

# WHAT ARE THE ISSUES IN THE MODEL FREELANCE PUBLISHING AGREEMENT?<sup>1</sup>

The Model Freelance Publishing Agreement seeks to facilitate agreement between media companies and freelance journalists (hereafter, the “contributors”) on terms that protect the interests and safety of the contributors. The goals are to make it easier for the parties to reach an agreement, by having a model agreement available, and to make the agreement clear and fair. The following are explanations of the key issues addressed in the Model Freelance Publishing Agreement.

## 1 Fee

This is the basis for the company to pay the contributor. It can be either:

- A) A specific amount or
- B) An amount based on time worked, whether per hours, days, weeks, or months.

The agreement requires the parties to specify the requirements of the work so that it is clear whether the work that contributor submits is satisfactory and thus entitles a fee.

## 2 Payment

This concerns whether the company pays the contributor in one or two installments, or periodically based on a fixed rate. The options are:

- A) The company pays the full amount when the contributor submits the work and the relevant invoice.
- B) The company pays a portion of the fee when the contributor submits the work and the relevant invoice and pays the rest upon publication of the work.
- C) The company pays the hourly/daily/weekly/monthly fee for the time worked as described in the invoice submitted by the contributor.

The agreement also provides an option that gives the company the right to pay a portion of the fee and not publish the work (a “kill fee”), and the contributor then can submit the work elsewhere for publication.

In either case above, the contributor must submit an invoice and the payment takes place with a set period of time afterwards, with 30 days (or such other period as mutually agreed) the default. The agreement may require the company to pay an interest when it fails to pay the fee due under the agreement.

The agreement specifies the contact person at the company whom the contributor may contact and seek payment from.

## 3 Expenses

This concerns when the company reimburses the expenses of the contributor for creating the work. The options are:

- A) The contributor seeks reimbursement for actually-incurred expenses after incurring the expenses or submitting the work.
- B) The company and the contributor agree on a budget ahead of time, and the company advances all or a portion of the budgeted expenses. Then, the company reimburses the balance or the contributor returns the unused amount to the company.

## 4 Insurance

This concerns who gets and pays for the appropriate insurance for the contributor.

- A) The company enrolls the contributor in its insurance program at its cost or otherwise pays for it.
- B) The company reimburses the cost of insurance that the contributor obtains.
- C) The contributor obtains and pays for insurance.

1- Note that this document was prepared for the sole purposes of assisting parties to understand and negotiate the key terms of the freelance publishing agreement and should not be used as a binding legal document. A full agreement should be executed by the contributor and the company. In the event of any conflict between this document and the agreement, the agreement controls.

## 5 Rights

This concerns who owns the work and what copyright the contributor grants to the company for the work submitted.

- A)** The contributor may maintain ownership of the work and grant certain rights to the company, limited in several ways:
- I** The language(s), e.g., only in English
  - II** The countr(y/ies), e.g., the U.S. and U.K. only
  - III** The medi(um/a), e.g., print only
  - IV** The use, e.g., only editorial and not commercial
  - V** The transfer, e.g., no sale to other publishers
  - VI** The period of time, e.g., exclusivity for six months
- B)** The contributor may give the ownership of the work and grant all rights of the work to the company (“Work for Hire”).

## 6 Status

The agreement designates the contributor as an independent contractor, rather than an employee, of the company. This means that the contributor is not entitled to any employment benefits of the company (e.g., payment of taxes for Medicare or Social Security) and that the contributor is responsible for payment of all relevant taxes for the work. It also means that the company cannot fire the contributor at any time or for any reason outside the agreement and must perform its obligations under the agreement.

- A)** The agreement does require the company not to discriminate in evaluating the work and to designate a contact person at the company to whom the contributor may complain about potential issue of discrimination.

## 7 Data Protection

The agreement requires the company to maintain the confidentiality of the contributor’s sources to the extent permitted by law, and may requires the contributor and the company to retain notes and other records for a year after publication.

## 8 Commitments

The agreement may specify that the contributor must follow good journalistic practices (e.g., no infringement of other copyright) and give the company exclusive use of the work regarding the rights granted under 5(a) above.

## 9 Termination

The agreement may specify that the company and the contributor may terminate the agreement with advance notice, but requires payment for all work done beforehand and reimbursement of associated expenses.

## 10 Legal Issues

The agreement provides that New York law governs and that disputes will be resolved in court.