

STANDARD FORM CONSULTANCY CONTRACT

AGREEMENT BETWEEN

NATIONAL GALLERY OF AUSTRALIA

AND

KEN BEGG AND ASSOCIATES PTY LTD

in relation to Consultancy Services

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THIS AGREEMENT is made on 6 September 2000. between **THE NATIONAL GALLERY OF AUSTRALIA** (in this agreement called 'the Gallery ') of the one part

AND

Ken Begg and Associates Pty Ltd, 2 Lamington Street, Deakin ACT 2600, ABN 1807110048, (in this agreement called 'the Consultant') of the other part.

NOW IT IS HEREBY AGREED as follows:

1. Interpretation

1.1 In this Agreement:

- (a) 'Contract' means this agreement including Schedules 1 and 2;
- (b) 'Gallery Material' means any material provided by the Gallery to the Consultant for the purposes of this Contract including, but not limited to, documents, equipment, information and data stored by any means;
- (c) 'Consultancy Services' means the services described in Schedule 1;
- (d) 'Consultant' shall, where the context so admits, include the employees and subContractors and agents of the Consultant;
- (e) 'Contract Material' means all material brought or required to be brought into existence as part of, or for the purpose of performing the Consultancy Services but is not limited to documents, equipment, information and data stored by any means;
- (f) 'Gallery' means the Gallery as specified in Schedule 2;
- (g) 'Intellectual Property' includes all rights in copyright, patents, registered and unregistered trademarks, registered designs, trade secrets, know-how, rights in relation to circuit layouts and all other rights of intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967;
- (h) 'Project Officer' means the person for the time being holding, occupying or performing the duties of the office of the Gallery specified in Schedule 2 or any other office specified by the Director for the purposes of this paragraph;
- (i) 'Specified Personnel' means the personnel specified in Schedule 1 as personnel required to undertake the Consultancy Services or part of the work constituting the Consultancy Services;

- (j) 'Director' means the person for the time being holding, occupying or performing the duties of the office of Director of the Gallery and includes the Deputy Director of the Gallery and any other person designated in writing by that person to perform any function or to exercise any of the powers of the Director under this Contract.
- (k) 'GST' means Goods and Services Tax (*Goods and Services Tax Act 1999*)

1.2 Words importing a gender include any other gender.

1.3 Words in the singular number include the plural and words in the plural number include the singular.

1.4 Clause headings in this Contract are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer.

2. Provision of Consultancy Services

2.1 The Consultant shall perform the Consultancy Services (including the preparation of Contract Material) in accordance with Schedule 1 at a high standard.

2.2 The Consultant shall perform the Consultancy Services at the times and in the manner specified in Schedule 1.

3. Fees, Allowances and Assistance

3.1 The Gallery shall pay to the Consultant the fees and any allowances, meet costs and provide assistance, subject to clause 25 in relation to GST, as specified in Schedule 2.

3.2 If in the Director's opinion the Consultant has performed the Consultancy Services at an insufficient standard, or has failed to complete the Consultancy Services, the Gallery may withhold from making all or any part of any payment or payments claimed by the Consultant until the Consultancy Services have been completed by the Consultant to the Director's reasonable satisfaction.

3.3 Where Schedule 2 provides that the Consultant is to be paid by progressive instalments, the Gallery shall be entitled, without derogating from any other right it may have, to defer payment of an instalment until the Consultant has completed to the satisfaction of the Gallery that part of the Consultancy Services to which that instalment relates.

3.4 The Consultant shall submit invoices for payment in the manner specified in Schedule 1.

4. Entire Agreement and Variation

- 4.1 The Contract constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, either oral or written, between the parties with respect to the subject matter of this Contract.
- 4.2 No agreement or understanding varying or extending this Contract, including in particular the scope of the Consultancy Services in Schedule 1, shall be legally binding upon either party unless in writing and signed by both parties.

5. Subcontracting

- 5.1 The Consultant shall not, without the prior written approval of the Gallery, subcontract the performance of any part of the Consultancy Services. In giving written approval, the Gallery may impose such terms and conditions as it thinks fit.
- 5.2 The Consultant shall be fully responsible for the performance of the Consultancy Services notwithstanding that the Consultant has subcontracted the performance of any part of those Services.

