



Independent Contractor Agreement

This Independent Contractor Agreement ("Agreement") is made effective as of ____ ("Effective Date") by and between ____ ("Contractor") and Language Services Company ("Company"), individually referred to as "Party" and collectively referred to as "Parties."

Parties acknowledge that the promises made by Contractor and Company set forth below constitute full and adequate mutual consideration. Based on such mutual consideration, Parties agree as follows:

Services and Code of Ethics. Parties are engaged in the business of translation services ("Services") and agree to comply with the American Translators Association ("ATA") Code of Ethics and Professional Practice. The term "Translation" for the purposes of this Agreement means a translation or any other translation-related tasks such as transcreation, editing (revision and review), proofreading, etc., that require the skills of a translator.

Relationship between Parties. Contractor serves as an independent contractor of Company in the performance of Contractor's Services under this Agreement. Nothing contained or implied in this Agreement creates a relationship of employer-employee between Company and Contractor nor does it create a joint venture, partnership, or similar relationship between Company and Contractor. Contractor is free from direction and control over the means and manner of providing the Services, subject only to the right of Company to specify the desired results. Contractor understands and agrees that (a) Contractor must file all corporate and/or individual tax returns and pay Federal and State taxes, as appropriate; (b) Company is not responsible for withholding any income or any other taxes with respect to Contractor's fees; and (c) Contractor has no claim against Company for any employee benefits of any kind. Contractor bears the full expenses of its operations. Company is not liable to Contractor for any expenses paid by Contractor, unless such expenses have been agreed in advance in writing. Any reference made in this Agreement to "in writing" includes e-mail and/or facsimile communications.

Compensation and Payment. Company agrees to pay Contractor the fee(s) set forth in each project assignment for Services. Any fee(s) agreed in advance between Contractor and Company become(s) binding only after Contractor has received and reviewed the source material and Company's instructions, and both parties have agreed in writing on the project specifications.

Supplementary charges may also be agreed in advance, for example those arising from: (a) inconsistent text, poorly legible copy, or complicated layout or presentation; and/or (b) certification; and/or (c) priority work or work outside normal business hours. "S"

If any changes/revisions are made to the source text or project specifications at any time while the task is in progress, Contractor's fee, charges, and terms of delivery may be adjusted by mutual agreement in writing. In the event a project assignment is cancelled while the task is in

Commented [1]: This statement is an important one for avoiding misclassification of the contractor of as an employee of the company, which has entirely different tax and benefit implications. Regulations in many states require contractors to pass the ABC test to be considered as such, where:

A) The worker is free from the control and direction of the hirer in relation to the performance of the work, both under the contract and in fact.

B) The worker performs work that is outside the usual course of the hirer's business.

C) The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

Commented [2]: The ABC test may soon be codified into federal law, adversely impacting the freelance status of translators and interpreters if a carve out is not received. This CoPTIC America handout explains why the ABC test is harmful to the status quo of translators and interpreters working as contractors.

https://drive.google.com/file/d/1pa2bxy0kAZpRk77vno_ODZLrJY2ld8Xs/view?usp=drive_link

Commented [3]: LSCs may encounter situations in which they need to circumvent certain parts of their onboarding process to onboard new talent quickly... such as communication about work specifications. This agreement makes specific reference to the fact that information conveyed over email serves the same purpose, allowing flexibility while also achieving risk management. Any attachments to emails count as in "writing" too!

Commented [4]: Basing work on previously agreed to specifications is a requirement for translation quality laid out in the ASTM F2575-23 standard.

This clause accounts for the fact that sometimes a translator will quote a project assuming that it will start within a couple of days... Based on that assumption, they include a specific delivery date in their quotes. Then, the client takes a week or two to decide to move forward. This clause prevents the translator from being bound to that original deadline (though if they included a deadline "in writing" they may still be subject to that deadline per the clause above - so many contradictions!)



progress, Contractor's fee is payable for all work completed up to the notice of cancellation, provided such work is made available to Company.

Payment in full must be made by Company to Contractor no later than **forty-five (45) days** from receipt of invoice by the method of payment specified in writing between the Parties. **Contractor is entitled to charge a late fee for any undisputed overdue payments.** In no event should payment to Contractor be contingent upon payment to Company by the party who commissioned the work.

For long assignments, Contractor may request an initial payment and periodic installments. **If an installment becomes overdue, Contractor, upon giving Company a written notice, has the right to stop work until the outstanding payment is received and to extend the deadline(s) for delivery accordingly.**

Delivery. Any delivery date(s) agreed to in advance between Contractor and Company become(s) binding only after Contractor has received and reviewed the source material and Company's instructions, and both parties have agreed in writing on the project specifications. Unless otherwise agreed, Company can reasonably expect to receive the assigned project no later than the normal close of business on the agreed-upon date of delivery.

Quality Assurance. Contractor understands and agrees that Company may, at Company's discretion, edit and/or proofread Contractor's work as part of Company's quality-assurance efforts.

