PM World *Journal*
Vol. VII, Issue I – January 2018
www.pmworldjournal.net

Freelance Web Developer: How to be well protected?
by Lucas Louf
Student Paper

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ABSTRACT

Nowadays, lots of developers decide to work as a freelancer and it will certainly increase in the next years. Those developers are technically good, but they often have no legal backgrounds and, so they have no ideas on how to write a contract and what should be included in it. The aims of this paper are to identify the most important clauses in a freelance developer contract and compare those ones in the most popular templates. This analysis will help us to conclude that the template written by the AIGA, an American organization, is the best one to protect the freelance developers.

Key words: Contract, Web Developer, Intellectual Property, Freelance, Templates, Payment

INTRODUCTION

The first references to "Freelance" date back to the 18th century. It was made up of two words at that time as written in the book *Ivanhoe* by Sir Walter Scott and it made a reference to mercenaries: « I offered Richard the service of my free lances […] ». Though the term still refers to the provision of services by independent people, it's not limited anymore to the military field. With the advent of the Internet, new professions have significantly developed around freelance such as web developer or web designer. They represent today a large part of the 60 million freelancers in the United States. For companies wishing for more competencies and flexibility, and workers for more liberty, this trend is rising.

Even if freelancers are skillful in their respective areas, they are rarely armed to deal with negotiations and even less with contracts drafting while all their work relies primarily on these few sheets of papers. Although the contacts with the clients are often cordial, it is not unusual to face unscrupulous people and so to go to court for copyright case or disagreements on the post-project responsibilities. So, it is very important to have a tailored contract as detailed as possible about the service that will be proposed. We could consider being assisted by a lawyer, but this is rarely profitable for a freelancer or at least for a "new" one. Fortunately, nowadays lots of websites offer templates for different kind of contracts. This is the most suitable

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[1] *Editor's note: Student papers are authored by graduate or undergraduate students based on coursework at accredited universities or training programs. This paper was prepared as a deliverable for the course "International Contract Management" facilitated by Dr Paul D. Giammalvo of PT Mitratata Citragraha, Jakarta, Indonesia as an Adjunct Professor under contract to SKEMA Business School for the program Master of Science in Project and Programme Management and Business Development.* http://www.skema.edu/programmes/masters-of-science. *For more information on this global program (Lille and Paris in France; Belo Horizonte in Brazil), contact Dr Paul Gardiner, Global Programme Director* paul.gardiner@skema.edu.

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solution. However, they should be carefully chosen and eventually modified because they are not always exhaustive.

STEP 1- OBJECTIVE STATEMENT

To summarize, we will identify the most important clauses and compare them in 5 of the most popular templates for freelance developers.

METHODOLOGY

STEP 2- FEASIBLE ALTERNATIVES

There are not as many contract templates as in the building field. However, some professional associations and some freelancers have written and shared contract templates. Here is the list of templates *(for each of them, a link is provided in the bibliography)*, we will compare:

1. AIGA
2. Andy Clarke's contract
3. Jeremy Smith's contract
4. Ross Kimbarovsky's contract
5. Eric Adler's contract

STEP 3- ATTRIBUTE TO EVALUATE ALTERNATIVES

The attributes selected are the most important clauses regarding this kind of contract.

1. Expectations and Responsibilities
2. Independent contractor clause
3. Work report
4. Payment terms
5. IP Rights
6. Termination
7. Legal Protection

Development of the attributes:

1. Expectations and Responsibilities

Most of the work will be based on this clause. This is where the service to be rendered will be detailed: what will the developer work on? With which technologies? For which devices? What are his responsibilities? What will he do to ensure the quality of the project? … But this is also where it will be explained what the developer is not responsible for. Indeed, it's very important for the developer to clarify the limit of its responsibility. It will avoid working without being paid and be on the same wavelength with the client. Specific requirements can be described in a statement of work attached to the contract. This document will explain what the expected outcomes are and what will be considered a work product. This will help to clearly describe the goals and the scope of the project. The statement of work will be judged as a project proposal

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if it is drafted by the developer. Expectations and responsibilities also define the role of each party and how they will cooperate.

2. Independent contractor clause

The independent contract clause is important for both sides. This clause will clearly define that the developer is as an independent contractor and that he is not affiliated with the client. As a result, the client will not have to pay employee taxes and the developer will be authorized to deduct business expenses.

3. Work report

During the development, the client will want to review regularly the work of the developer and the developer will want to have feedback on his work. This reporting process will be clearly established in the work report clause. This is even more important when the freelancer is a remote developer.

It should be decided how often there will be work reports. Sometimes the developer may also want to limit the number of revisions in order not to have a never-ending. The developer will have to inform the client how the project is going on, which tasks have been accomplished, on what tasks he will working on before the next report, any questions he has on current tasks… After that, the client will communicate his review and approve or disapprove the work report. The content of the report and the time given to the client to send his feedbacks should also be defined in the contract.

