



**MILDURA MULTI-DISCIPLINARY CENTRE  
PROJECT CONTROL GROUP**

**PRINCIPAL CONSULTANCY BRIEF**

**CONSTRUCTION AND FITOUT  
WORKS AT  
MILDURA MULTI-DISCIPLINARY  
CENTRE  
[48-50 DEAKIN AVENUE,  
MILDURA]**

**December, 2019**

<b>1</b>	<b>INTRODUCTION</b> .....	<b>4</b>
1.01	CLIENT BACKGROUND .....	4
1.02	PROJECT BACKGROUND .....	4
1.03	CURRENT MILDURA MDC FACILITY .....	5
1.04	FUNCTIONAL BUILDING CONSIDERATIONS .....	6
	1.04.01 Client Access.....	7
<b>2</b>	<b>PROJECT BUDGET &amp; COST CONTROL</b> .....	<b>8</b>
2.01	COST PLAN AND CASH FLOW .....	8
2.02	PROJECT PROGRAM .....	8
<b>3</b>	<b>SCOPE OF CONSULTANCY SERVICES TO BE PROVIDED</b> .....	<b>9</b>
3.01	PROJECT SCOPE .....	9
3.02	PRINCIPAL CONSULTANTS SERVICES .....	11
	3.02.01 General Services .....	11
	<b>Meetings</b> .....	11
	<b>Organisation of the project</b> .....	11
	<b>Project Report</b> .....	11
	<b>Presentations</b> .....	12
	<b>Value Management</b> .....	12
	<b>Quality Assurance</b> .....	12
	<b>Consultation with Statutory Authorities</b> .....	12
	<b>Furniture Procurement</b> .....	12
	3.02.02 Pre – Design Services.....	13
	<b>Functional Brief</b> .....	13
	<b>Project Scope and Parameters</b> .....	13
	3.02.03 Design, Document, Construction and Fit-Out Phases.....	13
	<b>Design Development</b> .....	13
	<b>Contract Documentation</b> .....	13
	3.02.04 Contract Administration.....	14
	3.02.05 Project Hand Over and Commissioning Phase .....	15
	<b>As-built Documentation</b> .....	15
	<b>Hand Over</b> .....	15
	<b>Defects Liability Period</b> .....	16
	<b>Final Accounting</b> .....	16
	<b>Final Certificate</b> .....	16
	3.02.06 Separate Contracts.....	16

	3.02.07 IT / Telecommunications.....	16
	<b>3.03 SECURITY OF CONSTRUCTION PROCUREMENT DOCUMENTS .....</b>	<b>17</b>
	<b>3.04 CONSULTATION .....</b>	<b>17</b>
	<b>3.05 LOCAL JOBS FIRST AGENCY GUIDELINES .....</b>	<b>17</b>
	<b>3.06 QUALITY ASSURANCE .....</b>	<b>18</b>
	<b>3.07 OCCUPATION HEALTH &amp; SAFETY (OH&amp;S) .....</b>	<b>18</b>
	3.07.01 Prevention of injuries in the workplace.....	18
	3.07.02 Consultant Responsibilities.....	19
	<b>3.08 LIAISON, PROJECT REVIEWS AND REPORTS .....</b>	<b>19</b>
	<b>3.09 CONSTRUCTION TENDER AND CONTRACT DOCUMENTATION .....</b>	<b>20</b>
	<b>3.10 CONSTRUCTION TENDER ASSESSMENT .....</b>	<b>20</b>
	<b>3.11 PRINCIPAL’S REPRESENTATIVE .....</b>	<b>21</b>
<b>4</b>	<b>TENDER FEE SUBMISSION .....</b>	<b>21</b>
<b>5</b>	<b>DOCUMENT SUBMISSION.....</b>	<b>22</b>
	<b>Requirements .....</b>	<b>22</b>
<b>6</b>	<b>EVALUATION CRITERIA .....</b>	<b>23</b>
	<b>Criterion 1 – Compliance .....</b>	<b>23</b>
	<b>Criterion 2 - Project Experience .....</b>	<b>23</b>
	<b>Criterion 3 – Proposed Personnel and their Relevant Experience .....</b>	<b>23</b>
	<b>Criterion 4 – Appreciation of Requirements .....</b>	<b>23</b>
	<b>Criterion 5 – Proposed Methodology .....</b>	<b>23</b>
	<b>Criterion 6 – Design Quality .....</b>	<b>23</b>
	<b>Criterion 7 – Environmental Performance .....</b>	<b>23</b>
	<b>Criterion 8 – Resources and Availability.....</b>	<b>23</b>
	<b>Criterion 9 – Experience and Understanding with Procedures and Policies .....</b>	<b>23</b>
<b>7</b>	<b>CONDITIONS OF ENGAGEMENT .....</b>	<b>24</b>
<b>8</b>	<b>WARRANTIES AND WAIVERS .....</b>	<b>24</b>

# 1 INTRODUCTION

## 1.01 CLIENT BACKGROUND

Sexual Assault and Domestic Violence services are an essential part of the primary health care system funded by government. The Mallee Sexual Assault Unit / Mallee Domestic Violence Service (herein referred to as the "Service") is a non-profit charity providing these services to the Mallee region of North West Victoria. These services are provided free and are available to all victims and survivors.

Mallee Sexual Assault Unit aims to provide direct services to victims / survivors of sexual assault in the context of their family and other support systems. Services include crisis care responses, counselling, casework, advocacy, referral and group work.

Mallee Domestic Violence Services aims to provide direct services to victims of family violence. Services include timely crisis care response, emergency accommodation, counselling and advocacy services, referrals for appropriate support and group work.

## 1.02 PROJECT BACKGROUND

This Principal Consultancy Brief is provided to assist consultants involved with the design and fit out of new Mildura Multidisciplinary Centre (Mildura MDC), established to improve the response to victims of sexual assault and child abuse. The project is being led by Mallee Sexual Assault Unit and Mallee Domestic Violence Services (MSAU-MDVS) who are responsible for the project.

In 2006, the Victorian Government funded the Mildura MDC under a pilot project which sought to co-locate teams of specialist sexual assault police investigators (SOCITs) with sexual assault counsellors to improve responses to victim/survivors.

Since 2006, the model also expanded to incorporate Department of Health and Human Services (DHHS) child protection practitioners, specialized forensic medical examinations through VIFM and DHHS funded Community Health Nurses for holistic well-being and justice responses. In 2012 due to success of the original pilot project, the MDC model transitioned and the Victoria Government established additional MDCs across the state to respond to sexual offences and child abuse.

MDCs support subscribing partner agencies to work collaboratively to provide a victim centred service from one location, enabling an integrated multidisciplinary experience for clients and staff. Better integration and co-location of services has been proven to significantly improve the response to victims.

The MDC model approach aims to:

- Improve support for victims, including their family and support people
- Increase the reporting of sexual offences and reduce attrition of cases from the system
- Improve and integrate the investigation of sexual offences and child abuse
- Improve the quality of evidence in sexual offences and child abuse cases
- Improve the capability of agencies to respond collaboratively.

There are currently 7 MDC sites across the state with the most recent purpose facility built located at Wyndham. Other recent expansions at Geelong and Dandenong also highlight the benefits of MDC operations and provide opportunity to further develop the service responses to include dedicated family violence responses from multiple agencies.

### 1.03 CURRENT MILDURA MDC FACILITY

The Mildura MDC building is located across a suite of four buildings located at 144-148 Lime Avenue, Mildura. The Service owns 3 of the suites situated at 144-146 Lime Avenue, while the 4<sup>th</sup> suite at 148 Lime Avenue is leased.

Suites 1-4 currently house 28 service staff and 12 SOCIT staff and is currently at full capacity.

In addition the Service is heavily involved in providing services to the Orange Door, which is located several blocks away at 113 Madden Avenue, Mildura. The Orange Door houses approximately 20 Staff, 9 of which are employees of the Service.

The Service has grown at a rapid rate in recent years and projections anticipate additional staff of up to 20. Other MDC partner agencies have also indicated their staffing profile projections to increase, resulting in the current accommodation no longer being viable or suitable.

The Mildura MDC vision is to house the projected staff profile of the Service and relevant Victoria Police Investigative Units. In addition to have leasing space available to co-locate other related services such as the Orange Door (Family Safety Victoria) and staff of the Dept. of Health and Human Services.

In 2018 the Service purchased the site of the old Mildura Post Office, located at 48-50 Deakin Avenue, Mildura. This corner block site has a total area of approximately 1,500m<sup>2</sup>, with current zoning allowing for development up to 4 floors. This site also

has a heritage overlay that would require the current building facade and roofline to be retained.

The Deakin Avenue site neighbours the Mildura Law Courts, which in turn adjoins the Mildura Police Station along Deakin Avenue. The location is considered beneficial for the MDV due to accessibility for clients and convenience for staff that currently spend a considerable amount of time either at Court or the Police Station. It also allows for Vic Pol staff to utilise specialist facilities of the Mildura Police Station for operational purposes, such as managing perpetrators or property and equipment.

In principle agreement has been reached with Vic-Pol regarding lease, use and fit out for the new Deakin Avenue location.

Likewise, in principle agreement has been reached with DHHS Child Protection to lease their required office space.

The Deakin Avenue site, after allowing for setback to be inline with other buildings, will have an area of approximately 1,300m<sup>2</sup> for the ground floor and a further 1,000m<sup>2</sup> for each of the additional 3 floors, giving the building a total of 4 floors with at least 4,000m<sup>2</sup> of space.

## 1.04 FUNCTIONAL BUILDING CONSIDERATIONS

Consideration needs be given towards providing a building that promotes inter-agency collaboration (use of shared spaces), whilst also keeping work areas for each of the agencies separate and secure. It would be preferable for as many of the spaces, especially meeting rooms, to be multi-functional.

The facilities are required to be:

- safe and secure
- discreet to protect the privacy, confidentiality and anonymity of victims in client-use areas or attending the facility
- welcoming, culturally safe and "homely" with dedicated waiting areas, access to telephone, tea and coffee making facilities, and toilet amenities (separate to staff amenities)
- sound proof, especially client use rooms, such as where counselling, therapeutic treatments or police response take place
- accessible for victims and staff with a disability.
- fully IT enabled to allow for integrated working throughout the facility

One of the over-riding design principles, is the ability to be able to deliver MDC services in a flexible manner from facilities that are specifically designed to accommodate the range of programs, services and related activities.

The overall design concept should, as far as possible, be reflective of the community based service delivery so that the MDC will be perceived as 'residential' and not 'institutional' in nature.

It is essential that the facility conveys to the community its role as an agency delivering a comprehensive range of integrated client-centred services and programs in a way that reduces secondary harm and/or stigmatisation.

The need to create an environment which is 'non-clinical' and clearly avoids an institutional look must be considered in order that the concept of an impersonal facility is avoided. The general character of program areas, materials, furnishings and fittings must contribute to that environment.

Specific attention must be given to acoustic treatment of various areas including the counselling rooms, health suites and offices to ensure that discussions in those areas cannot be overheard. Similarly, care should be taken to ensure that any noise generated in any areas does not intrude into other areas and cause distress or disturbance.

Wherever possible, the design of the building should enhance the capability for agencies to work collaboratively and deliver on the intended aims of the MDC, primarily improving support to victims of sexual assault and child abuse.

Consideration should be given to ensuring the centre is culturally safe, child friendly and designed in a way so that children feel comfortable and safe to attend. Meeting/Counselling rooms with adjoining play areas would be beneficial to allow parents to discuss private matters without their conversations being over-heard by children, but so that parents are still able to provide supervision and reassurance.

#### 1.04.01 Client Access

The inclusion of the Orange Door (Mildura Support & Safety Hub) service will require a separate discreet entrance and reception area, whilst still allowing those workers from various MDC agencies to work collaboratively.

The privacy and safety of victims is paramount in the design of the MDC. Perpetrators (alleged or convicted) are **not** permitted access to the MDC and will be managed offsite by relevant agencies. However treatment programs for children and young people with sexually abusive behaviours (Sexually Abusive Behaviours Treatment Service 'SABTS') may be provided from within the MDC.

Areas for SABTS use is required to be segregated from other client use areas to limit the risk of contact between children and young people accessing these programs and victims attending the MDC. This component of the MDC should include its own entrance and designated waiting room area. It would be preferable if all clients accessed one reception desk but are kept separate from one another.

## 2 PROJECT BUDGET & COST CONTROL

### 2.01 COST PLAN AND CASH FLOW

The appointed Principal Consultant will be responsible for the preparation of a cost plan for the project. The estimated cost of design, building and fitout is expected to be in the vicinity of \$10 million. The cost plan shall include the estimated costs of **all** the project components necessary for the satisfactory completion of the project.

The Service will engage a Quantity Surveyor to independently provide costing advice.

In addition, the Principal Consultant will be required to prepare a cash flow program for all payments to be made by the Service for the duration of the consultancy to assist Service with budgeting for the project. The cash flow program shall include **all** cost plan items.

