

# MANUSCRIPT

## Freelance Writing & Photography Contract

This Contract is between **MANUSCRIPT** Digital Magazine (the "Client") and \_\_\_\_\_ (the 'Contractor').

### 1. WORK AND PAYMENT.

**1.1 Project.** The Client is hiring the Contractor to do the following: Responsible for generating one-of-a-kind story (pitch) ideas and creating engaging articles related to books, literary figures, reading and other book topics. The Contractor may also be responsible for creating and producing custom photography for the sole use of the Client.

**1.2 Schedule.** The Contractor will begin work on \_\_\_\_\_ and will continue until the work is completed. This contract can be ended by either Client or Contractor at any time, pursuant to the terms of Section 6, Term and Termination.

**1.3 Payment.** The Client will pay the Contractor a flat fee of up to \$50.00 (CAD). This fee will be provided at the time of final editing and use of the article in a published form. The standard flat fee will be for one-time work on either article(s) or photography. This fee is subject to negotiation and can be amended at any time.

**1.4 Expenses.** The Client will not reimburse the Contractor's business or personal expenses.

**1.5 Invoices.** The client will provide an e-transfer of payment, along with a duplicate copy of an invoice for the article(s) or photography provided.

**1.6 Support.** The Contractor will not provide support for any deliverable once the Client accepts it, unless otherwise agreed in writing.

### 2. OWNERSHIP AND LICENSES.

**2.1 Client Owns All Work Product.** As part of this job, the Contractor is creating "work product" for the Client. To avoid confusion, work product is the finished product, as well as drafts, notes, materials, mock-ups, hardware, designs, inventions, patents, code, and anything else that the Contractor works on—that is, conceives, creates, designs, develops, invents, works on, or reduces to practice—as part of this project, whether before the date of this Contract or after. The Contractor hereby gives the Client this work product once the Client pays for it in full. This means the Contractor is giving the Client all of its rights, titles, and interests in and to the work product (including intellectual property rights), and the Client will be the sole owner of it. The Contractor also waives its moral right to the integrity of the work product. The Client can use the work product however it wants or it can decide not to use the work product at all. The Client, for example, can modify, destroy, or sell it, as it sees fit.

**2.2 Contractor's Use of Work Product.** Once the Contractor gives the work product to the Client, the Contractor does not have any rights to it, except those that the Client explicitly gives the Contractor here.

**2.3 Contractor's Help Securing Ownership.** In the future, the Client may need the Contractor's help to show that the Client owns the work product or to complete the transfer. The Contractor agrees to help with that. For example, the Contractor may have to sign a patent application. The Client will pay any required expenses for this. If the Client can't find the Contractor, the Contractor agrees that the Client can act on the Contractor's behalf to accomplish the same thing. The following language gives the Client that right: if the Client can't find the Contractor after spending reasonable effort trying to do so, the Contractor hereby irrevocably designates and appoints the Client as the Contractor's agent and attorney-in-fact, which appointment is coupled with an interest, to act for the Contractor and on the Contractor's behalf to execute, verify, and file the required documents and to take any other legal action to accomplish the purposes of paragraph 2.1 (Client Owns All Work Product).

**2.4 Contractor's IP That Is Not Work Product.** The Contractor might include intellectual property that the Contractor owns or has licensed from a third party in the deliverable(s), but because this intellectual property was not created for the Client, it does not qualify as "work product." This is called "background IP." Possible examples of background IP are pre-existing code, type fonts, properly-licensed stock photos, and web application tools. The Contractor is not giving the Client this background IP. But, as part of the contract, the Contractor is giving the Client a right to use and license (with the right to sublicense) the background IP as part of the deliverable(s) in which it is included. Once the Client pays the Contractor in full, the Client may use this background IP worldwide and free of charge, but it cannot transfer its rights to the background IP (except as allowed in Section 11.1 (Assignment)). The Client cannot sell or license the background IP separately from the deliverable(s) in which it is included. The Contractor cannot take back this grant, and this grant does not end when the contract is over.

