

Indigenous Data - Clause Templates and Guidance

Health Translation Queensland



**Terri Janke
and Company**
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Acknowledgement of Country

Terri Janke and Company (TJC) acknowledge the Traditional Owners of the lands on which we live and work. We extend our respect to all Aboriginal and Torres Strait Islander peoples throughout Australia. We recognise their ongoing connection to land, sea and community. We pay our respects to their knowledge, and to the Elders past and present.

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Terminology

Throughout this document, the term 'Indigenous' is used to respectfully refer to Indigenous Australians, Australia's First Nations peoples, the First Australians, First Peoples and/or Australian Aboriginal and Torres Strait Islander peoples. When referring to specific communities or language groups, we seek guidance from those in authority about the respectful and appropriate language protocols.

Legal Notice

The laws and policies referred to in this publication are current as of 29 July 2025. Any reference to laws and policies are for general use only and should not be relied upon for legal advice for a specific matter. For such matters, it is recommended to obtain professional legal advice from a suitable, qualified legal practitioner.

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Guide Overview and Instructions for Use

This document is a resource for understanding and implementing template clauses related to intellectual property (**IP**), Indigenous Cultural and Intellectual Property (**ICIP**), and Indigenous Data Sovereignty (**IDSov**) in agreements. It is designed to provide clarity, guidance, and practical tools for incorporating these clauses into contracts and agreements in a respectful and best practice manner.

The aim of this document is to:

- **Ensure Legal and Cultural Compliance:** Help align clauses with relevant legal frameworks and cultural protocols as well as contemporary moral and ethical standards.
- **Encourage Best Practice Engagement:** Guide culturally appropriate contracting when dealing with ICIP and Indigenous Data.
- **Provide Guidance:** Explain the purpose and potential application of each clause to ensure they are used in an appropriate context.

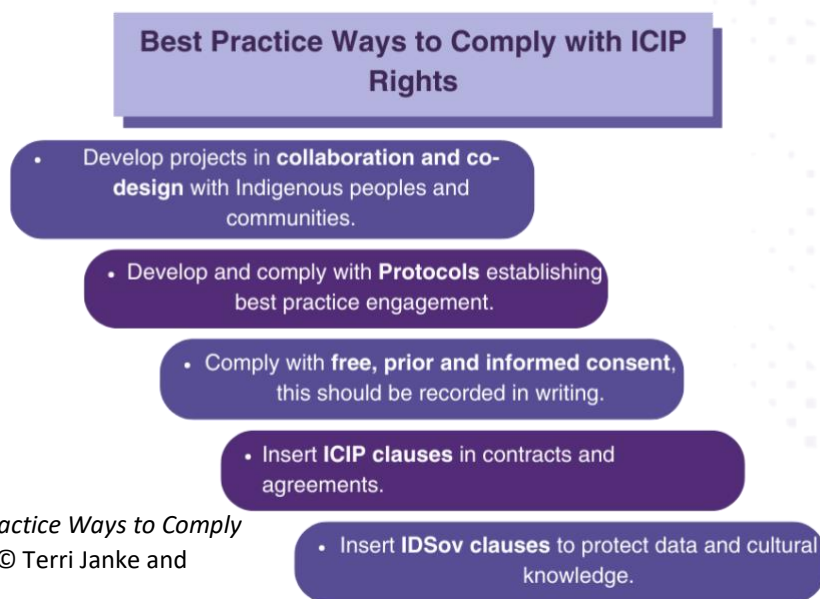


Figure 1: Best Practice Ways to Comply with ICIP Rights © Terri Janke and Company, 2025.

By following this document, agreements can be used to recognise and respect Indigenous peoples' rights to their ICIP, IP that incorporates their ICIP, and their Indigenous Data. This empowers self-determination, fosters collaboration, upholds principles of fairness and respects, and demonstrates a commitment to best practice.

It is important to approach these clauses not only in relation to legal compliance but as an expression of respect and a shared commitment to best practice. Before finalising any agreement, both parties should obtain independent legal advice to ensure legal compliance, accuracy and cultural appropriateness.