5A. Payment of Workers Employed by Consultant

5A.1 Where under this Contract:

- (a) the work, or part of the work, is undertaken in NSW;
- (b) the Contract between the Gallery and the Consultant comes under NSW State jurisdiction; or
- (c) the contract for employment between Consultants and their employees is formed in NSW,

the Consultant shall, before any payment is made, provide the Gallery acting through the Gallery with:

- (a) a written statement under s.127(2) of the *Industrial Relations Act 1996 (NSW)* signed by the Consultant; or
- (b) if specified by the Gallery, a statutory declaration under s.127(2) of the *Industrial Relations Act 1996 (NSW)*, signed by the Consultant, or where the Consultant is a body corporate, by a representative of the Consultant authorised to sign on the body corporate's behalf,

verifying that all remuneration payable to employees engaged in carrying out work in relation to the Contract up to the date of the statement, have been paid by the Consultant at the time of the payment.

6. Specified Personnel

- 6.1 The Consultant shall ensure that the Specified Personnel undertake work in respect of the Consultancy Services in accordance with the terms of this Contract.
- 6.2 Where Specified Personnel are unable to undertake work in respect of the Consultancy Services, the Consultant shall notify the Gallery immediately. The Consultant shall, if so requested by the Gallery, provide replacement personnel acceptable to the Gallery at no additional charge and at the earliest opportunity.
- 6.3 The Gallery may, at its absolute discretion, give notice requiring the Consultant to remove personnel (including Specified Personnel) from work in respect of the Consultancy Services. The Consultant shall promptly arrange for the removal of such personnel from work in respect of the Consultancy Services and their replacement with personnel acceptable to the Gallery.
- 6.4 If the Consultant is unable to provide acceptable replacement personnel the Gallery may terminate this Contract in accordance with the provisions of Clause 18.

7. Project Officer

- 7.1 The Consultant shall liaise with and report to the Project Officer as reasonably required by the Project Officer during the period of this Contract.
- 7.2 The Consultant may nominate from time to time a person who has authority to receive and sign notices and written communications for the Consultant under this Contract and accept any request or direction in relation to the Consultancy Services.

8. Contract Material

- 8.1 Subject to any agreement to the contrary, the title to and Intellectual Property right in or in relation to Contract Material shall vest upon its creation in the Gallery and if requested by the Gallery so to do, the Consultant shall bring into existence, sign, execute or otherwise deal with any document which may be necessary to enable the vesting of such title or rights to the Gallery.
- 8.2 On the expiration or earlier termination of this Contract, the Consultant shall deliver to the Gallery all Contract Material and, if necessary, transfer any Intellectual Property to the Gallery.
- 8.3 The Consultant shall ensure that the Contract Material is used, copied, supplied or reproduced only for the purposes of this Contract.

9. Gallery Material

- 9.1 Gallery Material shall remain the property of the Gallery and, on the expiration or earlier termination of this Contract, the Consultant shall return to the Gallery all Gallery Material.
- 9.2 The Gallery will inform the Consultant of any Gallery Material produced for and on behalf of the Gallery in which third parties hold the copyright and of any conditions attaching to the use of that material because of that copyright. The Consultant shall use that material only in accordance with those conditions.
- 9.3 The Consultant shall be responsible for the safe keeping and maintenance of Gallery Material.

10. Disclosure of Information

- 10.1 The Consultant shall not, without the prior written approval of the Gallery, disclose to any person other than the Gallery, any Gallery Material or Contract Material. In giving written approval the Gallery may impose such terms and conditions as it thinks fit.
- 10.2 The Gallery may at any time require the Consultant to give and to arrange for its employees and subcontractors engaged in the performance of the Consultancy Services to give written undertakings, in a form prescribed by the Gallery, relating to the nondisclosure of confidential information. The Consultant shall promptly arrange for all such undertakings to be given.
- 10.3 The Consultant shall not, without the prior written authorisation of the Director, make any public statement on or concerning:
- (a) the fact that the Consultant has been engaged to provide the Consultancy Services; or
 - (b) the progress of the Consultancy Services or of the Gallery program in connection with which the Consultancy Services are required by the Gallery; or
 - (c) the findings or results produced or likely to be produced as a result of the Consultancy Services.
- 10.4 Where the Director authorises the making by or on behalf of the Consultant of a statement of the kind referred to in subclause 10.3, the Consultant its employees or agents shall make any such statement only in accordance with the authorisation given by the Director and not otherwise.

