Independent Contractor Services Agreement

If a Client and a Contractor enter an independent contractor relationship, then this Independent Contractor Services Agreement ("Services Agreement") will apply. This Agreement is effective as of April 2, 2013. Your continued use of the Site after that date will signify your acceptance of it. We reserve the right to modify the provisions in this policy without prior notice to you, so please check back often for updates.

This Services Agreement incorporates all terms, conditions, rules, policies, and guidelines on the Site, including the Terms of Service ("Terms of Service"). Capitalized terms not defined in this Agreement are defined in the User Agreement, elsewhere in the Terms of Service, or have the meanings given such terms on the Site.

In some cases, contractors may be deemed to be employees under applicable law. If you are not certain that your Job is an independent contractor relationship, consult your legal advisor. If you believe your relationship may be an employment relationship, then you should select the Elance Payroll Service described here. In that case, your Job will be subject to the Payroll Services Agreement in lieu of this Services Agreement.

Client is solely responsible for determining whether Contractor is its independent contractor or employee. Elance disclaims any liability for that determination.

1. Member Contract

Client agrees to purchase, and Contractor agrees to deliver, the Contractor Services in accordance with their Member Contract. Client and Contractor may agree to Job terms or other contractual provisions uploaded to the Workroom that modify this Services Agreement. However, no Job term or contractual provision may modify any Mandatory Terms. Conflicts in the Member Contract will be resolved in the following order of precedence: (1) the Mandatory Terms; (2) the Job terms, as awarded and accepted in the Workroom; (3) other contractual provisions as uploaded to the Workroom and accepted by Client and Contractor; and (4) this Services Agreement.

CLIENT AND CONTRACTOR IRREVOCABLY AGREE THAT ANY PART OF THEIR MEMBER CONTRACT THAT CONFLICTS WITH OR PURPORTS TO MODIFY THE MANDATORY TERMS WILL 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 specifying its job, screening, hiring, managing, inspecting, accepting and paying for Contractor Services in accordance with the Member Contract in a timely and professional manner. Contractor is responsible for the performance and quality of the Contractor Services in accordance with the Member Contract in a timely and professional manner, consistent with industry practice, at a location, place and time that Contractor deems appropriate. Client and Contractor each covenants and agrees to act in good faith and deal fairly in the performance of the Member Contract.

3. Duration of Services

The term of the Member Contract commences and terminates on the dates specified in the Job terms, unless both Client and Contractor otherwise agree in the Workroom.

4. Independent Contractor Relationship

Contractor’s relationship with Client will be that of an independent contractor, and nothing in the Member Contract will be construed to create a partnership, joint venture, or employer-employee relationship. Contractor is not the agent of Client and is not authorized to make any representation, contract, or commitment on behalf of Client. The Contractor will choose the manner and means to perform Contractor Services. Contractor will provide its own equipment, tools, and other materials at its own expense. Contractor, at its sole cost and expense, will maintain appropriate insurance in accordance with generally accepted industry standards.

Contractor is solely and exclusively liable for complying with, and making all payments under, 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 Contractor under the Member Contract. Neither Client nor Elance will withhold or make payments for social security, unemployment insurance or disability insurance contributions, or obtain workers’ compensation insurance on Contractor’s behalf. Contractor hereby agrees to indemnify and defend Client and Elance against any and all such taxes or contributions, including penalties and interest. Contractor will provide proof of payment of appropriate taxes on fees paid to Contractor upon reasonable request of Client or Elance.

5. Intellectual Property Rights

Certain Defined Terms

The following capitalized terms have the following meanings:

“Background Technology” means all Inventions developed by Contractor other than in the course of providing services to Client under the Member Contract and all Inventions acquired or licensed by Contractor that Contractor uses in performing Contractor Services or incorporates into Job.

“Intellectual Property Rights” has the meaning given in the Definitions.

“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 Contractor as required to complete the Job and delivered to the Client in the performance of the Job, excluding Background Technology.

Background Technology

Contractor will disclose any Background Technology that Contractor proposes to use or incorporate in connection with performance of its services to Client. If Contractor discloses no Background Technology, Contractor warrants that it will not use Background Technology or incorporate it into Work Product provided pursuant thereto. Unless otherwise agreed in the Job Terms, Contractor 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

Contractor 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 Work Product and Intellectual Property

Contractor agrees that the Work Product is work made for hire. If any Work Product does not qualify as work made for hire, Contractor agrees that, upon Contractor’s receipt of payment from Client, the Work Product, including without limitation all 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 Contractor has any Intellectual Property Rights to the Work Product that are not owned by Client upon Contractor’s receipt of payment, Contractor hereby automatically irrevocably assigns to Client all right, title and interest worldwide in and to such Intellectual Property Rights. Except as set forth below, Contractor retains no rights to use, and agrees not to challenge the validity of Client’s ownership in, such Intellectual Property Rights. Contractor 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 Contractor has any right to the Work Product, including without limitation any Intellectual Property Right, that cannot be assigned to Client by Contractor, Contractor 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 Contractor, irrevocable, perpetual, worldwide, fully paid and royalty-free license to such rights, 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 Contractor has any rights to such Work Product that cannot be assigned or licensed, Contractor 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

