

# Services Agreement between Client and Provider

This Services Agreement is part of the Member Contract between Client and Provider, effective upon Client's award and Provider's acceptance of a Job on the Site. This Services Agreement incorporates all terms, conditions, rules, policies, and guidelines on the Site, including the [Elance Terms of Service](#) ("**Terms of Service**"). Capitalized terms not defined in this Services Agreement are defined in the Elance Terms of Service.

## 1. Member Contract

Upon Client's award and Provider's acceptance of a Job on the Site, Client agrees to purchase, and Provider agrees to deliver, the Provider Services in accordance with the following agreements (collectively, the "**Member Contract**"): (1) the Terms of Service; (2) the Job terms, as awarded and accepted on the Site, to the extent not inconsistent with the Mandatory Terms (defined below); (3) any other contractual provisions accepted by both Client and Provider and uploaded to the Site, to the extent not inconsistent with the Mandatory Terms (defined below); and (4) this Services Agreement.

The provisions of this Services Agreement may be modified by Job terms awarded and accepted on the Site or other contractual provisions accepted by both Client and Provider and uploaded to the Site. However, the other provisions of the Terms of Service besides this Services Agreement (the "**Mandatory Terms**") may not be modified.

Conflicts in the Member Contract shall be resolved in the following order of precedence: (1) the Mandatory Terms; (2) the Job terms, as awarded and accepted on the Site, to the extent not inconsistent with the Mandatory Terms; (3) any other contractual provisions accepted by both Client and Provider and uploaded to the Site, to the extent not inconsistent with the Mandatory Terms; and (4) this Services Agreement. Notwithstanding anything to the contrary, Client and Provider both agree not to enter into any contractual provisions or Job terms in conflict with the Mandatory Terms. Any part of the Member Contract that conflicts with or modifies the Mandatory Terms shall be null and void while the other parts of the Member Contract shall remain valid and binding.

## 2. Responsibilities and Performance

Client is responsible for managing, inspecting, accepting and paying for satisfactory Provider Services in accordance with the Member Contract in a timely and professional manner. Provider is responsible for the performance and quality of the Provider Services in accordance with the Member Contract in a timely and professional manner, consistent with industry practice, at a location, place and time that Provider deems appropriate. The manner and means that Provider chooses to perform the Job are in Provider's sole discretion and control. In performing the Job, Provider agrees to provide its own equipment, tools, and other materials at its own expense. Client and Provider each covenants and agrees to act with good faith and fair dealing in performance of the Member Contract.

## 3. Duration of Services

The duration of performance of Provider Services under the Member Contract commences and terminates on the dates specified in the Job terms, unless both Client and Provider otherwise agree through a change request on the Site and uploaded to the Workroom.

## 4. Independent Contractor Relationship

Provider's relationship with Client will be that of an independent contractor, and nothing in the Member Contract should be construed to create a partnership, joint venture, or employer-employee relationship. Provider (a) is not the agent of Client; (b) is not authorized to make any representation, contract, or commitment on behalf of Client; (c) will not be entitled to any of the benefits that Client makes available to its employees, such as group insurance, profit-sharing or retirement benefits (and waives the right to receive any such benefits); and (d) will be solely responsible for

all tax returns and payments required to be filed with or made to any federal, state, or local tax authority with respect to Provider's performance of services and receipt of fees under the Member Contract.

Provider is solely and exclusively liable for complying with all applicable state, federal and international laws including laws governing self-employed individuals, if applicable, such as laws related to payment of taxes, social security, disability, and other contributions based on fees paid to Provider under the Member Contract. Client will not withhold or make payments for social security, unemployment insurance or disability insurance contributions, or obtain workers' compensation insurance on Provider's behalf. Provider hereby agrees to indemnify and defend Client against any and all such taxes or contributions, including penalties and interest. Provider agrees to provide proof of payment of appropriate taxes on any fees paid to Provider under the Member Contract upon reasonable request of Client.

## 5. Intellectual Property Rights

### Certain Defined Terms

As used in this Services Agreement, the following capitalized terms have the following meanings unless the context otherwise requires:

**"Background Technology"** means all Inventions developed by Provider other than in the course of providing services to Client hereunder and all Inventions acquired or licensed by Provider and disclosed to Client that Provider uses in performing services under the Member Contract or incorporates into Job.

**"Intellectual Property Rights"** has the meaning given in the Terms of Service.

**"Invention"** means any ideas, concepts, information, materials, processes, data, programs, know-how, improvements, discoveries, developments, designs, artwork, formulae, other copyrightable works, and techniques and all Intellectual Property Rights therein.

