User Agreement

Effective Date: May 5, 2015

This User Agreement (this “Agreement”) explains the terms under which you are allowed to use the elance.com website and any web or mobile services or applications (collectively, the “Site”) offered by Elance, Inc. (“Elance”) and our subsidiaries, including, without limitation, Elance Escrow Corporation (“EEC”). This Agreement is a part of and incorporates by reference all the Terms of Service1 linked from https://www.elance.com/q/legal, including all Site information referenced or linked therein (the “Terms of Service”). Your use of the Site after the effective date will signify that you have read, understand, accept, and agreed to be bound and are bound by this Agreement for yourself and on behalf of any Member for whom you use the Site, and you represent that you have the authority to do so. To the extent permitted by applicable law, we may modify this Agreement with prospective effect without prior notice to you, and any revisions to this Agreement will take effect when posted on the Site, unless a later date is otherwise stated in the revised Agreement. Please check the Site often for updates. Capitalized terms not defined in this Agreement (including section 20 below titled “Definitions”) are defined in the other Terms of Service or have the meanings given such terms on the Site.

Please read this Agreement carefully to ensure that you understand each provision. This Agreement contains a mandatory individual binding arbitration and class action/jury trial waiver provision that requires the use of arbitration on an individual basis to resolve disputes, rather than a jury trial or class action. You have the right to opt out of the arbitration and class action/jury trial waiver provision as described in section 16 below.

1. Overview

The Site is a venue where our Members use both our marketplace and our platform for online services. Clients and Freelancers become Members when they open Elance Accounts pursuant to the Account Agreement. As Members, they use the Site directory and Freelancer Services board functions to advertise, locate, introduce themselves to each other, screen and select each other, negotiate Engagement terms, and enter into Member Contracts between each other. Once two Members enter into a Member Contract, they use the Site to collaborate, communicate about, and invoice and pay for the Engagement.

2. Relationship between Client and Freelancer

Member Contract

Client and Freelancer acknowledge and agree that when Freelancer accepts an Engagement awarded by Client, Client and Freelancer will be deemed to have entered into a “Member Contract” comprising the following agreements: (1) those Relationship Agreements applicable to the Engagement as described in the next subsection titled “Relationship Agreements”; (2) the remaining Terms of Service (other than the Relationship Agreements); (3) the Engagement terms awarded and accepted on the Site, to the extent not inconsistent with the Mandatory Terms (defined below); and (4) any other contractual provisions accepted by both Client and Freelancer and uploaded to the Site, to the extent not inconsistent with the Mandatory Terms.

Relationship Agreements

1 The “Terms of Service” include this User Agreement, the Account Agreement, Independent Contractor Services Agreement, Fixed Price Escrow Instructions, Hourly and Miscellaneous Payment Agreement with Escrow Instructions, Payroll Services Agreement, Refund and Cancellation Policy, Fixed Price Dispute Resolution Policy, Hourly Dispute Resolution Policy, Site Usage Policy, Client Engagement Posting Policy, Freelancer Memberships, Proposals and Fulfillment Policy, Referral Program, Mark Use Guidelines, Copyright and Other Infringing Content Policy, Cookie Policy, and Privacy Policy. Different sections of the Terms of Service are hyperlinked throughout this Agreement for your convenience.
The following four parts of the Terms of Service are called “Relationship Agreements”: (1) Independent Contractor Services Agreement; (2) Fixed Price Escrow Instructions; (3) Hourly and Miscellaneous Payment Agreement with Escrow Instructions; and (4) Payroll Services Agreement. Different Relationship Agreements apply to a Member Contract, depending on which type of relationship and compensation Client and Freelancer choose, as follows:

**Independent Contractor Relationships**

If a Client and a Freelancer enter into an independent contractor relationship, then the Independent Contractor Services Agreement applies. In addition, Client and Freelancer in an independent contractor relationship must choose either fixed price or hourly compensation, and that choice determines the agreement that governs their payment mechanism as follows:

**Fixed Price Engagements.** If Client and Freelancer enter into an independent contractor relationship and choose fixed price compensation, then Client and Freelancer agree that they will be bound by, and EEC will follow, the Fixed Price Escrow Instructions.

**Hourly Engagements and/or Miscellaneous Payments.** If Client and Freelancer enter into an independent contractor relationship and choose hourly compensation, and/or, if the Client makes miscellaneous payments to the Freelancer, then Client and Freelancer agree that they will be bound by, and EEC will follow, the Hourly and Miscellaneous Payment Agreement with Escrow Instructions.

**Employment Relationships**

If a Client and a Freelancer enter into an employment relationship, then the Client and Freelancer agree that the Payroll Services Agreement and the Hourly and Miscellaneous Payment Agreement with Escrow Instructions both apply.

**Mandatory Terms**

A Member Contract may modify only certain provisions of the Terms of Service as follows:

**Independent Contractor Services Agreement**

A Member Contract may modify the Independent Contractor Services Agreement to the extent any Client and Freelancer agree to contrary Engagement terms or contractual provisions and record their agreement on the Site in accordance with the Terms of Service.

**Refund and Cancellation Policy; Dispute Resolution Policies**

A Member Contract may modify the Refund and Cancellation Policy and the Dispute Resolution Policies referenced therein to the extent a Private Talent Cloud Client and Freelancer agree to contrary Engagement terms or other contractual provisions and record their agreement on the Site in accordance with the Terms of Service.

Except as expressly permitted in the foregoing provisions of this subsection titled “Mandatory Terms,” all other provisions of the Terms of Service may not be modified and are called “Mandatory Terms.” Any purported modification to the Mandatory Terms will be null and void.

**Order of Precedence**

If there are any conflicts in the various terms of the Member Contract, those conflicts will be resolved in the order of precedence stated in: (1) the Independent Contractor Services Agreement for an independent contractor relationship; or (2) the Payroll Services Agreement for an employment relationship.

