

COMMUNITY PROPOSED PROJECT AGREEMENT 2011 FOR THE DEVELOPMENT AND USE OF LANGUAGE MATERIALS

between

Indigenous community organisation's name and address

and

Consultant's name and address








Use this agreement when a community organisation thinks of the project first and then approaches a consultant.

This model agreement, prepared by the Arts Law Centre of Australia, comes with the FATSILC Protocol. You should read the agreement with the FATSILC Protocol.


Both documents are free, and are available from the FATSILC office or can be downloaded from the FATSILC or Arts Law Centre of Australia website.

COMMUNITY PROPOSED PROJECT AGREEMENT 2011

Developing and Using Language Materials

KEY	
Picture	Meaning
	This picture means that you need to write the names and addresses of the people and organisations who are making the agreement.
	This picture means that you need to make choices.
	This picture means that you need to write something.
	This picture means that legally binding promises begin.
	This picture means that the agreement is talking about copyright, especially ownership of the copyright in the Project Material.
	This picture is put where the agreement deals with disagreements.
	This picture is put where the agreement needs to be signed.

CONTRACT DETAILS

Item 1 Party Details 		THE CONSULTANT	THE INDIGENOUS COMMUNITY ORGANISATION
	Name
		(You)	(Us or We)
	ACN/ABN		
	Address		
	Phone		
	Fax		
	Email		

	Website			
Item 2 Project	Describe the project, its purpose and what it is expected to achieve:			
Item 3 Project Period and Project Timetable	Project Period: Start Date: End Date:			
Item 4 Locations	You must conduct the Project at the following location(s):			
Item 5 Meetings	Meeting with Representative(s) (describe when and where meeting(s) will take place):			
Item 6 Our Contribution	Describe what materials or equipment We must contribute to the Project.			
	<i>People</i>	<i>Services/Materials/ Equipment</i>	<i>Information</i>	<i>Facilities</i>
	<i>Who (example only)</i> <i>Name of person</i>	<i>What (example only)</i> <i>Help to find historical papers)</i>	<i>What (example only)</i> <i>Knowledge of meanings for local names</i>	<i>What (example only)</i> <i>One room at the community centre and use of the furniture</i>
	Insert actual details in these columns :			
	<i>Who</i>	<i>What</i>	<i>What</i>	<i>What</i>
	<i>When</i>	<i>When</i>	<i>When</i>	<i>When</i>


	<i>How</i>	<i>How</i>	<i>How</i>	<i>How</i>
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Item 7 Your Contribution to Project and Training	Describe what services or materials You will deliver for the Project.		
	Service(s)/materials <i>(For example, already published dictionary/word list about the language)</i>	How, when and where <i>(For example, during sessions with language informants, copies available for community members)</i>	Any other details <i>(For example, also make dictionary/word list available in electronic format)</i>
	Training <i>(For example, skills in language analysis and description)</i>	How, when and where <i>(For example, by talking about the names of grammatical features and parts of speech using examples from Our language, during recording and documenting sessions with language informants)</i>	Place <i>(For example, at the community centre)</i>

Item 8 Progress Reports	Dates for Progress Reports from You:
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Item 9 Project Material and Purpose for which the Project Material may be used	Describe the final Project Material which You must deliver to Us.
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	<p>.....</p> <p>(iv) Method of payment (<i>tick</i>):</p> <p><input type="checkbox"/> Cash</p> <p><input type="checkbox"/> Cheque</p> <p><input type="checkbox"/> Other: (give account details)</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
<p>Item 13</p> <p>Ownership of Project Material, including the copyright</p>	<p><i>(Tick the box that applies to this Project. You must tick only one box.)</i></p> <p>Subject to clause 71:</p> <p><input type="checkbox"/> We and You own all rights and interests (including the Intellectual Property) in the Project Material, jointly, throughout the world for the full period of copyright in these rights and interests.</p> <p><input type="checkbox"/> We own all rights and interests (including the Intellectual Property) in the Project Material throughout the world for the full period of copyright in these rights and interests. You sell (assign) to Us absolutely all of Your rights and interests in the Project Materials to give effect to this.</p> <p><input type="checkbox"/> You own all rights and interests (including the Intellectual Property) in all Project Material that is a cinematograph film or a sound recording (as those terms are defined in the Copyright Act). We own all rights and interests (including the Intellectual Property) in all other Project Material.</p>
<p>Item 14</p> <p>Delivery Date</p>	<p>.....</p>
<p>Item 15</p> <p>Amount of notice for ending agreement</p>	<p>.....</p>
<p>Item 16</p> <p>Other Interested People</p>	<p>List other people or organisations who are involved with the Project.</p> <p>.....</p> <p>.....</p>
<p>Item 17</p> <p>Special Conditions</p>	<p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>