However, if Contractor retains the copyright in a Translation, or if Contractor is asked to deliver a certificate of accuracy, no amendment or alteration may be made to a Translation without Contractor's written acceptance of such amendment or alteration. If in Company's substantiated opinion, Contractor has delivered substandard Services in relation to the project specifications, Company must inform Contractor in writing within **thirty (30) business days** and give Contractor reasonable time to bring the work up to the required standard; if this procedure is unsuccessful or if, for lack of time or otherwise, Company incurs extra expense in bringing the work up to the required standard, Company may be entitled to reduce the fee payable to Contractor by the amount of such extra expense.

Ownership of translation. If a Translation is done as a **"work made for hire"** as that term is defined under U.S. copyright law, Company owns all copyrights in the work product upon full payment of the agreed fee.

To the extent that a Translation does not qualify as a work made for hire, copyright remains the property of Contractor and such copyright can be assigned or licensed to Company upon full payment of the agreed fee. ***Copyright assigned or licensed to Company for "work made for hire" includes all translation output (bitext files, translation memories) regardless of the format.***

Commented [5]: Translators tend to prefer payment terms of 30 days. Forty-five days is fairly standard and generally allows enough time for the processing of jobs to verify the quality of the translated deliverables and the receipt of payment from the end client before payments to the translator are made. This helps companies keep their books in order!

Some, like Chris Do, recommend that independent contractors require a partial payment up front as a guarantee that the company will pay for their work. While a great idea, this would be outside of standard practice within most LSCs.

Commented [6]: ATA included this clause in its ICA model. If I were the representative of an LSC, I would not agree to this. If the Accountant is accidentally late making a payment, do you really want to be bound to paying a late payment fee?

Commented [7]: This clause is great risk management for translators. The representatives of most LSCs would not agree to this, nor include this type of clause in the ICAs they have contractors sign.

Commented [8]: This clause is very tricky... For large assignments the full quality assurance and delivery cycle within the LSC once they receive the translation from the translator may very well take longer than 30 days. If you worked in an LSC, it's reasonable to assume that for very large projects, you would not have detected quality issues until after 30 days had passed. I'd consider changing this to 60 days if I were representing an LSC in any negotiations on this contract, but this number ultimately depends on the type of work and size of projects that an LSC handles.

Commented [9]: For consistency and risk management, this "work made for hire" language should also be used in service level agreements (SLAs), work orders, and purchase orders (POs).

Commented [10]: Very often in the language industry, contracts make clear that ownership of the target translation is assigned to the purchaser of the services, however, ownership of the byproducts of translation workflows - the bitext files and translation memories in which aligned source and target content is stored - is not defined, despite their value. For risk management, I'd add an explicit statement to the ICA about who owns important byproducts of translation and localization work, including translation memories, termbases, and style guides.



Indemnification. Each Party hereby agrees to indemnify and hold harmless the other and such indemnified Party's subsidiaries, directors, officers, agents, and employees from and against all claims, liabilities, and expenses, including reasonable attorneys' fees, which may result from acts, omissions, or breach of this Agreement by the indemnifying Party, its subcontractors, employees, or agents. This provision shall survive the termination of this Agreement.

Notwithstanding anything to the contrary, except in case of willful misconduct or gross negligence, Contractor's entire liability to Company for damages or other amounts arising out of or in connection with the Services provided by Contractor hereunder shall not exceed the total amount of payments made by Company to Contractor under this Agreement.

Confidentiality. Information is deemed Confidential Information if, given the nature of Company's business, a reasonable person would consider such information confidential. Contractor agrees: (a) to exercise the same degree of care as he/she accords to his/her own confidential information, but in no case less than reasonable care, and (b) to use Confidential Information which Company provides to Contractor only for the performance of Services for Company and not for Contractor's own benefit.

Confidential Information under this agreement includes the intellectual property of the Company that is shared with the Contractor in the course of business (forms, work instructions, style guides, quality assurance metrics). Confidential Information under this agreement also includes the intellectual property of the Company's clients, such as glossaries, termbases, and translation memories. Under no circumstances should the intellectual property of a Company's client be shared by the Contractor among a Company's clients or the Contractor's clients. Content in glossaries, termbases, and translation memories may only be leveraged in the performance of work for the Company's client to which that intellectual property belongs.

Notwithstanding any other provision in this Agreement, Company has the right to immediately terminate this Agreement in the event of any breach of this provision.

Term. This Agreement remains in effect for one (1) year from the Effective Date and, unless terminated as set forth below, continues in effect for successive one (1) year periods. Contractor understands and agrees that Company will be utilizing Contractor's Services only on an as-needed basis and at Company's discretion. Contractor may, without penalty, decline to accept any offered assignment from Company.