3. **Relationship with Elance**

Elance Not a Party to Engagements
Elance is not a party to the dealings between Client and Freelancer, including posts, proposals, screening selection contracting, provision of Freelancer Services, and payment for an Engagement. Elance does not introduce Freelancers to Clients or help Freelancers find Engagements. Elance merely makes the Site Services available to enable Freelancers to identify and determine the suitability of Clients for themselves and to enable Clients to identify and determine the suitability of Freelancers for themselves. Elance may sort Engagement proposals to enable Clients to more easily navigate and choose which Freelancers to contact. Elance does not direct, has no control over, makes no representations, and does not guarantee the quality, safety, or legality of Freelancer Services; the truth or accuracy of Engagement listings; the qualifications, background, or identities of Members; the ability of Freelancers to deliver Freelancer Services; the ability of Clients to pay for Freelancer Services; or that a Client or Freelancer can or will complete a transaction.

Elance is not required to and may not verify any information given to us by Freelancers or Clients, nor does Elance perform background checks on Freelancers or Clients.

YOU HEREBY ACKNOWLEDGE AND AGREE THAT ELANCE MAY PROVIDE INFORMATION ABOUT A FREELANCER OR CLIENT, SUCH AS A STRENGTH OR RISK SCORE, GEOGRAPHICAL LOCATION, OR VERIFICATION OF IDENTITY OR CREDENTIALS. HOWEVER, SUCH INFORMATION IS BASED SOLELY ON DATA THAT FREELANCER OR CLIENT SUBMITS TO ELANCE, AND ELANCE PROVIDES SUCH INFORMATION SOLELY FOR THE CONVENIENCE OF MEMBERS AND IS NOT AN INTRODUCTION, ENDORSEMENT, OR RECOMMENDATION BY ELANCE.

Third-Party Beneficiary of Member Contract

Client and Freelancer appoint Elance as a third-party beneficiary of their Member Contract for purposes of enforcing any obligations owed to, and any benefits conferred on, Elance by the Member Contract. Client and Freelancer further agree that Elance has the right to take such actions with respect to their Accounts, including, without limitation, suspension, closure, or legal actions, as Elance, in its sole discretion, deems necessary to enforce our rights as a third-party beneficiary under the Member Contract.

No Agency, Partnership, or Joint Venture

This Agreement and any registration for or use of the 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 in the Terms of Service.

Records of Compliance

Client and Freelancer will each (1) create and maintain records to document satisfaction of their respective obligations under this Agreement and any Member Contract, including, without limitation, their respective payment obligations and compliance with tax and employment laws, and (2) provide copies of such records to Elance upon request. Nothing in this subsection will be construed as requiring Elance to supervise or monitor Freelancer Services or a Member’s compliance with this Agreement, the other Terms of Service, or a Member Contract.

4. Fees

Service Fee

When a Client pays a Freelancer or funds related to an Engagement are otherwise released to a Freelancer as required by the applicable Escrow Instructions, EEC credits the Freelancer Escrow Account and then deducts a Service Fee that Elance earns and Freelancer agrees to pay Elance for creating, hosting, maintaining, and providing the Site Services. The Service Fee is described here.

No Fee for Introducing or For Finding Engagements

Elance does not introduce Clients to Freelancers and does not help Freelancers find Engagements. Elance merely makes the Site Services available to enable Freelancers to do so themselves. Therefore, Elance does not charge a fee when a Freelancer finds a suitable Client or finds an Engagement. However, Client and a Freelancer are obligated to use the Site to pay and receive payment for the Freelancer Services if they identified each other through the Site, as detailed in section 5 titled “Non-Circumvention” below.

Membership Fee
Freelancers may subscribe to different levels of participation and privileges on the Site by payment of subscription fees as described here and subject to the Freelancer Memberships, Proposals & Fulfillment Policy.

Other Fees

Elance may offer additional features, such as featured posts or verification features, for additional fees. Such features and fees are described in detail here. EEC may also charge Escrow Fees as described in the Account Agreement and to the extent permitted by applicable law.

5. Non-Circumvention

You acknowledge and agree that a substantial portion of the compensation Elance receives for making the Site available to you is the Service Fee described in the subsection titled “Service Fee” in section 4 above. You further acknowledge and agree that Elance only collects this Service Fee when a Client and a Freelancer pay and receive payment through the Site. Therefore, in consideration for our making the Site available to you, for 24 months from the time you identify or are identified by any party through the Site (the “Non-Circumvention Period”), you must use the Site as your exclusive method to request, make, and receive all payments for any services directly or indirectly provided to or received from that party or arising out of your relationship with that party (the “Elance Relationship”). You may opt-out of this obligation only if Client, prospective Client, or Freelancer pays Elance an “Opt-Out Fee” computed to be the greater of the following amounts:

1. $2,500; or

2. 15% of the cost to the Client or prospective Client of the services to be provided in the Elance Relationship during the Non-Circumvention Period, as estimated in good faith by the Client or prospective Client; or

3. all Service Fees that would be earned by Elance from the Elance Relationship during the Non-Circumvention Period, computed based on the annualized amount earned by Freelancer from Client during the most recent normalized 8-week period or during such shorter period as data is available to Elance;

and, in any 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 Client or prospective Client first makes payment to the subject Freelancer until the date the Opt-Out Fee is paid.

To pay the Opt-Out Fee, you must request instructions by sending an email message to optoutfee@elance.com.

in addition, you agree not to circumvent the Payment Methods offered by the Site. By way of illustration and not in limitation of the foregoing, you must not:

• Submit proposals or solicit parties identified through the Site to contact, engage, or pay outside the Site.

• Accept proposals or solicit parties identified through the Site to contact, deliver services, invoice, or receive payment outside the Site.

• Invoice or report on the Site or in an Opt-Out Fee request an invoice or payment amount lower than that actually agreed between Client (or prospective Client) and Freelancer.

You agree to notify Elance immediately if another person improperly contacts you or suggests making or receiving payments outside of the Site. If you are aware of a breach or potential breach of this non-circumvention policy, please submit a report to Elance by sending an email message to policy@elance.com, which report will be kept confidential to the extent practicable.

