

Contracts & Insurance:

Key Elements to Freelancing Safely

*By Anna Therese Day, co-founder of Frontline Freelance Register
and board member of the ACOS Alliance*

“In fact — because contracts establish not only a media organization’s expectations *of* freelancers, but also their obligation *to* them — contracts likely play a greater role in establishing the necessary safeguards and resources (or dangerous lack thereof) than just about anything else.”

- “Why We Created A Toolkit for Freelance Journalists to Negotiate Terms That Keep Them Safe”
via [ACOS Alliance & Frontline Freelance Register](#), April 2020 via Medium

Contracts & Insurance for Freelancing Safely

FOR TODAY'S SESSION:

1. **CONTRACTS**

- What is the Model Freelance Publishing Agreement?
- Why is it relevant to our safety?
- Review the "Guide to the Model Freelance Publishing Agreement"

2. **INSURANCE**

- Key considerations for selecting/securing insurance
- Recommended Resources via ACOS Alliance & its partners
- Q&A

What Is The Model Contract & Why Do We Need It?

BACKGROUND:

- **Frontline Freelance Register & ACOS Alliance** partnered with the **Vance Center for International Justice** to create a “Model Contract” aka “**The Model Freelance Publishing Agreement**” to develop tools for freelance journalists to negotiate safe, fair, and professional contracts
- **Contracts as a Safety Issue:** the contract was originally developed for freelance journalists working in hostile environments in order to include specific provisions often missing from standard contracts. However, given the onset of COVID-19, **the need for safe contracts is even greater and more urgent** across our entire industry.

What Is The Model Contract & Why Do We Need It?

THE MODEL FREELANCE PUBLISHING AGREEMENT

- The model contract helps freelance journalists navigate negotiations and contracts quickly, armed with **sample legal language** for common freelance challenges as well as a **sample contract**
 - What should freelancers ask for? What should they absolutely avoid? What should commissioning editors/producers know?
 - If an outlet doesn't have a sufficient contract, freelancers can present the model contract, noting that it's supported by ACOS Alliance, FFR, and the broader journalism safety community
- **Key Issues:** Payment (Structure / Timelines), Expenses, Insurance, Communications, and HR/Finance/Legal
- **The Tool Kit:** Full Model Contract, Guide, & Sample Contract

The Model Freelance Publishing Agreement ToolKit

Three Documents:

1. Model Freelance Publishing Agreement
2. The Guide
3. The Summary

[LINK](#) for Downloads



#1: The Model Freelance Publishing Agreement

- Color-Coded
by favorability
to freelancer
- 11 Page
Document
- [Link](#) for
download via
ACOS

MODEL FREELANCE PUBLISHING AGREEMENT

The information made available on this site is not legal advice or a substitute for legal counsel. The

The template has been reviewed under New York law and does not specifically address issues in non-NY jurisdictions, including those outside of the United States. The template will need to be tailored to the specific circumstances of each assignment. In certain circumstances, review of local or subject-matter counsel would be appropriate, particularly for intellectual property-related issues.

The information contained in the template may or may not reflect the most current legal developments, and ACOS Alliance does not guarantee any particular results from the use of this form. Users should also consider their applicable rights or obligations under New York's Freelance Isn't Free Act (Local Law 140 of 2016), and the template does not necessarily address all of the requirements of such law in all circumstances.

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 \$ [•] (the "**Publication Fee**"). In connection with the Publication Fee, the Contributor shall include an invoice at the time of submission of the Complete 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 "**Deliv. 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 [bracketed] 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, 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. For situations 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 need 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.

#2: The Guide: Model Freelance Publishing Agreement

- Guide by
section and
issue
- 2 Page
Document
- [Link](#) for
download
via ACOS

GUIDE: FREELANCE PUBLISHING AGREEMENT¹

The Model Freelance Publishing Agreement seeks to facilitate agreement between media companies and freelance journalists (hereafter, the "contributor") 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 for 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 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.
- B) The contributor seeks reimbursement for actually-incurred expenses after incurring the expenses or submitting the work.

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 purpose 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 country(ies), e.g., the U.S. and U.K. only
- III The medium(s), 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 require 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.

