

John Burton, 10 June 2011.

Example of a contract attachment used with a mining company that is a member of the International Council of Mining and Metals.

If the client is a government agency, or from a different industry, etc, the social responsibility signups and agreements need to be replaced with those relevant to the situation. Examples would be to reference the Wet Tropics Regional Agreement when working between Mossman and Tully, or a local or State-based cultural heritage agreement, or generic international standards such as IFC Performance Standard 7 'Indigenous Peoples'.

ATTACHMENT 3 – INTELLECTUAL PROPERTY IN MATERIALS GATHERED OR CREATED DURING THE AGREEMENT PERIOD, SOCIAL RESPONSIBILITY, AND COMMUNICATIONS PROTOCOL

1. SPECIAL CONDITIONS

To the extent of any inconsistency between these special conditions and the general conditions or other provisions of this Agreement, these special conditions shall prevail.

2. MATERIALS

- 2a. **Original information** provided by informants in connection with this Agreement is the intellectual property of the informants.
- 2b. **Primary materials** (e.g. field notes, film, audio tapes, digital media) created by the Nominated Persons in the course of engagement under this Agreement remain the property of the Nominated Persons, except for those portions of the primary materials that comprise the original information of informants.
- 2c. **Deliverable materials**, as specified in Attachment 1, created in the course of engagement under this agreement shall vest in The Client upon delivery to the Client, excepting that:
 - information comprising the original information of informants remains the intellectual property of the informants;
 - the reproduction rights of images embedded in reports forming part of the deliverable materials remain with the report authors, as qualified by the rights of any human subjects represented in the images;
 - information existing in the public domain and already published information may not be appropriated as the intellectual property of the Client or made subject to contractual restriction;
 - content in the deliverable materials in the form of expertly presented data and analysis may be reused in secondary reports or summaries, including the reports and summaries of other consultants, but not in an edited form that makes material changes to data or expert interpretations.
 - when data and analysis is reused in secondary reports or summaries, fair acknowledgement shall be made of the original authorship, recommendations and expert interpretations, which may not be concealed, and verbatim (including essentially verbatim) passages shall be clearly marked off and the original authorship acknowledged.

The Nominated Persons undertake to preserve the primary materials in their keeping for a minimum period of five years beyond the expiry of the Agreement in conditions of unbroken oversight.

The Nominated Persons will give The Client access to the primary materials if so requested and at the cost of The Client, except where (i) disclosure is restrained by the Privacy Act 1988 (Cth), per 14(c) above, (ii) disclosure would constitute a breach of cultural protocol, informant confidentiality, or would otherwise contravene permissions granted by community representatives empowered to do so at the start of the programme of research, or (iii) there is a strong likelihood that information in the primary materials could cause harm to other parties if disclosing.

Subject to any lawful requirement, research findings made in the course of engagement under this agreement must be subject to Section 4 of the *Australian Code for the Responsible Conduct of Research*, 'Publication and Dissemination of Findings' and its subsections, notably 'Responsibilities of Researchers', where 'researchers have a responsibility to their colleagues and the wider community to disseminate a full account of their research as broadly as possible ... [taking] account of any restrictions relating to intellectual property or culturally sensitive data.'

ANUE shall direct the Nominated Persons to take such steps as may be necessary to advise informants that they act of behalf of ANUE as consultants to the Client and that information provided may be disclosed to The Client for the purposes of the Agreement.

The Nominated Persons and/or ANUE shall take such steps as may be necessary to advise The Client where information has been received by design or inadvertently that may not be disclosed to The Client for the purposes of the Agreement.

The duties and obligations imposed on the parties under this Clause shall survive the expiration or termination of the Agreement.

3. SOCIAL RESPONSIBILITY

The Parties subscribe to various social responsibility, codes of ethics, or sustainability frameworks ("social responsibility policies"). These include but are not limited to:

- ICMM Sustainable Development Principles¹ – Client
- Global Reporting Initiative G3 reporting framework² and Mining and Metals Sector Supplement – Client
- Voluntary Principles on Security and Human Rights – Client³
- Australian Code for the Responsible Conduct of Research⁴ – ANU.
- Code of Ethics of the Australian Anthropological Society⁵ – any of the Nominated Persons as members of the AAS.

While the policies above apply by default, there are circumstances where insufficient guidance is offered in respect of the services to be provided. Notable among these are further requirements for projects at a stage where formal social impact assessment is needed. To be on the safe side, all work

¹ <http://www.icmm.com/our-work/sustainable-development-framework/10-principles>

² <http://www.globalreporting.org/ReportingFramework/G3Guidelines/>

³ <http://www.voluntaryprinciples.org/>

⁴ <http://www.nhmrc.gov.au/publications/synopses/r39syn.htm>

⁵ http://www.aas.asn.au/docs/AAS_Code_of_Ethics.pdf

will respect guidance found in IFC policy documents on Social and Environmental Sustainability.⁶ These include, but are not limited to:

- IFC Performance Standard 1. Social and Environmental Assessment and Management Systems
- IFC Performance Standard 5. Land Acquisition and Involuntary Resettlement.
- IFC Performance Standard 7. Indigenous Peoples.
- IFC Performance Standard 8. Cultural Heritage.

Where issues are encountered that require handling by specialists, e.g. in cultural heritage, ANUE will notify the Point of Contact as soon as possible (see 4d).

4. COMMUNICATIONS PROTOCOL

- 4a. The deliverable materials, as specified in Attachment 1, created in the course of engagement under this Agreement shall be remitted to the Point of Contact in The Client.
- 4b. The Nominated Person shall be able to communicate directly with the Point of Contact in The Client at any time.
- 4c. In case of discovery in the Client's area of operations, or found in the Client's supply chain, of performance suspected to be at variance with the social responsibility policies of any of the Parties or the IFC Performance Standards, ANUE will notify the Point of Contact in writing as soon as is practicably possible, and will lodge a copy of the correspondence at the Australian National University Research Office at the same time.
- 4d. Where issues are encountered that require attention beyond the expertise of the Nominated Person, ANUE will notify the Point of Contact in writing as soon as is practicably possible, with suggestions on who to contact about them (e.g. cultural heritage expert).
- 4e. The Nominated Person shall be able to communicate with a relevant government oversight committee or government project liaison officer about the progress and findings of the work, during any meetings or at other times in writing.

⁶ <http://www.ifc.org/ifcext/sustainability.nsf/Content/EnvSocStandards>