

MODEL FREELANCE PUBLISHING AGREEMENT

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FORM OF FREELANCE PUBLISHING AGREEMENT¹

Freelance [Contribution and] Publishing Agreement (the “Agreement”), dated as of [●], by and between [●] (the “Company”) and [●] (the “Contributor” and, together with the Company, the “Parties”).

1. ASSIGNMENT

The Company hereby hires the Contributor to complete the assignment, and the Contributor hereby accepts such assignment, of the work described in Annex A hereto, as may be updated from time to time (the “Works”) for publication by the Company, all in accordance with the terms and conditions set forth herein. The Company shall have the right to publish or not to publish the Works in its discretion, subject to its other obligations set forth herein.

2. PAYMENT OF THE FEE²

[PAYMENT OPTION A:] [In consideration for the Contributor’s delivering the Complete Works to the Company, the Company shall pay to the Contributor an aggregate fee of \$_____]³ (the “Publication Fee”) ⁴. In connection with the Publication Fee, the Contributor shall include an invoice at the time of submission of the Completed Works. The Publication Fee shall be paid within [thirty (30) days] following the receipt of such invoice. For purposes of this Agreement, the Works shall be “Complete” or shall have reached “Completion” on the first date (i) on which the Works meet the Minimum Requirements (as defined in Annex A) and (ii) that is the earlier of (a) the date on which ___ drafts of the Works have been submitted by the Contributor to the Company reasonably responsive to the Company’s proposed edits and (b) the date that is ___ days following submission of the first draft of the Works.]

[PAYMENT OPTION B:] [In consideration for the Contributor’s having created the Works, the Company shall pay to the Contributor an aggregate fee of \$_____ payable for Works (the “Publication Fee”) as follows: in connection with the Publication Fee, the Contributor shall include an invoice at the time of submission of the first draft of the Works; the Company shall pay a delivery fee equal to [60]% of the Publication Fee (the “First Delivery Fee”) within [thirty (30) days] following the receipt by the Company of such invoice, and shall pay the remaining [40]% of the Publication Fee within [thirty (30) days] following publication of the Works.]

1-The template is designed to be flexible to best suit the circumstances of a particular engagement and Company faced by the individual Contributor. Throughout, language that may not be applicable or is likely to require modification to fit the particular circumstances appears in [brackets] and may be removed or modified as needed. If there are multiple options for a provision, the option that is generally more favorable to the Contributor appears in green; an option likely to be less favorable to Contributor but more likely to address concerns of the Company appears in blue; and lastly, an option that is likely to be even less favorable to the Contributor, but in many circumstances even more likely to be found acceptable by the Company, appears in red. Where these options appear, only one should be included in the final contract. This template has been reviewed under New York law and does not specifically address issues in non-NY or Non-US jurisdictions. In certain circumstances, review of local counsel would be appropriate, particularly for intellectual property- or employment-related issues.

2-Any acceptable contract should include the specific payment terms, including the amount and timing of payment. Four structures for payment terms are provided here: the first does not require publication and provides for the fee to be paid when the Works meet certain minimum requirement and when a minimum number of drafts or amount of time has been completed; the second incorporates the concept of a “kill fee” by requiring partial payment on delivery and payment of the remainder on publication; and the third allows the Company to reject the Works for any reason within 15 days, subject to payment of a kill fee, and otherwise also requires partial payment on delivery and remainder on publication. The fourth structure is provided in the event of an hourly or daily rate being more applicable for the circumstances.

3-If there will be a different specified fee for different Works, the full exact amount should be specified herein, or in Annex A describing the scope of the assignment.

4-If the Company offers a flat fee for both expenses and payment for services, the amount of expenses that a Contributor expects that it will have to incur should be incorporated into this amount.

