

Workshop on Intellectual Property Issues in the Publishing Industry

New Delhi, India, February 15 and 16, 2007

SAMPLE INDEPENDENT CONTRACTOR AGREEMENT*

Tradenet Publishers LLC

Independent Contractor Agreement

This is an Independent Contractor Agreement (“Agreement”) executed and entered into as of _____ (the “Commencement Date”), between **Tradenet Publishers LLC**, a _____ (“Tradenet”) and _____ (“IC”).

1. Engagement of IC. Tradenet hereby engages IC to perform and IC hereby agrees to perform the services (as such term is defined in Section 2 herein), in accordance with and subject to the terms and conditions in this Agreement.

2. IC Services.

a. Services. The services (“Services”) IC shall perform are as follows:

b. Deliveries; Due Dates. IC shall timely perform the Services for IC. Deadlines and due dates are as follows:

[[INSTALLMENTS OF MATERIALS, ETC. DESCRIBED IN THIS SECTION 2(b).]]

c. Expenses. Tradenet shall reimburse IC for following expenses incurred directly related to IC’s performance of the Services: _____, _____, _____, and _____

*Prepared by Jon Tandler of Isaacson Rosenbaum P.C., Denver, Colorado. This contract form was presented at the Workshop on Intellectual Property Issues organized by the World Intellectual Property Organization in cooperation with the Ministry of Human Resource Development and the Federation of Indian Publishers. This form is based on U.S. law and practice. It has been prepared for teaching and presentation purposes only. It contains material applicable to some publishing and editorial models, and material not applicable to other models. This form is illustrative only, does not serve as legal advice or create an attorney client relationship, and should not be used or adapted without the services of suitable legal counsel or other qualified person. For purposes of this presentation, "Tradenet Publishers LLC" and "Tradenet" are solely made-up, fictional names and are not intended to refer to or bear any resemblance to the name of an actual business or enterprise.

_____, not to exceed \$ in the aggregate with IC to submit all expenses substantiated with proper receipts.

3. Term. The term of this Agreement, and the period during which IC shall perform the Services hereunder, commences as of and from _____ through and including the earlier of (i) completion of the Services as determined by Tradenet in its sole discretion upon written notice to IC, and (ii) _____ (the "Term").

4. Compensation. As IC's sole consideration for the Services, Tradenet shall pay IC _____ (the "Fee"). Payments will be made to IC, as follows: _____ .

5. Copyright, Trademark, and other Intellectual Property Ownership.

a. Copyright. IC hereby agrees that the textual, artistic, and other works IC writes and otherwise creates for Tradenet and all other matter, content, and works created by IC hereunder (the "Works") are "work-made-for-hire" (as such term is defined under the U.S. Copyright Act of 1976, as amended), and Tradenet shall accordingly own sole and exclusive copyright in and to the Works and all rights of copyright therein under U. S. and international laws and conventions. In the event any of the Works are not "work-made-for-hire", IC hereby grants, transfers, and assigns to Tradenet and Tradenet shall own, all and exclusive right, title, and interest in and to the Works under U.S. and international laws and conventions. Tradenet may register the Works for copyright in Tradenet's name in the United States and elsewhere throughout the world, as Tradenet deems appropriate. IC agrees to execute such additional instruments, if any, that Tradenet considers necessary or advisable to perfect, register, evidence, or defend Tradenet's said ownership as set forth herein.

b. Trademarks and other Intellectual Properties. IC hereby acknowledges that IC acquires no rights in or to the _____ trademark (whether such trademark is registered or at common law) or any related service marks or domain names, or any other trademarks, service marks, domain names, or any other copyrighted works or other intellectual properties that may be created or used by IC or Tradenet, in connection with the Work, or any goodwill derived therefrom or associated therewith.

6. Independent Contractor Status.

a. Independent Contractor. IC is an independent contractor and nothing in this Agreement shall affect IC's status as an independent contractor nor deem IC to be an employee, agent, partner, or joint venturer of Tradenet for any purpose. IC shall be free to work such hours at such locations and with such tools and equipment, and by such means and methods, as IC deems appropriate, subject to IC's obligations to timely perform the Services. IC shall not enter into any agreement or obligation on behalf of Tradenet, nor shall IC have any

authority to act on behalf of Tradenet or to bind Tradenet to any obligation. IC shall not represent that IC is an employee or agent of Tradenet or is authorized to act on behalf of Tradenet in any capacity.

b. No Withholdings. IC acknowledges and agrees that (i) no income, social security, or other taxes or withholdings will be deducted from any and all payments made to IC hereunder, (ii) no insurance of any nature, whether statutory or otherwise, shall be carried or funded by Tradenet for the benefit of IC, and (iii) the payment of such taxes and the procurement of such insurances shall be solely IC's responsibility. IC agrees that IC shall not have any entitlement to participate in any benefit plans of any nature offered or maintained by Tradenet for its employees.

