



media, entertainment & arts alliance
the people who inform and entertain

STANDARD FREELANCE COMMISSIONING TERMS

BANKI HADDOCK FIORA

LAWYERS

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MEAA STANDARD FREELANCE COMMISSIONING TERMS

THIS AGREEMENT IS MADE ON

PARTIES

##ACN~ of ## (Publisher)

##ACN~ of ## (Contributor)

BACKGROUND

- A. The Publisher publishes the publications listed in schedule 1.
- B. The Contributor is a freelance journalist.
- C. The Publisher and the Contributor have agreed terms on which the Contributor will contribute and the Publisher will publish, material created by the Contributor for publication.

AGREEMENTS

1. Definitions and interpretation

1.1 Definitions

1.1.1 Where commencing with a capital letter:

Publications means the publications listed in schedule 1;

Territory means the territory described in the Work Description;

Work means a literary or artistic work created by the Contributor for publication under and submitted to the Publisher in accordance with this agreement; and

Work Description means the document a copy of which is set out in schedule 2.

1.1.2 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

1.2 Presumptions of interpretation

Unless the context otherwise requires a word which denotes:

- (a) the singular denotes the plural and vice versa; and
- (b) a person includes an individual, a body corporate and a government.

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1.3 Successors and assigns

A person includes the trustee, executor, administrator, successor in title and assign of that person. This clause must not be construed as permitting a party to assign any right under this agreement.

2. Works

2.1 Works for publication

From time to time during the term of this agreement, the Contributor may submit, or the Publisher may commission, Works for publication in one or more of the Publications.

2.2 Commissioning Works

2.2.1 The Publisher may engage the Contributor to create Works, by completing the Work Description and delivering it to the Contributor.

2.2.2 By the acceptance date set out in the Work Description, the Contributor must accept or reject the engagement.

2.2.3 The Contributor may submit a Work Description to the Publisher, and the Publisher may engage the Contributor to create the Work by accepting the Work Description by the acceptance date in the Work Description.

2.2.4 If the Contributor has not submitted a Work by the submission date set out in the Work Description and the Publisher has not agreed to vary the submission date, the Publisher may terminate the commission and no fee will be payable in respect of that Work.

2.2.5 If at any time prior to the submission date set out in the Work Description the Publisher terminates the commission, the Publisher must pay to the Contributor the fee set out in the schedule.

2.3 Unsolicited Works

2.3.1 The Contributor may submit a Work for publication to the Publisher, with a copy of the Work Description.

2.3.2 The Publisher must accept or reject a Work submitted under this clause 2.3 by no later than the date for acceptance indicated in the Work Description.

2.3.3 The Publisher must not publish a Work referred to in clause 2.3.1 except on the terms set out in the Work Description, unless agreed in writing with the Contributor.

2.4 Acceptance for publication

2.4.1 With 7 days after submission of a Work referred to in clause 2.2, the Publisher must:

- (a) accept the Work for publication;

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- (b) accept the Work for publication subject to the Contributor making minor reasonable modifications; or
- (c) reasonably determine that the Work is not of an acceptable standard for publication, and notify the Contributor accordingly.

2.4.2 If the Publisher notifies the Contributor that it accepts the Work for publication subject to minor reasonable modifications, the Contributor must make such modifications within a reasonable time and return the Work to the Publisher.

3. Copyright

3.1 Exclusive licence

3.1.1 On submission of a Work under clause 2.3, the Contributor grants to the Publisher an exclusive option to publish the Work for the period from the date of submission to the date of acceptance as set out in the Work Description.

3.1.2 If the Work has not been accepted for publication by the acceptance date, and the Publisher and the Contributor have not agreed otherwise, the exclusive option granted in clause 3.1.1 will lapse and the Contributor may deal with the Work as he or she sees fit.

3.2 Assignment or licence on publication

From the date of acceptance of the Work for Publication, the Contributor grants to the Publisher the licence described in the Work Description.

3.3 Licence to the Contributor

Where the Contributor has granted an assignment or an exclusive licence of the copyright in the Work to the Publisher, the Publisher grants the Contributor a royalty free non exclusive licence of the copyright in the Work for use by the Contributor in promoting his or her services, including in portfolios and on websites.

