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**FREE, PRIOR AND INFORMED CONSENT
DUE DILIGENCE QUESTIONNAIRE**

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TALLGRASS
INSTITUTE

CONTENTS

Introduction	3
Part 1: Project Developer's Existing Policy Commitments	5
Part 2: Identifying Impacted Indigenous Peoples	6
Part 3: Optimal Data on Impacted Indigenous Peoples	7
Part 4: Engagement and Agreement	9
Part 5: Agreement and Post-Agreement Relationship Management	11

INTRODUCTION

The following questionnaire provides a list of considerations for investors seeking to implement best practices for operationalizing the free, prior and informed consent (FPIC) of Indigenous Peoples regarding the development of resources on or near their lands and territories. This includes the use and development of all resources including, but not limited to, land and marine resources, and intellectual property.

Updates to the questionnaire since initial publication in 2018 reflect key advancements in best practices regarding how to ensure respect for Indigenous Peoples' rights. Notably, many Indigenous Peoples have developed their own protocols for engagement with the private sector. This momentous shift requires that these self-determined protocols now be a primary driver in the decision-making process for development projects. These protocols must be actively integrated into every stage of development, from consultation through implementation, de-commissioning to monitoring. This approach marks a deliberate movement away from merely considering these protocols to ensuring they shape the overall framework of engagement, underscoring their centrality in ensuring that development respects the rights and traditions of Indigenous Peoples.

Another significant addition is the recognition of Indigenous Peoples in Voluntary Isolation and Indigenous Peoples in initial contact. These groups require particular consideration due to their heightened vulnerability to outside contact. Investors and project developers must take into account specific protocols necessary to avoid direct and indirect contact and respect their autonomy and rights as set forth in international guidelines.

The purpose of this questionnaire remains to inform engagement between Indigenous Peoples and non-governmental entities from outside the community. The questionnaire is based on FPIC as enumerated in Articles 10, 19, 29, and 32 of the United Nations Declaration on the Rights of Indigenous Peoples but reflects all the rights therein, including the right to self-determination in Article 3. It builds on the United Nations Guiding Principles on Business and Human Rights' assertion that businesses have responsibilities to respect the rights of Indigenous Peoples during development. Tallgrass Institute views FPIC as a right and not solely a process, and nothing in this questionnaire shall be construed as a means by which to achieve consent. Thus, this questionnaire provides guidance for investors to perform requisite due diligence that optimizes beneficial partnership and engagement.

Of note, this questionnaire makes the following three assumptions. First, that many Indigenous communities are marginalized communities. This is a generalization that is not true for all communities, however many Indigenous communities face undesirable and intersecting socio-economic indicators such as poverty, racial and ethnic discrimination, lack of access to justice, and lagging local economies. Further, many Indigenous communities are also located in rural areas, intensifying these indicators. What is most important for the purposes of this questionnaire, and what the questionnaire teases out, is to verify whether the community has access to the same infrastructure as more widely served communities in the host country and to account for the aspects where it does not.

Second, this questionnaire is responsive to commonly held traditional approaches to land in Indigenous communities. Specifically, many Indigenous Peoples have cultural and spiritual ties to their land and resources that go beyond economic uses. These ties are vital to their cultural heritage and the modern practices that bind them as a community. Thus, development on Indigenous Peoples' lands and territories requires examination from several viewpoints and with different considerations than development on non-Indigenous territories to fully understand the true value of the resources.

Third, while not universally true, in many countries Indigenous Peoples have been removed from their traditional territories or relocated to smaller sections within those territories. Thus, places with ancestral, cultural, and spiritual ties may be located outside of the official or nationally recognized boundaries of the community. In some countries, Indigenous Peoples may still have legal hunting, fishing, or gathering rights that extend outside those official boundaries. This questionnaire reflects this history in two ways. First, it refers to "potentially impacted Indigenous Peoples" as those whose territories extend outside of their currently demarcated community boundaries into areas where the project development will create impacts. Because these territories are still of value to Indigenous Peoples, they must also be screened for development impacts to avoid risk exposure that would otherwise be unknown. Second, this questionnaire encourages assessing development impacts to other uses of the land (i.e., cultural, spiritual, ancestral), as described in the United Nations Declaration on the Rights of Indigenous Peoples.

