

# Records Management Consultants

by C. Raymond LaFever  
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## **Introduction**

Consultants can play a beneficial role in developing and improving an organization's archives or records management program. However, to ensure successful employment of a consultant, organizations must consider several issues. This publication provides advice and guidance for state agencies, local governments, and historical societies that are considering the employment of consultants, whether through grant funds or budgeted resources.

Consultants can be valuable human resources. As independent experts, they may have proficiency in specific areas (e.g., electronic records, micrographics, inventory, business process analysis, archival appraisal, archival conservation/preservation). They may provide information on the purchase of specialized equipment, determine problems and recommend solutions, or carry out projects that organizations cannot carry out by themselves. Consultants can also help promote the value of archives or records management to an organization's decision makers, or assist staff in gaining the expertise they need. Used for one-time, short-term tasks, consultants can provide staffing flexibility and just-in-time expertise.

However, an organization can become overly dependent on consultants for routine or continuing activities that should be carried out by its own staff. Such dependence does not benefit the organization and can become expensive. Local governments and other organizations that are eligible for New State Archives grants should be particularly cautious in engaging a consultant. For example, when a consultant repeatedly prepares grant applications and carries out one project after another, the organization will not develop its own internal expertise or its capacity to handle its management needs on a continuing basis. Thus, when an organization continually submits grant applications to the Local Government Records Management Improvement Fund (LGRMIF) or the Documentary Heritage Program (DHP) that are prepared by consultants, funding may be denied unless the organization's need for consultants is compelling or the justification for them extremely convincing.

## **Consultant or Contract Worker?**

Archives and records management consultants and contract workers both play a beneficial role in improving an organization's programs although their qualifications and uses will differ. Consultants are usually hired to supply expertise the organization lacks, while contract workers are usually hired to supplement existing staff expertise and to augment staff time allocated for particular projects. Contract workers can also be used to prepare records for microfilming projects, purge files of obsolete records, data-enter information for finding aids, or conduct records inventories.

Some projects use a combination of consultants and contract workers. For example, a consultant can guide an organization in planning a records inventory and assessing the results, but the organization might hire a contract worker to do the actual inventory. The cost of using a contract worker can be significantly less than the cost of a consultant.

There are several issues related to managing both consultants and contract workers. Most of the issues listed below relate to using a consultant; however, if you are using a contract worker, you should also clearly identify the project, interview candidates, and develop a contract. Such a contract will not be as detailed as a consultant contract, but it should clearly state your organization's and the contract worker's responsibilities. One additional issue to consider with contract workers is whether fringe benefits are required.

### **Considerations Before Hiring**

A good time to determine whether or not to hire a consultant can be during the development of an archives or records management program, or during the formal review of an established program. If a records inventory and a needs assessment are already in place and a program plan is in progress, particular concerns will have been identified.

You should hire a consultant only if you need specific expertise that your organization's employees do not have or cannot readily acquire. For example, an organization with a microfilm expert on staff will probably not need a consultant to plan and carry out a microfilm program. Keep in mind that much of the information your organization might need is readily available free of charge from the State Archives: technical assistance, regional workshops on archives and records management topics, a series of technical publications.

In assessing whether in-house expertise is sufficient for a particular task or initiative, an organization's managers should ask:

- Are there employees already on staff with archives or records management expertise who can address the issue?
- Can we designate enough employee time to help solve the problem?
- Have we consulted with State Archives staff?
- Have we sought assistance through State Archives leaflets and workshops and from other state agencies and professional organizations?
- Are there other organizations with similar concerns with whom we can share ideas?

### **Why Hire a Consultant?**

Though the answers to some of these questions might be "yes," you may still want to hire a consultant for the following reasons:

- A consultant can provide an objective view of the archives or records management system, identify problem areas, and recommend improvements.
- A consultant can organize and supervise studies of program weaknesses, analyze the data, and report on the findings.

- A consultant can explain and set in place standard archives and records management practices.
- A consultant can tackle specific tasks like microfilm quality control or preservation of archival records.
- As an outside expert, a consultant can help employees accept archives and records management initiatives.
- Hiring an outside professional can increase the likelihood that management will accept and implement recommendations.
- A consultant is often familiar with similar concerns in other locales and can bring that knowledge and experience to the project.
- Training staff as a component of the consultant's contract ensures self-sufficiency once the consultant leaves.

