

Human Resources Management:

Contracting with Independent Contractors

CHRC Cultural
Human Resources
Council

CRHSC Conseil
des ressources humaines
du secteur culturel

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Introduction

Hiring independent artists and other contractors, on a regular or occasional basis, is a common activity in most cultural organizations. It may involve bringing on board:

- actors, dancers, musicians or other performing artists for a particular project — from a one-night performance to a six-month-or-longer contract
- a choreographer or director to stage a particular piece of work
- a consultant to do an organizational review or build a business plan for an organization
- make-up professionals to work on a film
- extra stage hands for a major production

or any other work arrangement that has a clear beginning and an end — either time-related or defined by the completion of a piece of work. *It is important to understand the differences between an employee and an independent contractor — see details on this on page 14.*

The purpose of this guide is to help you to draft and negotiate effective contracts with independent contractors that enable you to get the full benefit of this valuable working relationship, while protecting your organization from potential problems that might arise in the course of the contract.

Two important points to remember in reading this guide:

1. **Because contracts are intended to be legally binding, they usually contain legal “jargon” which many (if not most!) people find somewhat tedious to read.**

Unfortunately that language is unavoidable if you wish to have sound, professional contracts that are defensible in a court of law should that become necessary.

The law does not distinguish between, or make allowances for, the nature of any work sector when interpreting contracts, be it financial, manufacturing, food, cultural or any other sector.

Hence you will find that, of necessity, this guide contains a lot of legal terminology which is necessary to protect your cultural organization — even when you are contracting with independent contractors who are not familiar with it.

However, contracts do not have to be long and cumbersome as long as you follow certain guidelines that we will outline through this guide.

2. **This guide is not intended to enable you to create contracts that are assured to be legally-sound.** Contract legislation changes from time to time, and the issue of contract interpretation can be a minefield of problems. This guide is intended purely to provide you with guidelines and examples to help you in the contracting and negotiating process with independent contractors.

If you are in any doubt about the terms of a contract that you are drafting or reviewing, we recommend that you consult with a lawyer who specializes in contract law.

Benefits of Contracts

Contracts don't have to be complicated or hard to understand, and there are many benefits to having a contract between your organization and the independent contractors with whom you work:

- Contracts define the rights and responsibilities of the independent contractor and the organization, and clarify their relationship. Simply drafting and discussing the terms of a contract helps both the worker and the organization to address all key aspects of the relationship and ensure that they are provided for.
- A contract, if well written, ensures that the interests of both the independent contractor and the organization are addressed and protected. As with any profession, cultural workers' professional practices are subject to a range of laws governing their practice. These may include, for example, agreements with managers and agents, copyright ownership, owners of performance venues and producers.
- Both the independent contractor and the organization are more likely to abide by the terms of the contract when they have signed a document that clearly lays out those terms.
- Although verbal agreements can be legally binding, well-written contracts leave much less latitude for misunderstandings or different interpretations. With verbal agreements, there is greater risk that the independent contractor will believe that they have agreed to something that is totally at odds with your understanding of the agreement, or may even think they have not entered into an agreement at all.

Is a verbal contract good enough?

It is a myth that all contracts need to be in writing to be legally binding. Although this is true for some types of agreements (eg — assignment of copyright), verbal contracts and simple letters of agreement can be legally binding. However, as stated above, a written contract will give you greater peace of mind about the possibility of future misunderstandings.

We strongly recommend that you have a written contract for any undertaking where you are exchanging money (or an equivalent) for a product or service.

Some agreements between independent contractors and organizations may be concluded on the basis that the parties have known each other for many years and trust each other to carry out their responsibilities to each other fairly and honestly. On that basis, people often query the need to have their "deal" reduced to a formal written agreement. In this situation, it is advisable for both parties to at least weigh the advantages and disadvantages of the different methods of contracting.

What Constitutes a Contract?

To be clear and useful, any contract will contain at least the following components:

An offer of services

- An independent contractor offers services to an organization (or another independent artist). These services may be contracted for a specific period of time (eg — a performance season) or to produce a specific result (eg — choreographing a ballet). Both parties need to be careful about any conditions that are attached to an offer or the acceptance of the offer. For example if payment is conditional upon the organization liking a finished work (eg — a new play), they may not be legally bound to pay the playwright if they decide they don't like the end result.

Intention to contract

- To be legally binding, a clear intention to enter into a contract must be evident with any offer of services and acceptance of that offer. Confusion can arise here if, for example, the parties are using a simple letter of agreement, and there is continued back-and-forth negotiating in writing or e-mails. One party may believe that the most recent letter/e-mail is the final agreement, whereas the other party may believe that they are still negotiating. It is essential that both parties declare when the negotiations have ended and that they are committing legally to the provisions in the letter of agreement.

Consideration

- A “consideration” makes the contract legally binding. Consideration usually involves the exchange of promises — eg. an actor's promise to perform in a play in consideration of promise of being paid by the theatre company, or an artist's promise to exhibit her paintings in consideration of a gallery's promise to pay all expenses for the show.

