

**About this Agreement template**

**What is this Agreement for?**

The Agreement should be used where an Aboriginal organisation wishes to protect the Aboriginal Cultural and Intellectual Property (ACIP) contained in Language materials created by a Contractor, such as a linguist.

The ACIP and copyright are protected under this Agreement as follows:

* the Contractor will collaborate with an Aboriginal person to ensure the integrity of the Language materials and the involvement of Aboriginal people in the creation of the materials;
* the Contractor agrees to transfer all copyright ownership of any resources created under the Agreement to the Aboriginal Consultant OR to the Project Lead;
* the Contractor agrees to abide by cultural protocols relating to ACIP.

You can find more information about this Agreement on page 10 of *Working with Aboriginal Language Custodians: Guidelines for ethical and respectful collaborations* and on page 19 of the *Community Guidelines: Protecting your Cultural and Intellectual Property*.

**Who should sign this Agreement?**

The Agreement should be used by an Aboriginal organisation or business (referred to as the Project Lead) who wants to pay a non-Aboriginal person or business, for example a researcher or linguist (the **Contractor**), to create Language materials.

This Agreement is written with the expectation that the Contractor will collaborate with an Aboriginal person to create the Language materials. The Aboriginal person has expertise in Language, Knowledge and Culture, and is referred to in this Agreement as the **Aboriginal Consultant**.

This Agreement is not suitable for use where a person is undertaking the work as part of their formal studies (e.g. Masters degree, PhD). This is because the relationship will not be that of services provided for payment, but of a collaboration for research purposes. In such circumstances, the person must enter into a suitable Research Agreement with the Project Lead, which clearly specifies the rights that each party will have to the different kinds of research deliverables, and is compliant with ethical research protocols such as the Australian Institute of Aboriginal and Torres Strait Islander Studies *AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research.* The Project Lead should seek independent advice on any Research Agreement to be sure what rights to language are being shared with the researcher.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**SERVICES AGREEMENT:**

**LINGUIST OR RESEARCHER**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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**THIS AGREEMENT is made between:**

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

**and**

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

**CONTRACT DETAILS – FOR RECORDKEEPING  
  
WORKING WITH: [insert name of person who is the Aboriginal Consultant]  
  
RESOURCES: [insert details and type of Language Resources to be created]  
  
FOR: [insert details of Language Group]**

# **BACKGROUND**

1. [Details about the Project Lead: what do you do? What is the language work that you are undertaking?]
2. The Project Lead strives to keep control of language materials in the hands of the [Aboriginal language Group] and ensure that language is taught and shared for the benefit of the community.
3. The Project Lead wishes to engage the Contractor to work with an Aboriginal language expert to create language materials.
4. The Contractor has agreed with the Project Lead to provide the Services and deliver the Deliverables in accordance with the terms set out in this Agreement.

**IT IS AGREED:**

1. **Definitions**

In this Agreement the terms and words set out in this clause shall have the following meaning unless otherwise indicated by the context:-

**“Aboriginal”** refers to Aboriginal people of Australia.

**“Aboriginal Consultant”** means the Aboriginal language expert, speaker or knowledge holder with whom the Contractor works to create the Deliverables.

**“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.

**“Agreement”** means the Agreement constituted by this document and includes the Background and all Schedules (as relevant).

**“Brief”** means the description from the Project Lead of the language materials to be created by the Contractor, as described in Schedule 1.

**“Commencement Date”** means the date this Agreement is signed by the Parties.

**“Contract Materials”** means any materials brought into existence as part of, or for the purpose of providing the Services and the Deliverables including records, documents and information stored by any means.

**“Contractor Background IP”** means the Contractor’s pre-existing Intellectual Property (and third party pre-existing Intellectual Property) incorporated into the Deliverables or the Contract Materials.

**“Contractor’s Material”** means copyright material that the Contractor alone has created and/or holds copyright in.

**“Deliverables”** means the Language Resources that the Contractor must deliver under this Agreement.

**“Delivery Date”** means the date by which the Contractor must deliver the Deliverables, as specified in Schedule 1.

**“Fee”** refers to the amounts set out in Schedule 1.

**“the Project Lead Background IP”** means any the Project Lead pre-existing Intellectual Property (and third party pre-existing Intellectual Property) used in providing the Deliverables or the Contract Materials.