The Principal Consultant is required to update and amend the cash flow program on a monthly basis to reflect actual payments against predicted and/or future amounts as outlined in the Project Reporting section.

### 2.02 PROJECT PROGRAM

The Principal Consultant is to provide a detailed program for the delivery of all elements of the project within 28 working days from being appointed. The anticipated program completion date is **by 30 November 2021**, however the Service will work together with the Principal Consultant to set a completion date.

The Principal Consultant shall update the programme on a monthly basis to illustrate in detail all remaining phases of the project, Design Development, Contract Documents, Tenders (including evaluations and recommendations), Contract Administration, Practical Completion, Removals, Occupation, Meetings, Presentation of Reports, Approvals, and any other items which should be included.



## 3 SCOPE OF CONSULTANCY SERVICES TO BE PROVIDED

### 3.01 PROJECT SCOPE

The project benefits from the fact that it is currently an untenanted site, allowing for the design and construction to be purpose built largely uninhibited as there are not tenants to re-locate. This also means that the construction can be completed in one single stage.

The site for the project is the Old Mildura Post Office, which is covered by a Heritage overlay. The design of the new building will need to be within the scope of the Heritage requirements.

The construction works are also to include any required demolition of the existing buildings and removal of waste.

The Principal Consultant shall provide all services described herein including but not limited to any of the following disciplines:

- Architectural, including Interior Design.
- Costings.
- Preparation of Tender documentation.
- Assistance with Tender selection.
- Project Management.
- Landscaping.
- Town Planning including Cultural Heritage.
- Structural Engineering.
- Structural Certification Engineer.
- Building Surveyor.
- Disability Consultant.
- Acoustic Engineering.
- Engineering Services (Mechanical / Electrical / Hydraulic / Security / Communications.)

The Principal Consultant shall be directly responsible for the provision of architectural and interior design services and shall not engage Sub-Principal Consultants for these services except at the direction or with approval of the Principal.

The disciplines listed above may otherwise be provided from within the Principal Consultant's organisation or by means of approved nominated Sub-Principal Consultants.

The Principal Consultant shall include, in addition to the above, all other tasks necessary for the satisfactory implementation and delivery of the project.

The Principal Consultant will be responsible for the management, co-ordination and delivery of all sub-consultant's obligations.

The completed project will be constructed with new furniture, fittings and equipment (FF&E) as supplied and installed by the building contractor. The Principal Consultant shall provide advice to the Service on furniture selection options e.g. workstations, joinery, etc. and be responsible for documenting all furniture and equipment layouts.

The Principal Consultant will be required to negotiate and manage the provision of all necessary approvals with relevant authorities.

Works associated with this consultancy for the works, generally include but are not limited to ensuring the following key project objectives are met:

- Timely delivery of the project enabling occupation by early 2022.
- Quality fitout capable of lasting duration of ten years or more.
- Fitout design that provides value for money.
- Ensure works are completed in a timely manner.
- Flexible fitout capable of adapting to organisational changes.
- Durable fitout enabling efficient maintenance.
- Maintaining staff satisfaction and confidence throughout life of project through interactions with the appropriate business units.
- Incorporation of Ecologically Sustainable Design (ESD) principles within the fitout design.
- Compliance with all legislative requirements including the provisions of the Occupational Health and Safety and Disability Discrimination Acts.
- Compliance with the Building Code of Australia.
- Compliance with the Victorian Code of Practice for the Building and Construction Industry.

## 3.02 PRINCIPAL CONSULTANTS SERVICES

Further to the Principal Consultants General Obligations, the Principal Consultant shall provide the following services for the duration of the project: -

### 3.02.01 General Services

#### Meetings

Coordinate, chair and minute meetings of Consultative Committees, User Groups, consultants and authorities. In addition the Principal Consultant will need to attend meetings as requested to report progress to the Property Control Group (PCG) organised by the Service (estimated at 4 meetings per year).

The Principal Consultant is to allow for time, travel, IT and accommodation costs to attend the meetings that supports in person or remote access meetings. The Principal Consultant shall provide a rate per Site Visit for time, travel and accommodation associated for additional attendance on site.

#### Organisation of the project

Set up an effective project management system to take into account the size, nature, complexity, scope and purpose of the project.

Prepare and administer an appropriate quality assurance program for the entire project.

#### Project Report

Provide a monthly written Project Report containing the following information: -

- A one-page synopsis on the progress of the works.
- Detailed progressive and cumulative records of all requested and approved variations.
- Details on the progress of the designs, developed designs, and contract documentation, including compliance with statutory requirements.
- Details on the progress of construction, including compliance with statutory requirements.
- Details of all urgent approvals, acceptances, directions and other decisions given by the Service's representative.
- Project Program.
- Financial report including Cash Flow

- All other matters critical to the project and to the interests of Service.

## Presentations

As required by the Principal's representative, present proposals to nominated representatives of the Principal for approval.

## Value Management

Play a proactive part in arranging and/or participating in all formal or informal cost and quality optimisation exercises as may be required by the Principal.

## Quality Assurance

Prepare and administer an appropriate quality assurance program for the entire project.

## Consultation with Statutory Authorities

Where necessary, meet with statutory authorities and attend meetings as required to ascertain planning issues, potential conflicts, approval processes, timing, and potential for appeals or dispensations, and allow for the payment of all fees (to be reimbursed to the Principal Consultant by the Service as a disbursement).

## Furniture Procurement

The Principal Consultant shall be responsible for the production of a **Furniture Schedule** for inclusion into the Construction Contract detailing all items of furniture which are to be sourced by the Contractor.

A list of all furniture, fittings and equipment (FF&E) items required for the project is to be produced by the Principal Consultant to allow the Contractor to arrange procurement.

The Contractor will also be responsible for the management, co-ordination and supervision of all furniture supply and installation.

The Principal is to ensure that Tender Documents and the subsequent Construction Contract provides an appropriate Provisional Sum allowance for the supply and installation of all furniture detailed within the **Furniture Schedule**.

### 3.02.02 Pre – Design Services

#### Functional Brief

In consultation with Service, prepare a functional brief and assess functional relationships and work practices.

#### Project Scope and Parameters

Review and confirm with the Service the statement of project objectives, overall scope and parameters known to influence the procurement of the project in terms of organisational and operational requirements and constraints, brief, budget, time and quality.

### 3.02.03 Design, Document, Construction and Fit-Out Phases

#### Design Development

- Prepare drawings and details including floor plans, furniture and equipment layouts and joinery sketches and details.
- Monitor the quality and production of Designs by the design team, including as appropriate, drawings, reports, advice on design of architectural and specialist services.
- Provide a Project Report (as detailed above under 'Project Report') including an estimation of costs.

#### Contract Documentation

The Principal Consultant will be responsible for the preparation of all documents required for tenders and for construction including drawings and specifications in accordance with the approved program and as may be required by the project delivery technique. All contract drawings shall unless otherwise approved be prepared on computer in an approved Computer Aided Documentation format.

The form of contract for the works will be AS 2124-1992 General Conditions of Contract, Annexures and Special Conditions.

The Principal Consultant will be responsible for the preparation of updated Emergency Evacuation Plans to suit the newly developed internal building layout and external area (e.g. car parks) and provide them in suitable picture frames for mounting on walls by the contractor.

### 3.02.04 Contract Administration

The Principal Consultant shall act as Superintendent (pursuant to AS2124 - Clause 23) in the administration of the refurbishment contract. Contract administration responsibility covers all work carried out by the contractor and includes the defects liability period.

The Principal Consultant shall issue contractual certificates for quality compliance, payments, variations, costs adjustments, extensions of time, practical completion and other matters included in the building contract and where appropriate, for payment by the Service.

The preferred head contractor for the construction and fit-out works will be required to be engaged under the terms of AS 2124 General Conditions of Contract. The head contractor will be required to seek the Principal's approval prior to the appointment of any/all nominated sub-contractors.

The Principal Consultant shall be responsible for ensuring satisfactory completion of all work by the contractor in a timely manner and in accordance with the program, allowing for approved extensions of time for completion. Additional costs will not be paid to the contractor, unless approved by the Superintendent for an extended construction period.

The Principal Consultant shall request that suitable operation and maintenance manuals from the Contractor in electronic format (Drawings to be in CAD format and PDF) with one hard copy. The Principal Consultant shall prepare the 'as built' drawings on behalf of the contractor. As-built drawings are to be provided at the time of hand over.

The Principal Consultant shall request from the contractor that adequate training of all staff members of the various organisations occupying the building in the operation and maintenance of any plant is conducted by the contractor following commissioning and prior to practical completion and handover.

Disputes at any time between the Principal Consultant and the Service shall not attract any payment for time spent or extension of time by the Principal Consultant in resolving the dispute.

The Superintendent shall, prior to the date of practical completion of the fit out, review and make a determination on any variations and claims notified by the contractor.

Variations and other normal contractual issues reviewed and determined after the date of practical completion shall not attract additional fees or extensions of time for contract

administration. The Superintendent shall endeavour to finalise all other issues prior to the expiration of the defects liability period.

Should the Principal Consultant's services be required for the arbitration of any dispute (other than a dispute between the Principal Consultant and the Service) beyond the date of practical completion of the works, the services shall be provided as approved and when directed by the Service at mutually agreed rates between the Principal Consultant and the Service. Such payment for services shall only be made if it is subsequently shown that the Principal Consultant did not contribute substantially to the dispute through any negligent act or failure to act.

### 3.02.05 Project Hand Over and Commissioning Phase

#### As-built Documentation

Provide all "As Built" documentation together with a comprehensive co-ordinated properly edited and indexed computerised document register in an approved format to the Principal before submitting the final fee claim for this service state. "As Built" drawings shall include:

- all contract documentation prepared by the Consultant, amended to show final construction without instructions to contractors except on drawings other than CAD;
- all shop drawings and "as built" drawings prepared by contractors and approved by the Consultant; and

Provide a computer disk or discs, USB of all drawings prepared on CAD on approved software as directed by the Principal.

#### Hand Over

- Arrange the hand over of the project in a state of readiness for occupation upon practical completion of the works;
- In co-ordination with the Builder's Building Surveyor to prepare and provide a complete *Essential Safety Measures Manual* in accordance with in the Occupancy Permit requirements, Building Regulations and relevant Australia Standards and the Building Commission's guidelines;
- To assist the User Group and Building Surveyor (for incorporated into the Essential Safety Measures Manual) the Design Management/Architectural Consultant is to provide:
  - Provide A3 format drawings in colour for each of the *Essential Safety Measures* or *Building Elements*, showing their locations within the building. (e.g. Locations of things such as fire walls or Paths of Travel)
  - Copy of Fire Indices for Materials (manufacturer's test data results)

- Specifications and methods for the construction of relevant building elements; and
- Schedule of Portable Fire Extinguishers, Fire Doors, Fire Hose Reels and Fire Hydrants.
- Evacuation Plans (printed, framed and installed).

### Defects Liability Period

Monitor the performance of the completed building during the defects liability period of the construction contract and ensure that reporting of defects and attention to rectification is thorough and punctual and of minimum disruption to the occupants.

### Final Accounting

Resolve the final accounting of the project including all variations and claims and report to the Service.

### Final Certificate

Arrange for the issue of a final certificate upon satisfactory completion of all contractual obligations at the expiration of the defect liability period.

## 3.02.06 Separate Contracts

Develop, with the Service a strategy for the delivery of any works to be provided under separate contracts (e.g. Information Technology works, furniture), to ensure their timely completion and careful integration with the main fit-out works.

## 3.02.07 IT/Telecommunications

The Service may directly engage (as necessary) a relocation company, to undertake the voice/data and phone installation / programming.

The Principal Consultant will be required to assist the Service in the co-ordination of all activities undertaken by those companies to ensure requirements are met within the agreed works program.

The presence on the project of these companies shall not diminish the responsibilities of the Principal Consultant, as defined herein.



### 3.03 SECURITY OF CONSTRUCTION PROCUREMENT DOCUMENTS

It will be the responsibility of the Principal Consultant to prepare and maintain a checklist and provide regular reports to the Principal regarding the management and compliance with security control measures. The checklist will include but not be limited to the following:

- Secure transmittal of documents;
- Secure destruction of surplus and superseded documents (including at end of contract);
- Recording of all individuals authorised to access confidential documents;
- Certification by consultants / contractors that documents have been returned;
- Restriction of tender documents / drawings to hard copy format;
- "Secure-in-Confidence" or similar classification labelling of documents;
- Prohibition of copying or dissemination of tender documents (unless authorised by the Principal);
- Creation and storage of documentation on isolated computer networks;
- Encryption and password protection of electronic data;
- Details of tendering obligations in terms of confidentiality and security; and
- Secure storage of documents.

### 3.04 CONSULTATION

Close consultation with the nominated stakeholders will be essential to the identification and documentation of the required scope of works and the further development of the project brief.

In this regard, advice will be sought from key stakeholders:

1. Mallee Sexual Assault Unit Inc.
2. Department of Health and Human Services Child Protection (DHHS);
3. Victoria Police.

The Principal Consultant may be required to attend any meetings or provide drawings for the respective representatives.