6. Site License

Subject to and conditioned on your compliance with this Agreement, the other Terms of Service, and the other Site Policies, Elance grants you a limited license to access and, if you are a Member, to use the Site for the purpose of ordering and receiving the Site Services available and authorized from the Site. You must not access or use the Site or Site Services for any reasons that are in competition with Elance. You must not sell, reproduce, distribute, modify, display, publicly perform, prepare derivative works based on, repost, or otherwise use any content of the 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 the Site on any other website or in a networked computer environment for any purpose except your own viewing. You must not frame or link to the Site except as permitted in writing by Elance. You must not attempt to reverse engineer or attempt to interfere with the operation of any part of the Site unless expressly permitted by applicable law. The Site and any portion of the 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 our licensors retain all of their respective right, title, and interest in and to all patent rights, inventions, copyrights, know-how, and trade secrets relating to the Site. Elance’s logos and name are trademarks of Elance and are subject to our Mark Use Guidelines. 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 in this Agreement, nothing in this Agreement confers any license under any of Elance’s or any third party’s Intellectual Property Rights, whether by estoppel, implication, or otherwise.

7. User Content License

When you post User Content on the Site, you represent and warrant that you have the right, power, and authority to post that content and grant the licenses specified below. You further represent and warrant that by posting such User Content you will not violate third-party rights of any kind, including, without limitation, any Intellectual Property Rights, rights of publicity, and privacy rights. To the extent your User Content may be copyrightable, you represent, warrant, and covenant that you are the owner of all the copyright rights to such User Content and that Elance may exercise the rights to your User Content granted under this Agreement without any liability or obligation for any payment.

You retain all your ownership rights in any User Content you post on Elance. You also grant to Elance and our successors and Affiliates a royalty-free, sub-licensable, transferable, perpetual, irrevocable, non-exclusive, worldwide license to use, reproduce, modify, publish, list information regarding, edit, translate, distribute, publicly perform, publicly display, and make derivative works of all such User Content and your name, voice, and/or likeness as contained in your User Content, in whole or in part, and in any form, media or technology, whether now known or hereafter developed, for use in connection with the Site and Elance’s (and our successors’ and Affiliates’) business, including, without limitation, for promoting and redistributing part or all of the Site (and derivative works thereof) in any media formats and through any media channels. You also hereby grant each User a non-exclusive license to access your User Content through the Site, and to use, reproduce, distribute, display, and perform such User Content, only to the extent permitted through the normal functionality of the Site and subject to all applicable confidentiality and other provisions of the Terms of Service.

Notwithstanding the foregoing paragraph, Elance will only use or disclose User Content you post to any Workroom or other non-public area of the Site to the extent necessary to provide Site Services to you.

The above licenses granted by you will terminate within a commercially reasonable time after you remove or delete your User Content from the Site, except that you grant Elance and our successors and Affiliates the irrevocable and perpetual license to retain and use, but not publicly display, distribute, or perform, server or archival copies of all User Content that you have removed or deleted to the extent permitted by applicable law.

You may submit comments or ideas about the Site, including, without limitation, about how to improve the Site or our products (collectively, “Ideas”). By submitting any Ideas, you agree that your disclosure is gratuitous, unsolicited, and without restriction and will not place Elance under any fiduciary or other obligation, that the Ideas do not contain the confidential or proprietary information of third parties, and that we are free to use the Ideas without any additional compensation to you and to disclose the Ideas on a non-confidential basis or otherwise to anyone. You further acknowledge and agree that, by acceptance of your submission of any Idea, Elance does not waive any rights to use similar or related ideas known or developed by Elance or obtained from sources other than you.

8. Unauthorized Access and Use; Site Interference; Malicious Software

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. You will not access the audiovisual content available on the Site for any purpose or in any manner other than streaming. 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; (d) bypass any measures we may use to prevent or restrict access to the Site or any subparts of the Site, including, without limitation, features that prevent or restrict use or copying of any content or enforce limitations on use of the Site or the content therein; (e) transmit spam, chain letters, or other unsolicited communications; (f) attempt to interfere with, compromise the system integrity or security, or decipher any transmissions to or from the servers running the Site; (g) collect or harvest any personally identifiable information, including account names, from the Site; (h) access any content on the Site through any technology or means other than those provided or authorized by the Site; or (i) directly or indirectly, advertise or promote another website, product, or service or to solicit other Users for other websites, products, or services.

Additionally, you agree that you will not post or introduce any invalid data, virus, worm, or other harmful or malicious software code, agent, hidden procedure, routine, or mechanism through or to the Site or the Site software that is designed to cause to cease functioning, disrupt, disable, harm, or otherwise impair in any manner, including aesthetic disruptions or distortions, the operation of, or to allow you or any other person to access, or damage or corrupt data, storage media, programs, equipment or communications or otherwise interfere with operations of or on, the Site or any other software, firmware, hardware, computer system, or network of Elance or any third party. Further information regarding other prohibited conduct can be found in the Site Usage Policy.

9. Third-Party Content

Directory of Freelancers

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

Third-Party Verification

The Site makes available various services provided by third parties to verify a Member’s credentials, provide testing services, and provide information. Any information or content expressed or made available by these third parties or any other Members is that 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 the Site by anyone other than authorized Elance employees acting in their official capacities.

Links and Applications

The Site may contain links to Third-Party Sites. The Site may also contain applications that allow you to access Third-Party Sites via the Site. Such Third-Party Sites are owned and operated by the third parties and/or their licensors. Your access and use of Third-Party Sites, including online communication services such as chat, email, and calls, will be governed by the terms and policies of the applicable Third-Party Sites. You acknowledge and agree that Elance is not responsible or liable for: (i) the availability or accuracy of Third-Party Sites; or (ii) the content, advertising, or products on or available from Third-Party Sites. You are responsible for deciding if you want to access a Third-Party Site by clicking on a link or installing an application. The inclusion of any link or application on the Site does not imply that we endorse the linked Third-Party Site or application. You use the links and these services at your own risk and agree that your use of an application via the Site is on an “as is” and “as available” basis without any warranty for any purpose.

10. Certain Disclaimers, Limitations, and Exclusions

You are solely responsible for creation, storage, and backup of your business records. This Agreement and any registration for or subsequent use of the 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.

