

# EDITORIAL FREELANCERS ASSOCIATION

## Code of Fair Practice

Third Edition : updated and revised September 2007

The Code of Fair Practice was originally created by the Freelance Editorial Association, which merged with the Editorial Freelancers Association in 2000. The code, in defining ethical standards and contract guidelines for editorial freelancers and clients, helps freelancers negotiate agreements and promotes fair business practices.

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- [Chapter 1](#) deals with freelancers and clients: freelancer resources, the client-freelancer relationship, professional competence, and descriptions of types of freelance work.
- [Chapter 2](#) provides guidelines for fees: setting fees, project fees and hourly rates, renegotiating fees, billable time, reimbursable expenses, specific fees, payment schedules, and interest applied to overdue payment.
- [Chapter 3](#) gives guidelines for project terms: schedules and estimates, scope of work, location of work, subcontracting, and credit and complimentary copies.
- [Chapter 4](#) discusses contracts and disputes: documenting agreements and resolving conflicts. It also includes a contract checklist that can help when writing contracts.
- [Appendix A](#) contains sample agreements between freelancers and clients.
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## Chapter 1. Editorial Freelancers and Clients

- [Resources of Editorial Freelancers](#)
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Editorial freelancers are self-employed contractors, or consultants, with expertise in one or more editorial functions or subject areas. Some editorial freelancers specialize in book, magazine, or newspaper publishing; others in corporate communications; others in technical documentation; others in online publications. Many editorial freelancers also have academic degrees qualifying them to work for research laboratories, educational publishers, or professional organizations. All have experience, skills, and creativity gleaned from education and practice. Their flexibility and innovation offer competitive advantages and valuable assets to any individual or business wishing to produce a professional-quality publication.

### ***Resources of Editorial Freelancers***

Editorial work requires meticulousness, an ability to manipulate ideas, a sensitivity to language, and finely honed skills. In addition, freelance work requires good business management — accounting, marketing, and office administration — as well as the skills and knowledge to use computers and other technology.

**Experience.** Some freelancers have gained experience by working on staff at a publishing house, in a publications department, or in a communications office of some kind. Some have worked in related fields, as teachers, librarians, or sales representatives. Others have learned on the job, sometimes with the assistance of colleagues. Through experience the editorial freelancer learns to predict a project's needs and potential problems. Because most editorial freelancers do not work for a single firm or perform only one particular task, they have the versatility to adapt to various situations. Clients seek editorial freelancers because they need professionals who can work independently. The client often expects an experienced and observant editorial freelancer to determine a publication's needs and to apply a range of skills to the task at hand.

**Equipment and Reference Materials.** The editorial freelancer's equipment usually includes a computer with high-speed Internet access, together with the usual accoutrements of an office: a desk, file cabinets, office supplies, a telephone-answering machine, and so forth. Many freelancers also own equipment such as printers, photocopy machines, and fax machines. Most editorial freelancers also maintain extensive reference libraries containing multiple dictionaries (sometimes in multiple languages), atlases, stylebooks, anthologies, encyclopedias, and journals.

**Education.** In addition to having earned bachelor's degrees and often advanced degrees as well, many editorial freelancers have completed continuing education and other specific courses that enhance their editorial expertise. These range from workshops in indexing or copyediting to courses in publishing and language arts taken either face-to-face or online.

**Judgment.** The editorial freelancer's main stock-in-trade is good judgment, and the freelancer's first exercise in judgment is to clarify the needs of a particular project.

Together with the client, the freelancer evaluates the project and determines both its requirements and the freelancer's role as an independent contractor.

### ***The Client-Freelancer Relationship***

As self-employed businesspeople, editorial freelancers negotiate with clients to establish the terms of a working relationship. In this the freelancer's position is parallel to that of any consultant, such as a self-employed lawyer or accountant, who markets professional expertise and applies technical knowledge to the requirements of each situation. Like other professionals who strike out on their own, editorial freelancers must establish fees that will cover the costs of doing business, including administrative support time, health and disability insurance, office supplies, equipment, office space, sick time, and vacation time.

When freelancers negotiate with clients, they are discussing not temporary employment but the terms of a contract that lasts for a specified period. A contract need not be written in formal language to be binding and enforceable. It might be reflected in a short letter or e-mail message summarizing a phone conversation in which both parties have discussed and accepted specific terms. The letter or e-mail is then the written confirmation of the oral contract and serves to remind both parties of the terms to which they agreed.

Both freelancer and client need to negotiate in good faith. Good faith generally means honesty. Because neither party can predict the future, both must recognize that the unexpected can occur and that the terms of an agreement might need to be changed. A good-faith relationship is one of reciprocity, a quality that makes any renegotiation possible. In general, some basic principles apply to both parties.

The editorial freelancer is responsible for

- accurately representing skills, knowledge, and background
- agreeing only to terms that the freelancer believes to be feasible
- informing the client of any problems that arise, especially those involving changes in schedule or budget
- billing the client fairly and accurately, according to the agreed-upon terms
- keeping confidential any information that the client identifies as confidential
- trying to resolve problems fairly
- The client, in turn, is responsible for
- accurately representing the work to be done, while allowing the freelancer to evaluate the project before agreeing to specific terms
- agreeing only to terms that the client believes to be feasible
- informing the freelancer of any changes in the project that affect the freelancer's work, especially those involving schedule or scope of work
- honoring the terms of the contract, with special attention to prompt payment
- representing the editorial freelancer's work accurately to other professionals, including those who ask for references
- trying to resolve problems fairly

### ***Demonstrating Professional Competence***

Freelancers who find work through advertising and direct solicitation usually demonstrate their competence with references from clients and promotional information, often a résumé or a brochure. Most freelancers establish their professional credentials by summarizing their work histories and by making one or more work samples available.

