



# Third-Party

## CONTRACTING AS A LONE WRITER

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**T**he complications of third-party contracting for lone writers sometimes remind me of a line from the movie *Ferris Bueller's Day Off*: "My best friend's sister's boyfriend's brother's girlfriend heard from this guy who knows this kid who's going with a girl who saw Ferris pass out at 31 Flavors last night."

If you're a third-party contractor, chances are you've found yourself at the end of a similarly confusing string of relationships. Such situations are potentially rife with legal traps and other scenarios a contractor should avoid. As a lone writer, how can you protect your rights and operate your business successfully when faced with these difficulties? This article discusses some of the potential pitfalls and helps contractors make sense of the series of buffers between themselves and the site client.

### The Upside

There are huge advantages to third-party contracting, and it is still the most common contracting gig around. Unless you managed to land a contract by word of mouth or by going directly through a former employer or colleague, you're probably a third-party contractor. Moreover, the larger the organization you work with, the greater the chance that you'll end up as a third, fourth, fifth, or even tenth party to your site client. One could easily argue that third parties, such as recruiters, job farms, or human capital management (HCM) companies, are necessary evils in the game of contracting.

So, what's positive about working as a third-party independent contractor? For one thing, it prevents you, a lone writer, from having to work your way onto a client's coveted Preferred Vendor list. Most large organizations have a list of companies with whom they will work, making direct-to-client gigging almost impossible. Getting on these lists is difficult, and complicated by the fact that most companies on the list are Big Six-type firms or are, at least, substantially larger than your army of one.

Many firms opt not to accept lone independent contractors on their Preferred Vendor list. Others will accept independent contractors, but the financial demands, such as liability insurance (often in excess of what is needed), can make Preferred Vendor status too much of a risk. Who wants a contract to fall through before recouping startup fees such as liability premiums, legal fees, and so on? Working through established placement firms or consulting companies already on Preferred Vendor lists can make life a lot easier.

Another positive aspect of third-party contracting is the six degrees of separation principle. In third-party contracting, the lone writer ends up several people or organizations away from the epicenter—that is, the site client. If your site client decides to sue someone involved with your employment, there should be enough of a buffer to protect you or at least minimize your risks, especially if your attorney did his or her homework. Though this arrangement may not sound like much of a benefit,

legal protection is quite important in today's market.

Third-party contracting remains a viable way of making a living. One of the primary financial advantages is that, as a third-party contractor, you are often paid much faster by your employer than you would be paid if you worked directly for the site client, which often operates on a completely different pay schedule. Also, those who are contracting temporarily as a means to a full-time position will find that contracting is a great way to get work with larger clients. Contracting allows you to spend more time on providing services and less time on other issues, such as forging client relationships.

Despite those advantages, there are some crucial issues to mull over before entering into a third-party contract. Since almost every lone writer considers or takes a contract through a third party, it's important to be aware of potential red flags.

### Wheeling and Dealing

In a direct-to-client contract, you have considerable leverage in terms of negotiating your rate, on-/off-site requirements, and benefits. But as a third-party contractor, you have little to no leverage in negotiations. It's harder to wheel and deal when you're low in the pecking order, since the other parties have already signed their contracts and negotiated a rate with the site client. Their job now is to find an actual provider, and they are not keen to cut their rate any lower than necessary. Since your employer (and remember, the client is *not* your employer) may be another small fish in a big pond, there's a good chance that it is also being paid a cut of some other company's negotiated rate.

When you interview, the employer will most likely offer you a take-it-or-leave-it rate with little wiggle room. The employer probably won't be open to discussing rates, on- or off-site requirements, travel reimbursement, or benefits.

If your site client works through an HCM company, you need to be very careful when negotiating salary, benefits, and other personal requirements. An HCM company is like an outsourced human resources department that finds

independent contractors for its clients (such as your site client). HCM companies have very strong relationships with their site clients. HCM companies handle the weeding-out process and make sure that you are a good fit in terms of skill sets, experience, and wage demands. Larger clients, particularly those in the Fortune 500, often use such companies to handle recruitment.

In this situation, your candidacy is literally a click away from being accepted or rejected. If your demands are too high, your bid will be rejected without fanfare. Consult with the employer about ballpark rates, read comparative job postings in your area, and look at STC's independent contractor surveys ([www.stc.org/salarySurvey.asp](http://www.stc.org/salarySurvey.asp)). These sources will give you a good estimate of what rate to request and what is too much. Remember, once you commit to a rate, there's no turning back.

### Degrees—and Consequences—of Separation

Though we use the expression "third party," you may find yourself four or more levels removed from the site client. The following scenario is not uncommon: Site client A hires company B, which subcontracts to company C, which in turn subcontracts to company D, which hires company E, a lone writer, for services. Since company D actually hired the writer, it established a contract between itself and the writer. In many situations, company D is just like the writer—a lone entrepreneur with a computer and a fax machine.

It is extremely important that you read the names of clients in your contract. With whom are you entering into an agreement? In this scenario, companies A and D are explicitly stated as clients, while B and C are implied clients (that is, not stated in the contract). One consequence of this situation is that only companies A and D can legally modify aspects of your contract—such as rate, hiring conditions, and so on. The lesson here for contractors is that you don't have to accept changes from implied clients: If a company in B or C's position tries to force you to sign additional non-disclosure agreements, take

a rate decrease, undergo a more extensive background check than initially requested, or tries to dictate other changes, you need to defend your rights. Such incidents are not common, but they do occur.