[PAYMENT OPTION C:] [In consideration for the Contributor's having created the Works, the Company shall pay to the Contributor an aggregate fee of \$_____ payable for Works (the "Publication Fee") in accordance with the terms of this Section 2:

- A) In connection with the Publication Fee, the Contributor shall include an invoice at the time of submission of the Works.
- B) Upon the Contributor's delivery of the Works that meet the Minimum Requirements (as defined in Annex A), the Company shall have [fifteen (15) days] to determine whether or not to elect to publish the Works. If the Company elects not to publish the Works by [written] notice to the Contributor not later than on [the fifteenth (15th) day] following the receipt of the invoice submitted by the Contributor, the Company shall pay to the Contributor a "kill fee" of [80]% of the Publication Fee. Upon such notice, all rights to the Works shall revert to the Contributor.
- C) If the Company elects to retain the right to publish the Works in accordance with Section 2(b), then the Company shall pay a delivery fee equal to [60]% of the Publication Fee (the "First Delivery Fee") within [thirty (30) days] following the receipt of the invoice submitted by the Contributor, and shall pay the remaining [40]% of the Publication Fee within [thirty (30) days] following publication of the Works.]

[PAYMENT OPTION D:] [In consideration for the Contributor's creation of the Works, the Company shall pay to the Contributor a[n] [daily][hourly] fee of \$_____ payable for Works (the "Publication Fee"). The Contributor agrees to submit an invoice that includes a reasonably detailed description of the [days][hours] worked on no less than a [weekly] basis; and the Company agrees to pay the Publication Fee determined pursuant to such invoice within [thirty (30) days] of receiving such invoice. The anticipated dates are as follows: [•].]

[In the event that the Company does not pay the Publication Fee when it comes due, the Company agrees to pay an interest at the rate of [1 or ___]% per month of such unpaid portion of the Publication Fee for each month of delay, payable at the time when payment of the applicable unpaid portion of the Publication Fee is paid.]⁵

3. EXPENSES⁶

[EXPENSES OPTION A:] [The Parties shall mutually agree to an expense budget based on a proposal therefore submitted by the Contributor, including any amounts reasonably necessary to account for contingencies (as provided as Annex C of this Agreement,) the "Budget"), and the Company shall advance [100 or ___]% of aggregate amount set forth in the Budget to the Contributor, prior to commencing work on the Works, for use by the Contributor to pay expenses specified in such Budget, as well as other incidental expenses incurred in connection with the creation of Works of the type described in Annex B. The Contributor shall submit to the Company a report of expenses incurred with documentation thereof that is reasonably available under the circumstances, within [thirty (30) days] after [incurring such expenses]/[completion of the field-work required for creation of the Works]. The Company shall reimburse the Contributor for the amount, if any, that the expenses exceed the Budget within [thirty (30) days] after the Contributor's submission of the expense documentation. In the event that the Budget exceeds the actual expenses, the Contributor shall reimburse the Company for the amount that the portion of the Budget advanced exceeds actual expenses, within [thirty (30) days] after the Company provides instructions for payment.]

[EXPENSES OPTION B:] [The Company shall reimburse the Contributor for all expenses that it incurs in connection with the creation of the Works of the type described in Annex B⁷, so long as the Contributor submits a report of such expenses to the Company within [thirty (30) days] after [incurring such expenses]/[submitting the Works] with documentation thereof that is reasonably available under the circumstances. The Company shall pay such reimbursement within [thirty (30) days] after the Contributor's submission of such expense report.]

[If the Company shall fail to timely pay such reimbursement, the Company agrees to pay an interest at the rate of [1 or ___]% per month of the due and unpaid expenses for each month of delay.]⁸

5-This late fee provision can be added to any of the options above.

6-An acceptable contract should include the process for reimbursement of expenses. In a case in which an advance payment of expenses may be required, the second alternative should be used.

7-Annex B should specify all categories of reimbursable expenses to the level of specificity that is acceptable to both parties.

8-This late fee provision can be added to any of the options above.