**"Work Product"** means any and all work product developed by Provider as required to complete the Job and delivered to the Client in the performance of the Job, excluding Background Technology.

**Background Technology.** Provider will disclose any Background Technology which Provider proposes to use or incorporate in connection with performance of its services to Client. If Provider discloses no Background Technology, Provider warrants that it will not use Background Technology or incorporate it into Work Product provided pursuant thereto. Notwithstanding the foregoing, unless otherwise agreed in the Job Terms, Provider agrees that it will not incorporate into Work Product or otherwise deliver to Client any software code licensed under the GNU GPL, GNU LGPL, or any other license that by its terms requires, or conditions the use or distribution of such code on, the disclosure, licensing, or distribution of the Work Product or any source code owned or licensed by the Client.

**License to Background Technology.** Provider hereby automatically upon receipt of payment from Client, grants to Client a non-exclusive, perpetual, fully-paid and royalty-free, irrevocable and world-wide right, with rights to sublicense through multiple levels of sublicensees, to reproduce, make derivative works of, distribute, publicly perform, and publicly display in any form or medium, whether now known or later developed, make, have made, use, sell, import, offer for sale, and exercise any and all present or future rights in the Background Technology incorporated or used in Work Product.

**Ownership of Job and Intellectual Property.** Provider agrees that the Work Product is a work made for hire. Upon Provider's receipt of payment from Client, any Intellectual Property Rights in the Work Product will be the sole and exclusive property of Client, and Client will be deemed to be the author thereof. If Provider has any rights to such Intellectual Property Rights that are not owned by Client upon Provider's receipt of payment, Provider hereby automatically irrevocably assigns to such Client all right, title and interest worldwide in and to such Intellectual Property Rights. Except as set forth below, Provider retains no rights to use such Intellectual Property Rights and agrees not to challenge the validity of Client's ownership in such Intellectual Property Rights. Provider hereby waives any moral rights, rights of paternity, integrity, disclosure and withdrawal or inalienable rights under applicable law in and to the Work Product.

**License to or Waiver of Other Rights.** If Provider has any right to such Intellectual Property Rights that cannot be assigned by Provider, Provider hereby automatically upon receipt of payment from Client unconditionally and irrevocably grants to Client during the term of such rights, an exclusive, even as to Provider, irrevocable, perpetual,

worldwide, fully paid and royalty-free license, with rights to sublicense through multiple levels of sublicensees, to reproduce, make derivative works of, distribute, publicly perform and publicly display in any form or medium, whether now known or later developed, make, use, sell, import, offer for sale and exercise any and all such rights. If Provider has any rights to such Intellectual Property Rights that cannot be assigned or licensed, Provider hereby automatically upon receipt of payment from Client unconditionally and irrevocably waives the enforcement of such rights, and all claims and causes of action of any kind against Client or related to Client's customers, with respect to such rights, and agrees, at Client's request and expense, to consent to and join in any action to enforce such rights.

**Assistance.** Provider agrees to assist Client in every way, both during and after the term of the Member Contract, to obtain and enforce United States and foreign Intellectual Property Rights relating to Work Product in all countries.

## 6. Competitive or Conflicting Jobs

Provider agrees, during the term of the Member Contract, not to enter into a contract or accept an obligation that is inconsistent or incompatible with Provider's obligations under the Member Contract. Provider warrants that there is no such contract or obligation in effect as of the Effective Date. Provider further agrees not to disclose to, deliver to, or induce Client to use any confidential information that belongs to anyone other than Client or Provider.

## 7. Confidential Information

Provider agrees that during the term of the Member Contract and thereafter, except as expressly authorized in writing by Client, Provider (a) will not use or permit the use of Confidential Information (as defined below) in any manner or for any purpose not expressly set forth in the Member Contract; (b) will not disclose, lecture upon, publish, or permit others to disclose, lecture upon, or publish any Confidential Information to any third party without first obtaining Client's express written consent on a case-by-case basis; (c) will limit access to Confidential Information to Provider personnel who need to know such information in connection with their work for Client; and (d) will not remove any tangible embodiment of any Confidential Information from Client's premises without Client's prior written consent.

