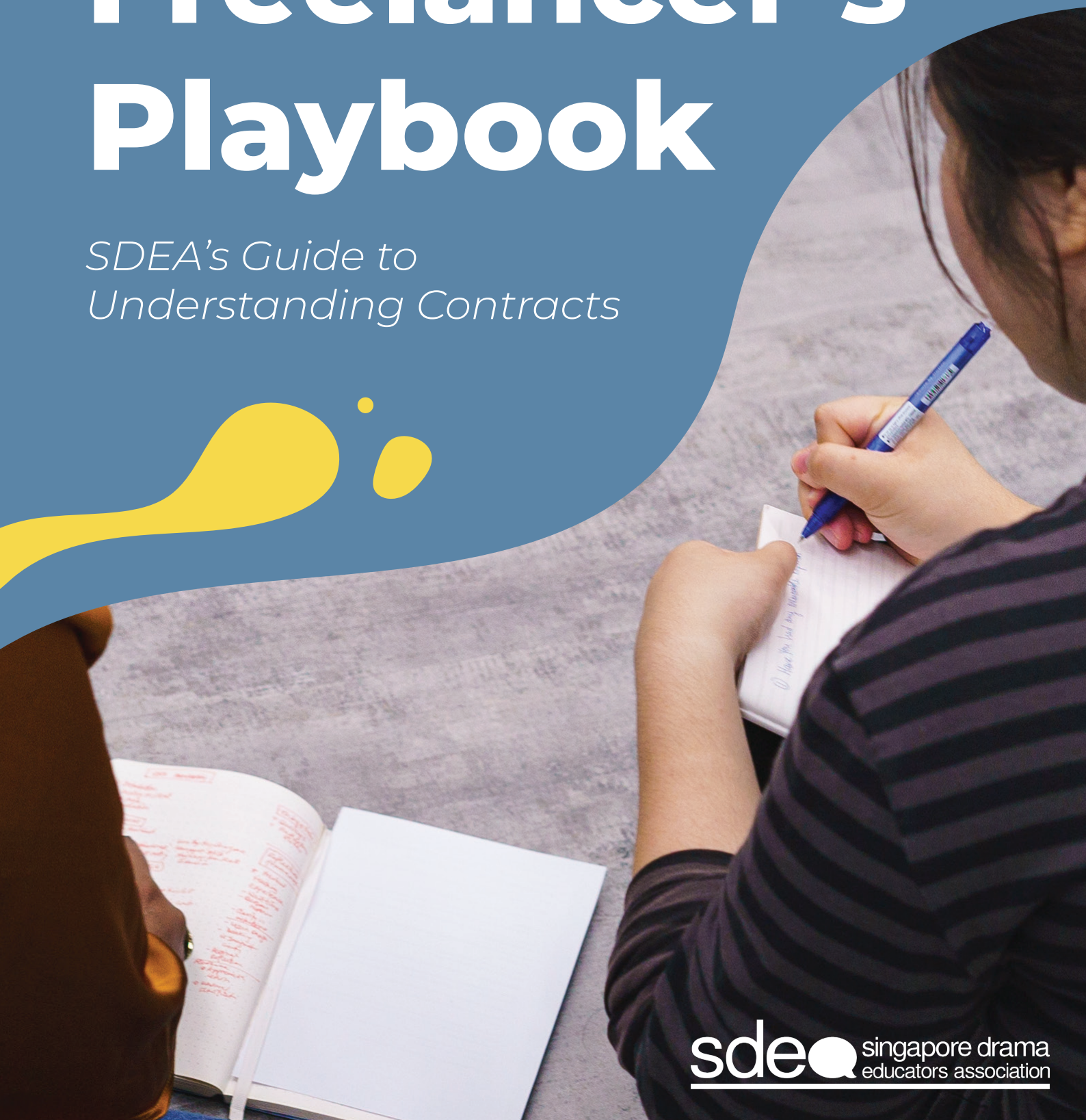
The Arts Freelancer's Playbook

SDEA's Guide to Understanding Contracts



sdea singapore drama educators association

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MESSAGE

from Advocacy Subcommittee

The birth of this advocacy project goes as far back as 2019, before the pandemic hit. We had already identified a growing desire among the community to better understand the contracts we are given. Are they fair? Do I understand what each clause means? What can I negotiate for?

Then 2020 came around. Drama educators began losing work and all forms of income due to lockdowns and circuit breakers, and the urgency was high to 'do something'. We held focus groups, surveys, and got in touch with the Ministry of Education. These dialogues paved the way for a decision to allow contracts to be extended to allow vendors to be paid, albeit at a later date.

It also spawned the Legal Playbook for Ideal Terms and Conditions Interest Group focused on discussing and creating a list of ideal terms and conditions for drama educators. This interest group would go on to form the Advocacy Sub-Committee, and this list of terms and conditions evolved as we emerged from the pandemic to become what it is today.

After two years of focus groups, discussions, and reading through contracts, we have created this living resource, The Arts Freelancer's Playbook: SDEA's Guide to Understanding Contracts.

This is not the end of our journey. This is a first step. A foundation upon which we can continue to gather feedback, add chapters, revise the document, and host dialogues to advocate for greater change.

We must acknowledge the contributions of all who came for our focus groups, sat in our meetings, gave their legal expertise, and shared their stories with us over these past two years.

We must also acknowledge community's efforts to create a fairer environment for the arts. Publications like the Advocates for the Arts, initiatives like the Arts Resource Hub, ground-up efforts like the Good Practices in Singapore Theatre paper, and the work of collectives like Producers.SG all prove that this is not just our effort, but a collective one.

Effecting lasting change will take more than a document. Creating fairer conditions will take more than a meeting. It will take collective and sustained effort to better equip ourselves to have these dialogues in our own spaces so that we can create the change necessary for our good work as practitioners to shine.

This is our first step, and we can't wait to do more.

Aishwariyah, Adi, Ghazali, Kamini, Kuan Cien, and Mark

The SDEA Advocacy Subcommittee, Feb 2023

FOREWORD

by Wang Liansheng

Introduction

Navigating the world of contracts is not easy. For a person who is not legally trained, needing to negotiate / prepare their own contracts may be a daunting task. The idea of creating this playbook stemmed from a pressing concern: Many freelancers do not have the luxury of institutional support behind them. In addition, they may not have ample resources to hire lawyers to review, prepare or assist them in negotiating their contracts.

Hence, this playbook is meant to be a practical guide for drama educators (and freelancers, in general) to manage the intimidating world of contracts. Each chapter will provide a concise summary of the types of clauses one would see in a contract, and the considerations one may have in relation to each of these types of clauses. Hopefully, it equips our readers with specific crucial information.

Naturally, this playbook is not intended to reduce the role of professional lawyers in negotiating, reviewing and preparing contracts. However, it attempts to guide the reader to be more informed and aware of relevant definitions, terms and consequences.

We hope you find this playbook a useful resource for your endeavours. Should this playbook open up more queries for you, feel free to write in at membership@sdea.org.sg or seek further assistance via the platforms below.

Resources

There are many resources available for drama educators and/or freelancers out there. Some of them include:

1. **Producers SG** – This website has a resource directory for independent producers, arts managers and self-producing artists in Singapore.

2. **Advocate for the Arts Handbook** – The Law Society Pro Bono Services Office produced a legal handbook for the creative industries which seeks to equip persons in creative industries with better awareness of their legal rights to support their creative endeavours .

3. **Pro Bono SG –** The Law Society Pro Bono Services Office offers free ad-hoc consultation sessions for freelancers by prior appointment.

4. **Arts Resource Hub –** The Arts Resource Hub is an initiative by the National Arts Council to support Self-Employed Persons and freelancers in the arts. In its website, the Arts Resource Hub has provided sample contract clauses for reference, as well as template simple written contracts.

ACKNOWLEDGEMENTS

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01 CONTRACTS 101 – KNOWING YOUR BASICS

As a freelancer or independent contractor, you may be assigned to multiple responsibilities. When approached with a legal document as part of a project offer, it can be quite a murky area to delve into.

On top of your various other roles, it may feel like another hurdle to battle. Hopefully, this chapter will help simplify the process and provide some insight and understanding on the things to look out for.