3.4 Moral rights

Nothing in this agreement constitutes a consent by the Contributor in relation to any acts contrary to the Contributor's moral rights, unless expressly set out in the Work Description.

4. Warranties

The Contributor warrants that:

- (a) any Work submitted under this agreement is an original Work created by the Contributor and will not infringe any other person's intellectual property rights;
- (b) no part of the Work has been previously published unless such publication is disclosed in the Work Description;
- (c) he or she is entitled to enter into this agreement;

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- (d) he or she has obtained an assignment of the whole of the copyright in relation to any material included in the Work that is created by a third party;
- (e) the Work will be of a standard acceptable for publication in the nominated Publication;
- (f) he or she will during the preparation for and creation of the Work comply with the Code of Ethics of the Media, Entertainment and Arts Alliance; and
- (g) he or she will take out and maintain any necessary insurances.

5. Indemnity

The Publisher indemnifies the Contributor against all liabilities, costs and claims arising out of the publication of the Work.

6. Fees and expenses

6.1 Fees

The Publisher must pay the Contributor the fees specified in the Work Description.

6.2 Expenses

The Publisher must reimburse the Contributor for all reasonable expenses incurred by the Contributor in creating the Work, excluding ordinary office expenses, provided that the Contributor:

- (a) obtains the Publisher's prior written consent before incurring expenses; and
- (b) gives the Publisher:
 - (i) details of the expenses incurred, together with evidence acceptable to the Publisher of the incurring of those expenses; and
 - (ii) all assistance reasonably required by the Publisher to verify the expenses incurred.

6.3 Payment

The Publisher must, subject to this clause 6, pay the fees and expenses referred to in clauses 6.1 and 6.2 in the following manner:

- (a) the Contributor must on submission of a Work provide to the Publisher an invoice setting out details of:
 - (i) the fee for the Work; and
 - (ii) expenses incurred; and

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- (b) the Publisher must pay the invoice:
 - (i) within 1 month after receipt of an invoice for a Work referred to in clause 2.2; and
 - (ii) within 1 month of acceptance of a Work referred to in clause 2.3.

6.4 GST

Unless otherwise indicated, amounts stated in this agreement do not include GST. In relation to any GST payable for a taxable supply by a party under this agreement, the recipient of the supply must pay the GST subject to the supplier providing a tax invoice. Terms used in this clause 6.4 which are defined in the GST Act have the same meaning as in the GST Act.

6.5 Reporting and auditing

- 6.5.1 The Publisher must maintain records and report to the Contributor at least quarterly, any sales or syndications in relation to the Work, in sufficient detail to enable the Contributor to verify amounts payable under this agreement.
- 6.5.2 The Contributor may, once every 2 years and on not less than 30 days' notice to the Publisher, during the Publisher's normal business hours and at its principal place of business in Australia, appoint a qualified accountant or auditor who is approved by the Publisher (such approval not to be unreasonably withheld) to examine the Publisher's records to determine the correctness of any report or payment made under this agreement for the period since any previous audit or 6 years, whichever is the lesser.
- 6.5.3 The Publisher must pay the reasonable cost of the audit or examination if it establishes that the information provided resulted in an underpayment of more than 5%, or that the Publisher has not kept the records required to be kept under this agreement.

7. Relationship of the parties

7.1 No partnership

Nothing contained in this agreement creates an agency, partnership, joint venture or employment relationship between the Contributor and the Publisher or any of their respective employees, agents or contractors.

7.2 No holding out

Neither the Contributor nor any person acting on behalf of the Contributor may hold itself out as being entitled to contract or accept payment in the name of or on account of the Publisher.

7.3 Exclusion

The Contributor's only liability is as expressly stated in this agreement. To the extent permitted by law, all other liability is excluded.

8. Term and termination

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8.1 Term

This agreement commences on its commencement date and continues until terminated in accordance with clause 8.2 or 8.3

8.2 Termination by notice

Either party may, on 1 month's notice to the other party, terminate this agreement, but the terms of this agreement shall apply to any Work commissioned but not accepted as at the date of termination.