### 3.05 LOCAL JOBS FIRST AGENCY GUIDELINES

The Local Jobs First Agency Guidelines apply to all Victorian Government associated procurement and construction projects over \$1M in regional Victoria and over \$3M in metropolitan Melbourne. Whilst the project is expected to be solely funded by the Service, any Victorian Government grants towards the project exceeding the \$1M threshold will require the application of the Local Jobs First Agency Guidelines.

Should the Local Jobs First Agency Guidelines apply, the Principal Consultant will be required to prepare a schedule of all specified construction items, materials, fabrics and equipment that are likely to be imported from overseas. Such schedule must be submitted to the Industry Capability Network for comment / advice prior to the calling of tenders.

The Service will arrange for ICN registration of the project.

### 3.06 QUALITY ASSURANCE

The Principal Consultant will be required to certify and be responsible for the quality and integrity of all work undertaken during the consultancy. The Service will review the Tender documentation prepared by the Principal Consultant, but not certify it as approved for use. Responsibility for the quality of all work under the consultancy including the Tender documentation will remain with the Principal Consultant. An appropriate compliance certification of the building designs from a Building Surveyor is required prior to release of documents to Tender.

### 3.07 OCCUPATION HEALTH & SAFETY (OH&S)

The Principal Consultant shall ensure that staff involved in the project are aware of and practice the requirements of OH&S legislation.

For the purposes of Occupational Health & Safety legislation, the appointed Principal (Construction) Contractor will be responsible for ensuring on-site occupational health and safety. However, the Service must ensure that the required obligations are being met. The Principal Consultant shall therefore ensure that staff, contractors and consultants involved in the project are aware of and practice the requirements of OH&S legislation.

Documentation of the project shall incorporate OH&S requirements to ensure that the works are to be constructed in a safe manner. In this regard, particular reference is to be made to the WorkSafe Victoria publication Handbook for the Public Sector: "Health & Safety in Construction Procurement" and the checklists contained therein.

#### 3.07.01 Prevention of injuries in the workplace.

All employees and contractors involved in site activities/works are aware of their obligations and the expectations of safety performance.

Safety considerations are embedded in all aspects of what is done from the advice given, to procurement, design, construction, maintenance and management.

All work site based activities include the following:

- A Health and Safety Management Plan (HSMP) is prepared and maintained,
- That a Job Safety Analysis (JSA), Safe Work Method Statements (SWMS), Risk assessments and hazard identification on all site activities have been developed and implemented,
- Personal protective equipment is identified, issued, maintained and used,
- That a pre start-up induction is undertaken and daily safety inductions are completed, documented and enforced,
- All safety incidents, including near misses are reported, captured, investigated.

### 3.07.02 Consultant Responsibilities

The Principal Consultant is to ensure that in all tenders there is an inclusion that employees involved in Construction Project including, sub consultants, head contractors and sub contractors are aware of and adhere to all of the requirements of the OH&S Act 2004 and ancillary Acts, Regulations and Codes of Practice appertaining to OH&S Law.

The Principal Consultant's tender submission must therefore indicate how it is proposed to ensure the OH&S obligations will be met for this particular project. Safety in Design principles must also be addressed. The tender assessment will include an evaluation score which reflects the strategy to be used. A maximum score will be awarded for a detailed response.

The Principal Consultant's tender submission will be considered non-compliant if OH&S planning is not addressed.

### 3.08 LIAISON, PROJECT REVIEWS AND REPORTS

The Principal Consultant shall work closely with the Principal's Representative throughout all stages of the consultancy.

The Principal Consultant may be required to liaise with appropriate Service staff individually and as requested or in groups during the assessment of needs process for the project.

Mallee Sexual Assault Unit, Victoria Police, Department of Health and Human Services, The Orange Door and any other relevant non-Government organisation representatives may be nominated to attend meetings and presentations by the Principal Consultant. The Principal Consultant may be required to prepare and issue any meeting agenda, and prepare meeting minutes and submit them to the Service not later than one week after each meeting. Progress reports prepared by the Principal Consultant shall:

- summarise progress and costs to date, with comparisons against planned progress and costs;

- discuss overall performance and report on progress against the program;
- address quality issues;
- identify all aspects likely to impact on the project program including potential delays or threats;
- provide a variation summary for the refurbishment and associated costs;
- give an outline of planned activities for the forthcoming period.

### 3.09 CONSTRUCTION TENDER AND CONTRACT DOCUMENTATION

The Principal Consultant shall seek Tenders and prepare a tender list for endorsement by the Service.

The Principal Consultant shall prepare the Tender documentation and issue to the Service for review and approval prior to Tenders being invited. Tender documentation shall include the selection criteria to be used in the Tender assessment process for selection of the successful Tenderer.

After review of the Tender documentation by the Service, and the incorporation of any modifications necessary, up to four (4) copies of final Tender documents (if required) shall be allocated to the Service for distribution by the Principal Consultant to prospective Tenderers.

If required by the Service, additional copies of the Tender documents shall be provided by the Principal Consultant at the rates given in the Tender submission.

The Principal Consultant shall attend to all Tenderers' queries, and matters arising out of such queries, including the issuing of any Addenda and shall advise the Principal of these matters prior to release.

The Principal Consultant shall be available and respond to Tenderers' queries within one working day.

The form of construction contract is Australian Standard AS 2124 – 1992, General Conditions of Contract.

### 3.10 CONSTRUCTION TENDER ASSESSMENT

Tenders will be received in a tender box and registered by the Principal Consultant and forwarded to the Service after the closing date, unless alternate arrangements have been agreed.

The Principal Consultant and the Service's Chief Executive Officer shall open each Tender and complete a Tender Summary Form.

Each tender assessment shall include:

- post Tender interview(s) to be attended by the Principal's Representative where required;
- assessment in accordance with the approved evaluation criteria listed in the Tender documents;
- preparation of a Tender assessment report and recommendation for the Service's approval.

### 3.11 PRINCIPAL'S REPRESENTATIVE

All issues pertaining to the consultancy shall be directed to the Principal's Representative(s), Joanne Sheehan-Paterson, Chief Executive Officer, Mallee Sexual Assault Unit Inc., (03) 50255400 -OR- email [joannesp@msau-mdvs.org.au](mailto:joannesp@msau-mdvs.org.au)

## 4 TENDER FEE SUBMISSION

The Principal Consultant tender fee submission shall include a Lump Sum Fee proposal based on a traditional design and lump sum tender method. Include in the proposal the following:

- A comprehensive Lump Sum Fee proposal broken into individual phases, to provide all the services required under the conditions set out in this document;
- A schedule of hourly rates applicable to the proposed personnel associated with this project;
- A percentage fee proposal that is applicable to any scope changes or amendments;
- Fee submission shall include all printing, travel, facsimile, photocopying costs etc. These items will not be reimbursed as a disbursement; and
- A separate comprehensive Lump Sum Fee proposal to provide any other services, which the Principal Consultant may wish to offer over and above the services required under these conditions.

## 5 DOCUMENT SUBMISSION

**One (1)** copy of the submission **must** be provided in a sealed envelope, marked with tender number **T 001** and lodged as follows:

**Chief Executive Officer  
Mallee Sexual Assault Unit Inc.  
144-146 Lime Ave  
MILDURA VIC 3500**

**THE CLOSING DATE FOR SUBMISSIONS IS FRIDAY 10<sup>TH</sup> JANUARY 2020 AT 5.00PM - SHARP**

Note:

- Facsimile and/or email transmissions will **not** be accepted;
- Late submissions and submissions not conforming with specified requirements will **not** be accepted;
- All proposals should be marked "Commercial in Confidence"; and
- Submissions are to be in A4 format only.

### **Requirements**

Proponents are required to confirm that:

- the services offered by the Consultant comply with the requirements laid out in this invitation; and
  
- the Consultant has:
  - i. a valid Certificate of Incorporation;
  - ii. a current Work Cover policy in the same name as the incorporated entity;
  - iii. a current Public Liability policy in the same name as the incorporated entity;  
and
  - iv. a current professional indemnity insurance policy in the same name as the incorporated entity.

Submissions requirements are to be completed on the tender forms provided in the **Appendix**.

## 6 EVALUATION CRITERIA

In evaluating the **Submission**, the Service will consider all the Schedules, written statements and information lodged and evaluate the **Submission** according to the following criteria (No more than 2 pages of information for each criteria):

### Criterion 1 – Compliance

The degree to which the proponent has submitted all information requested in the Brief document.

### Criterion 2 - Project Experience

Demonstrated ability and recent experience in providing consultancy services on projects of similar size and complexity, particularly on Government projects.

### Criterion 3 – Proposed Personnel and their Relevant Experience

A summary outline of the proposed personnel that will constitute their team, noting specifically why they are well suited to this project.

### Criterion 4 – Appreciation of Requirements

An outline of their understanding of the project requirements, including intended outcomes, critical success factors and risks.

### Criterion 5 – Proposed Methodology

A description of their approach to the provision of the consultant services, consistent with their understanding of the project requirements. This is to include your approach to OH&S/safety in design.

### Criterion 6 – Design Quality

Demonstrate the proponents ability to design and deliver facilities that support efficient service delivery, are supportive of the needs of the various building occupants and visitors, contribute to the creation of a high quality environment, are efficient to operate and maintain and have the required flexibility to accommodate any planned or unplanned future expansion or changes in use.

### Criterion 7 – Environmental Performance

Demonstrate the proponents experience in the environmental performance of these types of projects. Key performance elements are energy efficiency, water consumption, waste management, material selection, biodiversity and indoor environment quality.

### Criterion 8 – Resources and Availability

Commitment level of the nominated individuals on the project and against their other project commitments.

### Criterion 9 – Experience and Understanding with Procedures and Policies

Experience and demonstrated understanding with State Government policies and procedures as they relate to capital works projects.

## 7 CONDITIONS OF ENGAGEMENT

The Principal Consultant will be expected to abide by the Government of Victoria's 'Code of Practice for the Building and Construction Industry' and the conditions for the Principal Consultant's engagement are as expressed in:

- The letter of engagement
- This document – Principal Consultancy Brief
- The attached Standard Contract for Construction Consultancy Services
- The Tender submission,
- NPWC3 Cost Control Manual
- WorkSafe Victoria: Handbook for the Public Sector "Health & Safety in Construction Procurement" (and the Checklists contained therein).

Note: Any submission which does not indicate full acceptance of each Contract Condition as outlined in the Tender documents, will be deemed non compliant and will not be accepted.

## 8 WARRANTIES AND WAIVERS

The Service has employed its best endeavours to present accurate information in this invitation. However, the Service gives no warranty or undertaking, expressed or implied, as to the accuracy or completeness of any information provided in writing or orally in relation to this invitation. Interested parties should make their own enquires and rely on their own information.

This invitation does not constitute for any reason an offer or contract or any part of the same. The Service reserves the right not to proceed with any of the projects or the appointment of consultants submitting a proposal.

The Service requires that all proponents submitting include a waiver of any right to claim costs or to in any way appeal against a decision arising from the process.



# SCHEDULE A

## FORM OF TENDER FOR CONSULTANCY (To be submitted with Fee Proposal: TENDER T 001 )

Brief description of the work under the Contract:

Pre-design, design, construction and fit out of the Mildura Multi-Disciplinary Centre .

I/We the undersigned do hereby tender to undertake, carry out and complete the work under the Contract for the sum of:

..... (\$ .....

which sum is **INCLUSIVE** of GST and to otherwise comply with the Contract and bring the Works to practical completion within the period or by the date specified in the Annexure to the General Conditions of Contract.

I/We hereby release the Mallee Sexual Assault Unit Inc. (the Service) and the Service's Agents from any claim in relation to or connected with the Conditions of Tendering, the Tender Information, the issuing of the Invitation, the consideration of the Tenders or the awarding of the Contract (including any claim by reason of any negligence, default or lack of care).

I/We submit this Tender in accordance with the attached Conditions of Tendering and hereby give the Tender Warranties referred to therein. I/We agree to be bound by the Conditions of Tendering in exchange for the Service investigating and considering this Tender with others received by the Service.

Dated this ..... day of ..... (year) .....

Full name of Tenderer: .....

Australian Company Number (ACN): .....

Australian Business Number (ABN): .....

Registered office/business address: .....

Telephone No.: ..... Facsimile No.: .....

If a sole trader or partnership, the names and addresses of the individual members are:

(1).....

(2).....

(3).....

Name and position of person submitting Tender for and on behalf and with the authority of the Tenderer:

Name: .....

Position: .....

Telephone No.: ..... Facsimile No.: .....

Signature of person submitting Tender: .....

Witness: .....

Address of Tenderer for service of notices: .....