**"Confidential Information"** means all information related to Client's business and its actual or anticipated research and development or related to a Work Product delivered or agreed to be delivered from Provider to Client, including without limitation (i) trade secrets, inventions, ideas, processes, computer source and object code, formulae, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs, and techniques; (ii) information regarding products or plans for research and development, marketing and business plans, budgets, financial statements, contracts, prices, suppliers, and customers; (iii) information regarding the skills and compensation of Client's employees, contractors, and any other service providers; (iv) information designated by Client, either in writing or orally, as Confidential Information, (v) the existence of any business discussions, negotiations, or agreements between Client and any third party; and (vi) all such information related to any third party that is disclosed to Client or to Provider during the course of Client's business ("**Third Party Information**").

Notwithstanding the foregoing, it is understood that Provider is free to use information that is generally known in the trade or industry, information that is not gained as a result of a breach of the Member Contract, and Provider's own skill, knowledge, know-how, and experience. Confidential Information shall not include information that was known to Provider prior to Client's disclosure hereunder or that becomes publicly available through no fault of Provider.

## 8. Provider Representations and Warranties

Provider hereby represents and warrants that (a) the Work Product will be an original work of Provider and any third parties will have executed assignment agreement(s) consistent with this Agreement prior to being allowed to participate in the development of the Work Product; (b) the Work Product will fully conform to the requirements and terms set forth on the Site and in the Member Contract; (c) neither the Work Product nor any element thereof will infringe or misappropriate the Intellectual Property Rights of any third party; (d) neither the Job nor any element thereof will be subject to any restrictions or to any mortgages, liens, pledges, security interests, or encumbrances; (e) Provider will not grant, directly or indirectly, any rights or interest whatsoever in the Work Product to third parties; (f) Provider has full right and power to enter into and perform the Member Contract without the consent of any third party; (g) Provider has an unqualified right to grant the license to all Background Technology as set forth in the section titled License to Background Technology; and (h) Provider will comply with all laws and regulations applicable to Provider's obligations under the Member Contract.

## 9. Indemnification

Provider will defend, indemnify, and hold harmless Client against any damage, cost, loss or expense arising from a claim, suit or proceeding brought against Client (i) alleging that any Work Product that Provider delivers pursuant to the Member Contract or the Job infringes upon any intellectual property rights, (ii) alleging that any Work Product that Provider delivers pursuant to the Member Contract or the Job misappropriates any trade secrets, of any third party, or (iii) arising from Provider's breach of the terms of this Agreement.

## 10. Insurance

Provider, at its sole cost and expense, will maintain appropriate insurance in accordance with generally accepted industry standards.

## 11. Termination

**Termination with Cause.** Either party has the right to terminate the Member Contract immediately in the event that the other party has materially breached the Member Contract and fails to cure such breach within fifteen (15) days of receipt of notice by the non-breaching party, setting forth in reasonable detail the nature of the breach. Such notice must comply with the [Dispute Resolution Process](#) set forth in the Terms of Service. Client may also terminate the Member Contract immediately in its sole discretion in the event of Provider's material breach of the Sections titled "Intellectual Property Rights," "Competitive or Conflicting Jobs," and "Confidential Information."

**Return of Property.** Upon termination of the Member Contract or upon Client's request at any other time, Provider will deliver to Client all of Client's property together with all copies thereof, and any other material containing or disclosing any Work Product, Third Party Information, or Confidential Information.

**Survival.** In addition to the provisions of the Terms of Service that will survive, the following provisions will survive termination of the Member Contract: Sections titled "Intellectual Property Rights," "Confidential Information," "Provider Representations and Warranties," "Indemnification," "Return of Property," "Survival," "Exclusion and Limitations of Liability," and "General Provisions."

## 12. Multi-Employee Provider

Before any Provider employee or agent performs services in connection with the Member Contract or has access to Confidential Information, the employee or agent and Provider must have entered into a binding written agreement that contains provisions substantially equivalent to the sections titled "Engagement and Performance of Services" and "Intellectual Property Rights," and any modifications thereto. Provider agrees (a) that its employees and agents will not be entitled to or eligible for any benefits that Client may make available to its employees; (b) to limit access to the Confidential Information to employees or agents of Provider who have a reasonable need to have such access in order to perform the services pursuant to the Member Contract; and (c) to be solely responsible for all expenses incurred by any of its employees or agents in performing the services or otherwise performing its obligations under the Member Contract, except as set forth in this Agreement.

## 13. DISCLAIMER OF WARRANTIES

OTHER THAN THE WARRANTIES EXPRESSLY STATED HEREIN OR IN THE TERMS OF SERVICE, PROVIDER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY, FITNESS FOR A PARTICULAR PURPOSE, ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OR TRADE. SOME STATES AND JURISDICTIONS DO NOT ALLOW FOR ALL THE FOREGOING ON IMPLIED WARRANTIES, SO TO THAT EXTENT, IF ANY, SOME OR ALL OF THE ABOVE LIMITATIONS MAY NOT APPLY.