References and work samples are preferable to proficiency tests. Experienced editorial freelancers can maintain files of work samples, which can be submitted to prospective clients once the work in question has been published by its copyright holder. Only editorial novices should take proficiency tests; these represent unpaid time and impose an opportunity cost on the freelancer, who could be earning income during the time required to take the test.

### ***Types of Freelance Editorial Work***

Editorial freelancers perform a variety of tasks that often defy common descriptions of editorial jobs. For example, an editorial freelancer who takes on a copyediting project might also correct logical flaws in narration or make other changes that entail substantive editing. A freelancer doing a proofreading project might impose a consistent style, even though editing for style is generally viewed as the copyeditor's job.

With the increase in electronic publishing, many editorial jobs also take on different perspectives and new tasks. For example, a proofreader might be expected to verify links on a website page. A writer providing content for a website might also code and publish updated pages. Because editorial freelancers apply a variety of skills to their work, both freelancer and client must evaluate a project and agree on its needs. To establish a basis for such a discussion, both parties need to have a working vocabulary of terms that describe editorial functions.

Standardization of terms is lacking among editorial professionals and editorial freelancers themselves often disagree about the definitions of editorial tasks. The following glossary of terms should help to differentiate among editorial functions and so should facilitate communication between editorial freelancers and their clients. These definitions therefore describe editorial tasks but not the requirements for specific jobs or the skills of specific individuals.

**Abstracting.** Writing a succinct summary or synopsis of a work, often for an academic publication or professional journal. The length, style, and amount of detail in an abstract vary depending on its intended use.

**Copyediting** (sometimes called line editing). Any or all of the following:

- correcting spelling, grammar, punctuation, syntax, and word usage while preserving the meaning and voice of the original text
- checking for or imposing a consistent style and format
- preparing a style sheet that documents style and format
- reading for overall clarity and sense on behalf of the prospective audience
- querying the appropriate party about apparent errors or inconsistencies
- noting permissions needed to publish copyrighted material
- preparing a manuscript for the next stage of the publication process
- cross-checking references, art, figures, tables, equations, and other features for consistency with their mentions in the text

**Copyfitting and Page Makeup.** Rewriting text to fit format specifications.

**Desktop Publishing.** Performing publishing functions using personal computers. Common desktop publishing tasks include page layout and design, composition, embedding formatting codes for conventional composition, illustration, typography, indexing, documentation, manipulating and editing graphics, color separation, and preparing documents for online publication.

**Developmental Editing.** Any or all of the following:

- working with the client and, usually, the author of a book or other document to develop a manuscript from initial concept, outline, or draft (or some combination of the three) through any number of subsequent drafts
- making suggestions about content, organization, and presentation, based on analysis of competing works, comments of expert reviewers, the client's market analysis, and other appropriate references
- rewriting, writing, and researching, as needed, and sometimes suggesting topics or providing information about topics for consideration of authors and client

**Evaluating a Manuscript.** Reading and reviewing an unpublished manuscript and preparing a written report about the work that addresses the client's specific concerns, such as competition, audience, and timeliness of topic.

**Fact Checking.** Verifying the accuracy of content. The scope and specific tasks involved vary depending on the type of publication.

**Illustrating.** Expressing or translating editorial content as a visual image using traditional or electronic media. An illustration may appear on a work's cover, in its interior, or on a website, either as a color or monochrome image. Illustrators are expected to submit finished work in a form ready for production.

**Indexing.** Providing a comprehensive guide to the contents of a work and generally involving the following:

- reading page proofs or the equivalent to compile an alphabetical list of references to pertinent terms and concepts in the text
- choosing, grouping, and consolidating page references under main headings, subheadings, and cross-references as a guide to specific information.

**Project Management.** Any or all of the following:

- coordinating and overseeing all or part of the publication process for all or part of a publication
- supervising and sometimes selecting other contractors to carry out such functions as copyediting, proofreading, illustrating, indexing, typesetting, and printing
- facilitating communication among authors, editors, and others involved in the project
- evaluating and monitoring production costs

**Proofreading.** Comparing the latest stage of text with the preceding stage, marking discrepancies in text, and, when appropriate, checking for problems in page makeup, layout, color separation, or type. Proofreading may also include one or more of the following:

- checking proof against typesetting specifications
- querying or correcting errors or inconsistencies that may have escaped an editor or writer
- reading for typographical errors or for sense without reading against copy
- verifying links in online publications

**Researching.** Gathering and verifying information to develop all or part of a publication.

**Rewriting.** Any or all of the following:

- adding original material to a draft
- deleting material
- reorganizing material
- collaborating with other editors
- producing another draft
- reworking print copy for online publication

**Substantive Editing.** Improving a manuscript in any or all of the following ways:

- identifying and solving problems of overall clarity or accuracy
- reorganizing paragraphs, sections, or chapters to improve the order in which the text is presented
- writing or rewriting segments of text to improve readability and flow of information
- revising any or all aspects of the text to improve its presentation
- consulting with others about issues of concern
- incorporating responses to queries and suggestions and creating a new draft of the document

**Translating.** Rendering a work from one language to another while preserving the original meaning, tone, and style as much as possible.