Offer acceptance

- The independent contractor accepts the offer or offers an alternative agreement. Any alternative offer may lead to negotiation until the contract provisions are agreed. Once the independent contractor has accepted the offer in writing and communicated it to the organization, the offer cannot be withdrawn.

What Do You Want from a Contract?

Your goal when drafting a contract is to create a clear, concise, and complete description of the agreement. That's it — there is no need to include unnecessary legal jargon or irrelevant clauses.

However, “clear, concise, and complete” is of course easier said than done — so let's take a look at what that means:

Clarity

Clarity is at the heart of any well-written contract. As lawyers say, “the terms of an agreement must be sufficiently definite and certain in order to be legally enforceable.”

Remember, it's not enough for the parties to understand the agreement in their own minds. The document's meaning must be clear. An outsider should be able to understand the agreement by reading the contract. Otherwise, how will a judge be able to enforce it, should that become necessary?

You may be tempted to take shortcuts without writing out the finer points, especially when both sides believe they understand the deal. You want to hire an actor to perform in a summer repertory theatre for 4 months — what could be simpler? But clarity is important from the perspective of enforcement. If things go wrong later — such as the actor is offered lesser parts from what he expected, it's always best to have a definitive written description to which the parties can refer.

Make sure that both your responsibilities and the other's obligations are carefully and clearly described. Ambiguous language in a contract can lead to misunderstandings, delays, frustration, and litigation.

Conciseness

You often don't need a 10-page contract to get the job done.

The trick is making sure that you have sufficiently described what you expect. Shorter, concise contracts are usually preferable — get to the essential points right away.

Completeness

Many contracts fail because they are incomplete. That is, you may fail to put in some important terms or expectations. Some people assume that the terms are understood and don't need to be spelled out. Wrong! Make sure that if you are relying on something important when entering into a contract (such as a promise or guarantee from the other side) that this information is actually included in the draft.

When drafting your contract be sure to write down exactly what you mean and include all the relevant points including:

- An accurate identification of the organization and the independent contractor
- The professional fees, including the amount paid, and when and how they will be paid
- A thorough description of the products/services being contracted for.

Contract Drafting Tips

Following are some guidelines to help you to draft contracts that work to the benefit of your organization:

Be clear in your own mind about what you want

Take the time to map out what you want out of the contract and how you intend to achieve that result. Also, consider what you are and are not willing to pay or give up.

Take charge of the draft

Wherever possible — and it is normally the case when cultural organizations are hiring independent contractors — you want to write the draft contract yourself. Doing so can give you a tremendous advantage in shaping any negotiations and the final agreement. Writing the contract allows you to:

- Define the issues to be addressed in the contract
- Set the tone of the negotiations with the language of your choice
- Potentially limit the issues raised by the other party, since he/she may respond to the points raised in your draft before raising their own points
- Structure the contract based on your own wish list, with payment and delivery terms most beneficial to you
- Avoid the hassle of renegotiating the other party's draft, which may be more time consuming than preparing your own first draft

Preparing the first draft of a contract can be a lot of work, but it is worth the effort.

Look at sample contracts and forms

The best way to start drafting a contract is to look at several sample forms that may be similar to your situation. If the sample forms are good, they will alert you to issues that you may not have even thought about, and they can provide you with the necessary and appropriate language for your contract.

NOTE

APPENDICES I – V show some examples of common contract terms, and sample contracts that have been used in cultural agreements. There is no guarantee that these contracts will be suitable or legally-binding for your organization in their current form. They are shown purely as samples and are not intended to be adopted — with the exact same content — as formats to be used in other cultural organizations. It is essential that you customize any contract format and provisions to suit your own purposes.

Contract forms are available on the Web (usually at a cost) and can provide you with base content that can be adapted for your purposes.

Don't rely totally on a "standard" form or sample contract

Although it is useful to review other cultural organizations' contracts, don't make the mistake of being too reliant on someone else's form. Often the form may not be applicable to your situation, may be drafted for the benefit of the other party (or have been written by the other party), or may simply not be a well-drafted contract. Most forms are simply a starting place and need to be revised to reflect your particular transaction.

Make Your Own Standard Form

If you plan to enter into the same type of contract over and over, then take the time to make your own standard form for that type of contract. This way you can present the other party with your ideal contract terms, and then negotiate from this strong position.

If you are just getting started it can be tough to get a sense of what you should put in your standard form. The other party definitely isn't going to tell you what you should be asking for. Call your contacts in other cultural organizations who are contracting similar services and ask if they would share sample contracts (with private/proprietary details deleted) written from their organization's perspective.

When you are starting out, we suggest that you consider engaging a lawyer to draft an initial standard form contract for you — ideally a lawyer who has experience in the cultural sector. A lawyer usually reviews many more contracts than you and may have a good sense of any developments in cultural contracts. Also be sure that your lawyer has direct experience working on behalf of cultural organizations, rather than only for independent contractors.