We have implemented commercially reasonable technical and organizational measures designed to secure your personal information from accidental loss and from unauthorized access, use, alteration, and disclosure. However, we cannot guarantee that unauthorized third parties will never be able to defeat those measures or use your personal information for improper purposes. You acknowledge that you provide your personal information, or information about the entity that you represent, at your own risk.

Elance is not liable, and you agree not to hold us responsible, for any damages or losses arising out of or in connection with this Agreement, including, but not limited to:
• your use of or your inability to use the Site or Site Services;
• delays or disruptions in the Site or Site Services;
• viruses or other malicious software obtained by accessing, or linking to, the Site or Site Services;
• glitches, bugs, errors, or inaccuracies of any kind in the Site or Site Services;
• damage to your hardware device from the use of the Site or Site Services;
• the content, actions, or inactions of third parties’ use of the Site or Site Services;
• a suspension or other action taken with respect to your account;
• your reliance on the quality, accuracy, or reliability of Engagement postings, Freelancer profiles, ratings, recommendations, and feedback (including their content, order, and display), or metrics found on, used on, or made available through the Site; or
• your need to modify practices, content, or behavior or your loss of or inability to do business as a result of changes to the Terms of Service.

11. Warranty Disclaimer

YOU AGREE NOT TO RELY ON THE SITE, THE SITE SERVICES, ANY INFORMATION ON THE SITE, OR THE CONTINUATION OF THE SITE. THE SITE AND THE SITE SERVICES 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 DISCLAIM ALL AND MAKE NO REPRESENTATIONS OR WARRANTIES, OF ANY KIND, EITHER EXPRESS OR IMPLIED, AS TO THE QUALITY, IDENTITY, OR RELIABILITY OF ANY THIRD-PARTY, THE FREELANCER SERVICES, OR THE ACCURACY OF THE POSTINGS MADE ON THE 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.

12. Limitation of Liability

IN THE EVENT OF A DISPUTE BETWEEN YOU AND ELANCE AND/OR AN AFFILIATE, NEITHER YOU NOR ELANCE, OUR AFFILIATES, OUR LICENSORS, OR OUR THIRD-PARTY SERVICE PROVIDERS WILL BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, 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. IF LIABILITY IS FOUND, THE LIABILITY OF ELANCE, OUR AFFILIATES, OUR LICENSORS, OR OUR THIRD-PARTY SERVICE PROVIDERS TO ANY USER FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT WILL NOT EXCEED THE GREATER OF: (A) $2,500; OR (B) ANY FEES RETAINED BY ELANCE WITH RESPECT TO MEMBER CONTRACTS OF WHICH USER WAS A PARTY AS A CLIENT OR FREELANCER DURING THE TWELVE-MONTH PERIOD PRECEDING THE DATE OF THE CLAIM. THESE LIMITATIONS WILL APPLY TO ANY LIABILITY ARISING FROM ANY CAUSE OF ACTION WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH COSTS OR DAMAGES AND EVEN IF THE LIMITED REMEDIES PROVIDED HEREIN FAIL THEIR ESSENTIAL PURPOSE.

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

13. Release

In addition to the recognition that Elance is not a party to any contract between Client and Freelancer, you hereby release Elance, our Affiliates, and our respective officers, directors, employees, attorneys, agents, subsidiaries, joint ventures, and our and their respective successors and assigns 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 any dispute you have with another Member, whether it be at law or in equity. This release includes, for example and without limitation, any disputes regarding the provision, functions, and quality of the Freelancer Services provided to Client by a Freelancer and requests for refunds based upon Disputes. Procedures regarding the handling of certain Disputes between Members are discussed below in section 16.

TO THE EXTENT APPLICABLE, 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 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

This release will not apply to a claim that Elance failed to meet our obligations under this Agreement and the other Terms of Service.

14. Indemnity

You agree to defend, hold harmless, and indemnify Elance, our Affiliates, our and their respective officers, directors, employees, attorneys, agents, joint ventures, and our and their respective successors and assigns (each such party an "Indemnified Party") from and against any and all losses, costs, expenses, damages, and other liabilities (including reasonable attorneys’ fees and costs) incurred by an Indemnified Party arising from or related to any cause of action, claim, suit, proceeding, demand, or action brought by a third-party against an Indemnified Party in connection with your use of the Site Services, including: (a) any payment obligations incurred through use of the Site Services; (b) any allegation of any infringement, misappropriation, or other violation of any Intellectual Property Rights by you or your agents, including by any Work Product provided by you or your agents; (c) your: (i) use of the Site; (ii) decision to supply credit or other information via the Site, including financial information; (iii) decision to submit postings and accept offers from other Members; (iv) breach of any provision of this Agreement or the other Terms of Service; (v) dispute of or failure to pay any invoice or make any other payment; (vi) obligations to a Freelancer, including payment obligations; (d) any breach of contract or other claims made by Members with which you conducted business through the Site; (e) any liability arising from the tax treatment of payments made or receive through the Site Services or any portion thereof; (f) anything which the Indemnified Party may do or refrain from doing in connection with this Agreement and the Terms of Service, including, but not limited to, all costs incurred in conjunction with any interpleader which EEC may enter into regarding an Escrow Account; or (g) monies deposited under the Account Agreement or for any interest upon any such monies. The foregoing indemnity will include, without limitation, such cause of action, claim, suit, proceeding, demand, or action arising out of the negligence of any Indemnified Party; provided that the foregoing indemnification will not extend to the gross negligence or willful misconduct of an Indemnified Party.