We have seen the benefits of the “six degrees of separation” of third-party contracting. Unfortunately, the distance between you and the site client can also be a source of problems and financial cost. For example, more paperwork means more documents for your attorney to review—and thus higher legal bills. The more people to whom you must report, the more time you must spend doing administrative work and the less time you have to experience the joy of the billable hour.

Remember that your employer in the example above (company D) may be a loner just like you. He or she may also be using a one-size-fits-all business contract. One very good reason for lone writers to have contracts reviewed by an attorney is that one contract most certainly does *not* fit all. Lone writers should be wary of anyone who insists otherwise. These contracts can be dangerous to independent contractors because they are extremely vague. For example, I once received a contract that my employer described as one that “everyone who works with us receives.” The contract stated that I would not be able to use any software used on site for a period of twelve months after termination of the contract. Does a technical writer really want to be banned from using *Acrobat* or *FrameMaker* for twelve months? One-size-fits-all contracts also tend to use very broad legal terms and agreements; for example, another contract stated that my company automatically would accept culpability should the client have to take me to court. By signing, I also would have agreed to cover the client’s legal costs.

It is likely that a subcontracting service provider such as company D does not have an attorney on board or does not hire one to review contracts. If this is the case, your attorney will have to review the contract and make any necessary changes. If your employer does have legal representation, ask its legal



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team to implement your attorney’s suggestions and re-send the contract—this will save you the cost of having your attorney make the changes for you.

#### Multiple Non-Disclosure Agreements

Regardless of whether you are a direct-to-client or a third-party independent contractor, you will almost certainly have to sign a non-disclosure agreement (NDA). Third-party contractors may sign multiple NDAs with companies linked to the site client. In the scenario above, you are five times removed from the site client. It is conceivable that each party will want you to sign an NDA, even

if you didn’t actually sign a contract with each party.

While most NDAs are fairly standard, you must look very carefully at one provision: the non-competition clause. Some employers, for example, may try to get you to agree not to work directly for the client (as determined in the contract) or one of the employer’s direct competitors for a fixed period after the contract expires. Generally, this period is six to twelve months; some employers insist on even longer non-competition periods. Never accept any clause with which you or your attorney are not comfortable.

If an HCM company is involved, it is very important that you review the non-competition clause with your attorney. HCM companies typically work with large companies, so signing an NDA with an HCM company could potentially bar you from working for another large site client. Also, if things go sour between you and the HCM company, you may find yourself missing out on a number of potential new clients that work through that company. Some contractors have successfully fought these clauses in court, but do you really want to rely on those odds?

When you sign on to a third-party assignment, remember one very important fact that your employer may forget: No matter how many times removed you are from the site client, you still have the closest relationship with the site client of anyone involved in the contract. The site client can prove to be a strong political ally should you have trouble with your employer. For example, the site client can make things happen that are not supposed to happen, such as granting contract extensions when a “final” extension was previously granted.

#### Communication Channels

Let’s say you’ve been hired to do a user documentation project for Project Alpha, and the site client suddenly wants you to do project management on Project Omega. To whom should you turn to address your concerns?

This can be a sticky situation; your employer almost certainly does not want you talking to the site client. The employer may be wary of rocking the

boat and probably has instructions for you not to discuss business details with the site client. Employers—especially if they are farming out work to independent contractors—don't like to show any cracks in their relationships with their bosses. By the time your concern works

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its way through the proper channels, the problem may be exacerbated, or you may be too far into a new role to do anything about it. You never want to force the site client to take sides.

If you have a strong relationship with your site client, you may feel that you can speak freely with your manager. As a service provider, you understand your professional relationship with the site client better than anyone. It may be worthwhile to address some issues with your site client manager; however, when in doubt, it's best to let your employer handle any problems. This is not the most practical way of doing things, but it could protect you in the long run. For example, if you talk directly with the site client, your employer could declare a breach of contract because you have shared confidential information with another party.

Clear communication is essential to technical communicators' livelihood; however, third-party contractors may be limited in their communication options with a site client. For example, you may not be allowed to reveal who hired you or your billable rate. Your employer may consider these details to be business-related information that should not be shared. Remember that your manager at the site client might have no idea about how you got the job. Also keep in mind that not all contractors land the same rate: Making your rate known in the workplace could lower morale and cause political problems.

#### **Small Company, Not Small-Time**

One of the biggest problems lone writers face as independent contractors is putting to rest the myth that a small company equals a small player. Looking and acting professional is extremely important. Professionals have money capital, business cards, decent Web sites, accountants, and attorneys. They have complete product offers, including user documentation, online help, white papers, marketing collateral, and so on. They provide high-quality deliverables on time, and they do not accept projects for which they are not qualified.

The last thing a lone writer wants to do is come across as an amateur or a fly-



by-night outfit. If you've decided to try independent contracting for the long haul, it's important to know your value: Be able to explain what you bring to the table and, above all, the importance of good documentation.

Third-party contracting remains a viable way of making a living. Technical communicators are still very much in demand; the demand for independent contractors, especially, has skyrocketed in recent years. However, it is important not to view independent contracting as an easy road to total professional and financial freedom. Contractors must still navigate some pitfalls: Just remember to keep your eyes open. ❶

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