

# Terms of Service Agreement

Updated: June 5, 2009

## WELCOME TO ELANCE

Welcome to Elance. The following Terms of Service, which include the [Site Policies](#), are a contractual agreement between you and Elance (including our corporate subsidiaries). The Terms of Service together with the Site Policies are collectively referred to as the "**Terms of Service**." Certain defined terms used in these Terms of Service are available [here](#). By visiting or using the services available from the domain and sub-domains of [www.elance.com](http://www.elance.com) (the "**Site**"), you are agreeing to be legally bound by these Terms of Service. We reserve the right to revise these Terms of Service and all linked information from time to time in our sole discretion by updating this posting or any linked information. Unless otherwise provided in such revision, the revised terms will take effect when they are posted.

## SITE SERVICES

Elance makes the Site available as an online workplace where clients for professional services ("**Clients**") and providers of professional services ("**Providers**") identify each other and work together online ("**Jobs**"). The Site contains features that enable Clients and Providers to do, among other things, the following:

**Clients:** Post Jobs and Requests for Proposals, identify, interview, negotiate terms, hire, manage engagements, rate and pay Providers.

**Providers:** Create profiles, advertise capabilities, submit proposals, interview, negotiate terms, get hired, manage engagements, invoice, get rated and receive payment from Clients.

## RELATIONSHIP BETWEEN CLIENTS AND PROVIDERS

### Member Contracts

The dealing, contracting and fulfillment of a Job are between a Client and a Provider. Upon acceptance of a proposal, the Client agrees to purchase, and the Provider agrees to deliver, the Provider Services in accordance with the following agreements: (1) the agreement between Client and Provider including the proposal and Terms as accepted on the Site, (2) these Terms of Service, and (3) any other contract uploaded to the Site by the parties (collectively, the "**Member Contract**"). You agree not to enter into any contractual provisions in conflict with these Terms of Service. Any provision of a Member Contract in conflict with these Terms of Service is void. Client is responsible for managing, inspecting, accepting and paying for satisfactory Provider Services in accordance with the Member Contract in a timely manner. Provider is responsible for the performance and quality of the Provider Services in accordance with the Member Contract in a timely manner. Client and Provider each covenants and agrees to act with good faith and fair dealing in performance of the Member Contract.

### Independent Contractors

Client and Provider each acknowledges and agrees that their relationship is that of independent contractors. The Provider shall perform the Provider Services as an independent contractor and nothing in these Terms of Service shall be deemed to create a partnership, joint venture, agency, or employer-employee relationship between Provider and Client or between Elance and any Provider or Client.

## **Taxes, Reporting and Elance 1099 Service**

**Provider Form W-9 Requirements.** As a Provider, if you enter and maintain timely, complete and accurate Account registration information on the Site, Elance will automatically fulfill your Form W-9 requirements, if any, to Clients who pay you through the Site.

**Client Form 1099-MISC and Form 1096 Requirements.** As a Client, if Elance notifies you that you have successfully requested and implemented the Elance 1099 service when posting a Job on the Site, and if you enter and maintain timely, complete and accurate Account registration information on the Site, Elance will automatically fulfill your Form 1099-MISC and Form 1096 requirements, if any, to Providers and to the US IRS for payments you make through the Site.

Except for reporting requirements fulfilled in accordance with the above, each Member is solely responsible for satisfying any income tax, VAT, payroll tax, payroll withholding, sales and use tax, governmental reporting and other legal requirements under applicable law, and all other requirements applicable to the purchase and sale of services from and by independent contractors.

## **RELATIONSHIP WITH ELANCE**

### **Elance Not a Party to Jobs**

Elance is not a party to the dealing, contracting and fulfillment of a Job between a Client and a Provider, including the Provider Services. Elance has no control over and does not guarantee the quality, safety or legality of Provider Services advertised, the truth or accuracy of Job listings, the qualifications, background, or abilities of Members, the ability of Providers to deliver Provider Services, the ability of Clients to pay for Provider Services, or that a Client or Provider can or will actually complete a transaction.

All rights and obligations for the purchase and sale of Provider Services are solely between Client and Provider. Client and Provider must look solely to the other for enforcement and performance of all the rights and obligations arising from Member Contracts and any other terms, conditions, representations, or warranties associated with such dealings.

### **Third-Party Beneficiary of Member Contract**

Client and Provider each acknowledges and agrees that the value, reputation, and goodwill of the Site depend on their performance of their covenants and agreements as set forth in their Member Contract. Client and Provider therefore appoint Elance a third-party beneficiary of their Member Contract for purposes of enforcing the obligations owed to, and the benefits conferred on, Elance by these Terms of Service. Client and Provider further agree that Elance has the right to take such actions with respect to the Member Contract or their Accounts, including without limitation suspension, termination, or legal actions, as Elance in its sole discretion deems necessary to protect the value, reputation, and goodwill of the Site.

### **No Agency**

These Terms of Service and any registration for or subsequent use of this Site will not be construed as creating or implying any relationship of agency, franchise, partnership or joint venture between you and Elance, except and solely to the extent expressly stated.

## ELANCE FEES

**Service Fee and Payment Processing Fee.** When Client pays a Provider or releases escrow funds to a Provider through the Site, Elance deducts the following amounts: (1) the “**Service Fee**” that Elance earns for creating, hosting, maintaining, and providing the Site, and for all services delivered by Elance that are accessible through the Site and (2) the “**Payment Processing Fee**” to cover expenses and fees Elance incurs to banks, credit card companies, PayPal, and payment processors. After deducting such amounts, Elance transfers the remaining payment amount to the Provider. The total amount of the Service Fee plus the Payment Processing Fee deducted by Elance varies according to the Provider’s volume of Provider Services, as detailed on the Site. If you are a Provider and believe a Service Fee might be in error, please log onto the Site and click the “Manage” tab at the top of the page, then click “Workroom List.” In your Workroom List, locate the appropriate job and then click “Select Action” > “Request Fee Adjustment” to fill out the Fee Adjustment Request form.

**Membership Fee.** Providers can choose various membership programs to subscribe to different levels of participation on the Site, as detailed in [Provider Membership](#) and on the Site.

## PERIOD OF EXCLUSIVITY

**Clients:** By visiting or using the Site you agree to use Elance to make all payments to Providers you identify on the Site, so that Elance can collect its Service Fee. You acknowledge and agree that Elance earns its Service Fee on all payments you make to a Provider in the first 12 months after you identify the Provider through the Site, regardless of whether you make the payments through Elance or not. You agree not to take any action directly or indirectly to circumvent these fees. After 12 months, our Service Fee applies only if the payment is made through the Payment Service.

As a Client, you also agree to notify Elance immediately if your Provider solicits payment from you outside the Site.

**Providers:** By visiting or using the Site, or by communicating with Clients identified through the Site, you agree to use Elance to receive all payments from Clients you identify on the Site, so that Elance can collect its Service Fee. You acknowledge and agree that Elance earns its Service Fee on all payments you receive from a Client in the first 12 months after you identify the Client through the Site, regardless of whether you receive the payments through Elance or not. You agree not to take any action directly or indirectly to circumvent these fees. After 12 months, our Service Fee applies only if the payment is made through the Payment Service.

As a Provider, you also agree to notify Elance immediately if your Client seeks to pay you outside the Site.

**Opt-Out:** Notwithstanding the foregoing, if the Client pays the Opt-Out fee and Elance notifies both Client and Provider that the [Opt-Out option](#) has been exercised for that Provider, then the Client has the right to pay that Provider outside the Site.

## MEMBER ELIGIBILITY AND OBLIGATIONS

To access Site Services through our Site, you must be a legal entity, or an individual in business 18 years or older who can form legally binding contracts. To register for an Account with Elance and become a Member, you must accept all of the terms and conditions in, and linked to, these Terms of Service. By becoming a Member, you agree to: (a) abide by the Elance Terms of Service and the processes, procedures, and guidelines described throughout the Site; (b) be financially responsible for your use of the Site and the purchase or delivery of Provider Services; and (c) perform your obligations as specified

by any Terms that you accept, unless such obligations are prohibited by law or by the Elance Terms of Service. Elance reserves the right in its sole discretion to refuse, suspend, or terminate service to anyone.

## ACCOUNTS

To become a Member and access Site Services through our Site you must register for an "**Account**." You agree to provide true, accurate and complete information as prompted by the registration form and all forms you access on the Site, and to update this information to maintain its truthfulness, accuracy and completeness. You cannot register for more than one Client Account and one Provider Account without express written permission from Elance (except Team Accounts as provided below).

As a Member, you may add Users to your Account to act on your behalf in the roles you assign (each, a "**Team Account**"). You may also grant certain account administration privileges to one or more "**Team Account Administrators**." Only the Member who registered the Account and the Team Account Administrators can add Team Accounts to the Account. Any or all Team Accounts related to the Account may be suspended or terminated without warning if the Account or any related Team Account is suspended or terminated.

Member represents, warrants, and agrees to grant access to the Account and any related Team Account only to Users authorized to act on behalf of the Member and only in accordance with these Terms of Service. Additionally, Member represents, warrants, and agrees to be fully responsible and liable for any action of any User who uses the Account, including Team Administrators, and any related Team Account. You agree (1) not to use any Account, Team Account, username, or password of another User of the Site that you are not authorized to use and (2) not to allow others who are not authorized to do so to use the Account or any related Team Account at any time.

Your Elance Account (including feedback) and username are not transferrable, and any transfer or attempted transfer to another party is null and void.

## USERNAMES AND PASSWORDS

When a Member registers an Account, the Member will be asked to choose a username and password for the Account. The Member and any Team Account Administrator will also be asked to choose the initial username and password for any Team Account that is added to the Account (and can change the username and password for any Team Account at any time).

As a Member, you agree and you are entirely responsible to safeguard and maintain the confidentiality of the username and password you use to access this Site. In addition, if you are a Member who owns a Team Account, or if you are a Team Account Administrator, you agree to safeguard and maintain the confidentiality of all your Team Account passwords. In either case, you authorize Elance to assume that any person using the Site with your username and password or your Team Account passwords, and the username of any Team Account added by an Account Administrator (if any) either is you or is authorized to act for you. You agree to notify us immediately if you suspect any unauthorized use of the Account or any related Team Account or access to your password or the password of any User of your Account or any related Team Account.

## **THIRD-PARTY CONTENT**

### **User Postings**

E lance has no editorial control over content posted by Users on the Site and is not responsible for and does not monitor such content for accuracy or reliability. Elance does not confirm or verify whether a Provider has the expertise, or is qualified or licensed to provide the Provider Services or advice being requested.

### **Directory of Providers**

The Site contains a directory of Providers. The directory is populated with information from third-party sources, from Providers themselves and from other Members. Elance provides this directory as a convenience and does not confirm or verify the information contained in it.