**Typemarking.** Indicating on a manuscript or in electronic files the actual type specifications for each element (for example, heading, displayed material, or list), often by noting codes for each element.

**Writing.** Producing an original document from notes, outline, research, interviews, experience, or general guidelines. The following two kinds of specialized writing are now commonplace:

**Technical Writing.** Writing about computer hardware or software or about other technical products or equipment, usually with information provided by engineers or other technical professionals and including any or all of the following:

- working with programmers, engineers, or other technical professionals to clarify product specifications
- organizing information to enhance ease of learning or understanding by product users
- designing online documentation

**Medical Writing.** Writing about drugs or biological devices and products, usually with information provided by scientists or doctors and including any or all of the following:

- working with scientists, doctors, or other researchers to clarify scientific data
- ensuring that documents comply with regulatory or journal guidelines

## Chapter 2. Guidelines for Fees

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Freelancers determine fees by considering their own expertise, the market for their services, the fees colleagues charge, and their own expenses. They also consider the requirements of each project. If, for instance, a project requires technical expertise or knowledge of a foreign language, a higher-than-average fee is appropriate for bringing those skills to the work. A job requiring a rush schedule or special research also commands a higher fee. The editorial freelancer and client negotiate each project separately, with the requirements of both freelancer and client as a basis for discussion.

### ***Setting Fees***

For clients, contracting with freelancers offers many advantages over hiring employees, the greatest of which is financial: the client pays the freelancer a fee instead of financing a staff position. The difference in cost is significant. Besides a paycheck, an employer normally finances all or part of a staff employee's medical benefits, pension plan, tax-sheltered savings, profit-sharing benefits, disability benefits, social security tax, and unemployment and workers' compensation insurance.

A staff employee also earns paid vacation days, holidays, sick days, lunch hours, and breaks. In the United States paid time off (vacations, holidays, personal time) typically ranges from 14 to 27 days annually depending on length of service. Bureau of Labor Statistics survey results show that, in the private sector, benefits account for more than 29 percent of an employer's total cost of employee compensation.

Independent businesspeople must cover all such costs themselves. The most significant factor a freelancer considers when setting fees is the cost of being self-employed. Freelancing is attractive for the flexibility, variety, and independence it brings, but it also entails financial burdens. Freelancers finance their own benefit plans, maintain their own overhead, and pay their own social security tax. They also bear the costs of looking for work, billing clients, and owning and maintaining expensive office equipment, such as computers, copiers, and fax machines. These costs can take approximately half of the freelancer's gross earnings. Therefore, to approximate the salary of a staff employee, the freelancer must charge approximately twice the employee's hourly wage.

### ***Project Fees and Hourly Rates***

The freelancer can charge either a single predetermined fee for an entire project or an hourly fee, with the total amount calculated at the project's completion. Each type of fee is appropriate in certain circumstances. A project fee might be appropriate for a job with few, if any, unknowns, for example, when the freelancer and the client have worked together on similar projects and have developed mutual trust.

When working for a project fee, a freelancer incurs the risk of financial loss that can come about through unforeseen elements of the job. Because of the risks involved, only projects with clearly defined requirements are good candidates for project fees,

and even here the fee should be high enough to cover any surprises that might take more time than first estimated. For example, a freelance indexer might charge a project fee because the number of entries in the index can be reasonably estimated in advance and, therefore, the amount of time required to compile the index can be accurately estimated as well. A freelance copyeditor, on the other hand, would most likely charge an hourly fee, or rate, because so many aspects of the work cannot be analyzed in advance.

Project fees are appropriate only when the job specifications are precisely described and understood, and when all agree that any additions, revisions, or unforeseen elements will entail renegotiation of the fee. When gauging the scope of work necessary on a project is difficult or prohibitively time consuming, an hourly rate is a more appropriate method of payment.

If the client is uneasy with an open-ended agreement, an interim arrangement might be reached whereby the freelancer completes a small portion of the job for a predetermined fee negotiated for that portion only. In this way, the freelancer can determine what the job requires, and the client can assess the pace and quality of the freelancer's work. This arrangement gives both parties a better understanding of the scope of the project. If the project's budget has an upper limit, the freelancer needs to know the amount, so that the client can be informed before this figure is exceeded.

### ***Renegotiating Fees***

All fees are renegotiable. Frequently, a project turns out to require work of a greater scope or longer duration than the client or freelancer originally envisioned. For example, a client might expect that a clean manuscript will facilitate quick proofreading, only to discover that the manuscript was inadequately edited and that the proofreader will need to do some additional editing. Or a developmental editor might be involved in a long-term project for many more months, or even years, than the client anticipated. Changes in the scope or time required for a project are the most common reasons for renegotiation of fees.

In the original contract between freelancer and client, it is good practice not only to spell out the option to renegotiate but also to point out that either party might need to make use of it. If both freelancer and client are aware that revising schedules or payment terms may become necessary, then renegotiation can be a smooth process.