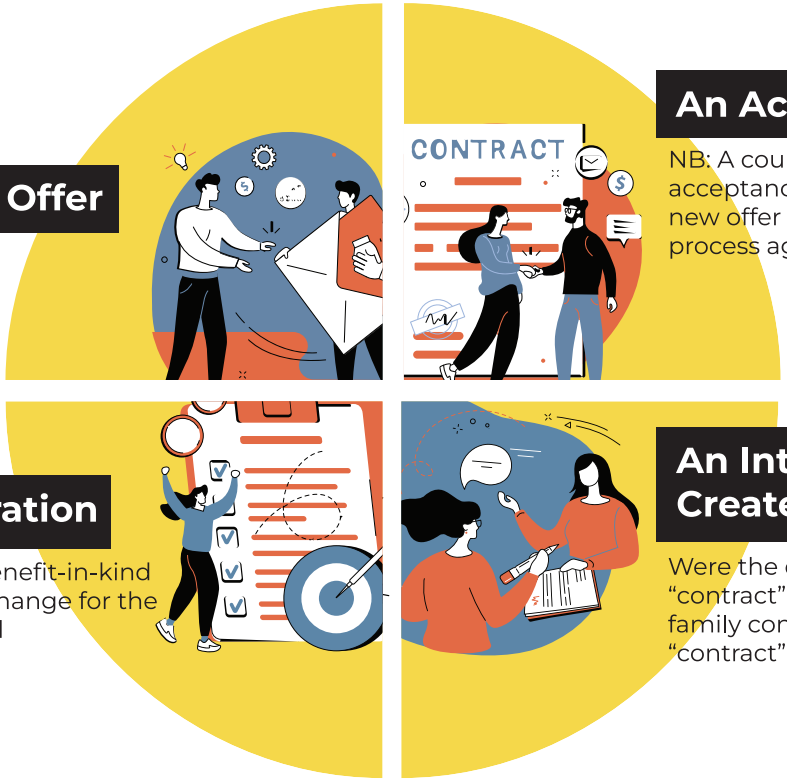
What is a contract?

1. **Contracts can take the form of a written or oral contract. It can also be captured via a written document, Whatsapp, SMSes, emails, voice recordings, etc**

The clarity of the contract is dependent, at times, on how it is captured. Commonly, in long email threads, it may be difficult to capture the terms of the contract clearly.

That's why we rely on a written document (i.e. contract) which comprehensively sets out an understanding and agreement between parties involved. Contracts need not be lengthy – at the bare minimum, it should capture the important points of agreement between parties.

2. **A contract is formed when these four elements are present:**



An Offer

An Acceptance

NB: A counter-offer is not an acceptance; a counter-offer is a new offer which re-starts the process again

A Consideration

i.e. what is the benefit-in-kind or in-cash, in exchange for the services provided

An Intention to Create Legal Relations

Were the discussions about the "contract" made informally or during a family context? Did parties intend for a "contract" to be made?

There must also be certainty to the terms of the contract. It is important to be clear about what you have agreed with the other party. This sets the expectations, rights and obligations between parties.

3. Varying the contract

Note that one can vary a contract by agreement in writing generally, e.g. a separate agreement, handwritten variation signed by both parties, or a confirmation email with a reply from the other party, recording a mutual agreement to vary the contract.

4. Fundamentally, a contract is keeping a record of an agreement between the parties

How parties negotiate, discuss or come to an agreement is a matter of commercial bargain. Therefore, various factors do come into play, including the power dynamics between parties, the needs and interests of the parties, the institutional barriers/resistance in changing contractual language/templates which have been adopted for years.

It is good practice to have the contractual terms agreed upon (captured in a signed document or clearly set out in an exchange of correspondence) prior to the commencement of any work for the other party.

You may eventually choose to enter into a contract even though you are unhappy with some clauses, but at the very least, you should enter into the contract knowing what are the terms you have agreed to.

What to look out for

5. During the course of your life as a freelancer, you may have come across many contracts.

There is usually a flow in a legally drafted contract:

(a)	**Parties**	Who is a party to / signing the contract?
(b)	**Glossary of terms**	This is the "dictionary" of the terms used in the contract.
(c)	**"Term" of the contract**	How long is this contractual engagement for?
(d)	**Termination**	What are the circumstances parties can "walk away" from the contract
(e)	**Scope**	What are the rights and obligations of parties?
(f)	**Confidentiality**	Are there matters to be kept confidential?
(g)	**Limitations and Liability**	What are the risks if something goes wrong?
(h)	**Other terms**	e.g. Intellectual Property
(i)	**Notices**	How would letters, notices, documents be sent to one party?
(j)	**"Boilerplate" clauses**	These are clauses which deal with the mechanics and/or legality of the contract
(k)	**Governing law and dispute resolution**	What is the law to apply to this contract? How would disputes be resolved?
(l)	**Signing clauses**	This is the part where parties sign off. Are the parties correctly identified in the signing portion?
(m)	**Annexures**	Have the annexures been inserted? Are the details inserted as agreed between parties?

6. It may be useful to have a checklist to consider when reviewing a contract:

Checklist	Query	Remarks
☐ **Parties (to the contract)**	• Do you know who you are contracting with? Is it the entity* or the individual? Who is ultimately going to be responsible for this engagement? **It is important to consider if the entity is a legal entity – which is capable of suing or being sued. This means that generally, the entity is the responsible party for the obligations under the contract.* • Generally speaking, a legal entity can refer to an individual or a company that has legal rights and responsibilities.	• In a contract, you should be able to identify the party with clarity – obtain the particulars of the entity, e.g. full name, ID / UEN No. (company registration number) or address, etc. • If there is a dispute, it is important to know who to look for. For example, when you are contracted by a producer to do stand-up comedy at a festival organised by the National Arts Council, if you sign the contract with the producer, he/she is the one you should generally look towards with regard to the contractual obligations, not the National Arts Council. • This is extremely important in situations when you are hiring multiple parties to fulfil the obligations of the contract, i.e. in a producer role. Consider: who should be the party to which contract? • Is the contractual party above 21 years old / bankrupt / unsound mind?

Checklist	Query	Remarks
☐ **Scope of work**	• What is the scope of each party's duties and the time frame within which such duties must be performed?	• This is the basis on which you claim compensation for work done. It is important to set out the work to be done, e.g. number of drafts, turnaround time, etc. • Consider, what does the other party have to do in order to facilitate your work? • It may be useful to use Schedules (or commonly known as annexures) in a written agreement to capture the milestones or scope of work. • Please note that contracts for illegal purposes are generally unenforceable.
☐ **Payment**	• What are the payment and the payment milestones? • Do the payment milestones correspond with the extent of creative work/planning done at that point? • How should payment be made – to bank accounts or by cheque or otherwise?	• Consider whether you wish to ask for a deposit as well. Fix payment milestones. It acts as a good reminder for your relationship with the client. • Is there late payment interest? • What is the payment method?
☐ **Termination**	• What are the circumstances for one party to walk away from the contract legitimately?	• You would see these under the "termination" heading in a contract. Check if you are to be paid for work you had done (prior to payment milestones), in the event there is an early termination of contract. • What is the notice period? What are the circumstances where notice needs not be served?

Checklist	Query	Remarks
☐ **Limitation of liability**	• What are the responsibilities if something goes wrong? • What are the extent and limits of each party's responsibilities and liabilities?	• You may come across clauses in a contract which has the headings "Indemnity", "Limitation of liability" or "Force Majeure". • "Force Majeure" refers to a concept where an act (out of the control of the contracting parties) interrupts the performance of a contract. "Force Majeure" clauses may provide an option for a party to extend time to perform / stop its obligations in the event of a situation beyond the control of the contracting parties. • Sometimes, you would also see "Limitation of liability" clauses – these restrict the amount payable if something goes wrong. • You may also see references to "Injunctive reliefs", "Liquidated Damages", etc. These are some reliefs a party who has suffered a loss owing to a default of the other party can have.