**“GST”** means any tax imposed on the supply of goods and services which is imposed or assessed under GST Law.

**“GST Law”** means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and all related ancillary legislation, which provides for a broad-based consumption tax on the supply of goods and services which becomes operative in respect of this Agreement.

**“Intellectual Property”** means all existing and future intellectual property rights throughout the world, including any copyright, database, patent, design, trade mark, domain name, business name, know-how, trade secret, confidential information and any other rights of a similar nature whether registered, registrable, patentable or not and wherever existing in the world including all renewals, extensions and revivals of, and all rights to apply for any of the foregoing rights, but does not include Moral Rights.

**“Moral Rights”** means without limitation any rights subsisting under Part IX of the *Copyright Act 1968* (Cth), and any rights under existing or future law in the nature of moral rights, wherever existing in the world.

**“Party**” means a party to this Agreement and **Parties** has a corresponding meaning.

**“Services”** means the Services of assisting the Aboriginal Consultant to create the Deliverables, and as described in Schedule 1.

**“Third Party Material”** means any copyright material that is incorporated into the Deliverables that is not the original material work of the Contractor.

1. **Interpretation**

In the interpretation of this Agreement unless the context otherwise requires:

1. Words importing the singular shall include the plural and vice versa;
2. Words importing one gender includes all other genders;
3. Expressions are used as in the *Copyright Act 1968* (Cth);
4. All sums are payable as and in Australian dollars;
5. All Schedules to this Agreement form part of this Agreement;
6. Clause headings shall be disregarded;
7. All warranties have the force and effect of conditions;
8. All warranties survive completion of this Agreement;
9. Where any word or phrase is given a defined meaning in this Agreement any other part of speech or other grammatical form of that word or part of speech shall have a corresponding meaning.
10. **Services**
    1. In consideration of the payment of the Fees, the Contractor agrees to provide the Services and deliver the Deliverables by the Delivery Date to the Project Lead in accordance with this Agreement.
    2. The Contractor agrees to:
11. Carry out the provision of the Services with due care and skill in accordance with the obligations in this Agreement;
12. perform the Services with all the necessary professional skill and diligence, in a timely manner, and as specified in this Agreement;
13. provide the Services to the reasonable satisfaction of the Project Lead;
14. comply with the reasonable requirements and directions of the Project Lead in connection with the provision of the Services;
15. ensure that the Services are fit for the purpose for which they have been provided and to promptly remedy any failure of fitness where notified by the Project Lead; and
16. provide the Services in a professional manner and not engage in any act or omission which may bring the Project Lead into disrepute.
    1. The Contractor agrees to provide any updates to the Project Lead as reasonably requested throughout the Term.
17. **Fees**
    1. The Fees will be paid as follows:
18. Upon completion of work, or, as agreed by the Parties in Item 4 of Schedule 1, the Contractor will submit to the Project Lead a valid written tax invoice; and
19. the Project Lead will pay valid tax invoices to the Contractor’s nominated bank account as listed in Item 5 of Schedule 1 within ten (10) working days, provided that the invoice is correctly calculated.
    1. The parties agree that all amounts payable under this Agreement are exclusive of GST. If a party is liable to pay GST in respect of any goods or services supplied under this Agreement, that party will invoice the other party for the GST amount payable for the good or service and will ensure that the invoice complies with GST Law. The party who received the GST Law compliant invoice must pay the amount of GST invoiced at the same time as the amount payable under this Agreement.
20. **Moral Rights**
    1. The Project Lead will respect the Moral Rights of the Contractor by naming them as the linguist or researcher who contributed to the creation of the Deliverables. The Contractor may specify their preferred manner of attribution in Schedule 1.
    2. However, the Contractor consents to any reasonable act by the Project Lead which might otherwise amount to an infringement of the Contractor’s Moral Rights. For example, this may include adapting the Deliverables as is contemplated by clause 4, or not attributing the Contractor where is not practical or reasonable to do so.