### **Verification and Monitoring**

E lance makes available to Members on the Site various services provided by third parties to verify a Member's credentials, provide testing services, or provide information. Any opinions, advice, statements, services, offers or other information or content expressed or made available by these third parties or any other Members are those of the respective author(s) or distributor(s) and not of Elance. Elance neither endorses nor is responsible for the accuracy or reliability of any opinion, advice, information or statement made on this Site by anyone other than authorized Elance employees acting in their official capacities.

### **Links**

This Site may contain links to other Web sites or resources and access and use of certain services offered by third parties, including online communication services such as chat, email and calls and your access and use of those Web sites, resources or services, including the online communication services, will be governed by the terms and policies of the Web site or resource or Provider. In particular, your use of chat services is governed by the [Userplane Terms of Service](#). These services are owned and operated by the third-party Providers and their licensors. You acknowledge and agree that Elance is not responsible or liable for: (i) the availability or accuracy of such sites or resources; or (ii) the content, advertising, or products on or available from such Sites or resources. The inclusion of any link on the Site does not imply that we endorse the linked site. You use the links and these services at your own risk.

## **LICENSES AND SITE ACCESS**

### **Elance License to User**

Subject to and conditioned on compliance with these Terms of Service, Elance grants you a limited license to access and, if you are a Member, to use this Site internally for the purpose of ordering and receiving the Site Services available and authorized from this Site. You must not sell, reproduce, distribute, modify, display, publicly perform, prepare derivative works based on, repost or otherwise use any content of this Site in any way for any public or commercial purpose without prior written consent of Elance or the rights holder. You must not use any content of this Site on any other Web site or in a networked computer environment for any purpose except your own internal viewing. You will not attempt to reverse engineer or attempt to interfere with the operation of any part of this Site unless expressly permitted by law. This Site or any portion of this Site may not be reproduced, duplicated, copied, sold, resold or otherwise exploited for any commercial purpose that is not expressly permitted by Elance.

Elance and its licensors retain all of its right, title and interest in and to all patent rights, inventions, copyrights, know-how and trade secrets relating to the Site. The Elance logo and name are trademarks of Elance, and may be registered in certain jurisdictions. All other product names, company names, marks, logos and symbols on the Site may be the trademarks of their respective owners.

Except as expressly stated above, nothing in these Terms of Service confers any license under any of Elance's or any third party's intellectual property rights, whether by estoppel, implication or otherwise.

### **Access and Interference**

The Site contains robot exclusion headers. You agree that you will not use any robot, spider, scraper or other automated means to access the Site for any purpose without our express written permission. Additionally, you agree that you will not: (a) take any action that imposes or may impose (in our sole discretion) an unreasonable or disproportionately large load on our infrastructure; (b) copy, reproduce, modify, create derivative works from, distribute, or publicly display any content (other than content you have submitted to the Site) from the Site, any software code that is part of the Site, or any services that are offered on the Site without the prior express written permission of Elance and the appropriate third party, as applicable; (c) interfere or attempt to interfere with the proper operation of the Site or any activities conducted on the Site; or (d) bypass any measures we may use to prevent or restrict access to the Site or any subparts of the Site.

### **User License to Elance**

In order to operate the Site, Elance must have certain rights. Consequently, when you post information, text, files, links, attachments, software or other materials ("**Content**") to publicly visible areas of the Site, you grant to Elance, and you represent and warrant that you have the right to grant, or that any other owner of such Content has expressly granted to Elance, a worldwide, royalty-free, perpetual, irrevocable, fully sub-licensable, non-exclusive right to Elance to use, reproduce, modify, transmit, distribute, perform, display and delete such Content (in whole or in part) and incorporate such Content in other works in any form, media or technology now known or later developed.

## **RESOLUTION OF DISPUTES BETWEEN MEMBER AND ELANCE**

If a dispute arises between you and Elance, our goal is to resolve such dispute quickly and cost-effectively. Accordingly, you and Elance agree that we will resolve any claim or controversy at law or equity that arises between us out of these Terms of Service or the Elance Services (a "**Claim**") in accordance with this section entitled "Resolution of Disputes Between Member and Elance." Before resorting to these alternatives, you agree to first contact us directly to seek dispute assistance by going to [Customer Support](#).

### **Law and Forum for Disputes**

These Terms of Service are governed in all respects by the laws of the State of California without giving effect to any principle that may provide for the application of the law of another jurisdiction. You agree that any claim or dispute you may have against Elance must be resolved by a court located in Santa Clara County, California, or as described in the Arbitration Option paragraph below. You hereby submit to the personal jurisdiction of the courts located within Santa Clara County, California for the purpose of litigating all such claims or disputes. Any cause of action you may have with respect to this Site must be commenced within 30 days after it arises, or the cause of action is barred.

## Arbitration Option

For any claim arising between you and Elance (excluding claims for injunctive or other equitable relief) where the total amount of the award sought is less than \$10,000, the party requesting relief may elect to resolve the dispute in a cost-effective manner through binding non-appearance-based arbitration. A party electing arbitration must initiate such arbitration through an established alternative dispute resolution ("ADR") provider mutually agreed upon by the parties. The ADR provider and the parties must comply with the following rules: (a) the ADR provider will specify whether the arbitration will be conducted by telephone, online, or solely based on written submissions; (b) the arbitration will not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties; and (c) if an arbitrator renders an award the party receiving the award has the right to enter any judgment on the award in any court of competent jurisdiction.

## Improperly Filed Claims

Should you file a claim contrary to this section entitled "**Resolution of Disputes Between Member and Elance**," Elance will be entitled to recover attorneys' fees and costs up to \$2,000, provided that Elance has notified you in accordance with these Terms of Service of the improperly filed claim, and you have failed to promptly withdraw the claim.

## TERM; TERMINATION AND SUSPENSION

These Terms of Service shall become effective as your contractual agreement upon your acceptance or your use of the Site, and shall continue until your Account is terminated by Elance or you as provided for under the terms of this Section.

Unless otherwise agreed to in writing between the parties, either party may terminate the contractual agreement represented by these Terms of Service at any time upon notice to the other party. In such event, your Account is automatically terminated and (i) Elance shall continue to perform those Elance Services necessary to complete any open transaction between you and another Member; and (ii) you shall continue to be obligated to pay any amounts accrued but unpaid as of the date of termination to Elance for any Site Services and to any Providers for any Provider Services.

Any termination of an Account will automatically lead to the termination of all related Team Accounts, and any termination of a Team Account gives Elance the right to terminate any or all related Accounts and Team Accounts.

Without limiting Elance's other remedies, we may issue a warning, or temporarily suspend, indefinitely suspend or terminate your Account or a Job, and refuse to provide any or all Site Services to you if: (a) you breach the letter or spirit of any terms and conditions of these Terms of Service or the linked policies and information incorporated herein by reference, including our written policies and procedures posted on the Site; (b) we are unable to verify or authenticate any information you provide to us; or (c) we believe in our sole discretion that your actions may cause legal liability for you, our Members or for Elance or are contrary to the interests of the Site or the Elance user community. Once indefinitely suspended or terminated, you must not continue to use the Site under the same Account, a different Account, or reregister under a new Account.

In addition, violations of these Terms of Service may be prosecuted to the fullest extent of the law and may result in additional penalties and sanctions.

Without limiting Elance's other remedies, to the extent you engage in actions or activities which circumvent the Elance Site or otherwise reduce fees owed Elance under these Terms of Service, you

must pay Elance for all fees owed to Elance and reimburse Elance for all losses and costs (including any and all Elance employee time) and reasonable expenses (including attorney fees) related to investigating such breach and collecting such fees.

Elance reserves the right to terminate any User access, Account, or Job for any reason, at its sole discretion and to refuse to provide registration and membership to you in the future. We will notify you if we cancel your membership, unless in our judgment giving notice would cause a risk of further violation or damages. However, we will notify you that your Account will be canceled if the law requires such notification.

When your Account is terminated for any reason, you may no longer have access to data, messages, files and other material you keep on the Site. The material may be deleted along with all your previous posts and proposals. The sections entitled "**RELATIONSHIP BETWEEN CLIENTS AND PROVIDERS**," "**RELATIONSHIP WITH ELANCE**," "**ELANCE FEES**," "**PERIOD OF EXCLUSIVITY**," "**THIRD-PARTY CONTENT**," "**LICENSES AND SITE ACCESS**," "**RESOLUTION OF DISPUTES BETWEEN MEMBER AND ELANCE**," "**TERM; TERMINATION AND SUSPENSION**," "**DISCLAIMERS, LIMITATIONS AND EXCLUSIONS**," "**NOTICES AND COMMUNICATIONS**," "**MISCELLANEOUS**," "**CERTAIN DEFINED TERMS**," and the Site Policies entitled "**Billing and Payment Service**," "**General Escrow Instructions**," and "**Dispute Resolution Process**," will all survive termination of the contractual agreement between us.

### **Notification of Elance Members**

You acknowledge and agree that the value, reputation and goodwill of the Site depend on transparency of Member Account status to all Members, including both yourself and other Members who are participating in Jobs with you. You therefore agree as follows: IF ELANCE SUSPENDS OR TERMINATES YOUR ACCOUNT OR JOB, ELANCE HAS THE RIGHT BUT NOT THE OBLIGATION TO (1) NOTIFY OTHER MEMBERS ENGAGED IN ACTIVE JOBS WITH YOU TO INFORM THEM OF YOUR SUSPENDED OR TERMINATED ACCOUNT OR JOB STATUS AND (2) PROVIDE THEM WITH SUMMARY REASONS FOR THE ACTION.

## **DISCLOSURES**

Elance, located in Mountain View, California, is the provider of the electronic commercial service on this Site. Members are notified, via this Site, in advance regarding any applicable service charges. The Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs in California may be contacted in writing at 1625 N. Market Blvd., Sacramento, CA 95834, or by calling the following number: 1-800-952-5210 for callers in California, and 1-916-445-1254 for callers outside California. Upon your request, you may have these Terms of Service sent to you by email. Please feel free to contact Elance to resolve a complaint regarding any aspect of service relating to this Site by writing to the above address, or contact us at [Customer Support](#).

## **DISCLAIMERS, LIMITATIONS AND EXCLUSIONS**

### **Data**

You are responsible for creation, storage, and backup of your business records. These Terms of Service and any registration for or subsequent use of this Site will not be construed as creating any responsibility on Elance's part to store, backup, retain, or grant access to any information or data for any period.