You need to balance the pros and cons before deciding whether or not a consultant is needed. For initiatives of limited scope and duration where missing technical expertise is needed and where funding is available, a consultant may be the answer. For continuing, routine work, however, where staff expertise is available or where it could and should be developed, organizations should use their own internal resources and seek advice and assistance from the Archives.

### **Writing Specifications**

Before hiring a consultant, you should clearly identify the problem you want the consultant to address. What are the issues under discussion? Have these issues been discussed with all appropriate staff in the organization? Have you contacted State Archives staff? Once these questions have been addressed, write a detailed job specification to ensure appropriate responses from the applicants. A good specification is clear, well developed, and logically arranged. A table of contents and task initiation and completion schedules will strengthen the document.

These items should be included in the job specification:

*Information on the organization*, including size, geography and population distribution, a brief administrative history, and an organizational chart.

*Goals of the project*. Discuss the project's mission, goals, and objectives.

*Consultant's responsibilities*. Outline what is expected from the consultant.

*Outcomes*. State what final outcomes are expected (needs assessment report, finding aid, conservation treatment proposal, etc.).

*Organization's responsibilities*. Outline what the organization will offer in terms of staff assistance, office space, equipment, etc.

*Consultant's qualifications*. List the educational background, archives and records management experience, and relevant skills required for the consultant. Define project dates to ensure

applicant's availability. Request references on professional performance. Make sure also to check the qualifications of any subcontractors the consultant may use.

*Payment.* State the specific fee or range of fees budgeted for the consultant's work on the project. Indicate whether your organization will pay for travel expenses or if such costs are the consultant's responsibility. Outline the payment schedule, designating that a substantial percentage of the fees will be paid only upon satisfactory completion of duties. If this is an LGRMIF or DHP grant project, check the current State Archives guidelines regarding acceptable fees for consultants.

*Response deadline.* State a deadline by which candidates must indicate interest in handling the project.

*Further information.* List those people in the organization who the consultant can contact for specification queries. Make sure the contacts have working knowledge of the archives and records management program and of the consultant's proposed duties.

## **Soliciting Proposals**

There are a number of methods for proposal solicitation:

*Use professional associations.* Advertise for a consultant through professional associations at their meetings, in their newsletters, or on their web sites. Such organizations include:

[Society of American Archivists](#) (SAA)

[National Association of Government Archives and Records Administrators](#) (NAGARA)

[American Institute for Conservation](#) (AIC)

[New York Association of Local Government Records Officers](#) (NYALGRO)

[Mid-Atlantic Regional Archives Conference](#) (MARAC)

Local archives associations

Also consider local chapters of [ARMA International](#) and the [Association for Image and Information Management](#) (AIIM)

Networking at meetings is also an effective way to solicit information about local consultants. Check your organization's regulations or consult with legal counsel to determine if there are other advertising requirements.

*Contact with other organizations.* Communicate with other organizations in the area. Share resource lists (including consultant names and references) and information on archives and records management projects.

*Contact with the New York State Archives.* The State Archives can refer you to other organizations that have completed similar projects using consultants. Archives staff can help determine the consultant skills required for a project but cannot recommend specific people.

## **Selecting a Consultant**

Once you have assembled a list of candidates, you can begin the selection process. Choosing a consultant involves several important steps:

*Planning the interview.* Interview each candidate as if the applicant were applying for a staff position within your organization. Decide which existing staff members will participate in the interview process. Develop standard questions for each candidate after prioritizing the required consultant skills (archives or records management, communications, analytical, etc.). Set limits for fees and other support. Do not be intimidated because you are talking with an "expert." You have your own expertise that the consultant does not. Using a consultant can be expensive—be very sure that you interview appropriate candidates for the problem you are trying to address.

*After the interview.* Evaluate the interview. Did the candidate exhibit strong archives and records management skills and experience? How closely did the candidate's experience relate to the project? Has his or her experience been extensive or short-term? Has it been with one employer or with several, and were any of those employers similar to your organization? What methods did the consultant employ to carry out previous projects, and were they effective and executed smoothly? Did the candidate communicate well and demonstrate professional concern and interest? Contact references but recognize that they will usually be positive. Telephone references are often more revealing than written ones.

