

GUIDELINES FOR ENGAGING A MAPPER 2.8

Introduction

1 These guidelines are provided by Orienteering Australian Inc to assist member State/Territory associations or affiliated clubs (hereafter the 'organisation') in establishing a clear (and legal) relationship with an individual who undertakes the development or updating of an orienteering map.

2 The guidelines do not address the process of developing a map – a mapper can be engaged to undertake some or all of the stages of developing a map (although generally "a mapper" is engaged to undertake the fieldwork and drawing stages).

3 The guidelines should be used as part of a risk management framework to minimise the likelihood that the organisation and the mapper are exposed to unforeseen risk. They cannot be prescriptive because the statutory provisions for several aspects differ in each state and territory and the organisation needs to ensure that it complies with the applicable laws.

4 The following issues are covered:

- Relationship between mapper and organisation
 - Volunteer
 - Employee
 - Contractor
- Public / professional liability
- Terms and conditions of engagement
- Copyright / ownership of the intellectual property
- Standards / quality control
- Disputes.

5 The guidelines assume that the organisation is a legally constituted and incorporated body under the laws of the State in which it operates – any agreement involving an un-incorporated body is fraught with legal uncertainties and the potential exposure of the individuals involved to significant risk.

6 Any agreement reached should be in writing, to assist the organisation and the mapper clearly understand each other's requirements, and to provide evidence of the agreement in the event of any dispute or legal proceedings arising from the mapping project involved.

Relationship between mapper and organisation.

7 There are three types of relationship possible: Volunteer, Employee, Contractor.

Volunteer

8 The volunteer provides the labour involved in making the map for free. Out of pocket expenses would normally be provided by the organisation. The base map, travel, accommodation and materials would also be at the organisation's expense. The organisation should ensure that, in paying "out of pocket expenses"; it does not in fact create a situation where it could be interpreted as employing the mapper (e.g. by paying an "honorarium").

9 The fact that the mapper is a volunteer does not remove the rights and responsibilities of either party, as outlined in the remainder of guidelines. It does, of course, mean that their enforcement can require more delicate negotiating.

Employee

10 A mapper who is paid for the labour involved in making the map may be engaged as an employee of the organisation. Out of pocket expenses would normally be provided by the organisation. The base map, travel, accommodation and materials would also be at the organisation's expense.

11 There is a wide range of taxation, superannuation, industrial relations and workers' compensation legislation, both Commonwealth and State/Territory, covering an employer/employee relationship. The organisation and the mapper should ensure that their agreement meets the requirements of that legislation.

12 An employee is often characterised as:

- paid for the hours worked
- supervised and controlled (sometimes expressed as a "master/servant" relationship)
- works for only one employer at a time
- paid in substance for his/her personal manual labour or services.

13 It should be noted, however, that the definition of an employee (and the distinction drawn with a contractor) can differ between different legislation – the principles drawn under taxation law, for example, may not apply under a particular state's worker's compensation laws.

14 A mapper who has established a company structure for their own financial, taxation or other purposes may still be regarded as an employee under the various taxation, superannuation and worker's compensation laws.

15 In the absence of a formal agreement, which clearly establishes the mapper as a contractor within the applicable taxation, superannuation and worker's compensation laws, a paid mapper would normally be regarded as an employee of the organisation for whom the map is being developed.

16 The organisation will be responsible for, among other things, Pay As You Earn (PAYE) tax, Fringe Benefits Tax (FBT), (compulsory) superannuation and worker's compensation.

Contractor

17 A contractor is a legal entity, rather than a person, engaged to undertake the work. The contractor should have the following characteristics:

- Undertake the work without direct supervision or direction
- Be responsible for own public and professional liability
- Be responsible for own occupational health, safety and welfare; leave; taxation and all other matters relating to the conduct of their business
- Be able to delegate the work to another.

18 A contractor is most clearly engaged when there is an agreed amount of work to be done for an agreed amount of money.

19 The contractor will, if registered, have to charge Goods and Services Tax (GST) for the service performed and this would be recovered as an input cost by the organisation (if it registers under the GST legislation).

Public and Professional Liability

20 When the organisation engages a mapper as a volunteer or a paid employee, it should ensure that it has appropriate professional and public liability insurance to cover any foreseeable occurrence arising from the creation of the map and its subsequent use. This should include, but is not limited to, damage to the property on which the map is based and injury (or worse) to event organisers and competitors using the map.

21 When the mapping is undertaken by a contractor, some of those liabilities may pass to the contractor and the organisation should ensure that the contractor has appropriate insurance for those liabilities, which could arise directly from the mapper's responsibilities.

22 Recognising that the organisation is still primarily responsible for the creation and use of the map, it would be prudent to have cover for the organisation as well.

23 Insurance is only one aspect of minimising the impact of liability issues - the organisation should also ensure that all appropriate steps have been taken to minimise the risk of a mishap.

24 This includes having a written agreement with the mapper (however engaged), properly briefing the mapper as to the precautions required for the mapping process and the mapping standards to be applied.

Terms and Conditions of Engagement

25 These may be broadly determined by the nature of the relationship entered into (see earlier) but the detail should still be clearly spelt out as part of a written agreement.

26 All of the issues raised in these guidelines should be addressed, together with details such as costs, method and timing of claims and payment(s), time constraints for completion and scope of the work, including responsibilities of the parties for preparatory and finishing off tasks.

27 Attachment 1 is an example of such an agreement and is provided as a guide to the range of issues, which can be addressed. It is not offered as a tested legal agreement.