	<p>SIGNED by the CONSULTANT</p> <p>.....</p> <p>Signature</p> <p>.....</p> <p>Full Name of Signatory</p> <p>Date:</p>	<p>SIGNED by THE REPRESENTATIVE on behalf of the COMMUNITY ORGANISATION</p> <p>.....</p> <p>Signature</p> <p>.....</p> <p>Full Name of Signatory</p> <p>.....</p> <p>We</p> <p>Date:</p>



BACKGROUND

1. You and We acknowledge that We are the owners and custodians of our language(s) and culture, and that We have the right to access the best linguistic and educational supports and resources available for the revitalisation and preservation of Our language.
2. You and We both acknowledge that we wish to work collaboratively on a language project that produces language materials (**Project**, as specified in **Item 2** of the Contract Details).
3. You and We both acknowledge that we will use our best efforts to maintain a positive and respectful working relationship throughout the Project.
4. We will give You access to the materials and the people listed in **Item 6** of the Contract Details to help with the Project, on condition that We and Other Interested People also benefit from the Project, on the terms of this agreement.
5. You will deliver the Project Material described in **Item 7** of the Contract Details to Us under the terms of this agreement

THE PROJECT

6. We engage You to participate in the Project, and You agree to work with Us on the Project, according to this agreement.
7. You must be responsible for all materials, equipment, facilities and other people that You provide for the Project, and ensure that they are adequate and appropriate for the Project.
8. You acknowledge and agree to the Project's aims and outcomes set out in **Item 2** of the Contract Details and agree to produce and deliver the final Project Material stated in **Item 9** of the Contract Details.
9. You must:
 - (a) start the Project on the Start Date;
 - (b) provide Your Contribution to the Project substantially full time during the Project Period and according to the Project Timetable;
 - (c) conduct the Project during the Project Period and at the location(s) stated in **Item 3** of the Contract Details;
 - (d) provide Your Contribution to the Project professionally, diligently and with the care and skill expected of a person or organisation experienced in projects like the Project and activities like those included in Your Contribution;
 - (e) perform the Project according to the Protocol, any relevant local Indigenous and government protocols, guidelines, policies and

principles to the extent not inconsistent with the Protocol, and this agreement. In particular, You must consult us about all aspects of the Project Material relating to our language(s) and ICIP;

- (f) comply with Our reasonable directions so long as these directions do not affect Your right to decide how to provide Your Contribution;
- (g) not engage any other person or organisation to work on the Project without first getting Our consent. If We give Our consent, You must ensure that the approved people and organisations comply with all applicable obligations under this agreement and all applicable law;
- (h) use reasonable efforts to ensure that the Project Material has a statement about the purpose for which it was produced and what it is not suitable for, for example:

“This publication was created to assist [name] community in the revitalising and teaching of [name] language. The [name] community is happy to make this publication available to help other communities, and the consultants who work with them, to revitalise their languages.”

- 10. If You are to develop Software as part of the Project, You must:
 - (a) comply with **attachment B**;
 - (b) develop the Software according to the Specification and the Project Timetable;
 - (c) install the Software on the Equipment according to the Project Timetable;
 - (d) carry out the Acceptance Tests specified in clause 3.3 of **attachment B** or help Us to carry out the Acceptance Tests, at Our choice;
- 11. We may let You hold and use Our Contribution, on the terms set out in **attachment C** and the other terms of this agreement, but for no longer than the Project Period.
- 12. In all matters relating to the Project, You must:
 - (a) always show the utmost good faith to Us and the Other Interested People; and
 - (b) engage and work with an appropriate interpreter where this would help You to communicate with Us, any Other Interested People, and any other Australian Indigenous people relevant to the Project.
- 13. You will deliver the Project Material to Us on the Delivery Date stated in **Item 14** of the Contract Details.



