

**About this Agreement template**

**What is this Agreement for?**

This Agreement should be used by an individual or organisation to engage an Aboriginal person to create Language materials for a project. The Contractor may be hired because they can share their Language, Knowledge and Culture to create the material, or they may have other expertise (e.g. curriculum expert or graphic designer). The Contractor may work with a Language and Culture Specialist to record their Language, Knowledge and Culture and include it in the Language materials.

You can find more information about this Agreement on page 14 of *Working with Aboriginal Language Custodians: Guidelines for ethical and respectful collaborations* and page 19 of the *Community Guidelines: Protecting your Cultural and Intellectual Property*.

**Who signs this Agreement?**

The Agreement is between an Aboriginal organisation or business (referred to as the **Project Lead**) who wants to pay an Aboriginal person (the **Contractor**), to create Language materials as part of a Language project.

**LANGUAGE PROJECT: SERVICES AGREEMENT**

**THIS AGREEMENT is made between:**

1. The person or organisationnamed in Item 2 of the Schedule (‘the **Project Lead**’)

**and**

1. **The Contractor** named in Item 1 of the Schedule (‘**the Contractor**’)

# **BACKGROUND**

1. [Details about the Project Lead: who are you and what do you do?
2. [Details about the Language Project - what is the language work that is being carried out?]
3. The Contractor is a Language Speaker and/or holds Language Knowledge and/or has other skills to support the implementation of the Language Project.
4. The Project Lead wishes to engage the Contractor as part of the Language Project, to provide the Services and the Deliverables described in Items 4 and 5 of the Schedule, on the terms of this Agreement.

**THE PARTIES AGREE TO THE FOLLOWING:**

1. **Definitions**

In this Agreement the following definitions apply unless the context requires otherwise:

* 1. **Agreement** means the whole of the terms and conditions in this agreement, including the Background, and any schedules and annexures to this Agreement;
  2. **Background Materials** means any materials made available under this Agreement, including Intellectual Property Rights in those materials, created or otherwise owned, used or licenced by either of the Parties, which was brought into existence by either of the Parties before this Agreement.
  3. **Confidential Information** means any information that:
     1. By its nature is confidential; or
     2. Is designated by a Party (including on behalf of Language Custodians or a Language and Culture Specialist) as confidential; or
     3. The recipient knows or ought to know is confidential;

but does not include information which:

* + 1. Is or becomes public knowledge other than by breach of this Agreement;
    2. Is required by law to be disclosed;
    3. Is in possession of the recipient, without restriction about disclosure, before the date of receipt from the disclosure;
    4. Has been independently developed or acquired by a Party; or
    5. Is required by law to be disclosed.
  1. **Deliverable(s)** means an item or thing that the Contractor must create and deliver to the Principal as part of the Services, as specified in Item 5 of the Schedule;
  2. **Fee** means the fee payable by the Principal to the Contractor for the performance of the Services in the amounts set out in Item 7 of the Schedule;
  3. **GST** means any tax imposed on the supply of goods and services which is imposed or assessed under GST Law;
  4. **Intellectual Property Rights** means:
     1. all rights in copyright, trademarks (including unregistered marks), business and company names, domain names, designs, database, circuit layouts, patents, inventions, discoveries, know-how, trade secrets and confidential information, but excluding Moral Rights; and
     2. all other rights or forms of protection of a similar nature or having a similar or equivalent effect to any of them, whether under international convention or otherwise,
     3. that may subsist anywhere in the world, whether current or future or registered (including applications for any of the above) or unregistered;
  5. **Aboriginal Cultural and Intellectual Property Rights** or **ACIP** means the rights of Aboriginal peoples and Torres Strait Islander peoples to their heritage. Heritage comprises of all objects, sites and knowledge, the nature or use of which has been transmitted or continues to be transmitted from generation to generation, and which is regarded as pertaining to a particular Aboriginal or Torres Strait Islander group or its territory. The heritage of an Aboriginal peoples and Torres Strait Islander peoples is a living one and includes objects, knowledge, literary and artistic works which may be created in the future based on that heritage. Heritage includes:
     1. Literary, performing and artistic works (including songs, music, dances, stories, ceremonies, symbols, languages and designs);
     2. Scientific, agricultural, technical and ecological knowledge (including cultigens, medicines and phenotypes of flora and fauna);
     3. All items of movable cultural property (including sacred and historically significant sites and burial grounds); and
     4. Documentation of Aboriginal people’s heritage or Torres Strait Islander people’s heritage in archives, film, photographs, videotape or audiotape in all forms of media.
  6. **Key Personnel** means the persons named in Item 6 of the Schedule.
  7. **Language and Culture Specialist** means a person identified by Aboriginal persons in authority as having expertise in an Aboriginal Language and/or Culture. This person may be consulted with and/or recorded for the purposes of creating the Deliverables.
  8. **Language Custodians** means Aboriginal people who identify as having cultural connections to the Aboriginal Language or Languages that are being used or taught as part of the Language Project, as named in Item 3 of the Schedule.
  9. **Moral Rights** means the rights in *Part IX of the Copyright Act 1968 (Cth)* including the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work and the right not to have authorship of a work falsely attributed;
  10. **Services** means the whole of the work which the Contractor is required to perform and complete under this Agreement, the details of which are set out in Item 4 of the Schedule;
  11. **Special Conditions** means those special conditions that apply to the Services and the Deliverables as specified in Item 12 of the Schedule.