Checklist	Query	Remarks
☐ **Special considerations**	• Are there any special circumstances to be included in the contract, i.e. intellectual property rights, extent of non-compete, confidentiality clauses, that you would be hired as an independent contractor, etc?	• Depending on the nature of the engagement, there may be specific clauses to include in a contract to cater for the "rights" and "obligations" of a party. • For intellectual property rights – Who owns what? Are you to be credited? Do you give permission to the other party to use your work, for a fee or otherwise? Can you re-use the materials in other projects? Does any party need to pay the other party if the same materials are used in another situation? • Remember, intellectual property rights can be an asset for you as a creative / freelancer. • Sometimes, you may see "Non-compete" clauses, i.e. that you are not allowed to join a competitor or provide the same services to a competitor for a fixed period after the engagement under the current contract. • You may also wish to consider: is there a need to keep information confidential? • At times, it may be necessary for the client to state that you are an independent contractor to avoid being caught by the Employment Act 1968 (i.e. the main piece of legislation in Singapore governing employment rights), etc.

Checklist	Query	Remarks
☐ **Dispute mechanism and governing law**	• What is the dispute resolution mechanism or the recourse if something goes wrong? • If you are engaged in an international / cross-border project, what country's law / legal system should you apply to interpret the contract in case there is a dispute?	• Usually good-faith negotiation between parties to resolve issues and differences may be a starting point. What happens if the negotiations do not result in a resolution? Do parties go for mediation, litigation or arbitration? What do these terms mean? • Mediation is a process where parties come together before an independent party (i.e. mediator) to discuss and attempt to resolve their differences. • Arbitration is a process where parties appoint a neutral party to make a determination of the merits of each party. This process is confidential and less formal than a court process. • Litigation is a process where parties utilise the court system and a judge makes a determination of the merits of each party.

Flowchart of steps to take in negotiating a contract

Introduction

- There must be clear identification of the contracting parties - obtain the necessary details upfront, if possible.

Discussions over important terms

- What are the services to be provided - what are the freelancer's / customer's obligations?
- What is the acceptance crieria?
- What are the payment milestones, will there be a deposit?
- It is important to be as clear about the scope of work as possible to avoid disputes or ambiguity.

Other terms for discussions

- How would terms be varied? Can terms be varied?
- How would the contract be terminated?
- What should happen in events of dispute?
- Will there be a deposit / insurance?
- Can there be sub-contracting?
- What about the indemnity or limitation of liabiltiy expected of parties?
- What about intellectual property rights?
- Are there industry specific rules and regulations that may be applicable?

Check if parties can sign a simple contract to record the agreement

- Usually, it is not advisable to enter into an agreement with a party who does not want a contract to be signed.
- A contract need not be long and wordy; it has to capture the important terms of agreement between parties.

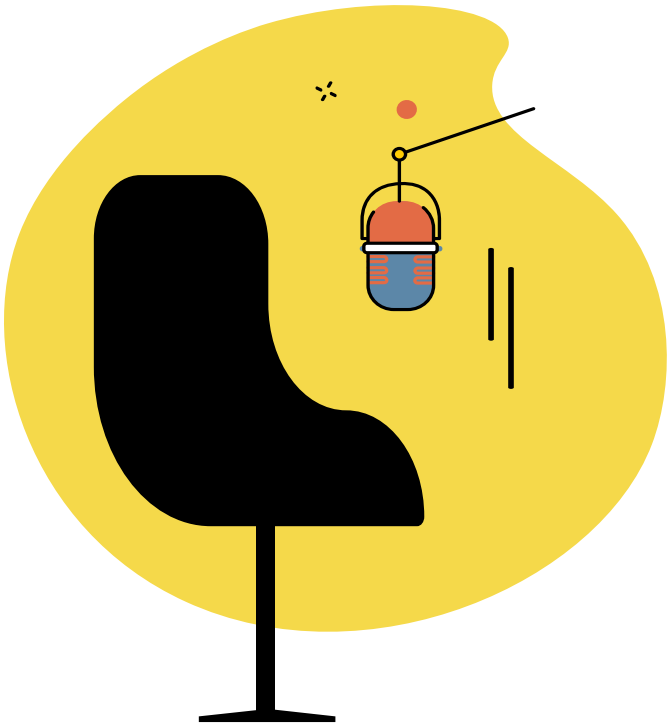
02 LIABILITY – LIMITS AND INDEMNITY

What is a Limitation of Liability Clause?

Limitation of Liability clauses are often used to limit the amount of liability one or more parties may incur, for defaults to a contract.

The limit is usually set based on an absolute amount or as a percentage of the value of a contract.

1. Limits often go hand-in-hand with indemnity clauses. Indemnity clauses are drafted to make one party guarantee to pay all losses for the other party in the event of a default. Indemnity clauses are a red flag. The limitation of liability clause helps to mitigate or set a limit to the losses one party would have to pay in the event of a default.
2. Generally, limitation of liability is useful for the service provider (i.e. the arts freelancer) to limit any loss / compensation payable in the event of an unfortunate situation. Indemnity is what the party requesting services would want the service provider (i.e. the arts freelancer) to provide.



For your consideration

(a) Should you have a limit on the liability you are exposed to? Consider this: You are a stand-up comedian. Due to a joke you shared at an event, one of the guests becomes enraged and causes a commotion, resulting in some furniture at the location being damaged.

If there is no limitation of liability, the event site may claim from you the full extent of all damages caused by the joke you shared. If there is a limitation on your liability to the amount of fees paid to you, this means the event site can only claim a maximum of your fees from you.

(b) Is it fair if there is a unilateral indemnity imposed on only one party? Which is the party who needs indemnity, and which is the party who needs a limitation of liability? What are the possible risks that may require the imposition of an indemnity or limitation of liability?

(c) Ultimately, limitation of liability and indemnity clauses are about risk-allocation. A limitation of one's liability provides assurance for that party that they would not have to pay more than what has been agreed beforehand to be the limit. An indemnity exposes the party giving the indemnity to significant risks – the party giving the indemnity is saying that they will guarantee to pay all loss suffered under the indemnity.

(d) Can the indemnity provided be limited to specific instances? For example, when there is wilful breach of the contract by one party? Or when the party engages in risky behaviour?

Sample Clauses

- **Indemnity Clause**

The Vendor shall indemnify and hold harmless the Client, its owners, parents, subsidiaries and/or affiliates, and their respective officers, directors, partners, stockholders, members, employees, licensees, agents, independent vendors, and/or successors and assigns of the foregoing from and against any and all liability, claim, judgment, settlement, damage, loss, cost or expense (including, without limitation, reasonable attorneys' fees, witness fees and disbursements) in respect of any breach of the agreement herein or the services which are to be carried out as described herein.

What does this mean?

This means that the service provider ("Vendor" in this case) is guaranteeing to pay any losses or damages that the Client may suffer in the event of any breach of the agreement or in relation to the services carried out pursuant to the agreement. What does this mean for you as a freelancer or independent contractor if you are the "Vendor" in this case?

- **Limitation of Liability**

The Contractor's total liability arising under or in connection with this agreement, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall in all circumstances be limited to fifty (50) percent of the sum of the total Contract Price.

What does this mean?

Simply put, this means that the total liability of the Contractor (presumably the party providing the services) is limited to 50% of the amount they are to be paid.

- **Limitation of Liability - Consequential or indirect loss**

Neither party shall have any liability for breach of this Agreement for (whether actual or prospective) any loss of expected future business, exemplary damages or consequential or indirect losses.

What does this mean?

Simply put, this means that the claim by the party who is not in default or in breach of the agreement would be restricted to losses which are foreseeable and reasonable.

- **Limitation of Liability - Liquidated damages**

Without prejudice to the Client's rights, and in the event of the Client accepts late delivery or performance of the services, the Client is entitled to charge the Contractor liquidated damages (and not as a penalty), a sum to be calculated at the rate of 0.5 per cent (0.5%) of the Contract Price for the late delivery, installation and/or performance of the services, which shall be deducted from the Contract Price payable by the Client to the Contractor. The Contractor acknowledges and agrees that the sum stipulated above constitutes a genuine pre-estimate by the Contractor and the Purchaser of the potential loss that would be suffered by the Purchaser resulting from or in connection with the Contractor's late delivery, taking into account all relevant considerations, including without limitation the disruptions caused

to the Purchaser's operations and the possible costs in sourcing for substitute sources before the late delivery was effected.

What does this mean?

Liquidated damages are when parties agree beforehand what the quantum of loss would be, by fixing an ascertainable rate to be paid, in the event of a default.

This clause means that in the event the service provider (i.e. Contractor) is late in providing or delivering his/her services, the Client can request compensation of 0.5% of the Contract Price (to be deducted from the amount payable to the service provider).