4. INSURANCE⁹

[INSURANCE OPTION A:] [The Company shall enroll the Contributor [and the individuals listed on Annex B (the “Team”), who shall support the Contributor in creating the Works] in a [Travel Assistance Program] maintained by the Company through [insert provider (i.e., ACE)] and ensure that the Contributor [and the Team are]/[is] entitled to all benefits of such policy, including [the emergency medical services provided under such insurance policy,] on the same terms as provided to employees of the Company.] [The Company shall also enroll the Contributor and the Team in a kidnap and ransom insurance that covers the perils of kidnap, extortion, wrongful detention, and hijacking through [insert provider]].]

[INSURANCE OPTION B:] [The Contributor shall be responsible for procuring any travel and emergency insurance policy that the Contributor determines is appropriate, in connection with producing the Works to cover the Contributor and any other individuals assisting the Contributor whom the Contributor deems appropriate for coverage. The cost to the Contributor, of such insurance coverage that is reasonably attributable to the Works, shall be included as an expense for [advance/reimbursement] in accordance with Section 3.]

[INSURANCE OPTION C:] [The Contributor shall be responsible for procuring any travel and emergency insurance policy that the Contributor determines is necessary in connection with producing the Works, and the Contributor shall be responsible for any expenses in connection with such insurance, the cost of which (estimated by Contributor to be approximately \$____) has been taken into account in agreeing to the Publication Fee.]

5. CONFIDENTIALITY & DOCUMENT RETENTION OBLIGATIONS¹⁰

- A) If the Contributor advises his/her editor of any agreement to maintain the confidentiality of a source, the Company shall maintain the confidentiality of such source except to the extent prohibited by applicable law. In determining whether the Company should be prohibited from maintaining the confidentiality of a source by applicable law, the Company may rely on the advice of its competent external legal counsel. In the event that the Company determines that it is prohibited from maintaining the confidentiality of a source, the Company shall notify the Contributor of such determination as soon as reasonably practicable.
- B) **[RETENTION OBLIGATION OPTION:]** [The Contributor and the Company each agree to retain his/her research and source material, including notes and/or tapes of interviews and all other files and documents gathered and relied upon in the preparation of the Works for a period of one year after the date of first publication of the Works to assist the defense in the event of a lawsuit related to the Works.]

9-The Agreement should explicitly set forth whether or not the Company will provide any necessary insurance. If the Company will not provide insurance coverage, the Contributor should consider the cost of self-insuring when negotiating the overall fee.

10-The Agreement should not provide for indemnification of the Company for legal exposure related to the Works. In the event the Company requires such an indemnification clause, the Contributor's indemnification should be as limited as possible (e.g., only to “finally adjudicated” claims arising from limited matters). If the Company insists on certain protection regarding the Works, consider instead agreeing to appropriate tailored and knowledge qualified representations that the Contributor is comfortable giving. These may include some of the following: .

[Representations & Warranties. The Contributor represents and warrants that, to the Contributor's knowledge, at the time the Contributor delivers the Works to the Company, (a) the Contributor will be the sole owner of the Works and has the exclusive right, power and authority to make the grant of rights set forth in this Agreement; (b) the Works will not infringe upon any copyright or other proprietary right of any third party; (c) if the Works consist of an interview, photograph or likeness of any subjects, the Contributor will have obtained written permission from each reasonably identifiable person in the Works to use their name or likeness, as applicable; [(d) no factual statements in the Works will be false or inaccurate in any material respect; and (e) the Works will not knowingly or intentionally defame, libel, or slander any person or entity]. The Contributor shall reasonably cooperate with the Company with respect to any claim threatened or made against the Company with respect to any item of the Works.]

6. OWNERSHIP

[Except for the rights expressly licensed herein to the Company, as between the Contributor and the Company, the Contributor owns and shall retain all right, title, and interest in and to the Works, including all copyrights.]