REPRESENTATIVE, PROJECT CHANGES AND MEETINGS

14. Either of us may change the Project at any time if we both agree in writing by changing **Item 2** of the Contract Details.
15. We may nominate a person(s) as Our representative for the Project (**Our Representative**).
16. We can change Our Representative at any time if We inform You of the change and give You the name and contact details of Our new Representative.
17. You will deal with Us firstly through Our Representative, and give all reports due to Us under this agreement to Our Representative.
18. You must promptly tell Us and the Other Interested People about any major changes to the Project.
19. During the Project Period, Our Representative and other people or groups of people nominated by Us will meet You at the times and locations listed in **Item 5** of the Contract Details or any other times that we both agree, and at places agreed by both of us, to discuss the progress, methods, results of, and plans for, the Project, as well as any changes made to the Project under clause 14.

YOUR ICIP ACKNOWLEDGEMENTS AND PROMISES

ICIP promises

20. You must observe the Protocol and any other applicable protocol known to You and:
 - (a) ensure that You get informed consent to Your use of any ICIP in connection with the Project from properly authorised custodians of the ICIP identified by Our Representative. We will use Our best efforts to help You do this;
 - (b) comply with any restriction on using and dealing with ICIP that the properly authorised custodians identified by Our Representative tell You about;
 - (c) not do or allow anything to be done that may damage, endanger or disrespect Our Intellectual Property or any ICIP used in connection with the Project, or help anyone else to do so; and
 - (d) ensure that the Project does not damage Indigenous cultural integrity.

Your acknowledgement of Us and Other Interested People

21. Unless We tell You otherwise, You must:
- (a) use Your best efforts to ensure that Our Contribution to the Project and the Project Material is acknowledged in all publications of the final Project Material and in anything else referring to the Project; and
 - (b) use Your best efforts to ensure that the contribution of any Other Interested People is acknowledged by including the following notice prominently in all publications of the Project Material and in anything else referring to the Project:



“This work embodies traditional knowledge of the [name] community. It was created with the consent of the custodians of the community. Dealing with any part of it for any purpose that has not been authorised by the custodians is a serious breach of the customary laws of the [name] community, and may also breach the Copyright Act 1968 (Cth).

Our community is happy to make this work available to help other Indigenous communities, and the consultants who work with them, revitalise their languages.

For enquiries about this and other permitted reproduction and use of the work, please contact _____

[community)/other contact names].”

22. Nothing in this agreement transfers or excludes any applicable cultural rights in favour of Australian Indigenous people that may be implemented under Australian law.

PASSING ON SKILLS TO US

23. You acknowledge that We have the right to develop as many skills as possible in the course of the Project.
24. You must provide the Training described in **Item 7** of the Contract Details.

WHAT WE CAN DO

25. We must give You reasonable access to materials and people at the times and in the way described in **Item 6** of the Contract Details.
26. If You are to develop Software for the Project, We must give you access to the Equipment during Our usual business days and information reasonably needed by You about the Specification, the Equipment and the Project.

27. You acknowledge that We may restrict (or attach conditions to) Your access to Culturally Sensitive Information, and that these conditions may change from time to time.

PAYMENT

28. You agree to pay Us the payments set out in **Item 11** of the Contract Details (if any), according to the terms set out in **Item 11**.
29. We agree to Pay You the payments set out in **Item 12** of the Contract Details (if any), according to the terms set out in **Item 12**. If We are only to make a payment if a milestone is met, We must be satisfied that the milestone has been met to the required quality and timelines.
30. Except for the payments expressly provided for in **Items 11** and **12** of the Contract Details, each of us bears all of our own costs relating to the Project.
31. We can deduct tax from payments due to you under this agreement if We think that this is required by law. If You think that We are not required to make these deductions, You must prove this to Our satisfaction.
32. We are not liable to pay You (or any people or organisations engaged by You) any holiday or sickness pay, workers' compensation or any other entitlements in connection with the Project.
33. You must send us a properly calculated tax invoice every month with copies of any documents that support Your invoice that We might reasonably ask You to send. If You have engaged any other people or organisations to work with You on the Project, You must also send Us a statement that they have been paid all payments that they are entitled to up to the due date for the payment that You have asked for in Your invoice.
34. We must pay You within 30 days after receiving Your correct invoice. If We disagree about any payment asked for in Your invoice, We will pay You any part of it that We do not disagree with, and We will follow clauses 69 to 71 to try to solve the dispute regarding the rest of the invoice.
35. If We overpay You, We can offset an overpayment against any other payments due to You under this agreement.
36. You must give Us details of the bank account into which You want Us to deposit any payments from Us to You under this agreement.
37. Neither of us will pay any expense of the other under this agreement unless the expense has first been approved by the party asked to pay it and has been proved by the other party.
38. Except for the payments expressly provided for in this agreement, we each bear all of our costs relating to the Project and You are responsible for Your own taxation requirements.