7. Representations, Warranties, and Indemnification.

a. Publishing Representations. IC represents and warrants to Tradenet, as follows:

(i) IC has the full power and authority to execute, deliver, and perform this Agreement in accordance with its terms and this Agreement does not violate any agreement or arrangement to which IC is a party or by which IC is bound;

(ii) IC is and will be the sole creator of the Works, and the Works are original and have not been previously published in whole or in part;

(iii) the Works do not and will not infringe upon the copyright, trademark, or any other registered or common law intellectual property or proprietary rights of any third party;

(iv) the Works shall be true and accurate in all respects and comply with all applicable consumer, advertising, and all other applicable laws;

(v) all factual statements contained in the Works will be true and no material contained therein could reasonably cause injury to person or property or discriminate in any manner against any person on the basis of age, race, sex, or religion or in any other manner; and

(vi) the Works do not and will not contain any matter that is libelous, defamatory, obscene, or otherwise unlawful and will not infringe upon the right of privacy, publicity, or the proprietary or other rights of any third party.

b. Indemnification. IC shall defend, indemnify, and hold harmless Tradenet and its respective officers, directors, and employees, from and against any and all claims,

liabilities, damages, judgments, settlements, costs and expenses, including without limitation reasonable attorneys' fees and costs, arising from IC's breach or alleged breach of its representations, warranties, or covenants in this Agreement.

8. Confidential Information. IC agrees not to provide any third party with any confidential or proprietary information as to Tradenet that IC learns in the course of performing the Services or preparing the Works, including as to the terms and provisions of this Agreement except to IC's legal and financial professional advisors. **[[ED. NOTE. IF A FREELANCER IS JUST THAT AND WILL NOT HAVE ACCESS TO CONFIDENTIAL INFORMATION OF YOUR COMPANY THEN A CLAUSE LIKE THIS MAY BE SUFFICIENT IN THE BOOK OR MAGAZINE PUBLISHING CONTEXT. IF AN INDEPENDENT CONTRACTOR MAY HAVE A RELATIONSHIP WITH YOUR COMPANY SUCH THAT THERE MAY BE MORE ACCESS TO CONFIDENTIAL INFORMATION, A MORE THOROUGH EXPANDED CONFIDENTIALITY CLAUSE SHOULD BE PREPARED AND UTILIZED.]]**

9. Breach And Termination.

a. Breach. The following shall constitute IC's breach of this Agreement: In the event IC breaches any of its representations, warranties, or covenants of IC set forth herein and fails, in Tradenet's sole judgment, to cure such breach(es) within ten (10) days after Tradenet's written notice to IC specifying the nature of such breach(es) and requesting cure of the same.

b. Actions. In the event IC breaches this Agreement, Tradenet may terminate this Agreement.

c. No Further Payments. In the event of any termination of this Agreement, IC shall have no entitlement to further payments of the Fee as of the date of termination and Tradenet shall be required to pay IC (and IC may retain) only that portion of the Fee which has accrued as of the date of termination with respect to IC's delivery and Tradenet's approval of completed portions of the Works, which shall be reduced for and by the amount of any monies owed by IC by reason of indemnification claims of Tradenet under Section 7(b).

d. Remedies. Any termination of this Agreement by Tradenet under this Section 9 is without prejudice to any rights and remedies at law or in equity that Tradenet may otherwise have against IC. All rights and remedies contained in this Agreement are cumulative and none of them shall be construed so as to limit any other right or remedy of either party. Tradenet reserves all of its rights and remedies which are granted to it by operation of law.

10. Notices. All notices under this Agreement shall be in writing and delivered by (i) personal hand delivery, (ii) overnight courier, (iii) certified mail, return receipt requested, or

(iv) fax transmission with customary confirmation followed by first class mail. The delivery date, in the case of (i) hand deliveries shall be the date of delivery, (ii) overnight courier shall be one (1) day after forwarding, (iii) certified mail shall be two (2) days after deposit with the U.S. Postal Service, and (iv) fax transmission shall be one (1) day after sending. Each party's respective address for receiving such notices shall be that address set forth in this Section 10, unless a party sends notice of a different address under this provision.

All notices to IC under this Agreement shall be delivered to:

Attn: _____
Fax: _____

All notices to Tradenet under this Agreement shall be delivered to:

Tradenet Publishers LLC

Attn: _____
Fax: _____

11. General Provisions.

a. Survival. Sections 5 through 11 herein shall survive any termination or expiration of this Agreement.

b. Further Assurances. IC shall execute, verify, acknowledge, deliver and file all formal assignments, recordations and any other documents that Tradenet may prepare or reasonably request to give effect to the provisions of this Agreement.

c. Waiver and Amendment. All waivers of this Agreement must be signed by the party charged with such waiver. A waiver of any provision of this Agreement shall not operate or be deemed to be a waiver of the subsequent performance of such provision. This Agreement may not be modified, altered, or amended except in a writing signed by both parties hereto.

d. Governing Law. This Agreement shall be interpreted under and governed by the laws and decisions of the State of _____, _____, applicable to agreements made and to be performed solely within said state.

e. **Integration; Remedies; Severability.** This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings between them with respect to such subject matter. All rights and remedies contained in this Agreement shall be cumulative and shall not limit any other right or remedy to which a party may be entitled. If any provision of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

f. **Assignment.** This Agreement is personal to IC and IC shall not delegate or assign IC's duties under this Agreement. This Agreement shall bind and inure to the benefit of the executors and administrators of IC and the successors and assigns of Tradenet.

g. **Force Majeure.** Neither party shall be in breach of this Agreement to the extent performance of its obligations hereunder is prevented due to an event of force majeure (e.g., fire, earthquake, epidemic, war, riot, civil disturbance, act of public enemy, embargo, or act of God).

h. **Counterparts.** This Agreement may be executed in original or faxed counterparts, all of which taken together shall constitute one and the same original instrument.

Tradenet and IC have executed this Agreement through their authorized signatories on the dates set forth below, to be effective as of the Commencement Date.

TRADENET

Tradenet Publishers LLC

Date: _____

IC

Date: _____