### ***Billable Time***

Freelancers bill for all time spent on a project. If the freelancer is working at an hourly rate, billable time includes travel time, time spent conferring on the telephone, time spent meeting with clients or others involved in the project, and time spent on other tasks related to the project, such as writing and mailing correspondence or photocopying material. A project fee covers the same considerations. Before agreeing to a project fee, the freelancer generally lists all billable time and expenses covered by the fee.

### ***Reimbursable Expenses***

Certain expenses are customarily reimbursed to the freelancer by the client. These expenses include the costs of postage, photocopying, telephone calls, and travel beyond a local commute. The freelancer itemizes all such charges on the invoice and submits receipts on request. To avoid misunderstandings regarding reimbursable expenses, the freelancer and client usually list these expenses in the initial agreement.



Alternatively, the fee can be high enough to cover routine costs, and then only extraordinary costs, such as a courier service, require reimbursement.

### ***Specific Fees***

**Rush Fees.** Occasionally, a client presents a project that cannot be completed on schedule unless the freelancer agrees to work additional hours during nights, weekends, or holidays. In such a case, a rush fee of 20 to 50 percent may be negotiated to cover the overtime involved. If the fee is determined at an hourly rate, the percentage is applied to the hours involved. If the freelancer is receiving a project fee, the client and freelancer might break the fee into time units and apply the additional percentage to the units that are beyond normal working hours. For example, if a seven-day job must be completed during Thanksgiving week, the rush-fee percentage would be applied to three-sevenths of the basic fee, because three of the seven days spent working are not regular business days.

Similarly, if the client requests that work be completed within a shorter period than originally negotiated or requests that the freelancer spend more time within a negotiated period, a rush fee — again 20 to 50 percent — might be appropriate. If the freelancer cannot accommodate the schedule change and the client deems the change essential, then the freelancer receives a cancellation fee for the remainder of the project and returns project materials to the client. Alternatively, the freelancer may, with the client's knowledge, subcontract all or part of the project to another capable freelancer.

**Cancellation Fees and Late Fees.** Because freelancers reserve time for projects and depend on clients' schedules, it is necessary for contracts to protect the freelancer's working time. The contract between freelancer and client therefore specifies contingencies that will require a cancellation fee or a late fee.

If a project is canceled before scheduled delivery to the freelancer, at least two weeks' notice allows a reasonable amount of time for the freelancer to obtain other work. Less than two weeks' notice requires a cancellation fee equal to two weeks' time. For example, if the freelancer has reserved fifteen hours per week for the project, the cancellation fee would equal either thirty hours at the freelancer's hourly rate or the proportion of the project fee corresponding to thirty hours' work. When a project is canceled in progress, the cancellation fee is added to the freelancer's final invoice, in addition to payment for the time worked.

If a client delivers the material for a project late, then the client compensates the freelancer for the resultant unused reserved time at either (a) 20 to 50 percent of the contracted hourly rate or (b) 20 to 50 percent of the effective hourly rate, if the contract called for a project fee. If the project is canceled by default—in other words, if it is so late that the freelancer must forgo it to move on to another scheduled project—then a two-week cancellation fee is appropriate. Cancellation fees should also cover any special expenses for the project, such as those for software, reference materials, or travel. The freelancer is reimbursed for these expenses in addition to the agreed-upon cancellation fee.

A client can avoid a cancellation fee by substituting an acceptable project that can be done in the time reserved for the original job. If the freelancer accepts the substitute job and does not lose working time—that is, does not incur opportunity costs—then the client need not pay a cancellation fee.

The freelancer might also cancel the project. Changes in the scope of work required in the project's schedule might make it impossible for the freelancer to complete the project. If, for example, a project is extended without notice beyond the negotiated time, a freelancer who is committed to another project might have to cancel the one being extended. The freelancer might also cancel a project because of a violation of professional standards. For instance, a freelance copyeditor might inform a client that a manuscript is incoherent and requires substantive editing, in contrast to the straightforward reading for punctuation errors that was originally requested; if the client refuses to authorize and pay for substantive editing, the freelancer might find the project requirements untenable and cancel the project.

**Reservation Fees.** Another way to deal with the possibility that a project will be delivered late or will be canceled is to negotiate a reservation fee, essentially an advance to reserve the freelancer's time. A freelancer who agrees to set aside a lengthy period for a long-term project or who commits to a project well in advance may require partial prepayment. If the client delivers the project materials on time, the freelancer then deducts the reservation fee from the first invoice. If the client delivers the project late, the reservation fee can be applied to a late fee. If the client cancels the project, the reservation fee can be applied to a cancellation fee that is added to the charge for the time spent working on the project. An appropriate reservation fee is 20 percent of the project fee or two weeks of the freelancer's time at the agreed-upon hourly rate.

### ***Payment Schedules***

For long-term jobs, freelancers usually receive payment in installments. For project fees, one common practice is to divide the total fee into thirds. The freelancer then bills the client for the first third to be paid when the project begins, for the second installment when half the project is completed, and for the final third when the project is finished. Another option, for jobs of any length, is a weekly or biweekly billing and payment schedule. Short jobs, generally those requiring less than two weeks to complete, usually involve billing and payment when the project is completed.