1. **Copyright**

**Contract Materials**

**OPTION 1**

* 1. Subject to clause 6.4, the Contractor assigns all Intellectual Property in the Contract Materials to the Aboriginal Consultant in accordance with the deed contained in Schedule 3.

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

**OPTION 2**

* 1. Subject to clause 6.4, the Parties acknowledge and agree that the Project Lead will own all Intellectual Property Rights in the Contract Materials immediately upon creation.
  2. The Project Lead grants the Contractor a non-exclusive, royalty-free, world-wide licence in perpetuity to use the Contract Materials for the purposes of fulfilling its obligations under this Agreement.

**Background IP**

* 1. Unless agreed otherwise in writing by the parties, nothing in this Agreement affects ownership of any Intellectual Property of either the Project Lead or the Contractor which came into existence before the Commencement Date.
  2. Title to, and all Intellectual Property in all Contractor Background IP remains vested in the Contractor.
  3. Title to, and all Intellectual Property in all the Project Lead Background IP remains vested in the Provider.
  4. The Contractor grants and will ensure that relevant third parties grant to the Aboriginal Contractor and the Project Lead, at no additional cost, a perpetual, irrevocable, non-exclusive, royalty-free, transferable licence to use, reproduce, sublicense and adapt the Contractor Background IP to the extent that it is incorporated into or in relation to the Contract Materials and the Deliverables.

**Third Party Material**

* 1. The Contractor is responsible for:

1. identifying and bringing to the Project Lead’s attention any Third Party Material that is incorporated in the Contract Materials; and
2. obtaining all necessary Rights and other permissions in the Third Party Material in order to give the licences required under clause 6.7.
3. **Aboriginal Cultural and Intellectual Property**
   1. The Parties acknowledge and respect cultural protocols of Aboriginal people which may apply to the Services.
   2. The Contractor agrees to abide by any cultural protocols concerning the use of ACIP in the Contract Material or which apply to the Services, as notified by the Aboriginal Consultant.
   3. The Parties acknowledge that Aboriginal Cultural and Intellectual Property (**ACIP**) is included in the Contract Materials and agree that ownership of any ACIP rights remains with the traditional owners or custodians of that ACIP.
   4. If the Contractor Background IP contains ACIP, the Contractor must:
4. identify and bring to the Project Lead’s attention any ACIP that is incorporated in the Contractor Background IP;
5. identify the Aboriginal people, language groups or communities involved in the creation of the Contractor Background IP, so that they may be acknowledged;
6. confirm that the Contractor Background IP is suitable for publication, display and dissemination and does not contain any sacred or secret material; and
7. confirm that the Contractor has permission from a person/organisation with cultural authority, to reproduce the ACIP in the Contractor Background IP, to share the Contractor Background IP publicly and to provide the Aboriginal Consultant with the licence in the deed contained in Schedule 3.
8. **Representations, warranties and indemnities**
   1. The Contractor represents and warrants that:
9. the Contractor is the sole author of the text in the Deliverables, and that the Languages Resources are original works;
10. the Contractor has identified all Third Party Material in the Deliverables and owns or has been granted all rights and interests in the Deliverables necessary to grant the licence to the Project Lead under this agreement;
11. the Deliverables, and any use of the Deliverables by the Project Lead or its licensees in accordance with clause 4 of this Agreement does not and will not infringe copyright, and nothing contained in the Deliverables is defamatory, a breach of confidentiality or is otherwise contrary to law; and
12. has the power and capacity to enter into this agreement and to perform the Contractor’s obligations under this agreement.
    1. the Project Lead represents and warrants that the Project Lead has the power and capacity to enter into this agreement and to perform the Project Lead’s obligations under this agreement.
    2. The Contractor will indemnify and keep indemnified the Project Lead against all losses, liabilities, costs and expenses (including reasonable legal expenses as between solicitor and client) that the Project Lead incurs as a result of or in relation to a breach of any of the Contractor’s representations or warranties made clause 9.1.
13. **Termination**
    1. This Agreement will continue until the Contractor has delivered the Services and the Project Lead has accepted the materials required to be delivered by the Contractor in the provision of the Services, or until a time mutually agreed by the parties, or until terminated by either party in accordance with this Clause 10.2.
    2. In the event of a fundamental breach of this Agreement, either Party may serve written notice to the other Party (**notifying Party**) and if the other Party fails to rectify the breach in seven (7) business days, the notifying Party may terminate the Agreement.
    3. Termination of this Agreement for any reason will be without prejudice to any rights which either party may have accrued before termination.
14. **Disputes**
    1. Except in the case of injunctive relief, if a dispute arises between the Parties, the Parties agree to first attempt to resolve the dispute in accordance with this Clause 10 prior to taking action in the courts.
    2. The aggrieved Party will notify the other Party in writing setting out the details of the dispute. Once notified, the Parties must arrange for representatives to meet within fourteen (14) calendar days after the dispute comes to the attention of the Parties. The Parties must take all reasonable steps to resolve the dispute in good faith.
    3. If the dispute is not resolved within twenty eight (28) days from the date of notification of the dispute, the Parties agree to submit the dispute to an independent mediator or mediation process that all Parties agree to, the costs of which are to be shared equally by the Parties.
    4. The mediator must be:
15. A person chosen by agreement between the Parties; or
16. In the absence of an agreement, a person appointed in accordance with, and subject to, the rules of the Resolution Institute.