#3: The Summary: Model Freelance Publishing Agreement

- Form/Sample Contract of main issues
- 2 Page Document
- [Link](#) for download via ACOS

SUMMARY: MODEL FREELANCE PUBLISHING AGREEMENT

Commissioning Organization: _____ (the "Company")
Contributor: _____ (the "Contributor")

The Company commissions the Contributor to produce a story/image/video suitable for the Company to publish (the "Work") and agrees to pay the Contributor a fee for the Work.

Description of the Work: _____
Date of Agreement: _____ Date for Submission of the Work: _____

Fee:

Option A: The total amount of \$ _____ for the Work.
Option B: The amount equal to the total time spent on producing the Work at a rate of \$ _____ per hour/day/week/month.
If the Company requests the Contributor to modify the Work for more than [_____] drafts/weeks, the Company pays an additional fee of \$ _____ per [day/week] and reimburses additional expenses.

Payment:

The Company pays the Contributor within [30 or _____] days after the Company's receipt of an invoice submitted by the Contributor based on the following:

Option A: Full payment of the Fee after the Contributor submits the Work to the Company.
Option B: [80 or _____]% payment after the Contributor submits the Work and [40 or _____]% payment days after the Company publishes the Work.
Option C: The Company pays [80 or _____]% as a "kill fee" if it does not publish the Work.
Option D: The Company pays the [hourly/daily/weekly/monthly] fee based on the [hours/days] worked as described in the invoice.
[Regarding any of the options above, if the Company is more than [30 or _____] days late in paying the Fee, it must pay interest at a rate of [1 or _____]% per month in addition to the Fee.]

Expenses:

Option A: The Company advances to the Contributor [100 or _____]% of estimated expenses based on an approved budget and reimburses any additional amount as in Option A.
Regarding either of the above options, if the Company is more than [30 or _____] days late in paying the reimbursement, it must pay an interest at a rate of [1 or _____]% per month.
Option B: The Contributor presents to the Company proof of expenses within [30 or _____] days after incurring such expenses/submits the Work. The Company reimburses the Contributor within [30 or _____] days following the presentation of such proof of expenses.

Insurance: **Option A:** The Company enrolls the Contributor in its insurance program at its cost or otherwise buys insurance for the Contributor.
Option B: The Contributor buys insurance and the Company reimburses the expense.
Option C: The Contributor buys insurance at his/her own expense.

Rights: **Option A:** The Contributor owns the Work and grants certain rights to the Work to the Company exclusively.
Rights granted: _____ language(s); _____ medium(s); _____ use (editorial and/or commercial); _____ country(ies)/region(s); [no or only _____] transfer to other publishers; and exclusivity for a period of _____ days/weeks/months.
Option B: ("Work for Hire"). The Contributor gives all rights and ownership to the Work to the Company.

Termination: [Either the Company or the Contributor may terminate this contract by giving [30 or _____] days' notice to the other. Upon termination, the Company will continue to be responsible for the fee and reimbursement of expenses that are payable at the time of such termination. Contributor should return unused advance of expenses to the Company, if any.]

Other: The Company maintains confidentiality of the Contributor's sources to the extent permitted by law.
[The Contributor and the Company retain notes and other records for one year after publication.]
The Company designates _____ of [Finance/Legal/Human Resources] to receive inquiries or complaints from the Contributor about payment and other issues.
The Company commits not to judge the Work based on discriminatory grounds. The Contributor may contact _____ of [Legal/Human Resources] of the Company in case of suspected discrimination.
The Contributor acknowledges that she/he is an independent contractor, is responsible for paying taxes related to the Work, and is not entitled to employment benefits.
Disputes are resolved in court under New York law.

The Guide: Fee

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.

****This section should not be determined without clear answers on the subsequent sections -- payment timeline, expenses, and insurance -- as a freelancers rate might change depending on the conditions of the contract.**

The Guide: Payment

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.

The Guide: Expenses

3

Expenses

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

- A) 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.
- B) The contributor seeks reimbursement for actually-incurred expenses after incurring the expenses or submitting the work.

“FFR’s position is that the refusal to advance expenses for freelancers is not only unprofessional, but also unethical... For our community, news outlets’ refusal to advance expenses is truly a matter of life and death; it’s asking us to work in the same conditions that have already led to the deaths of our colleagues.”