Clause Templates and Guidance

Background Intellectual Property (IP)

Purpose

A Background Intellectual Property clause aims to clarify ownership, use and protection of a party's intellectual property that has been developed prior to, or independently of, a specific agreement, project or collaboration. It identifies each party's intellectual property that already exists and reduces confusion regarding ownership of pre-existing intellectual property. It provides a framework for how pre-existing intellectual property can be used with the appropriate rights to do so.

A Background Intellectual Property clause may either be a standalone clause, or it may be embedded as a sub-clause within the Intellectual Property clause.

Definitions

Background Intellectual Property or **Background IP** means Intellectual Property owned by the parties/Party A/Party B, in any existing materials created by or for a party or third party prior to or outside the scope of this Agreement, that is used in relation to this Agreement.

Indigenous Cultural and Intellectual Property or **ICIP** refers to Indigenous peoples' rights to their heritage. Heritage comprises all objects, sites knowledge, and practices including language, 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 Indigenous community or its territory.

Intellectual Property or **IP** means all present and future rights conferred by statute, common law, equity, in or relating to copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields and includes the rights to the registrations of those rights. Intellectual Property does not include Moral Rights or rights to keep information confidential.

New Intellectual Property or **New IP** means material created by or on behalf of the parties in the course of complying with their obligations under this Agreement, but excludes Background IP and ICIP.

Non-exclusive means that the rights that are granted to one party regarding use of IP are not limited to use by that party alone. It allows the granting party (IP owner) to provide the same rights to others or to use them for their own purposes or projects.

Perpetuity means that the right granted remains valid and enforceable forever, unless otherwise terminated by specific provisions in the contract. NB: This may not be appropriate to include when ICIP is incorporated in IP.

Royalty-free means the rights that are granted to use intellectual property does not require the payment of ongoing royalties or fees to the owner for each use or instance. This does

not necessarily mean the rights are granted for free; there may be an initial payment or other conditions, but no recurring fees are required thereafter.

Term means the duration of a licence or Agreement, as defined in the Agreement.

Worldwide means that the rights that are granted under the Agreement apply or are enforceable across the entire world, without restriction to any specific country or region.

Clause and Application

Template Clause I – Background IP Clause

This clause ensures that pre-existing intellectual property ownership is retained by the respective party.

1. The parties/Party A/Party B acknowledge and agree that all right, title and interest (including Intellectual Property (IP)) in any Background IP, is held by the relevant party.

This clause provides a licence to the parties to be able to use the pre-existing intellectual property in so far as it is incorporated in the intellectual property created under the Agreement.

2. The parties grant to each other a non-exclusive, royalty-free, worldwide licence for the Term/in perpetuity of this Agreement in any Background IP in so far as it is incorporated in the New IP created under this Agreement for the purposes of the Agreement.

New/Project Intellectual Property (IP)

Purpose

A New Intellectual Property clause (which may also be referred to as a Project Intellectual Property clause) aims to address the ownership, rights and usage of intellectual property that is created under an agreement, or in a specific project or collaboration. It establishes clear terms regarding who owns the intellectual property that is created in an effort to prevent disputes, defines rights to use intellectual property, encourages innovation, collaboration and where appropriate, empowerment of Indigenous parties. It may also provide a framework for the commercialisation of intellectual property.

It is best practice to empower Indigenous peoples by ensuring that they own any IP created by them, or at minimum, to jointly own New/Project IP. It is also best practice to ensure that the New Intellectual Property clause is subject to the ICIP clause, because ownership of ICIP to the extent that it is included in any IP is communally held by Indigenous communities in accordance with cultural protocols, and is not transferrable.

Definitions

Exclusive refers to rights granted to a party to the Agreement that are not available to any other party. This means the granting party agrees not to provide the same rights to others,

ensuring that the recipient has sole access or control within the agreed purposes. NB: This may not be appropriate to include when ICIP is incorporated in IP.

Indigenous Cultural and Intellectual Property or **ICIP** refers to Indigenous peoples' rights to their heritage. Heritage comprises all objects, sites knowledge, and practices including language, 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 Indigenous community or its territory.

Intellectual Property or **IP** means all present and future rights conferred by statute, common law, equity, in or relating to copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields and includes the rights to the registrations of those rights. Intellectual Property does not include Moral Rights or rights to keep information confidential.

Irrevocable refers to a condition that cannot be withdrawn, cancelled, or altered by the granting party once it has been established. This ensures permanence and enforceability, meaning the rights or obligations granted are binding for the duration specified in the agreement, or indefinitely if no duration is stated. NB: This may not be appropriate to include when ICIP is incorporated in IP.

