

Chapter 11. Contracts and Letters of Agreement

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Experienced independents always advise “newbies” to have an agreement in writing before starting any paying project. What kind of written agreement with your customers do you need before you begin a new project? Most of the time, two documents will do the trick:

- A *contract* that defines standard conditions that don't change very often, such as your general fees and expenses policy, your commitment to confidentiality, your project cancellation standard, and your requirement for one customer representative to oversee the project.
- A *letter of agreement* (LOA) that defines the specifics for the individual project. By explicitly stating the terms of your agreement with the customer, the letter of agreement ensures that both of you know what to expect from each other, and when to expect it.

These two documents work in tandem to protect you and your customers; that's why I'm including both in this chapter.

Let me recommend that you download and use the sample documents as you develop your own versions of contracts and letters of agreement. My contract and letter of agreement were originally developed with my attorney, and have been successfully in use for the past 12 years at the time of this writing.

Contracts

I'm new as an independent contractor. Do I need a written contract before I start a job?

A written contract spells out the working agreement between you and your customer. As an independent contractor, you don't have the structure or support guaranteed by a large consulting agency or corporation. A contract sets the conditions for the work and protects the interests of both parties. Verbal agreements last only as long as the memory of the participants, and they do not stand up in court. So the answer is yes, always get it in writing!

What items should I include in my contract?

My attorney advised me to create a standard contract detailing conditions that don't often change. A standard contract allows me to send copies to clients and prospects easily and quickly. He also suggested that I call the document “Standard Terms and Conditions”

(ST&C, for short) instead of “Contract.” Many clients respond more positively to the title “Standard Terms and Conditions,” which may seem friendlier and more collaborative than the formal term “Contract.”

My ST&C contains the following sections:

- *Fees and Expenses:* Breaks out the billable elements of any project.
- *Invoices and Payment:* Explains my invoicing schedule and expected payment schedule.
- *Customer Representative:* Identifies one person who can authorize changes and approve my work.
- *Confidentiality:* Assures the client that I take reasonable steps to protect company secrets.
- *Project Modifications:* Outlines the process by which modifications may be made to the project. This section is similar to the change order process for a construction or home remodeling job. Project details are defined in a separate document, often called a “letter of agreement” (LOA). My contract states that any changes to the LOA must be agreed to by me and by the customer representative, and may incur additional fees.
- *Staffing:* Establishes my identity as the independent contractor under hire.
- *Access to Customer’s Staff:* Guarantees my reasonable access to the customer’s staff and resources.
- *Proprietary Materials:* Declares adherence to copyright law by both parties, and establishes ownership of the work. My contract states that all work in progress belongs to me until final payment is received; that I will retain one copy for my portfolio; and sets ownership and restricts use of any workshop materials that I develop.
- *Canceling or Postponing a Project:* Outlines the process by which either party may cancel or postpone a project, including time limits and fees.
- *Limit on Liability:* Declares liability for content. My contract states that the customer is responsible for accuracy of content; my liability is limited to the amount I have been paid for the project at the time of any lawsuit.
- *Agreement and Acceptance:* Provides space for dated signatures.

Over the years, I’ve developed one ST&C for hourly rate projects and another for daily rate projects. Having two versions saves me from having to modify the ST&C every time I get a new project with a different rate method.

Many independents, me included, have an ST&C on file with ongoing customers. Then each new project for that customer only requires a letter of agreement. If the customer changes project managers, I always review the ST&C with the new person.

Contracts always seem written in a language so “legalistic” that they are impossible to understand. Is there a simpler style I can use?

Legal language doesn't have to be complex. Find an attorney who writes in plain language. I did, and he inspired me to change my business name to Plain Language Solutions. The legal departments at several companies have reviewed and approved my ST&C, only occasionally requesting minor changes.

Can I write my own contract?

Sure you can! But I strongly recommend that you get the help of an attorney. The cost is not that great—several hundred dollars—and the comfort derived from knowing you are as protected as possible is worth every penny.

You can also find many books and Web sites on the subject. Read up on contracts before consulting your attorney, but get specific legal advice, too.