- [ACOS Alliance & Frontline Freelance Register](#), April 2020 via Medium

The Guide: Insurance

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.

*If Option B or C are selected, the earlier sections of the contract (Fee, Payment, or Expenses) must be adjusted to reflect the change.

**More on selecting the right insurance later!

The Guide: Rights

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").

The Guide: Status & Data Protection

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.

The Guide: Commitments, Termination, & Legal

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.

Insurance for Freelancing Safely

ACOS Recommendations:

- ACOS does not see its role as promoting a specific product, but instead it identifies insurance options that fulfill needs identified by freelance journalists around the world and encourages freelancers and news organizations to assess, compare, and understand any policy's terms
- The top concerns raised by journalists have been quality, cost, and geographic limitations. ACOS has identified two options that provide basic emergency insurance, at low-cost, without geographical limitations. ACOS also maintains a list with its partners of other options, including higher cost but more comprehensive insurance packages

Insurance for Freelancing Safely

Insurance for Journalists:

- Covers journalists traveling to any country, including conflict zones, of any nationality, by-the-week
- Includes accidental death / disablement / medical, medical evacuation & repatriation
- Can be purchased outside country of residence or whilst on assignment

Insurance for Local Media:

- Covers any nationality, anywhere in the world, including country of residence, by-the-day for \$7.50/day
- Includes accidental death / medical, medical evacuation & repatriation
- Affordable option for international media organizations looking to insure local journalists, fixers, & drivers.

*ACOS signatories can benefit from 7.5% discount on both!

Insurance for Freelancing Safely

KEY CONSIDERATIONS:

- To properly assess plans and communicate effectively with insurance providers, complete a thorough **Risk Assessment & Communications Plan** ([via RPT](#))
- For Consideration:
 - Does the provider have experience working with journalists? What documentation will you need? Is there a 24-hour emergency line? Does it cover incidents related to natural disasters or terrorism? How does their payment/reimbursement work? ([Sample Q&A prompts via RPT!](#))
 - Call the insurance provider in advance to review the specifics of your assignment, including areas of travel within countries in case specific areas have higher ratings
 - Experience and relevant safety trainings (HEFATs) can help individuals secure insurance
 - Limitations: most plans don't cover kidnap/ransom (K&R) or COVID-19 (in their medical evacuation or treatment). When looking for K&R, search "crisis response"; Battleface Insurance covers COVID-19, excluding travel cancellations and individuals over age 57
 - Moving Forward: looking for insurance related to trauma/PTSD and legal issues

Risk Assessment & Communications Plans

Downloadable Templates:

- **Rory Peck Trust** offers [downloadable templates](#) for the following: Risk Assessment & Security Protocol Template (including a Guide to completing it), Communications Plan Template, Proof of Life Template, Digital Risk Assessment Template, among others.
- These Templates will allow you to aggregate all the information you'll need to have a thorough discussion with an insurance provider in advance, as well as your commissioning media organization... In addition to being a Best Practice among all working professional journalists.

Contracts & Insurance: Moving Forward

Next Steps for Our Community...

- Adapting and Translating the Model Freelance Publishing Agreement: ACOS will release an Arabic language version next month. It will pursue other languages / regions moving forward as well.
- Evolving Resources: both the Model Freelance Publishing Agreement and the Insurance Resources of ACOS are living documents that need inputs to improve and adapt with the pace of our industry. As you use these resources, please give us feedback so we can keep improving these resources for our entire community!

Resources for Freelance Journalists

- **Model Freelance Publishing Agreement:** [Complete Toolkit](#), [Medium Article](#),
- **Insurance for Freelancers:** [ACOS Alliance](#) and [Rory Peck Trust](#) (including backgrounds/guides),
- **Rory Peck Trust's Freelance Resources:** Safety & Security, Digital Security, Online Training & Videos, Funding Sources, Insurance, and Forms & Templates ([LINK](#))
- **ACOS Alliance's Freelance Resources:** COVID-19, Trauma Support, Insurance, Safety Trainings, Contracts, & Safety Checklists for News Rooms and Journalists ([LINK](#))

MEET OUR PARTNERS



**Freelance
Journalism
Assembly**