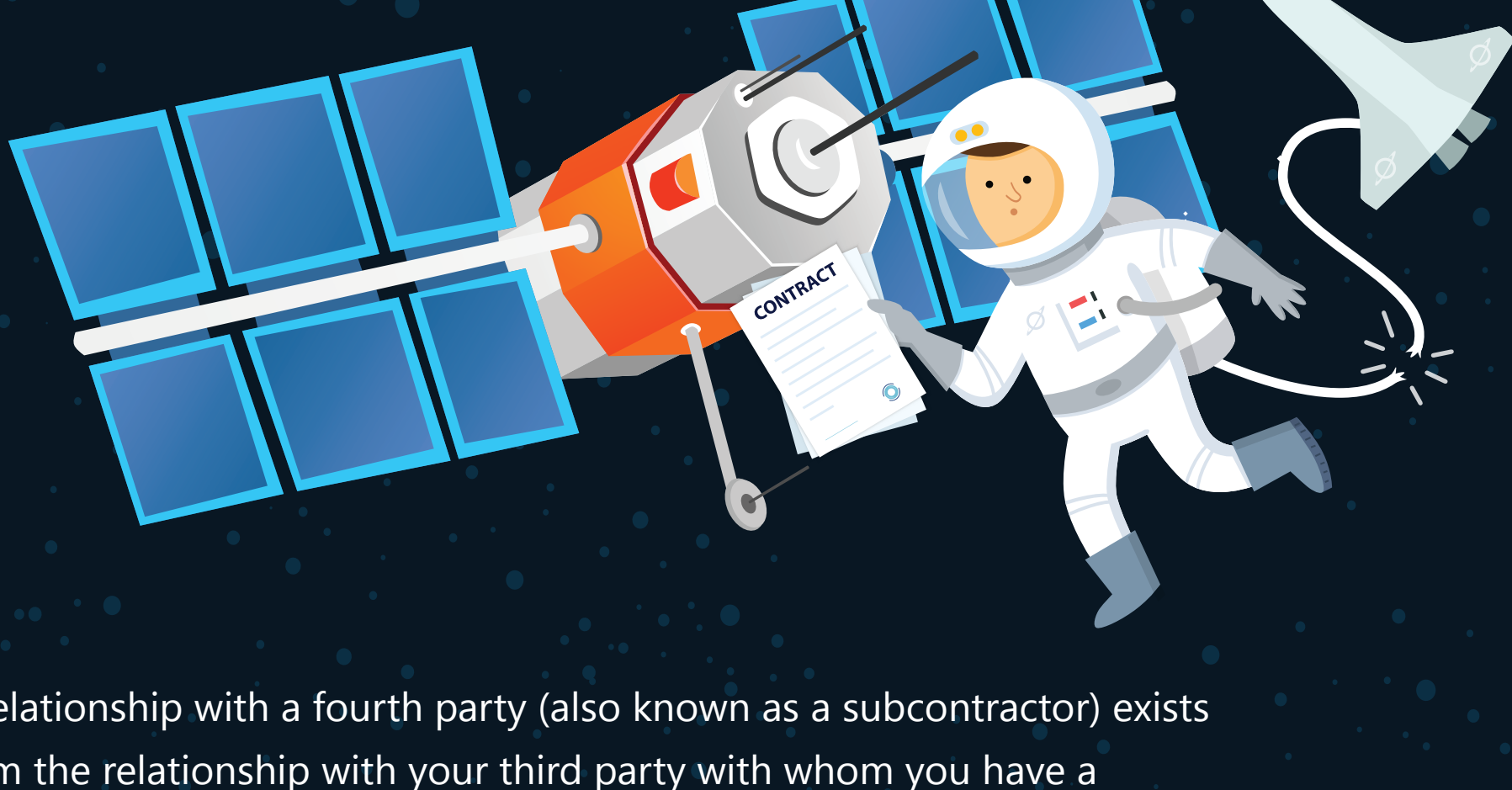


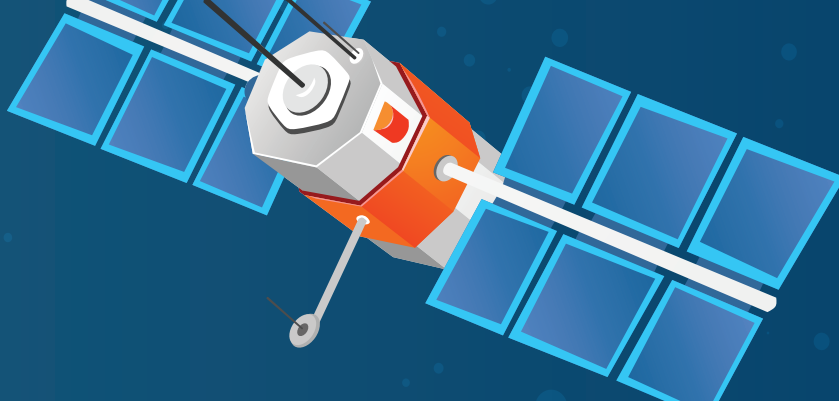
How to Write Fourth-Party Vendor Requirements Into the Contract



A relationship with a fourth party (also known as a subcontractor) exists from the relationship with your third party with whom you have a contractual agreement. Since you don't have a contractual relationship with the fourth party, it's important that you have a thorough understanding of your third party's risk management practices with their own vendors.

Before you determine the specific fourth party-related clauses to include in your third-party vendor contract, review your third party's vendor risk management policy, procedures and any other documentation that will provide insight into the scope, rigor and effectiveness of their program.