## SCHEDULE B – T 001

### FEES APPLICABLE TO EACH STAGE OF SERVICE

<b>PHASE:</b>	
1. Schematic / Design Development	\$
2. Contract Documents (incl. tender)	\$
3. Contract Administration	\$
4. Defects Liability / Post Occupancy	\$
<b>SUB-TOTAL {PHASES}:</b>	<b>\$</b>
<b>ALLOWANCES</b>	
5. Disability Consultant	\$
6. Acoustic Engineer	\$
7. Engineering Services (Mechanical / Electrical / Hydraulic / Security / Communications.)	\$
8. Heritage Consultant	\$
<b>SUB-TOTAL {PC ALLOWANCES}:</b>	<b>\$</b>
<b>SUB-TOTAL {PHASES + PC ALLOWANCES}:</b>	<b>\$</b>
<b>GST:</b>	<b>\$</b>
<b>TOTAL:</b>	<b>\$</b>

**STANDARD CONTRACT FOR CONSTRUCTION  
CONSULTANCY SERVICES**

DESIGN AND CONSTRUCTION WORKS FOR MULTI-  
DISCIPLINARY CENTRE  
MILDURA

**Consultancy Agreement**

**MALLEE SEXUAL ASSAULT UNIT INC**  
**(ABN: 57 685 819 813)**

**and**

**Standard Consultancy Agreement**

**Developed from**  
**Department of Health, Capital Projects and Service Planning**  
**Standard Agreement Version 7 – 1 July 2010**  
**50 Lonsdale Street, MELBOURNE VIC 3000**

## ***Contents***

---

<a href="#">Contents</a>	2
<a href="#">Agreement</a>	3
<a href="#">Execution Page</a>	4
<a href="#">Schedule 1 - Details Of Agreement</a>	5
<a href="#">Schedule 2 - Fee Structure</a>	6
<a href="#">Schedule 3 - Consultant's Key Personnel</a>	7
<a href="#">Schedule 4 - Terms and Conditions</a>	8
<a href="#">Schedule 5 - Confidentiality Undertaking</a>	34

# MULTI-DISCIPLINARY CENTRE – MILDURA

## **Agreement**

---

### **PARTIES:**

The Chief Executive Officer  
(ABN: 57 685 819 813)  
144-146 Lime Avenue  
MILDURA Vic. 3500

### **And**

the **Consultant** being the person referred to in Item 1 of Schedule 1  
(**“Consultant”**).

### **RECITALS:**

- A. The Mallee Sexual Assault Unit Inc. has requested the Consultant to perform the Services specified in this Agreement.
- B. The Consultant has agreed to perform the Services for the Mallee Sexual Assault Unit Inc. in accordance with the terms and conditions specified in this Agreement.

### **THE AGREEMENT:**

This Agreement is made up of the following -

- (a) This page;
  - (b) The Execution page;
  - (c) Schedule 1 - Details of Agreement;
  - (d) Schedule 2 - Fee Structure;
  - (e) Schedule 3 – Consultant's Key Personnel;
  - (f) Schedule 4 - Terms and Conditions;
  - (g) Schedule 5 – Confidentiality Undertaking;
  - (h) Schedule 6 – Form of Payment Schedule;
  - (i) Consultancy Brief for the Provision of Principal Consultancy Services
  - (j) Fee proposal dated ...../...../2020
  - (j) The Letter of Acceptance.
- (the “Agreement”)**.

## **Execution Page**

---

### **EXECUTED AS AN AGREEMENT**

#### **Date of execution of the Agreement:**

**SIGNED** by [Authorised officer], as authorised representative for the )  
**Mallee Sexual Assault Unit Inc. (ABN 57 685 819 813), an Agent** )  
**of the State of Victoria.** )

) Date:

in the presence of: )

Signature of witness: )

Name of witness: )

(block letters)

By executing this Agreement the signatory warrants that the signatory is duly authorised to execute this Agreement on behalf of the Mallee Sexual Assault Unit Inc.

Date:

**SIGNED by** .....  
**(ABN: .....**)  
in accordance with the Corporations Act  
2001:

Signature of Director

(By executing this Agreement the signatory warrants that the signatory is a director of the Consultant)

Name of Director (block letters)

Date

## ***Schedule 1 - Details Of Agreement***

---

(In this Schedule, "clause" is a reference to the clause of that number in Schedule 4 - Terms and Conditions).

The details are:

1. Consultant:
2. Project: Multi-Disciplinary Centre – Mildura
3. Brief description of Services: Provision of Principal Consultancy Services for the Mildura Multi-Disciplinary Centre Project.
4. Commencement Date: (clause 2.2) The date of the Letter of Acceptance:
5. Completion Date: (clause 2.2) ...../...../.....
6. Consultant's Principal Officer: (clause 5) Name:  
Position:
7. Supervising Officer: (clause 6) Name:  
Position:
8. Amount of Public Liability Insurance: \$5,000,000 for any one occurrence (clause 10.6)
9. Amount of Professional Indemnity Insurance: \$5,000,000 for any one claim and \$10,000,000 in the annual aggregate (clause 10.7)
10. Maintenance of Cover Period: 10 years (clause 10.7)
11. Address of Consultant: (clause 16.1)
12. Facsimile of Consultant: (clause 16.1)
13. Address of the Principal: 144-146 Lime Avenue  
(clause 16.1) Mildura Vic. 3500
14. Facsimile of the Principal: 03 5025 5432 (clause 16.1)
15. Maximum Amount Payable: (Clause 1.1)

## Schedule 2 - Fee Structure

---

### Amounts to be paid by the Principal to the Consultant

#### Method of Payment for Phases

Pursuant to clause 4 of Schedule 4, Mallee Sexual Assault Unit Inc. will pay the Consultant for the phases in the project by reference to the following phase lists indicated in Tables 1 and 2:

<b>Table 1: Lump Sum fee:</b>	
<b>Milestone Description</b>	<b>Payment (Excl GST)</b>
Phase 1: Design (Schematic/Development)	\$
Phase 2: Contract Documentation	\$
Phase 3: Contract Administration	\$
Phase 4: Defect Liability Period	\$
Provisional Sums:	\$
<b>Maximum Lump Sum Payable</b>	<b>\$</b>

For each phase of the Project, payment of the Lump Sum payment will be made to the consultant in accordance with the percentage of the work completed. Fee will be made to the Consultant in accordance with clause 4.

<b>Table 2: Applicable Hourly Rates for Additional Work</b>	
The following hourly rates will only apply to work outside the scope of the Services as consented to in writing by the parties pursuant to a variation under clause 20 of Schedule 4, prior to such work being carried out. It is acknowledged that the rates are subject to periodic review.	
<b>Name or Designation</b>	<b>Hourly Rate</b>

<b>Table 3: Provisional Sums</b>	
The Provisional Sums allowed below for "Additional Services" may be expended at the direction of the Supervising officer, by the engagement of a sub-consultant. Where such Services are directed to be progressed, the Consultant will be paid the actual amount paid to the sub-consultant for the service.	
<b>Additional Services</b>	<b>Amount allowed</b>
Disability Consultant	\$
Acoustic Engineer	\$
Building Engineering Services	\$
Heritage Consultant	\$
<b>Fee Payable for Provisional Sums:</b>	<b>\$</b>



**Schedule 3 - Consultant's Key Personnel**

---

The following are the Consultant's Key Personnel pursuant to clause 5 of Schedule 4 (Terms and Conditions):

<b>Key Person</b>	<b>Position</b>	<b>Responsibilities</b>

## ***Schedule 4 - Terms and Conditions***

---

### **1. Definitions and Interpretation**

1.1. For the purposes of this Agreement -

**"Applicable Policies"** means all policies, guidelines and principles of the Principal in force as at the Commencement Date and as amended, replaced or introduced from time to time and as notified to the Consultant and which apply to the subject matter of this Agreement including but not limited to the Victorian Government's Ethical Employment Policy.

**"Business Day"** means a day (not being a Saturday or Sunday) on which banks are open for general banking business in Melbourne.

**"Certified VIPP Plan"** means the Consultant's VIPP plan, as certified by the Industry Capability Network Victoria Limited and submitted to the Principal as part of the tender process.

**"Commencement Date"** means the date stated in Item 4 of Schedule 1.

**"Completion Date"** means the date stated in Item 5 of Schedule 1.

**"Confidential Information"** means any information or data, including Personal Information and Mallee Sexual Assault Inc. Information, whether or not in a material form, which is, by its nature, confidential, is designated by a party as being confidential or which the recipient party knows, or ought to know, is confidential and includes information acquired, collected or developed for the purpose of the Project or obtained during the currency of this Agreement, but does not include information which the recipient party can establish:

- (a) is already in, or which after the Commencement Date becomes part of the public domain otherwise than as a result of a breach of this Agreement;
- (b) is or becomes available to the recipient party from a third party lawfully in possession of it and who has the lawful power to disclose that information to the recipient party on a non-confidential basis;
- (c) was rightfully known by the recipient party (as shown by its written record) prior to the date of disclosure to it under this Agreement;
- (d) was independently developed by an employee, agent or subcontractor of the recipient party who has no knowledge of the disclosure under this Agreement; or
- (e) is received by the recipient party from any person not being under a duty of confidence at the time of the disclosure.

**"Consultancy Brief"** means the brief for the Project set out in Section 1 of Schedule 7.

**"Consultant's Key Personnel"** means those persons listed along with their positions and responsibilities in Schedule 3.

**"Consultant's Principal Officer"** means the person stated in Item 6 of Schedule 1.

**"Cost Plan C"** - means the Sketch Design Cost Plan as set out in the Australian Institute of Quantity Surveyors "Australian Cost Management Manual," February 2002.

**"Design"** means a concept, product or process that is capable of being patented or registered as a design.

**"Expenses"** means the out of pocket expenses, if any, to be paid pursuant to clause 4.

**"Force Majeure Event"** means an event or cause:

- (a) beyond the reasonable control of the party claiming force majeure ("Affected Party"); and
- (b) against which the Affected Party has taken all proper precautions, due care and reasonable alternative measures to prevent the event from affecting its ability to perform its obligations under this Agreement; and
- (c) which is not the direct or indirect result of the Affected Party's failure to perform any of its obligations under this Agreement; and
- (d) which is an act of God, war, riot or industrial action (provided it is not directed only at the Affected Party).

**"GST"** means GST within the meaning of the *GST Act*.

**"GST Act"** means *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth as amended from time to time.

**"Insolvency Event"** means -

- (a) in respect of a Consultant who is a natural person -
  - (i) the Consultant commits an act of bankruptcy as defined in section 40 of the *Bankruptcy Act 1966* (Cth) ("*Bankruptcy Act*");
  - (ii) a creditor's petition is presented against the Consultant pursuant to Division 2 of Part IV of the *Bankruptcy Act*;
  - (iii) the Consultant presents a petition against himself or herself pursuant to section 55 of the *Bankruptcy Act*;
  - (iv) a sequestration order is made in respect of the Consultant;
  - (v) the Consultant signs an authority pursuant to section 188 of the *Bankruptcy Act*;
  - (vi) a meeting of creditors of the Consultant is convened for the purposes of Part X of the *Bankruptcy Act*;
  - (vii) the Consultant enters into any arrangement with creditors pursuant to Part X of the *Bankruptcy Act*;

- (b) in respect of a Consultant who is not a natural person -
- (i) the board of the Consultant passes a resolution under section 436A of the Corporations Act 2001 (Cth) ("Corporations Act");
  - (ii) the Consultant is placed into administration pursuant to Part 5.3A of the Corporations Act;
  - (iii) a deed of arrangement is entered into in respect of the Consultant;
  - (iv) an application is made to a court for the winding up of the Consultant;
  - (v) the Consultant resolves that it be wound up voluntarily;
  - (vi) a winding up order is made in respect of the Consultant;
  - (vii) a receiver or receiver and manager is appointed to the Consultant;
  - (viii) a court orders that there be a meeting of creditors or members of the Consultant for any purpose related to Part 5.1 of the Corporations Act;
- (c) and in either case -
- (i) a mortgagee takes possession of any assets of the Consultant;
  - (ii) the Consultant informs the Principal or any creditor of the Consultant, in writing that he, she or it is insolvent; or
  - (iii) any execution is levied against the property of the Consultant and remains unsatisfied for 30 days.

**"IP Act"** means the *Information Privacy Act 2000* (Vic) as amended, updated or replaced from time to time.

**"Intellectual Property"** means trademarks, patents, circuit layouts, copyrights, know-how and all other rights with respect to Intellectual Property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967, and rights in respect of such Intellectual Property include all statutory and other proprietary rights.

**"Laws"** includes all Acts of the Parliaments of Australia and the states and territories, and all regulations, by-laws, awards and orders made thereunder, and the lawful requirements of public, municipal and other competent authorities in any way affecting or applicable to the Services, the Project or this Agreement.

**"Local Jobs First Agency Guidelines"** means the policy of the Victorian Government, revised with effect from 1 July 2009, which seeks to maximise opportunities for Australian, New Zealand and Victorian suppliers to compete for government business on the basis of best value for money over the life of the goods or services, and which applies to Government procurement activities, construction activities, major projects, major events, public private partnerships and investment support, business development and community infrastructure grants above the threshold values of \$3 million or more in metropolitan Melbourne and \$1 million or more in regional Victoria. Further information on the policy and templates are available on the Department of Business and Innovation (DBI) website [www.dbi.vic.gov.au/projects-and-](http://www.dbi.vic.gov.au/projects-and-)

initiatives/victorian **Lump Sum Fee**" means the fee to be paid pursuant to clause 4 and set out in Schedule 2.