1. **Provision of Services**
   1. In return for the payment of the Fee, the Contractor agrees to provide the Services and the Deliverables to the Principal in accordance with this Agreement.
   2. The Parties agree that in interactions with one another relating to this Agreement, the Parties will act:
      1. in good faith;
      2. with regular communication; and
      3. with transparency.
2. **The Contractor’s obligations** 
   1. The Contractor will:
      1. Perform the Services as specified in Item 4 of the Schedule;
      2. Deliver the Deliverables as specified in Item 5 of the Schedule;
      3. Provide the Services in a professional, competent and timely manner and with due care, skill and diligence;
      4. Keep the Principal, or the Project Lead’s authorised representative, regularly informed about the progress in providing the Services;
      5. Promptly notify the Project Lead of any delay in performance;
      6. Not engage in any conduct, act or omission which may or could potentially bring the Project Lead in disrepute or interfere with the proper performance of the Services;
      7. Sign all documents and do all things necessary to give effect to the Parties’ agreement regarding ownership of Intellectual Property in the Deliverables;
      8. Comply with the Special Conditions;
      9. Comply with the reasonable requirements and directions of the Project Lead in connection with the provision of the Services; and
      10. Comply with any applicable statutes, regulations, by-laws and requirements of the Commonwealth and any State, Territory or local authority.
3. **The Project Lead’s obligations** 
   1. The Project Lead will:
      1. Pay the Fees and Expenses to the Contractor in accordance with Clause 5 and Item 6 of the Schedule;
      2. Provide to the Contractor all materials, access to personnel, facilities or information as may reasonably be required by the Contractor to satisfactorily implement and deliver the Services and Deliverables;
      3. Comply with the Special Conditions; and
      4. Promptly respond to the Contractor’s requests for further information.
4. **Payments**

**Fees**

* 1. The Fees will be paid as follows:
     1. Upon completion of work, or, as agreed by the Parties in Item 7 of the Schedule, the Contractor will submit to the Project Lead a valid written tax invoice; and
     2. The Project Lead will pay valid tax invoices to the Contractor’s nominated bank account as listed in Item 9 of the Schedule within fourteen (14) days provided that the invoice is correctly calculated.

