

# Facilitated by: Paula Arturo

Lawyer-Linguist

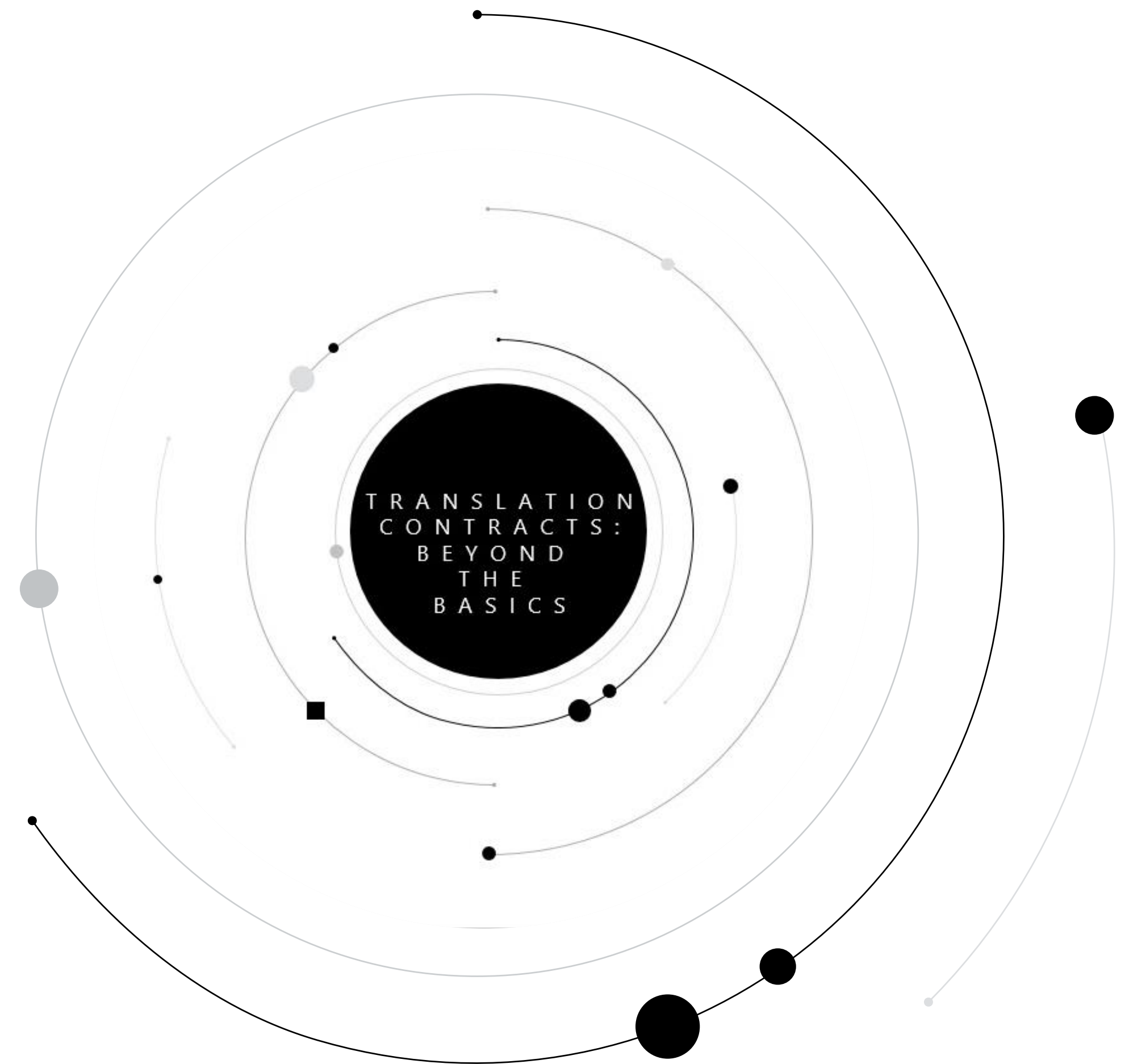
Please feel free to email me: [paula@translatinglawyers.com](mailto:paula@translatinglawyers.com)

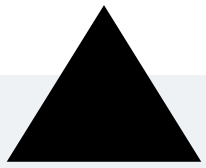
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*ata*  
American Translators Association





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# Contract Checklist

## Literary

Delivery and obligation to publish; payment and rights; royalties and subsidiary rights; copyright; editing and acceptance; credits

## Work-for-hire

Engagement of service; payment, invoicing, and delivery; confidentiality and nondisclosure; indemnification; term and termination

## Boilerplate Provisions

Same for both; part 2 of webinar

# Translator Qualifications and Engagement of Service

Reassure Client of qualifications, education, experience  
Confirm service and how we will work