10A. Protection of Personal Information

10A.1 The Consultant agrees with respect to all activities related to or in connection with the performance of the Consultancy Services or in connection with this Contract:

- (a) to comply with the Information Privacy Principles set out in section 14 of the *Privacy Act 1988* which concern the security, use and disclosure of personal information to the extent that the content of those principles apply to the types of activities the Consultant is undertaking under this Contract, as if it were a record-keeper as defined in the *Privacy Act 1988*;
- (b) to cooperate with any reasonable demands or inquiries made by the Privacy Commissioner;
- (c) to ensure that any person who has an access level which would enable that person to obtain access to any personal information (as defined in the *Privacy Act 1988*) is made aware of, and undertakes in writing, to observe the Information Privacy Principles referred to in paragraph (a) above;
- (d) to comply in so far as is practicable with any policy guidelines laid down by the Gallery or issued by the Privacy Commissioner from time to time relating to the handling of personal information;
- (e) to comply as far as practicable with any reasonable direction of the Project Officer to observe any recommendation of the Privacy Commissioner relating to any acts or practices of the Consultant that the Privacy Commissioner considers breach the obligation in paragraph (a) above;
- (f) to indemnify the Gallery in respect of any loss, liability or expense suffered or incurred by the Gallery arising out of or in connection with a breach of the obligations of the Consultant under this clause or any misuse of personal information by the Consultant or any disclosure by the Consultant in breach of an obligation of confidence whether arising under the *Privacy Act 1988* or otherwise; and
- (g) ensure that any record (as defined in the *Privacy Act 1988*) containing personal information provided to the Consultant pursuant to this Contract shall, at the expiration or earlier termination of the Contract, be either returned to the Gallery or deleted or destroyed in the presence of a person duly authorised by the Gallery to oversee such deletion or destruction.

11. Conflict of Interest

11.1 The Consultant warrants that, at the date of signing this Contract, no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract. If, during the term of this Contract, a conflict or risk of conflict of interest arises, the Consultant undertakes to notify the Gallery immediately in writing of that conflict or risk.

12. Security

- 12.1 The Consultant shall, when using the Gallery's premises or facilities, comply with all reasonable directions and Gallery procedures relating to occupational health (including the Gallery's smoke free work place policy) and safety and security in effect at those premises or in regard to those facilities, as notified by the Gallery.

13. Access to Consultant's Premises

- 13.1 The Consultant shall at all reasonable times give to the Project Officer or to any persons authorised in writing by the Director, access to premises occupied by the Consultant where the Consultancy Services are being undertaken and shall permit those persons to inspect the performance of the Consultancy Services and any Gallery Material, Contract Material or other material relevant to the Consultancy Services.

14. Negation of Employment, Partnership and Agency

- 14.1 The Consultant shall not represent itself, and shall ensure that its employees do not represent themselves, as being employees, partners or agents of the Gallery.
- 14.2 The Consultant shall not by virtue of this Contract be or for any purpose be deemed to be an employee, partner or agent of the Gallery.

15. Termination and Reduction

- 15.1 The Gallery may, at any time by written notice, terminate this Contract, in whole or in part. If this Contract is so terminated, the Gallery shall be liable only for:
- (a) payments under the payment provisions of this Contract for services rendered before the effective date of termination;
 - (b) subject to subclauses 3 and 4, any reasonable costs incurred by the Consultant and directly attributable to the termination or partial termination of this Contract.
- 15.2 Upon receipt of a notice of termination the Consultant shall:
- (a) stop work as specified in the notice;
 - (b) take all available steps to minimise loss resulting from that termination and to protect Gallery Material and Contract Material; and
 - (c) continue work on any part of the Consultancy Services not affected by the notice.