### ***Interest Applied to Overdue Payment***

Invoices are typically payable within fifteen days. After thirty days, interest is assessed, usually at a rate of 2 percent per month or partial month. A freelance proofreader, for example, who billed for \$1,000 upon completion of a one-week job and received no payment would send a reminder after two weeks and after thirty days would bill for \$1,020. Were payment not received at the end of another thirty days, the freelancer would send an invoice for \$1,040.40, and so on, until payment is made.

## Chapter 3. Guidelines for Project Terms

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In addition to the freelancer's fee and payment terms, a contract between an editorial freelancer and client involves other considerations that affect the project's successful completion. The requirements of the job, the time it will take, and the site at which the freelancer will work are among these considerations. Although specific kinds of publications often involve project needs that both freelancer and client understand well, it is good business practice to define these terms in the contract so that all involved can verify their assumptions.

### ***Schedules and Estimates***

The freelancer and client usually discuss the schedule for a project when they begin negotiating its terms. The freelancer needs to ensure that the job can be completed comfortably within the time available, while keeping in mind any other jobs that require attention within the time period, any anticipated delays, and the possibility of unexpected problems. Usually the client also wants to determine the requirements for a job and, in most cases, both freelancer and client need to discuss the material in question to agree on the scope of work required and the amount of time needed to complete the job.

**Estimating Time.** In most cases, the freelancer can estimate a project's schedule accurately only after receiving a description of the client's expectations and reviewing a portion of the project or its specifications. For example, a freelance copyeditor might want to edit several pages from different parts of a manuscript before estimating the time the job is likely to require; a freelance technical writer might want to review the final document's planned scope and degree of technical information to ensure a reasonable estimate. The freelancer bills the client for any preliminary work requested as a sample. The time spent reviewing a project's needs is also included in the freelancer's fee. All estimates must incorporate time for at least one complete reading of the project from beginning to end and for correspondence, meetings, telephone conferences, and other ancillary aspects of the job.

**Renegotiating Estimates.** An estimate is only an informal projection and is subject to review and renegotiation when necessary. A preliminary schedule can, however, indicate the date the freelancer will receive the necessary materials to begin work, the date by which the client will receive some or all of the completed work, and the amount of time expected to be spent on the project. Late fees, rush fees, reservation fees, and cancellation fees might apply, as specified in chapter 2.

### ***Scope of Work***

In some cases, clients rely entirely on editorial freelancers to determine the scope of work a job requires. In other cases, the client and freelancer evaluate a project together. Both parties can expect that schedule and budget estimates might need revision during this analysis or during the early stages of the freelancer's work.

The scope of work required is often greater than expected. An index, for example, might require a more conceptual set of entries than the technical compilation originally envisioned. Or a set of proofs might require extensive checking, revision, or cross-references. The scope of work may also turn out to be less than expected. For example, a manuscript assumed to be poorly written might require no more than occasional corrections to fix lapses in spelling and punctuation. Both freelancers and clients need to be alert to such possibilities and prepared to revise the terms of their contracts to reflect the actual scope of work.

Because the scope of work required for a job greatly affects the estimated time the project will take, a freelancer evaluates a project's requirements carefully when beginning work. If the project does require more time and expense than originally discussed, the freelancer needs to inform the client immediately and renegotiate any agreed-upon terms or, if necessary, terminate work and return all project materials. If the agreement is terminated rather than revised, a cancellation fee might apply, as specified in chapter 2. The freelancer also informs the client when the project requires less attention and might be completed more quickly.

### ***Location of Work***

Another variable to consider in an agreement is the location at which work will take place. Some clients and some projects require an editorial freelancer to work on-site, in the client's office, whereas work on other projects is customarily done in the freelancer's office, which is often a portion of the freelancer's home. Because freelancers who work on-site do not receive employee benefits, their fees need to reflect the costs of self-employment, which are not part of an employee's wage.

On-site freelancers also need to offset the cost, in both time and money, of commuting to the client's office on a regular basis. In some instances, the client subsidizes the cost of commuting, either by providing a travel allowance or by paying for the freelancer's time spent traveling to the office. Alternatively, the freelancer's fee can reflect these additional expenses, usually through a surcharge of 5 to 10 percent.

On-site freelancers also give up some other benefits that come with freelancing, such as working for a variety of clients or on a variety of projects, and having access to new clients and projects. Termination of an on-site contract can be problematic if the freelancer has been away from other sources of work for the duration of the on-site job. Therefore, a contract for on-site work typically includes a termination agreement of two weeks' notice or two weeks' pay, with the freelancer's usual fee for a week's work as the basis for calculation.

Contracts for on-site freelancing must also clarify the freelancer's tax status. Federal tax law mandates that some companies withhold taxes from the paychecks of on-site independent contractors. For some on-site freelancers, the client is now expected to pay social security tax on the freelancer's fees and to withhold taxes as if the freelancer were an employee. Other regulations, particularly those concerning unemployment insurance and workers' compensation insurance, vary from state to state, as different criteria classify an on-site freelancer as either an independent contractor or an employee.

### ***Subcontracting***

Subcontracting occurs when a freelancer performs services for an agent (sometimes called a packager or developer). The agent, in turn, has an agreement with its client, who has initiated the project and usually controls its final form. Subcontracting also

takes place when an individual freelancer engages the services of another freelancer to help complete an overflow of work.