Here are some tips for drafting your own standard form:

- Don't use the other party's contract terms as a model for your standard form. They have not been up nights writing contracts with your best interests at heart.

- Avoid words like “whereas”, “aforementioned”, “notwithstanding” and other legalese terms that tend to be ambiguous.
- Don’t be afraid to ask for too much in the standard form, within reason. You can always revise contentious contract terms at the request of the independent contractor.
- Stay within the boundaries of reasonable behavior. Contentious doesn’t mean offensive. If weekly payment terms are the standard in your field, sending out a standard form with monthly payment terms will only create ill will and slow negotiations. And you’ll feel silly when you have to admit that your “standard form” isn’t the standard at all.
- Make your standard form look as official as possible, by formatting it in an attractive, balanced, easy-to-read way.
- When signing the agreement, be sure that you and the independent contractor initial every page where changes have been made.
- Get it proofread, preferably by someone who is familiar with independent contractors’ contracts.
- Watch out for repetition.
- Organize the contract by headings and number each clause and sub-clause so that the different items are easier to reference.

Put your wish list of reasonable terms in your standard form, and let the other party tell you what it is not willing to do.

Look ahead

Work out all the details of the contract — think about everything involved in the transaction that needs to go into the contract. Try to anticipate problem areas that may crop up later on.

If the independent contractor is producing piece of work — written, audio, or visual — for which you wish the organization to retain copyright, be sure to spell this out in the contract. A sample of an appropriate copyright clause is shown on page 28 and in APPENDIX III: Sample Consultant Contract.

Be aware of legal requirements

Certain types of provisions in a contract may be questionable legally, such as non-competition clauses in certain instances. Some provisions, such as limitations of liability, may need to be boldfaced or in all capital letters to be effective. A good contract lawyer can point these out to you.

Use attachments

Sometimes your best bet is to use attachments or addendums to a contract. That way, you can use your base contract over and over, and all the details that are specific to the transaction, such as a description of the specific services being provided, or the method of payment, can be put in an attachment. Just make sure to number or letter each attachment, and be sure to refer to each attachment where appropriate in the main contract.

NOTE

When you are engaging an independent contractor who belongs to a union (eg — an actor who is a member of Actors' Equity), we suggest that you contact the union to find out if they have standard contract terms/provisions that they require to be included in any contract to be signed by their members.

What Are Boilerplate Provisions?

“Boilerplate provisions” is a term commonly used to describe standard contract terms usually found at the end of the contract which are important but which do not reflect the essence of the deal. Examples of “boilerplate” terms include provisions describing notice of terminating a contract, governing law, payment of lawyers’ fees, liability, copyright, etc. Sometimes they are referred to as the “Miscellaneous” provisions. Because they are at the end, people sometimes don't feel they are important and don't read or pay any attention to them. Big mistake!

Boilerplate provisions are important because they affect your legal rights under the contract as much as all other clauses. The purpose of boilerplate provisions is to save the parties and drafters of contracts time with commonly used and understood language.

Make sure to read through all sections of any contract you are about to sign, even if you are using a standard contract format that you have used before. Ask questions and make comments. Boilerplate provisions are essential to the effective enforcement of your rights under the contract and in some instances may grant or take away important rights.

Isn't It All Standard?

Absolutely not! Boilerplate language is used to save time and it does have commonly understood meanings, but it is nevertheless important to understand that meaning and the impact of these provisions in order to choose which ones are important for your particular contract. Although boilerplate provisions may seem “standard,” they can still be tailored to meet your specific contracting requirements. Every clause of every contract may be negotiated — even the boilerplate provisions.

Do I Really Need All That Boilerplate?

No, you don't need every single boilerplate provision in every contract. Aside from the key provisions, whether a particular boilerplate provision is used in your contract will depend upon the type of transaction documented in your contract.

Common Contract Drafting Mistakes

There are numerous ways to make mistakes when drafting a contract. Here are common mistakes that organizations make and that you should avoid. If you feel insecure heading into the contract drafting process, consult a lawyer. The repercussions of “getting it wrong” can be very expensive — both monetarily and in terms of your professional reputation in the cultural community.

Not Writing the First Draft

As stated earlier, you always want to draft the contract whenever possible. Doing so can give you a tremendous advantage in any ensuing negotiations. It allows you to structure the agreement initially, based on your own wish list of terms most beneficial to you.

Moreover, from a legal cost perspective, drafting the first draft often is more cost-effective than hiring a lawyer to advise you on how to respond to the contractor’s one-sided draft.

Not Including Explicit Payment Terms

Almost everyone understands that payment terms are an essential part of an agreement and should not be omitted or left to be decided until after the agreement is signed.

Good drafting requires that the payment terms be clearly laid out in the agreement. Avoid ambiguity as to what the amount owed will be, or provide a clear formula for determining the amount owed. Put terms that explicitly state how much is owed and when, as well as the form of payment. Make sure to allocate who pays GST and any applicable provincial taxes.