[WORK FOR HIRE OPTION]¹¹ [The Company will own all right, title, and interest in and to the Works as works made for hire, including, without limitation, any and all registrations, applications, copyrights, renewals, extensions, restorations, and reversions, and all other proprietary and intellectual property rights in the Works, as well as the right to collect all revenue from the Works, and the right to sue, counterclaim, and recover for all past, present, and future violations of the Works, and all rights corresponding to any of these rights throughout the world (collectively, “All Rights in the Work”). If any copyright or other proprietary and intellectual property rights in the Works are deemed not to constitute works made for hire, this Agreement will automatically constitute an assignment from the Contributor to the Company of All Rights in the Works. The Company hereby grants to the Contributor, and the Contributor here accepts, a non-exclusive, worldwide[, transferable, and sublicensable] right and license to reproduce, distribute, modify, create derivative works of, publicly display, and publicly perform the Works [in marketing and business development materials that the Contributor distributes to document its professional activities; for teaching purposes; for inclusion in full or in part in a thesis or dissertation]. [In its use of the Works pursuant to this license from the Company, the Contributor shall identify the Company as the owner of the copyrights in the Works.]

7. LICENSING AND EXCLUSIVITY

- A) Subject to the terms and conditions of this Agreement, including, without limitation, Section 7(b), the Contributor hereby grants to the Company, and the Company hereby accepts, an exclusive, [worldwide,] non-transferable, and non-sublicensable right and license to first reproduce, distribute, modify, create derivative works of, publicly display, or publicly perform the Works [in any medium now known or hereafter devised] [in a print periodical; in all digital and online publishing formats; in podcasts, radio, and television programming] [in the English language] [for an editorial, non-commercial purpose] (collectively, “Publish”; a “Publication” is any instance of reproduction, distribution, modification, creation of a derivative work of, public display, or public performance of the Works), which exclusivity lasts until the earlier of (i) [sixty (60) days] following the date in which the Works are first Published by the Company, and (ii) [● months] following [Completion of the Works]/[submission by the Contributor of the Works, in a manner satisfying the Minimum Requirements] (the “Exclusivity Period”); provided that the Company provides appropriate credit to the Contributor in any Publication of the Works].¹²
- B) The Company shall have the right to modify and create derivative works of the Works only as provided in this Section 7(b). The Company may make copy edits to correct grammatical, spelling and typographical errors without the Contributor’s review and consent. All other modifications of the Works require the Contributor’s review and consent, which the Contributor may grant or withhold in its discretion.
- C) In the event that, prior to the initial Publication of the Works, the Company requests the Contributor’s cooperation in a permitted modification or creation of a derivative work of the Works and such process extends for more than either ___ drafts or ___ weeks following the initial submission of the Works that satisfies the Minimum Requirements, the Publication Fee shall be increased by \$___ per day following such time, plus additional expenses in accordance with Section 3, if applicable, as consideration for the Contributor’s additional contributions to the Works; provided that such increase in the Publication Fee shall not be applicable in any case in which the Contributor is primarily responsible for a delay that substantially extends the process of modifying the Works or of creating a derivative work thereof].

11-The Contributor should consider whether there is any feasible alternative to a work-made-for-hire arrangement before agreeing to it. If this option is used, Section 7 will not be applicable.

12-Section 7(a) includes options for describing the media in which the Publisher has the right of first Publication.