15. Agreement Term; Termination and Suspension

This Agreement will become effective upon your first visit to the Site and will remain in effect for the duration of your use of the Site. Unless both you and Elance agree otherwise in writing, either of us may terminate this Agreement in our sole discretion, at any time, without explanation, upon written notice, except as otherwise provided below. If you are using Elance Payroll Services, you must legally terminate your relationship with Client or Freelancer, as applicable, before terminating this Agreement. In the event you or we properly terminate this Agreement, your right to use the Site is automatically revoked, and we will close your Account; however, upon our election, (i) if you have any open Engagements when you terminate this Agreement you will continue to be bound by this Agreement until all such Engagements have closed on the Site; (ii) Elance will continue to perform those Elance Services necessary to complete any open Engagement or related transaction between you and another Member; and (iii) you will continue to be obligated to pay any amounts accrued but unpaid as of the date of termination or as of the completion of any open Engagements, whichever is later, to Elance for any Site Services and to any Freelancers for any Freelancer Services. Without limiting any other provisions of this Agreement, the termination of this Agreement for any reason will not release you, any Member with whom you have entered into a Member Contract, or Elance from any obligations incurred prior to termination of this Agreement or that thereafter may accrue in respect of any act or omission prior to such termination.

Upon any termination of a Team Account, Elance may close any or all related Accounts.

Without limiting Elance’s other remedies, we may temporarily suspend, indefinitely suspend, or permanently revoke your access to the Site 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 this Agreement or other Terms of Service; (b) we suspect or become aware that you have
provided false or misleading information to us; or (c) we believe, in our sole discretion, that your actions may cause legal liability for you, our Members, or Elance or our Affiliates; may be contrary to the interests of the Site or the User community; or may involve illicit activity. Once your Account is suspended or closed, you must not continue to use the Site under the same Account or a different Account or reregister under a new Account without Elance’s prior written consent.

Without limiting Elance’s other remedies, if you engage in actions or activities that circumvent the Site or otherwise reduce fees owed Elance or our Affiliates under this Agreement, you must pay Elance for all fees owed to Elance and our Affiliates and reimburse Elance for all losses and costs (including any and all time incurred by employees of Elance or our Affiliates) and reasonable expenses (including attorneys’ fees) related to investigating such breach and collecting such fees.

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

Except as otherwise required by applicable law, we will notify you if we suspend or close your Account, unless we believe, in our sole judgment, that giving notice may cause damage. You acknowledge and agree that the value, reputation, and goodwill of the Site depend on transparency of Users’ Account status to all Members, including both yourself and other Members who have entered into Member Contracts with you. You therefore agree as follows: IF ELANCE DECIDES TO SUSPEND OR CLOSE YOUR ACCOUNT, ELANCE HAS THE RIGHT, BUT NOT THE OBLIGATION, TO (1) NOTIFY OTHER MEMBERS THAT HAVE ENTERED INTO MEMBER CONTRACTS WITH YOU TO INFORM THEM OF YOUR SUSPENDED OR CLOSED ACCOUNT STATUS, AND (2) PROVIDE THOSE MEMBERS WITH A SUMMARY OF THE REASONS FOR YOUR ACCOUNT SUSPENSION OR CLOSURE.

When your Account is closed for any reason, you will no longer have access to data, messages, files, and other material you keep on the Site. If practicable, Elance will retain this information along with all your previous posts and proposals for a period of one year from the date of closure to give you ample time to institute an appeal of our decision through the process described in the subsection titled “Disputes with Elance” in section 16 below. If you appeal our decision through that process within one year, Elance will retain your information until such dispute is resolved. If you fail to appeal our decision within one year, Elance may delete your information, including data, messages, files, and other material you keep on the Site.

The following will all survive termination of this Agreement for any reason: (a) those terms of this Agreement that by their nature are intended to survive this Agreement; and (b) the Account Agreement, the applicable Escrow Instructions, the Payroll Services Agreement, the Refund and Cancellation Policy, and the applicable Dispute Resolution Policies.

16. Cancellations, Refunds, and Disputes; Mandatory Binding Arbitration and Class Action/Jury Trial Waiver

To cancel an Engagement, issue or request a refund, or initiate a Dispute with a Member (other than a dispute involving feedback), please see the following policies as applicable: the Refund and Cancellation Policy, the Fixed Price Dispute Resolution Policy, or the Hourly Dispute Resolution Policy.

For a Dispute involving feedback, you must follow the section titled “Rating and Feedback System” in the Site Usage Policy.

For a dispute between you and Elance or any of our Affiliates, see below.

Disputes with Elance

If a dispute arises between you and Elance or any of our Affiliates, our goal is to resolve the dispute quickly and cost-effectively. Accordingly, you, Elance, and our Affiliates agree that we will resolve any claim or controversy at law or in equity that arises between you and Elance or our Affiliates out of or relating to this Agreement or the Elance Services (a “Claim”) in accordance with this section titled “Disputes with Elance.”

Law and Forum for Disputes

This Agreement and any Claim, including, without limitation, any dispute relating to a Member Contract, will be governed by and construed in accordance with the laws of the State of Delaware, without regard to its
conflict of law provisions and excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG); provided, however, that any Claims made by any Freelancer located within the United States will be governed by the law of the state in which such Freelancer resides or is legally organized.

You agree that any Claim must be resolved as described in the subsections below titled “Informal Dispute Resolution” and “Mandatory Binding Arbitration and Class Action/Jury Trial Waiver.”

Informal Dispute Resolution

Before serving a demand for arbitration of a Claim, or otherwise seeking injunctive or other equitable relief in a court of law as expressly permitted in this Agreement, you agree to first notify Elance of the Claim at Attn: Legal, 441 Logue Ave., Mountain View, CA 94043 (the “Notice”) and seek informal resolution of the Claim. The Notice must include your name, pertinent account information, a brief description of the Claim, and your contact information, so that we may evaluate the Claim and attempt to informally resolve the Claim. Elance will have 60 days from the date of our receipt of the Notice to informally resolve the Claim, which, if successful, will avoid the need for further action.

Mandatory Binding Arbitration and Class Action/Jury Trial Waiver (Does Not Apply to Freelancers Located Outside the United States and Its Territories)

This Mandatory Binding Arbitration and Class Action/Jury Trial Waiver provision (“Arbitration Provision”) applies to all Visitors and Members, except Freelancers located outside of the United States and its territories.

In the unlikely event that Elance is unable to resolve a Claim within 60 days of our receipt of the Notice, you, Elance, and our Affiliates agree to resolve the Claim by binding arbitration before an arbitrator from JAMS. JAMS may be contacted at www.jamsadr.com.