Not Including All Deal Terms in the Agreement

All “deal terms” should be included in the agreement. This means that you should not only include all the legal “boilerplate” provisions (see page 12), but also all the key details that you discussed when entering into the agreement.

These may include statements relating to:

- What did the other person agree that he/she would do for your organization and what did you agree to do in return?
- When did you both agree that this would happen?
- Is there a critical deadline for products or services to be delivered (eg — a new ballet, book, works for a planned exhibition, etc.)?
- Was there some key event or condition that was to happen before you became fully obligated?

The answers to all of these questions can be included within the agreement so that if at any point the contract falls apart, it can be shown that you relied on specific answers to these questions when you signed the contract.

Making Assumptions

Don't make any assumptions when drafting the agreement. Spell out all the obligations and assumptions under the agreement within the agreement itself — better to have too much detail than to leave out potentially-critical points.

For example:

- If you are contracting with a specialist performer who requires certain props or equipment for their particular act, do not assume that they will arrive with all the necessary items. Spell out explicitly what they need to provide and what you will provide.
- Don't assume the other party will know that if they are late in delivering a product (eg — a major new production) that you will lose thousands of dollars. Include a clause that specifies penalties that may/will apply if a deadline is not met.
- If a touring theatre company will be playing in several locations, make sure all details of expenses payable (travel, hotel, meals, incidentals) are clearly laid out in the contract.

Independent Contractor or Employee?

Anyone who performs a service is an “**employee**” if the one for whom services are performed — ie — the cultural organization — can control what will be done and how it will be done. This is true even when you give the worker quite a bit of freedom of action. What matters is that you have the legal right to control the method of the services — the how, when, and where — rather than just the results.

Whether an individual is an employee of your organization or an independent contractor has major tax implications, both for your organization and the individual. If you are not aware of this, the government may categorize someone as an employee that you believe you have engaged as an **independent contractor**.

Broadly speaking, an individual is considered to be an employee when he or she:

- maintains a continuous relationship with an employer
- is subject to the control of the employer, even if the employer chooses not to exercise the control
- performs the work personally and receives required training, tools, supplies, etc. from the employer
- works hours and locations that are assigned by the employer
- qualifies for company benefit plans

It is not a good idea to treat contractors the same as regular employees. By definition, a contractor is in a different relationship with the organization and it is important to set boundaries so that the difference in the relationship is maintained. Among other things, contractors do not receive employee benefits from the company, like health and disability insurance, and they pay their own taxes.

The Canada Revenue Agency takes a strong stand on misclassification of workers as independent contractors when they are really employees and frequently imposes back taxes, penalties, and interest when workers are improperly treated as independent. On the whole, to ensure independent contractor status, an employer must allow the contractor to have control over *the way the job is performed*.

There is often a fine line between whether a worker would be officially categorized as an independent contractor or an employee. If you are in any doubt about an individual’s status in your organization, refer to the “tests” on The Canada Revenue website to determine a worker’s employment status. The web address is http://www.cra-arc.gc.ca/E/pub/tg/rc4110/rc4110-e.html#P76_1700. There are rules for all provinces and territories excluding Quebec, and separate rules for Quebec.

Resolving Contract Disputes

Having a well-written contract will vastly reduce the likelihood of a dispute over the nature and expectations of your relationship with independent contractors. However, some contracts can be complicated and, even if you attend closely to the details and provisions, disputes can still arise. But that doesn't necessarily spell disaster — if handled properly, disputes can be resolved, often to the satisfaction of both your organization and the independent contractor.

Common reasons for disputes

Omissions

It is not uncommon, during the course of a contract, for issues to arise that were unforeseen by both parties when the contract was drafted and signed. They now need to be resolved.

Usually all that is required is that the parties negotiate and arrive at a mutual understanding to cover those areas overlooked in the original contract.

Interpretation

If the interpretation of the contract language is under dispute, you may need to consult a contract lawyer about the language in question. This most often happens when expert legal advice was not obtained during the drafting of the contract.

Breach of contract

A breach of contract, simply put, is when either the organization or the independent contractor states that the other party has failed to meet the terms of the contract. Often, if both parties dig in their heels, this can escalate to the point where neither party is then complying with his/her contractual obligations.

A breach of contract can occur in a variety of ways. One party may entirely refuse to carry out their obligations in an efficient manner. A party may signal their intention not to fulfill their responsibilities well before the time performance is due.

Generally, when one party breaches a contract, the other party is given a choice: they may choose to end the contract and sue for damages or they may elect to treat the contract as in force and attempt to hold the defaulting party to its obligations.