New Intellectual Property or **New IP** means material created by or on behalf of the parties in the course of complying with their obligations under this Agreement, but excludes Background IP and ICIP.

Non-exclusive means that the rights that are granted to one party regarding use of IP are not limited to use by that party alone. It allows the granting party (IP owner) to provide the same rights to others or to use them for their own purposes or projects.

Perpetuity means that the right granted remains valid and enforceable forever, unless otherwise terminated by specific provisions in the contract. NB: This may not be appropriate to include when ICIP is incorporated in IP.

Royalty-free means the rights that are granted to use intellectual property does not require the payment of ongoing royalties or fees to the owner for each use or instance. This does not necessarily mean the rights are granted for free; there may be an initial payment or other conditions, but no recurring fees are required thereafter.

Term means the duration of a licence or Agreement, as defined in the Agreement.

Transferable refers to the ability of a party to assign, delegate, or transfer their rights, obligations, or interests under the agreement to another party, subject to the terms and conditions outlined in the agreement. This allows the original party to pass on their role or benefits to someone else. NB: This may not be appropriate to include when ICIP is incorporated in IP.

Worldwide means that the rights that are granted under the Agreement apply or are enforceable across the entire world, without restriction to any specific country or region.

Clause and Application

There are differing versions of this clause that may be inserted into an agreement:

Template Clause I – New IP Owed by 1 Party

This clause identifies who will own the intellectual property created under the Agreement.

1. Subject to [insert ICIP clause], the parties acknowledge that all right, title and interest (including Intellectual Property (IP)) in the New IP is owed by Party A/Party B.

NB: It is best practice for Indigenous people to be the owners of intellectual property where it incorporates their ICIP, and to then provide the licence to the organisation contained within clause 2 below. Where this cannot occur in the agreement itself (i.e. the Indigenous person is not a signatory), a Deed of Assignment must be entered into with the organisation who owns the IP assigning it to the Indigenous person.

This clause provides a licence to the party who does not own the intellectual property under this Agreement, to be able to use the intellectual property in accordance with the Agreement.

2. Party A/Party B grants Party A/Party B a non-exclusive/exclusive, irrevocable, transferable, royalty-free, worldwide licence for the Term/in perpetuity of the Agreement to exercise the Intellectual Property rights in the New IP created under this Agreement to allow Party A/Party B to perform its obligations under this Agreement.

Template Clause II – New IP Owed by Both Parties

This clause identifies who will own the intellectual property created under the Agreement.

1. Subject to [insert ICIP clause], the parties acknowledge that all right, title and interest (including Intellectual Property (IP)) in the New IP is owned jointly by the parties in equal shares as tenants in common, unless otherwise agreed in writing.

NB: Where both parties own the intellectual property jointly, they must obtain permission for use of that intellectual property outside of the approved uses within the agreement.

Moral Rights

Purpose

A Moral Rights clause aims to protect the personal rights of the individual creator/author over their intellectual and creative works. Moral rights focus on maintaining the creator/author's connection to their work through identifying them as the creator/author of a work, and to safeguard the integrity of the work.

Where IP is created with Indigenous peoples and is likely to include ICIP, the Moral Rights clause should be subject to the ICIP clause which will provide for proper attribution of ICIP in accordance with cultural protocols.

A Moral Rights clause may either be a standalone clause, or it may be embedded as a sub-clause within the Intellectual Property clause.

Definitions

Intellectual Property or **IP** means all present and future rights conferred by statute, common law, equity, in or relating to copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields and includes the rights to the registrations of those rights. Intellectual Property does not include Moral Rights or rights to keep information confidential.

New Intellectual Property or **New IP** means material created by or on behalf of the parties in the course of complying with their obligations under this Agreement, but excludes Background IP and ICIP.

Moral Rights has the same meaning as Part IX of the *Copyright Act 1968* (Cth).

Clause and Application

There are differing versions of this clause that may be inserted into an agreement:

Template Clause I – Attributing the Creator/Author

This clause identifies that the creator/author will be attributed for the use of their work.

1. Subject to [insert ICIP clause], the parties/Party A/Party B will attribute the creators/authors of Intellectual Property for any use of that Intellectual Property where reasonable to do so.