## **The Contract**

After selecting a consultant, formalize the proposal by stating all requirements and objectives in a contract. This contract will serve to protect the organization and to eliminate possible misunderstandings. The agreement should carefully detail the responsibilities of both the consultant and the organization. Generally the consultant will recommend options and directions, conduct interviews, propose and develop plans, present them to the organization's executives or governing bodies, supervise project implementation, analyze results, and prepare written reports based upon these analyses. The organization's responsibilities may include gathering data, handling routine project tasks, and planning how to implement the recommendations. Always direct legal counsel to draft and execute the agreement.

A written contract should detail all project steps. It should incorporate the information that was contained in the job specification discussed above, including the payment schedule, as well as the following additional information:

*Project summary.* Outline the scope of the project and its goals and objectives. Include specific data, such as the number of cubic feet of records earmarked for inventory, microfilming, or appraisal; or the particular number and types of volumes that need deacidification or indexing; or the number of departments to be analyzed in a business process analysis. Indicate whether the

consultant will be responsible for training staff. This data will clarify the consultant's responsibilities and later serve as a benchmark for measuring project effectiveness.

*Work plan.* Outline the specific steps of the project and who will be responsible for each. Also note how many people will work on the project, the skills they require, and whether the organization or the consultant will provide this personnel. Keep in mind that products must be in a format compatible with the organization's operation; for example, don't produce microfilm if there are no reader/printers to view the film.

*Timeline.* Specify the beginning and ending dates of each project element on a timeline. Include meeting dates for introduction of the project to employees, for progress reports, and for interim and final written reports.

*Reporting.* Use the timeline above to specify when reports are due. Also specify what kind of information is expected in each report. See the section on "Reporting Requirements."

*Budget.* Include a payment schedule and delineate any support the organization will provide to the consultant during the project, such as office space, equipment (e.g., word processors, photocopiers), or support staff.

*Personnel.* If the consultant will be providing project support staff, make sure that the hours support staff will work are distinguished from those that technical or professional staff will work.

*Meeting the project requirements.* Provision must be made in the contract to address dissatisfaction with the progress of the project. This is why a timeline is so critical. It is a good way to measure progress.

*Voiding the contract.* The contract should include provisions for voiding it if the consultant or contract worker is not meeting expectations or project requirements.

*Ownership of completed work.* Explicitly state in the contract that the organization will own any work produced by the consultant. Otherwise, the creator (consultant) owns the copyright.

Direct legal counsel to draft statements on liability, insurance, equal employment opportunity, and other standard agreement language for the contract. Carefully review the contract with legal counsel prior to signing.

## **Reporting Requirements**

Consultant reports should serve as a measuring tool of the effectiveness of the consultant's performance and as a vehicle for improving an archives or records management program. The consultant should write and submit both budget reports and narrative project reports. Depending on the nature of the consultant's work, the following reports should be required:

Budget reports. These can be brief and may double as invoices. In addition to noting the amount due, budget reports should outline tasks completed and hours spent on each and by whom. They should also reflect the pay rate specified for the work in the contract.

Narrative Reports.

- *Status reports* should be concise and adhere to a specific time schedule. They should outline the project's progress as compared to the plan of work and timeline. An inventory project status report, for example, would list departments inventoried and the number of cubic feet of inventoried records. An archival appraisal project status report would list the records series already appraised and what series have been marked for permanent retention. An interim project report presented halfway through the project can summarize the project status and provide an opportunity to revise the plan of work.
- *A final project report* should be drafted in time to allow your organization to review and revise the document before finalizing it. This report may include the following:
  - *Introduction*: State the project's goals and intended results.
  - *Methodology*: Summarize how project tasks were completed. This section allows an organization to reconstruct the steps taken during the project and to implement recommendations effectively.
  - *Summary of results*: Summarize the project's benefits and report on the work accomplished. This section can also include estimates of cost avoidance; for example, how much cost was avoided by destruction of obsolete records and reuse of filing equipment during the project. The section should also reveal the methods used to arrive at conclusions; include specific data on results (e.g., cubic feet of records inventoried), outline any benefits realized from implementation of consultant recommendations, and detail plans for future action.
  - *Needs assessment* and recommendations: Discuss problems uncovered during the project and possible solutions for future consideration.
  - *Plan*: Recommend both short-term and long-term actions for the organization to take.