Case Studies

X is presented with a contract which had the following clause:

> *The Vendor shall indemnify and hold harmless the Client, its owners, parents, subsidiaries and/or affiliates, and their respective officers, directors, partners, stockholders, members, employees, licensees, agents, independent vendors, and/or successors and assigns of the foregoing from and against any and all liability, claim, judgment, settlement, damage, loss, cost or expense (including, without limitation, reasonable attorneys' fees, witness fees and disbursements) arising from or in connection with: (i) a breach by the Vendor of any obligation or representations in this Agreement; and/or (ii) an infringement by the Vendor of a third party's Intellectual Property rights in connection with the Vendor's Intellectual Property rights, equipment, hardware and/or software used in the course of this Agreement.*

What is good here:

- There are some specific circumstances in which the indemnification clause will be invoked, although the circumstances are still rather wide.

What can be improved here:

- Is there a need to indemnify so many parties?
- Can the specific circumstances be narrowed further, i.e. that the indemnification will be invoked only when there is a breach of significant or material obligations or representations.
- Can there be a limitation of the liability to a proportion of the Contract Price?

How to mitigate

When confronted with an indemnity clause, always consider:

1. **Is this necessary?**

Are there alternatives to consider, e.g. purchase of insurance to reduce the risks to parties?

2. **What is the Contract Price?**

Is this clause a reasonable or proportionate one? What are the reasons for requesting / denying indemnity? If the engagement is for a one-night comedy stand-up performance, in which you are paid $800 for the engagement, then there usually is not a strong reason for making you indemnify the producer for almost everything under the sky. However, if there is a need to indemnify because there is a risk your activity may result in loss or damage suffered by the organization / client, then there should be some negotiation on the matters below.

3. **Is there a mutual indemnification?**

If not, why not? Does mutual indemnification help one party more than the other? For example, if you request indemnity from a client whose only role is to pay you when the work is done, how is such an indemnity helpful for you in situations where the client does not pay you?

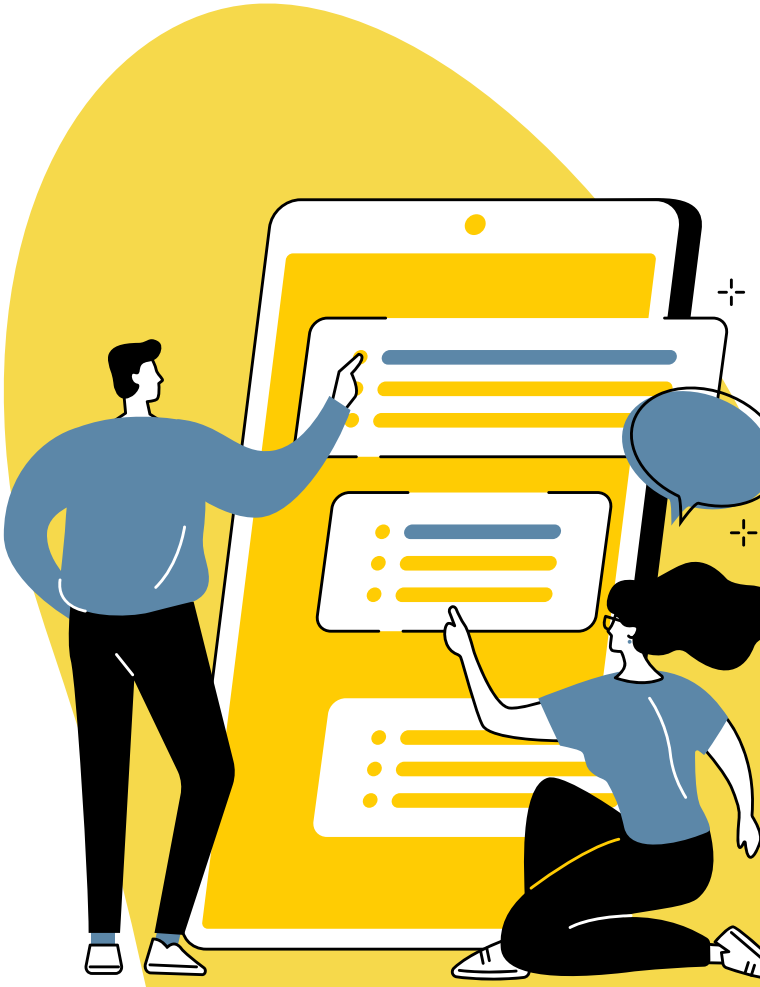
4. **Is there a limitation in terms of the scope and quantum of liability?**

For instance, if your client wants you to provide an indemnity, can you limit the extent of liability you are exposed to? You may wish to suggest a simple clause:

> *The Contractor's total liability arising under or in connection with this agreement, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall in all circumstances be limited to fifty (50) per cent of the sum of the total Contract Price.*

Conclusion

As mentioned previously, indemnity clauses are red-flags. Generally, one should not readily provide indemnification unless the situation calls for it. Even if the other party insists on it, then there should be some discussions on the scope, limit as well as the reasons for indemnity.



03 FORCE MAJEURE

What is *Force Majeure?*

Loosely translated, force majeure means “overwhelming force”. It often refers to an extraordinary event or circumstance beyond the control of the parties. In contracts, it is a specific type of clause which excuses a party from performance in the event of specified categories of neutral events.

There are certain events which appear in most (if not all) standard force majeure clauses: War, hostilities, invasion, acts of foreign enemies, rebellion, terrorism, insurrection, riot, munitions of war or natural catastrophes such as earthquakes, hurricanes, typhoons or volcanic activity, pandemics, and strikes, civil commotion, and so forth.

During the Covid-19 pandemic, Force Majeure has come to the fore, surfacing in many contractual discussions. Owing to government imposed restrictions or health risks, many events were unable to occur.

The clarity of the contract is dependent, at times, on how it is captured. Commonly, in long email threads, it may be difficult to capture the terms of the contract clearly.

Consequences of a Force Majeure

What is a Force Majeure clause meant to do? It is to afford relief to parties in a neutral manner. Due to the fact that certain external events are regarded as neutral events, out of no fault of either party to a contract.

A force majeure clause is generally triggered when the contractual obligation cannot be carried out, because of insurmountable circumstances. This clause should hold all parties safe from liability in the event of non-performance of a contract, arising from a force majeure event.

What are some things to consider when looking at a Force Majeure clause?

In contracts, the wording of a clause is important.

We have to specify the types of events triggering the force majeure clause. For example, if there is a reference to “pandemic” or “epidemic”, it may be easier to argue that Covid-19 pandemic can fall within the force majeure clause. If there is only a reference to “act of god”, then one may argue that Covid-19 is not an act of god and therefore the force majeure clause is not triggered.

The “trigger event” for a force majeure clause is also important. For example, if a clause states that the force majeure clause is triggered if the force majeure event “prevents” the performance of the contractual obligation, there would be a higher threshold to cross to invoke the clause as compared to a clause which states that the force majeure clause is triggered if the force majeure event “hinders” the performance of the contractual obligation.

When is a Force Majeure clause necessary?

Usually, a force majeure clause is often included alongside other “boilerplate” clauses. However, a force majeure clause is useful if the event you are contracted for is time-sensitive such as a performance, classes, etc.

Sample Clause

"If a party is prevented or substantially delayed from performing any of its obligations under this agreement by reason of any circumstance beyond such party's reasonable control (such as any act of God, war, fire, earthquake, strike, sickness, accident, civil commotion, epidemic, acts of government), the affected party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations."

What does this mean?

What you see above is a typical "boilerplate" clause for force majeure events.

This means that if there is an event / circumstance which is beyond any party's reasonable control, at any non-performance of the contract, the party who was unable to perform its obligations would not be in breach of the agreement.