**"Materials"** means all materials and documentation produced by the Consultant in performance of the Services. **"Maximum Amount Payable"** means the amount stated in Item 15 of Schedule 1, being the maximum amount that can be paid by the Principal to the Consultant for the Services. This amount is a cap and the Consultant is not automatically entitled to be paid it.

**"Panel"** means the panel established in accordance with clause 11.3 consisting of a nominated senior representative of each of the Principal and the Consultant.

**"Percentage Fee"** means the fee to be paid pursuant to clause 4 and set out in Schedule 2.

**"Personal Information"** has the same meaning as that term in the IP Act.

**"Professional Fee"** means the fee to be paid pursuant to clause 4 and set out in Schedule 2.

**"Project"** means the project to be undertaken as described in Item 2 of Schedule 1 in respect of which the Services are to be provided.

**"Proposal"** means the submission prepared by the Consultant in relation to the Project, as set out in section 2 of Schedule 7.

**"Provisional Sum"** means a monetary amount allowed for the provision of additional Services, which additional Services may be performed at the direction of the Supervising Officer.

**"Schedule"** means a schedule to this Agreement.

**"Security of Payment Act"** means the *Building and Construction Industry Security of Payment Act 2002* (Vic) as amended, updated or replaced from time to time.

**"Services"** means the Services to be provided by the Consultant as set out in brief in Item 3 of Schedule 1 and more fully set out in Schedule 7 and is inclusive of being ready, willing and able to provide the Services.

**"Supervising Officer"** means the person nominated in accordance with clause 6.1 or such other person from time to time filling the position of that person.

-industry-participation-policy.

**"Works"** means the building works to which the Services relate.

- 1.2. Unless the context requires otherwise:
- (a) words importing any gender include each other gender;
  - (b) the plural includes the singular and vice versa;
  - (c) a reference to a person includes any other entity recognised by law and vice versa;
  - (d) a reference to a statute, ordinance, code or other law includes subordinate legislation, consolidations, amendments, re-enactments, and replacements of it;
  - (e) terms used in the Consultancy Brief and in the Proposal have the same meaning as when used in this Agreement;
  - (f) where a term is defined, the definition includes all other grammatical forms of that term;
  - (g) headings and notes in square brackets are for reference only; and
  - (h) a reference to a clause or schedule is to a clause or schedule in or to this Agreement.
- 1.3. Inconsistencies between the terms of this Agreement will be resolved in the following order of priority:
- (a) Schedule 1;
  - (b) the clauses in this Schedule 4;
  - (c) Schedule 2;
  - (d) Schedule 7 Section 1 Consultancy Brief;
  - (e) Schedule 7 Section 2 Proposal; and
  - (f) any other Schedules in numbered order.
- 1.4. Despite anything contained in this Agreement, the obligations of clauses 3.6, 3.7, 7, 8, 10, 11, 18.4(a), 18.6 and 26 are continuing obligations and will not cease on the completion, expiry or termination of this Agreement or any other discharge of this Agreement.
- 1.5. In performing this Agreement, both parties must act reasonably and in good faith.

## **2. Evidence, Period and Nature of Agreement**

- 2.1. Unless and until a Formal Instrument of Agreement is executed by the parties, the Letter of Acceptance in writing from the Principal confirming the agreement between the parties for the performance of the Services, and other documents or parts of documents to which reference may properly be made to ascertain the rights and obligations of the parties, shall evidence the Agreement.

- 2.2. The Consultant's engagement under this Agreement will commence on the Commencement Date and, subject to this clause 2, and clause 12, the Consultant must complete the Services by the Completion Date and must complete any stages or phases of the Services by the due dates specified in this Agreement or such other date as specified by agreement between the parties in accordance with clause 20.
- 2.3. The Consultant must comply with its obligations under this Agreement including but not limited to carrying out and completing the Services, and any variation of the Services agreed, in accordance with this Agreement. The Principal shall pay the Consultant for the Services in accordance with this Agreement.
- 2.4. If the Consultant fails to deliver the Services to the reasonable satisfaction of the Principal by the Completion Date then, in addition to any other rights which the Principal may have, this Agreement will continue, without the Consultant being entitled to any additional payment, until:
  - (a) the Services are so delivered to the Principal;
  - (b) the Principal waives the right to insist on delivery of the Services; or
  - (c) the Principal elects (in its sole discretion) to terminate this Agreement by notice to the Consultant in accordance with clause 12.2,but the operation of this clause will not be construed as a waiver by the Principal of any of its rights.
- 2.5. Notwithstanding any other provision of this Agreement, if the Consultant is delayed in performing the Services by the Principal's acts or omissions, the Consultant shall be entitled to a reasonable extension of time for performing the Services. Such extension of time shall be determined by the Principal at its sole discretion. Any such delay to the performance of the Services by the Consultant shall not be a breach of this Agreement and the Consultant has no claim of any kind whatsoever for delay costs arising out of the performance of the Services.

### **3. Duties of the Consultant**

- 3.1. The Consultant must carry out the Services and any variation to the Services agreed in accordance with this Agreement to the satisfaction of the Principal.
- 3.2. In performing its obligations under this Agreement, the Consultant will-
  - (a) exercise due care, skill and judgement and at all times act in accordance with professional principles and standards of a competent professional provider of such Services;
  - (b) ensure that the Services are adequate and suitable for the purposes for which they are required;
  - (c) ensure that any person employed by the Consultant to perform any Services under this Agreement possesses adequate levels of skill and experience to perform those Services to the satisfaction of the Principal;
  - (d) observe and comply with all Laws and Applicable Policies;
  - (e) perform the Services within the time stipulated in this Agreement or if no time is stipulated, such reasonable time as may be stipulated by the Supervising Officer and otherwise in a timely manner;

- (f) perform the Services in accordance with any directions issued by the Supervising Officer in accordance with this Agreement;
- (g) co-ordinate and co-operate with other consultants, contractors and workers employed or engaged by the Principal in connection with the Project to optimise its management and minimise the risk of mutual disruption; and
- (h) prepare and submit to the Supervising Officer within such reasonable time as may be stipulated by the Supervising Officer, progress reports or other material prepared in accordance with this Agreement.

- 3.3. The Consultant may have carried out services comprising the Services for the Principal prior to the entering into of this Agreement. The Consultant warrants that in carrying out any such services, the Consultant complied with the requirements of this Agreement. The Consultant agrees that the Principal's rights in relation to any such services shall be as if those services comprised part of the Services.
- 3.4. The Consultant is obliged to provide and maintain, so far as is practicable, an environment for its employees and members of the public that is safe and without risk to health.
- 3.5. The Consultant must itself, and must ensure that any permitted sub-Consultants of the Consultant, at all times identify and take all necessary precautions for the health and safety of any personnel employed or retained by the Consultant in the course of providing the Services.
- 3.6. The Consultant must not in any manner publicise or advertise that it provides Services to the Principal, without the express written approval of the Principal.
- 3.7. The Consultant must do all that is necessary to make good any consequence of any failure in the delivery of the Services that may prejudice the Principal.

#### **4. Payment**

- 4.1. The Consultant is only entitled to submit claims for payment (**Invoice**) for the Services in accordance with this clause 4 and Schedule 2, up to the maximums stated in Schedule 2. All claims for payment must be delivered to the Principal and any claim for payment not delivered to the Principal shall be of no effect.

##### **Method of Payment**

- 4.2. The Consultant must:
  - (a) submit Invoices for payment for the Services monthly in arrears, or in accordance with such other schedule of payments as set out in Schedule 2;
  - (b) provide information in support of the value of any Invoice if requested by the Supervising Officer; and
  - (c) detail the amount of any GST included in the Invoice for payment for the Services.



## Payment Schedules

- 4.3. Subject to this clause 4:
- (a) if the amount to be paid by the Principal is that claimed in an Invoice, the Principal may, at any time after the Principal's receipt of an Invoice; or
  - (b) if the amount to be paid by the Principal is less than that claimed in an Invoice, the Principal shall, within 10 Business Days after the Principal's receipt of an Invoice; or
  - (c) where the Consultant fails to deliver an Invoice, the Principal may, at such times as the Principal in its sole and unfettered discretion thinks fit, issue to the Consultant a payment schedule in the form contained in Schedule 6 (**Payment Schedule**).
- 4.4. The Payment Schedule shall:
- (a) if it is in response to the submission of an Invoice, identify the Invoice to which it relates;
  - (b) indicate the amount of the payment, if any, which in the reasonable opinion of the Principal, is to be made by the Principal to the Consultant (**Scheduled Amount**);
  - (c) indicate the amount of the payment, if any, which in the reasonable opinion of the Principal is to be made by the Consultant to the Principal; and
  - (d) if the Scheduled Amount is less than the amount claimed in the Invoice, indicate why the Scheduled Amount is less (including but not limited to deductions made pursuant to clause 4.15). If the Scheduled Amount is less because the Principal is withholding payment for any reason (including but not limited to a breach of clause 3.1), the Principal's reason for withholding payment must be indicated.
- 4.5. If the Principal has not issued a Payment Schedule under clause 4.3 (a) within 20 Business Days after the Principal's receipt of an Invoice, a Payment Schedule is deemed to have been issued with the Scheduled Amount being that claimed in the Invoice.

## Time of Payment

- 4.6. Subject to the provisions of this Agreement:
- (a) if a Payment Schedule has been issued by the Principal, within 30 days of issue, the Principal shall pay to the Consultant or the Consultant shall pay to the Principal, as the case may be, an amount not less than the amount shown in the Payment Schedule as due to the Consultant or to the Principal, as the case may be; or
  - (b) if a Payment Schedule is deemed to have been issued under clause 4.5, within 45 days after the Principal's receipt of an Invoice, the Principal shall pay to the Consultant the amount claimed in the Invoice.
- 4.7. Any payment of moneys under this clause 4 is not:
- (a) evidence of the value of the Services or that the Services have been satisfactorily carried out in accordance with the Agreement;
  - (b) any admission of liability; or
  - (c) approval by the Principal of the Consultant's performance and compliance with the Agreement;
- but is only to be taken as payment on account.

## **Expenses**

- 4.8. The Consultant may only claim Expenses (for items not included with the Lump Sum Fee – refer Consultant Brief document) on the basis of actual Expenses incurred, as evidenced to the satisfaction of the Supervising Officer.

## **Other Out of Pocket Expenses**

- 4.9. All other out of pocket expenses are deemed to have been allowed for in the Lump Sum Fee and may not be separately claimed for by the Consultant.

## **Limit on Total of All Fees**

- 4.10. Subject to the provisions of this Agreement:
- (a) the amount payable by the Principal in respect of the Lump Sum Fee will be limited to the maximum amounts set out in the Summary of Payments in Schedule 2; and
  - (b) the total amount payable to the Consultant by the Principal under this Agreement will not exceed the Maximum Amount Payable.

## **GST**

- 4.11. In this clause, expressions set out in *italics* bear the same meaning as do those expressions in the GST Act.
- 4.12. The Principal and the Consultant have *registered* or will register for the purpose of receiving and supplying *taxable supplies* under the GST Act.
- 4.13. Unless otherwise stated, an amount payable by the Principal under this Agreement in respect of a *supply* by the Consultant which is a *taxable supply*, represents the GST inclusive value of the *supply* and the Principal is not required to pay to the Consultant any additional amount for the GST payable in respect of the *supply*.
- 4.14. Clauses 4.11 to 4.13 have no application where the Services are *input taxed* or *GST-free*.

## **Right of set off**

- 4.15. The Principal may deduct from moneys otherwise due to the Consultant:
- (a) otherwise than under this Agreement, any debt due from the Consultant to the Principal; and
  - (b) under this Agreement, or otherwise at law relating to the Services:
    - (i) any debt due from the Consultant to the Principal; and
    - (ii) any claim to money which the Principal may have against the Consultant whether for damages or otherwise.
- 4.16. If the amount due to the Principal under clause 4.15 is not ascertainable at the time that payment would otherwise be due to the Consultant under this clause 4, the Principal may retain such amount as the Principal reasonably estimates will become due to it until the actual amount has been determined.
- 4.17. For the avoidance of doubt, any amount deducted from moneys otherwise due to the Consultant under clause 4.15 must, in accordance with clause 4.4, be set out in the applicable Payment Schedule.

## **Miscellaneous**

- 4.18. The Consultant must, promptly and without delay, give the Principal a copy of any written communication of whatever nature in relation to the Security of Payment Act that the Consultant receives from a sub-consultant.