When a freelancer works for an agent, the agent is in effect the freelancer's client. Thus the freelancer negotiates with the agent rather than with the party represented by that agent (which might be, for example, a book publisher or a software company). Because subcontracting adds another layer to the freelancer-client relationship, agreements with agents can be more complicated and therefore more problematic. Before entering into subcontracting agreements, freelancers need to consider a number of additional issues.

**Disclosure.** The freelancer who anticipates a need to subcontract work to another freelancer indicates this prospect in negotiations and in the contract with the client. If the need to subcontract part or all of a job arises in the course of a project, the freelancer discusses the situation with the client. If the client agrees in principle to subcontracting portions of the project, the client can expect to be informed about the portions being subcontracted and about who the additional freelancers are.

When a freelancer works for an agent, disclosure of the freelancer's identity is also important. The freelancer can expect that the agent's client will be informed of the freelancer's identity. It is also important that the project requirements be disclosed to all involved, so that the freelancer, agent, and agent's client all have the same expectations.

**Payment.** Freelancers should be paid by the agent according to the agreed-upon terms. In no case should payment be contingent on the timing or amount of payment to the agent by the agent's client.

**Taxes.** Subcontracting arrangements need to specify who will pay the freelancer directly and who is responsible for tax payments. State tax codes vary, and all tax laws are subject to change. Therefore, all parties need to determine their current tax status and liability.

**Exclusivity.** When a freelancer is asked to work for an agent's client only through that particular agent, the duration of this exclusive agreement needs to be reasonable but limited. Open-ended agreements that fail to limit the period during which a freelancer may not work directly for a client except through that agent are an unfair practice and of questionable validity. In general, a freelancer should be free to negotiate directly with an agent's client no more than six months after an exclusive contract (that is, a project) has terminated.

Each department of a large company represented by an agent is considered a separate entity. For example, if a freelancer works through an agent and contracts to index a book for a publisher's trade book division, this contract does not preclude the freelancer's working directly for the same publisher's college textbook division. Minimizing an agent's exclusive claim on a freelancer's services requires negotiating a separate contract for each project.

**Control.** The freelancer who takes work from an agent clarifies, in the contract with that agent, a number of issues related to control of the project. These issues include a determination of who makes the final decisions regarding the project's requirements, whether the freelancer has direct access to the agent's client (who might wish to make final decisions), the project's schedule, and the conditions under which the contract can be terminated.

In addition, the freelancer will want to protect a professional reputation with both the agent and the agent's client. Therefore, all important communication is documented in writing. For example, if an agent engages the services of a freelance technical writer to complete a partially finished manual, the freelancer and agent will document clearly the portions completed before the freelancer takes over the project. To protect the freelancer's interests, all parties involved need to receive documentation clarifying the role of each professional associated with the project.

Freelancers and agents also need to clarify in advance the way in which résumés and promotional materials will be used, especially when they are left with the agent. A freelancer can reasonably expect to be consulted before an agent shows the freelancer's credentials to any prospective client of that agent. The freelancer can also refuse permission for the agent to circulate such credentials generally or to send them to particular clients of the agent.

**Agency Fees.** In most subcontracting arrangements, the agent receives a percentage of the freelancer's fee. This percentage is the source of an agent's income, but freelancers should not make less than their usual fees to compensate the agent. The agency fee is an additional amount covered by the client, as compensation for the transaction costs that the client saves by engaging the agent's services.

### ***Credit and Complimentary Copies***

If receiving printed credit for editorial work is important to a freelancer, then the form of such credit is a matter for negotiation between the freelancer and the client. Freelancers might wish to receive printed credit in the final publication as a way to build a professional reputation, receive acknowledgment for contributing to a project, and obtain personal satisfaction. On the other hand, a freelancer might prefer not to receive printed credit because, say, of a lack of control over the form of the credit or the final publication.

Most freelancers not only want to retain the option of receiving printed credit but also want to reserve such an option until the end of the project. In no case should the freelancer's name appear without the freelancer's consent.

If a freelancer wishes to receive complimentary copies of a finished publication, this request is also subject to negotiation and agreement. Clients often consider providing complimentary copies a professional courtesy and send copies of a published work to all who contributed to it.

## Chapter 4. Contracts and Disputes

- [Documenting Agreements](#)
- [Resolving Conflicts](#)
- [Contract Checklist](#)

Contracts between editorial freelancers and clients can be oral, written, or electronic; they can be formal or informal. A contract need not be in legalistic language, labeled a contract, or documented in writing to be valid. A contract is simply an agreement between at least two parties, and to be binding, that agreement must be acknowledged by all involved. Any terms suggested by one party but unacceptable to the other are not a valid part of the contract.

When a project runs smoothly, people clearly remember oral agreements and easily accommodate each other with changes. When difficulties arise, people tend to forget oral agreements, which they now see as disadvantageous, or they tend to remember the agreement differently. Because contract terms not in writing are often elusive, even though both parties agreed to them, both freelancer and client benefit when contracts are written and detailed. The written document is always consulted when problems occur.

When conflicts arise in spite of a contract, the parties have options for resolution. Many disputes can be resolved through simple discussion and renegotiation. Others require intervention. Options include mediation, arbitration, and court action. All are possible mechanisms for resolving conflict, but both freelancers and clients benefit from avoiding disputes and addressing difficulties as soon as they arise.

