

COMMUNITY PROPOSED PROJECT AGREEMENT 2004

Developing and Using Language Materials

Between

Indigenous community organisation 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 FATSIL Protocol. You should read the agreement with the FATSIL Protocol.


Both documents are free, and are available from the FATSIL office or can be downloaded from the FATSIL website.

COMMUNITY PROPOSED PROJECT AGREEMENT 2004

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. <table border="1" data-bbox="488 1024 1378 1923"> <thead> <tr> <th data-bbox="488 1024 704 1108"><i>People</i></th> <th data-bbox="704 1024 951 1108"><i>Services/Materials/ Equipment</i></th> <th data-bbox="951 1024 1166 1108"><i>Information</i></th> <th data-bbox="1166 1024 1378 1108"><i>Facilities</i></th> </tr> </thead> <tbody> <tr> <td data-bbox="488 1108 704 1331"> <i>Who (example only)</i> <i>Name of person</i> </td> <td data-bbox="704 1108 951 1331"> <i>What (example only)</i> <i>Help to find historical papers)</i> </td> <td data-bbox="951 1108 1166 1331"> <i>What (example only)</i> <i>Knowledge of meanings for local names</i> </td> <td data-bbox="1166 1108 1378 1331"> <i>What (example only)</i> <i>One room at the community centre and use of the furniture</i> </td> </tr> <tr> <td colspan="4" data-bbox="488 1331 1378 1388"> <i>Insert actual details in these columns :</i> </td> </tr> <tr> <td data-bbox="488 1388 704 1566"> <i>Who</i> </td> <td data-bbox="704 1388 951 1566"> <i>What</i> </td> <td data-bbox="951 1388 1166 1566"> <i>What</i> </td> <td data-bbox="1166 1388 1378 1566"> <i>What</i> </td> </tr> <tr> <td data-bbox="488 1566 704 1745"> <i>When</i> </td> <td data-bbox="704 1566 951 1745"> <i>When</i> </td> <td data-bbox="951 1566 1166 1745"> <i>When</i> </td> <td data-bbox="1166 1566 1378 1745"> <i>When</i> </td> </tr> <tr> <td data-bbox="488 1745 704 1923"> <i>How</i> </td> <td data-bbox="704 1745 951 1923"> <i>How</i> </td> <td data-bbox="951 1745 1166 1923"> <i>How</i> </td> <td data-bbox="1166 1745 1378 1923"> <i>How</i> </td> </tr> </tbody> </table>	<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>	<i>Insert actual details in these columns :</i>				<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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<p>Item 7</p> <p>Your contribution to Project and Training</p>	<p>Describe what services or materials You will deliver for the Project.</p> <table border="1" data-bbox="488 233 1378 659"> <thead> <tr> <th data-bbox="488 233 753 457"> Service(s)/materials <i>(For example, already published dictionary/word list about the language)</i> </th> <th data-bbox="753 233 1075 457"> How, when and where <i>(For example, during sessions with language informants, copies available for community members)</i> </th> <th data-bbox="1075 233 1378 457"> Any other details <i>(For example, also make dictionary/word list available in electronic format)</i> </th> </tr> </thead> <tbody> <tr> <td data-bbox="488 457 753 659"></td> <td data-bbox="753 457 1075 659"></td> <td data-bbox="1075 457 1378 659"></td> </tr> </tbody> </table> <table border="1" data-bbox="488 688 1378 1253"> <thead> <tr> <th data-bbox="488 688 753 1050"> Training <i>(For example, skills in language analysis and description)</i> </th> <th data-bbox="753 688 1075 1050"> 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> </th> <th data-bbox="1075 688 1378 1050"> Place <i>(For example, at the community centre)</i> </th> </tr> </thead> <tbody> <tr> <td data-bbox="488 1050 753 1253"></td> <td data-bbox="753 1050 1075 1253"></td> <td data-bbox="1075 1050 1378 1253"></td> </tr> </tbody> </table>	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>			
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<p>Item 8</p> <p>Progress Reports</p>	<p>Dates for Progress Reports from You:</p> <p>.....</p> <p>.....</p>												
<p>Item 9</p> <p>Project Material</p>	<p>Describe the final Project Material which You must deliver to Us.</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>												
<p>Item 10</p> <p>Commercialisation</p>	<p>Do You intend to commercialise the Project Material?</p> <p style="text-align: right;"><i>(circle one)</i> Yes / No</p>												
<p>Item 11</p>	<p>(i) Will You have funds to pay Us under this Agreement?</p>												