## **Managing the Consultant or Contract Worker**

The contract is your blueprint for managing both the project and the consultant or contract worker. Use it as such. Hold the consultant or worker to all of its provisions.

Steps in the successful management of your consultant or contract worker include:

- writing an agreement with specifications clearly laid out
- following up on any references supplied by the consultant or worker
- requiring regular contact throughout the project
- conducting regular meetings with the consultant or contract worker to gauge progress
- requiring written reports from the consultant or contract worker as the project progresses
- setting up a regular payment schedule (for consultants, do not make full payment until you are satisfied with the completed project)

- being prepared to cancel the contract if work is not progressing on schedule (be sure that your consultant or contract worker knows this)

What should you do if the project is not progressing? This is where writing good specifications and requiring regular meetings become critical. If it appears the project is not meeting your expectations, you must be prepared to void the contract and find another consultant or worker. You need to do this so you can quickly find someone who can complete the project on time.

Consultants and contract workers do not remove your responsibility for any project your organization might undertake. Although consultants can be an effective way to implement special projects, your organization must be prepared to devote time to the project. You cannot simply "dump" the entire project on a consultant, walk away, and in a year expect everything to be done to your satisfaction. Spending some time overseeing a project, and then ensuring that it is being carried out efficiently by means of regular consultant reports, meetings and contact, will be worth the effort as you move towards completing your archives and records management program.

### **For More Information and Assistance**

The New York State Archives provides records management and archival advisory services to state and local governments, including technical advice and assistance, publications, training, presentations, and consultations with state and local officials concerning records and information issues. The State Archives has records specialists in Albany and in regional offices throughout the state to provide advice. For further information, contact your Regional Advisory Officer or:

Government Records Services  
State Archives and Records Administration  
State Education Department  
Room 9A47 Cultural Education Center  
Albany, NY 12230  
(518) 474-6926  
[recmgmt@mail.nysed.gov](mailto:recmgmt@mail.nysed.gov)

### **Appendix A: Contract Worker Agreement**

*This example should not be construed as legal advice.*

Jane Doe, Party of the First Part and the Somename School District, Party of the Second Part hereby agree as follows:

1. The Party of the First Part agrees to perform the following records management services under the exclusive control of the Party of the Second Part:
  1. Index student and personnel files using Access database program.
  2. Strip files of obsolete records, which have met their legal retention.
  3. Arrange documents in chronological order so all files will be standardized.



4. Complete Records Destruction Authorization forms for legal destruction of obsolete records.
  5. Once Party of the Second Part approves Records Destruction forms, the Party of the First Part will shred the records.
  6. Develop numeric system for boxes and steel shelving at the Second Party's facility to aid in the retrieval of their documents.
- 
2. The Party of the First Part agrees to perform all work requested by the Party of the Second Part as provided herein, provided, however, that the Party of the First Part may refuse any work because of unavailability of space, equipment or labor, or any other good cause.
  3. It shall be the responsibility of the Party of the Second Part to deliver the records to the Party of the First Part at a time and place directed by the Party of the First Part.
  4. Upon completion of the work, the Party of the First Part shall inform the Party of the Second Part of said completion. The Party of the Second Part shall then, as soon as practicable, remove the records upon which the work was performed from the premises of the Party of the First Part.
  5. The Party of the First Part shall deliver to the Party of the Second Part, on a monthly basis, an invoice detailing the work performed, the amount of labor expended and the supplies and materials used.
  6. The Party of the Second Part shall pay the Party of the First Part, in full, no later than thirty (30) days after receipt of an invoice. Payments made later than thirty (30) days after receipt of an invoice shall be subject to a late charge of 1.5% per month.
  7. Charges for work performed by the Party of the First Part pursuant to this agreement shall be calculated on the basis of the cost of supplies and material plus an hourly charge for labor in the amount of Nineteen and Seventy-five Hundredths Dollars (\$19.75), and not to exceed the total amount of Five Thousand Dollars (\$5,000.00).
  8. The Party of the First Part shall defend, indemnify and hold harmless the Party of the Second Part, its agents, officers, employees and board members against any and all claims, suits, judgments, liabilities, losses and expenses, including, but not limited to, reasonable attorney's fees and costs of litigation, which result from any act or omission of the Party of the First Part.