### ***Documenting Agreements***

Written agreements are good business practice. Freelancers and clients can avoid disputes based on misunderstanding by summarizing conversations in writing, noting the terms discussed. A simple letter of agreement, whether on paper or in electronic format, usually serves this purpose, and such a letter is itself all or part of the parties' contract and so is legally binding.

Writing out the terms of agreement fixes more clearly the expectations of both parties and also focuses their attention on issues they might otherwise fail to notice. For example, if a client hands an incomplete manuscript to a freelance copyeditor and is unsure of the date on which the manuscript's author will deliver the remaining portion of the project, the freelancer might want to raise the possibility of charging a reservation fee for the remaining portion or of subcontracting the remainder of the project if the freelancer's schedule makes timely completion difficult. Such contingencies are best documented in a project's early stages, before any problems arise.

Up-front discussions help each party comprehend the other's expectations and avoid disputes. Several discussions — and corresponding documentation — might be needed before all terms are covered, but as long as none conflicts with another, all are part of the contract. Further discussion, of course, can take place at any point in the project, as new issues arise.

A contract is valid if both parties accept its terms. A contract may stipulate that both parties accept the terms of the contract if neither rejects or amends the agreement by a given date. One practice that clarifies acceptance of a contract's terms is to have each party sign and date a copy of the agreement to verify that all concerned

have read it. A freelancer can verify an agreement by mail by asking the client to sign and return a copy of the contract so that each has the terms of agreement summarized and on file. Another common practice is to cite a date by which the contract will stand unless one or more parties seek to amend it.

Even the most well-considered contract, however, can require renegotiation. Changes are easily incorporated into the contract as long as both parties agree to the revisions. Any amendments must be approved by both parties. Many amendments, such as schedule changes and adjustments in the freelancer's fee, are typically necessary for long-term projects.

### ***Resolving Conflicts***

A contract is breached when one party fails or is unable to meet its terms. A breach of contract by one party does not invalidate the contract or free the other party from the obligation to perform unless the contract so provides. The parties can anticipate problems resulting from breached contracts by including in the termination provisions a contract term stating that a material breach of the contract by either party excuses further performance by the other party unless or until the breach is remedied. (A material breach of a contract is a failure to meet a term that is essential to the agreement.) The same term should indicate that failure to pay invoices is a material breach, usually with the exception of amounts less than \$100 and periods less than twenty days after the invoice date.

Most breaches of contract can be resolved through renegotiation. If both parties address any differences promptly, questions about breach of contract remain limited, and both freelancer and client can avoid further problems.

**Discussion between Freelancer and Client.** The first step in resolving any conflict is discussion between the freelancer and the client. Misunderstandings sometimes arise when one party is unaware of a change in the project that necessitates a change in the terms of the contract. For example, a client and a freelance indexer agree to a deadline for a completed index; however, the page proofs are delivered to the indexer two weeks after their due date. The client may be unaware of this; the freelance indexer and the client must discuss the late delivery of the page proofs and the effect this will have on the delivery date for the index. In most cases, renegotiation can resolve any difficulties if both parties are willing to address concerns and acknowledge the project's requirements.

**Legal Remedies.** A variety of legal and quasilegal remedies is available when a dispute cannot be resolved by a freelancer and a client. Mediation and arbitration are two possibilities. Mediation is a process by which both parties discuss the dispute with an impartial facilitator, who then assists them in reaching an agreement. Arbitration is a process by which both parties submit their dispute to one or more impartial arbitrators, who then render a final and legally enforceable decision. Arbitration is quicker, less formal, and less expensive than going to court. Both parties, however, must agree in advance to accept the arbitrator's decision. The freelancer and client can agree in their initial contract that any unresolved disputes should be resolved through arbitration, or they can decide on this course of action after a dispute has arisen.

Other legal remedies involve lawsuits, which all parties generally prefer to avoid. Freelancers who are owed relatively small amounts of money by clients who do not make payment can sometimes use small claims court, where they can have cases decided by a judge and without the advice (and expense) of an attorney. Procedures for



small claims court vary from state to state, however, and each state has an upper limit, above which a freelancer is required to use the civil court system, generally with the advice of an attorney.

For both freelancers and clients, court action is a last resort. Both parties lose valuable time and incur expenses in the course of a lawsuit. Although legal action is occasionally necessary when other measures have failed, the costs — in time, money, and frustration — of bringing a lawsuit to court frequently outweigh the possible gain.

### ***Contract Checklist***

A complete contract covers as many issues as possible. No one ever foresees every necessary contract term, but the following checklist can help freelancers and clients to be sure they are addressing key issues.

- names and contact information of all parties involved
- date on which the contract takes effect
- status of freelancer (contractor versus employee)
- date(s) on which the project or parts of the project are due to both freelancer and client
- description of freelancer's tasks
- schedule by which the project is planned to proceed
- location at which work will be performed (freelancer's office vs. client's office)
- party responsible for purchasing supplies, equipment, and additional services
- basis of freelancer's compensation (project fee, hourly rate, or other agreed-upon arrangement)
- amount of freelancer's compensation
- billable expenses
- schedule of billings and payments
- interest charges for late payment
- applicability of reservation fees, rush fees, late fees, or cancellation fees
- conditions in case of project termination
- copyright holder for final publication
- special considerations: equipment needed and any reimbursement for equipment, prospect of project's interruption, possibility of subcontracting a portion of the project
- printed credit listing the freelancer's name in the final publication
- complimentary copy or copies of the final publication

## Appendix A. Sample Letters of Agreement

Following is a letter of agreement documenting a contract between an editorial freelancer and a client.

