



TEMPLATE FOR A MEMORANDUM OF AGREEMENT

SECTION ONE

PREAMBLE

A memorandum of agreement (or contract) is a statement of mutually agreed guidelines for a project. It should define parameters and set incentives that help the project towards completion. It is a tool for historians and commissioning agents alike.

The following information is provided for the GUIDANCE of Professional Historians Association (PHA) members and commissioning agents.

IT IS NOT, AND SHOULD NOT UNDER ANY CIRCUMSTANCES BE
INTERPRETED AS, LEGAL ADVICE

Furthermore, the information is offered subject to local and regional variations, and on the understanding that any contract or agreement should not only be useful and meaningful to both parties but also be the subject of legal advice prior to being signed.

The template for a memorandum of agreement and checklist for its use are offered to PHA members as a guide only.

The template for a memorandum of agreement and checklist for its use attempt to be as inclusive as possible by incorporating a wide range of aspects that may be considered for inclusion in a member's final agreement.

However, it is the PHA member's responsibility to carefully consider the relevance of each inclusion and determine what must be deleted and what must be retained for each and every separate and individual project.

SECTION TWO

CHECKLIST

There are a huge variety of issues to be agreed upon before you undertake a history project, whether it be an advisory consultancy, a commissioned history or other form of published or public history, an exhibition or a collection of oral history material. It is essential that these agreements be formally recorded and historians should always insist on a memorandum of agreement or contract that has been negotiated and agreed upon by both parties.

The type of information that can/should be covered in an agreement includes:

- Description of the project
- Timeline for completion
- How much the historian will be paid and at what stages will they be paid
- Provisions for payment of work by the historian, if required, beyond the agreed parameters for completion
- Access to archival/research material and research work space
- Nomination of a client representative, project manager or steering committee who will be responsible for approving each stage of work upon completion
- Whether oral histories will be undertaken and by whom
- Responsibility for selection of photographs and other illustrative material for publication
- Responsibility for obtaining the necessary copyright permissions for quotations and illustrations
- Responsibility for publication and dealings with publisher
- Responsibility for proof reading and editing the manuscript and checking any pre-publication proofs
- Responsibility for preparation of an index
- What form the manuscript will be submitted in (hard copy/electronic)
- Responsibility for expenses incurred during the research and writing of the manuscript, such as photocopying, transcription of oral histories, access to archival material, travel and accommodation, as well as publication costs, such as artwork and design
- Whether alterations can be made to the final product without the permission of the historian
- Who owns the copyright in the final publication – see additional copyright notes below
- In what format the author will be credited for their work
- Whether royalties are payable, including for the initial publication or reprints

- Procedures for termination of the agreement or contract by either party
- Adjudication or mediation procedures that may be invoked in the event of a dispute arising between the parties

Some notes on copyright:

(from Australian Copyright Council Information Sheet G013v06 Writers & Copyright, March 2012) www.copyright.org.au

How long does copyright last?

The general rule is that copyright in a published written work lasts for the life of the creator plus 70 years, whether or not the creator is the copyright owner. If a literary work is never published, copyright in it does not expire.

I was commissioned by a company to create a work. Who owns copyright in it?

As the author of the work you will own copyright in it, unless you assigned copyright to the commissioning company (an assignment must be in writing and signed by you to be legally effective). The company will generally have the right to use the work for the purpose for which it was commissioned.

What if I was commissioned by a government agency to create a work?

If you are commissioned by a government agency, the government may own copyright in the work, unless you have an agreement with the agency that you will own copyright. You may need advice about whether the agency is part of the Commonwealth, or a State or Territory government. You may also need advice about whether your work is, or will be, made or published under the direction or control of the Commonwealth, or a State or Territory government.

Can copyright be jointly owned?

Yes. The Copyright Act provides that copyright in a work may be owned jointly if two or more authors have contributed jointly to the creation of a single work. Joint ownership of copyright can also be provided for in an agreement between the authors or contributors.

Who owns copyright in an oral history?

If an oral history consists of the words of a person whose story telling has been recorded the storyteller is the owner of copyright in the oral history. If two people create a version of the story together, the two people may be joint authors. If you are recording oral histories, it is generally a good idea to have a written agreement with the person whose story telling is recorded, which sets out how the recorded story may be used and who owns copyright.

SECTION THREE

**A TEMPLATE FOR
A MEMORANDUM OF AGREEMENT**

DEFINITION OF TERMS

HISTORIAN means an accredited member of an Australian Professional Historians Association

COMMISSIONING AGENT means a person, company, organisation, society or other body employing the Historian

STEERING COMMITTEE means a group of people appointed by the Commissioning Agent to oversee, administer and liaise with the Historian

1. PARTIES

THIS AGREEMENT is made on date between Agency (in this Agreement called the 'Commissioning Agent') of Address of the one part and Name (in this Agreement called the 'Historian') of Address of the other part.