Termination. Either Party may terminate this Agreement at any time upon thirty (30) days written notice sent to the other Party using the contact information provided in the Notification section below. In the event of such termination, the Parties agree to act in good faith toward one another during the notice period. In the event of termination of this Agreement, Contractor must provide Company, and Company must pay Contractor for, all Services performed through the date of termination; Company is not obligated to pay Contractor any other compensation, severance, or other benefit whatsoever. "breakup"

Commented [11]: Many times, LSCs do not protect their right over the materials that they build to communicate expectations with translations, and translators sometimes leverage the materials they've received from one LSC, such as TMs, in the work they produce for their other clients. Translators sometimes sell style guides and TMs they have received to other translators, for instance, and the work instruction written by one LSC may be adopted by a translator as they build up their business. Therefore, in the ICA, an LSC naming its ownership and prohibiting these kinds of practice explicitly is an important form of risk management.

Commented [12]: This clause is designed as a cushion period for going through the "breakup" between a translator and an LSC. When breaking up, LSCs will at least want to inform the contractor in writing that the contractor needs to remove IP belonging to the LSC from their systems. As a representative of the LSC, I would require written confirmation from the translator that they carried out that removal to the best of their abilities.



During the notice period, Contractor also agrees to return any intellectual property of the Company's clients to the Company that he or she may hold. Contractor also agrees to take reasonable measures to destroy any intellectual property of the Company's clients in his or her holding.

Non-Exclusivity. Company acknowledges that Contractor may perform services for other customers, persons, or companies during the term of this Agreement as Contractor sees fit, subject to the terms of this Agreement.

Choice of Law. The laws of the State of California will govern the validity of this Agreement and the interpretation of the rights and duties of the Parties.

Non-Inducement/Non-Solicitation. For the duration of this Agreement and for a period of one (1) year immediately following its termination, Contractor must not: (a) induce, solicit, or recruit, or attempt to induce, solicit, or recruit, any of Company's employees to leave their employment or otherwise terminate their relationship with Company, or (b) solicit work from parties known to Contractor to have commissioned work from Company.

In the event of a breach of this provision while the Agreement is in force, Company has the right to immediately terminate this Agreement.

Notification. Either Party can provide notice to the other Party using the following contact information:

Company Representative

- Name of Company Department or Person
- Company E-mail Address
- Company Phone Number

Contractor

- Name
- Contractor E-mail Address
- Contractor Phone Number

Dispute Resolution. In the event a dispute arises between the Parties which they are unable to resolve among themselves, the Parties agree to participate in a mediation in accordance with the mediation procedures of the American Arbitration Association's Mediation Services. The Parties agree to share the costs of such mediation. If mediation fails to resolve the dispute, the Parties agree that the dispute may be submitted to final arbitration upon written request of one Party served on the other. The arbitration will be governed by the American Arbitration Association. Judgment on the arbitrator's award may be entered by any court of competent jurisdiction.

Commented [13]: In this context, "reasonable measures" accounts for the fact that locating and destroying files, once they have been received, is not so simple. Translators may have automatic data backup systems in place, and identifying all places where IP belonging to a client is housed may not be reasonably possible, especially if the translator does not have good organization. The time burden to execute this would be too great.

That said, as a representative of an LSC, I can only assume that any digital files that I send to independent contractors are ultimately not recoverable, no matter what any contract says.

Commented [14]: None of the comments in this document are meant to constitute legal advice, and you should always consult with a lawyer about legal questions. That said, California is a tricky place to do business. Back before 2020, even if a small business incorporates as an LLC in another state (such as Delaware, which has a reputation for being business friendly with regards to tax collection), they have to register as a "foreign entity" in CA and pay the associated fees...

Commented [15]: Requiring that conflicting parties first go through mediation is great risk management. Court is costly and tends to cause a big stir! Mediation keeps things affordable and quiet.



Severability. If any provision of this Agreement is held to be invalid or illegal, such invalidity or illegality does not invalidate the remainder of the Agreement. Instead, this Agreement is then construed as if it did not contain the illegal or invalid part, and the rights and obligations of the Parties are construed and enforced accordingly.

Modification or Amendment. No amendment, change, or modification of this Agreement is valid unless in writing and signed by both Parties.

Entire Agreement. This Agreement contains the complete agreement of the Parties and supersedes any and all other agreements between the Parties. By signing below, the Parties represent that neither is relying on any promise, guarantee, or other statement not contained in this Agreement.

IN WITNESS WHEREOF, the signatures of the authorized representatives of the Parties below demonstrate the Parties' acceptance of the terms and conditions of this Agreement. The Parties hereto agree that electronic signatures are as effective as originals.

Company Representative

- Signature
- Print name
- Title
- Date

Contractor

- Signature
- Print name
- Title
- Date

Acknowledgements: This contract was provided by ATA to its members for use as a model from the nineties to around 2022, when ATA updated its model. Content that we added to ATA's model is italicized and presented in blue.

Loc101 Introduction to Localization a LocEssentials seminar by Alaina Brandt