The contract should establish who will be the person responsible to review the work report. It is better to name only one person, else it could have conflicting feedbacks which lead the developer to produce useless work.

4. Payment terms

The Payment Terms is obviously one of the most important clauses. Unclear payment terms in the contract can lead to a quarrel with the client which will stall the project and then will cause compensation delays. The payment base which can be fixed or variable (hourly cost) must be determined. Lots of other information relative to payment are necessary, here is a list of what should not be forgotten: deposit, amount to be billed, bank account details, deadlines for payments, interest for late payments, currency conversion fees (if needed), bank transfer fees… The developer can also include, in agreement with the client, expenses made for and during the project such as travel expenses or costs for telephone calls.

This is also one of the most difficult clauses to negotiate. Indeed, clients are not very inclined to sign for provision such as late fees and they will often try to delay the payment.

The Payment terms can also include that if the client considerably changes the project scope (which may lead to big changes on the website or on the software), the contract could be renegotiated.

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5. IP Rights

The deliverables made for a client by a freelancer are usually considered as "work-for-hire" if they met 3 requirements:

a. They must be ordered, and they should not already exist
b. A contract must stipulate that they are "work-for-hire"
c. They should be part of one of the nine limited categories of work

It's usually the case for freelance works and it will allow the client to have automatically the full IP for the work. However, the last requirement could not be applied to most of the independent developer's works. That is why a copyright assignment is often included in contracts with developers. It could be:

- Full assignment: full ownership of rights will be transferred upon payment in full. This means that the client now owns the deliverables and he can do whatever he wants with them. The developer keeps the right to display the work in his personal portfolio.
- Limited license: the developer keeps the ownership of the deliverables and the client has to pay a licensing fee to use it
- Exclusive license: it guarantees to the client that you won't use the same code or design for other, third-party projects. It could be:
    o Exclusive with modifications allowed
    o Exclusive with modifications not allowed

6. Termination

This clause should specify when the contract expires and mainly what happens if the contract ended prematurely.

If everything is fine, the contract will expire at the end date planned in the contract with an option to renew.

But, if for any reason (nonpayment, breach of contract, etc.), the client or the freelancer want to stop the collaboration earlier, the contract should provide provisions.

In case of termination by the client, the developer can retain all costs already incurred and request for an early termination fee (sometimes called "kill fee") which can rise to 25% or more of the total project fee. It could also have no IP rights transfer.

In case of termination by the freelancer, it could happen that the client wants to have his money back or at least, he will ask to assist in transferring the project to a new designer.

7. Legal Protection

First, the liability which should protect both parties from any unfair claims and financial responsibilities. The client's liability should be limited to the fees agreed in the contract and he should not be responsible for the developer or any third-party for any damages. The freelancer should cover himself from third-party IP claims related to photos, designs or anything else

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provided by the client. He must also not guarantee that the code will function forever and, so he could protect himself from any future problems.

Second, the principle of severability: if any clause of the contract is found to be invalid, the rest remain effective.

Third, the contract should specify which committee will arbitrate the dispute, if any. The mediation, which will try to find solutions with both parties, is softer. If it is possible, it is definitely the best solution.

Lastly, the contract should indicate which country laws will be used for the contract. This will be useful as the last resort.

STEP 4- SELECTION OF THE ACCEPTANCE CRITERIA

We use the Multi-Attribute Decision Making (MADM) process in order to evaluate each of the alternatives. This analysis helps us to have a global overview of the different alternatives regarding the most important clauses. We will only accept alternatives which have more than two green cases. That already eliminates "Andy Clarke's contract".

	AIGA	*Andy Clarke*	*Jeremy Smith*	*Ross Kimbarovsky*	*Eric Adler*
EXPECTATIONS AND RESPONSIBILITIES	Mostly C. *(Complete but mostly designer oriented)*	Complete	Complete	Incomplete *(Present but no template provided)*	Incomplete *(Present but no template provided)*
INDEPENDENT CONTRACTOR CLAUSE	Present	Absent	Present *(no exclusivity)*	Present	Present *(no exclusivity)*
WORK REPORT	Complete	Very Inc.	Incomplete	Very Inc.	Incomplete
PAYMENT TERMS	Complete	Incomplete	Mostly C.	Mostly C.	Mostly C.
IP RIGHTS	Present *(full assignment & portfolio right)*	Present *(full and limited assignment & portfolio right)*	Present *(full assignment & portfolio right)*	Present *(full assignment & portfolio right)*	Present *(full assignment & portfolio right)*
TERMINATION	Complete	Very Inc.	Very Inc.	Very Inc.	Complete
LEGAL PROTECTION	Complete	Incomplete	Complete	Incomplete	Complete

Table 1 : Multi-Attribute Decision Matrix

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FINDINGS

STEP 5- ANALYSIS AND COMPARISON OF ALTERNATIVES

First, we need to represent alternatives in a quantitative manner in order to use compensatory models. So, we should transform relative options in dimensionless values.