2. PROJECT/DESCRIPTION OF WORK

2.1 To research and prepare a (*describe project as 'history of X', or like or similar brief description*) using the accepted scholarly conventions of research, analysis and writing. The Historian will produce in the agreed timeframe a manuscript of approximately words on the above topic suitable for publication or other outcome as mutually agreed (in this agreement called 'the project').

2.2 The extent of the Project will include

Details of the project should include the extent of the work, including research, writing, oral history interviewing and transcribing, layout and design, editing, indexing and project management. Details should also include whether the final product will be a book, a report, a website or other product and in what format the final product will be presented to the commissioning agent, ie print-ready publication files or text and images for website designer etc.

3. TIMEFRAME

3.1 The project will commence on and will be completed by

3.2 The Historian must advise the Commissioning Agent in writing, as soon as practicable, if the Historian becomes aware of circumstances which are likely

to change the scope or the timeframe of the work required to complete the project.

4. FEES

- 4.1 The total remuneration (in this Agreement called the 'Amount') payable by the Commissioning Agent is \$....., (plus GST) and% will be paid in [.....] instalments after progress has been approved by the Steering Committee or its nominee.
- 4.2 Ten percent (10%) of the total Amount (\$.....) will be retained until completion of the Project (*submission of completed manuscript/report, oral history transcripts, exhibition material, etc.*) to the satisfaction of the Steering Committee or its nominee.

Alternatively a payment schedule could be appended to the agreement.

Details of other expenses related to the completion of the project, or out-of-pocket expenses, likely to be incurred by the historian which are to be covered by the commissioning agent, should be included in clause 6 below.

5. RIGHTS GRANTED

- 5.1 The historian will, for a period of two years from the completion of the manuscript, offer the manuscript for publication only to the publisher selected by the Commissioning Agent.
- 5.2 Neither party will assign its rights or obligations under the Agreement without consent of the other party.

6. OBLIGATIONS OF THE COMMISSIONING AGENT

- 6.1 The commissioning agent will make payments of the Amounts as may fall due under the terms of this Agreement.
- 6.2 The Commissioning Agent will give the Historian access to all material relevant to the Project.
- 6.3 Where appropriate, the Commissioning Agent will provide the Historian with administrative assistance (which will include, but not be limited to, liaising with the general community and arranging interviews).
- 6.4 The Commissioning Agent will bear the costs of project management and publication of the Project (including but not be limited to illustrations, art work, maps, indexing, editing and printing).
- 6.5 The Commissioning Agent will reimburse, on the production of tax invoices, all reasonable expenses incurred by the Historian for travel, photocopying, telephone calls, postage and other incidentals relevant to the Project.

- 6.6 The Commissioning Agent will reimburse the Historian for expenses (including travel expenses and transcription fees) associated with oral history interviews, and, if required, provide an interview area.
- 6.7 The Historian's name will appear on the publication resulting from the Project.
- 6.8 The Commissioning Agent will consult with the Historian on the final format and design of the publication resulting from the Project.
- 6.9 No subsequent revision or alteration of the final work resulting from the Project will be made without the permission of the Historian.

7. OBLIGATIONS OF THE HISTORIAN

- 7.1 The Historian will carry out the Project promptly and efficiently and with a degree of care, diligence, and skill normally exercised by members of the Historians' profession in performing services of a similar nature.
- 7.2 The Project will be completed and the final manuscript submitted to the Steering Committee or its nominee in the agreed format by date or by such later date as the Commissioning Agent may agree. This will be a final copy, suitable for presentation to a publisher.
- 7.3 The Historian will, at his or her own cost, rectify any work undertaken in the performance or purported performance of his or her duties under this Agreement which are, after discussion, negotiation and mutual agreement, considered by the Historian and the Commissioning Agent to be defective, faulty, or unsatisfactory.
- 7.4 The Historian will ensure that all records and other material referred to in the Project are identified in either footnotes or endnotes and a bibliography, or as appropriate for the style of writing.
- 7.5 In respect of any part of the Project of which copyright is not vested in the Historian, the Historian will obtain the necessary written assignments from the owners of the respective Copyrights and will supply to the Commissioning Agent the originals of such documents.
- 7.6 The Historian will collect oral history material by interviewing and recording as appropriate according to the ethical guidelines of Oral History Australia. These guidelines include the drawing up of an appropriate 'Conditions of Use' or 'Consent' form which has been approved by the Commissioning Agent and signed by the interviewee.
- 7.7 The Historian will be responsible for gaining formal permission from all interviewees, on the Consent form agreed by the Commissioning Agent for the recordings and/or transcripts of their interviews and all audio files used for oral history interviews will be submitted to the Commissioning Agent as required and/or deposited in an appropriate library or local studies collection.