39. If You stated in **Item 10** of the Contract Details that You intend to commercialise the Project Material, You must not commercialise the Project Material without first getting Our consent. You must get Our consent again for each new commercialisation.
40. If You commercialise the Project Material, without limiting any other rights We may have, You agree to pay Us (or a third party We might nominate) the following royalties:
- Percentage of Gross Payments payable:.....
- When payment is due:.....
- Payment method for royalties: (*only if different from payment method stated above in Item 11(v)*):
41. If royalties are payable under this Agreement, You must also give Us a true and complete written and signed statement showing any royalties payable to Us and setting out how the royalties have been calculated.
42. The parties agree that all amounts payable under this agreement are exclusive of Goods and Services Tax (**GST**).
43. If a party is liable to pay GST in respect of any good or service 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 is a GST compliant invoice.
44. The party who receives the GST compliant invoice must pay the amount of GST invoiced at the same time as the amount payable under this agreement.

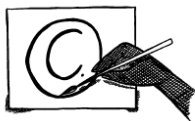
MATERIAL AND COPYRIGHT OWNERSHIP

Who owns Our Contribution and Your Contribution?

45. As between You and Us, We own all rights and interests in Our Contribution and You own all rights and interests in Your Contribution.

Who owns the Project Material?

46. You and We agree that all rights and interests in the Project Material (including in the Intellectual Property) are owned as stated in **Item 13** of the Contract Details.
47. If You engage any other person or organisation to work on the Project, You must ensure that it sells (assigns) to Us, or to You and Us, all of its rights and interests (including the Intellectual Property) in the Project Material, so that all rights and interests in the Project Material are as set out in **Item 13** of the Contract Details.



USE OF OUR CONTRIBUTION AND YOUR CONTRIBUTION

48. You can use Our Contribution (non-exclusively), as stated in **Item 6** of the Contract Details, to the extent necessary to let You use the Project Material.
49. We can use Your Contribution (non-exclusively), as stated in **Item 7** of the Contract Details, to the extent necessary to let Us use the Project Material.

PROMISES ABOUT PROJECT MATERIAL

50. You represent and warrant that:
 - (a) any Project Material that You create is original, and will not infringe the Intellectual Property or other rights of any other person or organisation; and
 - (b) You have not, and will not, deal with the Project Material in a way that would conflict with Our rights and interests in it under this agreement.

USE AND PROTECTION OF PROJECT MATERIAL

When is use allowed?

51. You and We recognise that any use of Project Material is subject to clause 52 to 56.
52. We recognise that You may:

(Tick the boxes that apply to this Project. Any number of boxes may be ticked.)

- publish and submit for publication Project Material and material based on Project Material in recognised and respected journals;
- discuss the Project and the Project Material in lectures, seminars, symposia and other professional meetings;
- teach on matters related to the Project; and
- submit for a degree, a thesis or dissertation based on the Project and Project Material for examination by authorised examiners, and deposit the thesis or dissertation in a university or equivalent library according to the relevant procedures of the institution,
all according to normal academic practice.

53. We may use the Project Material in any way We want to. Without limiting this, We may use Project Material for any Purposes stated in **Item 9** of the Contract Details.