The Party of the Second Part shall defend, indemnify and hold harmless the Party of the First Part, against any and all claims, suits, judgments, liabilities, losses and expenses, including, but not limited to, reasonable attorney's fees and costs of litigation, which result from any act or omission of the Party of the Second Part.

9. The Party of the First Part warrants to the Party of the Second Part that the work performed pursuant to this agreement shall be performed in a workmanlike manner.
10. This agreement constitutes the entire agreement between the parties and cannot be amended, altered, changed or modified except in writing duly executed by both parties hereto.

11. This agreement shall take effect upon execution by both parties and shall expire on June 30, 2001.
12. Either party shall terminate this agreement with 7 days written notice or at any time by a mutual written agreement between the parties. In the event this agreement is terminated, the Party of the First Part shall be compensated for all work performed prior to the date of termination.

Noname School District, Party of the First Part

BY: \_\_\_\_\_

On this \_\_\_\_\_ day of October, 2000, before me personally appeared Jane Doe, to me known and known to me to be the same person described in and who executed the foregoing instrument.

\_\_\_\_\_

Notary Public, State of New York  
Some County #  
Commission Expires March 14, 2002

Somename School District, Party of the Second Part

BY: \_\_\_\_\_

On this \_\_\_\_\_ day of November, 2000, before me personally appeared Frank Jones to me known and known by me to be the same person described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same and that he did so upon approval of the Somename School District.

\_\_\_\_\_

Notary Public, State of New York  
No.  
Qualified in Some County  
Commission Expires May 31, 2002

### **Appendix B: Contract Worker Agreement**

*This example should not be construed as legal advice.*

AGREEMENT BETWEEN  
TOWN OF HOPEFUL  
AND  
MARY SMITH

FOR  
INDEPENDENT CONTRACT SERVICES

The Town of Hopeful agrees to retain the services of Mary Smith as an independent contractor to complete a Microfilm Grant Project for the period of May 1, 1999 to June 30, 1999.

Mary Smith agrees to:

Perform all functions necessary to carry out and complete a microfilm grant program the Town of Hopeful is currently engaged in with a mandatory completion date of June 30, 1999. This work will include but is not limited to:

1. Perform initial records preparation such as bursting continuous computer printouts when necessary and removing paper clips and staples, for camera readiness.
2. Preparation of documents to accompany records to microfilm vendor, such as title targeting sheets, project information sheets, etc.
3. Boxing of documents for pick up by vendor.
4. Verify microfilm against original documents.
5. Preparation of Final Project Narrative and Final Expenditure Report.

Mary Smith recognizes and agrees that she is an independent contractor and not an employee of the Town of Hopeful.

All obligations and duties of the parties are as set forth in this agreement.

The Town of Hopeful agrees to:

Pay Mary Smith \$15.00 per hour on a contractual basis up to 120 hours. Any work that will exceed the 120 hours shall require prior Town Board approval before being performed.

Either party upon five (5) days written notice may cancel this agreement.

Request for payment must be made on a Town of Hopeful voucher with an invoice attached showing dates and hours worked. The voucher must be submitted for payment no later than the 22<sup>nd</sup> day of the month for which payment is expected.

\_\_\_\_\_ Dated: \_\_\_\_\_

Authorizing Official  
Town of Hopeful

\_\_\_\_\_ Dated \_\_\_\_\_

Mary Smith  
Independent Contractor

## Appendix C: Consultant Agreement

*This example should not be construed as legal advice.*

Agreement No.: X-XX-XXXXXX-X

Consulting and Web Site  
Development Agreement

Agreement between

XYZ Inc.  
Empire Building  
24 Broadway  
Old City, NY 22222  
Contractor

and

The Village of Neverland  
37 Main Street  
Neverland, NY 11111

AGREEMENT as of January 7,2001, between The Village of Neverland (hereinafter referred to as the "Client"), and XYZ, Inc., (hereinafter referred to as "XYZ"), with respect to the creation of certain designs (hereinafter referred to as the "Work"). Whereas, XYZ is a professional design firm of good standing; Whereas, Client wishes XYZ to create such Work; Now, therefore, in consideration of the foregoing premises and the mutual covenants hereinafter set forth and other valuable considerations, the parties hereto agree as follows:

1. DESCRIPTION. The Work will consist of training, consulting services, and additional development of the Neverland Web application currently hosted by XYZ, as described in Exhibit A hereof. The Client will accept delivery of an archival backup copy of the Work Domain (fully described herein) as the final Work.
2. WORK DOMAIN. XYZ will create a disk subdirectory (hereinafter referred to as the "Work Domain"), to be used as the root directory for objects (electronic files, scripts, templates and graphics) provided by the Client or resulting from the Work. The Work Domain, including all its contents will constitute the product of the Work. The Client will retain rights to the objects within the Work Domain as described more fully herein. In addition, if the Work specifies the development of one or more database files for the purpose of containing information or objects belonging to the Client, the Work Domain will encompass the contents and structure of the database(s) resulting from the Work.
3. ASSIGNMENT OF WORK. XYZ reserves the right to assign other designers or subcontractors to the Work to ensure quality and on-time completion.
4. PERIOD OF PERFORMANCE. The period of performance of the Agreement will be March 6, 2001 through May 31, 2001. XYZ will make every effort to meet agreed upon

due dates. The Client should be aware that failure to submit required information or materials might cause subsequent delays in the production. Client delays could result in significant delays in delivery of finished Work.

5. GRANT OF RIGHTS. Upon receipt of full payment, XYZ grants to the Client the following right in the products or publications contained within the Work Domain:
6.
  - a. For use as an information exchange medium between the Client and the general public.
  - b. For publication on the Internet for the purpose of conducting Client's business with the general public.
7. With respect to the usage shown above, the Client will have exclusive rights.
8. RESERVATION OF RIGHTS. All rights not expressly granted hereunder are reserved to XYZ, including but not limited to all rights in computer programs, scripts, and custom tags, and including but not limited to all rights in preliminary graphic sketches, comps or other preliminary materials.
9. ADDITIONAL USAGE. If Client wishes to make any additional uses of the Work, Client agrees to seek permission from XYZ and make such payments as are agreed to between the parties at that time.
10. PERMISSIONS AND RELEASES. The Client agrees to indemnify and hold harmless XYZ against any and all claims, costs, and expenses, including attorney's fees, due to materials included in the Work at the request of the Client for which no copyright permission or previous release was requested or uses which exceed the uses allowed pursuant to a permission or release.
11. PAYMENT. Payment will be advanced to XYZ in phases as follows. At the time of signing this Agreement, Client will pay \$2000.00, which is one third of the total fee. Upon delivery and approval of minute management application, Client will pay \$2000, a further third of the total fee. On the date of XYZ delivery of the final Work, Client will pay \$2000, the final third of the total fee. Late fees past thirty days will be charged at 1.5% per month.
12. FEES. Changes in Client input or direction or excessive changes will be charged at \$40.00 per hour. The Client will be entitled to one revision of general page layout and graphic theme concept, provided the request is made within three days of XYZ delivery of the first interactive demonstration; further revisions will be deemed an excessive change. Any change to the entity pool beyond Phase 4 of an IDEFIX modeling process will constitute an excessive change.
13. ADDITIONAL SERVICES. Any Work, which the Client wishes XYZ to create that is not specified in the Description Section of this agreement will be considered an additional service. Such Work will require a separate Agreement and payment separate from and above that specified in this Agreement.
14. TERMINATION FOR CONVENIENCE. This Agreement may be terminated at any time by either party giving the other party at least thirty (30) days written notice of termination. In the event that Work is postponed or cancelled at the request of the Client, XYZ will have the right to bill pro rata for Work completed through the date of that request, while reserving all rights under this Agreement. If additional payment is due, this will be payable within thirty days of the Client's notification to stop Work. In the event of

cancellation, the Client will also pay any expenses incurred by XYZ and XYZ will own all rights to the Work.