1

## Compensation, Invoice, and Delivery

When and how you will want to get paid  
What happens if payment is late  
Whether or not discounts apply

2

## Independence of Contractor Status (agencies)

Confirm independent contractor status  
Method of performing service  
Place and time of work  
Translation Memory (if CAT)

3

## Confidentiality, Nondisclosure Nonuse

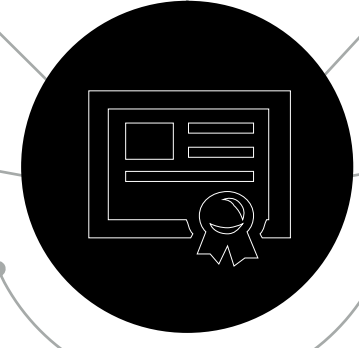
Define "confidential information"  
Establish how such information is to be handled  
Nondisclosure  
Promise not to use the information to which you have access for anything other than its intended purpose.

4

## Term and Termination

How long the agreement will be in effect  
As of when  
Termination by you  
Termination by client  
Transactions after termination

5



The previous slides contained samples of some of the most important provisions you'll find in a translation service contract. The way I draft my contracts is by dividing the main obligations up into five categories and then adding boilerplate provisions at the end under "Miscellaneous". If you're an agency, you may want to have a section on Innovations and one on Non-solicitation and/or Non-interference and/or Conflict of interest.

# Interpreting Contracts



## Determine Intent

Contracts that resort to too many absolutes or unnecessarily strong language reveal a lot about how the other party views you and your contractual relationship.

## Watch Your Words!

Provisions with key words like “sole and absolute discretion” or “absolute duty” or “without notice”, etc. should be read very carefully. When in doubt, ask a local lawyer.

## Take Custom and Practice into Account

If a certain provision seems to contradict existing custom and practice in that particular industry, you’ll want to ask for clarification or renegotiate.

## Clarify Ambiguity

A provision is not ambiguous simply because the parties disagree as to its construction or urge alternative interpretations. Courts have principles for determining if a provision is ambiguous.

# Interpreting Contracts



## Context Matters

Contracts should be viewed in light of the circumstances under which they were made.

## Reasonability is Key

Contracts should be construed in a commercially reasonable manner. If a provision is not reasonable, it should be renegotiated.

## Contracts are to be Harmonized

The terms of the contract should be “harmonized” and read in context with all other pertinent documents, including POs, emails, etc.

**ATA Translation Job Model Contract  
TRANSLATION AGREEMENT**

**Date of this Agreement:** \_\_\_\_\_ of \_\_\_\_\_ ("Translator")  
Translator's Name Translator's Address  
and \_\_\_\_\_ of \_\_\_\_\_ ("Client")  
Client's Name Client's Address

hereby agree as follows:

1. Description of services. Translator, as an independent contractor, will provide the following service(s) [*Identify item(s) to be translated and the particular service(s) to be performed*]:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Scheduled completion date is:* \_\_\_\_\_

Translator shall make every effort to complete service(s) by the above date but shall not be responsible for delays in completion caused by events beyond Translator's control.

Method of delivery: \_\_\_\_\_

Format of delivery: \_\_\_\_\_

2. Fee for services. Client agrees to pay \$ \_\_\_\_\_ as Translator's fee for the above service(s). Payment is due as follows:

\_\_\_\_\_  
\_\_\_\_\_

The due dates for payment of fees and costs under this Agreement shall be the date(s) specified in this Agreement, provided that if no date is specified, the due date shall be the date of Translator's billing for the fees or costs. Any payments for fees or costs not received by Translator within \_\_\_\_\_ days of the due date will be deemed late and shall be subject to a \_\_\_\_\_% per month late charge. Client agrees to be responsible for Translator's costs in collecting late payments due from Client, including reasonable attorneys' fees.

3. Cancellation or withdrawal by Client. If Client cancels or withdraws any portion of the item(s) described in paragraph 1 above prior to Translator's completion of the service(s), then, in consideration of Translator's scheduling and/or performing said service(s) Client shall pay Translator the portion of the above fee represented by the percentage of total service(s) performed, but in any event not less than \_\_\_\_\_% of said fee.

4. Additional fees. Additional fees will be payable, to be calculated as provided below, in the event the following additional services are required: (a) investigation, inquiry, or research beyond that normal to a routine translation is required because of ambiguities in the item(s) to be translated; (b) additional services are required because Client makes changes in the item(s) to be translated after the signing of this Agreement; and (c) Translator is requested to make changes in the translation after delivery of the translation, because of Client's preferences as to style or vocabulary, and such changes are not required for accuracy. Such additional fees will be calculated as follows:

\_\_\_\_\_  
\_\_\_\_\_

5. Additional costs. Client shall reimburse Translator for necessary out-of-pocket expenses incurred by Translator that are not a normal part of routine translation procedure, such as overnight document delivery service requested by Client, long distance telephone and telefax expenses to clarify document ambiguity, etc.