* 1. The Parties agree to act in accordance with any resolution made during the mediation described in this clause.
  2. The Parties must continue to perform their respective obligations under this agreement while dealing with any dispute under this clause.

1. **Notices**
   1. A notice required to be given under this Agreement may be delivered by hand, or sent by pre-paid post or email to the address of the Party indicated in Schedule 1. Notices sent by mail are taken to have been served when received, or within 2 business days of having been sent, whichever occurs first. Notices sent by email are taken to have been received at the time the email is sent, as recorded by the sender’s system.
2. **General Terms**
   1. This Agreement sets out the whole of the agreement between the Parties.
   2. This Agreement can only be altered or modified if any alteration or modification is in writing and signed by the Parties.
   3. 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.
   4. The Parties may not assign, subcontract, novate or otherwise divest this Agreement or any of the rights or obligations under this Agreement without the other Party’s prior written consent.
   5. Invalidity of any clause of this Agreement will not affect the validity of any other clause except to the extent made necessary by the invalidity.
   6. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument.
   7. This Agreement binds the Parties’ legal personal representatives, successors and assignors.
   8. The provisions of this Agreement are governed by and construed in accordance with the laws of New South Wales.

# **EXECUTED AS AN AGREEMENT**

Signed by **the Project Lead:**

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

Signature of Authorised Person Signature of Authorised Person/Witness

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

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

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

Office held Office held (if relevant)

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

Date Date

Signed sealed and delivered **the Contractor**:

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

Signature of Contractor Signature of Witness

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

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

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

Date Date

# **SCHEDULE 1 – Agreement Particulars**

**ITEM 1 – Contractor Information**

| **Contractor Name:** |  |
| --- | --- |
| **ABN:** |  |
| **Address:** |  |
| **Phone:** |  |
| **Email:** |  |

| **Project Manager Name (if applicable):** |  |
| --- | --- |
| **Address:** |  |
| **Phone:** |  |
| **Email:** |  |

**ITEM 2 – Project Lead Information**

| **Organisation Name:** |  |
| --- | --- |
| **ABN:** |  |
| **Address:** |  |
| **Phone:** |  |
| **Email:** |  |

| **Project Manager Name:** |  |
| --- | --- |
| **Address:** |  |
| **Phone:** |  |
| **Email:** |  |

**ITEM 3 – Brief**

| **Description of Services:** |  |
| --- | --- |
| **Description of Deliverables:** |  |
| **Delivery Date:** |  |

**ITEM 4 – Fees**

| **Fee for Services and creation of Deliverables** |  |
| --- | --- |

**ITEM 5 – Attribution as linguist or researcher**

| **Preferred form:** |  |
| --- | --- |

**ITEM 6 – Contractors Bank Account Details**

| **Name:** |  |
| --- | --- |
| **Institution:** |  |
| **BSB:** |  |
| **Account Number:** |  |

