

## **The Freelance Contract**

**by Cathryn D. Evans**

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I have received numerous requests to publish sample contracts for freelance writers. The following is just one example of a contract specific to projects negotiated on an hourly consultation basis for pharmaceutical, biotechnology, or other companies. The language is typical of many companies' legal departments because this is the source of most contracts of this type. Obviously, many variations of such contracts are possible. Sample contracts between a writer and publisher - as well as for fixed-fee projects - will be presented in future columns. To this end, contributions are encouraged from readers, along with any comments on the sample printed here.

COMPANY desires to retain Writer as a consultant to assist in the development of XYZ Product on the following terms and conditions:

1. Writer agrees to consult with [Name of client contact], or whomever COMPANY may designate by telephone or in writing, in relation to XYZ Product. Writer's responsibilities as a consultant include:
  - to provide communications services, including planning, organizing, writing and editing for clinical study reports, scientific publications, product monographs, and/or scientific presentations related to XYZ Product as mutually agreed upon with COMPANY.
  - to provide other consulting services in relation to the XYZ Product as COMPANY may request from time to time during the duration of this Agreement.
2. It is understood and agreed that COMPANY is contracting for Writer's services hereunder; if such personal services are not available for any reason, COMPANY may terminate this Agreement immediately. In such event, COMPANY agrees to pay all outstanding invoices within 30 days of receipt of such invoices.
3. It is understood and agreed that COMPANY will provide all relevant background material (or approve expenses for Writer to obtain such material from subcontractors) involved in a specific project and that, prior to any publication, distribution or submission of the material for review and/or publication, COMPANY is solely responsible for the approval of statistical and scientific accuracy and completeness of written material provided by Writer.
4. Writer will act as consultant and writer/editor and agrees that the name(s) of Writer or any of its principals, employees or affiliates will not be listed as author(s) on any publications that result from such consultations, unless agreed upon mutually by COMPANY and Writer.
5. COMPANY agrees to indemnify, defend and hold Writer free and harmless from and against any and all liability, including but not limited to loss, costs, damages, attorney's fees and expenses of whatever kind or nature resulting from written or published material on the XYZ Product. Should writer be asked to participate as a

witness in a deposition or trial connected with the XYZ Product, COMPANY agrees to reimburse Writer for any and all costs, liability, damages, attorney's fees and expenses associated with such procedures, including but not limited to the cost of materials/services requested and for Writer's time involved in such activities at the rate of €X/hr or Writer's hourly rate at the time of the request, whichever is higher.

6. As full consideration for Writer's services hereunder and for Writer's agreement to the terms and conditions hereof, COMPANY agrees to pay Writer €X for each hour of consultation, as mutually agreed upon by telephone, FAX or letter, between Writer and COMPANY prior to initiation of work. COMPANY will also reimburse Writer for reasonable out-of-pocket expenses associated with each project (including, but not limited to, literature searches, copying services, word processing services, graphic illustration, FAX and electronic-mail transmissions, long distance, and approved travel expenses incurred while executing a specific project). Fees are payable within 30 days of COMPANY's receipt of an invoice of itemized services. COMPANY further agrees to pay a 10% late fee for invoices that are not paid within the 30-day period. *[see below for an alternative wording for fixed-fee projects]*
7. Writer agrees that unrestricted copyright will be transferred from Writer to COMPANY for all projects executed on XYZ Product after Writer has received payment for all invoices associated with a specific project, unless other agreements are mutually agreed upon in writing between COMPANY and Writer.
8. Any information, inventions or discoveries (whether patentable or not), product innovations, suggestions, ideas, communications and reports conceived, reduced to practice, made or developed by Writer relating to the XYZ Product as a result of Writer's services under this Agreement shall be promptly disclosed to COMPANY and shall be the sole property of COMPANY. Writer agrees to execute, upon COMPANY's request and at COMPANY's expense, such documents and to take such other actions as COMPANY deems necessary or appropriate to obtain patents in COMPANY's name covering any of the foregoing.
9. During the term of this Agreement, including any extension thereof and 5 years thereafter, Writer shall exercise due care to prevent the unauthorized disclosure of Confidential Information. Confidential Information shall include all Information concerning COMPANY and XYZ Product disclosed to Writer by COMPANY, or developed as a result of Writer's services under this Agreement, except any portion thereof which:
  - is known to Writer before receipt thereof under this Agreement, as evidenced by written records;
  - is disclosed to Writer after acceptance of this Agreement by a third party who has a right to make such disclosure; or
  - is or becomes part of the public domain through no fault of Writer.

Further, during the term of this agreement, including any extension thereof and 5 years thereafter, Writer shall not use Confidential Information for any purpose other than that indicated in this Agreement without COMPANY's prior written approval.