## **WARRANTY DISCLAIMER**

THE SITE SERVICES PROVIDED BY ELANCE OR ANY OF OUR LICENSORS OR OUR THIRD-PARTY SERVICE PROVIDERS ARE PROVIDED "AS IS," AS AVAILABLE, AND WITHOUT ANY WARRANTIES OR CONDITIONS (EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OR TRADE). WE MAKE NO REPRESENTATIONS OR WARRANTIES, OF ANY KIND, EITHER EXPRESS OR IMPLIED, AS TO THE QUALITY, IDENTITY OR RELIABILITY OF ANY THIRD PARTY, OR AS TO THE ACCURACY OF THE POSTINGS MADE ON THE WEB SITE BY ANY THIRD PARTY. SOME STATES AND JURISDICTIONS DO NOT ALLOW FOR ALL THE FOREGOING LIMITATIONS ON IMPLIED WARRANTIES, SO TO THAT EXTENT, IF ANY, SOME OR ALL OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

## **LIMITATION OF LIABILITY**

IN NO EVENT SHALL WE OR OUR LICENSORS OR OUR THIRD-PARTY SERVICE PROVIDERS BE LIABLE TO YOU OR ANY OTHER MEMBER FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES PURSUANT TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF BUSINESS OPPORTUNITIES OR LOSS OF GOODWILL, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT WILL OUR LIABILITY TO YOU FOR ANY ACTION OR CLAIM RELATED TO THE SITE SERVICES PROVIDED UNDER THESE TERMS OF SERVICE, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE OR ANY OTHER THEORY OF LIABILITY, EXCEED THE GREATER OF: (A) \$100 OR (B) THE AGGREGATE AMOUNT OF SERVICE CHARGES ACTUALLY COLLECTED BY US FROM YOU FOR THE SITE SERVICES TO WHICH THE LIABILITY RELATES DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE DETERMINATION OF SUCH LIABILITY. SOME STATES AND JURISDICTIONS DO NOT ALLOW FOR ALL THE FOREGOING EXCLUSIONS AND LIMITATIONS OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO TO THAT EXTENT, IF ANY, SOME OR ALL OF THESE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO YOU.

## **RELEASE**

If you have a dispute with another Member, you release Elance (and our officers, directors, agents, subsidiaries, joint ventures and employees) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such dispute.

YOU HEREBY WAIVE CALIFORNIA CIVIL CODE §1542 (AND ANY ANALOGOUS LAW IN ANY OTHER APPLICABLE JURISDICTION) WHICH SAYS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

## **INDEMNITY**

You agree to defend, hold harmless and indemnify Elance from and against any and all losses, costs, expenses, damages or other liabilities incurred by Elance from and against any cost, liability, loss, damage, cause of action, claim, suit, proceeding, demand or action brought by a third party against Elance: (a) in connection with your use of the Site Services including any payment obligations incurred through use of the Site Services; or (b) resulting from: (i) your use of the Site (ii) your decision to supply

credit information via the Site, including personal financial information; (iii) your decision to submit postings and accept offers from other Members; (iv) any breach of contract or other claims made by Members with which you conducted business through the Site; (v) your breach of any provision of these Terms of Service; (vi) any liability arising from the tax treatment of payments or any portion thereof; (vii) any negligent or intentional wrongdoing by any Member; (viii) any act or omission of yours with respect to the payment of fees to any Provider; (ix) your dispute of or failure to pay any invoice or any other payment; or (x) your obligations to a Provider. Any such indemnification shall be conditioned on our: (a) notifying you in writing of any such claim, demand, action, cost, liability, loss or threat of any thereof; (b) cooperating with you in the defense or settlement thereof; and (c) allowing you to control such defense or settlement. We shall be entitled to participate in such defense through our own counsel at our own cost and expense. We reserve the right to report any wrongdoing of which we become aware to the applicable government agencies or otherwise.

## **NOTICES AND COMMUNICATIONS**

Unless you otherwise indicate in writing to [Customer Support](#), Elance will communicate with you by email or by posting communications on the Site. You consent to receive communications from us electronically and you agree that these electronic communications satisfy any legal requirement that such communications be in writing. You will be considered to have received a communication when Elance sends it to the email address you have provided to Elance on the Site, or when Elance posts such communication on the Site. You must keep your email address updated on this Site, and you must regularly check this Site for postings. If you fail to respond to an email message from Elance regarding violation, dispute or complaint within two business days, Elance has the right to terminate or suspend your Job or your Account.

All notices to Elance intended to have a legal effect concerning these Terms of Service must be in writing and delivered either in person or by a means evidenced by a delivery receipt, to the following address:

Elance, Inc.  
441 Logue Ave., Suite 150  
Mountain View, CA 94043  
Attn: Controller

Such notices to Elance are deemed effective upon receipt.

## **MISCELLANEOUS TERMS AND CONDITIONS**

You are responsible for compliance with applicable local laws, keeping in mind that access to the contents of this Site may not be legal for or by certain persons or in certain countries. Elance will not be considered to have modified or waived any of our rights or remedies under these Terms of Service unless the modification or waiver is in writing and signed by an authorized representative of Elance. No delay or omission by Elance in exercising its rights or remedies will impair its rights or be construed as a waiver. Any single or partial exercise of a right or remedy will not preclude further exercise of any other right or remedy. If any part of these Terms of Service is held to be unenforceable, the unenforceable part will be given effect to the greatest extent possible and the remainder will remain in full force and effect. You will not transfer, assign or delegate your rights or obligations (including your Account) under these Terms of Service to anyone without the express written permission of Elance, and any attempt to do so will be null and void. Elance may assign these Terms of Service in its discretion.

Except for the payment of fees to Elance, neither of the parties to these Terms of Service shall be

responsible for the failure to perform or any delay in performance of any obligation hereunder due to labor disturbances, accidents, fires, floods, telecommunications or Internet failures, strikes, wars, riots, rebellions, blockades, acts of government, governmental requirements and regulations or restrictions imposed by law or any other similar conditions beyond the reasonable control of such party. The time for performance of such party shall be extended by the period of such delay.

The boldface paragraph headings in these Terms of Service are included for ease of reference only and have no binding effect. These Terms of Service and all documents referenced in these Terms of Service (including the Site Policies listed and available by hyperlink below) comprise the entire agreement between you and Elance with respect to the use of this Site and supersede all prior agreements between the parties regarding the subject matter contained herein as well as any conflicting or inconsistent terms in any Web site that link to or are linked from this Site. For convenience, these Terms of Service are displayed in HTML and PDF versions. In the event of any inconsistency between such versions, the PDF version will govern.

## **CERTAIN DEFINED TERMS**

Any capitalized term not otherwise defined in these Terms of Service has the meaning given such term on the Site. As used throughout these Terms of Service:

**"Account"** means the Elance Account you open when you register to become a Member and use the Site Services, and all Team Accounts added to that Account.

**"Client"** means a Member that investigates and purchases Provider Services or identifies a Provider through the Site.

**"Elance Services"** means the creation, hosting, maintenance, and provision of the Site and all services delivered by Elance that are accessible through the Site. The term Elance Services does not include Provider Services or Third-Party Services.

**"Member"** means a person or legal entity that registers for an Account.

**"Payment Service"** means the Elance Billing and Payment Service.

**"Provider"** means a Member that offers and delivers Provider Services or identifies a Client through the Site.

**"Provider Services"** means all services delivered by Providers.

**"Site Policies"** means these Terms of Service and all obligations, requirements, and guidelines contained in or linked from the Site. Site Policies includes, without limitation, all documents linked [here](#).

**"Site Services"** means all services that are accessible through the Site except Provider Services.

**"Terms"** means the terms of engagement accepted by a Client and a Provider. Terms may include specifications, price, milestones, deliverables, units of work, hours, payment terms, warranties and other contractual obligations.

**"Third-Party Services"** means all services that are accessible through the Site and delivered by third parties. The term Third-Party Services does not include Elance Services or Provider Services.

"**User**" means (1) a person who is a Member, using the Site on his or her own behalf, or (2) a person who is using the Site on behalf of a Member that is a company or organization.

"**Visitor**" means a person who is only visiting the Site, not a Member or User.

"**Workroom**" means the place on the Site where a Client and Provider can communicate and work together on a Job.

"**Work System**" means the tools available on the Site for Client and Provider to communicate and work together.

"**you**" means a Visitor or Member accessing the Site or using the Site Services on his or her own behalf; or, if the Site Services are used on behalf of a Member, "you" means the Member for which the Site Services are used and the User who accesses the Site on behalf of such Member (and such User represents that he or she has the authority to do so on the Member's behalf).

## **SITE POLICIES**

These Terms of Service hereby incorporate all terms and conditions, rules, policies, and guidelines on the Site, including:

[Billing and Payment Service](#)

[General Escrow Instructions](#)

[Privacy Policy](#)

[Copyright Policy](#)

[Site Usage](#)

[Provider Membership Fees](#)

[Dispute Resolution Process](#)

[Referral Program](#)

[Contacting Customer Support](#)

# **Billing and Payment Service**

Updated: June 5, 2009

[Return to Site Policies](#)

## **INTRODUCTION**

The Elance Billing and Payment Service ("**Payment Service**") enables Providers to issue invoices and enables Clients to make payments for services. When Client makes a payment through the Payment Service, Elance deducts the appropriate Service Fee and Payment Processing Fee due Elance as described on the Site. The Payment Service is intended for business use, so you agree to use the Payment Service primarily for business, and not primarily for personal, family, or household purposes.

## **MANDATORY USE OF BILLING AND PAYMENT SERVICE**

As a Client, you agree to use the Payment Service to make all payments to a Provider, for a period of one year after you identify the Provider through the Site, whether first-time, repeat, or follow-on. You also agree not to take any action directly or indirectly to circumvent the Elance Service Fee. You may opt out of the foregoing obligation for any Provider you identify, if you pay Elance an Opt-Out Fee for such Provider as provided below.

As a Provider, you agree to use the Payment Service to receive all payments from a Client for a period of one year after you identify the Client through the Site, whether first-time, repeat, or follow-on (“**First-Year Payments**”). In addition, you acknowledge and agree that a Client is not obligated to pay any invoice to you unless you originated that invoice through the Payment Service. If Elance notifies you that your Client has paid Elance an Opt-Out Fee, the foregoing obligations will not apply for your work with that Client.

## **OPT-OUT FEE**

A Client and Provider are not required to use the Payment Service only if the Client pays Elance a fee in the amount of \$750 (“**Opt-Out Fee**”) for identifying the Provider through the Site. The Client may elect to pay the Opt-Out Fee at any time. Once the Client pays the Opt-Out Fee, the Client and the Provider may request, make, and accept payments outside the Site for any work they do together thereafter. You must contact Elance by sending an email to us at the following email address: ***optoutfee (at) elance.com*** for instructions on how to pay an Opt-Out Fee.

If a Client does not use the Payment Service to make all First-Year Payments to a Provider as agreed above, and fails to pay the Opt-Out Fee, then the Client agrees that it is liable and will pay to Elance the greater of: (a) \$750 or (b) the amount of all Service Fees that Elance would earn or would have earned on all First-Year Payments, and in either case plus interest at the rate of 18% per annum or the maximum rate permitted by applicable law, whichever is less, calculated from the date the Client first makes payment to the Provider identified through the Site.

## **NON-CIRCUMVENTION OF PAYMENT SERVICE**

You agree not to circumvent the Payment Service. Prohibited acts include (but are not limited to) the following:

- Submitting proposals or soliciting Clients identified on the Site to contact, hire, manage or pay outside the Site.
- Accepting proposals from or soliciting Providers identified on the Site to contact, deliver Provider Services, invoice, or receive payment outside the Site.
- Invoicing or reporting on the Site an invoice or payment amount different than that agreed between Client and Provider.