This clause ensures that where the creator/author isn't, or cannot be identified, no infringement will occur.

2. However, the parties/Party A/Party B consents, and will ensure its personnel and any third-party creators/authors consent, to all reasonable acts or omissions by the parties/Party A/Party B and its personnel, licensees and assigned in relation the Intellectual Property that would otherwise constitute a breach of their Moral Rights.

Template Clause II – Not Attributing the Creator/Author

This clause identifies that the creator/author will not be attributed for the use of their work.

1. To the extent permitted by law, the parties/Party A/Party B consent, and will ensure that each creator/author of the New IP consents in writing, to all or any acts or omissions by the parties/Party A/Party, or their personnel, which would otherwise infringe any Moral Rights in the New IP or other results of the Services/Project.

Indigenous Cultural and Intellectual Property (ICIP)

Purpose

An Indigenous Cultural and Intellectual Property clause can be inserted into an agreement that involves Indigenous peoples and/or Indigenous Cultural and Intellectual Property. An Indigenous Cultural and Intellectual Property clause aims to, in accordance with the [United Nations Declaration on the Rights of Indigenous Peoples](#), recognise, respect and protect the rights that Indigenous peoples have over their ICIP, affirms that ownership of ICIP are retained by the Indigenous people, identifies cultural protocols that must be observed, and ensures that ICIP can only be used with Free, Prior and Informed Consent. Its purpose is to ensure that Indigenous peoples rights are acknowledged, preserved and appropriately managed when engaging with community, their ICIP, and Country.

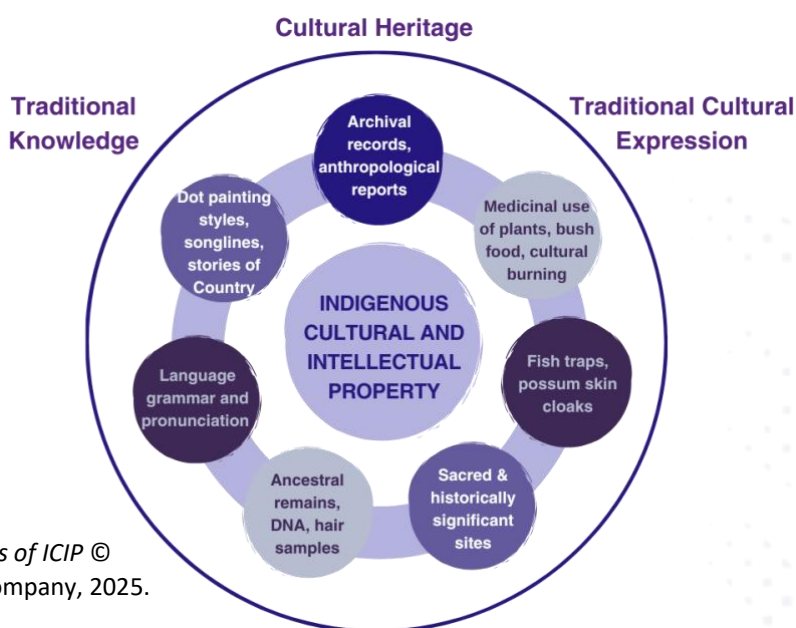


Figure 2: Examples of ICIP © Terri Janke and Company, 2025.

Definitions

Background Intellectual Property or **Background IP** means Intellectual Property owned by the parties/Party A/Party B, in any existing materials created by or for a party or third party prior to or outside the scope of this Agreement, that is used in relation to this Agreement.

Intellectual Property or **IP** means all present and future rights conferred by statute, common law, equity, in or relating to copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields and includes the rights to the registrations of those rights. Intellectual Property does not include Moral Rights or rights to keep information confidential.

New Intellectual Property or **New IP** means material created by or on behalf of the parties in the course of complying with their obligations under this Agreement, but excludes Background IP and ICIP.

Free, Prior and Informed Consent or **FPIC** means the consent standard set out in the [United Nations Declaration on the Rights of Indigenous Peoples](#). *Free* means that there has been no coercion or intimidation; *Prior* means that consent is sought with sufficient time for the community to consider the request and to follow any community consultation protocols; *Informed* means that the community asked for consent is given all relevant information necessary to make their decision including the size and scope of a project, the purpose of the project, and the audience as well as any potential economic, social, cultural, and environmental impacts of the project. *Consent* should be carefully recorded and documented. In some circumstances consent can be revoked.

