by the Department's Native Title Unit of the progress report specified in Item 11c) below (due no later than 26 January 2015), provided that the Department's Native Title Unit has received an invoice for this amount which complies with the requirements of clause 5.2.</p> <p>e) The Department will make a fifth payment of \$66,000 (inclusive of GST) to the Corporation within 90 days of receipt by the Department's Native Title Unit of the final report specified in 11d) of this Schedule (due no later than 30 September 2015) provided that the Department's Native Title Unit has received an invoice for this amount which complies with the requirements of clause 5.2.</p>

Item	Description	Details
		f) The Department will make a sixth payment of \$66,000 (inclusive of GST) to the Corporation within 90 days of receipt by the Department's Native Title Unit of the final report specified in 11 e) of this Schedule (due no later than 30 September 2016) provided that the Department's Native Title Unit has received an invoice for this amount which complies with the requirements of clause 5.2.
8.	Project (clause 1, 4)	The Project details are set out in Annexure 1, including the amount of funds assigned to each project.
9.	Keeping of Funds (clause 6.2)	<p>The Corporation must:</p> <ul style="list-style-type: none"> a) Ensure the Funds are held in an account in the Corporation's name and which the Corporation solely controls with an authorised deposit taking institution authorised under the <i>Banking Act 1959</i> (Cth) to carry on banking business in Australia (Bank); b) Notify the Department, prior to receipt of any Funds, of details sufficient to identify the account; c) On notification from the Department, provide the Department and the Bank with a written authority for the Department to obtain any details relating to use of the account; d) If the account changes, notify the Department within 10 Business Days of the change occurring, and provide the Department with details of the new account; and e) Unless the Corporation is a sole director company or an individual, ensure as a minimum two signatories who have the Corporation's authority to do so, are required to operate the account.
10.	Project Assets (clause 11)	Any Project Assets which may be purchased with the Funds under the Project shall be the property of the Corporation at the Completion Date for this Agreement.

Item	Description	Details
11.	<p>Reporting, audit or review requirements (clause 13)</p>	<p>The Corporation must submit the following to the Department's Native Title Unit:</p> <ul style="list-style-type: none"> a) By 27 January 2014: <ul style="list-style-type: none"> (i) a progress report in respect of the first twelve months after the Commencement Date (Year 1) which summarises activities undertaken in that period; and (ii) a financial report. b) By 30 September 2014: <ul style="list-style-type: none"> (i) a final report in respect of Year 1; and (ii) an audited Project financial statement for Year 1. c) By 26 January 2015: <ul style="list-style-type: none"> (i) a progress report in respect of the second consecutive twelve month period after the Commencement Date (Year 2), which summarises activities undertaken in that year; and (ii) a financial report . d) By 30 September 2015: <ul style="list-style-type: none"> (i) a final report in respect of Year 2; and (ii) an audited Project financial statement for Year 2. e) By 30 September 2016: <ul style="list-style-type: none"> (i) a final report in respect of the third consecutive twelve month period after the Commencement Date (Year 3), which summarises activities undertaken in that year; and (ii) an audited Project financial statement for Year 3.

Item	Description	Details
		<p>f) By 30 September 2017:</p> <ul style="list-style-type: none"> (i) a final report in respect of the fourth consecutive twelve month period after the Commencement Date (Year 4), which summarises activities undertaken in that year; and (ii) an audited Project financial statement for Year 4. <p>The Corporation must also:</p> <ul style="list-style-type: none"> g) have all reports signed by the Corporation's Chief Executive Officer (or equivalent or nominee); and h) have the financial report and audited statement accompanied by a declaration by the Chief Executive Officer (or equivalent or nominee) of the Corporation, that all Funds received by the Corporation have been expended for the purpose for which they were provided.
12.	Insurance (clause 15)	<p>The Corporation must maintain:</p> <ul style="list-style-type: none"> a) workers compensation insurance as required by Law; and b) public liability insurance to the value of at least \$10 million for each and every claim, or occurrence giving rise to a claim, in respect to activities undertaken under this Agreement, where occurrence means either a single occurrence or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be.
13.	Annexures	Annexure 1: Project Description

Project title	Project description	Designated funds
	2. meet the obligations of the Corporation under the Recognition and Settlement Agreement.	
Project Budget:		TOTAL = \$550,000 (incl. GST)
Project: Employment of Project officer	<p>Year 1</p> <p>The Project consists of providing funds to the Corporation to cover the employment of a full-time Project Officer.</p> <p>The objective of the Project is to support the Corporation to meet its obligations under the Recognition and Settlement Agreement and Traditional Owner Land Management Agreement, including to establish policies and procedures for the management of the obligations of the Corporation under the Land Use Activity Agreement, Natural Resource Agreement and Traditional Owner Land Management Agreement.</p> <p>Year 2</p> <p>The Project consists of providing funds to the Corporation to cover the employment of a full-time Project Officer.</p> <p>The objective of the Project is to support the core operations of the Corporation, including to implement policies and procedures for the management of the obligations of the Corporation under the Land Use Activity Agreement, Natural Resource Agreement and Traditional Owner Land Management Agreement.</p>	<p>\$88,000 (incl. GST)</p> <p>\$88,000 (incl. GST)</p>
Project Budget:		TOTAL = \$176,000 (incl. GST)
Project: To assist in the employment of business development and workforce planning manager.	<p>Year 1</p> <p>The Project consists of providing funds to the Corporation to assist with the employment of a full-time Business Development and Workforce Planning Manager.</p> <p>The objective of the Project is to support the Corporation to:</p> <ol style="list-style-type: none"> 1. source paid work for Dja Dja Wurrung Enterprises Pty Ltd; 2. assist in developing and 	\$66,000 (incl. GST)

Project title	Project description	Designated funds
	<p>implementing an investment plan;</p> <ol style="list-style-type: none"> 3. explore opportunities for economic development; and 4. develop business development and workforce planning goals. <p>Year 2</p> <p>The Project consists of providing funds to the Corporation to assist with the employment of a full-time Business Development and Workforce Planning Manager.</p> <p>The objective of the Project is to support the Corporation to:</p> <ol style="list-style-type: none"> 1. source paid work for Dja Dja Wurrung Enterprises Pty Ltd; 2. assist in developing and implementing an investment plan; 3. explore opportunities for economic development; and 4. develop business development and workforce planning goals. <p>Year 3</p> <p>The Project consists of providing funds to the Corporation to assist with the employment of a full-time Business Development and Workforce Planning Manager.</p> <p>The objective of the Project is to support the Corporation to:</p> <ol style="list-style-type: none"> 1. grow Dja Dja Wurrung Enterprises Pty Ltd; 2. implement the investment plan; 3. source opportunities for economic development; and 4. implement business development and workforce planning goals. <p>Year 4</p> <p>The Project consists of providing funds to the Corporation to assist with the employment of a full-time Business Development and Workforce Planning Manager.</p> <p>The objective of the Project is to support the Corporation to:</p> <ol style="list-style-type: none"> 1. grow Dja Dja Wurrung Enterprises Pty Ltd; 	<p>\$66,000 (incl. GST)</p> <p>\$66,000 (incl. GST)</p> <p>\$66,000 (incl. GST)</p>

Project title	Project description	Designated funds
	<ol style="list-style-type: none">2. implement the investment plan;3. source opportunities for economic development; and4. implement business development and workforce planning goals.	
Project Budget:		TOTAL = \$264,000 (incl. GST)