Resolving Breaches of Contract

The most common way to resolve breaches of contract is through payment for monetary damages. The amount of damages are usually related to the contract price and are normally assessed as of the date the loss was suffered, i.e., the date the contract was breached. The courts have developed a complicated body of law dealing with the quantification of damages. A key point is the requirement that the innocent party does his/her best to mitigate the damage done — ie — that he/she attempts to “cut his/her losses” by an appropriate course of action. Any failure to do is taken into account when damages are calculated.

An example: suppose an opera company has commissioned a stage designer to design a set for a new opera, including initial production of a model set. After viewing and discussing the model and the designer’s ideas, the company is not happy with the design and decides to terminate the designer’s contract. The designer may have a duty to mitigate the damages by altering the design to meet with opera company’s approval. Whether the designer took reasonable steps to do this could ultimately determine the amount of damages payable.

If an organization is particularly concerned about the possibility of breach of contract, it can include a dispute resolution clause outlining the procedures both parties agree to undertake should a dispute occur. This clause often outlines that the parties agree to employ a mutually agreed upon mediator to help resolve the dispute and failing that, the parties may either agree to proceed to binding arbitration with a mutually agreed upon arbitrator or to court proceedings. Often the mediator and/or the arbitrator are named in the contract. That way when disputes do arise, the naming of a mediator or arbitrator is one less thing the parties have to concern themselves with agreeing to.

If the independent contractor is a union member, we recommend that you contact the union to enquire about their dispute-resolution practices.

Conclusion

Cultural organizations and independent contractors tend to enter contract negotiations in the hope and expectation that all will go well. Their main interest and driving force is usually their passion for the art form and the sooner they can get on with that the better!

However, there is sometimes a natural tendency for optimism and excitement to take precedent over a realistic risk assessment of what could go wrong. It is here that lawyers have an often-undeserved reputation for paranoia, but they have experience of exactly how messy and costly employer/contractor contract disputes can be.

In the corporate world, a fairly expensive lawsuit over a contract dispute may not make much of a dent in corporate expenses. But in the cultural world where funds are often all too scarce, it is particularly important that cultural managers take great care to ensure that their organization's interests and finances are protected by solid, professional contractual agreements with the independent contractors whom they engage.

Appendix I: Common Contract Terms

There are a number of standard terms used to deal with issues that arise in all contractual relationships. On the following pages is a selection of these standard terms, followed by notes explaining their relevance. These terms are often included at the end of the contract and can be used in contracts regardless of the work sector in which they are used.

But as with any work sector, there are some arts-related terms that are particularly common and important to organizations and independent contractors in the cultural sector that are entering into contracts. These are also noted on the following pages.

These terms listed below are just examples. There are many commonly-used contractual terms used in addition to or instead of these. We strongly recommend that you consult a contract lawyer if you are developing a contract for the first time, and thereafter whenever you are in doubt as to the provisions of a contract that you are drafting or negotiating.

Examples of additional resources that you may find useful are:

Website: www.lawdepot.com

Sample forms that you can use to quickly and easily create your own legal contracts.

Book: “Standard Legal Forms & Agreements for Canadian Business”, 2nd edition

Author: Stephen Sanderson

ISBN: 1-55180-650-9

General Terms

Default and Cure

No party shall be in breach of this agreement unless given written notice by the other party stating the nature of the breach and the party receiving notice has failed to remedy the default within thirty days of receipt of the notice.

Arbitration

Any disputes arising from this agreement shall be settled by arbitration. This arbitration shall be governed by the laws of the province of [name of province]. One arbitrator shall be appointed to preside at this arbitration and shall be mutually consented to by both parties. Each party shall pay an equal share of the costs of the arbitration.

Dispute resolution

The parties agree to use their best efforts to settle any disagreement as to the meaning of this contract. If the parties are unable to settle a dispute, they agree to subject the disagreement to mediation using a single mediator acceptable to both parties. Costs of the mediation shall be borne equally by both parties.

If the mediation is unsuccessful, an aggrieved party shall be free to seek such redress as may be obtained in an action or application to a court of competent jurisdiction.

Assignment

Neither party shall assign its rights under this agreement without the prior written consent of the other party. However, the contractor retains the right to assign monies due to them under this agreement and to assign the copyright in the work without the consent of the other party.

Interpretation and Validity

The interpretation and validity of this agreement shall be governed by the laws of the province of [name of province] and the parties agree to attorn to the exclusive jurisdiction of the courts of _____.

Amendments

Amendments to this agreement shall be in writing and signed by the parties.

Severability

If any provision of this agreement is held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall in no way be affected or impaired.

Entirety

This agreement constitutes the entire agreement between the parties and supersedes all prior negotiations and understandings.

The parties further agree that there are no representations or warranties, collateral agreements or conditions which affect this Agreement other than as expressed herein.

Notice

Any notice required under this agreement shall be in writing and shall be delivered to the parties at the above-noted addresses. Notice given by hand shall be deemed to be given on the date of delivery. Notice given by mail shall be by prepaid registered mail and shall be deemed to be given on the fourth day after posting.