Indigenous Cultural and Intellectual Property or **ICIP** refers to Indigenous peoples' rights to their heritage. Heritage comprises all objects, sites knowledge, and practices including language, 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 Indigenous community or its territory.

Clause and Application

Template Clause I – Recognition of ICIP Rights

This clause identifies the right Indigenous peoples have to their ICIP.

1. The parties acknowledge and uphold the ICIP rights of Indigenous peoples to maintain, control, protect, and develop their ICIP in accordance with Article 31 of the [United Nations Declaration on the Rights of Indigenous Peoples](#).

This clause ensures that ownership of ICIP will remain with the traditional custodians.

2. The parties acknowledge that ICIP is incorporated in the Services/Project, including the Background IP and New IP, and agree that ownership of any ICIP will remain with the traditional custodians of such ICIP.

This clause ensures that ICIP will be identified.

3. The parties/Party A/Party B agrees to identify any ICIP incorporated in the Services/Project, including the Background IP and New IP, and will notify parties/Party A/Party B of any cultural protocols or restrictions for the appropriate use of the ICIP.

This clause identifies the protocols which must be complied with, and that any cultural protocols and restrictions identified by traditional custodians must be respected.

4. The parties agree to act in accordance with, and respect any cultural protocols or restrictions which may apply to the ICIP, and agree to comply with the [insert protocol, e.g. AIATSIS Code of Ethics, NMHRC Guidelines, etc.] in respecting Indigenous peoples' rights to control their ICIP.

This clause ensures that ICIP is only used for the specific purposes agreed by the traditional custodians, and that any additional or reuse of the ICIP must only be done with the Free, Prior and Informed Consent.

5. The parties agree, and will ensure their personnel agree, to only use ICIP for the purposes of the rights granted in this Agreement and will seek the Free, Prior and Informed Consent from the other party or traditional custodians if it wishes to use the ICIP for any other purpose not contemplated by this Agreement (including under [insert IP clause reference]).

This clause ensures that traditional custodians will be attributed for the use of their ICIP.

6. The parties will ensure that the relevant traditional custodians are appropriately attributed for any use of their ICIP in relation to the Services/Project, including the Background IP, New IP, and any promotion or publicity of the same.

Indigenous Data Sovereignty (IDSov)

Purpose

An Indigenous Data Sovereignty clause can be inserted into an agreement that involves Indigenous peoples, their private information and/or Indigenous Cultural and Intellectual Property. An Indigenous Data Sovereignty clause affirms in accordance with the [United Nations Declaration on the Rights of Indigenous Peoples](#), the rights Indigenous peoples have to govern the collection, ownership, access, use and disclosure of their data in accordance with the self-determination of Indigenous peoples. It aims to ensure that data is properly identified, outlines the principles with which data must be managed, and to observe cultural protocols and sensitivities around use and access to this data.