My customer has a standardized contract form. Should I sign it?

Large companies sometimes do a lot of work with consultants and independent contractors and may have their own contract form at the ready. They may insist that you sign their contract if you want the work. I've signed company contracts before; I've even worked as a vendor from time to time, invoicing with a purchase order number.

My advice is to read a company contract very carefully and discuss any sections that you don't understand or may disagree with *before* you sign. For example, the company's contract might be directed toward agencies that provide contract (consultant) programming services, and it might state that work space and equipment will be provided by the company, that the programmers will work on site, and so on. You aren't a programmer, you may not want to work on site, and you may not need any equipment provided.

The company might agree to modify certain sections or to insert wording from your contract in place of theirs. Remember, anything is possible, and the worst they can say is, “No, we can't do that.” Then you have to make a decision about accepting the project.

I have an opportunity to do a type of work that my standardized contract doesn't cover. What do I do now?

You might be able to cover the new type of work in your LOA, or whatever document you use to outline the specifications for each project (sometimes called “scope of work”). Try to reserve your contract for the items that don't change from project to project.

On the other hand, if the new work would require just a small change in the wording of your contract (say, a change from providing daily rate services, such as facilitating

workshops, to hourly rate services, such as writing the materials for a customer's training sessions), you can tweak the appropriate sections of your contract.

Remember: Ask questions about any new type of work before you make a decision.

Summary of Contracts

You can protect yourself from ethical or financial trouble by developing a good contract and using it on every project. With luck, you will never need to remind your customers of the contract protection, but you both will know that it is there.

Letters of Agreement

What is an LOA?

The letter of agreement is an actual letter printed on your business letterhead, in which you spell out the specifics of the project. You may also call this document a scope of work, project specification, or proposal. The document name doesn't matter; what matters is that you list the unique elements of the project at the time you sign on to do the work. The letter of agreement might be all you need for a very small project; most of the time, you will also want a contract.

What items should I include in my LOA?

The LOA includes information that helps you put some limits around the project. It ensures that you and your customer agree on what the project does and does not include. The following sections turn up in most of my LOAs:

- *Statement of Purpose*: Briefly explains what the project is about and takes the form of an introduction to the LOA. A statement of purpose can be as simple as "Thank you for selecting Plain Language Solutions to edit and revise the six sections of your grant application" or "I'm delighted to design and develop the user guide and self-study training for your new XYZ product."
- *Deliverables*: Identifies what the final product will be (user manual, training guide, online help file, edited manuscript) and what form it will take (hard copy master, HTML file, electronic file on diskette in *Word* or PDF, single copy for production or multiple copies for distribution). This section of your LOA should state the version of the application you will use to create the deliverables, such as *Word 97* or *FrameMaker 2000*.

- *Specifications*: States the size of the deliverables (anticipated number of chapters, pages per chapter, or Web site pages) and layout notations (8.5 by 11-inch paper, 3-ring binder with tabs, company logo on each page, use of color).
- *Your Responsibilities*: Provides a sketchy outline of your process—for example, designing a layout and template, developing a draft of each chapter, submitting it for review, making one set of revisions, and creating the master copy. This section should explain how you will handle changes and how you will communicate unforeseen events and issues that might affect the project deadlines. If you will do all the work on the project, say so in this section; if you will subcontract parts of the work, say so here.
- *Customer's Responsibilities*: List the project manager's name and the names of subject matter experts. Note whether the manager needs to sign your invoice or timesheet and submit it for timely payment. List reviewers' names and procedures for expediting reviews. State the resources the customer is providing. In other words, specify any resources the customer has agreed to provide for you to do your job, and when you need them.
- *Schedule and Estimate*: Answers the following questions: What is the timeline for the project? What is your best estimate at this time for the size of the project? When will you begin work? What is the end date?
- *Fees and Payment*: Spells out the specifics: What is the hourly rate, how often will you invoice the customer, and how soon will you be paid? Or, if you are working at a project rate, how many payments will you receive, and when? What if there are changes to the project scope? In this section, I state that the final deliverable will be provided upon final payment, or that I will change the copyright notice from me to the customer upon final payment—whatever I think I need to say to ensure that the final payment is made. This section can generate interesting discussions with new customers; for ongoing customers, it becomes routine. I'm pleasantly adamant about protecting myself and my cash flow.
- *Unanswered Questions*: Lists the things you don't know yet. Did someone mention online help as well as a printed user guide? Does the customer still need to identify the signoff person to approve your revisions? Do you need special permission to get dialup access? You might want to subdivide this section if it is longer than eight to ten items. Then make sure you don't let these issues slide until it's too late and they affect your success. Yes, I sign agreements and begin work before getting all of these answers, but I keep picking away for the answers at every opportunity.
- *Approval Signatures*: A place for you and your customer to sign and date the agreement. Include a note that your contract (or the customer's) governs standard factors that affect the project. You may also state that any changes to items listed in the letter of agreement will create the need to discuss a whole new agreement or will require a change order.