# **SCHEDULE 2 – Ethics Protocol**

**[attach copy of protocol or insert cultural rules for the project**

**You could choose to use the Principles for Aboriginal Language Projects as per page 14 of the** *Community Guidelines: Protecting your Cultural and Intellectual Property*

**You may also wish to specify Protocols specific to your community or project, for example:**

* **How Aboriginal language custodians will have control of the project and any material created that incorporates Aboriginal language and culture** e.g. Project Steering/Advisory Group, Aboriginal Language Custodians have the right to review/give feedback on the recordings or language materials before the project is completed.
* **Any specific people who must be involved in the project**
* **Any areas of Cultural Knowledge that are “off-limits”** e.g. sacred knowledge, men’s or women’s business
* **Ways in which information can or cannot be recorded** e.g. written notes, audio recordings, video recordings
* **Where and how any recordings are kept at the completion of the project**
* **Any restrictions on what can be done with the recordings or language materials once the project is complete** e.g. cannot share online, for community only, or commercial use is allowed.

**SCHEDULE 3 - DEED OF ASSIGMENT AND MORAL RIGHTS CONSENT**

**Dated: [INSERT DATE]**

**This Deed is made between:**

[***insert Contractor’s full name***] ACN/ABN [***insert Contractor’s ACN or ABN***]   
of [***insert Contractor’s address***]   
(**Contractor**)

**and**

[***insert name of Aboriginal Consultant***] ACN/ABN [***insert Consultant’s ABN***]   
of [***insert Consultant’s address***]

(**Aboriginal Consultant**)

**BACKGROUND**

1. The Contractor was engaged to provide services to the Project Lead (“the Agreement”).
2. The Contractor will work with the Aboriginal Consultant to create language materials for the purposes of revitalisation, teaching and maintenance of languages belonging to the [name of Nation] peoples.
3. the Project Lead wishes to ensure that the Aboriginal Consultant is the owner of all Intellectual Property in the Contract Materials, in order to support the rights of Aboriginal people to maintain, control, protect and develop their cultural heritage, and intellectual property over such cultural heritage.
4. As such, the Project Lead requests and the Contractor agrees to provide the following Intellectual Property assignment and Moral Rights consent in relation to the material created by the Contractor pursuant to the Agreement, on the terms of this Deed.

**This Deed witnesses** that the parties agree as follows:

1. **Definitions**

1.1 In this Deed (including the Background and any Schedules and Annexures) the following terms have the following meanings unless the context otherwise requires:

**Contract Materials** means any materials brought into existence as part of, or for the purpose of providing the deliverables required under the Agreement, including records, film and sound recordings, documents and information stored by any means.

**Contractor Background IP** means the Contractor’s pre-existing Intellectual Property (and third party pre-existing Intellectual Property) incorporated into the Deliverables or the Contract Materials.

**Intellectual Property** means the various rights and property conferred under statute, common law and equity in and in relation to patents, inventions, designs, copyright, trademarks, trade names, business names, corporate names, logos and get up, circuit layouts, know-how, trade secrets, confidential information and all other intellectual property rights, including all applications for registration, extension, renewal or otherwise, and all rights of action, in respect of the same, but excluding Moral Rights;

**Moral Rights** means without limitation any rights subsisting under Part IX of the *Copyright Act 1968* (Cth), including the authors’ right of attribution, the author’s right against false attribution and the authors’ right of integrity;

1. **Intellectual Property**

2.1 The Contractor confirms that the Aboriginal Consultant is the owner of all Intellectual Property, including copyright, in the Contract Materials. The Contractor hereby assigns to the Aboriginal Consultant all existing and future right, title and interest (including copyright) that the Contractor might hold in the Contract Materials.

2.2 The Intellectual Property rights in the Contractor Background IP will remain vested in the Contractor. The Contractor grants and will ensure that relevant third parties grant to the Aboriginal Consultant, at no cost, a perpetual, irrevocable, non-exclusive, royalty-free, transferable licence to use, reproduce, sublicense and adapt the Contractor’s Pre-existing IP that is incorporated into the Contract Materials.