- 7.8 The Historian will be responsible for gaining the written permission of interviewees to include all or part of the oral history material in the final Project.
- 7.9 The Historian will be responsible for selecting photographs and other illustrative material, writing image captions, and ensuring that all image sources are appropriately identified and that written consent for their use has been obtained.
- 7.10 The final work will be presented to the Commissioning Agent in an electronic format (unless otherwise requested) as specified by the Commissioning Agent.
- 7.11 The Commissioning Agent may retain, print, reproduce and copy the final work for its own internal purposes with appropriate acknowledgement of the Historian.
- 7.12 The Historian will not cite or quote from internal agency documents which are not in the public domain without the prior consent of the Commissioning Agent.
- 7.13 Should any amendment or alteration of the Project become necessary by virtue of the printing or production of the Project, the Historian will, if a request in writing is made by the Commissioning Agent, amend or alter the work accordingly. The costs and expenses of such amendments or alterations will be the subject of agreement between the two parties or, in the absence of agreement, will be determined by arbitration.
- 7.14 The Historian will effect and maintain Public Liability Insurance, Professional Indemnity Insurance and [*stipulate any other requirement*] as required by the Commissioning Agent for the duration of the Project, and provide copies of the policies on the request of the Commissioning Agent.

8. PROJECT STEERING COMMITTEE

- 8.1 To facilitate the Project, the Commissioning Agent may select and appoint a History Project Steering Committee, which will be the liaison body between the Historian and the Commissioning Agent.
- 8.2 The Steering Committee is the representative of the Commissioning Agent and is responsible for obligations on the part of the Commissioning Agent in this agreement, including liaison with the Historian; timely reading and commenting on the project outline, project plan, draft content and final content; and decisions on oral history participants.
- 8.3 The Commissioning Agent and/or the Steering Committee will appoint an individual to liaise with the Historian on a day-to-day basis. The nominee for this project is
- 8.4 The Historian will report regularly to the nominee or the Steering Committee at times mutually agreed by the Steering Committee and the Historian

incorporating such reasonable detail as the Steering Committee requires on work performed to date.

- 8.5 The Historian will present progressive drafts of the Project to the Steering Committee at times mutually agreed by the Steering Committee and the Historian.
- 8.6 The purpose and description of the work as described under Item 2 above will not be altered in any way by any changes that may take place in the membership of the Steering Committee during the course of the Project, or by other nominees or representatives of the Commissioning Agent.

9. TERMINATION OF AGREEMENT

- 9.1 Major illness or physical incapacity of the Historian to complete the Project will be a ground for terminating the agreement without liability for breach of contract.
- 9.2 Should progress of the work be considered unsatisfactory, the Steering Committee may recommend and effect the termination of the Agreement and the appointment of another Historian to complete the work. Grounds for termination will be:
- 9.2.1 Repeated failure to meet agreed submission dates (or as reasonably extended) provided that such failure not be the fault of the Commissioning Agent, Steering Committee or its nominee;
- 9.2.2 Failure to undertake work agreed to on appointment as outlined in Section 2.2 (or subsequently agreed to by all parties) provided that such failure not be the fault of the Commissioning Agent, Steering Committee or its nominee;

10. DISPUTE RESOLUTION

- 10.1 In the event of a dispute between the Historian and the Commissioning Agent, that could not be firstly settled by the two parties, independent mediation may be sought such as from the Professional Historians Association (*state or territory*), with each party to bear its own costs. The parties will use their best endeavours to behave reasonably and to reach a mutually acceptable solution to this Agreement.

11. NOTICES

- 11.1 Any notices required or permitted to be given under this Agreement will be in writing and delivered by hand or sent by certified or registered post from one party to the other to the address specified above or to the last address as notified by one party to the other.

12. GOVERNING LAW

12.1 This Agreement is governed by and shall be interpreted in accordance with the law of the *State or Territory of* and the Commonwealth of Australia as applicable.

13. ENTIRE AGREEMENT

13.1 This Agreement constitutes the entire understanding between the parties and no waiver or modification of any provision will be valid unless in writing and signed by both parties.

Dated this: day of 2.....
day month year

Signed:

.....
Commissioning Agent (Print Name)

In the presence of

.....
Witness (Print Name)

Signed:

.....
Historian (Print Name)

In the presence of

.....
Witness (Print Name)