**Expenses and Entitlements**

* 1. Unless otherwise expressly agreed by the Parties in Item 8 of the Schedule, the Contractor will meet its own expenses including travel, accommodation and wages, it obtains the prior written approval of the Project Lead before the expenses occur. Payment of any approved Expenses will be in the same manner as the Fees, as outlined in Clause 5.1.
  2. As an independent contractor, the Contractor has no entitlement to holiday, long service or other leave entitlements, superannuation or other entitlements from the Project Lead and is not covered by employee workers compensation insurance.

**GST**

* 1. All payments under this Agreement are exclusive of GST. In addition to these payments, the Project Lead will pay the Contractor an amount equal to any GST payable for supply by the Contractor under or in connection with this Agreement. the Project Lead will pay the GST amount when the corresponding payment must be paid.

1. **Intellectual Property Rights**

**Background Materials**

* 1. Nothing in this Agreement affects the ownership of Intellectual Property Rights in any Background Materials.
  2. The Contractor warrants that it owns, or is licensed by the owner to use and sub-license the use of, the Background Materials incorporated in the Deliverables.
  3. The Contractor grants to the Project Lead a perpetual and irrevocable licence to use, reproduce, adapt and sub-licence the use of the Contractor’s Background Materials for the purposes of the Language Project and as contemplated by this Agreement.
  4. The Parties agree that Background Materials will not be used for any other purposes other than under the terms of this Agreement.

**Intellectual Property Rights in the Deliverables**

*[****DRAFTING NOTE:*** *IP ownership of Project Intellectual Property should be negotiated in good faith before the Services and Deliverables are delivered.*

***OPTION 1:*** *the Contractor owns all IP rights in the Project Intellectual Property created and gives the Project Lead a licence to use the for the Language Project– you can specify any other uses in Item 10 of the Schedule.*

***OPTION 2*** *allows for joint ownership by the Project Lead and the Contractor in the Project Intellectual Property. The Parties each grant the other a licence to use for the Language Project – you specify any other uses in Item 10 of the Schedule.*

***NOTE:*** *The Parties can also use Item 10 of the Schedule to list any specific materials that are going to be created, and who will own them and how those materials can be used by the Project Lead and the Contractor.]*

**OPTION 1**

* 1. Subject to Clauses 6.9 - 6.11, the Parties acknowledge and agree that, unless otherwise expressly agreed by the Parties in Item 10 of the Schedule, the Contractor will own all Intellectual Property Rights in the Deliverables immediately upon creation.
  2. The Contractor grants the Project Lead a non-exclusive, royalty-free, world-wide licence in perpetuity to use the Deliverables for the purposes of the Language Project and for those other uses (if any) specified in Item 10 of the Schedule.

***OR [delete one option]***

**OPTION 2**

* 1. Subject to Clauses 6.9 - 6.11, the Parties acknowledge and agree that, unless otherwise expressly agreed by the Parties in Item 10 of the Schedule, the Contractor and the Principal will jointly own all Intellectual Property Rights in the Deliverables in equal shares.
  2. Each Party grants the other a non-exclusive, royalty-free, world-wide licence in perpetuity to use the Deliverables for the purposes of the Language Project and for those other uses (if any) specified in Item 10 of the Schedule.

**Recordings**

* 1. The Parties acknowledge that copyright in recordings (including film, sound recordings, photographs, translations, transcripts, field notes and any edited versions) made of a Language and Culture Specialist or other relevant contributor, including their words, expressions and performances, belong to the Language and Culture Specialist, and will be licensed back to the Contractor and the Principal for use in the Deliverables.
  2. The Parties acknowledge that these recordings will contain ACIP.
  3. The Contractor must ensure that all Language and Culture Specialists sign a recording release in the same or similar form as that listed in Annexure A and provide copies of the same to the Project Lead.

**Third Party Intellectual Property**

* 1. To the extent that each Party provides the other with any Intellectual Property for a specific purpose, that Party warrants that the use of that Intellectual Property will not infringe the intellectual property rights of any third party.