A. Scope of Arbitration Agreement and Conduct of Arbitration.

Arbitration as provided in this Arbitration Provision is governed by the United States Federal Arbitration Act (9 U.S.C. §§ 1 et seq.). Except as otherwise stated in this Arbitration Provision, this Arbitration Provision applies to any Claim (including any claimed employment with Elance or one of our Affiliates or successors) or termination of your relationship with Elance, regardless of the date of Claim accrual. This Arbitration Provision survives after your relationship with Elance ends. Except as it otherwise provides, this Arbitration Provision is intended to apply to the resolution of Claims that otherwise would be resolved in a court of law or before a forum other than arbitration. Except as otherwise stated in this Arbitration Provision, you, Elance, and our Affiliates agree that any Claim covered by this Arbitration Provision, or arising out of, relating to, or concerning the validity, enforceability, or breach of this Arbitration Provision, will be resolved by binding arbitration administered by JAMS. If for any reason JAMS will not administer the arbitration, a party may apply to a court of competent jurisdiction with authority over the location where the arbitration will be conducted for appointment of a neutral arbitrator.

Except as otherwise provided herein, arbitration will be conducted in Santa Clara County, California in accordance with the JAMS Comprehensive Arbitration Rules and Procedures under the Optional Expedited Arbitration Procedures then in effect for JAMS. Notwithstanding the foregoing, any Claims by Freelancers that allege employment or worker classification claims will be conducted within 25 miles of where the Freelancer is located in accordance with the JAMS Employment Arbitration Rules and Procedures then in effect. The JAMS arbitration rules may be found at www.jamsadr.com or by searching online for “JAMS Comprehensive Arbitration Rules and Procedures” or “JAMS Employment Arbitration Rules.” The parties agree that any party will have the right to appear at the arbitration by telephone and/or video rather than in person.

Except as it otherwise provides, this Arbitration Provision applies, without limitation, to all Claims arising out of or related to your relationship with Elance or the termination of that relationship, any payments you claim due you from Elance, trade secrets, unfair competition, compensation, classification, minimum wage, seating, expense reimbursement, overtime, breaks and rest periods, termination, discrimination, or harassment and claims arising under the Uniform Trade Secrets Act, Civil Rights Act of 1964, Americans With Disabilities Act, Age Discrimination in Employment Act, Family Medical Leave Act, Fair Labor
Standards Act, Employee Retirement Income Security Act (except for claims for employee benefits under any benefit plan sponsored by Elance and (a) covered by the Employee Retirement Income Security Act of 1974 or (b) funded by insurance), Affordable Care Act, Genetic Information Non-Discrimination Act, state statutes or regulations addressing the same or similar subject matters.

You, Elance, and our Affiliates will follow the applicable JAMS rules with respect to arbitration fees. In any arbitration under the JAMS Employment Arbitration Rules and Procedures, the Freelancer will pay JAMS arbitration fees only to the extent those fees are no greater than the filing or initial appearance fees applicable to court actions in the jurisdiction where the arbitration will be conducted. The arbitrator must follow applicable law and may award only those remedies that would have applied had the matter been heard in court. Judgment may be entered on the arbitrator’s decision in any court having jurisdiction.

This Arbitration Provision does not apply to litigation between Elance and our Affiliates and you to which you are a party that is already pending in a state or federal court as of the effective date of this Arbitration Provision. This Arbitration Provision also does not apply to claims for workers’ compensation, state disability insurance, or unemployment insurance benefits. You, Elance, or our Affiliates may apply to a court of competent jurisdiction for temporary or preliminary injunctive relief in connection with an arbitrable controversy, but only upon the ground that the award to which that party may be entitled may be rendered ineffectual without such relief. Notwithstanding this Arbitration Provision, you, Elance, and our Affiliates retain the right to bring an action in small claims court within the jurisdictional limits of the small claims court and as long as such matter is only pending in that court.

Regardless of any other terms of this Arbitration Provision, a Claim may be brought before and remedies awarded by an administrative agency if applicable law permits the agency to adjudicate the Claim notwithstanding the existence of this Arbitration Provision. Such administrative Claims include, without limitation, Claims brought before the Equal Employment Opportunity Commission, the U.S. Department of Labor, or the National Labor Relations Board. Nothing in this Arbitration Provision will be deemed to preclude or excuse a party from bringing an administrative Claim before any agency in order to fulfill the party's obligation to exhaust administrative remedies before making a Claim in arbitration.

Claims that may not be subject to a pre-dispute arbitration agreement as provided by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203) are excluded from the coverage of this Arbitration Provision.

B. Enforcement of this Arbitration Provision.

This Arbitration Provision is the full and complete agreement relating to the formal resolution of Claims covered by this Arbitration Provision. In the event any portion of this Arbitration Provision is deemed unenforceable, the remainder of this Arbitration Provision will be enforceable. If the Class Action Waiver in subsection C below of this Arbitration Provision is deemed to be unenforceable, you, Elance, and our Affiliates agree that this Arbitration Provision is otherwise silent as to any party's ability to bring a class, collective, or representative action in arbitration.