	EXPECT. & RESPONSI-BILITIES	IND. CONTRACT-OR CLAUSE	WORK REPORT	PAYMENT TERMS	IP RIGHTS	TERMINAT-ION	LEGAL PROTECTI-ON
COMPLETE / PRESENT	1	1	1	1	1	1	1
MOSTLY COMPLETE	0.8		0.8	0.7	0.8	0.7	0.7
INCOMPLETE	0.4		0.3	0.2	0.4	0.2	0.3
ABSENT / VERY INCOMPLETE	0	0	0	0	0	0	0

Table 2 : Quantitative representation of the attributes

Second, we use these values to create the "relative weighting" of the alternatives.

	AIGA	*Jeremy Smith*	*Ross Kimbarovsky*	*Eric Adler*
EXPECTATIONS AND RESPONSIBILITIES	0.8	1	0.8	0.8
INDEPENDENT CONTRACTOR CLAUSE	1	1	1	1
WORK REPORT	1	0.3	0	0.8
PAYMENT TERMS	1	0.7	0.7	0.7
IP RIGHTS	1	1	1	1
TERMINATION	1	0	1	1
LEGAL PROTECTION	1	1	0.3	1
TOTAL	**6.8**	**5**	**4.8**	**6.3**

Table 3 : Relative weighting

Third, we rank each attribute by importance to use the "additive weighting technique". The higher the ranking, the important the attributes are. The sum of each alternative is compared to the normalized weight 1 which is the maximum score to have.

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	Rank.	Weigh.	AIGA		Jeremy Smith		Ross Kimbarovsky		Eric Adler	
EXPECTATIONS AND RESPONSIBILITES	6	0.21	0.8	0.17	1	0.21	0.8	0.17	0.8	0.17
INDEPENDENT CONTRACTOR CLAUSE	1	0.04	1	0.04	1	0.04	1	0.04	1	0.04
WORK REPORT	4	0.14	1	0.14	0.3	0.04	0	0	0.8	0.11
PAYMENT TERMS	7	0.25	1	0.25	0.7	0.18	0.7	0.18	0.7	0.18
IP RIGHTS	5	0.18	1	0.18	1	0.18	1	0.18	1	0.18
TERMINATION	2	0.07	1	0.07	0	0	1	0.07	1	0.07
LEGAL PROTECTION	3	0.11	1	0.11	1	0.11	0.3	0.03	1	0.11
TOTAL	**28**	**1**		**0.96**		**0.76**		**0.67**		**0.86**

Table 4 : Additive Weighting Technique

STEP 6- RANKING AND SELECTION OF THE PREFERRED ALTERNATIVE

The "relative weighting" analysis already give us a clear ranking. The best solution is the AIGA's contract even if Eric Adler's contract (second choice) is not so far. Indeed, AIGA's contract is better than Eric Adler's contract by 107%. With the "relative weighting analysis", it seems to have a big gap between the first two solutions and the last ones (141% with Ross Kimbarovsky's contract and 136% with Jeremy Smith's contract). The "additive weighting technique" confirms the result given by the "relative weighting" analysis, the AIGA's contract is definitely best one. But this also shows that the difference with the other contracts is more constant.

Finally, we get the following ranking: AIGA > Eric Adler > Jeremy Smith > Ross Kimbarovsky

STEP 7- PERFORMANCE MONITORING AND POST-EVALUATION OF RESULTS

This analysis has been made to identify the most suitable and complete template to protect the freelance developers. Even though we provide the most important clauses and identify the best template, we assume that each project is different and, so developers may have to modify the template to match with the project.

The quality of some clauses is quite difficult to measure if the developer has no problem with the clients such as IP rights, termination or legal protection. However, the developer will quickly realize if the use of certain clauses will help him to properly define the project, to have

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regular feedbacks, and to make easier the accounting. To monitor the performance for those clauses, developers can have KPI which can include: number of change requests, cost overruns and delays caused by change requests, cost overruns and delays caused by a misunderstanding of the project, etc.

CONCLUSION

In this paper, we wanted to identify the most important clauses and compare them in the most popular templates for freelance developers.

We have explained what are the most important clauses and what should be included in those ones. However, this is not an exhaustive list, it is possible to find other clauses which can be sometimes specific to a project. Concerning the best template for freelance developers, the AIGA's contract is the most complete and the most professional even if it can seem to be a little bit long and complex. It is mostly designer oriented so, developers must have to make it their own by modifying some clauses.

Finally, even though this paper provides advice on how to have a strong contract, the fact remains that the developer should first carefully choose his clients and his contracts to be well protected.

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Lucas LOUF is a French student passionate about web development and new technologies. He first trains as a general engineer at Iteem (Centrale Lille). During these studies, he does several internships as a web developer in e-business companies in both France and Netherlands helping him to obtain experience and technical skills in this field. He also discovers there the management of a web project with an Agile approach. In his final year of studies, this encourages him to follow a Master of Science in project management (PPMBD) at SKEMA Business School in parallel to an E-Business master at Centrale Lille.