Access to Project Material

54. You must protect the Project Material by taking all reasonable measures to keep the Project Material secure and to store it in a manner and in facilities that:
- (a) are appropriate to maximise the life of the Project Material; and
 - (b) take into account Our and any Other Interested People's access, skills and sensitivities in relation to on-line access. In particular, You will not make the Project Material available on-line without first consulting Us and getting Our written approval.
55. You must use reasonable efforts to give Us a copy of the Project Material as soon as possible after its completion, and after receiving Our reasonable request to do so.
56. We and You both agree that:

*(Tick the boxes that apply to the Project. You may tick **any number of boxes.**)*

- the Project Material must not be made publicly available
- subject to the other terms of this agreement, either of us may make the Project Material publicly available;
- You may deposit the Project Material and any other material gathered or produced in connection with the Project in the following public libraries or collections only:

.....

[name the libraries and collections]

- the Project Material can be made available by Us to help other Indigenous communities and the consultants who work with them to revitalise their languages;
- the Project Material can be made available by You to help other Indigenous communities and the consultants who work with them to revitalise their languages;
- You are responsible for organising, copying, labelling and cataloguing Project Material and any other material gathered or produced in connection with the Project;
- You must use Your best efforts to ensure that high quality copies of the Project Material are lodged with AIATSIS (or another archive that we both agree to) as soon as possible after the Project Material is finished and use Your best efforts to ensure that nominated access conditions



relating to the Project Material, where appropriate, benefit Us and the Other Interested People so that the archive can perform its curatorial responsibility according to local wishes and protocols;

- You must use Your best efforts to ensure that high quality copies of the Project Material are lodged with AIATSIS (or the archive listed below) as soon as possible after the Project Material is finished and use Your best efforts to ensure that nominated access conditions relating to the Project Material, where appropriate, benefit Us and the Other Interested People so that this archive can perform its curatorial responsibility according to local wishes and protocols:

[name of archive]

- We will promptly inform AIATSIS (or other agreed archive) of any changes to conditions of access to the Project Material, for example on the basis of Culturally Sensitive Information, the passing away of any person, or the change in status of a relevant incorporated body;
- You and We must use reasonable efforts to ensure that an original archival copy of any audio-visual Project Material is made and kept safe, and that any other copies of it are made from that copy for day-to-day use.

RECORDS AND REPORTS

Records

57. You must keep records of Your work on the Project and the development of the Project Material, in enough detail to enable us to check that You are complying with this agreement. We can look at these records at any reasonable time during Your usual business hours after We give You reasonable notice that We want to do this.
58. To the extent that You can, You must give Us or Our representatives reasonable access to Project Locations specified in **Item 4** of the Contract Details during usual business hours, and to documents about the Project's management and progress, and let Us observe work on the Project.

Progress Reports

59. You must give Us Progress Reports on the date(s) specified in **Item 8** of the Contract Details which will include:
 - (a) the status of project;
 - (b) the estimated time to completion;
 - (c) a statement of the work done as at the date of the Progress Report;
and

- (d) results of the Project (if any).

LIABILITY

60. To the extent that We are allowed by law:
- (a) We are not liable (including in negligence) in relation to any claim, loss or damage in relation to or resulting from the Project or this agreement, except to the extent due to Our breach of this agreement; and
 - (b) You are responsible for Your officers, employees, contractors and agents, including for:
 - (i) any payments and taxes relating to Your engagement of them; and
 - (ii) any injury, loss or damage that any of them may suffer (or any other person or organisation may suffer in connection with any acts or omissions by any of them),
- in relation to or resulting from this agreement.

CONFIDENTIALITY

61. You and We recognise that the Project may require the transfer of Confidential Information (including Culturally Sensitive Information) between us.
62. Subject to the terms of this agreement, neither of us can, during this agreement and after it has ended:
- (a) use any of the other party's Confidential Information except to the extent necessary for the Project; or
 - (b) disclose any of the other party's Confidential Information, except according to this agreement, without first getting the other party's written consent.
63. Either of us may use and disclose Confidential Information:
- (a) if we are legally required to do so; or
 - (b) once it is in the public domain (except for You in relation to Culturally Sensitive Information).