- 15.3 In the event of partial termination the Gallery's liability to pay fees under Schedule 2 shall, in the absence of agreement to the contrary, abate proportionately to the reduction in the Consultancy Services.
- 15.4 The Gallery shall not be liable to pay compensation in an amount which would, in addition to any amounts paid or due, or becoming due, to the Consultant under this Contract, together exceed the fees set out in Schedule 2. The Consultant shall not be entitled to compensation for loss of prospective profits.

16. Default

16.1 If the Consultant:

- (a) goes into liquidation or a receiver or receiver and manager or mortgagee's or chargee's agent is appointed or, in the case of an individual, becomes bankrupt or enters into a scheme of arrangement with creditors; or
- (b) fails, within 14 days after receipt of written notice, to remedy any default in performance of the following obligations, namely:
 - i. to commence or to proceed at the rate of progress strictly in accordance with this Contract; or
 - ii. to perform or observe the terms and conditions of this Contract,

the Gallery may, by written notice, terminate this Contract and recover from the Consultant any loss or damage suffered by the Gallery.

17. Unavoidable Delay

- 17.1 A party to this Contract shall not be entitled to exercise its rights and remedies upon the default of the other party (whether at common law or under Clause 18) if that default:
- (a) is caused by an act or event that is beyond the reasonable control of that other party;
 - (b) continues for less than one (1) month; and
 - (c) was not reasonably foreseeable at the time this Contract was entered into.

18. Waiver

- 18.1 A waiver by the Gallery in respect of any breach of a condition or provision of this Contract shall not be deemed to be a waiver in respect of any other or of any subsequent breach.

19. Applicable Law

- 19.1 This Contract shall be governed by and construed in accordance with the law for the time being in force in the Australian Capital Territory.
- 19.2 The Consultant shall ensure that the work done under this Contract complies with the laws from time to time in force in the State or Territory in which the Consultancy Services, or any part thereof, are to be carried out.

20. Notices

- 20.1 Any notice, request or other communication to be given or served pursuant to this Contract shall be in writing and addressed as the case may be, as follows:
- (a) if given to the Gallery, addressed and forwarded to the Director to the Gallery, for the attention of the Project Officer at the address indicated in Schedule 2 or as otherwise notified by the Project Officer;
 - (b) if given by the Gallery, signed by the Project Officer and forwarded to the Consultant at the address indicated at the commencement of this Contract or as otherwise notified by the Consultant.
- 20.2 Any such notice, request or other communication shall be delivered by hand or sent by prepaid post, facsimile or telex, to the address of the party to which it is sent.

21. Affirmative Action

- 21.1 The Consultant must comply with its obligations, if any, under the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* ('the Act'). Information about the legislation can be obtained from the Affirmative Action Agency on (02) 9334 9800.
- 21.2 The Consultant must not enter into a subcontract under this Contract with a subcontractor named by the Director of Affirmative Action as an employer currently not complying with the Act.

22. Employment Opportunities for Aboriginals or Torres Strait Islanders

- 22.1 The Consultant shall use its best endeavours to provide employment opportunities to Aboriginal and Torres Strait Islander people in accordance with the terms of the Consultant's offer. The Consultant shall not contract out of this obligation.

23. Taxes, Duties And Government Charges

- 23.1 Except as provided by this clause, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement shall be borne by the Consultant.

- 23.2 The amounts payable to the Consultant as determined in accordance with clause 3. *Fees, Allowances and Assistance* (the Original Amounts Payable) do not include an amount to cover any liability of the Consultant for Goods and Services Tax (GST) on any supplies made under this Agreement which are taxable supplies within the meaning of *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act).
- 23.3 If applicable, the Consultant agrees to reduce the Original Amount Payable to ensure that the benefit of any reduction in or removal of taxes, duties or charges which impacts on the costs to the Consultant in performing this Agreement is passed onto the Gallery. If a reduction to the Original Amount Payable is made under this clause, the reduced amount will become the Original Amount Payable for the purposes of this Agreement.
- 23.4 If a supply made by the Consultant under this Agreement is a taxable supply under the GST Act, the Consultant may, by notice in writing to the Gallery, increase the Original Amount Payable by the Gallery by the amount of GST that is payable by the Consultant on that part of the Original Amount Payable which relates to the taxable supply as if that part of the Original Amount Payable is the value of the supply for the purposes of the GST Act.
- 23.5 If required by the Gallery, the Consultant shall substantiate to the Gallery's reasonable satisfaction how any reduction or increase in the amounts payable by the Gallery determined under this clause have been calculated before such changes will take effect.
- 23.6 In relation to taxable supplies made under this Agreement, the Consultant agrees to issue the Gallery with either:
- (a) a tax invoice in accordance with the GST Act; or
 - (b) a document satisfying the minimum information requirements set out in GSTB 1999/1 to entitle a recipient of a taxable supply to claim an input tax credit without holding a tax invoice.