15. **FORCE MAJEURE.** XYZ will not be liable for any failure to perform as required by this Agreement to the extent such failure to perform is reasonably beyond XYZ's control, or by reason of any of the following: labor disturbances or labor disputes of any kind, accidents, failure of any governmental approval required for full performance, civil disorders or commotions, acts of aggression, floods, earthquakes, acts of God, energy or other conservation measures, explosion, failure of utilities, mechanical breakdowns, material shortages, disease or other such occurrences.
16. **REVISIONS.** XYZ will be given the first opportunity to make revisions requested by the Client. If the revisions are not due to any fault on the part of XYZ, such Work will be billed at the hourly rate listed above.
17. **EXPENSES.** Client agrees to reimburse XYZ for any of the following expenses necessary in completion of the Work, unless specifically included in Exhibit B (e.g. Fonts, Messengers, Proofs, Props, Research, Shipping, Software, Stock photography, Travel, Telephone).
18. **COPYRIGHT NOTICE.** Copyright notice in Client's name will be published with the Work.
19. **AUTHORSHIP CREDIT.** Unless requested otherwise by XYZ, authorship credit in the name of XYZ will accompany the Work, including when it is reproduced or relocated to another server. If any part of the finished Work is used as a contribution to a magazine or for a book, authorship credit will be given unless specified to the contrary in the preceding sentence.
20. **OWNERSHIP AND RETURN OF WORK.** The ownership of original artwork, including sketches and any other materials created in the process of making the finished Work, will remain with XYZ. All such artwork will be returned to XYZ by bonded messenger, airfreight or registered mail within thirty days of the Client's completing its use of the Work.
21. **ISP.** The Client understands that a separate contract with an Internet Service Provider (ISP) is required to publish the Work on the Internet. XYZ will not be under any obligation to supply ISP services under the terms of this Agreement, nor will the Client be required to purchase ISP services from XYZ at any time in the future as a result of this Agreement. The Client further understands that proprietary server capabilities may be required for the products or publications of the Work to function. (For example, a Cold Fusion Server may be required to enable database functions). If such requirements exist they may limit ISP choices available to the Client. Anticipated server requirements are detailed in Exhibit B herein.
22. **OPERABILITY.** The Client should be aware that products and publications within the Work Domain might not function independently of third party applications or software. Any anticipated dependencies are listed in Exhibit B herein. The Client assumes full responsibility for securing licensed copies of any software required to fully implement the Work.
23. **GOVERNING LAW.** This Agreement will be governed and construed in accordance with the laws of the State of New York.
24. **ASSIGNMENT.** Either party without the prior written consent of the other party will not assign this Agreement.

25. AGREEMENT MODIFICATION. Any agreement to change the terms of this Agreement in any way will be valid only if the change is made in writing and approved by mutual agreement of authorized representatives of the parties hereto.
26. CODE OF FAIR PRACTICE. The Client and XYZ agree to comply with the provisions of the Code of Fair Practice, a copy of which may be obtained from the Joint Ethics Committee, P.O. Box 179, Grand Central Station, New York, New York, 10017.
27. ARBITRATION. Any disputes in excess of \$1000 (or the maximum limit for small claims court) arising out of this Agreement shall be submitted to binding arbitration before the Joint Ethics Committee or a mutually agreed upon Arbitrator pursuant to the rules of the American Arbitration Association. The Arbitrator's award shall be final, and judgment may be entered in any court having jurisdiction thereof. The Client shall pay all arbitration and court costs, reasonable attorney's fees and legal interest on any award or judgment in favor of XYZ. XYZ shall pay all arbitration and court costs, reasonable attorney's fees and legal interest on any award or judgment in favor of the Client.
28. NOTICES. Notices, invoices, communications, and payments hereunder will be deemed made if given by registered or certified envelope, postage prepaid and addressed to the party to receive such notice, invoice, or communication at the address given below or such other address as may hereafter be designated by notice in writing.

If to the Client:

*Contractual/Technical*

John Smith  
37 Main Street  
Neverland, NY 11111  
Phone: xxx-xxx-xxx  
Fax: xxx-xxx-xxxx

If to XYZ:

*Payments*

Made payable to XYZ, Inc.  
Empire Building  
24 Broadway  
Old York, NY 22222  
Phone: xxx-xxx-xxxx  
Fax: xxx-xxx-xxxx

*Contractual/Technical*

Jane Brown, President/CEO  
Empire Building  
24 Broadway  
Old York, NY 22222  
Phone: xxx-xxx-xxxx  
Fax: xxx-xxx-xxxx  
Email: jbrown@xyz.net