ENDING THE AGREEMENT

64. Either of us may end this agreement by giving the other at least the amount of notice stated in **Item 15** of the Contract Details.
65. Either of us may end this agreement immediately by telling the other party if:

- (a) the other party is or becomes or is considered to be insolvent (including where a provisional liquidator, liquidator, administrator, controller, receiver, or receiver and manager is appointed) or the other party ceases to carry on business or threatens to do so;
 - (b) the other party breaches any of its obligations under this agreement and does not fix the breach (if it can be fixed) within one month of being told about it.
66. Either of us may end this agreement immediately by telling the other if:
- (a) You are ill or incapacitated for a continuous period of at least 3 months or a period of 6 months during any calendar year of this agreement; or
 - (b) there is a change in Your ownership that is likely to affect the Project.
67. This agreement automatically ends if You pass away.

WHAT HAPPENS AT THE END OF THE AGREEMENT?

68. At the end of this agreement:
- (a) You must stop working on the Project;
 - (b) We may keep any of the Project Material that You have delivered to Us;
 - (c) We may require You to give Us a copy of (or give Us access to) the Project Material or, if not finished, Your work in progress for the Project Material, and to give Us access to all other relevant materials relating to the Project;
 - (d) You must refund money paid to You under this agreement for goods and services not given to Us;
 - (e) We must pay You any money properly due to You under this agreement, but not paid;
 - (f) We may repossess any of Our Contribution in Your possession; and
 - (g) each of us must return to the other records and copies of any Confidential Information that belongs to the other party, and must not keep any copies or other records of the Confidential Information.

SOLVING DISPUTES

69. If You or We disagree about this agreement, whoever disagrees must:
- (a) first tell the other about the dispute; and
 - (b) not start any litigation or arbitration in relation to the dispute until clauses 70 and 71 are followed.



70. Once the other party has been told of the dispute, both parties must arrange for representatives to meet within 14 days and take all reasonable steps to try to solve it.
71. If our representatives do not solve the dispute, You or We may refer the dispute to the Arts Law Mediation Service, to be dealt with according to any Arts Law mediation guidelines current at that time. These guidelines are part of this agreement.
72. If the dispute is not solved by the parties' representatives or by mediation, either party may terminate this agreement by telling the other party in writing and clause 68 applies.
73. You and We must continue to perform our obligations under this agreement even if we disagree.

YOUR AND OUR RELATIONSHIP

74. You and We both agree that we are each independent contractors and not partners, joint venturers, principal and agent or employer and employee.

WHAT IF OUR LEGAL STATUS CHANGES?

75. If We cease to exist as an organisation, Our rights and interests in the Project Material immediately vest in:
 - (a) Our successor, or if none;
 - (b) AIATSIS or its successor; or;
 - (c) another archive (or its successor) that We choose and tell You about before this occurs.

CHANGING OR TRANSFERRING THIS AGREEMENT

76. You and We can only change this agreement in writing signed by both of us.
77. This agreement is personal to You. Subject to clause 9, You must not:
 - (a) transfer it in any way; or
 - (b) sub-licence any of the rights that We grant to You under it, without first getting Our consent.

THIS AGREEMENT

78. The laws of _____ *[insert state or territory]* govern this agreement and each party irrevocably submits to the exclusive jurisdiction of the courts of that state or territory.

79. This Agreement is subject to the Special Conditions (if any) specified in **Item 17** of the Contract Details.
80. You and We must each do anything (including sign any documents) and must ensure that our officers, employees, contractors and agents do anything (including sign any documents) that the other party reasonably asks us to do to give full effect to this agreement.
81. This document contains the entire agreement between You and Us about its subject matter, and replaces any previous understandings, agreements, representations or warranties about this subject matter.
82. In this agreement:
 - (a) headings, pictures and words not printed in black ink are for assistance only, and do not affect how this agreement is interpreted;
 - (b) if an example is given of anything, such as by saying it includes something, the example does not limit the scope of that thing.

ATTACHMENT A – DEFINITIONS

Aboriginal has the meaning given to that term in section 3 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth).

Aboriginal Tradition has the meaning given to that term in section 3 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth).

AIATSIS means the Australian Institute of Aboriginal and Torres Strait Islander Studies, a statutory authority established by the *Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989* (Cth), or any successor agency.

Arts Law means the Arts Law Centre of Australia (ACN 002 706 256), The Gunnery, 43-51 Cowper Wharf Road, Woolloomooloo, NSW, 2011.

Our Contribution means the contribution described in **Item 6** of the Contract Details.