How does the LOA protect me and my customer?

The letter of agreement protects both you and your customer from "project creep," that common tendency to add more content, create more graphics, make one more set of revisions, send for one more round of reviews—actions that can strip the profit right out of a fixed-rate project or break the budget on an hourly-rate project.

What if I don't have many details for the project?

In your Unanswered Questions section, include as many of these items as possible. Your fees, the project schedule, and even the deliverables could be affected.

In an e-mail discussion, Carol Elkins of A Written Word in Pueblo, Colorado, said on this topic, "It never occurred to me to include a list of unanswered questions . . . but thinking about it, why not? The time to answer those unanswered questions needs to somehow be accounted for, and including them . . . at the get-go would help defend your actions in the event of arbitration."

How much detail is enough?

Some independents provide as much detail as possible in their letter of agreement—they create a complete design document in some cases. However, there's always a chance that an unscrupulous customer could take your detailed agreement document (developed for free as part of your selling process) and give it to some other person or agency that agrees to do the work for less money. When you prepare a letter of agreement that is very detailed, you might want to add a proprietary statement such as this: "All of the information in this letter of agreement is proprietary and intended for the exclusive review by and consideration of Such and Such Company. Redistribution or subsequent disclosure of this material requires the express written consent of Your Name." (Thanks to Pam Scott, member of the Association of Professional Communication Consultants, for this proprietary statement.)

In her letters of agreement, Linda Gallagher of TechCom Plus in Westminster, Colorado, often provides only the name of the manual, total estimated pages, estimated range of hours, and estimated range of costs. Sometimes she includes options on the work at different total costs. Her LOA also includes a statement that explicitly protects against project creep: "If I foresee that any portion of the project will take longer than the upper range of the estimate, I will notify you immediately, and we can discuss the options. If the deliverables are 5 percent or more longer than the estimated page counts, the additional pages can be created at a rate of \$X per hour."

Kim Shaw of Words & Graphics, Inc., in The Woodlands, Texas, says, "It's now my rule to provide only enough details to let decision makers know I can do the job. I don't even include project schedules in my proposals, beyond a very high-level timeline with a few major milestones, and sometimes not even that."

What if my customer already has a corporate contract and LOA?

Only one set of agreement documents should exist for each project, whether the documents are yours or your customer's. It's best to use your own, because you can develop the agreement in your favor. But don't be surprised if a large company that already works with contractors or vendors has its own agreement documents, which you must sign in order to work with the company.

Still, it's important to discuss the agreement and ask for any changes that do not fit the way you prefer to work. Some project managers are very willing to consider other ways of conducting business. The worst the customer can say is, "No, we can't change that."

When a company has a contract but no project-specific agreement, you can provide it as a letter of agreement. You might even be able to make it part of the design document and get paid for writing it!

Summary

So remember that it usually takes two documents to get you started on safe footing in a new project: a contract and a letter of agreement. When you develop your own versions, you'll be prepared whenever you meet a customer who doesn't already have these written agreement forms. Good luck, and good business to you.