Force Majeure

If any party is unable to comply with the provisions of this agreement for reasons beyond that party's control, this agreement shall not terminate; it shall remain suspended until the cause ceases, unless this period exceeds six months from the date the cause began. After this six-month period, either party may terminate this agreement by giving 30 days notice, in writing, to the other party.

Culture-related Terms

Copyright

Artist retains copyright:

The parties agree that the Artist is the owner of the copyright in the work of art created by the Artist and all works incidental to the creation of the Artist's work of art.

Organization retains copyright:

The Consultant hereby assigns to _____ [organization] any copyright that he/she has in works (including audio-visual material, software, documents or reports) produced by him/her during the term of this Contract.

Incapacity

If the Artist dies or is unable to complete the work for any reason, the Artist or their personal representative shall retain all unfinished works of the Artist.

Moral Rights

Artist retains moral rights:

The Artist retains all moral rights in the work including the right to claim or disclaim authorship of the work and to prevent persons from altering the work in any way. No alteration to the work shall be made without first securing the Artist's written consent.

Organization retains moral rights:

The Artist waives in favor of _____ [organization] any moral rights that he/she may have in their commissioned works.

Artistic Control

Artistic control is the right to develop the work of art as the Artist considers artistically necessary; at all times it is retained by the Artist.

Appendix II: Sample Choreographer Contract

This Choreography Agreement (the “**Agreement**”) is made and entered into as of _____, 200____, by and between _____ (the “**Choreographer**”), and _____ (the “**Company**”), collectively, (the “**Parties**”).

Whereas the Company desires to retain the services of the Choreographer to develop certain original works for use by the Company (the “**Choreography**”) [to be included in _____, with scenario by _____ set to (recorded/live) music (of public domain), selected and assembled by the (Company/Choreographer) (the “**Project**”)]; and

[WHEREAS the Company and the Choreographer anticipate that the Project may, in the future, also be performed with a live orchestra, or recorded in film, television or their audiovisual versions;]

NOW, THEREFORE, in consideration of the mutual promises in this Agreement [and other valuable consideration], the receipt and adequacy of which are hereby acknowledged, the Parties agree to the following:

1. **Agreement Term**

The term of this Agreement begins on the date of this Agreement and continues through [(date)] (or) [the completion of the Project] (the “**Term**”). If the Company determines that additional services are required of the Choreographer after such date, the term of this Agreement shall be extended until such services have been rendered to the Company’s reasonable satisfaction, [provided that the Company gives the Choreographer adequate notice of the duration for which the Company requires the Term to be extended and the precise nature of the additional services required.]

2. **Responsibilities**

The job of Choreographer is (a) to create [the Choreography] (or) [original Choreography appropriate to the Project, to the specifications of the Company and under the direction of _____], [(b) to rehearse and instruct dancers in the performance of the Choreography, as requested by the Company, and] [(c) to perform such other services as the Company may reasonably request in connection with the Project].

3. Time Commitment

Choreographer shall commence creating Choreography for the Project not later than _____. Thereafter, Choreographer agrees to work such hours and at such times as the Company and the Choreographer shall mutually deem necessary to complete the Project [by _____, 200 ____] (or) [in a timely and professional manner].

4. Payment for Services Rendered

In consideration for the Choreography, Choreographer will receive [no monetary compensation other than royalties] (or) [a flat fee of \$_____ and royalties of \$ _____] or [compensation at the rate of \$ _____ per _____ (hour/day/week, or other unit of time)].

5. Terms of Payment

[The Choreographer shall be paid according to the Schedule of Payments set forth in Exhibit _____ attached to and included in this Agreement.]

(or)

[The Choreographer shall be paid \$_____ upon signing this Agreement and the remaining amount shall be due when the Choreographer completes the services provided for under this Agreement and submits an invoice to the Company, which the Company shall pay within _____ days.]

6. Expenses

[The Company shall be responsible for all expenses reasonably incurred in the course of the Choreographer's performance of [his/her] obligations under this Agreement. The Choreographer shall submit an itemized statement of such expenses, which the Company shall pay within _____ days from the date of each statement.]

(or)

[The Company shall reimburse the Choreographer for all reasonable travel and living expenses necessarily incurred by Choreographer in the performance of services under this Agreement while away from Choreographer's regular place of business. The Choreographer shall submit an itemized statement of such expenses, which the Company shall pay within _____ days from the date of each statement.]

(or)

[The Company shall reimburse the Choreographer for the following expenses, directly attributed to work under this Agreement: (enumerate expenses).]

7. Intellectual Property Rights

Choreographer shall be sole author and owner in perpetuity of copyright and all other right, title, and interest in any copyrightable or proprietary contributions to the [Choreography] (and/or) [Project] created by Choreographer hereunder. Any and all copyright registrations applied for in connection with the [Choreography] (or) [Project], whether by the Company or the Choreographer, and all credits and publicity for the [Choreography] (and/or) [Project], shall so indicate.