Confidential Information means information about a party and its business, including Culturally Sensitive Information, information that a party tells the other is confidential, and information which, if disclosed, would prejudice a party but excludes information that is in or legitimately falls into the public domain.

Your Contribution means the contribution described in **Item 7** of the Contract Details.

Culturally Sensitive Information means all information and knowledge of special religious, spiritual or customary significance considered to be secret, exclusive or restricted by an Aboriginal person or according to Aboriginal Tradition.

Gross Payments means all payments received by or for You from commercialising the Project Material without any deduction from those payments. The payments are not limited to money.

Equipment means the computer equipment and operating system specified in **attachment B**.

ICIP arises from the right of Indigenous people to their cultural heritage and means the intangible and tangible aspects of the whole body of cultural practices, resources and knowledge systems that have been developed, nurtured and refined by Indigenous people (and continue to be developed, nurtured and refined) by Indigenous people and passed on by Indigenous people as part of expressing their cultural identity, including:

- literary, performing and artistic works (including music, dance, song, ceremonies, symbols and designs, narratives and poetry);
- languages;
- scientific, agricultural, technical, and ecological knowledge (including cultigens, medicines and sustainable use of flora and fauna);

- spiritual knowledge;
- all items of moveable cultural property, including burial artefacts;
- Indigenous ancestral remains;
- Indigenous human genetic material (including DNA and tissues); and
- cultural environmental resources (including minerals and species).

Intellectual Property means all rights in or in relation to copyright, trade marks, designs, patents, circuit layouts, plant varieties, inventions and other results in the industrial, commercial, scientific, literary or artistic fields.

Other Interested People means the people or organisations identified in **Item 16** of the Contract Details.

Project Timetable means the timetable set out in **Item 3** of the Contract Details.

Protocol means the document called ***FATSILC Guide to Community Protocols for Indigenous Language Projects 2011*** (as it may be amended from time to time).

Software means the computer programs to be developed and delivered by You under this agreement, in both source and object code.

Specification means the specification of the Software's design, functions and facilities described in **attachment B**.

Words used in the Protocol have the same meaning in this agreement unless this agreement says that they have another meaning.

If someone is said to have a right, or is allowed to do something **non-exclusively**, it means that other people and organisations can also have these rights or be allowed to do these things.

ATTACHMENT B

Software terms

1. Definitions

Equipment means the following computer equipment and operating system:

[Describe computer equipment and system]

or any other equipment or system or both that You and We agree on.

2. General Promises

You represent and warrant that:

- (a) no computer program virus or other destructive or disabling code is coded or introduced into the Software;
- (b) no device is introduced into the Software that would stop it from performing its desired function;
- (c) the Software, when used on the Equipment, conforms to the Specification;
- (d) the tangible copy of the Software is free from defects in materials and workmanship; and
- (e) the Software operates on the Equipment.

3. Acceptance Tests

3.1 Acceptance of Software

- (a) You must promptly tell Us when You finish the Software, and when it is ready for the Acceptance Tests. We must each conduct the Acceptance Tests according to this **attachment B**.
- (b) We must give You a certificate saying that the Software has passed the Acceptance Tests as soon as possible after the Acceptance Tests have been completed satisfactorily.
- (c) We will have accepted the Software if We:
 - give You a certificate under clause 3.1. (b);
 - don't argue about the results of the Acceptance Tests; or
 - use the Software (other than for testing).
- (d) If We reasonably think that the Software fails to meet the Acceptance Tests, We must promptly tell You this, and You must:

- use Your reasonable efforts to correct the Software so that the Acceptance Tests can be repeated;
 - tell Us when You have corrected the Software; and
 - ensure that the Acceptance Tests are repeated according to this **attachment B**.
- (e) If the repeated Acceptance Tests are satisfactorily finished, We will accept the Software. If the repeated Acceptance Tests are not satisfactorily completed, We can choose either to:
- end this agreement; or
 - accept the Software as long as we both agree (within a reasonable time) to changes to the payments to be made to You under this agreement to reflect the reduced level of functionality or other aspect of the Software.

3.2 Conduct of Acceptance Tests

[Fill in this section]

3.3 Meaning of Acceptance Tests

[Fill in this section]

ATTACHMENT C

Specification

[Fill in this section or attach the specification here.]