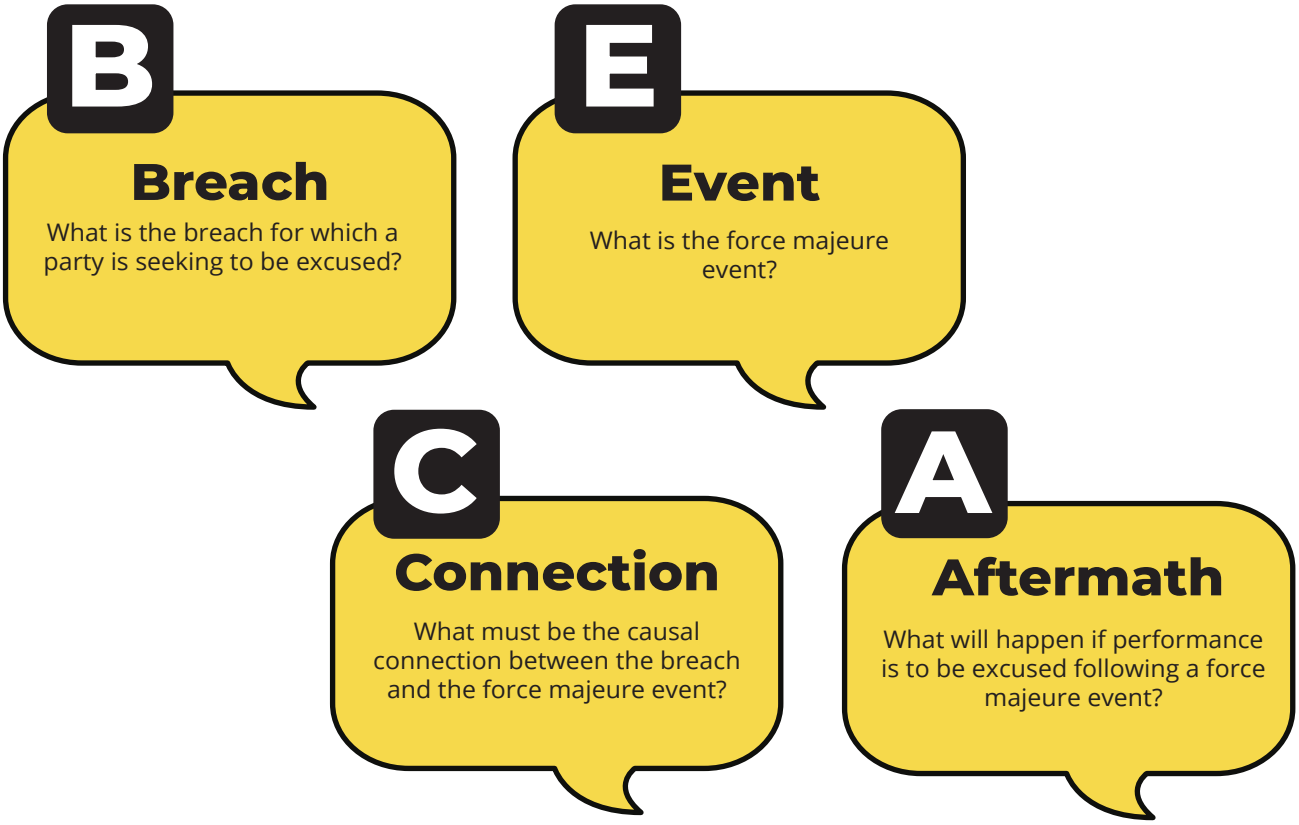
What is good here:

- The clause above is neutral, and does not favour any party. It covers a wide range of events (considered beyond any party's reasonable control), e.g. acts of God, war, fire, earthquake, strike, sickness, accident, civil commotion, epidemic, acts of government.

What can be improved here:

- It may be good to add that in the event of any force majeure event, parties shall use their best endeavours to reschedule the event.
- Under this clause, if the event has to be cancelled, then both parties will be relieved of their obligations under the contract. If funds were paid to one party, that party shall be entitled to keep the same/refund the same amount.

The clause must be clear, in terms of:



Other Questions to Ask

(a) How would the force majeure clause be triggered?

(i) What must you show to trigger the force majeure clause?

(ii) Must the event completely prevent the performance of the contractual obligations? Or would an increase in the cost of materials arising from the force majeure event be enough to trigger the force majeure clause?

(b) What are the entitlements/reliefs arising from the force majeure clause being triggered?

(i) Would a party affected by the force majeure event have more time to fulfil its contractual obligations? How much more time?

(ii) Is there a long-stop date to the extension of time granted?

(iii) Must notice be given by the party (who wishes to invoke the force majeure clause) to the other party? How much advance notice must be given?

(iv) If a force majeure event occurs, would the freelancer be compensated for setting aside their time for an event which now cannot be completed? Would the arts freelancer be compensated only if the commissioning party received compensation or would the arts freelancer be contracted for a further / replacement event? If fees had already been paid prior to the occurrence of the force majeure event, is the party who received payments obliged to refund the payments?

Conclusion

Ultimately, whether the force majeure clause can be triggered is dependent on the wording of the relevant provisions. Generally, for force majeure clauses, if the force majeure event is triggered, either party may seek relief pursuant to those clauses. Whether you are entitled to and have correctly relied on those clauses is dependent on the interpretation of those clauses. It is recommended to seek legal advice before taking action under the clauses of the contract*.

**Note that the purposes of a contract are to allocate risks between parties, in addition to acknowledging commercial bargains between parties.*

04 INTELLECTUAL PROPERTY

Copyright

Intellectual property (IP) is a broad term that covers different types of rights rewarding intellectual creation. The main type of IP right that you will come across in the performing arts sector is copyright.

Copyright can be attached to any work you produce. For example, this paragraph may have copyright, if it can satisfy the four requirements set out in the table below.

Requirements for a work to have copyright:

1. Work must fall under the definition of a "literary work", "dramatic work" or any other category under the Copyright Act	To note: Lesson plans usually fall under "literary work" Scripts are usually covered under "dramatic work"
2. Work must be 'original'	To note: Lesson plans and scripts usually meet low bar of "skill, labour and judgement"
3. Copyright protects how the idea is expressed or put onto a page, not the idea itself	To note: Two artists may have the same idea of adapting a Shakespearean play. But if they adapt the play in different ways or without reference to each other, copyright can attach separately to each work
4. Work must be 'fixed' in some tangible form	To note: Lesson plans and scripts must be in writing

Copyright is separate from the physical property containing the copyright. For example, you may own a physical copy of a novel, but the novel's author retains copyright of the text. Similarly, an art collector who has bought a sculpture does not own the copyright to the sculpture (unless parties have contractually agreed otherwise).

For commissioned work, you (as the author) own the copyright. You can agree in writing to transfer the copyright to the commissioner, who will then own the copyright.

The only exception is if you create the work as an employee – in this case, your employer owns the copyright.

Why is Copyright powerful?

As a copyright owner, you can restrict others from dealing with your work in multiple ways. For example, you can prevent others from copying or performing your work without permission.

You can also grant others a licence in writing to use your copyrighted work. For example, you can allow others to use or reproduce your lesson plans within an agreed duration after the work is completed.

**For more important information on copyright, including the different types of copyright and duration, see the section More on Copyright below.*

Right to be identified

You retain the right to be identified as the author of your work.

Of course, there are exceptions, where you consent in writing to not be identified, or waive your right to be identified in writing.

You can find other exceptions on page 6 at https://www.ipos.gov.sg/docs/default-source/resources-library/copyright/copyright-creators-and-performers-factsheet.pdf

Contracts and IP

Parties to a contract can agree on anything if it is not inconsistent with the law. More contracts now define and use terms such as Background IP and Foreground IP.

Background IP refers to existing intellectual property that you bring to a contractual arrangement, for example, past lesson plans or past scripts. Most, if not all, contracts will not change the ownership of the Background IP.

Foreground IP refers to the work created pursuant to the contract, for example the script or lesson plan you are required to create for the commissioning party.

Most contracts generally use a variation of either option:

Option A: You, as the artist, own ALL the Foreground IP.

Sometimes, the commissioner gets a licence to use your work. This is the usual arrangement when you receive funding through a grant.

Option B: The commissioner owns ALL the Foreground IP.

You, as the artist, don't retain any intellectual property rights. This is the usual arrangement when the commissioner wants complete freedom to reuse, reproduce and adapt your work.

Sounds simple, right? Here is where it gets tricky:

Sometimes, under **Option A**, the commissioner gets a non-exclusive, perpetual, worldwide, royalty-free licence to use your work, or a recording of your work. Even for non-commercial purposes without needing your consent.

Sometimes, under **Option B**, you don't retain the right to be acknowledged as the original author of the work.