## 14. EXCLUSIONS AND LIMITATIONS OF LIABILITY

EXCEPT FOR A VIOLATION OF SECTION 7 OF THIS AGREEMENT TITLED CONFIDENTIAL INFORMATION, IN NO EVENT SHALL EITHER PROVIDER OR CLIENT BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT,

CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES PURSUANT TO THE MEMBER CONTRACT, 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, EXCEPT FOR A VIOLATION OF SECTION 7 OF THIS AGREEMENT TITLED CONFIDENTIAL INFORMATION AND AS PROVIDED UNDER SECTION 9 OF THIS AGREEMENT TITLED INDEMNIFICATION, IN NO EVENT WILL EITHER PROVIDER OR CLIENT BE LIABLE TO THE OTHER FOR ANY ACTION OR CLAIM RELATED TO THE SERVICES PROVIDED FOR THE JOB, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE OR ANY OTHER THEORY OF LIABILITY, IN AN AMOUNT IN EXCESS OF THE AMOUNT THE CLIENT PAID TO THE PROVIDER THROUGH THE SITE DURING THE ONE (1) YEAR PERIOD IMMEDIATELY PRECEDING THE DETERMINATION OF SUCH LIABILITY.

SOME STATES AND JURISDICTIONS DO NOT ALLOW FOR ALL THE FOREGOING EXCLUSIONS AND LIMITATIONS OF LIABILITIES, SO TO THAT EXTENT, IF ANY, SOME OR ALL OF THESE DISCLAIMERS, LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO YOU.

## 15. General Provisions

**Governing Law and Venue.** The Member Contract and any action related thereto will be governed, controlled, interpreted, and defined by and under the laws of the State of California, without giving effect to any conflicts of laws principles that require the application of the law of a different jurisdiction. Provider hereby expressly consents to the personal jurisdiction and venue in the state and federal courts for Santa Clara County, California, or the county in which Client's principal place of business is located for any lawsuit filed there against Provider by Client or by Elance arising from or related to the Member Contract.

**Severability.** If any provision of the Member Contract is, for any reason, held to be invalid or unenforceable, the other provisions of the Member Contract will be unimpaired and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

**No Assignment.** The Member Contract, and the party's rights and obligations herein, may not be assigned, subcontracted, delegated, or otherwise transferred by either party without the other's prior written consent, and any attempted Job, subcontract, delegation, or transfer in violation of the foregoing will be null and void. The terms of the Member Contract will be binding upon assignees. Notwithstanding the foregoing, Client may, without the consent of Provider, assign any rights and obligations under the Member Contract to an entity merging with, consolidating with, or purchasing substantially all its assets or stock. Any permitted assignment of the Member Contract shall be binding upon and enforceable by and against Client's and Provider's successors and assigns, provided that any unauthorized assignment shall be null and void and constitute a breach of the Member Contract.

**Notices.** Each party must deliver all notices or other communications required or permitted under the Member Contract to the other party by uploading it to the Workroom.

**Injunctive Relief.** Provider acknowledges that, because its services are personal and unique and because Provider will have access to Confidential Information of Client, any breach of the Member Contract by Provider would cause irreparable injury to Client for which monetary damages may not be an adequate remedy and, therefore, will entitle Client to injunctive relief (including specific performance). The rights and remedies provided to each party in the Member Contract are cumulative and in addition to any other rights and remedies available to such party at law or in equity.

**Waiver.** Any waiver or failure to enforce any provision of the Member Contract on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**Export.** Provider agrees not to export, directly or indirectly, any U.S. technical data acquired from Client or any products utilizing such data, to countries outside the United States, because such export could be in violation of the United States export laws or regulations.

**Execution and Delivery; Binding Effect.** The parties will evidence execution and delivery of the Member Contract with the intention of becoming legally bound, by accepting the Terms of Service on the Site.

**Entire Agreement.** The Member Contract is the final, complete and exclusive agreement of the parties with respect to the subject matters hereof and supersedes and merges all prior discussions between the parties with respect to such subject matters. No modification of or amendment to the Member Contract, or any waiver of any rights under the Member Contract, will be effective unless uploaded to the Workroom and accepted by Provider and Client. The terms of the Member Contract will govern all Jobs and services undertaken by Provider for Client.

## **CONTACTING US**

If you wish to report a violation of the Terms of Service, 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>