As a Client, you agree to notify Elance immediately if your Provider solicits payment from you outside the Site. As a Provider, you agree to notify Elance immediately if your Client seeks to pay you outside the Site. If you are aware of a breach of the foregoing prohibitions, or any potential circumvention of the Payment Service, please submit a confidential report to Elance by sending an email to us at the following email address: ***policy (at) elance.com***.

## **LEGAL NATURE OF PAYMENT SERVICE**

When you use the Payment Service to bill for or pay service fees, Elance acts as your agent based upon your direction and your requirements to perform tasks on your behalf. Elance holds your Account funds separate from its corporate operating accounts, and will not voluntarily make your funds available to its creditors in the event of a bankruptcy or for any other purpose.

ELANCE IS NOT A BANK, AND AMOUNTS TRANSFERRED THROUGH OR STORED IN THE

PAYMENT SERVICE ARE NOT INSURED DEPOSITS. You will not receive interest or other earnings on the funds in your Account. Elance may earn and retain interest on those funds, or may receive a reduction in fees or expenses charged for banking services or other compensation in respect of any balances in Accounts.

By initiating invoices and sending payments through the Payment Service or adding funds to your Account, you appoint Elance as your agent to obtain the funds on your behalf and to transfer the funds to the recipient that you designate, subject to the terms and conditions of this Billing and Payment Service Policy and the Elance Terms of Service. Each Provider must properly discharge and credit Clients for all payments that Elance receives through the Payment Service from such Clients.

### **No Responsibility for Provider Services or Client Payments**

Elance acts as a payment provider by creating, hosting, maintaining, and providing the Payment Service to you via the Internet. Elance does not have any control over the Provider Services invoiced or paid for with the Payment Service, nor whether a Client or Provider you are dealing with will actually complete the transaction. Nothing in the Payment Service will be deemed to constitute Elance your agent with respect to any Provider Services purchased and sold by Users through the Site, or expand or modify any warranty, liability or indemnity stated in these Terms of Service.

### **Disputes Between Clients and Providers**

Any disputes in connection with services provided by Providers or payments made by Clients remain between such Clients and Providers. By using the Payment Service, you agree to follow the [Dispute Resolution Process](#). You further acknowledge that Elance will not be a party to any such dispute. Elance will attempt to take the actions set forth in the Dispute Resolution Process, but Elance will not be obligated to take any other action or refrain from taking any other action toward resolving any such dispute. Elance may, at its sole discretion, and in the case of Escrow Jobs may be required to, withhold or delay payment or continue to hold amounts in Escrow or make payment or release funds in Escrow, in the event of dispute between a Client and a Provider.

## **HOW TO BILL FOR SERVICES USING THE PAYMENT SERVICE**

To request payment from a Client using the Payment Service, Provider must follow the instructions and Payment Service links on the Site and provide the information requested. By requesting payment, Provider authorizes Elance to bill such Client and receive payments from the Client on Provider's behalf in the amounts stated on the applicable Payment Service Web page.

When Provider requests payment from a Client, such request is: (1) Provider's representation that it has completed the applicable Provider Services fully and satisfactorily, and (2) Provider's irrevocable instruction to Elance to invoice and accept payment from the Client on Provider's behalf. Once Elance has charged the Client, if the Client's credit card company, bank, or PayPal charges back any amount to Elance for any reason, Provider hereby agrees to repay Elance for such amounts, plus reasonable attorney fees and costs of collection.

## **HOW TO PAY FOR SERVICES USING THE PAYMENT SERVICE**

To pay a Provider using the Payment Service, Client must follow the instructions and links on the Site and provide the information requested. Client must be a Member that holds a valid credit card issued by a bank acceptable to Elance or a Member that holds a Verified PayPal account. Unless Client has a balance in their Account, Elance will charge the Client's credit card, bank account, or PayPal for the

necessary amount. By providing Elance with credit card or bank account information, Client authorizes Elance to charge such credit card or bank account for the amounts stated on the applicable Payment Service Web page.

When Client instructs Elance to pay a Provider using the Payment Service, such instruction is: (1) Client's representation that it has inspected the work and the Provider has completed the applicable Provider Services fully and satisfactorily; (2) Client's final acceptance of the Provider Services; and (3) Client's irrevocable instruction to Elance to pay the Provider. Once Elance has paid funds to the Provider, Client agrees NOT to ask its credit card company or bank to charge back any amount to Elance for any reason. If Client does so, Client hereby agrees to repay Elance for such amounts, plus reasonable attorney fees and costs of collection.

## **MISCELLANEOUS PAYMENT SERVICE TERMS**

### **Authorized Payments are Final**

Your use of the Payment Service constitutes your agreement to pay for any amounts which you authorize us to charge against your Account and, as appropriate, your credit card, bank account, or PayPal. Such payments, once authorized, are final.

### **Erroneous or Duplicate Transactions; Charge Backs**

Elance reserves the right to seek reimbursement from you, and you will reimburse Elance, if Elance discovers erroneous or duplicate transactions, or Elance receives a charge back from any Client's credit card company, bank, or PayPal for any reason. You agree that Elance has the right to obtain such reimbursement by charging your Account, deducting amounts from future payments or withdrawals, charging your credit card, or obtaining reimbursement from you by any other lawful means. Failure to pay for reimbursements of charge backs is cause for termination of your Account.

### **Currency**

The Payment Service operates in US Dollars and therefore Elance is not responsible for currency fluctuations that occur when billing or crediting a credit or debit card denominated in a currency other than US Dollars, nor is Elance responsible for currency fluctuations that occur when receiving or sending payment via wire transfer, check or automated clearinghouse to and from your Account. Payments made to Elance in currency other than US Dollars may take up to eight weeks to process, depending on relationships among the banking and payment systems between the two countries. Consequently, balance adjustments may be delayed.

### **Withdrawal of Funds**

To withdraw funds from your Account, you must request such funds using any of the withdrawal methods available on the Site. Any such requests shall be subject to the conditions and restrictions contained on the Site and in these Terms of Service. Notwithstanding any other provision of these Terms of Service, if Elance determines in its sole discretion that a Member has violated the conditions and restrictions of the Site or Terms of Service, Elance has the right to refuse to process the withdrawal.

### **Hold on Account Funds**

Elance will make funds deposited in your Account generally available for you to use or withdraw. Elance reserves the right, at its sole discretion, to place a hold on funds for Client payments to clear, or if Elance suspects monies may be subject to charge back or if fraud is suspected. Elance will release a hold as

soon as practical.

### **Agreement to Pay**

If, for any reason, Elance does not receive payment for any amounts that you have authorized to be paid through your use of the Payment Service or other Elance Services, you agree to pay such amount immediately upon demand by Elance. You also agree to pay any interest charges, attorneys' fees and other costs of collection incurred by Elance in collecting from you the authorized but unpaid amount. In such case, Elance may, at its option, stop processing any further payments made by you and apply any amounts then held by Elance on your behalf toward any deficiencies, losses or costs that we have incurred as a result of your use of the Payment Service or other Elance Service. We may also make appropriate reports to credit reporting agencies, financial institutions, tax agencies and law enforcement authorities, and cooperate with them in any resulting investigation or prosecution.

### **Inactive Accounts; Abandoned Accounts**

For purposes of determining Inactive Account status and Abandoned Account status, "**activity**" means payment of subscription fees, payment or receipt of Job fees, or actions under the Dispute Resolution Process.

**Inactive Accounts.** Effective July 1, 2009, if your Account has a balance, but has had no activity for at least six consecutive months, your Account will be placed on "**Inactive**" status. Elance will notify you that your Account is Inactive by sending an email to your registered email address and give you the option of keeping your Account open and maintaining the balance or withdrawing the balance. If your account has no activity within thirty days after such notice, Elance will automatically deduct an Inactive Account Fee of \$5 per month thereafter, to recover administrative costs and costs of holding funds. Elance will send monthly notices of such fees to your registered contact information.

**Abandoned Accounts.** Effective July 1, 2009, if your Account has a balance, but it has had no activity for at least 18 consecutive months or has been on Inactive status for at least 12 consecutive months, Elance will automatically close your Account and attempt to either (a) wire transfer the entire Account balance to your registered bank account or (b) mail a check in the amount of your entire Account balance to your registered mailing address. If those attempts fail, the Account balance may escheat to the State of California.

### **Questions**

If you have any questions, suggestions or reports of problems regarding the Payment Service, please contact [Customer Support](#).

# **General Escrow Instructions**

Updated: June 5, 2009  
[Return to Site Policies](#)

These General Escrow Instructions govern an Escrow established by Client and Provider pursuant to the Terms they have jointly agreed to on the Site. The "**Escrow Instructions**" are comprised of these General Escrow Instructions, the Elance Terms of Service, and such Terms. Client and Provider are deemed to have executed the Escrow Instructions pursuant to the federal Electronic Signatures in Global and National Commerce Act (the E-Sign Act) (15 U.S.C. Sec. 7001, et seq.), by clicking to accept the Terms or clicking to fund Escrow at the Site, and doing so constitutes an acknowledgement that you are

able to electronically receive, download, and print the Escrow Instructions. By clicking to accept an Escrow Job, Client has agreed automatically to the Escrow Instructions effective when Provider clicks to Accept the Job. By clicking to Accept an Escrow Job, Provider has agreed automatically to the Escrow Instructions. All references to the Escrow in these General Escrow Instructions will include the initial Funding Approval and any additional Funding Approval for the Job.

The direct provider of the escrow services pursuant to the Escrow Instructions is Elance Escrow Corporation, a Delaware corporation (“**EEC**”). EEC is a wholly-owned corporate subsidiary of Elance. EEC is licensed as an Escrow Agent by the Department of Corporations, State of California, License No. 963 5086. Client and Provider hereby employ, authorize, and instruct EEC to act as Escrow Holder and Escrow Agent in connection with the applicable Job to provide for the retention, administration, and controlled release of the escrowed funds in accordance with the Terms and subject to and conditioned on the Escrow Instructions. You authorize EEC to disburse to Elance amounts released from Escrow pursuant to the Escrow Instructions in payment of Service Fees payable to Elance pursuant to the Elance Terms of Service.

Throughout these General Escrow Instructions, the terms “Elance,” “us,” and “we” are intended to mean both EEC and Elance unless the context otherwise requires.