In short, this questionnaire provides an analytical framework to operationalize meaningful engagement and consultation between investors and Indigenous Peoples. The process of seeking the FPIC of Indigenous Peoples should be completed in alignment with international human rights standards in an independent investigation apart from other governmental procedures and approvals. Implementing this type of due diligence will expose project risks that could materially affect the project's success. Using this questionnaire provides the basis for forming a partnership with Indigenous Peoples that prioritizes human rights while establishing the context for mutually beneficial development.

PART 1: PROJECT DEVELOPER'S EXISTING POLICY COMMITMENTS

1. List existing policy commitments related to human rights.
2. Ensure company policies consider international human rights standards such as those in the core commitments of the United Nations Guiding Principles on Business and Human Rights; the United Nations Declaration on Human Rights; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; and the eight International Labour Organization core conventions.
3. If the project developer is a member of an organization that prioritizes human rights during development initiatives, such as the Initiative for Responsible Mining Assurance or the Equator Principles Association, ensure policies reflect the minimum recommendations of these organizations.
4. List existing policy commitments to Indigenous Peoples.
 - a. Specify whether the policy:
 - i. acknowledges and integrates affected Indigenous Peoples' protocols related to business engagement and ensures adherence to these protocols at every stage of project development;
 - ii. is separate from but inclusive of the project developer's general human rights policy;
 - iii. reflects the minimum standards in the United Nations Declaration on the Rights of Indigenous Peoples and International Labour Organization Convention 169; and,
 - iv. applies to every stage of project development including planning, implementation, closure, and risk-management.
5. Detail how the policy addresses an iterative engagement process that respects Indigenous Peoples' protocols where they exist.

PART 2: IDENTIFYING IMPACTED INDIGENOUS PEOPLES

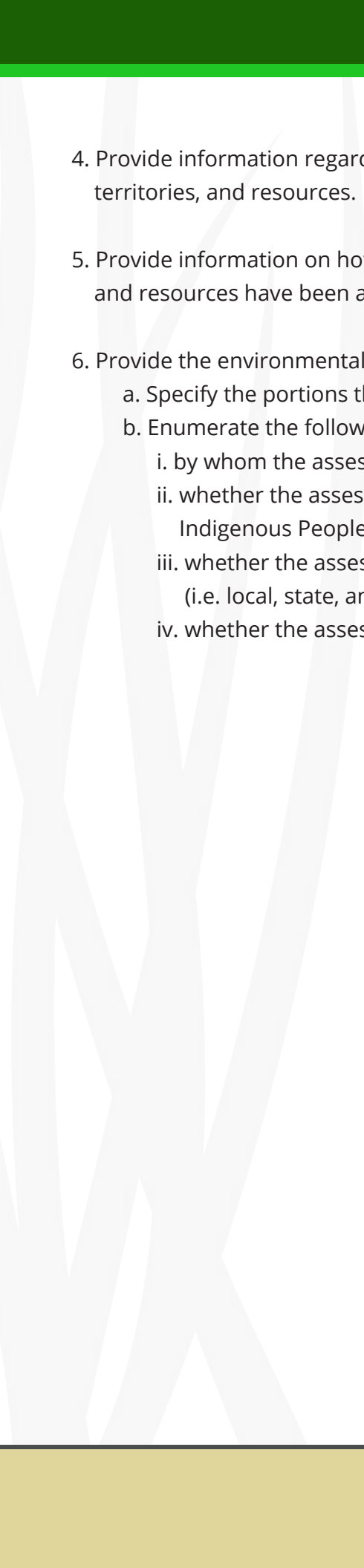
1. List the impacted Indigenous Peoples and communities.
 - a. Provide information as to how impacted Indigenous Peoples were identified and through which sources.
 - b. Provide information on how Indigenous Peoples' own protocols were identified and incorporated into the consultation process.
 - c. Disclose the methods by which the project has been assessed for impacts that may be different for a marginalized community (i.e. if there is only one road in or out of a community center, or only one water intake serves the entire community).
2. Provide a list of Indigenous communities that are potentially impacted by the project.