## ***The Write Stuff***

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### *The Freelance Contract*

10. Writer agrees not to disclose the existence of this agreement or use the name of COMPANY in any advertising or promotional material without COMPANY's prior written approval.
11. Writer agrees not do disclose to COMPANY any information which is confidential and/or proprietary to a third party.
12. Writer warrants and represents that the terms of this Agreement are not inconsistent with other contractual and/or legal obligations Writer may have, or with the policies of any institution with which Writer is associated including, but not limited to, policies regarding the administration of grants and funded research.
13. This agreement shall be effective through [Date] and may be extended by written agreement signed by the parties. Either party may terminate this Agreement without cause upon written notice to the other party 30 days prior to termination. Termination or expiration of this agreement shall not effect any rights or obligations which have accrued prior to termination. Upon completion of Writer's consultation, termination or expiration of this Agreement with COMPANY, Writer shall return to COMPANY all Confidential Information, data and materials provided to Writer by COMPANY, or developed by Writer as a result of consultation services, as requested by COMPANY. COMPANY will reimburse Writer for any expenses associated with returning or destroying confidential material.
14. Writer's status under this Agreement is that of an independent contractor, and Writer has no authority to bind or act on behalf of COMPANY except as otherwise expressly stated herein. Writer may not assign this Agreement to a third party without COMPANY's prior written consent, and any attempted assignment shall be null and void. COMPANY may not assign this Agreement to a third party without Writer's prior written consent, and any attempted assignment shall be null and void.
15. As an independent contractor under this Agreement, Writer shall not be entitled to participate in any benefit plan or program for employees of COMPANY. However, nothing contained in this agreement shall prevent or preclude Writer from other benefits to which Writer may be entitled under various COMPANY retirement and benefit plans by virtue of any employment with COMPANY prior to the effective date of this Agreement. Writer shall be responsible for and agree to comply with obligations under national tax laws for payment of income and self-employment taxes. Writer shall have no authority to bind or act on behalf of COMPANY except as otherwise expressly stated herein.
16. This Agreement contains the entire understanding of the parties with respect to the matters herein contained and supersedes all previous agreements with and undertakings with respect thereto. This Agreement may be modified only by written agreement signed by the parties.
17. This Agreement shall be governed by and construed in accordance with the laws of [use whatever is appropriate].

An alternative wording for fixed-fee projects replaces item 6 above:

6. Writer will produce an educational monograph for a single audience on "Topic" according to a complete and annotated outline supplied by COMPANY, with background material also supplied by COMPANY and specifically keyed to the outline. The monograph will be addressed to a single audience (i.e., patients with X disease). The final length will be approximately 80-100 double-spaced manuscript pages, or 32-40 typeset pages.

COMPANY's annotated outline will include (1) a working title of the monograph; (2) titles for each section, presented in the order of their required appearance; (3) sub-titles under each section, if relevant; (4) under each section, a brief overview of what the section and its sub-sections should contain; and (5) identification of the reference sources for each section.

Writer will supply text only, with suggestions for charts, graphs, and/or illustrations. The fixed fee for writing will be €X,000 – X,000, depending on the scope and complexity of the outline and background material, as well as the final length of the monograph. Direct out-of-pocket expenses (including but not limited to telephone, copies, FAX, postage, shipping and/or couriers, word processing fees, disk conversion and downloading, literature searches as required, draft charts and tables, etc.) will be reimbursed by COMPANY upon invoice submitted by Writer.

Contingencies for the fixed fee include the following: work will commence only after *all* material has been given to Writer; the fee will include a first draft plus one reasonable revision; the one revision will be made from a single review copy (i.e., multiple reviewers' comments have been reconciled by COMPANY before sending the revised markup to Writer); and the requested revisions must be returned to Writer within four weeks of submission of the first draft. A "reasonable revision" means minor editorial changes only; structural changes or new material not included in the original outline will be charged hourly at €X/hr. Similarly, changes submitted on more than one copy of the manuscript, or later than four weeks after initial submission, will be charged hourly.

The fixed fee does not include instructional design, examinations, or final page layout and art; formatting of the manuscript will follow your outline. The payment schedule will be as follows: one-third in advance (prior to commencing work), one-third upon submission of the first draft, and one-third upon submission of the first revision; expenses for each part of the cycle will be included in the relevant invoice. Invoices for hourly charges will be submitted once a month, or upon completion of a revision cycle. After payment of the advance, all invoices must be paid within 30 days of the date of the invoice, with a 10% late fee for amounts not paid within that time.

Cathryn D. Evans  
Chandos Communications  
945 Alice Lane  
Menlo Park, CA 94025, USA  
savonna@aol.com  
Fax: (+1) 650 326 0327

Cathryn D. Evans has been a freelance writer and communications consultant in California since 1980. She is a past president of AMWA and a recipient of the Golden Apple Award. She has given 17 workshops on freelancing and many others on various aspects of medical communications.