The Consultant must indemnify the Principal against all damage, loss or liability suffered or incurred by the Principal arising out of:

- (a) a suspension pursuant to the Security of Payment Act by a sub-consultant of work which forms part of the Works;
  - (b) a failure by the Consultant to comply with this sub-clause 4.18; and
  - (c) any lien claimed over unfixed plant or equipment forming part of the Works under section 12A of the Security of Payment Act by a sub-consultant of the Consultant.
- 4.19. Each quarter during the Term, the Consultant must provide to the Principal a statutory declaration stating that the Consultant's sub-consultants (if any) have been paid all moneys due and payable to them in the preceding quarter in relation to the provision of the Services and Principal Officer.
- 4.20. If the Principal becomes aware that a sub-consultant is, or will soon become, entitled to suspend work pursuant to the Security of Payment Act, the Principal may pay the sub-consultant such money that is or may be owing to the sub-consultant in respect of that work, and any amount paid by the Principal shall be a debt due from the Consultant to the Principal.

## **5. Consultant's Key Personnel**

- 5.1. The Services must be carried out by the Consultant under the direction of the Consultant's Principal Officer and no other person, unless the Principal consents otherwise in writing.
- 5.2. The Consultant's Principal Officer will:
- (a) represent the Consultant and be available at all reasonable times for consultation with the Principal or the Supervising Officer in connection with any matter arising under this Agreement; and
  - (b) be deemed to be the agent of the Consultant in respect of any decision made or information given or received by the Consultant concerning any matter arising under this Agreement, with full authority to bind the Consultant.
- 5.3. (a) Subject to clauses 5.3(b) and (c), the Consultant agrees that its Key Personnel (including the Consultant's Principal Officer) identified in Schedule 3 are to be engaged throughout the provision of the Services in the positions and in respect of the duties also set out in Schedule 3.
- (b) The Consultant's Key Personnel may only be replaced or moved from their positions and identified duties during the term of this Agreement on condition that:
- (i) the Supervising Officer approves the substitute;
  - (ii) an instruction is given by the Supervising Officer to replace the particular key person;
  - (iii) that key person dies, retires or resigns (other than to accept other employment with the Consultant or any associate of the Consultant) or otherwise suffers from ill health or due to some serious compassionate grounds; or
  - (iv) that key person's section of the Services has been completed.

- (c) Any vacancy of Key Personnel will be promptly filled by the Consultant with a person approved by the Supervising Officer.

## **6. Supervising Officer**

### **Supervision**

- 6.1. The Principal will nominate a person to act as the Supervising Officer to supervise performance of this Agreement (as set out in Item 7 of Schedule 1 or as otherwise notified to the Consultant) for the duration of this Agreement or as otherwise notified to the Consultant.
- 6.2. The Supervising Officer will-
  - (a) represent the Principal and be available at all reasonable times for consultation with the Consultant's Principal Officer in connection with any matter arising under this Agreement; and
  - (b) be deemed to be the agent of the Principal in respect of any decision made or direction given (except with respect to payment of moneys in excess of the Maximum Amount Payable) or information given to or received by the Supervising Officer concerning any matter arising under this Agreement unless stated otherwise in this Agreement.

## **7. Confidentiality, privacy and records management**

### **Mutual Undertaking**

- 7.1. Each party must keep all Confidential Information of the other party absolutely confidential and each party undertakes to the other that it will not communicate, publish or release, or permit the communication, publication or release of any Confidential Information except-
  - (a) as is necessary for the parties to perform their obligations under this Agreement;
  - (b) as required by Law; or
  - (c) as is permitted under this Agreement or otherwise agreed in writing by the parties.

### **Privacy**

- 7.2. The Consultant acknowledges and agrees in respect of the provision of the Services under this Agreement:
  - (a) to use and disclose Personal Information and/or Mallee Sexual Assault Unit Inc Information obtained during the course of providing the Services under this Agreement only for the purposes of this Agreement;
  - (b) not to do any act or engage in any practice that would breach an Information Privacy Principle ("IPP") contained in schedule 1 of the IP Act or any applicable code of practice, which if done or engaged in by the Principal, would be a breach of that IPP or code of practice;
  - (c) to carry out and discharge the obligations contained in the IPPs as if it were the Principal under the IP Act;
  - (d) to ensure that any employee, agent, contractor or sub-consultant of the Consultant who is required to deal with Personal Information or Mallee

Sexual Assault Unit Information for the purposes of this Agreement is made aware of the obligations of the Consultant set out in clauses 7.2 and 7.3; and

- (e) to immediately notify the Principal if the Consultant becomes aware of a breach or possible breach of any of the obligations referred to in sub-clauses (a) to (d) (inclusive), whether by the Consultant or any agent, contractor or sub-consultant of the Consultant.

7.3. The Consultant agrees to ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Agreement contains provisions to ensure that the sub-consultant has the same awareness and obligations as the Consultant has under clauses 7.2 and 7.3.

7.4. Clauses 7.2 and 7.3 apply only where the Consultant deals with Personal Information and Mallee Sexual Assault Unit Inc. Information when, and for the purpose of, providing the Services under this Agreement.

### **Undertaking by Employees and Agents of Consultant**

7.5. The Consultant must:

- (a) ensure that each person employed or engaged by it in relation to this Agreement keeps all Confidential Information confidential and procure from each such person an undertaking that is consistent with the Consultant's obligations under clause 7.1, in effect, that the person will not communicate, publish or release Confidential Information, before giving them access to any Confidential Information; and
- (b) on being informed, or otherwise becoming aware, of any breach or anticipated breach of any undertaking referred to in sub-clause (a), inform the Principal of such breach or anticipated breach and take such action as may be necessary to enforce that compliance, including all reasonable actions directed by the Principal, and irrevocably authorises and permits the Principal to enforce the undertaking in the event that the Consultant fails adequately to do so.

7.6. If, in the reasonable opinion of the Principal, the Confidential Information is of an extremely sensitive nature then the Principal may at any time request in writing that the undertaking required by clause 7.5 be given in the form of an executed deed in favour of the Principal, essentially in the form set out in Schedule 5. If the Principal so requests, then the Consultant must deliver a copy of the undertaking to the Supervising Officer within 14 days of the request.

### **Undertaking by Others**

7.7. Where in the conduct of, or for the purposes of, the Services the Consultant desires to engage the services of a person who is not an employee or agent, and it is necessary for the purposes of that engagement to disclose Confidential Information, no such disclosure will be made unless-

- (a) the other person warrants to the Principal that it will maintain the confidentiality of the Confidential Information in like terms to that required by clause 7.1;
- (b) except as expressly excluded by the Principal in writing, the other person executes and delivers to the Supervising Officer a substantially similar undertaking to that referred to in clause 7.5 and set out in Schedule 5 as

drafted by the Principal; and

(c) the consent in writing of the Supervising Officer is first obtained

7.8. Where such a person is engaged, the Consultant:

(a) must ensure that that person keeps all Confidential Information confidential; and

(b) must, on being informed, or otherwise becoming aware, of any breach or anticipated breach of any undertaking referred to in clause 7.7(b), inform the Principal of such breach or anticipated breach and take such action as may be necessary to enforce compliance with that undertaking, including all reasonable actions directed by the Principal, and irrevocably authorises and permits the Principal to enforce the undertaking in the event that the Consultant fails adequately to do so.

### **Surrender of Materials**

7.9. Subject to clauses 7.10 and 7.11, on or before the Completion Date (or earlier termination) the Consultant must if requested by the Principal:

(a) deliver to the Principal or at the Principal's option, destroy, all Confidential Information and other material received from or through the Principal or on its behalf including without limiting the generality thereof, reports, papers, technical information, plans, charts, drawings, data in any form, calculations, tables, graphs, schedules, notes, computer programs, computer tapes and discs, computer data bases, reference books and other texts; and

(b) after providing all Confidential Information and other material to the Principal and subject to the *Public Records Act 1973* (Vic), delete and render irrecoverable any form of electronic or optical record of the final report or any draft or copy thereof, or any other information or program that was created, collected or otherwise received in the course of carrying out the Services including installed software provided by the Principal.

7.10. If the Supervising Officer gives the Consultant written permission, or requests the Consultant in writing, to retain certain specific Confidential Information or other materials described in clause 7.9, held in electronic or written form, the Consultant need not comply with the provisions of clause 7.9 in respect of the relevant materials.

7.11. Unless the Principal otherwise directs in writing, and subject to clauses 7.1, 7.2 and 7.12, the Consultant may retain one hard copy (which may be scanned and stored by electronic means) of the materials created in performance of this Agreement for the purposes of its own internal quality control, business continuity, auditing, compliance, insurance, document retention policy and dispute resolution purposes. The Principal may only issue a direction under this clause if, in the reasonable opinion of the Principal, the materials contain Confidential Information which is of an extremely sensitive nature.

### **Security of Materials**

7.12. Each party must take all reasonable measures to ensure the security of the Confidential Information and all other materials and Intellectual Property provided, created or acquired by either party under this Agreement, for so long as that Confidential Information or other such material is within its custody or

control, and in so doing must ensure that the Confidential Information and other such material is protected at all times from access, use or misuse, damage or destruction, by any person not authorised by this Agreement to have access to it.

### **Permitted Disclosure**

7.13. Despite anything else in this Agreement:

- (a) the Principal may disclose the terms of this Agreement to the public, including disclosure on the internet, provided such disclosure does not involve trade secrets or proprietary information of a party where disclosure would result in a significant commercial disadvantage to that party;
- (b) if requested by the Auditor-General or the Ombudsman of the State of Victoria in the course of performing their statutory duties, Confidential Information and the terms of this Agreement may be disclosed to the Auditor-General or the Ombudsman as the case may be; and
- (c) Confidential Information and the terms of this Agreement may be disclosed by the Principal to the Minister, and that Minister's staff, responsible for the portfolio under which the Services and this Agreement operates.

## **8. Intellectual Property**

- 8.1. The Intellectual Property in all material prepared or developed by the Consultant prior to the Commencement Date (including all documents, reports, charts, drawings, data bases, software, source codes, models systems, slides, tapes and specifications) and in all processes, tools and methodologies prepared or developed by the Consultant prior to the Commencement Date and improvements to these processes (provided that such improvements are not included in the definition of Services), tools and methodologies developed during the Services vests in and are owned by the Consultant.
- 8.2. Where the Services comprise any Intellectual Property referred to under clause 8.1 or of a third party, the Consultant grants to the State of Victoria and the Principal accepts on behalf of the State of Victoria, a non-exclusive, irrevocable, world-wide, royalty-free licence (including the right to sub-license) to use, reproduce, publish, communicate to the public, adapt and exploit that Intellectual Property to the extent necessary to enable the State of Victoria to enjoy the full benefit of the Services, the Project and this Agreement.
- 8.3. The Consultant assigns to the State of Victoria, and the Principal accepts on behalf of the State of Victoria, exclusive ownership of all Intellectual Property created, discovered, brought into existence or otherwise acquired by the Consultant or on its behalf, as a result of, for the purposes of, or in connection with the Project, the Services or this Agreement (including in all documents, reports, charts, drawings, data bases, software, source codes, models systems, slides, tapes, graphs, notes and specifications) ("Project Intellectual Property") and ownership of such Intellectual Property vests exclusively in the State of Victoria.
- 8.4. In order to facilitate assignment by the Consultant to the State of Victoria under clause 8.3 of exclusive ownership of all rights to the Project Intellectual Property, including but not limited to the copyright in all material (including software) under clause 8.3 (and in accordance with Section 197 of the *Copyright Act 1968*), the Consultant must:

- (a) procure from its employees, consultants, contractors and subcontractors a written assignment to the Consultant of all of the rights to the Project Intellectual Property created or otherwise brought into existence by such employees, consultants or contractors in any way relating to the Project, the Services or this Agreement; and
  - (b) do all things reasonably necessary to assign the rights to the Project Intellectual Property to the State of Victoria, and must procure its employees, consultants, contractors and subcontractors do likewise.
- 8.5. In relation to any work in which the Consultant or a person engaged by it has a moral right, the Consultant consents, and will procure the consent of any person engaged by it, to the Principal and the State of Victoria doing or omitting to do, anything that, but for this consent, would constitute an infringement of those moral rights including, reproducing, publishing, performing, transmitting, exhibiting, adapting, altering or in any way changing or using the work in which the Intellectual Property rights subsist:
- (a) with or without attribution of authorship;
  - (b) with or without any other materials comprising copyright;
  - (c) with or without any other text, data, sounds or images;
  - (d) with no title, the same title or any other title;
  - (e) in any medium or context,  
in any way that the Principal or the State of Victoria sees fit.
- 8.6. The Consultant warrants that:
- (a) it has the right to grant any licence that it is required to provide under clause 8.2;
  - (b) the assignment under clause 8.3 covers all rights, title and interest in the Project Intellectual Property and is not subject to prior licences, charges, encumbrances or other rights of any kind; and
  - (c) the provision of the Services and creation of any material or Intellectual Property in the course of providing the Services will not infringe the Intellectual Property rights of any third party nor render any amount payable by the Principal or the State of Victoria for their respective use of any such material or Intellectual Property.
- 8.7. Subject to clause 7.11, on or before the Completion Date, the Consultant must deliver to the Principal all material in which Intellectual Property has vested in the State of Victoria pursuant to clause 8.3 in the format requested by the Principal, or if none, in a standard, easily accessible format which will allow the Principal to access and use the material using standard and easily available methods or technologies.
- 8.8. Subject to clause 7, the Consultant may be excused from compliance with clause 8.7 where the Supervising Officer has given written approval for the material to be retained.