	<input type="checkbox"/> Cash <input type="checkbox"/> Cheque <input type="checkbox"/> Other: (give account details)
Item 13 Ownership of Project Material, including copyright the	<p><i>(Tick the box that applies to this Project. You must tick only one box.)</i></p> <p>Subject to clause 71:</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. <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. <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.
Item 14 Delivery Date
Item 15 Amount of notice for agreement ending	
Item 16 Other Interested People	List other people or organisations who are involved with the Project.
Item 17 Special Conditions

	<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>
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BACKGROUND

1. You and We both acknowledge that we wish to work collaboratively on a language project that produces language materials.
2. You and We both acknowledge that we will use our best efforts to maintain a positive and respectful working relationship throughout the Project.
3. 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.
4. You will deliver to Us the Project Material as described in **Item 7** of the Contract Details as is required under this agreement

THE PROJECT

5. We engage You to participate in the Project, and You agree to work with Us on the Project, according to this agreement.
6. 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.
7. You acknowledge and agree to the Project's aims and outcomes set out in **Item 2** of the Contract Details and agree to deliver and produce the final Project Material stated in **Item 9** of the Contract Details.
8. 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;

- (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, make sure 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. Our community is also happy to make this publication available to help other communities, and the consultants who work with them, to revitalise their languages.”

- 9. 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;
 - o install the Software on the Equipment according to the Project Timetable;
 - o carry out the Acceptance Tests or help Us to carry out the Acceptance Tests, at Our choice;
- 10. 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.
- 11. You must, in all matters relating to the Project:
 - (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.

12. You will deliver the Project Material to Us on the date stated in **Item 14** of the Contract Details.

REPRESENTATIVE, PROJECT CHANGES AND MEETINGS



13. Either of us may change the Project at any time if we both agree.
14. We may nominate a person(s) as Our representative for the Project (**Our Representative**).
15. We can change Our Representative at any time if We tell you of the change and the new name and contact details.
16. You will deal with Us firstly through Our Representative, and give all reports due to Us under this agreement to Our Representative.
17. You must promptly tell Us and the Other Interested People about any major changes to the Project.
18. 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 12.

YOUR ICIP ACKNOWLEDGEMENTS AND PROMISES

ICIP promises

19. You must observe the Protocol and any other applicable protocol known to You and:
 - (a) make sure 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 restrictions 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, put in danger or disrespect Our Intellectual Property or any ICIP used in connection with the Project, or help anyone else to do so; and
 - (d) make sure that the Project does not damage Indigenous cultural integrity.

Your acknowledgement of Us and Other Interested People

20. Unless We tell You otherwise, You must:
- (a) use Your best efforts to make sure 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 make sure that the contribution of any Other Interested People is acknowledged by including this 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 Australian 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).”

21. 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

22. You must give the people and organisations named in **Item 7** of the Contract Details, the training described in **Item 7**, at the time and in the way also described in **Item 7**.

WHAT WE CAN DO

23. We must give You reasonable access to materials and people at the times and in the way described in **Item 6**.

24. 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

25. 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**.
26. 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.
27. 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.
28. 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.
29. You must send us a properly calculated tax invoice every month with copies of any documents that support Your invoice that We 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 with Your invoice 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.
30. 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 54 to 58, inclusive, to try to solve the dispute.
31. If We overpay You, We can offset an overpayment against any other payments due to You under this agreement.
32. 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.
33. 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.

34. 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.

35. If You said in **Item 10** 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.

36. If You commercialise the Project Material, without limiting any other rights We may have, You agree to pay Us (or someone else that We give You details of) these 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))*:

37. If royalties are payable under this Agreement, You must also give Us a true and complete written statement which You have signed showing any royalties payable to Us that sets out how the royalties have been calculated.