## **FUNDING ESCROW**

When Client Submits a Funding Approval on the Site, Client irrevocably authorizes Elance to use the Payment Service to charge Client's Account and, as appropriate, Client's credit card, bank, or PayPal in the amount of the applicable Funding Approval, and deposit any amounts collected thereby into an Escrow Account for the Job. If Elance cannot collect such amount for any reason, Elance has no obligation with respect to the creation or funding of the Escrow or any addition to such Escrow. Unless and until Client submits the initial Funding Approval with Elance, Elance has no obligation with respect to the Escrow. **OTHER THAN CHARGING CLIENT'S ACCOUNT AND, AS APPROPRIATE, CLIENT'S CREDIT CARD, BANK, OR PAYPAL, ELANCE HAS NO OBLIGATION WITH RESPECT TO THE CREATION OR FUNDING OF THE ESCROW OR ANY ADDITION TO SUCH ESCROW.**

**Client's Submission of Funding Approval for an Escrow constitutes Client's agreement to pay the amounts that Client authorizes Elance to charge against Client's Account and, as appropriate, Client's credit card, bank, or PayPal. Such payments, once authorized, are final, and Elance will release amounts in the Escrow only pursuant to the Escrow Instructions.**

## **USE OF FUNDS IN ESCROW ACCOUNT**

Elance uses funds deposited in the Escrow Account only in accordance with the Escrow Instructions. Elance will not voluntarily make funds deposited in the Escrow account available to its creditors in the event of a bankruptcy or for any other purpose. These General Escrow Instructions are supplementary to the Terms, the Elance Terms of Service, and to any other agreement between Client and Provider concerning the Job, as provided in 11 United States [Bankruptcy] Code, Section 365(n).

## **ESCROW ACCOUNT DEPOSIT**

Elance deposits and maintains all funds in the Escrow Account in a bank insured by the Federal Deposit Insurance Corporation and approved to receive escrow funds under applicable laws and regulations. You agree that you will not receive interest or other earnings on the funds in the Escrow Account. Elance may earn and retain interest on those funds, or may receive a reduction in fees or expenses charged for banking services or other compensation in respect of any balances in Escrow Accounts.

## ESCROW STATUS

Client and Provider may access current information regarding the status of the Escrow on the Site.

## RELEASE AND DELIVERY OF AMOUNTS IN ESCROW

E lance is authorized to and will release applicable portions of the Escrow Account (each portion a "Release") to Provider or Client only pursuant to one or more Release Conditions provided below. Provider and Client authorize Elance to use the Payment Service to deliver the amount of any Release, and to withhold from Provider those amounts Elance is entitled to withhold pursuant to the Payment Service.

### Release Conditions

As used in these General Escrow Instructions, "Release Conditions" means any of the following:

1. Client's or Provider's Approval of a Release request on the Site
2. Client's or Provider's failure to timely upload to the Site Contrary Instructions pursuant to the Dispute Resolution Process below
3. Client's and Provider's delivery of joint written instructions to Elance
4. Client's or Provider's failure to submit to binding arbitration requested by the other pursuant to the [Dispute Resolution Process](#)
5. Client and Provider have failed to initiate arbitration for an unresolved dispute by the Limitations Date in accordance with the [Dispute Resolution Process](#)
6. An Escrow Account has no activity for six consecutive months after the scheduled Job completion date
7. The final binding determination of an arbitrator from which appeal is not taken
8. The final binding order of a court from which appeal is not taken

### Service Fees; Payment Processing Fees

When Client pays or releases escrow funds to a Provider through the Site, Elance deducts certain Service Fees and Payment Processing Fees, as described in [Fees](#).

## ESCROW DISPUTES

For six months after the Breach Date applicable to any dispute arising between Client and Provider regarding an Escrow (excluding disputes involving claims for injunctive or other equitable relief), the Client and Provider will pursue resolution of the dispute in accordance with the [Dispute Resolution Process](#):

### Escrow During Dispute Resolution Process

During the Dispute Resolution Process, Elance will continue to hold the Escrow pending a Release Condition.

## **RELEASE OF ESCROW ACCOUNT**

Upon any Release, the Escrow will terminate as it relates to the portion of the Escrow Account so released. Upon Release of Escrow funds for the final milestone the entire Escrow Account will terminate.

### **Releases are Final**

**Your approval of a Release of any amount in the Escrow Account constitutes your agreement to release such amounts from the Escrow. Any such release is final.**

## **ESCROW AGENT DUTIES**

Ealance undertakes to perform only such duties as are expressly set forth in the Escrow Instructions and no other or further duties will be implied. Ealance has no liability under and no duty to inquire as to the provisions of any agreement other than the Terms and the Escrow Instructions. Ealance will be under no duty to inquire into or investigate any agreement or communication between Client and Provider, even if uploaded to the Site. Ealance has the right to rely upon, and will not be liable for acting or refraining from acting upon, any written notice, instruction, or request furnished to it in accordance with these General Escrow Instructions, if Ealance reasonably believes that such notice, instruction, or request is genuine and that it is signed or presented by the proper party or parties. Ealance has no duty to inquire into or investigate the validity, accuracy or content of any such document. Ealance has no duty to solicit any payments or Releases which may be due to or from any Escrow Account. Ealance may execute any of its powers and perform any of its duties under the Escrow Instructions directly or through agents or attorneys (and will be liable only for the careful selection of any such agent or attorney) and may consult with counsel, accountants and other skilled persons to be selected and retained by it. Ealance will not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons. If Ealance is uncertain as to its duties or rights hereunder or receives instructions, claims or demands from any party hereto which, in its opinion, conflict with any of the provisions of the Escrow Instructions, Ealance will be entitled to refrain from taking any action and its sole obligation will be to keep safely all property held in Escrow until it is directed otherwise in writing by Client and Provider or by a final order or judgment of an arbitrator or court of competent jurisdiction.

## **ESCROW AGENT RIGHTS**

Ealance has the right in its sole discretion but not the obligation to institute Arbitration in accordance with the foregoing, or to institute any other legal proceedings including depositing funds held in Escrow with a court of competent jurisdiction, to resolve any dispute between Client and Provider related to an Escrow. Any provision of these General Escrow Instructions to the contrary notwithstanding, and regardless whether Ealance is identified as a party in interest in any dispute, arbitration or other legal proceeding, nothing herein will be construed to limit Ealance's legal and equitable rights, including but not limited to depositing funds held in Escrow with a court of competent jurisdiction. In case of fraud, Ealance has the right to Release funds held in Escrow to the defrauded party. Any corporation or association into which Ealance may be merged or converted or with which it may be consolidated, or any corporation or association to which all or substantially all the escrow business of Ealance may be transferred, will succeed to all the rights and obligations of Ealance as escrow agent under these General Escrow Instructions without further act.

## **TERM AND TERMINATION OF ESCROW**

The Escrow will terminate automatically upon Release of all funds in the Escrow Account. Elance reserves the right to terminate the Escrow, for any reason, by providing Client and Provider 20 days written notice.

### **Survival of Terms Following Termination**

Upon termination of the Escrow, the remaining provisions of the Elance Terms of Service will survive, including, without limitation, obligations to pay Elance any amounts, provisions concerning dispute resolution, limitation of liability, and indemnification obligations.

## **MISCELLANEOUS ESCROW TERMS AND CONDITIONS**

### **Notice of Requested Order**

If Provider or Client intends to obtain an order from any arbitrator or any court, which order might direct Elance to take, or refrain from taking any action with respect to the Escrow, that party will: (1) give Elance at least five business days prior notice of the hearing; (2) include in any such order a provision that, as a precondition to Elance's obligation, Elance be paid in full for any amounts to which Elance would otherwise be entitled; and (3) be paid for the reasonable value of the services to be rendered pursuant to such order.

### **No Third-Party Rights**

The Escrow Instructions are intended solely for the benefit of Client, Provider, Elance, and their respective permitted successors and assigns, and no other person or entity has or acquires any right by virtue of the Escrow Instructions unless otherwise expressly agreed to in writing by Client, Provider, and Elance.

### **Dormant Escrow Accounts**

Effective July 1, 2009, if an Escrow Account has a balance, but has had no activity for six consecutive months after the scheduled Job completion date, then Provider will be deemed to have instructed Elance, and Elance will, Release the entire Escrow Account balance to the Client and close the Escrow Account. In that case, Elance will deduct an escrow fee of \$25 or 2.75% of the amount of the Release, whichever is greater, to recover any banking, payment processing, and administrative costs and other costs of holding funds. For purposes of determining dormant status, "**activity**" means business term or milestone updates, Escrow Funding, Escrow Release, Job Cancellation requests, or actions under the Dispute Resolution Process.

### **Successors and Assigns**

These General Escrow Instructions are binding upon and inure to the benefit of the successors and assigns of Client, Provider, and Elance. However, Elance has no obligation in performing the Escrow Instructions, to recognize any successor or assign of Client or Provider unless Elance receives clear, authoritative, and conclusive written evidence of the change of such parties.

# Privacy Policy

Updated: June 5, 2009  
[Return to Site Policies](#)

Please view our Privacy Policy at <http://www.elance.com/p/help/tos/privacy.html>

# Copyright Policy

Updated: June 5, 2009  
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## REMOVAL OF MATERIAL FOR WHICH COPYRIGHT INFRINGEMENT IS CLAIMED

Pursuant to 17 USC. § 512 as amended by Title II of the Digital Millennium Copyright Act, **Elance** has implemented procedures for receiving written notification of claimed infringements and for processing such claims in accordance with the Act. If you believe your copyrights are being infringed by a user of the Site Services available at the domain and sub-domains of [www.elance.com](http://www.elance.com), please fill out a [Notice of Infringement form](#) and fax it to **Elance Copyright Infringement Notices at 650-316-7501**.

The information requested by the Notice of Infringement form substantively complies with the safe harbor provisions of the Digital Millennium Copyright Act, 17 USC. § 512(c)(3)(A), which provides:

To be effective under this subsection, a notification of claimed infringement must be a written communication provided to the designated agent of a Provider that includes substantially the following:

1. A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
2. Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online Site are covered by a single notification, a representative list of such works at that Site.
3. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the Provider to locate the material.
4. Information reasonably sufficient to permit the Provider to contact the complaining party such as an address, telephone number, and if available, an electronic mail address at which the complaining party may be contacted.
5. A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent or the law.
6. A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Notification from a copyright owner or from a person authorized to act on behalf of the copyright owner that fails to comply substantially with the provisions above shall not be considered as providing actual knowledge or an awareness of facts or circumstances from which infringing activity is apparent.

**Please provide a Notice of Infringement form each time you wish to report alleged acts of infringement and fax it to the number provided.**

# Site Usage

Updated: June 5, 2009  
[Return to Site Policies](#)

## COMMUNICATION

Elance encourages detailed and professional communication between Clients and Providers through the Site. You are required to log onto the Site to manage Jobs and use the Workrooms to maintain an electronic record of all written communication including clarifications and agreements around scope, deliverables, milestones, timeframes, price, feedback on deliverables, requests for revisions, acceptance of deliverables and completion of milestones. You must transcribe into the Workroom all relevant emails, instant messages, telephone or in-person conversations between the Client and the Provider to maintain a record. If there is a dispute, all written communication on the Site, including Job posting, proposals, Terms, messages, and any communications transcribed to the Workroom will serve as the record for resolution of the dispute. A communication that is not saved in or copied to the Workroom cannot be submitted as evidence in the Elance Dispute Resolution process after a dispute is reported.