2.3 The Aboriginal Consultant grants the Contractor the Contractor a non-exclusive, non-transferable licence to use the Contract Materials and Deliverables solely for the purposes of providing the services under the Agreement.

1. **Attribution and Moral rights**

3.1 The Aboriginal Consultant will acknowledge the Contractor in the Published Material.

3.2 The Contractor acknowledges that the Aboriginal Consultant will use their best efforts to uphold the Contractor’s Moral Rights in the Contract Materials but consents to any act or omission by the Aboriginal Consultant in relation to any Moral Rights that exist in the Contract Materials.

3.2 The Contractor agrees that the Aboriginal Consultant may edit, adapt, alter or otherwise modify the Contract Materials and/or the Contractor’s Pre-existing IP in the Contract Materials, and authorise others to do the same.

3.3 The Contractor will procure the consent of any person who, acting under the Contractor’s direction, is the author of any of Contractor’s Pre-existing IP or the Contract Materials, to any or all acts or omissions by the Aboriginal Consultant, its licensees or assigns, which would otherwise infringe any Moral Rights they may have in the Contractor’s Pre-existing IP or the Contract Materials.

3.4 The Contractor will not institute, maintain or support any claim or proceeding for infringement of any Moral Rights that it has consented to or that may otherwise result from any act or omission to which it has consented.

1. **Contractor’s use of the Contract Materials**
   1. The Contractor may keep copies of the Contract Materials and the Deliverables for their records and for no other purpose.
   2. If the Contractor wishes to reproduce part or all of the Contract Materials for the purposes of promoting itself, the Contractor must seek the prior informed consent of the Aboriginal Consultant and comply with all relevant standards for respecting ACIP rights and the recording and publication of Aboriginal languages, including GERAIS, the Australia Council’s Protocols for Producing Aboriginal Australian Writing.
2. **Aboriginal Cultural and Intellectual Property (ACIP)**
   1. The parties acknowledge and agree that ACIP may be included or recorded in the Contract Materials and the Deliverables. The right to manage and control ACIP will remain with the relevant traditional owners of such ACIP.
   2. The Contractor confirms that:
3. The Contractor Background IP and all content therein including images and ACIP are suitable for publication, display and dissemination and does not contain any sacred or secret material; and
4. The Contractor has cultural authority or has permission from a person/organisation with cultural authority, to reproduce the ACIP in the Contractor Background IP, to share the Contractor Background IP publicly and to provide the Aboriginal Consultant with the licence in clause 2.2.

**6. General**

6.1 This deed contains the entire agreement between the parties with respect to the subject matter of this deed and supersedes all prior agreements and understandings between the parties in connection with it.

6.2 No modification or alteration of the terms of this deed shall be binding unless made in writing dated subsequent to the date of this deed and duly executed by the parties.

6.3 The parties agree that nothing in this deed may be construed to make either of them a partner, agent, employee or joint venturer of the other.

6.5 This deed is governed by the laws in force in New South Wales. The parties submit to the exclusive jurisdiction of the courts of New South Wales in respect of all matters arising out of or in relation to this deed, its performance or subject matter.

6.6 The parties intend for this document to take effect as a deed but if the form or manner of execution or delivery of this deed fails to satisfy any of the formal requirements which must be satisfied in order for this document to take effect as a deed, then the parties nevertheless intend that this document takes effect as a legally binding agreement. The covenants and promises given by each party in this deed are given in consideration of the covenants and promises of each other party.

6.7 This deed may be executed in counterpart and all counterparts shall operate and be read and construed as one document.

6.8 Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this Deed.

**EXECUTED AS A DEED**

**Signed sealed and delivered** **by**

**[insert name of Contractor]**

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

(Signature of Contractor)

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

(Name of Contractor)

in the presence of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature of Witness)

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

(Name of Witness)

**Signed sealed and delivered** **by**

**[insert name of Aboriginal Consultant]**

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

(Signature of Aboriginal Consultant)

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

(Name of Aboriginal Consultant)

in the presence of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature of Witness)

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

(Name of Witness)