# Contracts and Agreements

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# INTRODUCTION

This document discusses the different types of contracts used in data governance and management projects. It also provides contract templates you can use. Finally, it suggests practical ways to effectively manage your contracts.

# DEFINITION OF A CONTRACT

A contract is a written evidence of consent between parties to do something. A contract can be used to prove legal rights in court or to defend against claims in court. A contract does not need to be in writing to be enforceable in court. However, don't create contracts with just a handshake. If a dispute arises between the parties, often the only recourse with a handshake contract is to prove the contract before a judge in court. So, it is a best practice only to use written contracts.

Contracts don't need to be complicated. A good rule of thumb is to think of the 3 Ps of contracts: (1) Parties, (2) Price, and (3) Performance. Parties are the individuals or SGIGs or other persons that make the contract and who agree to do specific things under the terms of the contract. Price is the payment to one (or more) of the parties for doing specific things under the contract. Performance is providing goods or services or a combination of both goods and services under the contract. Ensure that the contract clearly states what the parties are expected to do and that there is a mechanism in place to deal with situations where the parties do not accomplish what they agreed to.

# TYPES OF CONTRACTS

Typical contracts involved in data governance are contracts for: research expenses and supplies, computer software and hardware, data storage, professional services such as data analysis, or web services. Common contract types used for the purposes of data governance and data management are:

- Non-disclosure agreements;
- Memorandum of agreement or memorandum of understanding;
- Information sharing agreements;
- Disclaimers;
- Consents; and
- Research agreements

## Non-disclosure agreement

A non-disclosure agreement is used to keep information confidential. For instance, the contract may require that anyone hired to assist with interviewing citizens as part of a research project must keep personal information of participants confidential. Examples of personal information may be the participant's name, image, Social Insurance Number, employment history, or medical information. Another example is to require a party to take steps to keep research data reasonably safe from damage, theft, disaster, or unauthorized access. Examples of a non-disclosure agreement used to commit individuals with access to data to confidentiality measures include:

- First Nations in Quebec and Labrador Research Protocol Template for Confidentiality. See page 86 for a Template for the Declaration of Confidentiality and the Conduct of Research.

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- [First Nations Information Governance Centre](#). FNREES Confidentiality Agreement.

- [Pledge of Confidentiality: An example for sharing data for research purposes from Population Data BC](#).

## Memorandum of agreement

A memorandum of agreement (MOA) or memorandum of understanding (MOU) are forms of contract that emphasize collaboration between the parties. Often an MOA or MOU will set out the areas of mutual understanding between the parties. For example, an MOA may set out the agreed topics for data governance research. An MOU may list the third-party organizations that will be consulted for research purposes, such as Elders, knowledge holders or other indigenous organizations. Examples of MOAs, MOUs, and agreements you may find helpful:

- [MOU between the Assembly of First Nations and Indigenous and Northern Affairs Canada](#);

- [MOU between the Government of BC and First Nations Health Council](#); and

- The [First Nations in BC Knowledge Network](#) resource library contains several examples of MOUs for different situations.

## Information sharing agreement

An information sharing agreement (ISA) documents what information will be shared amongst who and for what purpose. Typical sources of information referred to in an ISA include surveys, questionnaires, polls, reports, data sets, statistics, and research methods. An ISA can also set out the way information is shared. Information may be shared online, during in-person table discussions, or through side tables, working groups, or committees. Resources you may find helpful:

- [Data Sharing Agreement, Urban Indigenous Health Database Project.](#)

- [Guidance on Preparing Information Sharing Agreements Involving Personal Information](#): This Treasury Board of Canada Secretariat document provides advice on preparing federal information sharing agreements, including how to decide whether personal information should be shared and how to comply with privacy policies.

- [Guidance Document on Information Sharing Agreements:](#) The Office of the Information & Privacy Commission for BC outlines the purpose of information sharing agreements, their role in complying with privacy legislation, and recommended provisions to include in an agreement.

- [First Nations in Quebec and Labrador Research Protocol:](#) See page 76 for a Data Sharing Agreement Template.

- [Alberta First Nations Information Governance Centre Framework for a Data Sharing Agreement:](#) The Alberta First Nations Information Governance Centre provides template language for an agreement and key factors to consider.

- [Indigenous Guardians Toolkit Information Sharing Agreement Template](#)

- [Multilateral Information Sharing Agreement](#) (MLISA): This agreement between Canada, the provinces, and the territories regarding sharing information between governments during a public health emergency is an example of an information sharing agreement between multiple parties.