How to mitigate

Under **Option A,**

1. Scrutinise the details of the licence.
2. Negotiate and narrow the licence further if you are concerned with any of the following:
    - Is the purpose (e.g. for promotion and marketing) appropriate?
    - Is the duration (e.g. for [x years] or perpetual suitable?
    - Is the material length (e.g. up to [x] % or the entire recording) reasonable?
    - Is the licence scope (e.g. limited to Singapore, or extending worldwide) fair?
    - Is the amount of royalties (if any) or lack of royalties for the licence fair?

For **Option B**,

1. Consider whether you are receiving the appropriate amount of compensation:
    - Will you be receiving royalties (e.g. future use, reproduction, staging, etc)?
    - What is the proportion and/or mechanism of royalties that is appropriate for your work? How should it be calculated? What is the payment method?
    - If the royalty mechanism is not suitable because the commissioner is a public or publicly-funded institution, have you factored in potential future use and reproduction in the pricing of your work and services?

Case Study 1

Shikha is an experienced scriptwriter who wants to venture into musicals.

An arts company commissions Shikha to write the book for an original musical production as part of a small arts festival.

Shikha's responsibilities include:

- Coordinating with the other artists involved in the production, including the actors, director, the composer, the lyricist, set designer and costume designer.

Shikha sees a copy of the contract and learns the following:

- The contract acknowledges her IP rights but the arts company is claiming the entire ownership of the Production.
- The arts company reserves the right to restage the Production in the future without consulting the artists involved.
- The arts company reserves the right to record the entire theatre production and display it for both commercial and promotional purposes, including the possibility of free screenings to audience members.
- The arts company promises to give a free copy of the recording to Shikha and the other artists involved.

Shikha checks in with the lyricist and composer. They are both concerned about whether the arts company's ownership of the Production affects their rights in the lyrics and music respectively.

While Shikha appreciates the idea of getting a copy of the recording of the Production, she is concerned about future screenings that can happen without the consent of her and other artists involved.

How can Shikha best address their concerns from an IP perspective?

1. If Shikha, the lyricist and composer are interested, they can try negotiating with the arts company for a percentage of royalties from the production for any future restagings.
2. They can ask for the clause on ownership of the Production to be dropped. They may also require that their permission be explicitly sought before agreeing to any future restaging of the musical production.
3. They may negotiate to limit any future display of the recording of the production. For example, they may ask that if it is displayed for non-commercial purposes, it can only be played in Singapore (as opposed to worldwide), only up to a maximum of [x] minutes at any one time (as opposed to the entire duration), and only within the next [x] years (as opposed to forever).

Sample clauses for Case Study 1

Subject to obtaining the prior written consent of the Artists, the Arts Company retains the right by way of licence to restage the Work in its entirety or as an excerpt. The royalty amount for any restaging will be calculated as [x]% of the Artist and Creative Team fees from restaging the Work. Excerpts of [y] minutes or less will not be subjected to a royalty.

The Arts Company may record, broadcast and reproduce the Work by any electronic, digital or other means (the "Recordings") for non-commercial purposes only, provided that:

(a) the Recordings are not disseminated, distributed or shown outside Singapore;

(b) any public display of the Recordings in Singapore is limited to excerpts of no longer than [x] minutes; and

(c) any public display of the Recordings in Singapore is limited to within [y] years from the date of this Agreement.

Case Study 2

Maslinda is an experienced drama educator.

A private school contacts Maslinda and they want her to organise and conduct drama workshops for their students.

Maslinda's responsibilities include:

- Creating lesson plans for the workshops
- Conducting the workshops, with a teacher present
- Recruiting and training other drama educators to conduct the workshops, should Maslinda be unavailable

The school sends Maslinda a copy of the contract and she learns the following:

- The school wishes to own the IP rights to anything that Maslinda creates for the contract, including lesson plans, powerpoint slides, etc.
- There is no mention of the school crediting Maslinda as the original author of the lesson plans.
- For the lesson plans, the school will pay Maslinda a consulting fee. There is a separate instructor fee for each workshop that Maslinda can conduct.

Maslinda is uncomfortable with the above. She calls the teacher-in-charge to clarify her doubts.

She learns that if the workshops are a success, the school may duplicate and/or adapt the lesson plans. In the future, the school teachers can conduct the workshops instead of hiring freelancers.

How can Maslinda best address her concerns from an IP perspective?

1. If Maslinda is comfortable with assigning her copyright in the lesson plans and powerpoint slides to the private school, she can negotiate for a higher consulting fee to take into account any future use and/or reproduction of her lesson plans by the school.

2. Maslinda should remind the private school of its obligations under the Copyright Act, identifying her as the author of the lesson plans and powerpoint slides. She can make this as specific as she wants in the contract, for example by requiring that the credit be given on the first slide or on the first page of the lesson plan.

Sample clauses for Case Study 2

In consideration and in recognition of the Artist assigning their copyright ownership in the Work to the School, the School agrees to pay the Artist the Consulting Fee of $[x].

In any further use, reproduction and / or adaptation of the Work, the School shall use the following credit lines where appropriate:

"Maslinda is the original author of this lesson plan, originally created in [xyxy]"

"Maslinda is the original author of these powerpoint slides, originally created in [xyxy]"

Conclusion

Have you encountered similar situations when negotiating copyright for your creations? How did you handle the negotiations? What lessons did you take away from your experiences?

Copyright is an essential element in any work that you create and can affect any future use and reproduction of your work. Don't forget to consider copyright issues and what baseline position you are willing to accept in each negotiation. When in doubt, ask someone trustworthy and more experienced for a second opinion. Consult a lawyer or legal professional when necessary.

More on Copyright

Here is a selected list of the different types of works covered under copyright that could be relevant to you as an author.

Note that any type of work you create or use could contain a combination of different types of copyrighted works. For example, a website you create could contain literary (in the words used), musical (background music) and artistic works (graphics).

Likewise, when you need to use others' work, do seek their permission in writing, through a licence.

Copyright Works	Examples	General Duration
Literary	Lesson plans, short stories, poetry, novels, articles, song lyrics	70 years after author's death
Dramatic	Scripts	
Musical	Melodies	
Artistic	Paintings, sculpture, drawings, graphics	
Photographs	Self-explanatory	
Sound recordings	Podcasts	70 years after first publication

For a more complete table on duration, including exceptions, visit:
https://www.ipos.gov.sg/about-ip/copyright/copyright-resources

For more detailed elaboration, visit:
https://www.ipos.gov.sg/about-ip/copyright
https://sso.agc.gov.sg/Acts-Supp/22-2021/Published/

05 BOILERPLATE CLAUSES

When you receive a contract, you would often see a whole string of clauses towards the end of the contract.

These include terms such as: “assignment”, “waiver”, “entire agreement”, etc. What are these terms? Are they necessary or can they be removed so that your contract can be shorter?

Generally, these terms are known as “boilerplate” clauses.

“Boilerplate” refers to standardised text which can be used or applied over and over again.

What are some boilerplate clauses?

Boilerplate clauses include clauses relating to:

(a) Parties;

(b) Definitions and interpretations;

(c) Governing law and jurisdiction;

(d) Dispute resolution mechanism;

(e) Costs;

(f) Entire agreement or prevalence;

(g) Variation;

(h) Waiver;

(i) Severance;

(j) Assignment; and

(k) Notice.

Many people may consider boilerplate clauses as extraneous or miscellaneous. They are misunderstood as unnecessarily lengthening the contract to intimidate non-legally trained persons.

However, these clauses are vital during situations of conflict. They cover default arrangements and / or what to do during a dispute.

When you see clauses in a contract, consider whether these clauses are important to your rights, and the purpose these clauses serve for you in the context of your engagement.

Samples and significance of boilerplate clauses:

(a) Governing Law and Jurisdiction

This Agreement shall be governed by, interpreted and construed in accordance with the laws of the Republic of Singapore. Parties hereby irrevocably submit to the exclusive jurisdiction of the courts of Singapore.

Such a clause sets out the law applicable to the contract, e.g. through which jurisdiction of law should the contract be interpreted.