**Moral Rights**

* 1. The Project Lead will respect the Moral Rights of the Contractor and any Key Personnel by attributing the creators of the Deliverables in a manner agreed between the parties.
  2. However, the Contractor consents, and will ensure Key Personnel consent to any reasonable act or omission by the Project Lead in relation to the Deliverables, which might otherwise amount to an infringement of Moral Rights. For example, this may include adapting the Deliverables as is contemplated by clause 6, or not attributing the creators of the Deliverables where it is not practical or reasonable to do so.

1. **Aboriginal Cultural and Intellectual Property Rights** 
   1. The Parties will, at all times, show respect for Language Custodians, Aboriginal peoples, and Aboriginal Cultural and Intellectual Property. Where appropriate, the parties will observe the trust placed in them through the disclosure by Aboriginal people to the Parties of knowledge or information concerning Languages, traditions, customs, cultural expression (song, dance, arts, stories, ceremonies) and beliefs, especially any secret knowledge.
   2. The Parties acknowledge and agree that Aboriginal people have the right to control, own and maintain their ACIP in accordance with Article 31 of the *United Nations Declaration on the Rights of Indigenous Peoples*. The ownership of any ACIP will remain with the relevant traditional owners of such ACIP.
   3. The Parties agree that ownership of any ACIP rights will remain with the relevant custodians of such ACIP.
   4. The Parties will:
      1. Comply with any restrictions on using and dealing with any ACIP in the Deliverables;
      2. Attribute the Language Custodians and any Aboriginal people who contribute to the Deliverables;
      3. Not use the ACIP for any purpose other than as part of the Deliverables and as contemplated by this Agreement.
2. **Confidentiality**
   1. The Parties must keep Confidential Information confidential and must:
      1. keep all Confidential Information safe, secure and protected against unauthorised use and access;
      2. use Confidential Information solely for the purpose of performing its obligations under this Agreement and for no other purpose;
      3. ensure Confidential Information is not copied or reproduced without the Party’s express written consent; and
      4. disclose Confidential Information to only those persons who have a need to know, and where disclosure is essential to the provision of the Services, ensure that each person to whom the Party discloses Confidential Information:
      5. is aware of the confidentiality requirements of this Agreement; and
      6. is advised that he or she is strictly forbidden to disclose the Confidential Information to any other person or use the Confidential Information for any purpose other than providing the Services;
      7. unless otherwise approved in writing by the disclosing Party, not issue any information, publication, document or article or make any statement to or advertise in any media about any matters relating to the Agreement, the Services or the Deliverables.
   2. Each Party will make its directors, officers, employees, agents and representatives comply with the confidentiality obligations under this Clause 8.
3. **Privacy** 
   1. In connection to this Agreement, the Parties will comply with the Privacy Act 1988 (Cth). To the extent that a Party has access to or deal with Personal Information (as defined under the *Privacy Act 1988* (Cth) under this Agreement, that Party will:
      1. Only use Personal Information held or controlled by it in connection with this Agreement for the purposes of fulfilling its obligations under this Agreement; and
      2. Take all reasonable measures to ensure that Personal Information in its possession or control in connection with this Agreement is protected against loss and unauthorised access, use, modification or disclosure; and
      3. Notify the other Party immediately if it becomes aware of a breach or possible breach of this Clause 9 by it, its personnel or any other approved person.
4. **Subcontracting** 
   1. The Contractor will:
      1. ensure that all approved subcontractors have the appropriate rights to work in Australia, evidence of which must be provided by the Contractor upon the Principal’s request; and
      2. satisfy itself and must ensure that the subcontractor has the necessary suitability, reliability, safety systems, expertise and financial standing to carry out the Services to be subcontracted.
   2. The Contractor will ensure that any subcontract entered into by the Contractor for the purposes of fulfilling their obligations under the Agreement, imposes on the subcontractor the same obligations that the Contractor has under this Agreement insofar as those obligations relate to the subcontracted part of the Agreement (including this requirement in relation to subcontracts).
   3. Subcontracting any part of the Services does not relieve the Contractor from its liabilities or obligations under this Agreement and the Contractor will remain liable for any breach of this clause by its subcontractor.
5. **Warranties**
   1. Each party represents and warrants that:
      1. It has the right and authority to enter into and to perform its obligations under this Agreement;
      2. It owns all Intellectual Property Rights in the materials its grants a licence to under this Agreement, or where it is not the owner, has been granted the authority by the owner to exercise and grant the rights in this Agreement;
6. **Termination**

**Term**

* 1. This Agreement commences on the Commencement Date and will continue:
     1. until the Services and Deliverables have been provided; or
     2. until terminated by either party in accordance with this Clause 13.