**2.5 Contractor's Right to Use Client IP.** The Contractor may need to use the Client's intellectual property to do its job. For example, if the Client is hiring the Contractor to build a website, the Contractor may have to use the Client's logo. The Client agrees to let the Contractor use the Client's intellectual property and other intellectual property that the Client controls to the extent reasonably necessary to do the Contractor's job. Beyond that, the Client is not giving the Contractor any intellectual property rights, unless specifically stated otherwise in this Contract.

### **3. COMPETITIVE ENGAGEMENTS.**

The Contractor won't work for a direct (book or literary print or digital) competitor of the Client until this Contract ends. To avoid confusion, a competitor is any third party that develops, manufactures, promotes, sells, licenses, distributes, or provides products or services that are substantially similar to the Client's products or services, within the territory in which the Client sells its products or services. A competitor is also a third

party that plans to do any of those things. The one exception to this restriction is if the Contractor asks for permission beforehand and the Client agrees to it in writing. If the Contractor uses employees or subcontractors, the Contractor must make sure they follow the obligations in this paragraph, as well.

#### **4. NON-SOLICITATION.**

Until this contract ends, the Contractor won't: (a) encourage Client employees or service providers to stop working for the Client; (b) encourage Client customers or clients to stop doing business with the Client; or (c) hire anyone who worked for the Client over the 12-month period before the contract ended. The one exception is if the Contractor puts out a general ad and someone who happened to work for the Client responds. In that case, the Contractor may hire that candidate. The Contractor promises that it won't do anything in this paragraph on behalf of itself or a third party.

#### **5. REPRESENTATIONS.**

**5.1 Overview.** This section contains important promises between the parties.

**5.2 Authority to Sign.** Each party promises to the other party that it has the authority to enter into this Contract and to perform all of its obligations under this Contract.

**5.3 Contractor Has Right to Give Client Work Product.** The Contractor promises that it owns the work product, that the Contractor is able to give the work product to the Client, and that no other party will have a valid claim that it owns the work product. If the Contractor uses employees or subcontractors, the Contractor also promises that these employees and subcontractors have signed contracts with the Contractor giving the Contractor any rights that the employees or subcontractors have related to the Contractor's background IP and work product.

**5.4 Contractor Will Comply with Laws.** The Contractor promises that the manner it does this job, its work product, and any background IP it uses comply with applicable Canadian and foreign laws and regulations.

**5.5 Work Product Does not Infringe.** The Contractor promises that its work product does not and will not infringe on someone else's intellectual property rights, that the Contractor has the right to let the Client use the background IP, and that this Contract does not and will not violate any contract that the Contractor has entered into or will enter into with someone else.

**5.6 Client Will Review Work.** The Client promises to review the work product, to be reasonably available to the Contractor if the Contractor has questions regarding this project, and to provide timely feedback and decisions.

**5.7 Client-Supplied Material Does Not Infringe.** If the Client provides the Contractor with material to incorporate into the work product, the Client promises that this material does not infringe on someone else's intellectual property rights.

**5.8 Disclaimer.** The Contractor disclaims all implied warranties, representations and conditions, including those that may be implied by statute, a course of dealing or a usage of trade. The only warranties, representations and conditions that the Contractor makes are those that are expressly set out in this Section 5 (Representations).

## **6. TERM AND TERMINATION.**

This Contract is ongoing until the work is completed. Either party may end this Contract for any reason by sending an email or letter to the other party, informing the recipient that the sender is ending the Contract and that the Contract will end in 7 business days. The Contract officially ends once that time has passed. The party that is ending the Contract must provide notice by taking the steps explained in Section 11.4. The Contractor must immediately stop working as soon as it receives this notice, unless the notice says otherwise. If either party ends this Contract before the Contract automatically ends as explained in the first sentence of this paragraph, the Client will not pay for anything that has not been completed. The following sections don't end even after the Contract ends: 2 (Ownership and Licenses); 3 (Competitive Engagements); 4 (Non-Solicitation); 5 (Representations); 8 (Confidential Information); 9 (Limitation of Liability); 10 (Indemnity); and 11 (General).