6. Client's review of translation. Upon receipt of the translation from Translator, Client shall promptly review it, and within 30 days after receipt shall notify Translator of any requested corrections or changes. Translator shall correct, at no cost to Client, any errors made by Translator.

7. Confidentiality. All knowledge and information expressly identified by Client in writing as confidential which Translator acquires during the term of this Agreement regarding the business and products of Client shall be maintained in confidentiality by Translator and, except as expressly authorized by Client in writing, shall not be divulged or published by Translator and shall not be authorized by Translator to be divulged or published by others. Confidential information for purposes of this paragraph shall not include the following:

a. Information which is or becomes available to the general public, provided the disclosure of such information did not result from a breach by Translator of this paragraph.

b. Terminological glossary entries compiled by Translator in the course of Translator's performance of the translation service(s) under this Agreement; provided, however, that Client and Translator may agree in writing that, upon payment by Client to Translator of an agreed-upon fee, such terminological glossary entries shall be the property of Client and shall be covered by the confidentiality provisions of this paragraph.

8. Translation is property of client, copyright. Upon Client's completion of all payments provided herein, the translation of the item(s) described in paragraph 1 above shall be the property of Client. Translator has no obligation to take any steps to protect any copyright, trademark or other right of Client with respect to the translation, except as may be expressly otherwise provided in this Agreement. Notwithstanding the foregoing, Translator shall have the right to retain file copies of the item(s) to be translated and of the translation, subject to the provisions of paragraph 7 above.

9. Indemnification and hold-harmless by Client. Client agrees to indemnify and hold Translator harmless from any and all losses, claims, damages, expenses or liabilities (including reasonable attorneys' fees) which Translator may incur based on information, representations, reports, data or product specifications furnished, prepared or approved by Client for use by Translator in the work performed under this Agreement.

10. Changes by others. Translator shall have no responsibility whatever as to any changes in the translation made by persons other than Translator.

11. Governing law. This Agreement shall be governed by the laws of the State of \_\_\_\_\_.

12. Additional provisions. [*Add all additional provisions required by the parties.*]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13. Complete agreement. This is the complete agreement of the parties as to the subject matter hereof. Any changes in this Agreement must be in writing signed by both parties. This Agreement becomes a binding contract only upon signature by both parties and the delivery of fully signed copies to each party.

Translator: \_\_\_\_\_

Client: \_\_\_\_\_

\_\_\_\_\_  
American Translators Association - Translation Agreement - July 1991 ed.

**IMPORTANT NOTICE**

THIS CONTRACT FORM OR GUIDE IS GENERAL IN NATURE AND IS NOT INTENDED TO PRESCRIBE THE USE OF ANY TERMS AND CONDITIONS HEREIN. THE ISSUANCE OF THIS FORM DOES NOT RESTRICT IN ANY RESPECT ANY MEMBER OR NON-MEMBER FROM CONTRACTING FOR SERVICE ON TERMS AND CONDITIONS DIFFERENT FROM THOSE SET FORTH HEREIN. THE USE OF ANY PORTION OF THIS FORM OF AGREEMENT IS STRICTLY VOLUNTARY, AND IS THE SOLE RESPONSIBILITY OF THE CONTRACTING PARTIES. NEITHER THE AMERICAN TRANSLATORS ASSOCIATION NOR ITS MEMBERS ASSUME ANY RESPONSIBILITY OR LIABILITY, WHETHER BASED ON WARRANTY, CONTRACT, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE, WITH RESPECT TO THE USE OF THIS CONTRACT FORM. THE AMERICAN TRANSLATORS ASSOCIATION AND ITS MEMBERS MAKE NO WARRANTY, EXPRESSED OR IMPLIED, WITH REGARD TO THE LEGALITY OR ENFORCEABILITY OF THIS FORM OF AGREEMENT.

# SWOT ANALYSIS

## Strengths

Specific to translation

Description of service; payment; cancellation or withdrawal by client; additional costs and fees; client review of translation; unauthorized changes; confidentiality.

## Weaknesses

Very weak boilerplates

As we learned throughout this webinar, boilerplate provisions are far more important than they seem and the ATA model agreement fails to capture their complexities.

## Opportunities

Maximizing the good parts

The model agreement is a good start for industry specific provisions, which can be easily strengthened with very minor changes.

## Threats

Not fully covered

There is a chance that you are not fully protected if you use the agreement as is, so please talk to a local lawyer and draft a stronger agreement.