If the contract involves international parties, or involves work to be done in a venue outside of Singapore, then this clause would be very important as parties should agree upfront what is the governing law. For example, if you are a Singaporean freelancer doing work for a French entity, and the governing law is French law, then in the event of any dispute as to payment, etc. – even if you can commence a legal action in Singapore against the French entity, it would be expensive or difficult for you to engage French lawyers (or even find one in Singapore!).

You may also not be familiar with the nuances or regulations under French law pertaining to your engagement and it would be difficult for you to negotiate or demand for your rights in the circumstances.

The jurisdiction clause also sets out in the event of a dispute, where the parties should be going to in order to resolve their dispute. In the example above, the Singapore courts would be the place parties would go to in order to resolve their dispute.

You may also come across other types of forum for dispute resolution such a Singapore International Arbitration Centre.

(b) Dispute Resolution

Any dispute shall be referred to and finally resolved by arbitration in Singapore in the English language by a sole arbitrator in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (SIAC) for the time being in force which rules are deemed to be incorporated by reference into this clause. The seat of arbitration shall be Singapore.

Such a clause sets out the dispute mechanism – that the dispute shall be resolved by arbitration in Singapore.

You may also come across another type of dispute resolution clause where the resolution mechanism is mediation:

Any dispute arising out of or in connection with this Agreement must be submitted for mediation at the Singapore Mediation Centre (SMC) in accordance with SMC's Mediation Procedure in force for the time being. Either Party may submit a request to mediate to SMC upon which the other Party will be bound to participate in the mediation within 45 days thereof. Unless otherwise agreed by the Parties, the Mediator(s) will be appointed by SMC. The mediation will take place in Singapore in the English language and the Parties agree to be bound by any settlement agreement reached.

What are the different types of dispute resolution mechanisms available in Singapore?

Mediation is a process in which a mediator facilitates negotiations between the disputing parties with the aim of arriving at a mutually acceptable settlement. The mediator does not act as a judge and has no power to make any decisions on the dispute or to force the parties to agree. His role is to help the parties find a win-win solution. The parties do not reach a resolution unless all sides agree.

Mediation is confidential and without prejudice. If there is subsequent litigation, matters raised and discussed at mediation cannot be referred to by any party. If the mediation is successful, the parties will enter into a binding settlement agreement that reflects the terms of settlement. If the mediation fails, parties will have to resort to Court or other processes to resolve their dispute.

Arbitration is a process where both parties agree to appoint another person, the arbitrator, to adjudicate their dispute. Both parties will present their arguments and evidence to the Arbitrator who will make a binding decision based on the merits of the case. The Arbitrator's decision may be enforced as an order of court.

You can only go for arbitration if both parties have agreed to the resolution of the dispute through this process. Parties normally agree to arbitration by means of an arbitration clause in a contract made by them before a dispute has arisen. As a matter of good practice, you should check whether the contracts you enter into have such arbitration clauses. It is also possible for parties to agree to go for arbitration after the dispute has arisen.

Arbitration is generally confidential, and a more informal process than court proceedings. Arbitration is generally costlier than mediation, and may take some time before resolution.

Litigation generally refers to the process of going to the Courts. It can mean going to the Small Claims Tribunal, the Magistrate's Courts, the District Court or the High Court of Singapore. Court process generally is costly, and would take time owing to the processes involved. However, for disputes relating to quantum below S$20,000 (or S$30,000 if both parties agree), then these disputes can be resolved at the Small Claims Tribunal, which provides a cost-effective and speedy resolution of disputes.

Small Claims Tribunal

You may file a claim with the Small Claims Tribunal if it relates to certain prescribed categories of disputes, e.g. a sale or purchase of goods, the provision of services, any contact relating to a lease of residential property for a period not exceeding two years (excluding lease of industrial or commercial premises or license of any premises for any period of time).

If you wish to file your claim at the Small Claims Tribunal, you must do so within two years from the date of the cause of action accrued, that is the day the facts arose to give rise to a right to sue. It would be good to visit the Small Claims Tribunal website to understand the processes involved when making a Small Claim.

What should I consider for my dispute resolution clause?

Parties should choose which form to use according to their circumstances, needs and concerns. Some factors to consider are as follows:

- **Costs and time**
  Mediation generally takes a shorter time and is less costly than Arbitration or Litigation. Arbitration of a simple dispute may end up being very costly.
- **Nature and complexity of the dispute**
  Simple commercial disputes may best be resolved by mediation at the Singapore Mediation Centre, while disputes involving very technical facts should ideally be referred to Arbitration by an expert in the field.
- **Quantum of the dispute**
  If the quantum (amount of money) in dispute is a relatively small sum, parties should opt for the most cost-effective form of dispute resolution. Sometimes, this may mean going to the Small Claims Tribunal to resolve the dispute.
- **Control over the outcome**
  Parties would have most control over the outcome in mediation, as they would be involved in the negotiations leading to the settlement and the preparation of the terms of the settlement agreement. Conversely, an award made by the arbitrator is binding and there is limited scope for appeal with an arbitration decision after the award is given.
- **Maintaining relationships**
  Of the three processes, mediation is the least confrontational and combative.

(c) Costs

Except as otherwise provided in this Agreement, each Party shall pay its own costs incurred in connection with negotiating, preparing and completing this Agreement and the other documents.

You may come across such a term in your contract. This simply means that each party will pay their own lawyers or bear their own fees in relation to the negotiation, preparation and signing of the agreement**.**

(d) Entire Agreement / Prevalence

This Agreement sets forth the entire agreement and understanding of the Parties and supersedes all prior understandings, agreements, representations and correspondence, whether written or oral, relating to the subject matter herein.

This is an "entire agreement" clause. This means that all arrangements, understanding or agreements which parties have come to are captured within the agreement.

If the other party has given you some assurance or promises not contained in the agreement, then this "entire agreement" clause means that you cannot rely on assurance or promises not contained in the agreement.

An "entire agreement" clause also avoids the risk of misunderstanding between parties – such a clause puts parties on notice that what has been discussed has been reduced in writing in this agreement.

Prevalence

If there is any conflict between the terms of this Agreement and [another agreement], the terms of this Agreement shall prevail.

Such a "prevalence" clause is important when there are multiple agreements being signed or if there are translations of the same agreement.

It is important to set out clearly which agreement parties should follow if there is a conflict in the terms of the agreement(s).

(e) Variation

This Agreement shall not be varied, altered, changed, supplemented, or amended except by written instruments signed by the Parties.

If you see such a clause in your contract, it means that no changes to the terms can be made unless parties agree in writing and signing the same.

It is important to capture the variations or amendments to the terms of the contract, i.e. your scope of work or payment terms in writing and signed by parties.

This can be done by a side letter signed by both parties after the entering into the agreement, and the side letter shall set out the terms varied clearly.

(f) Waiver

No failure by any Party to exercise and no delay by any Party in exercising any right, power or remedy under this Agreement will operate as a waiver. Nor will any single or partial exercise by any Party of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy by that Party.

"Waiver" refers to the concept of excusing a party from a breach. Sometimes, when deadlines are not met, this results in inevitable delays. This clause helps avoid your right from being extinguished.

If there is to be any waiver of rights, then it must be clearly told to the other party, preferably by way of writing.

(g) Severance

If any provision in this Agreement is held to be illegal, invalid or unenforceable in whole or in part in any jurisdiction, this Agreement shall, as to such jurisdiction, continue to be valid as to its other provisions and the remainder of the affected provision, and the legality, validity and enforceability of such provision in any such jurisdiction shall be unaffected.

The above clause means that parties agree that if there is any "illegal, invalid or unenforceable" part in the contract, that part can be excised without affecting the validity of the whole agreement.

This is important as generally, illegal contracts cannot be enforceable. Having this severance clause allows for a practical resolution of issues should there be any "illegal, invalid or unenforceable" part in the contract.

(h) Assignment

Except with the prior written consent of the other Parties, no Party may assign, transfer, charge or otherwise deal with any of its rights or obligations under this Agreement nor grant, declare, create or dispose of any right or interest in it or sub contract the performance of any of its obligations under this Agreement.

An "Assignment" is the concept of transferring your rights to another party.

When you have a "no assignment" clause, it confirms the agreement between parties that the rights and obligations only apply to the parties signing the contract.

A "no assignment" clause also suggests that you cannot subcontract out your responsibility to another party.

(i) Third-Party Rights

A person who is not a Party to this Agreement shall have no right under the Contract (Rights of Third Parties) Act 2001 of the Republic of Singapore to enforce any of the terms of this Agreement.

