

# FREELANCING WITH A SUIT OF ARMOUR

JEANANNE KIRWIN, Q.C.

**T**he gig economy is nothing new to us writers. We have been writing freelance for hundreds of years.

The origin of the word “freelance” can be traced to medieval times, when a lord could hire a mercenary soldier to fight in battle. The term “free” in free-lance did not mean the warrior worked without pay. Rather, his lance was freely available to anyone; he was unsworn to any lord’s service.

Today, lances are not commonly used, but words are enduring; the pen is mightier than the sword. So analogous is the often piecemeal work of a writer to the battle-by-battle toil of a medieval fighter that many dictionaries show the words “writer” and “freelancer” as synonyms.

A warrior would not hazard a battle without chainmail, breastplate, helmet and shield. To continue the metaphor, unless you have a long-term relationship with a specific editor or publisher, you should not venture into the field without your suit of armour: a written agreement. To do so might mean working without pay.

## Important components of a contract

Key elements to your protective shell:

1. State the names of the parties, including the full legal name of the person, association, or corporation hiring you, and their contact information. Set out a detailed description of the literary work they are hiring you to create, whether it be a biography, a textbook on climate change, or an article about freelancing. Set forth an approximate word length and perhaps a working title. Label that “the Work” and use the term throughout the rest of the contract.

2. Describe the services you will perform, besides the actual writing:

- Researching (will the party hiring you provide you with materials and administrative support?)
- Interviewing (will the party hiring you provide names and contact details?)
- Editing and copy editing
- Reviewing final proofs or galleys before publication

Ensure you add a provision that you are an independent contractor, and no deductions will be made for any government remittances.

3. Set out the agreed terms of your payment, which is often a flat fee apportioned as follows:

- A portion upon signature to the agreement
- A portion upon provision of an outline (if not provided by the party hiring you)
- A portion upon completing a first chapter or other segment
- A portion upon delivery of the first draft manuscript
- A portion upon completion of revisions and edits
- A portion upon acceptance of the final manuscript

Will you also receive royalties on sales? If so, will you consider the flat fee an advance against royalties? Who pays for expenses such as travel and copyright permissions?

4. Describe the schedule and approval process, referring to the following:



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- Who prepares the working outline of the Work?
  - When are specific sections of the Work to be completed?
  - Who will edit the Work?
  - What is the maximum number of revised versions of the manuscript you will deliver?
  - Who has the power to accept the final manuscript?

In connection with schedules, always include a force majeure clause—a provision that says a party is not in default of meeting a timeline when “acts of God” or events beyond its control arise. Such situations include weather episodes like floods, forest fires or tornadoes; your illness or incapacity; and yes, pandemics.

5. Decide who owns the copyright in the Work. As an independent contractor, rather than an employee, you will be the automatic first owner of the copyright in

the Work. Still, the party hiring you may assume it will own copyright since it is paying you. Therefore, expect to be asked to assign your copyright in the Work. If you agree with this, make the assignment conditional upon your receipt of full payment.

6. Address your moral rights in the Work. Even if you assign your copyright, expressly reserve and do not waive your moral rights as a creator: your right to paternity (be named as author, to use a pseudonym, or to remain anonymous); your right to association (prevent the Work from becoming associated with any product, service, cause or institution); and your right to integrity (object to any changes to the Work that may harm your reputation).
7. Discuss who bears the risk of being sued for copyright infringement, defamation, and other risks. You will wish the party hiring you to take on these risks.
8. Decide who will find a publisher for the Work if this has not already been arranged.
9. Consider termination situations, for example, your protracted illness or death; the insolvency of the hiring party; a breach of the contract such as non-payment; or a mutual parting of the ways. Spell out the consequences of termination.
10. Both you and the party hiring you should date and sign the agreement.

In short, suit up with a written contract. You may well disarm with your words, but arm yourself.

This column does not contain legal advice, but merely legal information. Always consult with a lawyer to discuss your situation and to draft a contract for you. ■

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# WGA Staff

## ANNOUNCEMENTS



SAMANTHA WARWICK  
— PHOTO BY MONIQUE DE ST. CROIX

The WGA announces the upcoming departure of Calgary-based Program Director **Samantha Warwick**. Sam has been with us for over 15 years and has developed a vibrant WGA community in Calgary and surrounding areas. She has supported writers—both new and established—from across Alberta and beyond, creating opportunities for artists to have their work celebrated and showcased at events, conferences and community partnerships. Since 2005, Sam has promoted the literary arts and writers through creative and inspiring programs held at indie bookstores, breweries, atmospheric wine stores, libraries, pubs, museums and even yoga studios. We will miss Sam's enthusiasm, welcoming energy, dedication to the community and innovative collaborations. Sam's last day will be October 1, 2020. Although we are very sad to see her go, we are excited for Sam as she moves forward to focus on her writing career and to complete her second novel. Sam, we will miss you and wish you the best of luck!



GIORGIA SEVERINI  
— PHOTO BY MONIQUE DE ST. CROIX

The WGA also announces that **Giorgia Severini** left the WGA on August 6 for a one-year maternity leave. Giorgia has been an essential part of the WGA team for the past twelve years in a number of capacities: admin assistant, member services coordinator, program coordinator and operations manager. She also oversaw our last website and database revamp; she is a keen writer of grant applications, and most recently launched the Digital Strategies project, our Online Reading Series, and Regional Facilitators program. Outside of the WGA, she has been a theatre director for more than a decade and a playwright in recent years. Her first original play, *Going Viral*, was produced at the Edmonton Fringe Festival in 2010. In March, 2020, her play *Border Breakdown* was featured in the Skirts Afire Peep Show Reading Series. We send her our heartfelt congratulations on the new addition to her family and eagerly await her return to the WGA in 2021!