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## Disclaimer

A disclaimer is a type of anti-contract. It disclaims or denies contractual liability for someone using information and suffering a loss or damage. Disclaimers are common on websites and paper publications. Disclaimers can be used in court as evidence that there was no consent to contract or be legally liable for loss suffered by a party by relying on information since there is no promise the information was complete or correct or that no legal advice was given. Examples of disclaimers you may find useful are:

- BC Assembly of First Nations Governance Toolkit Disclaimer;

- Nadleh Whut'en First Nation;

- UBC Indigenous Research Support Initiative Disclaimer.

## Consent

A consent is a type of agreement that proves that an individual research participant freely volunteered to participate in the research and that the participant was fully informed about the purpose of the research and the intended use made of the research. Consent is required before the participants engage in the research. Consents to participate in research can also be withdrawn at any time by the research participant. Examples of consents you may find useful are:

- First Nations in Quebec and Labrador Research Protocol Consent Form Template for Research Participants (see pg. 89);

- Health Canada Research Ethics Board;

- World Health Organization.

## Research agreement

It is common for SGIGs to work with researchers from universities who have specialized skills and experience. A research agreement is a contract that defines the conditions of the research relationship between a researcher and the SGIG. For example, the contract may specify that the SGIG owns the data, not the researcher. Other rights may be that the SGIG has the authority to review and approve the researcher's research. The contract can specify who publishes what research results and where. As well, the SGIG may limit by contract who can access the research. In the event of a dispute, the contract can be used to encourage a settlement; if not, the contract can aid the court in interpreting the legal relationship between the parties in deciding the case.

Examples of research agreements you may find helpful are:

- First Nations in Quebec and Labrador Research Protocol: See page 57 for a Research Agreement Template.

- Manitoba First Nations Education Resource Centre Guidelines for Ethical Research in Manitoba First Nations: See page 23 for a Collaborative Research Agreement Template.

- Memorial University Indigenous Research Agreement.

- World Health Organization: Example of a research agreement between Centre for Indigenous Peoples' Nutrition and Environment and an Indigenous community in Canada.

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# CONTRACT MANAGEMENT

Contract management can be simple or complex depending on the needs of your government. A simple form of contract management might consist of ink-signed contracts living in a locked fireproof cabinet in your Finance department. A complex system might consist of a contract management software system capable of managing many contracts in electronic form at any one time.

Some best practices to keep in mind include:

- Have a contract management policy that covers who in the organization are the authorized signatories for different types of contracts, and/or for contracts that are above a certain value. The policy should also specify how contracts are approved, and the procurement process.

- Check the laws in your jurisdiction to determine whether an electronic signature is legally effective. Most jurisdictions have electronic transaction statutes that provide an electronic signature is just as legal as an ink signature.

- For electronic contracts, consider:

    o naming the official electronic file with "official", "final" or some other identifier in the file name so you know that it is the official contract;

    o keeping your official signed contracts in a folder on your computer system that has security access restrictions;

    o maintaining a backup of the official contract folder.

- For paper contracts, consider:

    o stating in your contract policy that the original inked signed contract is the official version. The original contract can be stored in a locked fireproof cabinet. Copies can be made of this original and a rubber stamp marked "Copy" is affixed to the photocopy of the original.

- Maintain a contract registry. Organize the registry by contract type, then organized by year. Designate a person or department as the keeper of the official (signed) contracts, and that person/department will have responsibility for keeping the registry up-to-date.

- Maintain an electronic library of contract clauses that you use often and then can re-use as needed.

- Have your legal counsel draft complicated contracts and then re-use those contracts as needed for transactions that repeat, like research contracts with researchers or vendor contracts.

- If your legal counsel provides you with a legal opinion on a contract matter or a memo that provides answers to your legal questions about contracts, keep those opinions and legal answers.

- Retain your contracts for a reasonable amount of time, and then destroy them. Check with your financial auditors about the length of time they recommend keeping contracts.

- Avoid evergreen contracts when possible, because they can be used unfairly by vendors to the detriment of your government. Evergreen contracts are contracts that are automatically renewed at the same time every year and continue until the payor gives written notice to end the contract. It is common for organizations to

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forget they have an evergreen contract since payment is often automatically taken electronically. An organization may also give its notice to end the contract late, so the evergreen contract continues to run until the termination notice is given effect.