

Contracts

Making life easier: simple contracts, clear guidelines

So, someone wants you to undertake some work and you have the skills for the job? Great! But how do you set up an agreement between you and your client?

The key thing is to ensure that each party knows what is expected of itself and the other party. Agreements will vary depending on whether you are self-employed or working on salary, but what follows is a simple guideline and initial checklist of the kinds of issues you should be considering.

Any agreement must be useful and meaningful to both parties. A standard contract might be fit for purpose, as long as it includes a description of the services you are to undertake and has no fishhooks in it. If your work is history-based, then ensure that the contract encompasses the nature of the work you will undertake and does not include the remnant of any other kind of work (an occasional feature of an oft-used standard contract).

A contract is a statement of mutually agreed guidelines for any project. It should define parameters and set incentives which help the project towards completion. It is a tool for you, the historian, and client alike. Of the 11 topics discussed below, some will be more relevant to your project than others.

Lastly, communication between the historian and client is key to a successful project. Circumstances may change along the way, and these changes need to be negotiated with both parties feeling they are fully engaged and informed. The best way to ensure this is to maintain a steady, regular flow of documented and verbal information reporting on the project's progress.

1. Scoping Reports

Any agreement must define the services that each party will provide. These are a mesh between the wishes of the client and the contractor's skills at turning these into a viable product. In this area you are an expert and should take a role in defining the work.

However, getting started is often the hardest part and a formal contract may not be appropriate until after you have prepared an in-depth proposal or discussed the matter in detail with the client so that you are both clear what the work will entail. If you are tendering for work, rather than negotiating the terms of a contract, then you are entitled to seek the information you need from the commissioning party.

Things to consider:

- The word range (or size) of the project
- Scope of project/chapter/topic headings
- Budget for research, transport, travel, illustrations, GST
- Who arranges publication, if relevant
- List of sources/information/bibliography
- Assessment of sources
- An early warning period or clause to avoid problems of interpretation or insufficient sources
- An index, where appropriate

2. Term of Contract

Make sure that you and the client have a clear idea of the duration of the contract. Time is often the most severe constraint on a project. For the client the inability of the contractor to meet deadlines could result in higher costs for the work and the opportunity cost of not having the work completed on time. For the contractor his/her reputation is closely aligned with the ability to deliver not only to the defined standard but also on time. Moreover, if a contract is undertaken at a fixed price, the contractor may be left with cashflow problems by failing to complete on time. Make sure you negotiate enough time to do the work and don't get pushed into meeting an unrealistic deadline.

Things to consider:

- Duration of contract
- Impact of duration on project quality
- Financial risk of failing to complete on time

3. Payment

When you are an employee, even on a short-term, you are paid at regular intervals. When you are a contractor it is not necessarily that straightforward. If your project is relatively short, then you may only need one or two payments. If it is longer, it would be very helpful to you to establish a regular system of payment that reflect the progress of the project. If that is not possible, it may be feasible to agree on certain milestones that, if met, will trigger the right to invoice.

Things to consider:

- Payment of salary/fees (how/when?)
- Payment of associated costs (how/when?)

4. Hours and Place of Work

When you are self-employed there is no employer responsibility to provide you with a working space or resources except where specified in your contract. Most contracts will contain a clause that conveys no right or expectation of a contractor that they will be able to use the client's place of work to undertake the contract. Some contracts can involve support other than money. For example, a client may provide working space to facilitate access to their archives, as well as use of photocopying etc.

Things to consider:

- Additional resources to be supplied by the client
- If self-employed, a statement of the contractor's independence and freedom to choose hours and place of work

6. Progress Reports

To an outsider the progress of a project may be difficult to measure, particularly if it is research-based, so it is important that the client is given tools to obtain a general appreciation of the status of progress. It is best to set up an agreed simple and transparent format that is updated regularly as part of the reporting process.

If you are preparing a history or undertaking research, the critical thing is regular communication with the person paying for the work. If you are chasing interesting leads, you need to make sure that the client will pay for you to follow those new leads. If there isn't the money there to pay for it, then it becomes your call to decide whether to pursue it or not. If you can get a client 'on board', then they may be more willing to go beyond the original budget.

Things to consider:

- Systems for reporting (form and frequency)
- Measurement criteria (words, hours etc.)
- Where the contractor can see a problem arising it is always wise to signal this as soon as possible. Surprises are seldom welcome
- Establish a rapport with your client so that you can negotiate a wider brief, if necessary

7. Supervision of Project

Good supervision is, in reality, dependent on good communication. This might involve regular reporting by the contractor and meaningful responses from the client. Measuring the quality of supervision is really based on how much useful information is exchanged.

8. End Use of Material

It is important to clarify – at the outset – the end purpose of your work. If it is to be published in some way then it is important to ensure that any item used that comes from another source, e.g. historic images, can be used in the public domain. This is much less of an issue if your work is only to be used for internal purposes and seen by relatively few people.

Things to consider:

- Format, e.g., a book, internal report, film etc.
- Consultation on presentation of material (name on cover, appropriate recognition etc.)
- Payment for by-products, e.g. booklets, annual reports

9. Copyright of material

The holding of copyright is an increasingly complicated area. At a bare minimum include an agreement that covers the likely end use of material and gives some editorial control on possible future uses. If you want to tie this down precisely, see a lawyer. Copyright is mostly a matter of principle and research integrity rather than financial concern. You may wish to share copyright with the client so that you can reuse your work at some later date.

The issue of who retains the product of any research may also arise. Again, this is something that should be settled in advance.

Things to consider:

- Copyright held by author or jointly author/client
- Payments associated with copyright
- Possible licensing period for publication 5-10 years
- If it is a book, royalties are important, not least because they are the means by which authors gain access to the Author's Fund, now managed by the Alexander Turnbull Library

- Ownership of notes and research materials

10. Independent Contractor or Employee

See our guide to becoming self-employed on this website. Take care to ensure that, if the contract is reasonably long, the work you are undertaking allows you (in the eyes of the IRD) to remain self-employed and not considered an employee.

11. Arbitration

One of the best ways of preventing serious breakdowns in the relationship between client and contractor is to prepare for one at the outset, so that each knows the other's rights. Disputes over interpretation or progress are a lot easier to resolve if you have an agreed authority you can turn to for arbitration. Many contracts will make provision for this. Again, anticipating problems and communicating them before they arise is always the best remedy.

Not all projects require a document that covers all the points raised above and some will need much more detail in one area and not in another. The big thing is to consider the relevant issues and decide for yourself what suits. It is then a matter of going through the issues with your client. Make sure you are happy with your contract, and only see a lawyer if you feel there is a particular matter that requires their expertise.

This guide was originally prepared by Tony Nightingale and later amended by the PHANZA committee, 2018.