**Mutual termination rights**

* 1. Either Party may terminate this Agreement by providing 30 days’ written notice.
  2. Without limiting any of their other rights and remedies, either Party may immediately terminate this Agreement by sending a written notice to the other Party if:
     1. Either Party breaches any of its obligations under this Agreement and the breach is not remedied, if it can be remedied, within 14 days of a written notice from the other party stating the breach and requiring it to be remedied; or
     2. The other party becomes insolvent or enters into a scheme of arrangement with its creditors or comes under external administration.

**Consequences of termination**

* 1. Upon termination of this Agreement, the Contractor will immediately:
     1. Stop performing the Services; and
     2. Return to the Project Lead all property belonging to the Project Lead in the Contractor’s possession.
  2. Upon termination of this Agreement, the Project Lead will pay to the Contractor the Fees and Expenses for all Services properly completed before and up to the date of termination.
  3. Termination of the Agreement will not prejudice any rights or remedies already accrued to any Party under, or in respect of any breach of, this Agreement.

1. **Dispute Resolution**
   1. The Parties agree to first try to resolve disputes arising from this Agreement in accordance with this Clause 14 prior to taking court action.
   2. The aggrieved Party will notify the other Party in writing setting out the details of the dispute, and the Parties agree to hold good faith discussions within 14 days to try and resolve the dispute.
   3. If the Parties are unable to resolve the dispute at the meeting, or if a Party fails to attend that meeting, then the Parties must within a further ten (10) days hold a meeting in the presence of a mediator.
   4. The mediator must be:
      1. A person chosen by agreement between the Parties; or
      2. In the absence of an agreement, a person appointed in accordance with, and subject to, the [rules](https://www.resolution.institute/resources/rules-for-dispute-resolution-processes) of the Resolution Institute Australia.
   5. Where the dispute has not been resolved within 1 month of commencement of mediation, then either Party may commence legal proceedings.
2. **Miscellaneous**

**Notices**

* 1. All notices required under this Agreement shall be in writing delivered by hand, post or email to the relevant address and contact listed for each Party in Item 1 or 2 of the Schedule, or as otherwise advised by the Parties from time to time. Notices will be regarded as being given by the sender and received by the addressee:
     1. If by delivery in person, when delivered to the addressee; and
     2. If by email or other electronic transmission, when an acknowledgement confirming that the notice has been received by the addressee is received by the original sender of the notice.

**Nature of the relationship**

* 1. The Contractor is engaged by the Project Lead as an independent contractor. The parties agree that they are not in partnership, agency or a contract of employment and cannot bind the other. Nothing contained in this document will be construed as constituting any other relation between the Parties.
  2. Subject to this Agreement, the parties acknowledge that the Contractor is solely responsible for controlling the manner in which the Contractor performs the services.

**Assignment**

* 1. No Party is entitled to assign any of its rights and obligations under this Agreement without the prior written consent of the other Party.

**Entire agreement**

* 1. This Agreement (including any schedules and annexures) represents the entire agreement between the Parties and supersedes all previous arrangements between the parties.

**Counterparts**

* 1. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which will be taken together and deemed to be one instrument.

**Jurisdiction**

* 1. This Agreement shall be interpreted in accordance with and governed by the law in force in New South Wales, Australia and in the event of any dispute arising, the dispute in question shall be subject to the jurisdiction of the courts in New South Wales.