Contractor agrees to assist Client in every way, including by signing any documents or instruments reasonably required, both during and after the term of the Member Contract, to obtain and enforce Intellectual Property Rights relating to Work Product in all countries. In the event Client is unable, after reasonable effort, to secure Contractor’s signature on any document needed in connection with the foregoing, Contractor hereby designates and appoints Client and its duly authorized officers and agents as its agent and attorney in fact to act on its behalf to further the purposes of this Section with the same legal force and effect as if executed by Contractor.

6. Competitive or Conflicting Jobs

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

7. Confidential Information

Contractor agrees that during the term of the Member Contract and thereafter, except as expressly authorized in writing by Client, Contractor (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 or permit others to disclose any Confidential Information to any third party without first obtaining Client’s express written consent; and (c) will limit access to Confidential Information to Contractor personnel who need to know such information in connection with their work for Client. “Confidential Information” means all information related to Client’s business and prospects or related to a Work Product delivered or agreed to be delivered from Contractor 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 Contractor during the course of Client’s business. Notwithstanding the foregoing, it is understood that Contractor 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 Contractor’s own skill, knowledge, know-how, and experience. Confidential Information shall not include information that was known to Contractor prior to Client’s disclosure hereunder or that becomes publicly available through no fault of Contractor.

8. Contractor Representations and Warranties

Contractor hereby represents and warrants that (a) the Work Product will be an original work of Contractor 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 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 Work Product nor any element thereof will be subject to any restrictions or to any mortgages, liens, pledges, security interests, or encumbrances; (e)
Contractor will not grant, directly or indirectly, any rights or interest whatsoever in the Work Product to third parties; (f) Contractor has full right and power to enter into and perform the Member Contract without the consent of any third party; (g) Contractor 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) Contractor will comply with all laws and regulations applicable to Contractor's obligations under the Member Contract.

9. Indemnification

Contractor 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 infringes upon any Intellectual Property Rights, (ii) alleging that any Work Product misappropriates any trade secrets, of any third party, or (iii) arising from Contractor's breach of the terms of this Agreement.

10. 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 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 Elance’s Refund and Cancellation Policy and the applicable Dispute Resolution Policy referenced therein. Client may also terminate the Member Contract immediately in its sole discretion in the event of Contractor'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, Contractor will deliver to Client all of Client’s property together with all copies thereof, and any other materials containing or disclosing any Work Product that Client has paid for 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," "Contractor Representations and Warranties," "Indemnification," "Return of Property," "Survival," "Exclusion and Limitations of Liability," and "General Provisions."

11. Multi-Employee Contractor

Before any Contractor's employee, contractor or agent performs services in connection with the Member Contract or has access to Confidential Information, the employee, contractor or agent and Contractor must have entered into a binding written agreement that contains provisions substantially equivalent to the sections titled "Intellectual Property Rights," "Competitive or Conflicting Jobs," "Confidential Information," and any modifications thereto. Contractor agrees (a) that its employees, contractors 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, contractors or agents of Contractor 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, contractors or agents in performing the services or otherwise performing its obligations under the Member Contract, except as set forth in this Agreement.

12. Disclaimer of Warranties

Other than the warranties expressly stated in this services agreement or other terms of service, contractor 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.
13. Exclusions and Limitations of Liability

Except for a violation of Section 7 of this agreement titled confidential information, in no event shall either contractor 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 contractor 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 contractor through the site during the one (1) year period immediately preceding the determination of such liability.

Some 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.


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. Client and Contractor hereby expressly consent to the personal jurisdiction and venue in the state and federal courts for Santa Clara County, California, for any lawsuit filed there against them by each other 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 Contractor, 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 Contractor’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

Contractor acknowledges that, because its services are personal and unique and because Contractor will have access to Confidential Information of Client, any breach of the Member Contract by Contractor 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

Contractor 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 Contractor and Client.

15. Contacting Us

If you wish to report a violation of the Terms of Service, have any questions or need assistance, please contact Customer Support as follows:

Web Support: http://www.elance.com/service
Email: support@elance.com
Phone: 1-877-4-ELANCE (1-877-435-2623)
      (Mon-Fri, 5 a.m. – 5 p.m. Pacific Time; Sat-Sun, 8 a.m. – 12:00 p.m. Noon Pacific Time)
Online Help Topics: http://www.elance.com/help