C. Class Action and Jury Trial Waiver.

THIS ARBITRATION PROVISION AFFECTS YOUR ABILITY TO PARTICIPATE IN CLASS, COLLECTIVE, OR REPRESENTATIVE ACTIONS. YOU, ELANCE, AND OUR AFFILIATES AGREE TO BRING ANY CLAIM IN ARBITRATION ON AN INDIVIDUAL BASIS ONLY, AND NOT ON A CLASS, COLLECTIVE, OR PRIVATE ATTORNEY GENERAL REPRESENTATIVE BASIS ON BEHALF OF OTHERS. THERE WILL BE NO RIGHT OR AUTHORITY FOR ANY CLAIM TO BE BROUGHT, HEARD, OR ARBITRATED AS A CLASS, COLLECTIVE, REPRESENTATIVE, OR PRIVATE ATTORNEY GENERAL ACTION, OR AS A MEMBER IN ANY SUCH CLASS, COLLECTIVE, REPRESENTATIVE, OR PRIVATE ATTORNEY GENERAL PROCEEDING (“CLASS ACTION WAIVER”). THE CLASS ACTION WAIVER DOES NOT APPLY TO ANY CLAIM YOU BRING AS A PRIVATE ATTORNEY GENERAL SOLELY ON YOUR OWN BEHALF AND NOT ON BEHALF OF OTHERS. NOTWITHSTANDING ANY OTHER PORTION OF THIS ARBITRATION PROVISION OR THE JAMS RULES, CLAIMS REGARDING THE VALIDITY, ENFORCEABILITY, OR BREACH OF THE CLASS ACTION WAIVER MAY BE RESOLVED ONLY BY A CIVIL COURT OF COMPETENT JURISDICTION AND NOT BY AN ARBITRATOR. IN ANY CASE IN WHICH (1) THE CLAIM IS FILED AS A CLASS, COLLECTIVE, REPRESENTATIVE, OR PRIVATE ATTORNEY GENERAL ACTION AND (2) A CIVIL COURT OF COMPETENT JURISDICTION FINDS ALL OR PART OF THE CLASS ACTION WAIVER
UNENFORCEABLE, THE CLASS, COLLECTIVE, REPRESENTATIVE, AND/OR PRIVATE ATTORNEY GENERAL ACTION TO THAT EXTENT MUST BE LITIGATED IN A CIVIL COURT OF COMPETENT JURISDICTION, BUT THE PORTION OF THE CLASS ACTION WAIVER THAT IS ENFORCEABLE WILL BE ENFORCED IN ARBITRATION. YOU, ELANCE, AND OUR AFFILIATES AGREE THAT YOU WILL NOT BE RETALIATED AGAINST, DISCIPLINED, OR THREATENED WITH DISCIPLINE AS A RESULT OF EXERCISING YOUR RIGHTS UNDER SECTION 7 OF THE NATIONAL LABOR RELATIONS ACT BY FILING OR PARTICIPATING IN A CLASS, COLLECTIVE, OR REPRESENTATIVE ACTION IN ANY FORUM. HOWEVER, ELANCE AND OUR AFFILIATES MAY LAWFULLY SEEK ENFORCEMENT OF THIS ARBITRATION PROVISION AND THE CLASS ACTION WAIVER UNDER THE FEDERAL ARBITRATION ACT AND SEEK DISMISSAL OF SUCH CLASS, COLLECTIVE, OR REPRESENTATIVE ACTIONS OR CLAIMS. THE CLASS ACTION WAIVER WILL BE SEVERABLE IN ANY CASE IN WHICH THE CLAIM IS FILED AS AN INDIVIDUAL ACTION, AND SEVERANCE IS NECESSARY TO ENSURE THAT THE INDIVIDUAL ACTION PROCEEDS IN ARBITRATION.


You may opt out of this Arbitration Provision by notifying Elance in writing within 30 days of the date you first register for the Site. To opt out, you must send a written notification to Elance at Attn: Legal, 441 Logue Ave., Mountain View, CA 94043 that includes (a) your Account username, (b) your name, (c) your address, (d) your telephone number, (e) your email address, and (f) a clear statement indicating that you do not wish to resolve Claims through arbitration and demonstrating compliance with the 30-day time limit to opt out of this Arbitration Provision.

17. Notices and Communications

Communications from Elance to you

By visiting the Site, you are deemed to have executed this Agreement electronically, effective on the date you visit the Site, pursuant to the federal Electronic Signatures in Global and National Commerce Act (the E-Sign Act) (15 U.S.C. §§ 7001 et seq.). Visiting the Site constitutes your acknowledgement that you are able to electronically receive, download, and print this Agreement. Unless you otherwise indicate in writing to Customer Support, Elance and our Affiliates will communicate with you by email or by posting communications on the Site. 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 the Site, and you must regularly check the Site for postings. Without limiting Elance’s other rights under this Agreement, if you fail to respond to an email message from Elance regarding a violation, dispute, or complaint within two Business Days, Elance has the right to suspend or close, in our sole discretion, your Account.

Communications from you to Elance

All notices to Elance or Affiliates intended to have a legal effect must be in writing and delivered either (i) in person; (ii) by a means evidenced by a delivery receipt, to the following address: Elance, Inc., 441 Logue Ave., Mountain View, California 94043, U.S.A., Attn: General Counsel; or (iii) in writing via email to legalnotices@elance.com. All such notices are deemed effective upon documented receipt by Elance. Elance does not accept service of any legal process by email or mail; all such service should occur by hand delivery to Elance or its registered agent for service of process.

18. Disclosures

Elance, located at 441 Logue Avenue, Mountain View, California 94043, is the provider of the electronic commercial service on the Site. Members are notified, via the Site, in advance regarding any applicable service charges. The Consumer Information Division of the California Department of Consumer Affairs may be contacted in writing at 1625 N. Market Blvd., Suite N 112, Sacramento, CA 95834 or by calling 1-800-952-5210. Upon your request, you may have this Agreement sent to you by email. Please contact Elance to resolve a complaint regarding any aspect of service relating to the Site by writing to the attention of Customer Support at the above address or contact us through Customer Support.
19. Miscellaneous Terms and Conditions

You are responsible for compliance with applicable foreign, federal, state, and local laws, keeping in mind that access to the contents of the Site may not be permitted under the laws of certain countries. Elance will not be considered to have modified or waived any of our rights or remedies under this Agreement unless the modification or waiver is in writing and signed by an authorized representative of Elance. No delay or omission by Elance in exercising our rights or remedies will impair our 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.

You will not transfer, assign, or delegate your rights or obligations (including your Account) under this Agreement to anyone without the prior express written consent of Elance, and any attempt to do so will be null and void. Elance may assign this Agreement in our sole discretion. Subject to the foregoing restrictions, this Agreement will inure to the benefit of the successors and permitted assigns of the parties.

If an arbitrator or court of competent jurisdiction deems any provision of this Agreement invalid, the invalidity of such provision will not affect the validity of the remaining provisions of this Agreement (except as noted in section 16 above), which will remain in full force and effect.