SCHEDULE 1 TO STANDARD FORM CONSULTANCY CONTRACT
CONSULTANT OBLIGATIONS AND WORK TO BE PERFORMED

Consultancy Services

The Consultancy Services shall be those services outlined in your proposal of 29 August 2000 (Attachment A).

Time frame

The Contract will commence on 21 August 2000 and shall be completed on 20 November 2000, but may be extended if agreed by both parties.

Invoice Procedures

Your invoice should be forwarded to the following address:

Alan Froud
Deputy Director
National Gallery of Australia
GPO Box 1150
CANBERRA ACT 2601

Specified Personnel

The Consultancy Services shall be undertaken by the following personnel:

Ken Begg

SCHEDULE 2 TO STANDARD FORM CONSULTANCY CONTRACT

GALLERY OBLIGATIONS

Gallery

National Gallery of Australia
GPO Box 2154
CANBERRA ACT 2601

Project Officer

Any questions in relation to the Consultancy Services should be directed to:

Alan Froud
Deputy Director
Phone: (02) 6240 6401

Contract Price

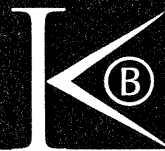
The total cost payable under this Contract shall not exceed \$6,000 per month, exclusive of GST, unless written approval has first been obtained from the Gallery.

Payment shall be made no later than 30 days after the satisfactory completion of the Consultancy Services, provided a correctly rendered tax invoice has been received.

Contract Administration

Please forward one signed copy of the Contract, within seven days, to the following address:

Alan Froud
Deputy Director
National Gallery of Australia
GPO Box 1150
CANBERRA ACT 2601
Phone: (02) 6240 6401



Ken Begg
& Associates Pty Ltd

29 August 2000

Dr Brian Kennedy
Director, National Gallery of Australia
GPO Box 1150
CANBERRA ACT 2601

Attachment 'A'

Dear Brian

Thank you for the invitation to work with you.

This letter sets out in general terms the way I would like us to work together over the next three months. As discussed, my key role is to help you rebuild your relationship with the media. This will require regular consultations, preferably at least once a week, to consider and act on appropriate strategies that will both enhance The Gallery's reputation and counter negative and ill-informed media stories.

It would also be helpful if I could meet members of your Executive team.

For this consultancy to succeed, I must be in a position to manage and arrange all your media interviews. In addition, I want to oversight the drafting and timing of all media releases issued by you.

Because we must work closely together, I propose to report to you directly.

You have requested an initial consultancy of three months – that is long enough to make a start and give you the opportunity to assess and establish confidence in our working relationship.

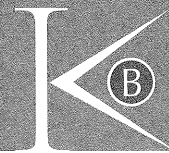
My fee, not including GST, will be \$6,000 a month, backdated to 21 August 2000.

Please be assured that I will use my experience and knowledge to help you achieve a fairer and more balanced media coverage of your role as Director of The National Gallery.

I look forward to working with you.

Yours sincerely

Ken Begg



Ken Begg
& Associates Pty Ltd

29 August 2000

Dr Brian Kennedy
Director, National Gallery of Australia
GPO Box 1150
CANBERRA ACT 2601

Dear Brian

Thank you for the invitation to work with you.

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Please be assured that I will use my experience and knowledge to help you achieve a fairer and more balanced media coverage for The National Gallery.

I look forward to working with you.

Yours sincerely