Elance provides a designated space in the Provider profile to enter email address, telephone number and instant message IDs. Providers must not enter contact information or solicit private communications in public messages, in proposal comments, in Job descriptions, or sections of their Elance profile outside of the designated Contact Information fields.

## POSTING INFORMATION AND CONTENT

You agree to provide true, accurate and complete information whenever you post any information or content on the Site (including but not limited to posting a request for Provider Services, providing a proposal for a posted Job, posting your profile and providing feedback). You agree to update such information whenever it changes. You agree to use good judgment when posting information, remarks or other content regarding other Users, Members, Clients, Providers, Elance or any other third party. You understand that you may be held legally responsible for damages suffered by other Users, Members, Clients, Providers, Elance or any third party as a result of legally actionable or defamatory comments, remarks or other information or content which you post to the Elance Site. Under federal law (specifically, the Communications Decency Act of 1996), Elance is not legally responsible for any remarks, information or other content posted or made available on its Site by any User or third party, even if such information or content is defamatory or otherwise legally actionable. Elance is not responsible for and does not monitor or censor content for accuracy or reliability. Elance reserves the right to remove or restrict access to any information, content or Job posted or made available on the Site in its sole discretion, or if ordered to do so by a court, or if Elance considers such information or content to be in violation of the Elance Terms of Service.

## POSTING JOBS

As a Client, when posting Jobs and hiring Providers, you agree to the following guidelines:

- Post Jobs with clear scope, well-defined deliverables and required time frames. Do not hesitate to contact [Customer Support](#) for assistance with posting a Job.
- Answer clarifying questions from Providers and update the Job description.
- Accept a proposal only when it has a clear description of the work, well-defined deliverables and milestones, precise timeframes and payment terms.
- Evaluate multiple proposals against criteria important to you, such as a Provider's work experience, education, portfolio, certifications, references, feedback from prior Clients, location,

- communication style and cost.
- Ask the Provider to utilize the Terms feature on the Site to define key milestones and payment schedules.
- Ask for the Provider's office hours and standard response times.
- Once you have hired for your Job, log onto the Site to manage the Job and use the Workroom as described in the section entitled "Communication."

## **PROHIBITED JOB POSTINGS**

You agree NOT to do any of the following when you post a Job or transmit information on the Site:

- Post any Job, submit any proposal, or otherwise use Elance to transmit any content or conduct any transaction that would violate any applicable law or regulation in the U.S. and any other country.
- Post any Jobs that are fake, posted without the intention to hire or complete the Job or posted only to receive pricing information.
- Post any Jobs that offer commission or equity compensation.
- Post any Jobs that request free services.
- Post any Job, proposal, deliverable or transmit any content that infringes a third party's intellectual property rights, license rights, the terms and conditions of use of such third party's Web site or copyrighted materials or such third party's rights of publicity or privacy.
- Post any Job, proposal, or deliverable or transmit any content related to or containing any adult or sexually explicit material.
- Post Jobs related to bulk email or spam, including but not limited to bulk email hosting, scripts, active code, programs, proxies, lists and relay servers.
- Post any Job, submit any proposal that violates, or has the potential to violate, the integrity of academic and professional applications, tests and work, for example, by passing off the skills, ideas or words of another as one's own; using another's production or content without crediting the source; presenting as new and original, ideas or products derived from an existing source; presenting fabricated facts, persons or sources as real.

## **PROHIBITED SITE ACTIVITIES**

You agree NOT to do any of the following on the Site:

- Post false or misleading information about a product, service or service request.
- Post logos, seals or slogans from third parties on the Site unless such material is provided by Elance or an Elance partner, or you have received express written permission from Elance to display such third-party logo, seal or slogan.
- Post or transmit any content that is profane, vulgar, racist, offensive, threatening, harmful, abusive, defamatory or disparaging.
- Post or transmit unprofessional or offensive comments about a User, Member, Provider, Client, Elance or any third party.
- Suggest or solicit another User to contact you directly in order to buy or sell services outside of Elance.
- Post or introduce software on the Site that: (i) is designed to disrupt, disable, harm or otherwise impede in any manner, including aesthetic disruptions or distortions, the operation of this Site or any other software, firmware, hardware, computer system or network (sometimes referred to as "viruses" or "worms"); (ii) would disable or impair this Site or any other software, firmware,

hardware, computer systems or networks in any way where such disablement or impairment is caused by the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral (sometimes referred to as "time bombs," "time locks" or "drop dead" devices); (iii) would permit you or any other person to access this Site or any other software, firmware, hardware, computer systems or networks to cause such disablement or impairment or transmit information (sometimes referred to as "traps," "access codes," or "trap door" devices, or "spyware"); or (iv) which contains any other similar harmful, malicious or hidden procedures, routines or mechanisms which would cause such programs to cease functioning or to damage or corrupt data, storage media, programs, equipment or communications or otherwise interfere with operations.

- Access, tamper with or use non-public or non-authorized areas of the Site. Unauthorized individuals attempting to access these areas of the Site may be subject to prosecution.
- Tamper with postings of other Users, Members or Elance.
- Solicit or gather any User's or Member's information available from the Site, such as other usernames and email addresses, for any commercial or business purposes or to transmit any unsolicited advertising, junk mail, spam or chain letters.
- Do anything which would create or impose an unreasonable or disproportionately large burden or load on the Site.
- Use robots, spiders, scrapers or other automated means to access information in our Site for any purpose without express written permission from Elance.
- Frame or link to the Site except as permitted in writing by Elance.
- Impersonate or misrepresent your affiliation with any person or entity.
- Require or request that a Provider deliver a free mock-up or proof of concept as part of a proposal submission or as a condition to consideration of a proposal.
- Repeat any action after you receive warning or request to desist from Elance, whether or not that action is explicitly prohibited in the policies stated on the Site.
- Fail to respond to an email from Elance regarding violation, dispute or complaint within two business days.
- Use the Site if you are not able to form legally binding contracts, are under age or are temporarily or indefinitely suspended from our Site.
- Take any action that may undermine the feedback or ratings systems (such as importing or exporting feedback information off the Site, or using feedback as an extortion mechanism).
- Copy, modify or distribute content from the Site, except for your own information and use, without the prior express written permission from Elance.
- Select a Client or hire a Provider on the basis of religion, sex or race.
- Violate a request by Elance to not post Jobs deemed by Elance in its sole discretion to be contrary to the interests of the Site or the Elance User community.

## **PROVIDING SERVICES**

### **Registering to Provide Services**

If you wish to provide services through Elance, you must complete the Provider registration process, pass the Elance admission test, and select a membership program. You agree to provide true, accurate, complete information and to update such information to maintain its truthfulness, accuracy and completeness. For purposes of your Elance registration information, your true, accurate, complete location is the primary place from which your Provider Services are rendered. Misleading information about your location is not allowed on Elance. At the beginning of your membership application, and from time to time thereafter, your Account may be subject to verification as well as editorial and feedback reviews. Elance can suspend or terminate your Account upon the discovery that any information you provided or posted is not true, accurate or complete, or as a result of other violations of the Elance Terms of Service.

## Proposal Guidelines

As a Provider, you agree to follow these guidelines when you submit a proposal:

- Provide proposals only for Jobs that you are a good fit for and you can complete within the Client's time frames.
- Help the Client clarify his or her needs and fully develop the Job scope and deliverables.
- Write a specific, detailed proposal with clear scope, deliverables and milestones.
- Set expectations that you can meet or exceed.
- Specify payment terms that tie to the completion of milestones.
- Specify how change orders will be handled.
- Specify how warranty work will be handled.
- Submit an accurate proposal reflecting your understanding of the scope of the Job and the amount of time/effort you plan to commit in order to provide high Client satisfaction.
- Inform the Client of your office hours and committed response time.
- Submit a new proposal when needed to reflect any changes to price, delivery date or approach, prior to the end of the proposal period.
- Not submit unreasonably low proposal prices or test proposals. If you wish to submit a proposal but require more information about the Job, post a message in the Public Messages area to request more information, indicating your assumptions regarding the Job scope in your proposal and making explicit that you will update the proposal once you receive more information.
- Not submit proposals that are made with the intent to commit fraud.
- Not submit boilerplate, placeholder or generic proposals.
- Not offer your services in exchange for good feedback or for free.

## Job Fulfillment Guidelines

You agree to the following Job fulfillment guidelines:

- Once you have been hired for a Job, log onto the Site to manage the Job and use the Workroom to maintain an electronic record of all written communication between you and the Client.
- Use the Workroom to record your understanding of the scope, deliverables, milestones, time frames, price, feedback, revisions, schedule changes, vacation, availability, delays, acceptance of deliverables and completion of milestones.
- Transcribe relevant emails, instant messages, telephone or in-person conversations between you and the Client into the Workroom to maintain a record of what is agreed.
- If there is a dispute, the data that you enter on the Site and the contents of the Workroom will constitute the sole and exclusive record of facts and evidence for resolution of the dispute.
- Inform the Client if a committed deliverable will be missed, offering an explanation and proposing a revised date.
- Inform the Client if you will be unavailable for more than one business day.
- If you are unable to complete the Job, alert [Customer Support](#) so that Elance is aware of the situation and can offer assistance to the Client.
- Respond promptly, within 1 business day, to all Job-related communication, whether from the Client or from Elance.

## Audit Provisions and Record Keeping

For a period of one year after accepting each Job, you agree to keep and maintain complete and accurate records related to the Provider Services that you perform for your Client, including the service description, the proposal and payment terms, and information on all repeat or follow-on Provider Services performed for each Client originated on Elance. If questions arise regarding services rendered, work performed or fees due to Elance, you agree to provide copies of these records and other relevant

documentation to Elance within 20 days of Elance's request.

## **RATING AND FEEDBACK SYSTEM**

Always leave objective balanced feedback about the Users with whom you have transacted. You acknowledge and agree that the Site contains public feedback from Users with whom you have transacted. You acknowledge that feedback results for you may consist of comments and ratings left by other Users and that Elance may calculate a composite feedback number based on these individual ratings. Providers agree to be rated by Clients along several criteria, as determined by Elance. Elance provides its feedback and rating system as a means through which Users can express their opinions publicly, and Elance does not monitor or censor these opinions or investigate any remarks posted by Users for accuracy or reliability unless a User brings the posting to Elance's attention. You may be held legally responsible for damages suffered by other Elance Users or third parties as a result of your remarks if a court finds that your remarks are legally actionable or defamatory. Under federal law, Elance is not legally responsible for any feedback or comments posted or made available on this Site by any Users or third parties, even if that information is defamatory or otherwise legally actionable.

You agree to report violations or abuses of our rating and feedback system immediately by contacting [Customer Support](#), and agree not to take any actions that undermine the integrity of the feedback system, including but not limited to the following:

- Leaving feedback for yourself using a secondary username or another Member's username.
- Leaving fake or inaccurate feedback for another User or Member.
- Soliciting other Elance Members to leave fake or inaccurate feedback.
- Threatening to leave negative feedback to induce another User or Member to perform a task not required by the Terms.
- Withholding deliverables or funds required by the Terms to induce another User or Member to leave positive feedback or no feedback.
- Feedback solicitation such as offering to sell or buy services in exchange for good feedback, trading feedback undeservedly or buying feedback.