## **9. Status of Consultant**

- 9.1. The Consultant is engaged as an independent contractor. Nothing in this Agreement creates any agency or employment relationship between the Consultant and the State of Victoria or the Principal. The Consultant has no



authority to incur and will not incur any obligation or make any representation on behalf of the State of Victoria or of the Principal except with the express written instructions from the Principal.

## **10. Indemnity and Insurance**

10.1. The Consultant indemnifies the Principal against all Liability the Principal may incur in respect of any Claim, including Claims in respect of:

- (a) personal injury or the death of any person;
- (b) loss of or damage to any property;
- (c) infringement of third party Intellectual Property rights; and
- (d) a contravention of the requirements of clause 7 or the applicable privacy legislation,

arising in any manner out of the Consultant's performance, purported performance or non-performance of its obligations under this Agreement, any negligent or unlawful act or omission or wilful misconduct of the Consultant or any person the Consultant is responsible for (including any personnel employed or retained by the Consultant) in the course of the procurement process leading to this Agreement or in the course of providing the Services. For the purposes of clauses 10.1 and 10.2:

"Liability" means all damages, costs, expenses, penalties and losses, including, without limitation, all legal costs on a full indemnity basis;

"Claim" means all claims, demands, rights, actions, suits or proceedings of any kind; and

"Mallee Sexual Assault Unit Inc" includes the Committee of Management, the Chief Executive Officer, their agents and employees.

10.2. The Consultant's liability under clause 10.1 will be reduced to the extent that Liability is caused or contributed to by the negligent or unlawful act or omission of the Principal.

10.3. The Consultant must perform and observe all obligations and requirements required of the Consultant by Law in relation to itself and its employees, including but not limited to paying all necessary wages, superannuation payments, taxes (including GST), duties and imposts, taking out and continuing all necessary insurances, including compliance with the *Accident Compensation Act 1985* (Vic) by registration as an employer and the payment of any WorkCover premium required to be paid under that act, and complying with all occupational health and safety requirements.

10.4. The indemnities in this clause 10 are continuing obligations, separate and independent from other obligations of the parties, and survive termination of this Agreement.

10.5. It is not necessary for the Principal or the State of Victoria to incur expense or make payment before enforcing a right of indemnity under this clause.

10.6. The Consultant must on and from the Commencement Date effect and maintain public liability insurance coverage with an insurer authorised under the *Insurance Act 1973* (Cth) for an amount not less than the amount set out in Item 8 of Schedule 1 for any one occurrence. The Consultant will ensure that the Mallee Sexual Assault Unit Inc, is noted as an interested party in respect of the insurance effected under this clause. The Consultant must maintain such insurance coverage for no less than the term of this Agreement.

- 10.7. The Consultant must on and from the Commencement Date effect and maintain professional indemnity insurance coverage with an insurer authorised under the *Insurance Act 1973* (Cth) for an amount not less than the amount set out in Item 9 of Schedule 1. The Consultant must maintain such insurance coverage for at least ten years, or such period as may be stated in Item 10 of Schedule 1, after expiration or earlier termination of this Agreement.
- 10.8. The Consultant must provide certificates of currency, or such other documentary evidence to the satisfaction of the Principal with respect to the currency and the details of insurances it is required to effect under this Agreement if the Supervising Officer requests it in writing.

## **11. Dispute Resolution**

### **Application of procedure**

- 11.1. Each of the parties will use its best endeavours to co-operatively resolve a dispute.

### **Discussions between the parties**

- 11.2. If a dispute arises, either party may give notice of a dispute in writing to the other party. The dispute will be referred to the Consultant's Principal Officer and the Supervising Officer for resolution except to the extent that it is a dispute related to progress payments to which the provisions of the Security of Payment Act apply.

### **Referral to a Panel**

- 11.3. If the dispute is not resolved within three (3) Business Days of the referral under clause 11.2, the dispute will be referred to a Panel for resolution. Each party will nominate a senior representative for the Panel within three (3) Business Days of the referral to the Panel in accordance with this clause.
- 11.4. If a dispute is referred to the Panel in accordance with clause 11.3, the Panel will meet to resolve the dispute unless the Panel agrees to resolve the dispute without the need for a meeting.
- 11.5. The Panel may determine its own procedures for meetings. Decisions of the Panel may only be made by unanimous agreement of the members of the Panel. Any decision of the Panel will be final and binding on the parties and will be provided in writing to the parties.
- 11.6. If the dispute is not resolved by the Panel within ten (10) days of it being referred to the Panel either party may commence legal proceedings.

### **Condition precedent to litigation**

- 11.7. Either party may commence legal proceedings only if the dispute has been referred to the Panel in accordance with clause 11.3 to 11.6 and
- (a) the Panel does not meet within 10 days of such referral unless the Panel decides that there is no need for a meeting in accordance with clause 11.4; or
  - (b) the Panel meets in accordance with clause 11.4 but fails to resolve the dispute within 10 days of such referral.

## **Performance of obligations pending resolution of dispute**

11.8. Prior to the resolution of a dispute, the Consultant will continue to perform its obligations under this Agreement.

## **12. Termination and Suspension**

### **Termination for convenience**

12.1. The Principal may terminate this Agreement at any time and in its sole discretion by giving ten (10) days prior written notice to the Consultant.

### **Termination by the Principal**

12.2. The Principal may, by notice to the Consultant, immediately terminate this Agreement if the Consultant is in breach of its obligations under this Agreement, and such breach is not remedied within seven (7) days of the receipt of a notice from the Principal, or if such breach is remedied but repeated at any time after the receipt of such a notice.

12.3. The Principal may immediately terminate this Agreement at any time by notice to the Consultant, without prejudice to its rights at law or otherwise, if an Insolvency Event occurs in relation to the Consultant.

### **Termination by the Consultant**

12.4. The Consultant may immediately terminate this Agreement by notice to the Principal if-

- (a) the Principal has failed to make a payment in breach of clause 4, except with respect to any payment or portion that the Principal disputes under clause 11; and
- (b) the breach in clause 12.4(a) is not remedied within 30 days of receipt of a notice from the Consultant.

### **Obligations of the Consultant upon termination**

12.5. Upon termination of this Agreement, the Consultant must immediately-

- (a) take all reasonable steps to cease providing the Services in a manner that will not cause any unnecessary or unreasonable loss or inconvenience to the Principal;
- (b) take all available steps to mitigate any loss resulting from termination; and
- (c) deliver to the Principal any documentation provided to the Consultant by the Principal or produced by or on behalf of the Consultant under this Agreement, whether in the course of preparation or completed by the Consultant at the date of termination, which have not been supplied to the Principal and ensure that it is able to do so in respect of such documentation prepared by any person employed or engaged or sub-contracted by the Consultant.

12.6. The Principal may make full use of all documentation prepared by the Consultant (or any sub-consultant or contractor employed or engaged by the Consultant) pursuant to and for use under this Agreement, regardless of any dispute in existence between the Principal and the Consultant over any unpaid fees or other

matter and the Consultant hereby waives any right of lien or similar right which might otherwise be attached to the same.

### **Payment upon termination**

- 12.7. If the Principal terminates this Agreement under clause 12.1 or the Consultant terminates this Agreement under clause 12.4, the Principal will only be liable to pay the Consultant for:
- (a) payment for the Services carried out prior to the date of termination; and
  - (b) an amount equal to the extra costs necessarily incurred by the Consultant as a direct result of the termination (which must be evidenced to the Principal's reasonable satisfaction), provided that the Principal will not be liable for any other losses or damages, including profits forgone, or for any amount in excess of the total amount that would otherwise have been payable under this Agreement if it had not been terminated.
- 12.8. If the Principal terminates this Agreement under clause 12.2 or 12.3, the Principal will only be liable to pay the Consultant for the Services carried out prior to the date of termination, and subject to clause 12.10.
- 12.9. If the Principal terminates this Agreement under clause 12.2 or 12.3, the Consultant must pay to the Principal the additional costs incurred by the Principal in completing the Project, such costs being payable as a debt due to the Principal. For the purposes of this clause additional costs includes but is not limited to all losses and damages suffered or incurred by the Principal as a result of the termination, as well as the amount by which the costs incurred by the Principal in completing the Project or attempting to complete the Project, exceed the balance of the Maximum Amount Payable that would have been payable by the Principal to the Consultant if this Agreement had not been terminated. Those costs include but are not limited to:
- (a) the additional cost to the Principal of having the Services or equivalent services provided by an alternative service provider to complete the Project, including costs of any acceleration or expedited methods used in an attempt to mitigate any delay caused by the Consultant;
  - (b) all reasonable charges for administering any related trade contract or consultancy agreement; and
  - (c) all legal costs incurred by the Principal (on an indemnity basis) associated with the termination.
- 12.10. Any amount due to the Principal from the Consultant under clause 12.9 may be set off against any amount due under clause 12.8. If the amount due to the Principal under clause 12.9 is not ascertainable at the time that payment would otherwise be due to the Consultant under clause 12.8, the Principal may retain such amount as the Principal reasonably estimates will become due to it under clause 12.9 until the actual amount has been determined. Nothing in this clause will affect the operation of clauses 4.2 to 4.4 inclusive.
- 12.11. If the amount payable by the Consultant to the Principal under clause 12.9 exceeds the amount payable by the Principal to the Consultant under clause 12.8, the difference is a debt due and payable by the Consultant to the Principal.

### **Condition precedent to payment**

12.12. It is a condition precedent to any payment to the Consultant of any outstanding amount as at the date of termination that the Consultant has fully complied with its obligations under clause 12.5.

### **Miscellaneous**

12.13. Any termination of the Agreement will not prejudice or affect the accrued rights, claims or liabilities of either party under this Agreement.

12.14. The rights given by this clause 12 are in addition to any other rights and may be exercised notwithstanding that there has been no breach of this Agreement.

### **Suspension**

12.15. The Principal may, at any time by giving prior written notice to the Consultant, suspend the carrying out of the Services or any part of the Services (**Suspension Notice**).

12.16. The Principal may, at any time within six (6) months from the date of the Suspension Notice, give the Consultant reasonable notice to recommence the performance of the Services.

12.17. If the Principal does not give the Consultant notice to recommence the carrying out of the Services (or the relevant part of the Services) within 6 months from the date of the Suspension Notice, then upon the expiry of the 6 month period, either party may terminate the Agreement by giving written notice to the other to that effect, such termination having effect from the date of the Suspension Notice.

12.18. If the Agreement is terminated in accordance with clause 12.17, the Principal must pay to the Consultant (and the Consultant will be deemed to accept in full and final payment of any claim which the Consultant may have arising out of such suspension):

- (a) any amount due to the Consultant for the portion of the Services carried out by the Consultant prior to the date of the Suspension Notice; and
- (b) any additional costs and expenses reasonably and not prematurely incurred by the Consultant by reason of the suspension in connection with carrying out the Services up to the date of the Suspension Notice and evidenced in writing to the Principal.

12.19. If the Consultant suspends the carrying out of the Services or any part thereof pursuant to section 29 of the Security of Payment Act, the Consultant will not be entitled to make any claim for any compensation for any costs or damages incurred or any losses suffered by the Consultant arising out of or in connection with any delays to the carrying out of the Services resulting from such suspension.

## **13. Resources**

13.1. Unless authorised by the Supervising Officer in writing, the Consultant will not access or utilise any of the resources of the Principal, including without limitation, its employees or premises.

#### **14. Scope or Timing of Services**

- 14.1. If either party becomes aware of any matter which may change the amount of work or time involved in completing the Services, that party must give written notice of that matter to the other party as soon as reasonably practicable.
- 14.2. If the Principal becomes aware of any matter which may change the amount of work or time involved in completing the Project, the Principal may suspend or, despite clause 19.1, adjust the Consultant's performance of the Services to the extent reasonably required.

#### **15. Provisional Sums**

- 15.1. A provisional sum included in the Agreement shall not itself be payable by the Mallee Sexual Assault Unit Inc. except as provided for in this clause. The Supervising Officer may direct the Consultant to obtain prices for the additional services, the subject of the provisional sum. Where the Supervising Officer directs the engagement of a sub-consultant for such services, the Mallee Sexual Assault Unit Inc. will pay the Consultant, subject to clause 4, the amount determined or agreed to be paid to the sub-consultant for the additional services, the subject of the provisional sum.