8.3 Termination by default

8.3.1 If the publisher:

- (a) goes into liquidation, has a receiver or receiver and manager appointed to it or any part of its assets, enters into a scheme of arrangement with creditors or suffers any other form of external administration;
- (b) fails, within 7 days after receipt of notice, to remedy any breach of its obligations under this agreement which is capable of remedy;
- (c) breaches any of its obligations under this agreement which is not capable of remedy, or
- (d) persistently breaches its obligations under this agreement,

the Contributor may, by notice to the Publisher, terminate this agreement and recover from the Publisher all damages, losses, costs and expenses suffered by the Contributor.

9. Dispute resolution

9.1 Dealing with disputes

9.1.1 The parties must, without delay and in good faith, attempt to resolve any dispute which arises out of or in connection with this agreement prior to commencing any proceedings.

9.1.2 If a party requires resolution of a dispute it must do so in accordance with the provisions of this clause 9 and the parties acknowledge that compliance with these provisions is a condition precedent to any entitlement to claim relief or remedy whether by way of proceedings in a court of law or otherwise in respect of such disputes.

9.2 Resolution by management

9.2.1 If a party requires resolution of a dispute it must immediately submit full details of the dispute to the chief executive officer of the other party.

9.2.2 If the dispute is not resolved within 1 month of submission of the dispute to them, or such other time as they agree, the provision of clause 9.3 will apply.

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9.3 Conciliation

9.3.1 Disputes must be submitted to conciliation in accordance with and subject to The Institute of Arbitrators and Mediators Australia Mediation and Conciliation Rules.

9.3.2 A party may not commence proceedings in respect of the dispute unless the dispute is not settled by conciliation within 1 month of submission to conciliation, or such other time as the parties agree.

10. Miscellaneous

10.1 Notices

10.1.1 A notice under this agreement must be in writing and may be given to the addressee by:

- (a) delivering it to the address of the addressee;
- (b) sending it by pre-paid registered post to the address of the addressee; or
- (c) sending it by fax to the fax number of the addressee

and the notice will be deemed to have been received by the addressee on the receipt.

10.1.2 A fax is deemed to have been received on production of the transmission report by the machine from which the fax was sent which indicates that the fax was sent in its entirety to the fax number of the addressee.

10.2 Amendment

This agreement may only be varied by the written agreement of the parties.

10.3 Assignment

10.3.1 The Publisher may only assign a right under this agreement with Contributor's prior written consent.

10.4 Entire agreement

10.4.1 This agreement embodies the entire understanding and agreement between the parties as to its subject matter.

10.4.2 All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this agreement are merged in and superseded by this agreement.

10.5 Consent

Where the consent or approval of a party is required under this agreement, that party may, except as expressly stated, withhold its consent or approval or give it conditionally or unconditionally as it sees fit.

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10.6 Waiver

A waiver under this agreement is not binding on a part unless it is in writing and signed by the party. A waiver is not a waiver of any other right.

10.7 Further assurance

Each party must promptly sign all documents and do all things that the other party from time to time reasonably requests to effect, perfect, or complete this agreement and all transactions incidental to it.

10.8 Severance

Each of the agreements of the parties under this agreement is severable from the others and the severance of one agreement does not affect the other agreements.

10.9 Legal costs

The parties must each pay their own legal and other expenses relating directly or indirectly to the negotiation, preparation and signing of this agreement and all documents incidental to it.

10.10 Governing law and jurisdiction

10.11 NSW

10.11.1 This agreement is governed by and must be construed in accordance with the laws of New South Wales.

10.11.2 Each party:

- (a) irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and all courts which have jurisdiction to hear appeals from those courts; and
- (b) waives any right to object to proceedings being brought in those courts for any reason.

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SIGNED AS AN AGREEMENT

Signed by **## Limited:**

.....
Signature of witness

.....
Signature of authorised person

.....
Name of witness (print)

.....
Office held

.....
Name of authorised person (print)

Signed by **##:**

.....
Signature of witness

.....
Signature of ##

.....
Name of witness (print)

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SCHEDULE 1

[The publisher's company details]

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SCHEDULE 2 – Form to be completed upon accepting commission

Work Description

Creators details	<i>To be expanded</i>
Title or proposed title of work:	
Description of work:	
Word length:	
Credit to be given	
Intended date of publication (if commissioned Work):	
Date for acceptance of commission:	
Date for submission:	
Date for acceptance for publication:	

Rate and Licence/Assignment Type

Base rate	
per word and/or	
per article and/or	
per photograph	
Publication/s: [indicate whether one or more publications]	
Media:- unrestricted/print only/electronic only and web/web/only	
Territory:	
License length:	

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Licence Value guide

This is a licence value guide only. A licence can be sold in a range of formats; those listed can be altered and mixed. For example, a copyright holder may wish to limit the licence they issue by a combination of territory, media and term. In this case the value of the licence would be varied slightly from this guide.