38. Any payments paid to Us under this Agreement must be exclusive of GST.

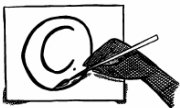
39. If GST is payable in relation to any payments made for any supply under this Agreement, the payment payable is increased by the amount of the GST so long as the person receiving the payment:

- (a) is registered for the purposes of GST; and
- (b) provides the payer with a GST compliant invoice.

40. If a party is required to pay any GST according to this clause, it must pay the GST within 14 days of receiving the tax invoice.

MATERIAL AND COPYRIGHT OWNERSHIP

Who owns Our Contribution and Your Contribution?



41. 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?

42. 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.
43. If You engage any other person or organisation to work on the Project You must make sure that it sells (assigns) to Us, or to We and You, 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

44. 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.
45. 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

46. 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?

47. You and We recognise that any use of Project Material is subject to clause 52 below.
48. 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

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

Access to Project Material

50. 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 are appropriate:

- (a) to maximise the life of the Project Material; and
- (b) that take into account Our and any Other Interested Peoples’ access, skills and sensitivities in relation to on-line access.

51. 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.

52. 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 these 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 make sure 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 make sure that high quality copies of the Project Material are lodged with AIATSIS (or this archive) 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

53. 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.

54. To the extent that You can, You must give Us or Our representatives reasonable access to Project sites and premises during usual business hours, and to documents about the project's management and progress, and let Us observe work on the Project.

Progress Reports

55. 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

56. 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 connection with 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 this agreement.

CONFIDENTIALITY

57. You and We recognise that the Project may require the transfer of Confidential Information (including Culturally Sensitive Information) between us.
58. 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's Confidential Information except to the extent necessary for the Project; or
 - (b) disclose any of the other's Confidential Information, except according to this agreement, without first getting the other party's written consent.
59. 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

60. 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.
61. 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.
62. 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.
63. This agreement automatically ends if You pass away.

WHAT HAPPENS AT THE END OF THE AGREEMENT?

64. 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
- (b) 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



- 65. 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 53 to 57, inclusive, are followed.
- 66. 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.
- 67. 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.
- 68. 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 52 applies.
- 69. You and We must continue to perform our obligations under this agreement even if we disagree.

YOUR AND OUR RELATIONSHIP

70. 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?

71. 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

72. You and We can only change this agreement in writing signed by both of us.
73. This agreement is personal to You. Except under 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

74. 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.
75. This Agreement is subject to the Special Conditions (if any) as specified in **Item 17** of the Contract Details.
76. You and We must each do anything (including sign any documents) and must make sure that our officers, employees, contractors and agents do anything (including sign any documents) that we are reasonably asked by the other to do to give full effect to this agreement.
77. This document contains the entire agreement between We and You about its subject matter, and replaces any previous understandings, agreements, representations or warranties about this subject matter.
78. 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*.

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

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 *FATSIL Guide to Community Protocols for Indigenous Language Projects 2004*, (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 this 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 1.1(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

ATTACHMENT B

- make sure that the Acceptance Tests are repeated according to **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.)

ATTACHMENT D

Our Contribution in Your possession terms

You:

- a) **(delivery)**: are responsible for the delivery of the relevant parts of Our Contribution to You;
- b) **(ownership)**: agree that We still own all rights and interests in Our Contribution and that You are a bailee only of it;
- c) **(care)**: where applicable
 - must keep Our Contribution in proper working order and good repair, except for normal wear and tear;
 - must store Our Contribution with due care;
 - must keep Our Contribution under Your control and not remove it from any place specified by Us without first getting Our consent;
 - must not do or allow to be done anything that is likely to put in danger the safety or condition of Our Contribution;
- d) **(access)**: must give Us, and Our representatives, access to any premises where any part of Our Contribution is or may be located, so that We can check it;
- e) **(no dealings)**:
 - must not sell any of Our Contribution, or give any of it to any other person or organisation, or encumber any of it;
 - must not, without first getting Our consent, add to, replace or alter any of Our Contribution. Any parts, accessories, equipment or devices that are installed on or in any of Our Contribution become Our property.
- f) **(responsibility)**:
 - must comply with all applicable laws, by-laws, licences and guidelines relating to Our Contribution and its use; and
 - assume all risks and liabilities in relation the to Our Contribution while it is in Your possession.