- D) Following the initial Publication of the Works, if the Contributor consents to modification or creation of a derivative work of the Works [consisting of Publication of the Works in a language other than English], the Company shall pay the Contributor a fee equal to [\$/%] of the Publication Fee or such other amount on which the Parties agree, whether or not the Company requests the Contributor's cooperation in such modification or creation of such derivative work. If the Company does request the Contributor's cooperation in such modification or creation of such derivative work, the Company shall also compensate the Contributor for its additional contributions to the Works in the amount of [\$/ per day, plus additional expenses in accordance with Section 3, if applicable].
- E) The Company, without additional compensation to the Contributor, may display the Works on the Company's website in the format in which the Company first Published the Works indefinitely. [Other than displaying the Works on the Company's website in the format in which the Company first Published the Works and Publishing a modification or derivative work of the Works, which is governed by Sections 7[(b)-(d)], in the event the Company wishes to Publish the Works following the expiration of the Exclusivity Period, the Company shall pay the Contributor an additional fee equal to [\$/%] of the Publication Fee. Any such Publication requires the express written consent of the Contributor, which the Contributor may grant or withhold in its discretion.]¹³
- F) [In the event the Company wishes to Publish the Works for a non-editorial, commercial purpose, the Company and the Contributor shall negotiate the terms for such use in good faith. For the avoidance of doubt, the Company will not be permitted to so Publish the work without reaching such an agreement with the Contributor.]
- G) [The Company shall have the right to use [the Works or any portion thereof and] the Contributor's name, as well as the Contributor's pre-approved image, likeness and biographical information, in connection with any advertising or promoting of the Works.]
- H) Without the express written consent of the Company, the Contributor shall not Publish or allow anyone else to Publish the Works for any purpose until the Exclusivity Period [in [insert scope of applicable territory]] has expired.
- I) Following the expiration of the Exclusivity Period [and with appropriate credit to the Company as the initial publisher], the Contributor may exercise any and all rights in the Works, including granting to third parties the right to exercise any or all of the rights reserved to the Contributor as the owner of the copyrights in and to the Works.

8. NON-COMPETE¹⁴

[NON-COMPETE OPTION:]The Contributor has not sold or agreed to sell any rights in the Works that would conflict with the rights granted to the Company. The Contributor has not and shall not, without the Company's prior written consent, license or permit any other person to Publish the Works or any other articles written by the Contributor on [insert appropriate description of the scope of the covered topic or, e.g., event or interview on which it is based] and in [insert appropriate description of the scope of the medium and territory that will be restricted] until [the earlier of (i) [forty-five (45) days] following the date on which the Works are first Published by the Company and (ii) [] months] following [Completion of the Works]/[submission by the Contributor of the Works, provided that the initial submission of the Works satisfies the Minimum Requirements]]/[the expiration of the Exclusivity Period].

13-As drafted, the Company may keep the Works on the website only if the Company has published them. If the Company wishes to publish the Works after the end of the exclusivity period, the Company should go back to the Contributor for permission. The exclusivity period may end without publication of the Works, and the Contributor may have found another publisher to which it has given some type of exclusivity. If the Company has published the Works and wants to publish them again, it should get the Contributor's permission to do so. It may be that the derivative work provisions do not apply because the work will not be changed (for example, the publisher may want to include a newspaper story in a collection of the most important stories of the year). It may also be that the publisher needs a broader license because its original license was limited by medium. In either case, going back to the Contributor for its permission will allow the parties to work out the necessary arrangements.

14-The Company may request a limitation on contributing to any competing publication, with no qualifications regarding topic or subject matter. The Contributor should consider rejecting this request if he or she reasonably expects to work with any of those publications within the time period specified. The descriptions of the scope of the covered topics, media or territory should be defined as narrowly and with as much specificity as possible. Ideally, the scope of the non-compete will be limited to the story itself, rather than the topic generally. The scope of the non-compete should be factored into both the fee provided and the exclusivity offered.