8. License

Without limiting the generality of the foregoing, the Choreographer also specifically grants the Company the non-exclusive right to use [his/her] contributions to the [Choreography] (and/or) [Project] in whole or in part, in any manner at anytime, in all media, now known or hereafter devised, throughout the world in perpetuity, and further grants the Company all consents and permissions, if any, necessary to enable the Company to make use of such contributions. The Company will not be required to make any payment in connection with the Company's use of such contributions other than payments specified [herein] (or) [in the _____ Agreement, attached hereto as Annex _____].

9. Releases

The Company shall obtain all necessary copyright permissions and privacy releases for materials [associated with the performance of the Choreography] (or) [included in the Project] at the Company's request. The Company shall indemnify the Choreographer against all claims and expenses, including reasonable attorney's fees, due to the Company's failure to obtain such permissions or releases.

10. Termination

With reasonable cause, either Party may terminate this Agreement effective immediately by giving written notice of termination for cause. Reasonable cause includes: (a) a material violation of the term of this Agreement; or (b) non-payment of the Choreographer's compensation (as provided in Section 4 above) following twenty days written demand for payment.

(or)

[Either Party may terminate this Agreement upon ____ days written notice.]

Upon termination the Choreographer shall be entitled to full payment for services rendered prior to the effective date of termination. The license granted herein at Section 8 shall not be valid upon early termination and until the Choreographer has been paid in full for the Choreography.

11. Liability

Neither Party to this Agreement shall be liable to the other for lost profits or special, incidental or consequential damages, whether in an action in contract or tort. Even if the Party had been advised by the other party of the possibility of such damages.

12. Assignment

The Company may not assign its rights and obligations under this Agreement without prior written consent of the Choreographer. Choreographer, however, acknowledges the unique nature of [his/her] services and agrees that, prior to [the termination of this Agreement] (or) [completion of the Project], [his/her] rights and obligations under this Agreement are not assignable without prior written consent of the Company.

13. Notices

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given if delivered by hand, by post or by fax as follows:

To the Choreographer:
(mailing address)

To the Company
Attention: _____
(mailing address)

The date of the notice shall be considered delivered (a) in the case of fax or hand delivery, on the date of actual delivery, or (b) in the case of delivery by Canada Post with postage prepaid to the recipient's address, three days after the postmark.

14. Entire Agreement

This Agreement sets out all of the terms agreed between the parties, and supersedes any prior oral or written promises, representations or undertakings made by either party with respect to the subject matter hereof. Any amendments or alterations of this Agreement must be made in writing and signed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

By: _____

[Company]

Name:

Title:

By: _____

[Choreographer]

Name:

Title:

Appendix III: Sample Consultant Contract

THIS AGREEMENT is made as of the _____ day of _____, 20_____.

BETWEEN:

THE XYZ PERFORMANCE ARTS COMPANY
(hereinafter referred to as “XYZ”)

AND:

(hereinafter referred to as the “Consultant”)

1. Engagement

XYZ hereby retains the Consultant and the Consultant hereby agrees to provide XYZ with consulting services as set forth in Appendix 1, for a term of * days/months, commencing on [date], in accordance with the terms and conditions of this Agreement.

2. Consulting Fee

2.1. XYZ shall pay to the Consultant the sum of CAD\$* a day for up to, but not exceeding, *days. Payment shall be made to the Consultant on a monthly basis upon receipt of an invoice detailing the number of days for which services were rendered. The invoice shall [or shall not] included any provincial sales tax and GST required to be charged to XYZ.

2.2. Reimbursement of the Consultant for any travel, accommodation and incidental expenses incurred in connection with the delivery of the services shall require the prior written approval of XYZ and shall be subject to the delivery to XYZ of receipts and invoices by the Consultant.

3. Confidential Information

The Consultant acknowledges and agrees that it shall not, during the term of this Agreement, or at anytime thereafter, directly or indirectly, disclose or grant access to XYZ’s confidential information to any third party, nor shall it use or exploit such information for any purpose other than those of XYZ.

4. Status of Parties

The Consultant's relationship with XYZ shall be that of an independent contractor and not that of an employee or agent. The Consultant shall be solely responsible for remitting such amounts as may be required by law to the Canada Customs and Revenue Agency, the Employment Insurance Commission, the Workers' Compensation Board and the Canada or Quebec Pension Plan.

5. Indemnification of XYZ

In the event that XYZ is required to make any payment to any third party in relation to this Agreement, the Consultant shall immediately indemnify and hold harmless XYZ against any and all claims, expenses, costs, losses or debts incurred by XYZ.

6. Copyright

The Consultant hereby assigns to XYZ any copyright that he/she has in works (including audio-visual material, software, documents or reports) produced by him/her during the term of this Contract.

7. Termination

7.1. This Agreement shall be terminated immediately in the event: a) that a party has failed to perform or otherwise breached any of its obligations hereunder, including where the Consultant has failed to provide the expertise identified in Appendix 1; b) of bankruptcy, insolvency or dissolution of either party; or c) that either party shall make a general assignment for the benefit of its creditors or suffer or permit the appointment of a receiver for its business or assets.