Potentially impacted communities are those with ties to the project-impacted land and resources that could include hunting or fishing rights, or ancestral and historical ties.

 - a. Ensure this list is cross-referenced during the entire due diligence process.
3. Describe the measures taken to ensure that Indigenous Peoples in Voluntary Isolation or initial contact are not affected by the project.
 - a. Detail protocols in place for avoiding contact and protecting these groups from direct or indirect exposure to the project.

PART 3: OPTIMAL DATA ON IMPACTED INDIGENOUS PEOPLES

1. Provide information about the legal regime in the host country specific to Indigenous Peoples.
 - a. Specify whether the host country:
 - i. is a signatory to International Labour Organization Convention 169 or the United Nations Declaration on the Rights of Indigenous Peoples; or,
 - ii. provides Indigenous Peoples' representatives with a formal seat or status within the host country's government.
 - b. Include recommendations for the protection of Indigenous Peoples in Voluntary Isolation and initial contact, referencing relevant guidelines or declarations such as the American Declaration on the Rights of Indigenous Peoples.
2. Provide current maps of impacted Indigenous Peoples' land.
 - a. Ensure that mapping has taken place in coordination with impacted Indigenous Peoples.
 - b. Specify whether there are unresolved land disputes in the project area.
 - i. Inquire with both the government and the potentially impacted Indigenous Peoples. If there are disputes, inquire as to the status of these disputes and verify whether the project runs through or adjacent to disputed areas.
 - c. Ensure that mapping exercises are inclusive of land use within and outside of official territorial boundaries, for example, hunting and fishing uses, cultural and spiritual uses, and ancestral and historical sites, among others.
 - d. Ensure that mapping exercises are inclusive of practices of impacted Indigenous Peoples and potentially impacted Indigenous Peoples.
 - e. Ensure that land use planning and mapping exercises include consideration of areas inhabited by or likely to affect Indigenous Peoples in Voluntary Isolation and initial contact. Detail the measures taken to identify and avoid these areas.
3. Provide information regarding impacted Indigenous Peoples' governance structures.
 - a. Provide a list of current leaders. Specify whether the formal leadership is designated by the community, by the host country, or by another entity.
 - b. Besides formal leadership (e.g. tribal councils), determine whether there are informal decision makers or influencers within the community.
 - c. Provide information about whether Indigenous Peoples have established protocols for providing FPIC, and how these protocols are respected and implemented in the project process.

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4. Provide information regarding impacted Indigenous Peoples' plans for development as to their lands, territories, and resources.
 5. Provide information on how Indigenous Peoples' protocols for development and their land, territories, and resources have been accounted for in assessing the project's impacts and plans.
 6. Provide the environmental and social impact assessment for this specific project.
 - a. Specify the portions that assess environmental, social, and cultural impacts to Indigenous Peoples.
 - b. Enumerate the following:
 - i. by whom the assessment was conducted;
 - ii. whether the assessment was completed in direct consultation with impacted Indigenous Peoples;
 - iii. whether the assessment was inclusive of host country government data at all levels (i.e. local, state, and federal); and,
 - iv. whether the assessment is inclusive of community mapping and Indigenous Peoples' data.

PART 4: ENGAGEMENT AND AGREEMENT

1. Identify and incorporate the impacted Indigenous Peoples' protocols related to business interactions, engagement, and FPIC into the project's engagement and planning framework.
 - a. Specify how the impacted community's protocols are incorporated into the project's engagement and planning framework over the lifecycle of the project.
2. Ensure that all materials used for public engagement are translated into local languages and understandable by non-technical experts.
3. Document the process of engagement with Indigenous Peoples' representatives.