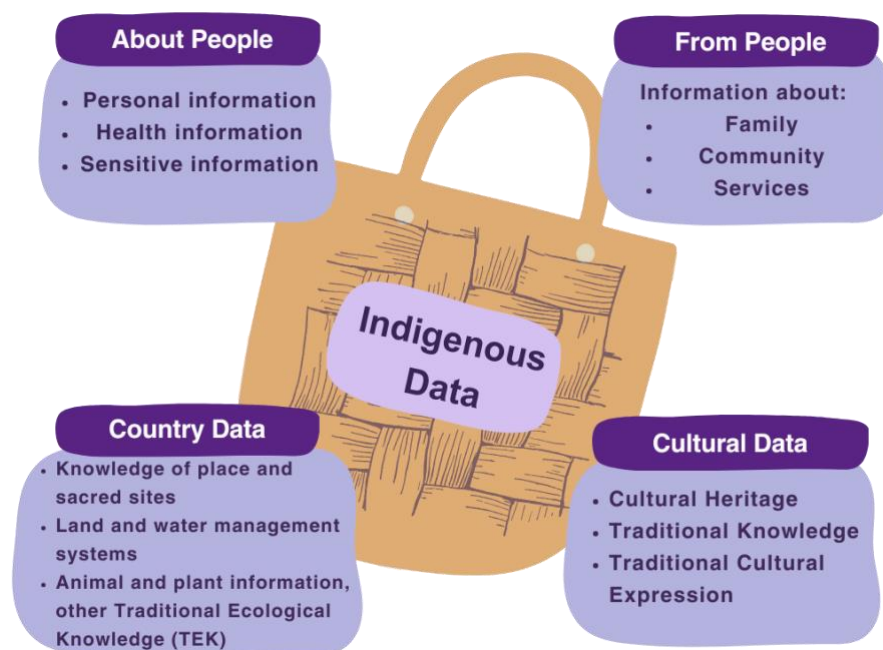


Figure 3: Examples of Indigenous Data © Terri Janke and Company, 2025.

Definitions

Background Intellectual Property or **Background IP** means Intellectual Property owned by the parties/Party A/Party B, in any existing materials created by or for a party or third party prior to or outside the scope of this Agreement, that is used in relation to this Agreement.

Data Holder means the individual or entity that is collecting, storing, using or managing Indigenous Data.

Data Provider refers to the individual or entity whose Indigenous Data is collected or provided.

Indigenous Data or **ID** includes any data, facts, information or statistics about Indigenous people, from Indigenous people, and about Country.

Indigenous Data Governance or **IDGov** refers to the right of Indigenous people to manage what, how and why Indigenous Data is collected, accessed, stored and used.

Indigenous Data Sovereignty or **IDSov** refers to the right of Indigenous peoples to own and control Indigenous Data collected about them, their culture or their Country.

Intellectual Property or **IP** means all present and future rights conferred by statute, common law, equity, in or relating to copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields and includes the rights to the registrations of those rights. Intellectual Property does not include Moral Rights or rights to keep information confidential.

New Intellectual Property or **New IP** means material created by or on behalf of the parties in the course of complying with their obligations under this Agreement, but excludes Background IP and ICIP.

Clause and Application

Template Clause I – Recognition and Implementation of Indigenous Data Sovereignty

This clause identifies the right Indigenous peoples have to their Indigenous Data.

1. The parties acknowledge and agree that Indigenous peoples have the right to control, maintain, protect and develop their Indigenous Data or information collected about them or their ICIP in accordance with Article 31 of the United Nations Declaration on the Rights of Indigenous Peoples.

This clause identifies that Indigenous Data will be incorporated, and that ownership of Indigenous Data remains with Indigenous people.

2. In undertaking the Project/Services and carrying out all obligations in this Agreement, the parties acknowledge that Indigenous Data (ID) may be incorporated in Project/Services, Background IP and New IP created under this Agreement, and agree that ownership of ID will remain with the Data Provider.

This clause identifies the principles which must be observed to ensure Indigenous Data Sovereignty and Indigenous Data Governance are implemented.

3. Without limiting any obligations in relation to confidential information, the *Privacy Act 1998* (Cth) (**Privacy Act**) and data breach laws or regulations, the parties will comply with IDSov and IDGov, including by ensuring that ID is collected, accessed, used, stored and managed on behalf of the Data Provider in accordance with the following principles:
 - a. Transparency as to the reasons for the collection of ID from the Data Provider;
 - b. Transparency regarding the storage of ID, including how and where ID will be stored and for how long;
 - c. Transparency concerning the extent of access and use of ID and the form in which the ID is intended to be accessed or used, as part of the Project/Services (including future publication of material or any de-identified data);
 - d. That the use of ID is relevant and necessary to the Project/Services and empowers sustainable self-determination and aligns with Indigenous cultural governance;
 - e. Free, Prior and Informed Consent is sought and obtained in accordance with management of IDSov principles and privacy obligations under the Privacy Act;
 - f. The Data Holder will comply with any IDGov obligations identified by the Data Provider;
 - g. That once collected, a Data Provider can request access to their ID stored by the Data Holder and/or that their ID not be used in relation to the

Project/Services, and that any such request will not be unreasonably denied by the Data Holder;

- h. The ID and use of the ID as part of the Project/Services and any related material now and in the future, protects and respects Indigenous peoples' individual and collective interests.

Before finalising any agreement, obtain independent legal advice to ensure legal compliance, accuracy and cultural appropriateness.