June 19, 2007

Dear Ms. Shakespeare:

According to our phone conversation today, I have agreed to copyedit your novel in manuscript form. In your estimation, the manuscript requires correction of spelling, grammar, syntax, and other mechanical problems, not major reorganizing or rewriting. As we discussed, my fee for this job is \$30 per hour. As I explained, I'm accustomed to working by snail-mail or e-mail, and maintain a home office; we can confer by e-mail or phone when necessary. If you wish, we can also meet in person, but neither of us currently anticipates a need to do so.

We have agreed that a sample editing of 10 to 20 pages will help us both evaluate the whole job. Assuming delivery of the manuscript on the morning of June 19, I would expect to complete the sample editing by Friday, June 22. I will return the 10- to 20-page sample via certified mail (postage expenses to be itemized on my first invoice) and can expect to hear from you by the following Wednesday.

Because I will be reserving time during the following week, I will need to know by Wednesday, June 27, whether you intend to proceed. At that time, should either of us decide not to continue with the project, we have agreed that I will be paid for the work done on the sample, not to exceed ten hours, and for any related expenses. If you decide not to engage my services but inform me of your decision after June 27, I will be paid a cancellation fee of \$300.

My preliminary estimate of the total time needed to complete the job is about two weeks after the sample is approved. My estimate, however, is based on the stated length of 450+ manuscript pages and the complexity of the work involved. If, upon review, the job appears to require more time to complete, I will contact you immediately, so that we can reevaluate the project's requirements.

Should you decide to terminate the project before its completion, we have agreed that I will be paid in full for all the time I have spent on it up to that point, together with a cancellation fee of \$300, and will return all materials, including edited manuscript, to you immediately. I will send you an invoice at the end of each week. My bills will include all time spent in actual editing, together with time spent in conference and in tasks directly related to the job. I will also include related expenses, such as those for postage and photocopying. I don't foresee any other expenses associated with this project and will inform you right away if I encounter any.

As we agreed, invoices are payable within 15 days. My usual practice is to apply interest if payment is not made within 30 days, at an interest rate of 2 percent per month or partial month, including the month following the invoice date. No interest is due if payment is made by the fifteenth day.

Should you decide after the job is completed that you would like the manuscript to undergo a second stage of editing, that work will be the subject of a separate agreement.

If this arrangement is acceptable to you, please sign below, keep a copy for yourself, and return this copy to me.

I've enjoyed reading your brother's plays, and I look forward to working with you on the book.

Sincerely,

Frances Bacon

Understood and Agreed:

---

(Judith Shakespeare)

---

(Date)

Following is a contract covering work on-site, in a client's office, for a specified period.

### ***Agreement***

This agreement between Purple Prose Press (the client) and Frank Freelancer (the contractor) describes the conditions under which the contractor will perform proofreading and fact checking for specific articles to be published in the client's magazine, Prosaica.

This agreement begins on June 4, 2007, and continues until September 28, 2007, and may be renewed or renegotiated at that time. This agreement terminates upon physical disability of the contractor or other circumstances upon which both freelancer and client agree. All work will be performed at the client's place of business.

The contractor will be available to work a minimum of 15 hours per week except as illness prevents and except weekends, company holidays, and any vacation time, for which the contractor will provide one month's notice to the client. Vacations will be at the contractor's expense.

The contractor will ordinarily work from 9:00 a.m. to 5:30 p.m. on Monday, Tuesday, and Wednesday of each week unless the client gives the contractor at least one week's notice of an alternative schedule for the following week and that schedule is agreeable to both parties. Additional time each week may be arranged by mutual agreement.

The client will pay the contractor the fee of \$30 per hour. There will be a minimum charge of 15 hours per week at this rate, regardless of whether the client has work to be performed. The contractor will submit invoices each Friday. The client agrees to make payment within two weeks of the date of each invoice. Any payment outstanding for more than 30 days from the invoice date will incur an interest charge at a rate of 2 percent per month or partial month, including the month following the invoice date. No interest is due on timely payments.

Both contractor and client state that this agreement does not create an employer-employee relationship. The contractor is free to provide services for other clients, provided that such work does not interfere with the obligations of this contract.

Either the client or the contractor may terminate this agreement upon two weeks' written notice. If the client terminates the agreement, the client must pay the contractor for services completed as of the effective date of termination.

Please sign and return a copy of this agreement.

## Appendix B. Sample Invoice

Following is a sample informal invoice generated with word-processing software.

31 July 2007

TO:

Big Bucks Publishing Company  
4321 Circle Lane  
Some City, CA 94114

FR:

Hannen Swaffer  
88 Lucky Road  
Another Town, MA 02138

Social Security Number: 123-45-6789

FOR:

Copyediting A Freelancer's Guide to a Happy Working Life by Jon Swift  
100 hours at \$40.00 per hour . . . . \$4,000.00

This bill is due and payable on receipt. Unpaid balances of more than 30 days past due are subject to a finance charge of 2 percent per month.