## **7. INDEPENDENT CONTRACTOR.**

The Client is hiring the Contractor as an independent contractor. The following statements accurately reflect their relationship:

- The Contractor will use its own equipment, tools, and material to do the work.
- The Client will not control how the job is performed on a day-to-day basis. Rather, the Contractor is responsible for determining when, where, and how it will carry out the work.
- The Client will not provide the Contractor with any training.
- The Client and the Contractor do not have a partnership or employer-employee relationship.
- The Contractor cannot enter into contracts, make promises, or act on behalf of the Client.
- The Contractor is not entitled to the Client's benefits (e.g., group insurance, retirement benefits, retirement plans, vacation days).
- The Contractor is responsible for its own taxes.
- The Client will provide reference and credit for any completed works related to this contract.
- The Contractor will yield any editing, skepticism and fact-checking with the Client on written articles and photography.

## **8. CONFIDENTIAL INFORMATION.**

**8.1 Overview.** This Contract imposes special restrictions on how the Client and the Contractor must handle confidential information. These obligations are explained in this section.

**8.2 The Client's Confidential Information.** While working for the Client, the Contractor may come across, or be given, Client information that is confidential. This is information like customer lists, business strategies, research & development notes, statistics about

a website, and other information that a reasonable person would understand to be private. The Contractor promises to protect the confidentiality of this information as if it is the Contractor's own confidential information. The Contractor may use this information to do its job under this contract, but not for anything else. For example, if the Client gives the Contractor a customer list to use in sending out a newsletter, the Contractor cannot use those addresses for any other purpose. The one exception to this is if the Client gives the Contractor written permission to use the information for another purpose, the Contractor may use the information for that purpose, as well. When this contract ends, the Contractor must give back or destroy all confidential information and confirm that it has done so. The Contractor promises that it will not share confidential information with a third party, unless the Client gives the Contractor written permission first. The Contractor must continue to follow these obligations, even after the contract ends. The Contractor's responsibilities only stop if the Contractor can show any of the following: (i) that the information was already public when the Contractor came across it; (ii) the information became public after the Contractor came across it, but not because of anything the Contractor did or didn't do; (iii) the Contractor already knew the information when the Contractor came across it and the Contractor didn't have any obligation to keep it secret; (iv) a third party provided the Contractor with the information without requiring that the Contractor keep it a secret; or (v) the Contractor created the information on its own, without using anything belonging to the Client.

**8.3 Third-Party Confidential Information.** It's possible the Client and the Contractor each have access to confidential information that belongs to third parties. The Client and the Contractor each promise that it will not share with the other party confidential information that belongs to third parties, unless it is allowed to do so. If the Client or the Contractor is allowed to share confidential information with the other party and does so, the sharing party promises to tell the other party in writing of any special restrictions regarding that information.

## **9. LIMITATION OF LIABILITY.**

Except for damages that result from a breach of Section 8 (Confidential Information), neither party is liable for the other party's lost profits, lost savings or lost business, or for other breach-of-contract damages that the breaching party could not reasonably have foreseen when it entered this contract. Except where a party breaches Section 8 (Confidential Information) or where a party indemnifies the other as described in Section 10 (Indemnity), neither party will be liable to the other, for breach of contract, negligence or otherwise, in an amount that is more than the Client is obligated to pay the Contractor under this contract.

## **10. INDEMNITY.**

**10.1 Overview.** This section transfers certain risks between the parties if a third party sues or goes after the Client or the Contractor or both. For example, if the Client gets sued for something that the Contractor did, then the Contractor may promise to come to the Client's defense or to reimburse the Client for any losses.