If you find that their program doesn't operate to the standard you may require, insert additional contract clauses to ensure your expectations are clear. For example, if your vendor doesn't review independent third-party audits as part of their information security due diligence review, require them to enlist an expert to perform the reviews for specified vendor types.



Some considerations to keep in mind when writing fourth-party requirements into your third-party contract are:

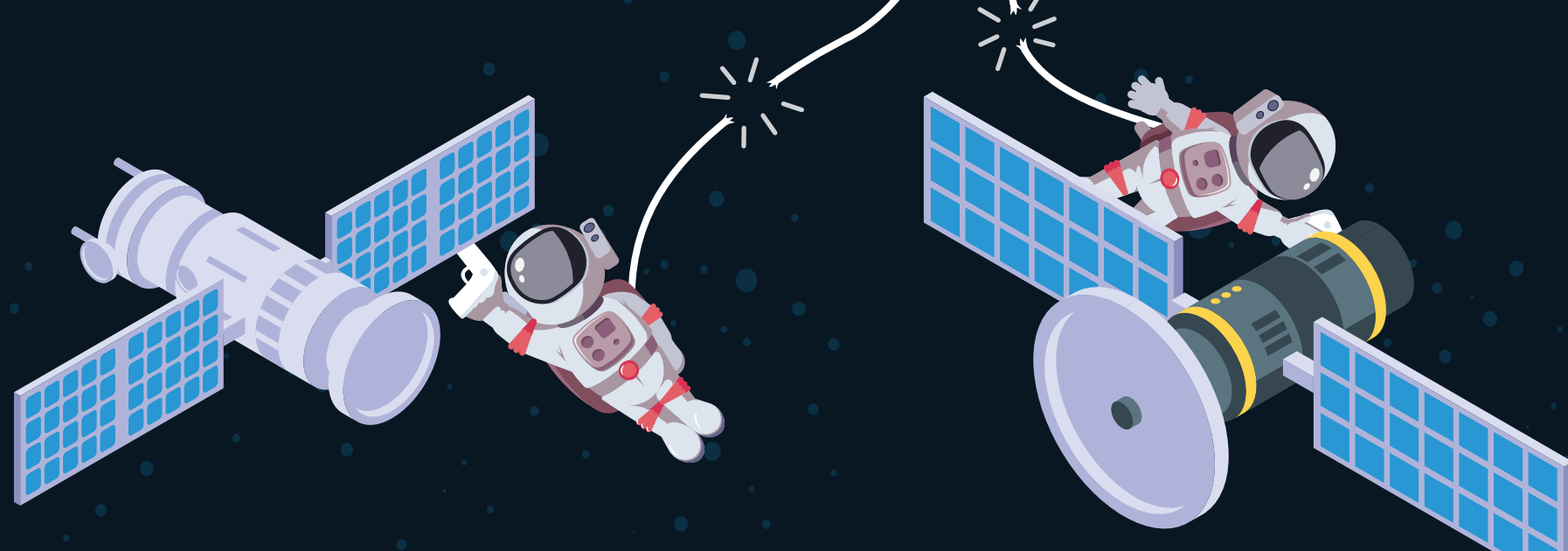


- 1 Standards:** Your third-party vendor should actively manage their third parties to the same standards that your organization would expect of them around the following areas:

 - Business continuity and disaster recovery plans
 - Information security and privacy program
 - Compliance with all applicable regulations, laws and rules
 - Specific periodic review intervals and ongoing monitoring requirements
 - Publicity and use of name
- 2 Critical subcontractors:** Vendor should disclose all of their current and known vendors (subcontractors) which are deemed critical in providing their products and services to you as well as specify whether your organization's approval is required for changes to a subcontractor and the required notification period and process for such change.
- 3 Right to audit:** If in a regulated industry, or if the third party is providing a critical function for your organization with access to your confidential information, include language that gives you the right to audit your third party – ensure that any subcontractor data and details supporting your services must also be available for such audit(s).
- 4 Adverse events:** Your vendor should notify you of any adverse reputational, legal or financial events relating to your fourth party. You should stipulate the acceptable timeframe for the notification.
- 5 Ongoing monitoring requirements:** Your vendor should be held accountable to perform risk-based monitoring and periodic due diligence for their significant third parties.
- 6 Non-disclosure agreement:** Your NDA with your third party should also extend to any fourth parties.
- 7 Indemnity and insurance requirements for fourth parties:** A fourth-party vendor who accesses your organization's data should have the same cyber insurance coverage amount as your direct vendor.
- 8 Rights to perform activities offshore:** State if your organization forbids your data to be accessed or stored offshore and whether written approval is required.
- 9 Return or destruction of confidential information:** Be very specific with how your data will be handled upon termination of the agreement. Explicitly state all data, in whatever medium stored and whatever location(s) stored, the disposal expectation, the documentation required and the timing around the data handling.

6 Examples of Fourth-Party Vendor Related Contract Clauses

The following are some examples of contract clauses we often see related to fourth-party vendors:

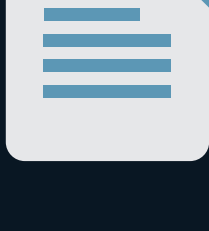


- 1** Vendor represents and warrants that to the extent subcontractors or agents are used to perform the obligations under this Agreement, Vendor shall be liable for the performance and all actions and inactions by such subcontractors or agents to the same extent that Vendor would be responsible under the terms of this Agreement for such performance as if it had been Vendor's own performance, including, but not limited to intellectual property rights, infringement and breaches of confidentiality.
- 2** Neither party shall have the right to assign or subcontract any of its obligations or duties under this agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.
- 3** Vendor shall keep full and detailed accounts for a period of not less than two (2) years and shall permit (company) to audit up to two (2) years of reports, logs and records of all data at any time with respect to vendor's charges, policies, procedures and transactions with (company).
- 4** Vendor is solely responsible for and agrees to perform its obligations in a manner that complies with all applicable national, federal, state and local laws, statutes, ordinances, regulations, codes and other types of government authority (including those governing export control, unfair competition, anti-discrimination, false advertising, privacy and data protection, and publicity and those identifying and requiring permits, licenses, approvals and other consents).
- 5** The contractor agrees to comply with all applicable securities legislation and regulatory policies in relation to providing the services, including but not limited to United States securities laws (in particular, Regulation XY2) and the policies of the (Regulators).
- 6** Vendor shall, and shall instruct all authorized users, to destroy all copies, whether in written, electronic or other form or media, all confidential information in its possession or the possession of such authorized users within X days following termination of this Agreement and will provide a Certificate of Destruction within X days.

Although these clauses are important to include in your third-party contract, your organization should not be responsible for managing and monitoring your fourth parties.

These guidelines are in place to ensure that your vendor is responsibly managing their third-party vendors, because the risk ultimately belongs to them. If your expectations are clearly expressed and the contract is well written, you can be assured that you are greatly reducing the risk associated with your third and fourth parties.

Having a solid contract with clear fourth-party clauses will set you up for a successful relationship with your third-party vendor.



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