Documentation should include:

 - a. a timeline showing, at a minimum, when the process of engagement began relative to initial project planning and design; the process of engagement with non-Indigenous government authorities; the process of application for and acquisition of permits; and the incorporation of Indigenous protocols during each stage of engagement and consultation; and,
 - b. a record of correspondence and meetings that took place between the project developer and Indigenous communities and their representatives.
4. Document the process of engagement with informal leadership and the broader public.

Documentation should include:

 - a. a record of correspondence and meetings that took place between the project developer and informal leadership;
 - b. the dates, locations, and attendance of meetings that were open to the public;
 - c. the mechanisms through which the meetings were made known to the public; and,
 - d. any other opportunities for input from the broader public (i.e. comment processes or government-led consultations).

5. Specify how the process of engagement addresses marginalized groups within the community such as elders, women and youth.
 - a. Specify how the engagement process respects and aligns with Indigenous Peoples' protocols, ensuring inclusivity of all community members, including elders, women, and youth.
 - b. Identify the mechanisms through which the developer creates space for public participation, including meetings, comment periods, or other avenues for engagement.
 - c. Identify the processes by which the concerns of Indigenous Peoples in Voluntary Isolation or initial contact have been integrated into the project plans.
6. Provide project materials to Indigenous Peoples' government(s), informal leadership, and the broader public in their primary language and preferred format, e.g. print, digital, or verbal communication.
7. Disclose any financial or nonfinancial compensation provided to community members as part of the engagement process.
 - a. Disclose any conflicts of interest that have arisen or may arise.
8. Disclose a summary of feedback from impacted Indigenous Peoples in response to the process of engagement. The summary should include:
 - a. the Indigenous Peoples' representative's position on the project;
 - b. feedback received from informal leadership and the broader public;
 - c. indicators of divisiveness within the community, if any; and,
 - d. indicators of opposition such as negative media attention, legal actions, or protests.

PART 5: AGREEMENT AND POST-AGREEMENT RELATIONSHIP MANAGEMENT

1. Disclose whether there is a project-level grievance mechanism, or by what means grievances are managed.
2. Relative to the project-level grievance mechanism, provide specific information as to the following:
 - a. how the grievance mechanism has been described to impacted communities, ensuring transparency and clarity;
 - b. how the grievance mechanism is accessible within the community and how it respects their business engagement protocols; and,
 - c. how monitoring and reporting mechanisms proactively prevent the project from impacting Indigenous Peoples in Voluntary Isolation or initial contact, while recognizing that these groups may not have access to or desire participation in such mechanisms.
3. Disclose whether grievances have been filed and, if so, disclose the quantity, reason, and outcomes of grievances filed.
4. If there is no project-level grievance mechanism, describe any other feedback loops that have been implemented to ensure that the project maintains broad community support.
5. Provide plans for continuous engagement throughout the project's lifecycle to include monitoring, adapting to evolving community needs, and maintaining open channels for feedback.¹

¹ The information in this report is not intended to be relied upon as, or to be a substitute for, specific professional advice. Tallgrass Institute shall have no responsibility for loss occasioned to any persons or legal entities acting on or refraining from action as a result of any material in this report. With respect to any and all information contained in this report, Tallgrass Institute makes no representation or warranty of any kind, either express or implied, with respect to such information, or the results to be obtained by the use thereof.



TALLGRASS INSTITUTE

CENTER FOR INDIGENOUS
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Through targeted research, training, investor networks, and corporate and international engagement, Tallgrass Institute forwards Indigenous solutions to market challenges and macro-economic issues by leading with Indigenous Peoples' self-determination and fostering equitable partnerships and practices. We aim to redefine the private sector's role as one that respects Indigenous Peoples' rights, lands, and economic priorities.