**10.2 Client Indemnity.** In this Contract, the Contractor agrees to indemnify the Client (and its affiliates and its and their directors, officers, employees, and agents) from and against all liabilities, losses, damages, and expenses (including reasonable attorneys' fees) related to a third-party claim that the work product or background IP infringes the third party's intellectual property rights.

**10.3 Contractor Indemnity.** In this Contract, the Client agrees to indemnify the Contractor (and its affiliates and its and their directors, officers, employees, and agents) from and against liabilities, losses, damages, and expenses (including reasonable attorneys' fees) related to a third-party claim that any material provided by the Client to incorporate into the work product infringes the third party's intellectual property rights.

## **11. GENERAL.**

**11.1 Assignment.** This Contract applies only to the Client and the Contractor. The Contractor cannot assign its rights or delegate its obligations under this Contract to a third-party (other than by will or intestate), without first receiving the Client's written permission. In contrast, the Client may assign its rights and delegate its obligations under this Contract without the Contractor's permission. This is necessary in case, for example, another Client buys out the Client or if the Client decides to sell the work product that results from this Contract.

**11.2 Arbitration.** As the exclusive means of initiating adversarial proceedings to resolve any dispute arising under this contract, a party may demand that the dispute be resolved by alternative dispute resolution administered by the ADR Institute of Canada in accordance with the ADRI Arbitration Rules.

**11.3 Modification; Waiver.** To change anything in this Contract, the Client and the Contractor must agree to that change in writing and sign a document showing their contract. Neither party can waive its rights under this Contract or release the other party from its obligations under this Contract, unless the waiving party acknowledges it is doing so in writing and signs a document that says so.

### **11.4 Notices.**

(a) Over the course of this Contract, one party may need to send a notice to the other party. For the notice to be valid, it must be in writing and delivered in one of the following ways: personal delivery, email, or certified or registered mail (postage prepaid, return receipt requested). The notice must be delivered to the party's address listed at the end of this Contract or to another address that the party has provided in writing as an appropriate address to receive notice.

(b) The timing of when a notice is received can be very important. To avoid confusion, a valid notice is considered received as follows: (i) if delivered personally, it is considered received immediately; (ii) if delivered by email, it is considered received upon acknowledgement of receipt; (iii) if delivered by registered or certified mail (postage prepaid, return receipt requested), it is considered received upon receipt as indicated by

the date on the signed receipt. If a party refuses to accept notice or if notice cannot be delivered because of a change in address for which no notice was given, then it is considered received when the notice is rejected or unable to be delivered. If the notice is received after 5:00pm on a business day at the location specified in the address for that party, or on a day that is not a business day, then the notice is considered received at 9:00am on the next business day.

**11.5 Severability.** This section deals with what happens if a portion of the Contract is found to be unenforceable. If that's the case, the unenforceable portion will be changed to the minimum extent necessary to make it enforceable, unless that change is not permitted by law, in which case the portion will be disregarded. If any portion of the Contract is changed or disregarded because it is unenforceable, the rest of the Contract is still enforceable.

**11.6 Signatures.** The Client and the Contractor may sign this document using pen and scanning or hand-delivering the contract to the Client.

**11.7 Governing Law.** The laws in force in the province of Ontario govern the rights and obligations of the Client and the Contractor under this Contract, without regard to conflict of law principles of that province.

**11.8 Entire Contract.** This Contract represents the parties' final and complete understanding of this job and the subject matter discussed in this Contract. This Contract supersedes all other contracts (both written and oral) between the parties.

Both the Client and the Contractor are to sign below.  
By signing, both parties agree and will adhere to the conditions stated above.

Contractor Name (Please print): \_\_\_\_\_

Contractor Name (Contractor signature): \_\_\_\_\_

Date: \_\_\_\_\_

Client Name (Please Print): \_\_\_\_\_

Client Name (Client owner signature): \_\_\_\_\_

Date: \_\_\_\_\_