

## CHAPTER SIXTEEN: EXHIBITION-RELATED CONSULTANTS<sup>1</sup>

### 1. Introduction

From time to time, all collecting organisations buy-in skills or resources to mount exhibitions. Even large institutions with numerous professional staff, need to retain additional, outside expertise. Few institutions have the internal intellectual richness to meet the entire range of demands upon them. Accordingly, there is an extensive range of independent professionals who provide their services on a project by project basis. These include: exhibition designers, catalogue designers, lighting designers, commissioned contributors to the catalogue, installers, security experts, conservators, photographers and curators.

Even where the organisation has this expertise in-house, it may choose to hire a consultant to provide the service. It may do so because its employees are already fully committed with other projects, to promote a new voice or approach, or for financial reasons.

All consultants must be properly contracted. The terms of the agreement must very clearly articulate the expectations of both parties. The brief must be fulsome and unambiguous.

### 2. What to cover in a consultancy agreement

The issues set out in the following list will generally need to be covered when retaining the services of consultants providing creative services such as the curator or designer of an exhibition or the author of a catalogue essay (the commentary provided should assist you to understand the significance of the relevant issue):

- that the consultant will:
  - perform the services professionally and in accordance with your directions (if the consultant has been well selected, he or she will be highly professional and will comply with this requirement as a matter of course – a clause dealing with this is there merely for those other unfortunate situations);
  - keep you informed of any significant issues that may arise, and liaise regularly with your staff (good communication is essential – good consultants do this as a matter of course, while others need to be prodded, though if you want or need formal reports you should specify when, what format and what information you want in the agreement, as further set out below in relation to the “nitty-gritty”);
  - attend meetings at the institution – or such other places as are mutually agreed – whenever reasonably required (note that it is usual for the Museum retaining the Consultant to pay the travel costs associated with meetings;

<sup>1</sup> First published on 29 May 2009, updated April 2018 by Shane Simpson and Ian McDonald.

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- if relevant, provide the relevant services through a nominated “key person” (if you are basing the engagement on the skills of a specific individual, make sure you will get that person and not a junior);
- deliver the “Services” and any “Deliverables” on time (most agreements should state that “time is of the essence” – and this has legal consequences, as if the timelines are not met, that, in itself, becomes a ground for termination);
- where a project is divided into stages, whether sign-off from the institution is required before the consultant moves to the next stage (this gives you the power to supervise the effectiveness of the consultant’s work at regular, agreed, stages, so if there is a problem, you are more likely to recognise it early – permitting you to either have the consultant remedy it, or to terminate the agreement);
- that the institution will pay the relevant fee into the consultant’s bank account (and note that this will usually be within, say, 30 days of the institution receiving a correctly rendered tax invoice);
- that the institution will meet agreed expenses (where possible, use real figures or caps, as much unhappiness can lie in expenses that blow out, particularly as most institutions are subject to audit obligations and transparency requirements);
- the circumstances in which the agreement may be terminated (usually for unremedied breach or if the consultant becomes bankrupt or goes into liquidation – but note also that, while no consultant likes it, many institutions will want to retain the right to either shrink the scope of a project or to terminate it altogether);
- what happens on termination:
  - on the financial side (often there will be different outcomes depending on the basis for termination – for example, if there is an unremedied breach of the agreement by the consultant, he or she may be entitled to no further payments, but if the institution chooses to terminate because its circumstances have changed, then the consultant will usually be entitled to be paid for his or her work to date, even though a payment milestone has yet to be reached); and
  - in relation to work or materials delivered to date (usually, the institution will have the right to continue to use these – the consultant shouldn’t be placed in a position where he or she can use these as a bargaining chip to squeeze more out of the institution);
- who owns rights in any intellectual property that’s created – for example:
  - whether the institution gets an assignment of those rights (this is usual, but in many cases the consultant may wish to reuse the deliverables for other clients under a clear and certain “licence back” from the institution – in which case the institution may want to be able to control that reuse to make sure that it does not conflict with its own cultural and corporate needs);
  - whether the institution gets an exclusive licence only (in which case, the institution will want to ensure that the licence enables it to use the material in all the ways it is expecting to be able to, both in the shorter and longer terms);
- how “moral rights” are to be handled (and see further our chapter on “Permission and acknowledgements”);

Other clauses – often referred to as “boilerplate” – will also generally be necessary. These are important, so must not be overlooked!

Among other things, these clauses will deal with issues such as: what warranties each side is providing; whether alternative dispute mechanisms must be employed in case of a dispute about the agreement or what it means; what indemnities each party is providing in case of a breach of the agreement (including a breach of warranties); which laws apply to the interpretation or application of the agreement; confidentiality obligations; a clause to the

effect that the agreement sets out the whole terms and conditions; that the consultant is an independent contractor and not an employee, agent, or joint venture; and so on.

The agreement you use will then also usually have a Schedule (either at the front or back of the contract) setting out all the key and variable matters (together with the nitty gritty that will assist in the day-to-day administration and supervision of the contract. For example, the above contract may have a Schedule that covers the following:

- the contractors, name, address, phone and email details (and make sure whether the consultant is providing services as an individual or through a company);
- the consultant's ABN;
- whether there is any "key person" who is to deliver the services;
- a description of the brief (which if detailed and extensive, may be referred to in the Schedule but annexed as a separate document – and be precise);
- a list of the "Services" and "Deliverables" you expect the consultant to deliver (this is what you are paying for, so pay particular attention to specifying exactly what you are expecting the consultant to do for you or to deliver, including what sort of reporting arrangements you want to impose, to see how a project is tracking);
- a timetable for delivery of the relevant services or deliverables (timetables are important, so specify your expectations – and state any milestones that are to be met, as these are an important project management tool);
- if relevant, information about the file or formats in which materials are to be delivered;
- the total fee (and remember to separate out any GST – for example, by stating that the fee is exclusive of GST);
- where payments are to be staggered over the course of a project or tied to stages, a timetable for payments (and what amounts or percentages become payable on the relevant dates)
- a list of any approved expenses such as travel costs (including class of travel) and agreed amounts to be paid to sub-consultants or contractors (each capped, perhaps, at maximum amounts to be reimbursed by the institution);
- what materials and facilities are to be provided by the institution to the consultant (for example, access to work facilities, conference rooms, meetings with staff);
- the consultant's bank account details;
- insurances;<sup>2</sup> and
- any special conditions (including whether any of the "standard" terms are not to apply to the particular contract or whether there are any additional terms that have been agreed).

Just make sure that all the items set out in the Schedule are referred to in the principal agreement! You do this by including a clause in the contract that makes it clear that that the Schedule and its contents form part of the agreement.

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<sup>2</sup> Insurance requirements will change depending on the kind of services that are being delivered. These can be specified in the Schedule.