In order to protect the integrity of the feedback system and protect Users from abuse, Elance will investigate and has the right (but is under no obligation) to remove posted feedback or information under the following scenarios:

- It seeks to elicit or solicit any User's contact information, such as other Users' email addresses, for any non-Elance related commercial or business purposes, or to transmit any unsolicited advertising, "junk mail," "spam," or "chain letters."
- It contains language that is profane, vulgar, racist or contains adult material. Insulting or inflammatory feedback is strongly discouraged but will not be removed.
- It is shown to have been left by any User who is in violation of Elance's Eligibility requirements, or by or for a User who has conducted any fraudulent transaction.
- It is not directly related to transactions conducted through Elance.
- It makes any reference to actions taken or purported to be taken by Elance or any law enforcement organization.
- Elance is provided with a ruling or settlement agreement from a valid and certified dispute resolution service, or is provided with a court order finding that the feedback or information posted is slanderous, libelous, defamatory or otherwise illegal.
- The User who posted the feedback or information provided Elance with false contact information during the transaction period (as verified by Elance) and cannot be contacted by Elance.
- The User who posted the feedback or information is participating in an Elance transaction with the intent of leaving feedback as part of a campaign to harass Elance member(s) (as verified by

- Elance).
- The User who posted the feedback or information informs Elance that it was intended for another User and posts the feedback or information for the appropriate User. This does not apply to feedback that was mistakenly marked negative instead of positive or vice versa, in which case the User can contact [Customer Support](#) to file a feedback review request.

# Provider Membership Fees

Updated: June 5, 2009  
[Return to Site Policies](#)

## PROVIDER MEMBERSHIP PROGRAMS

Elance offers several Provider membership programs as detailed on the Site. Each membership program includes a certain number of "**Connects**." These Connects reserve monthly capacity on the Site for the Provider to list proposals for Jobs. If a Provider requires additional listings in a given month, the Provider has the option to buy additional Connects through the Site. Unused Connects expire at the end of each monthly membership period. Because Connects reserve capacity, unused Connects are not carried over into the next month.

Elance reserves the right to change membership fees, the monthly number of Connects included in the membership programs or the price for additional Connects or institute new fees at any time, upon reasonable notice posted in advance on this Site. No refunds of fees already paid will be given. If Elance exercises its right to cancel a membership at any time, Elance will not refund the membership fee already paid.

## AUTOMATIC MEMBERSHIP RENEWAL

Provider membership fees can be paid by credit card, bank account, or PayPal, or through your Elance Account. The membership billing period begins on the date that Elance receives payment. Provider membership fees are calculated from the beginning of that billing period.

Elance automatically renews your Provider monthly membership and charges your default payment method. If your Account is set up to pay by credit card, bank account, or PayPal, you hereby authorize us to charge such credit card, bank account, or PayPal for the appropriate membership fees and amounts stated. If you are set up to pay via your Elance Account, Elance deducts the appropriate membership fee from the Account balance each month. Automatic renewal occurs on the first day after the expiration date. You can cancel by following the cancellation instructions listed below.

## CHANGES TO MEMBERSHIP PROGRAM

If you upgrade your membership program, the unused portion of a lower membership fee will be credited toward the higher membership fee. The new billing period will then be based upon the date Elance receives payment of the new membership fee. Upgrading a membership or adding additional categories will result in a new billing date effective upon the date of payment of the additional fees and, if applicable, will result in a credit of the unused portion of the existing category membership fees. If you downgrade a membership, you will not receive a refund or credit for the fees already paid. The downgrade will go into effect at the beginning of the next billing period. Elance reserves the right to modify its membership programs at any time, upon a reasonable notice posted in advance on this Site.

## Membership Cancellation Instructions

To cancel your membership, log onto the Site and click on the “Membership Status” link, then the “Edit my Membership Plan” link, or contact [Customer Support](#). Your cancellation request will be effective if received by 11:15 p.m. Pacific Time on the final day of your membership term. Elance will send you an email confirmation once your membership has been cancelled. You will not be liable for any additional membership fees after your cancellation is effective. Cancellation goes into effect at the end of the active billing period. In any notice of cancellation, you must include:

1. Your full name, Elance username, phone number and address.
2. Number of memberships you wish to cancel.
3. Levels (i.e., Individual Professional, Small Business, Large Business).
4. Categories you wish to cancel.
5. Term (i.e., monthly, quarterly or annual) of each membership you would like to cancel.
6. The last five digits of the payment method currently used for your Account (for your security, write only the last five digits; if you are paying with your Elance Account, please specify the last activity on your Elance Account).
7. Only if you are canceling via fax or certified mail, a printout of your Membership Status page.

Please note that we will not be able to process cancellation requests unless all of the above information is provided. Memberships that expire or are converted to Free Memberships are subject to a monthly Account fee until remaining funds are removed or expire. Please consult the Site or contact Customer Support for the current fee level.

# Dispute Resolution Process

Updated: June 5, 2009  
[Return to Site Policies](#)

## HOW TO AVOID DISPUTES

Disputes may arise due to miscommunication and can often be resolved amicably between the parties. Elance recommends the following steps to avoid disputes:

- Follow all rules and guidelines in the Site Usage Policy.
- Answer clarifying questions from your Clients or Providers and update the Job description and the proposal.
- Review the [Sample Contracts](#) posted on the Site for applicability to your situation, or obtain legal advice and upload a written agreement into the Workroom.
- Use the Terms and Change Order features found by logging onto the Site, to define key milestones and payment schedules.
- Ask for the other party’s office hours and standard response times.
- Maintain open lines of communication. Be clear about your expectations and check in frequently with the other party.
- Set milestone deliverables and use Escrow to fund each milestone and release funds when the milestone is complete.
- Document any changes to scope, timing or payment in writing, and utilize the Terms and Change Order feature to add all milestones and payment schedules.

## WHAT IF I HAVE A DISPUTE WITH ANOTHER MEMBER?

If you have used the Site in accordance with the Elance Terms of Service and you have a dispute with another User (“**Opposing Party**”), the Dispute Resolution Process consists of three phases subject to limitation based on the type and status of Job in dispute:

1. **Member Resolution** - Available on all Jobs.
2. **Elance Dispute Assistance** - Available only for Escrow Jobs.
3. **Arbitration** - Available only for Escrow Jobs.

**Notice of Disputes Resolved.** Any agreement resolving the dispute between you and the Opposing Party must be posted (and confirmed by both parties) as text or attachments onto the Workroom to allow Elance to maintain a record of the disposition of the matter.

### Key Dates

For all disputes regardless of type and status of a Job in dispute, you must be aware of the following key dates in any dispute:

**"Breach Date"** means the later of (1) the date on which the events causing the breach of your agreement with the other User first took place, and (2) the date on which you learned, or reasonably should have learned, about those events.

**"Dispute Initiation Date"** means the earlier of: (1) the date a Client or Provider uploads to the Workroom the completed "[Dispute Notice Form](#)" made available by Elance on the [Dispute Resolution Help page](#) or (2) the date a Client submits a Job Cancellation Form on the Site. You must upload your completed Dispute Notice Form to the Workroom or submit your Job Cancellation Form on the Site at least 15 days prior to the six month anniversary of the Breach Date (see the paragraphs entitled "**Limitations Period**" and "**Arbitration for Escrow Jobs**" below).

**"Limitations Date"** means the date six months following the Breach Date. You do not have a right to initiate a claim or cause of action or demand arbitration after the Limitations Date.

**Limitations Period.** The six-month anniversary of the Breach Date is the statute of limitations date or "**Limitations Date.**" All claims must have a Dispute Initiation Date prior to the Limitations Date or the claim is barred. You do not have a right to initiate a claim or demand Arbitration after the Limitations Date. You must upload your completed Dispute Notice Form to the Workroom at least 15 days prior to the six-month anniversary of the Breach Date or you will not have the right to initiate a claim or demand arbitration, and your claim or cause of action will be barred (see the section entitled "**Arbitration for Escrow Jobs**" below).

### Member Resolution for Non-Escrow Jobs

For non-Escrow Jobs, please upload to the Workroom a completed Dispute Notice Form as made available by Elance on the [Dispute Resolution Help page](#) (posting in the Workroom allows Elance to maintain a record of each party's positions in the dispute). You must allow the Opposing Party 15 days to respond and attempt to resolve the dispute with you, before you initiate any claim.

### Member Resolution for Escrow Jobs

For Escrow Jobs, if Provider or Client requests an Escrow Release or a modification to the Terms due to changed circumstances imposed by the other party, and if the other party does not approve such Release or modification within five business days after such request was posted on the Site, then either (1)

Provider or Client has the right to upload to the Workroom a completed Dispute Notice Form as made available by Elance on the [Dispute Resolution Help page](#), or (2) Client has the right to submit a completed Job Cancellation Form on the Site, as the case may be.

**Contrary Instructions.** If Provider or Client uploads a completed Dispute Notice Form or Job Cancellation Form, the other party has three business days to respond in the Workroom with contrary instructions ("**Contrary Instructions**") before Provider or Client has the right to make a request to Elance for assistance. Contrary Instructions means a good faith written representation: (1) If by Client, that Client has not received all Milestone Deliverables required for a Release pursuant to the Terms, or (2) If by Provider, that Provider has delivered all Milestone Deliverables required for a Release.

**Failure to Upload Contrary Instructions.** If Client or Provider does not upload Contrary Instructions to the Site within three business days following Provider's or Client's original upload of the Dispute Notice Form or Job Cancellation Form, Provider or Client will notify Elance of such failure, Elance will then notify the Client or Provider and require a response. If Client or Provider does not respond to Elance within five business days of Elance's demand then Client and Provider will be deemed to have agreed to the Release sought in the Dispute Notice Form or the cancellation sought in the Job Cancellation Form, and either (1) Client and Provider will be deemed to have authorized and instructed Elance to, and Elance will, make the Release to the Provider or (2) Provider and Client will be deemed to have authorized Elance to, and Elance will, make the Release to the Client, as the case may be.

**Response to Contrary Instructions.** If Client or Provider timely uploads Contrary Instructions to the Site, the other party has the right within three business days to upload a good faith response. Then, Client and Provider have the right to upload and respond successively, with the goal of resolving in good faith any dispute and delivering joint written instructions to Elance concerning a Release. Client and Provider will not terminate such discussion and negotiation prior to the earlier to occur or delivery of joint written instructions to Elance concerning a Release, or the date 15 business days following the original upload of the Dispute Notice Form or Job Cancellation Form.