Copyright and Ownership of the Intellectual Property

28 Where it is clear from the agreement between the organisation and the mapper that the map was commissioned by the organisation, then the copyright should belong to the organisation.

28 Orienteering organisations must be sensitive, however, to the issue of the mapper's reputation, which is bound up in the accuracy of the map and the standard and consistency of the interpretation.

29 The agreement between the mapper and the organisation should include a clear statement regarding when the hand-over of the intellectual property occurs. This is typically when the map is printed for its initial competition use and any payment has been finalised, and the agreement should enable the mapper to retain control of the content up to that point.

30 The ease with which maps can now be altered, given OCAD (or other computerised) drafting, requires that there be clear agreement as to the extent of modifications, including updating, which can take place before the mapper is given the option of having their identification removed from the map. A regime of noting modifications on the map may assist.

Standards / Quality Control

31 The agreement with the mapper should clearly specify the mapping standards (if any) to be adhered to, include the drafting process. If OCAD is to be used, it may be appropriate to specify the version and base symbol set to be used, so that the map is compatible with the organisation's facilities and other maps of that type.

32 The extent of field checking should be agreed and the process of agreeing and incorporating modifications specified. This needs to be consistent with the agreement on issues relating to copyright and ownership of the intellectual property (see above).

Disputes

33 The agreement should include a clear process for resolving any disputes, which arise during the mapping project. Reference should be made to the OA Disputes Resolution Process (or its local equivalent, if available).

Summary

34 Engaging a mapper should include a written agreement covering, in as much detail as possible, the issues outlined above.

35 If the mapper is a volunteer, the issues are generally less complex but it is still worthwhile establishing an agreement to assist in managing the mapping project.

36 If the mapper is paid, the complexities increase significantly and the nature of the relationship between the organisation and the mapper become subject to a wide range of laws. As well as assisting in the management of the project, an agreement becomes a fundamental legal document in the event of either or both parties being the subject of legal proceedings arising from the mapping project or the use of the resulting map.

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Attachment to Operational Manual 2.8

Framework Agreement for Engaging a Mapper

1 This framework is provided as a starting point for the development of an agreement between an orienteering organisation and a mapper. It is not claimed to be exhaustive and has not been subject to any legal scrutiny.

Parties to the Agreement

2 Specify the (legal) names of the organisation and the mapper.

Nature of engagement

3 The nature of engagement is either:

- Volunteer
- Employee or
- Contractor

4 If an employee, specify the State legislation underpinning the terms and conditions of employment, particularly any statutory minimum conditions.

5 Specify clearly the responsibilities for any taxation and superannuation obligations.

Remuneration

6 Hourly rates for should be fieldwork and drawing (if different) or a lump sum. If the agreement includes the provision of some form of estimate of total costs to the organisation by the mapper, specify the basis of the estimate, the extent to which it is binding on both parties and the parameters by which the actual cost can change.

Expenses

7 Out of pocket expenses which will be paid by the organisation, such as:

- travel (at \$.cc per km)
- accommodation
- consumables
- external services (eg copying)
- etc.

8 Specify the type of evidence of expenditure, which the mapper will have to provide reasonable evidence of the expenditure (receipts, log books, etc).

Payments

9 Specify the frequency and method of payment.

Scope of Work

10 Describe the area to be mapped and the range of work to be undertaken (fieldwork, drawing, etc).

Standards

11 Specify IOF and Australian Guidelines, if required.

Scale

12 Normally specified as fieldwork at 1:7500, drawn using OCAD for legible use at 1:15000, printing can be at 1:15000 or 1:10000 depending on intended use.

Preparatory work by the organisation

13 Details of what will be provided to the mapper prior to commencement (and when)

- photogrammetry with magnetic north line
- working copies of photogrammetry
- maps and aerial photos of the area
- accommodation details
- landowner permissions and access (eg keys).

Mapping Process

14 Description of agreed approach, level of detail, amount of emphasis on vegetation, etc.

Hazardous areas

15 Specify the approach to hazardous areas (mineshafts, quarries, high cliffs) in terms of mark as out-of-bounds or map with particular care to locate all hazards.

Fieldwork standards

16 Specify the agreed approach to achieving standards of interpretation in the field, which are acceptable to the organisation.

Field check

17 Specify the extent to which the organisation will be field checking the work and the requirements of the mapper to produce draft maps for this purpose. The process for incorporating the amendments arising and any provision for the mapper to refuse to incorporate amendments for reasons of standards or consistency of interpretation should be included.

Final draft

18 Specify the process for producing a final draft for proof reading and the process for corrections.

Conclusion of project

19 Specify the materials, which will be delivered to the organisation by the mapper:

- OCAD file ready to print
- Prints of the map
- Unused materials, including photogrammetry.

20 Specify the materials, which will be retained by the mapper

- OCAD file for reference.

Termination for unforeseen reasons

21 Specify the process for terminating the project in the event of unforeseen circumstances such as illness, natural disasters or withdrawal of access to the area.

Copyright

22 Specify the time at which copyright passes from the mapper to the organisation (usually at final payment).

Intellectual property rights

23 Specify the agreed process for protecting the intellectual property of the mapper through the life of the map, including

- the inclusion of the mapper's name,
- the manner in which amendments will be noted on the map.

Other services

24 Specify any other services, which the mapper is required to provide, eg training of local mappers, and the conditions applying.

Legal responsibilities

25 Specify the extent to which each party is responsible for liabilities arising from the production and use of the map.

Dispute resolution

26 Specify the mechanism for resolving any disputes, including the authoritative body and the guidelines to be used eg the OA confliction resolution procedures see 2nd Ed Leaflet 1.20 Conflict Resolution.