9. MISCELLANEOUS

- A) This Agreement and all rights and obligations of the parties in connection herewith shall be governed by the laws of the State of New York applicable to agreements made and fully performed therein. The state courts of the State of New York sitting in New York County and, if the jurisdictional prerequisites exist at the time, the United States District Court for the Southern District of New York, shall have the sole and exclusive jurisdiction to hear and determine any dispute or controversy arising under or related to this Agreement. In any such action or proceeding, service of process upon the parties may be accomplished by sending such process in the manner specified herein for the giving of notice.
- B) In the event of the delayed payment of any Publication Fee or other amount owed by the Company to the Contributor, the Contributor may, but is not obligated to, notify [name] in the Company's finance department (as provided, together with those individuals identified in Section 9(d) and 9(e), in the attached Annex D) and the Company shall take appropriate steps to remedy such delayed payment. For the avoidance of doubt, in the event of breach of this Agreement, the Contributor is entitled to pursue all available remedies under applicable law, including, without limitation, pursuant to the New York City Freelance Isn't Free Act (Local Law 140).
- C) The Contributor acknowledges, and the Company agrees, that in performing services pursuant to this Agreement, the Contributor shall be acting, and shall act at all times, as an independent contractor only, and not as an employee, agent, partner, or joint venturer, of, or with the Company, or any of its affiliates. Except for the payments and benefits specifically provided pursuant to this Agreement, the Contributor acknowledges that the Contributor is and shall be solely responsible for the payment of all federal, state, local, and foreign taxes that are required by applicable laws or regulations to be paid, with respect to all payments and benefits payable or provided hereunder (including, without limitation, the Fee). Further, the Contributor understands that [with the exception of the insurance coverage provided pursuant to Section 4], the Contributor shall not be entitled to participate in or to accrue benefits under any benefit plan available to Company employees.
- D) The Company shall evaluate the Contributor and the Contributor's Works without regard to the Contributor's race, color, religion, national origin, disability, sex, age, marital status, sexual orientation, gender identity, gender expression, genetic information, liability for service in the armed forces of the United States or any other unlawful criterion or circumstance. In the event that the Contributor suspects a violation of this Section 10(d), the Contributor may contact [position], currently held by [name], in the Company's human resources department to discuss anonymously such suspected violation and the Company shall act in accordance with its procedures applicable to employees for violations of any similar Company policy.
- E) The Company shall undertake commercially reasonable efforts to respond promptly to all requests submitted by the Contributor for information or approvals in connection with this Agreement. The Contributor agrees to make such requests [in writing via e-mail]¹⁵ to the attention of [name] in the Company's [*] department. In the event the Contributor makes a reasonably detailed request of the Company (including, but not limited to, request for additional expense reimbursement), and the Company does not respond to such request in [2] business days, the request shall be deemed accepted by the Contributor and the Company for all purposes under this Agreement.
- F) **[TERMINATION OPTION]** [Either Party may terminate this Agreement by giving [thirty (30) days] written notice to the other Party. For the avoidance of doubt, upon termination of this Agreement, the parties shall continue to be responsible for [any portion] of the Publication Fee that is payable at the time of such termination as set forth in Section 2, [and any expenses incurred or return of advance not spent pursuant to Section 3].]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first above written.

15-This can be modified to provide the most appropriate method of communication for the specific circumstances.

ANNEX A: DESCRIPTION OF THE WORKS

The Works:

[Specify the scope of the assignment, including, if applicable, the platforms contemplated for the Works]

Due Date:

The initial submission is due on *[date]*, unless such due date is extended by the mutual agreement of the Parties. *[In the event such extension is greater than [•] [days/weeks] [at the request of the Company], the Company agrees to increase the fee by [•]% per [day/week] of delay.]*

Minimum Requirements:

The following are the Minimum Requirements that must be met for the initial submission of the Works: *[describe the minimum requirements, such as number of words, number of photos, length of video, or other objective measures agreed upon by the Parties; the minimum requirements may vary, based on the payment structure and on whether they are the minimum requirements of submission or for completion].*

[In addition, notwithstanding the foregoing, the Works shall not meet the Minimum Requirements if the Works do not fulfill the Company's reasonable professional journalistic standards; provided, [that the Company acknowledges that the first draft of the Works submitted by the Contributor shall be measured based on the standards reasonably applied to a first-draft submission and, provided further,] that the Contributor shall be provided notice of, and a reasonable opportunity to cure, any defect in the Works that would cause the Works not to meet the Company's reasonable professional journalistic standards.]

[ANNEX B: THE TEAM]

[ANNEX C: BUDGET]¹⁶

16-Annex should list the expected budget plus all possible expenses for which expense reimbursement could be sought, with the expectation that the Company may seek to limit the scope.

[ANNEX D: CONTACT LIST]

For editorial inquiries: [•]

For financial inquiries: [•]

For HR inquiries: [•]

For all other inquiries: [•]