### **Elance Dispute Assistance for Escrow Jobs**

If the Job is an Escrow Job, and if you upload the Dispute Notice Form to the Workroom or submitted the completed Job Cancellation Form but the Opposing Party does not respond within three business days, or if the Opposing Party responds but you cannot come to an agreement within an additional three business days after their response, then Elance will notify both the Opposing Party and you to try to re-establish communication between the two of you to encourage settlement of the dispute. If either party fails to respond to an email message from Elance regarding violation, dispute or complaint within two business days, Elance has the right to terminate that party's Job or Account. Elance is a neutral third party and has no further obligations. No Elance employee is authorized to make any recommendation or guaranty regarding the dispute.

By using the Site you agree that if for any reason the parties fail to agree on a resolution to the dispute within 15 days of the Dispute Initiation Date, then the provisions of the section below entitled "**Arbitration for Escrow Jobs**" will automatically apply.

### **Arbitration for Escrow Jobs**

**Arbitration.** If the Job is an Escrow Job, if the dispute is not settled within 15 days after the Initiation Date, you agree that if either (a) there are funds in the Escrow Account or (b) it has been less than 30 days since the Release of Escrow Funds for any Milestone, then you and the Opposing Party (the "**Dispute Parties**") each has the right for 30 days following the Release of Escrow Funds for any Milestone, to demand binding, non-appearance-based arbitration to resolve the dispute ("**Arbitration**"). Any such Arbitration will be conducted by a neutral third-party dispute resolution service that Elance will choose and engage in its sole discretion ("**Arbitrator**"). If the Opposing Party demands Arbitration in

accordance with the foregoing, you agree to submit to such Arbitration in accordance with the Elance Terms of Service. If the amount in dispute is less than \$600, the Arbitrator must be a single arbitrator unless both parties request a panel of Arbitrators. If the amount in dispute is \$600 or more, the Arbitrator must be a panel unless both parties request a single Arbitrator. You agree that in any such Arbitration: (a) each Dispute Party and Elance will pay one-third of the first \$600 of the Arbitrator's fees; (b) each Dispute Party will pay one-half of any amount by which the Arbitrator's fees exceed \$600; and (c) each Dispute Party will solely bear and pay any other costs it incurs related to the Arbitration. You hereby agree that Elance will charge your Account, or your credit card, bank account, or PayPal for the amount of the Arbitrator's fees owed by you in accordance with the foregoing.

If Provider or Client requests binding Arbitration ("**Requesting Party**"), the other party ("**Responding Party**") has three business days following receipt of notice from the Arbitrator to submit to such Arbitration. If Responding Party fails to submit to such Arbitration within three business days, Elance will promptly notify Responding Party of such failure and demand that Responding Party submit to such Arbitration within three more business days. If Responding Party fails to submit within three business days after Elance sends such notice, then: (1) Responding Party will be deemed to have agreed to the Release sought by the Requesting Party; (2) if the dispute involves funds held in Escrow, Responding Party will be deemed to have authorized Elance to, and Elance will, make the Release sought by the Requesting Party; and (3) Elance has the right to terminate or suspend the Responding Party's Account.

**Failure to Arbitrate.** If Provider or Client requests binding Arbitration ("**Requesting Party**"), the other party ("**Responding Party**") has three business days following receipt of notice from the Arbitrator to submit to such Arbitration. If Responding Party fails to submit to such Arbitration within three business days, Elance will promptly notify Responding Party of such failure and demand that Responding Party submit to such Arbitration within three more business days. If Responding Party fails to submit within three business days after Elance sends such notice, then: (1) Responding Party will be deemed to have agreed to the Release sought by the Requesting Party; (2) Responding Party will be deemed to have authorized Elance to, and Elance will, make the Release sought by the Requesting Party; and (3) Elance has the right to terminate or suspend the Responding Party's Account.

If both Provider and Client fail to request binding Arbitration for an unresolved dispute by the Limitations Date in accordance with the [Dispute Resolution Process](#), then Provider will be deemed to have instructed Elance, and Elance will, make a Release to the Client. In that case, Elance will deduct an escrow fee of \$25 or 2.75% of the amount of the Release, whichever is greater, to recover any banking, payment processing, and administrative costs and other costs of receiving and holding funds.

**Reminders and Statute of Limitation.** Elance will send periodic reminders to you and the Opposing Party (the "**Dispute Parties**") to remind you of the ongoing dispute and the need to resolve it prior to the Limitations Date. If the dispute has not been resolved and neither Dispute Party has demanded Arbitration by the Limitations Date, then (1) Provider will be deemed to have agreed to the Release sought by the Client; (2) if the dispute involves funds held in Escrow, Provider will be deemed to have authorized Elance to, and Elance will, make the Release sought by the Client; (3) Elance has the right to terminate or suspend either or both the Provider's and the Client's Account; and (4) any further claims or causes of action in such dispute will be forever barred. The Arbitrator has the power to determine whether the Breach Date entered into Elance's system is correct or if the Limitations Date should be extended or "tolled" due to your reasonable reliance on the Opposing Party's assurances that it would cure the breach.

**Release of Escrowed Funds.** If the Job in dispute involved Escrow and the Limitations Date has passed (based on the Breach Date in the Elance System): (1) Elance will send the Dispute Parties notice of its intent to release the funds, and (2) unless you give Elance notice, within 10 days after Elance's notice is sent, that you have claimed in the Arbitration that the Limitation Date has been "tolled" and that your claims are not barred, then: (3) Provider will be deemed to have agreed to the Release sought by the Client; (4) if the dispute involves funds held in Escrow, Provider will be deemed to have authorized Elance to, and Elance will release such funds. In that case, Elance will deduct an escrow fee of \$25 or 2.75% of

the amount of the Release, whichever is greater, to recover any banking, payment processing, and administrative costs and other costs of receiving and holding funds.

**Arbitration Rules.** The sole and exclusive evidence admissible in the Arbitration is the contents of the Workroom. Elance will provide to the Arbitrator access to information in the Workroom for the dispute. You agree to be responsible for ensuring that the Workroom contains all of your communications with the Opposing Party related to the dispute. The Dispute Parties must comply with the following rules: (a) the Arbitrator will specify whether the Arbitration will be conducted online, by telephone, or solely based on written submissions posted in the Workroom; (b) the Arbitration shall not involve any personal appearance by the Dispute Parties or witnesses unless otherwise mutually agreed by the Dispute Parties; and (c) any judgment on the award rendered by the Arbitrator may be entered in any court of competent jurisdiction. Before the Arbitrator renders its decision in the dispute, each of the Dispute Parties will be allowed to upload to the Workroom one last closing statement or argument for the Arbitrator related to the dispute.

**Arbitration Award.** Once there is an arbitration award, you must send an email to Elance with the case identification information, the usernames of the Dispute Parties and the name of the Job. Elance will then verify the award with Arbitrator.

### **Noncompliance and Abuse**

**Improperly Filed Claims.** All claims between you and the Opposing Party must be resolved in accordance with the terms on this page. All claims filed or brought contrary to these terms shall be considered improperly filed. Should you file a claim contrary to these terms, the Opposing Party may recover attorneys' fees and costs up to \$2,000, provided that the Opposing Party has notified you in writing of the improperly filed claim, and you fail to promptly withdraw the claim.

**Abuse.** If you initiate an excessive number of Arbitrations, Elance reserves the right to suspend or terminate your Account immediately upon giving notice to you. However, any disputes for any Jobs that existed prior to termination will be subject to the Elance Terms of Service.

### **Feedback Disputes**

If you are involved in a dispute involving feedback, please refer to the Rating and Feedback System section in the Site Policies to find out in what circumstances Elance will consider removing feedback.

## **Referral Program**

Updated: June 5, 2009

[Return to Site Policies](#)

The Referral Program details including Eligible Transactions and Referral Fees are described on the Referral Program Web pages on the Site. Elance reserves the right to modify or terminate the Referral Program at any time upon 30 days notice.

### **REFERRAL PROGRAM TERMS**

Elance will provide each Member ("**Referral Participant**") with a referral identifier ("**RID**") upon acceptance of registration with Elance. Elance will pay the Referral Participant the specified referral fee upon completion of any Eligible Registration or Eligible Transaction, as such terms are defined below. "**Eligible Registration**" occurs when a username identified with a Referral Participant's RID successfully

completes Elance's registration process and Elance in its sole discretion accepts such registration. Registrations that: (1) are not in good faith, or (2) involve a registrant that has previously registered with Elance at any time, are NOT Eligible Registrations. "**Eligible Transaction**" means a bona fide transaction satisfying the requirements set forth on the Referral Program Web pages on the Site. The following transactions are NOT Eligible Transactions: (1) any transactions that do not arise from or are not connected with the Referral Participant's RID; (2) any transactions that involve a Client who previously purchased services through Elance; (3) any transactions that arise in connection with a pre-existing relationship between a Client and a Provider; (4) any transactions that arise in connection with a User's purchase of services for User's own use or for resale or commercial use of any kind, including but not limited to, orders for customers or on behalf of customers or orders for services to be used by the User or User's friends, relatives or associates in any manner; (5) any transactions which are not a bona fide arm's length transaction for the purchase of services; and (6) any transactions compensated separately under an Elance affiliate program. Site Users will be identified and linked to a Referral Participant's RID if they have clicked to the Site via a link tagged with that Referral Participant's RID. The Referral Participant is solely responsible for ensuring that links to Elance are correctly tagged with the RID Elance has provided to that Referral Participant.

## **REFERRAL FEES AND PAYMENT**

We will pay a Referral Participant a "Referral Fee" for every Eligible Registration as a paid Provider on Elance and for each Eligible Transaction. Please consult with the Site for the current Referral Fees. Elance will track Eligible Registrations and Eligible Transactions and will make available to you reports summarizing such activity. The form, content and frequency of the reports may vary from time to time in Elance's sole discretion. Except as otherwise provided, Elance shall pay you Referral Fees that are owed, less any taxes or other amounts that Elance is required by law to withhold, within 30 days of each Eligible Registration and immediately upon payment of each Eligible Transaction. Payments shall be made directly into your Elance Account. All amounts shall be paid in US dollars. Elance reserves the right to investigate any suspicious, unprofessional or inappropriate registration or transactional activity. Elance also reserves the right to delay payment of any Referral Fees, at its sole discretion, while it conducts an investigation of such activity. If Elance, in its sole discretion, concludes that a particular registration or transaction was deceptive or did not qualify as an Eligible Registration or Eligible Transaction, respectively, you agree that Elance will not be obligated to pay any Referral Fees for such registration or transaction. If a service or registration upon which you have already been paid a Referral Fee is later charged back, cancelled within 30 days, breached, repudiated or rejected by a Client or Provider after payment and Elance is forced to remit fees, an amount equal to the Referral Fee for such service or registration shall be deducted from your Account.

## **Contacting Customer Support**

Updated: June 5, 2009  
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If you wish to report a violation of Site Policies, have any questions or need assistance, please contact Elance Customer Support as follows:

**Web Support:** <http://www.elance.com/service>

**Email:** [services@Elance.com](mailto:services@Elance.com)

**Phone:** Mon-Fri, 8 a.m. - 5 p.m. Pacific Time: 1-877-4-ELANCE (1-877-435-2623)

**Online Help Topics:** <http://www.elance.com/help>