This is quite a common clause; such a clause means a person / entity who is not a party to the contract cannot sue the parties to the contract. For example, if you have signed a contract with one company, X, X then cannot ask Y to step in their shoes to enforce the right.

With the "no assignment" clause and no "third-party rights" clause, the contractual terms are kept strictly between the parties to the contract.

(j) Notice

(1) Any notice to be given by one Party to the other Party in connection with this Agreement shall be in writing in English and signed by or on behalf of the Party giving it. It shall be delivered by hand, email, registered post or courier using an internationally recognised courier company.

(2) A notice shall be effective upon receipt and shall be deemed to have been received (i) at the time of delivery, if delivered by hand, registered post or courier or (ii) at the time of transmission if delivered by email. Where delivery occurs outside working hours, notice shall be deemed to have been received at the start of working hours on the next following business day.

(3) The addresses and email addresses of the Parties for the purpose of giving notice is as follows…

The notice clause specifies the manner in which notices are to be disseminated to parties.

If the information is not delivered in the manner agreed to, then one may argue that there was no notice given.

This is important in situations when notice is a prerequisite for certain events such as extending the agreement, etc.

It is pertinent for parties to set out effective communication methods so that all information is conveyed properly and duly to the other party.

06 FAQs

Here is a list of commonly asked questions. The provided scenarios and responses serve as guidelines on what you can do.

Should you require more in-depth information - online resources, addresses and contact numbers are also indicated below.

1. Are there readily available guides for contracts between clients and freelancers?

There is a Tripartite Standard on Contracting with Self-Employed Persons. This is a guide meant for companies to adopt. However, do note that it is not compulsory for these companies to adopt the standard.

The Tripartite Standard on Contracting with Self-Employed Persons sets out a useful list of matters for freelancers to consider when contracting with clients:

(a) Names of contracting parties;

(b) The parties' respective obligations, such as nature of services to be provided (e.g. deliverables, duration, location);

1. Amount of payment for each product or service (or part thereof)
2. Due date of payment(s);

(c) If terms on variation of the agreement are provided, how either party can vary key terms or terminate the agreement;

(d) The terms for resolving disputes.

Advocates for the Arts also provides template contract clauses for ease of reference by freelancers.

Advocates for the Arts administered by Pro Bono SG* also arranges pro bono consultations. The session is held between a freelancer in the creative industry and a lawyer. During the session, the freelancer can have a quick consultation on the issue(s) they are facing.

**Pro Bono SG is located at the State Courts, 1 Havelock Square, #B1-18, Singapore 059724. Contact them at 6536 0650.*

For more information, do visit https://www.probono.sg/

2. I have been issued a "standard" contract. Is it safe to sign this contract?

Many "standard" contracts may be in favour of the party which prepared it.

It is important to read the contract and understand the terms. Please obtain legal advice on terms which you do not understand. Once the contract is signed, you are bound by the terms set out in the contract (even if it is not to your benefit).

You are entitled to negotiate the terms of the contract. Whilst commercial practicalities may dictate otherwise, inquiring or negotiating the terms of the contract would help you understand the other party more.

From there, you can better assess the risks of entering into an agreement with them.

3. I never signed a contract with a client. Will I get paid even though I provided services?

In summary, a contract is any agreement, whether oral or written, made between two parties to do work and / or provide services in exchange for benefit (usually monetary compensation). A signed written contract reduces and prevents ambiguity.

However, in the absence of a signed written contract, one can rely on written correspondence / paperwork exchanged between parties such as email, drafts, messages, etc. to see if a contract has been entered into, and demand payment.

The written correspondence / paperwork exchanged between parties can be used to resolve issues between parties. If there are ongoing court proceedings, these written correspondence/paperwork can be used in such court proceedings.

4. What do I do when the client defaults on payment?

There are cases whereby your client has forgotten about payment. A reminder for payment would be useful.

In the reminder to the client, it is recommended to state:

(a) The outstanding amount;

(b) The agreed date for payment;

(c) The date by which the payment is to be made;

(d) Any reference to relevant contractual clauses to remind the parties of their obligations / rights in the contract.

You may also read the contract (if any) to verify any dispute resolution mechanism, i.e. for mediation to take place or for court proceedings to be commenced in the event of a dispute.

For claims below S$20,000/-, you may wish to consider making a claim with the Small Claims Tribunal. You may wish to visit this resource for more information.

Do note that:

- It is important to state the correct party against whom you are making a claim.
- The claim must be made within two years after the cause of action accrued, e.g. date by which payment was to be made (but failed to do so).
- For claims above S$20,000/-, you may wish to make a claim through a lawyer.

5. What are some of the ways to protect myself when negotiating contracts?

It may be good to consider upfront whether there should be a deposit placed for your services (especially if your services are to be carried out over a period of time).

In the event where the project is ongoing for a period of time, do request for clear payment milestones.

It is important to have clear discussions over payment terms, the scope of services, late payment interest and what is to be done in the event of default or termination. Provide your own invoices to make your demands for payment clear to the other party as well.

If your work involves intellectual property, it would be good to discuss the terms of ownership over the intellectual property of the materials or goods provided.

It is also prudent to keep copies of correspondence or open a clear, written channel of communication with the client.

6. If there is a dispute over the contractual terms, what should I do?

Firstly, reach out to the other party to see if matters can be resolved amicably.

If there is no resolution, then you should consider if there is any dispute resolution mechanism in the contract (if any), i.e. for mediation to take place or for court proceedings to be commenced in the event of a dispute.

If no such mechanism or terms is in the contract, then you may wish to consider making a claim with the Small Claims Tribunal* or commence legal proceedings.

**The Small Claims Tribunal is located at the State Courts.*

Visit them at 1 Havelock Square, Singapore 059724 or contact them at 6587 8423.

For more information, go to https://www.judiciary.gov.sg/civil/file-small-claim

7. What happens if the terms of the scope of work change during the project?

One must first establish whether a contract has been entered into.

A contract is entered into when the four elements below are established:

(a) Offer

(b) Acceptance

(c) Intention to create legal relations

(d) Consideration (i.e. the benefit-in-kind or in-cash, in exchange for the services provided).

If no contract has been entered into, then each counter-proposal by the other party is a new offer. Then, it is for the parties to negotiate and reach an agreement on the terms of the engagement.

If there is a contract, then one should read the terms of the contract to see how the contractual terms can be varied or changed. The terms may also state how to govern a situation (whereby there are changes in the scope of work).

If there are no such terms, remind the other party that all parties should come to an agreement for any revised scope of work, before it commences.

If work has already been done, the changes to the scope of work should not affect your right to payment.

Variation to a scope of work can be indicated by:

(a) A separate document signed by both parties detailing the agreed terms of variation;

(b) A handwritten variation to the section in the contract, signed by both parties;

(c) A confirmation email / letter and a response from the other party which records mutual agreement to the variation.

8. How do I terminate the agreement?

If there is a contract, then one should read the terms of the contract to see how the contract can be terminated.

If there is no contract, one should provide adequate notice of termination.

If there has been a breach in the terms of the contract, then one should generally give notice of the breach to allow for remedial actions to be taken.

If not, then if the breach is of an essential term of the contract, or if the breach is a serious or fundamental one, one may proceed to terminate the contract.

9. Where can I seek help generally?

Ask around. You will find that you are not alone in facing problems of non-payment or disputes over the scope of work. If you are a union or association member, then you can consider seeking advice from your union or association. You may also approach Pro Bono SG to seek assistance.

10. Good practices

1. Keep clear documentation of the negotiations. If possible, maintain it on one platform to avoid any confusion or ambiguity. If there is ambiguity, follow up to confirm the terms of discussion.
2. If there has been an agreement, follow up with an email for the other party's confirmation or acceptance. If possible, sign a simple agreement with the terms set out.
3. Keep the channel of communications open. Update the other party on the status of your work progress to avoid any surprises. Do not be shy about checking matters with the other party. Communication always reduces the risks of disputes!
4. Find a community to seek assistance and share resources with.

sdea
singapore drama
educators association

facebook.com/sdeaofficial

instagram.com/sdeaofficial

twitter.com/sdeaofficial

Singapore Drama Educators Association

sdea.org.sg

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