Value of Licence (as a percentage of)	Type of Licence granted	Example / What this means to Freelancers
100%	Non exclusive licence, limited by media	You grant a licence to one person and also retain the right to grant other licences for the work to other people. You can also to continue to use it yourself. Any licences are limited by type of media. E.g. You allow XYZ Magazine to use your work in print and online but also retain the right to allow ABC Newspaper to use it for their new app and to continue to use it yourself in any form of media.
100%	Non exclusive licence, limited by territory	You grant a licence to one person and also retain the right to grant other licences for the work to other people. You can also to continue to use it yourself. Any licences are limited by type of media. E.g. You allow XYZ Magazine to use your work in Ireland but also retain the right to allow ABC Newspaper to use it in New Zealand and the US and to continue to use it yourself in any country.
150%	Unlimited, non exclusive licence	You grant a licence to one person and also retain the right to grant other licences for the work to other people. You can also continue to use it yourself. E.g. You allow XYZ Magazine to use your work but also retain the right to allow ABC Newspaper to use it and to continue to use it yourself. You allow the licensees to use the work in any manner they see fit.
150%	Non exclusive licence, limited by term	You grant a licence to one person and also retain the right to grant other licences for the work to other people. You can also to continue to use it yourself. Any licences are limited by time. E.g. You allow XYZ Magazine to use your work for six months but also retain the right to allow ABC Newspaper to use it for four years and to continue to use it yourself at the same time.
200%	Exclusive licence, limited by media	You undertake not to offer the work to anyone else. The licensee can use your work in an agreed form of media for an unlimited time – e.g. XYZ Magazine can exclusively use your work on the web only for eternity.
200%	Exclusive licence, limited by territory	You undertake not to offer the work to anyone else. The licensee can use your work in any media for an unlimited time but only in a certain territory(ies) – e.g. XYZ Magazine can exclusively use your work on the web, in print, or in any other form for an unlimited period of time, but only in Brazil.
250%	Exclusive licence for all media, limited term	You (the licensor) undertake not to offer the work to anyone else. The person you give the licence to (the licensee) can use your work in any media for a specified period of time – e.g. XYZ Magazine can exclusively use your work on the web, in print, or in any other form for a period of two years.
250%	Exclusive licence, limited by term	You undertake not to offer the work to anyone else. The licensee can use your work in an agreed form of media for a specified period of time – e.g. XYZ Magazine can exclusively use your work on the web only for a period of two years.
300%	Assignment – all media, in perpetuity	You assign (authorise someone else to deal with) all rights in your work so that it can be used in any way, anywhere in the world, and does not expire.

Authorisations/Restrictions

Web: <http://www.alliance.org.au> | **Email:** mail@alliance.org.au | **Phone:** Alliance Inquiry Desk: 1300 656 512

This contract was developed by the Media Entertainment and Arts Alliance in conjunction with Banki Haddock Fiora, March 2011

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Unauthorised modifications approved?	Y/N
Retails sales permitted?	Y/N
Commercial sales permitted?	Y/N
Other restrictions [e.g., not for advertising use]:	

Other

Authorised expenses passed on at cost	Y/N
Description of expenses	
Delivery Method/Format (e.g., Word 2007 via email/Photographs on CD)	
Responsibilities of publisher (e.g., Press pass by date, access to previous articles)	
Rework Fee (e.g. if publisher has purchased a licence but the article has become dated before publication and needs reworking)	
Kill fee:	

Currency of Payment (if not A\$)	
Total Licence Fee	
lump sum (Base x licence value)	
lump sum plus royalty on sales	
additional fees on syndication	

Signed _____ Signed _____

Date _____ Date _____