7.2. Upon the expiration or termination of this Agreement, the Consultant shall forthwith return to XYZ all of XYZ's confidential information, all copies thereof, any related material including without limitation, memoranda, notes and documents containing extracts or reproductions of proprietary information, all copies thereof, and all other property of XYZ in the Consultant's possession or control.

7.3. Upon the termination of this Agreement in accordance with the terms of clauses 6.1, the Consultant shall be paid all amounts due and owing hereunder to the date of termination. Upon the termination of this Agreement, all other amounts shall be null and void.

8. Agreement in English

The parties have required that this Agreement as well as any notice, document or proceedings relating hereof be written in English.

SIGNED, SEALED AND DELIVERED THIS *DAY OF

PER: SECRETARY-TREASURER
THE XYZ PERFORMANCE ARTS COMPANY

PER: CONSULTANT Name:

Appendix IV: Sample Researcher Contract

This Agreement, executed on March 12, 2007, by and between _____ with its principal office located at _____, hereinafter referred to in this Agreement as the Organization and _____, hereinafter referred to in this Agreement as Consultant.

1. Duties:

After planning, research, meetings and evaluation, develop a database of _____

2. Deliverables:

A final report will be issued in (month) 200- which will outline the _____

3. Term:

(month & day), (200- to month & day), 200- (any changes to the term will require initials by both parties on the original contract).

4. Reporting:

Consultant reports to the Organization's, Project Manager, _____. Weekly updates by e-mail will be sent to the Project Manager. Bi-weekly progress and question and answer telephone calls will occur between the Organization and the Consultant.

5. Working Conditions:

The Consultant will work from home and is responsible for computer, home phone, printer etc. On occasion the Consultant may visit the Organization to review resource materials or to use the telephone for conference call purposes and for meetings between herself and the Organization.

6. Expenses:

The Consultant is responsible for expenses and will keep a detailed list for the Organization for their records and reporting.

7. Compensation:

The total fee payable to the Consultant is \$_____ including expenses associated with the project (long distance, postage, photocopying etc.) The Consultant will issue an invoice to the Organization two weeks prior to instalment dates.

Payment will be received in three instalments:

1. (month & day), 200-
2. (month & day), 200-
3. (month & day), 200-

Total

The Consultant is responsible for:

The parties agree that Consultant will act as an independent Consultant in the performance of its duties under this contract and not as an employee of the Organization. Consultant shall be solely responsible for EI, CPP and Federal Income Tax remittances.

The parties have hereunto agreed on the (month & day), 200-

_____, Directeur général _____, Consultante
pour (*organisme*)

Appendix V: Sample Performer Contract

This contract for the personal services of musicians on the engagement below is made on the day of _____, between the undersigned: herein called "Organization" and the performer(s), herein called "Artist".

1. The Artist agrees to render to the purchaser personal services and the Organization agrees to hire the ARTIST on the following terms and conditions:

Place of engagement: _____ Telephone: _____

Address: _____

Date of engagement: _____ Showtime: _____

Set Length: _____ minute set(s) with _____ breaks.

Compensation: _____

Type of Engagement: _____

2. Production: _____

3. Age of admission: _____ 4. Venue capacity: _____ 5. Ticket price: _____

6. ORGANIZATION shall pay in cash on or before conclusion of engagement directly to ARTIST or ARTIST MANAGEMENT.

7. No performance shall be recorded, reproduced or transmitted in any matter without specific written permission from [ARTIST or ARTIST MANAGEMENT.

8. It is hereby agreed that the undersigned ARTIST is an independent contractor and not an employee of the undersigned ORGANIZATION.

9. The agreement of the ARTIST to perform is subject to proven prevention by sickness, accidents, riots, strikes, epidemics, acts of God, or any other legitimate condition beyond control. If this occurs deposits shall be returned in full to ORGANIZATION.

10. ORGANIZATION understands that he/she is obligated to pay for services of ARTIST unless it becomes impossible for the purchaser to provide a place of performance due to an act of God.

Acknowledgements

This module is one of several human resources management guides that have been developed by the Cultural Human Resources Council and the Cultural Careers Council Ontario for use in the cultural sector. It is part of a continuing series of HR management tools, many of which are already available and in circulation throughout the cultural sector.

Steering Committee

The partners gratefully acknowledge the contribution of the following individuals who have contributed as valued members of the Steering Committee:

- Susan Annis, Executive Director, Cultural Human Resources Council
- Bob Johnston, Executive Director, Cultural Careers Council of Ontario
- Jeanne LeSage, Director of Human Resources, Toronto International Film Festival Group
- Manon Turcotte, Project Manager, Cultural Human Resources Council

Consultant

Clark Reed is a management consultant who specializes in human resources development in both the not-for-profit and corporate sectors.

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