# **EXECUTED AS AN AGREEMENT**

Signed by **the Project Lead:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Authorised Person Signature of Authorised Person/Witness

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Name of Authorised Person (print) Name of Authorised Person (print)

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Office held Office held (if relevant)

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Date Date

Signed by **the Contractor**:

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Signature of Contractor Signature of Witness

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Name of Contractor (print) Name of Witness (print)

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Date Date

**SCHEDULE**

| **Item 1 – The Contractor** | Name of Person/Organisation: [insert details]  ABN:  Address:  Contact Person:  Phone:  Mobile:  Email:  Address for Notices: |
| --- | --- |
| **Item 2 – The Project Lead** | Name of Person/Organisation: [insert details]  ABN:  Address:  Contract Person:  Phone:  Mobile:  Email:  Address for Notices: |
| **Item 3 – Language Project** | [insert Language Project description]  Language Custodians: |
| **Item 4 – Services** | The Services to be provided by the Contractor are as follows:  [insert details] |
| **Item 5 – Deliverables** | The Deliverables (e.g. materials, resources etc) to be developed and provided by the Contractor are as follows:  [insert details] |
| **Item 6 – Key Personnel** | Name: [insert details]  Mobile:  Email:  Name: [insert details]  Mobile:  Email: |
| **Item 7 – Fees** | [Insert fees to be paid to the Contractor]  e.g. As payment for the provision of the Services, the Contractor will be paid as follows:  $X per hour + GST  OR   | **Item** | **Amount** | **Due Date/Payable** | | --- | --- | --- | | e.g. Teaching Fee | $X per hour | On signing or list instalments | | e.g. Recordings with Language and Cultural Specialists | $X per hour | On completion of Recordings | | e.g. Provision of draft Deliverables | $X | Delivery of first draft | | e.g. Provision of final Deliverables | $X | Delivery of final draft |   All Fees are exclusive of GST and are payable within 14 days of the Project Lead receiving a valid tax invoice from the Contractor. |
| **Item 8 - Expenses** | List expenses that the Project Lead agrees to pay. |
| **Item 9 – Contractor’s Bank Account Details** | **Bank:**  **Account Name:**  **BSB:**  **Acc #:** |
| **Item 10 – Project Intellectual Property** | [Insert any specific uses that the Principal and/or the Contractor can make of the Project Intellectual Property under Clause 6]  Additional uses for the Project Lead: e.g. archiving  Additional uses for the Contractor:  Agreed uses for Language Custodians: e.g. sharing in community  [If so desired, insert details of specific project materials to be created; and detail the agreement about IP ownership and use by both Parties]   | **Material** | **Details – ownership and use** | | --- | --- | | e.g. Recordings of Language and Culture Specialist | e.g. Copyright to be transferred to Language and Culture Specialist using the forms provided. | | e.g. Teaching Resource | e.g. Copyright jointly owned by the Contractor and any contributors or co-authors (e.g. Language and Culture Specialist) (also consider if copyright to be jointly owned with the Principal on behalf of the Principal). | | e.g. Published book | e.g. Copyright owned by the Contractor  Language Custodians and the Principal to be acknowledged.  Sharing of any royalties from sale between joint copyright owners. | |
| **Item 11 – Cultural Notice** | [Cultural Notice to be used where ACIP is published]  This publication contains the Language, traditional knowledge and/or traditional cultural expression of the [**Language Custodians**].  All rights reserved. Dealing with any part of the traditional knowledge and/or traditional cultural expression in this publication for any purpose that has not been authorised by the custodians is a serious breach of the customary law of the [**Language Custodians**] and may breach the *Copyright Act 1968* (Cth).  For enquiries about permitted reproduction, contact [insert details of contact person]. |
| **Item 12 – Special Conditions** | [Specify any other special conditions that have to be complied with, including in relation to Language, Culture, Language Reference Group governance, checking of deliverables] |

**ANNEXURE A**

**LANGUAGE AND CULTURE SPECIALIST RELEASE (insert)**