#### **16. Notices**

- 16.1. Any notice or document to be served on a party to this Agreement may be served:
  - (a) by delivering it to the party personally by means of delivery by hand on the Supervising Officer or Consultant's Principal Officer; or
  - (b) by lodging it during normal office hours at the party's ordinary place of business as set out in Schedule 1; or
  - (c) by sending it by post or facsimile addressed to the party's ordinary place of business as set out in Schedule 1; or
  - (d) in such manner as may be prescribed for the purposes of section 50 of the Security of Payment Act.
- 16.2. A notice or document given to a party in accordance with clauses 16.1(a), (b) or (c) is treated as having been given and received:
  - (a) if delivered or lodged, on the day of delivery or lodgement if delivered or lodged before 4.00 pm on a Business Day, otherwise on the next Business Day
  - (b) if sent by post, two Business Days after the day on which it was posted; and
  - (c) if sent by facsimile and the transmission report states that it was sent in full and without error, on the day of transmission if that report states that the transmission was completed before 4.00 pm on a Business Day, otherwise on the next Business Day.

## **17. Governing Law**

- 17.1. The laws of the State of Victoria govern this Agreement.
- 17.2. Subject to clause 11, each party submits to the exclusive jurisdiction of the courts of the State of Victoria and the courts of appeal from those courts.
- 17.3. If any provision of this Agreement is or becomes illegal, invalid or unenforceable ("Ineffective"), it will be read down to the extent necessary to ensure that it is not Ineffective. If the offending provision cannot be so read down, it will be severed. In any event, the remainder of this Agreement will be construed so as to ensure that it remains effective to the greatest extent possible.

## **18. Entire Agreement**

- 18.1. This Agreement constitutes the entire agreement between the parties and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing.

## **19. Novation, Assignment and Subcontracting**

- 19.1. The Principal may novate this Agreement or any portion of it to any third party by means of a deed of novation substantially in the form directed by the Principal ("Deed of Novation"). If the Principal wishes to novate this Agreement, it will serve on the Consultant a written notice of novation ("Notice of Novation") together with the Deed of Novation. The novation will be effective from the date specified in the Deed of Novation, which is not to be less than five (5) Business Days after the service of the Notice of Novation.
- 19.2. The Consultant will enter into the Deed of Novation within five (5) Business Days of receipt of the Notice of Novation.
- 19.3. Except with the prior written consent of the Principal, the Consultant may not assign or subcontract the whole or any part of the Consultant's obligations under this Agreement or assign or sub-contract the whole or any part of the Works or tasks associated with the Project. Such consent may be given subject to any terms and conditions as the Principal may think appropriate.
- 19.4. Where the Principal gives such consent in clause 19.3:
  - (a) the Consultant is in no way relieved or released from any of its obligations or liabilities under this Agreement;
  - (b) the obligations of the sub-consultant to the Consultant must be the same as the obligations of the Consultant to the Principal under this Agreement; and
  - (c) the Consultant must meet all payment obligations to the Consultant's sub-consultants engaged in the provision of the Services under this Agreement, shall not vary those payment obligations without the prior written consent of the Principal, and shall comply with all reasonable requests for verification of such payments received from the Principal.

- 19.5. The Consultant will, within five (5) Business Days of receipt of a written request to do so from the Principal, assign the benefit of any sub-consultancy or sub-contract it has entered into (which is the subject of the written notice) to the Principal.
- 19.6. Without limiting the effect of clause 19.4(a), the indemnity under clause 10.1 extends and applies to any act or omission of any sub-consultant, or any sub-consultant's employees and agents, which if it were an act or omission of the Consultant, would constitute a breach of the Consultant's obligations under this Agreement.

## **20. Variation of Agreement**

- 20.1. This Agreement may only be varied with the written consent of each party.

## **21. Joint and Several Liability**

- 21.1. If the Consultant is a partnership or joint venture (or consortium) of two (2) or more persons, all such persons are jointly and severally liable to the Principal for the fulfilment of the terms of this Agreement.
- 21.2. The Consultant's Principal Officer has authority to bind the partnership or joint venture (or consortium) and each of its members.
- 21.3. Where the Consultant or any part of it is a partnership, this Agreement will not automatically terminate upon death, retirement or resignation of one or more members of such partnership.
- 21.4. The composition or the constitution of the partnership or joint venture (or consortium) may not be altered without notice to the Principal.

## **22. Conflict of Interest**

- 22.1. The Consultant warrants that at the Commencement Date, to the best of its knowledge and belief having made all reasonable and diligent inquiries, no conflict of interest exists in relation to this Agreement or is likely to arise during the period of this Agreement. The Consultant must inform the Principal as soon as it becomes aware of any matter that may give rise to a conflict of interest during the currency of this Agreement.
- 22.2. Any Confidential Information provided by the Consultant under clause 22.1 will be treated in confidence by the Principal to the extent permitted by law and subject to clause 7.13(b) and (c).

## **23. Waiver**

- 23.1. A waiver of any provision of, or right or obligation under, this Agreement must be in writing and is effective only to the extent specifically described in such writing.
- 23.2. If a party waives its rights in relation to a breach of any covenant, obligation or provision in this Agreement by the other party, that waiver does not operate as a waiver of another or a continuing breach of that covenant, obligation or provision or of any other covenant, obligation or provision in this Agreement.



## **24. Adjudication**

### **Nominating Authority**

24.1. For the purposes of section 18(3)(b) of the Security of Payment Act, the authorised nominating authorities shall be:

- (a) The Institute of Arbitrators & Mediators Australia;
- (b) LEADR; and
- (c) Rialto Adjudications Pty Ltd

### **The Adjudicator**

24.2. To the full extent permitted by law, any adjudicator appointed pursuant to the Security of Payment Act shall:

- (a) not have the authority to open up, review or revise any Payment Schedule issued by the Principal pursuant to clause 4.3;
- (b) act, at all times, impartially, fairly and in accordance with the requirements of the Security of Payment Act and this Agreement; and
- (c) provide detailed written reasons for his or her determination, including details of the adjudicator's basis for determining;
  - (i) the adjudicated amount; and
  - (ii) the date on which the adjudicated amount became or becomes payable.

### **Adjudicator's Determination**

24.3. For the purposes of section 23(2)(b) of the Security of Payment Act, the adjudicator shall, in determining the adjudicated amount, consider any set-offs the Principal may be able to make against the amount of the progress payment (if any) to be paid by the Principal to the Consultant including, without limitation, any amount due from the Consultant to the Principal arising out of or in connection with the Agreement.

## **25. Employment Policy**

25.1. The Consultant acknowledges that it must not act in a manner that is contrary to the Victorian Government's Ethical Employment Policy.

25.2. The Consultant must not engage in any practice that is contrary to any industrial Law or any award or other industrial instrument made under or pursuant to such Laws that is applicable to the Consultant.

25.3. The Consultant and any person engaged in the provision of the Services must not:

- (a) engage in unethical work practices; or
- (b) engage employees or sub-contracted workers upon terms and conditions that are not commensurate with industry standards generally applicable in Victoria.

25.4. In addition to any rights the Principal may have under clause 12, if the Consultant is in breach of this clause 25, the Principal may suspend the operation

of this Agreement, or the performance of the Principal's obligations under it, immediately by notice to the Consultant for so long as the breach continues.

## **26. Force Majeure**

- 26.1. If a party ("Affected Party") is affected by a Force Majeure Event, the Affected Party must notify the other party of:
- (a) the full particulars of the Force Majeure Event, including its nature and likely duration;
  - (b) the obligations affected by the Force Majeure Event and the extent to which the Affected Party is unable to perform those obligations; and
  - (c) the specific measures proposed to be adopted to remedy or abate the Force Majeure Event.
- 26.2. The Affected Party must give notice as soon as practicable after it becomes aware that the Force Majeure Event will prevent the performance of its obligations (either wholly or in part) under this Agreement.
- 26.3. If the Affected Party gives notice under this clause 26 and clause 16, the Affected Party's obligations, in so far as they are affected by such Force Majeure (other than an obligation to pay money), are suspended from the time the Force Majeure Event affects the performance of those obligation.
- 26.4. If the event of Force Majeure continues for more than 30 days, either party may terminate this Agreement by notification in writing to the other party.

## **27. LOCAL JOBS FIRST AGENCY GUIDELINES**

- 27.1. This clause 27 only applies where the Local Jobs First Agency Guidelines apply to this Agreement. The guidelines apply to this Agreement if the Project:
- (a) is located in metropolitan Melbourne and the Maximum Amount Payable is over \$3,000,000; or
  - (b) is located in regional Victoria and the Maximum Amount Payable is over \$1,000,000.
- 27.2. The Consultant must comply with the Local Industry Development Plan, and must provide to the Principal:
- (a) a written report regarding its compliance with the Certified Local Industry Development Plan by 30 June in each year of this Agreement; and
  - (b) a final report on the Local Industry Development Plan outcomes achieved by the Consultant, certified by Industry Capability Network Victoria Limited, prior to or on completion of this Agreement.
- 27.3. The Consultant acknowledges that the Certified Local Industry Development Plan, or information from the Certified Local Industry Development Plan, and the measures of the Consultant's compliance with the Certified Local Industry Development Plan shall be provided by the Principal to the Industry and Trade Division of the Department of Business & innovation, to be included in a register of Local Jobs First Agency performance. The information included in the Certified Local Industry Development Plan may be made available to departments and agencies of the Victorian Government to be used in assessing other tender proposals for Local Jobs First Agency purposes.

- 27.4. The Principal will monitor the Consultant's performance measured against the outcomes set out in the Certified Local Industry Development Plan and as part of the monitoring process, the Consultant will allow an auditor or other nominated representative of the Principal to have access to and to obtain information from the Consultant's records and staff. The Consultant must provide authorisation for the Principal to obtain information from the persons, firms or corporations nominated in the Certified Local Industry Development Plan regarding compliance with the Certified Local Industry Development Plan. The Supervising Officer will exercise his or her reasonable discretion in assessing the Consultant's performance under this clause and shall take into account any issue raised by the Consultant which fairly represents a cause of failure to comply beyond the Consultant's reasonable control.

## **28. NATIONAL CODE OF PRACTICE FOR THE CONSTRUCTION INDUSTRY**

- 28.1. The Consultant must comply with the National Code of Practice for the Construction Industry (the Code) and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, May 2012 (the Guidelines). Copies of the Code and Guidelines are available at [www.deewr.gov.au/building](http://www.deewr.gov.au/building)
- 28.2. Compliance with the Code and Guidelines shall not relieve the Consultant from responsibility to perform the Agreement, or from liability for any deficiency in performance arising from compliance with the Code and Guidelines.
- 28.3. Where a change in the Agreement is proposed and that change would affect compliance with the Code and Guidelines, the Consultant must submit a report to the Mallee Sexual Assault Unit Inc. specifying the extent to which the Consultant's compliance with the Code and Guidelines will be affected.
- 28.4. The Consultant must maintain adequate records of the compliance with the Code and Guidelines by:
- 28.5. the Consultant;
- (a) its sub consultants; and its Related Entities (see Guidelines for meaning including Section 3.5 of the Guidelines).
- 28.6. If the Consultant does not comply with the requirements of the Code or the Guidelines in the performance of this Agreement such that a sanction is applied by the Minister for Employment and Workplace Relations, the Code Monitoring Group or the Commonwealth, without prejudice to any rights that would otherwise accrue, those parties shall be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the Consultant or a related entity in respect of work funded by the Commonwealth or its agencies.
- 28.7. While acknowledging that value for money is the core principle underpinning decisions on Government procurement, when assessing tenders, the Consultant may give preference to sub Consultants that have a demonstrated commitment to:
- (a) adding and/or retaining trainees and apprentices;
- (b) increasing the participation of women in all aspects of the industry; or
- (c) promoting employment and training opportunities for Indigenous Australians in regions where significant indigenous populations exist.

## Schedule 5 - Confidentiality Undertaking

---

This Deed is made on the \_\_\_\_\_ day of \_\_\_\_\_, 2020

I, \_\_\_\_\_, am a Director of \_\_\_\_\_ ("Consultant").

\_\_\_\_\_ has been engaged by the **Mallee Sexual Assault Unit Inc. (ABN 57 685 819 813), the Principal**, to perform services ("**Services**") in relation to the Project defined in the agreement dated ...../...../ 2020 ("**Agreement**").

**I will not** communicate, publish or release any Confidential Information, as defined in the Agreement, except as directed by the Principal, as required by law, or for the purpose of the performance of the Services.

**I will** instruct all employees, agents or sub-consultants working and/or acting on behalf of \_\_\_\_\_ that they are not to communicate, publish or release any Confidential Information, as defined in the Agreement, except as directed by the Principal, as required by law, or for the purpose of the performance of the Services.

**I irrevocably authorise** the Principal to enforce this undertaking and **I acknowledge** that the Principal is entitled (in addition to any entitlement to damages) to seek an injunction or other equitable relief for any actual or threatened breach by me of this Deed:

- (a) without the need for the Principal to prove any damage; and
- (b) the Principal need not provide any security and/or undertaking in respect of any damages that I or anyone else might incur as a result of an injunction being granted.

Executed as a deed on the date set out at the commencement of this Deed.

SIGNED, SEALED AND DELIVERED ) Name:  
)  
) \_\_\_\_\_

in the presence of: Signature:  
Signature of witness: \_\_\_\_\_  
.....

Name of witness (block letters): Date: .....  
.....