The Site is controlled and operated from our facilities in the United States. Elance makes no representations that the Site is appropriate or available for use in other locations. Those who access or use the Site from other jurisdictions do so at their own volition and are entirely responsible for compliance with all applicable foreign, United States federal, state, and local laws and regulations, including, but not limited to, export and import regulations, including the Export Administration Regulations maintained by the United States Department of Commerce and the sanctions programs maintained by the Department of the Treasury Office of Foreign Assets Control. You must not directly or indirectly sell, export, re-export, transfer, divert, or otherwise dispose of any software or service without obtaining any and all required authorizations from the appropriate government authorities. You also warrant that you are not prohibited from receiving U.S. origin products, including services or software. You may not use or access the Site if you are (i) a resident of, or legally organized under the laws of, a country or geographic area embargoed by the United States; (ii) subject to United States economic sanctions that prohibit your use of or access to the Site; or (iii) a foreign person or entity blocked or denied by the United States government. Unless otherwise explicitly stated, all materials found on the Site are solely directed to individuals, companies, or other entities located in the United States.

The parties to this Agreement will not 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 will be extended by the period of such delay but in no event longer than 60 days.

The English language version of this Agreement will be controlling in all respects and will prevail in case of any inconsistencies with translated versions, if any. The section headings in this Agreement are included for ease of reference only and have no binding effect. Even though Elance drafted this Agreement, you represent that you had ample time to review and decide whether to agree to the terms of this Agreement. If an ambiguity or question of intent or interpretation of this Agreement arises, no presumption or burden of proof will arise favoring or disfavoring you or Elance because of the authorship of any provision of this Agreement. This Agreement, together with the other Terms of Service and the Site Policies, comprise the entire agreement between you and Elance with respect to the use of the Site and supersede all prior agreements between you and us, written or oral, regarding the subject matter contained herein and therein as well as any conflicting or inconsistent terms in any website(s) that link to or are linked from the Site. This Agreement will be displayed in a PDF version and for convenience may be displayed in both PDF and HTML versions. In the event of any inconsistency between such versions, the PDF version will govern.

20. Definitions

As used in this Agreement and the other Terms of Service, the following terms have the meanings given below, unless otherwise defined or required in context:

“Account” means the Elance account you open when you register to become a Member and use the Site Services, including all Team Accounts added to that Account.
“Account Agreement” means the Account agreement that governs your Account, Escrow Accounts, and related Site Services, including the Escrow Services, and is part of and incorporates by reference all terms, conditions, rules, policies, and guidelines on the Site, including the Escrow Instructions and other Terms of Service.

“Affiliate” means any entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Elance.

“Business Day” means a day on which the headquarters office of Elance is open for normal business.

“Client” means a Member that investigates and purchases Freelancer Services or identifies a Freelancer through the Site.

“Deliverable” means any Work Product (as defined in the Independent Contractor Services Agreement) identified as a deliverable in the Member Contract.

“Dispute,” if capitalized, means any dispute between Members where one or the other has the right to submit a Dispute Notice Form via the Site pursuant to the Refund and Cancellation Policy or an applicable Dispute Resolution Policy. The use of the un-capitalized term “dispute” anywhere on the Site refers to any dispute, whether between Members or with Elance, including those where no Member has filed a Dispute Notice Form via the Site.

“Dispute Notice” or “Dispute Notice Form” means the electronic form that the Site provides in a Workroom, that any Member may complete to identify a Dispute and begin Dispute resolution for an Engagement via the Site.

“Dispute Resolution Policy(ies)” for an independent contractor Engagement means either the Hourly Dispute Resolution Policy or the Fixed Price Dispute Resolution Policy, whichever is applicable.

“EEC” means Elance Escrow Corporation, a Delaware corporation and wholly owned operating subsidiary of Elance that provides the Escrow Services pursuant to the Account Agreement and the applicable Escrow Instructions.

“Elance,” “we,” and “us” means Elance, Inc., a Delaware corporation, except where otherwise specifically stated.

“Elance Limited” means Elance Limited, an Ireland registered company and wholly owned operating subsidiary of Elance that provides financial and merchant services pursuant to the Terms of Service.

“Elance Payroll Services” means the services described in the Payroll Services Agreement.

“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 Freelancer Services or Third-Party Services.

“Engagement” means a Client’s engagement of a Freelancer to provide Freelancer Services pursuant to a Member Contract.

“Escrow Account(s)” means a Client Escrow Account, a Freelancer Escrow Account, and/or a Fixed Price Escrow Account, each as described in the Account Agreement and applicable Escrow Instructions.

“Escrow Fee” means a fee that EEC earns for providing Escrow Services.

“Escrow Instructions” mean any instructions to EEC contained in the Terms of Service, including, without limitation, the Fixed Price Escrow Instructions, the Hourly and Miscellaneous Payment Agreement with Escrow Instructions, the Refund Escrow Instructions contained in the Refund and Cancellation Policy, and instructions to EEC contained in the text of the Account Agreement.

“Escrow Release” means a release of any or all funds in an Escrow Account pursuant to the Account Agreement and one or more of the Release Conditions described in the applicable Escrow Instructions.

“Escrow Services” means the escrow services provided by EEC pursuant to the Account Agreement and the applicable Escrow Instructions.
“Fixed Price Engagement” means an Engagement where Client has offered or agreed to pay Freelancer a fixed price for Freelancer Services and/or Deliverables.

“Freelancer” means a Member that advertises and provides services or identifies a Client through the Site. The term "Freelancer" includes, without limitation, a Member that becomes a Payroll Employee.

“Freelancer Services” means all services provided or delivered to Clients by Freelancers.

“Hourly Engagement” means an Engagement where Client has offered or agreed to pay Freelancer at a specified hourly rate for the Freelancer Services.

“Intellectual Property Rights” means all patent rights, copyright rights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights, and other intellectual property rights as may now exist or hereafter come into existence, and all applications therefore and registrations, renewals, and extensions thereof, under the laws of any state, country, territory, or other jurisdiction.

“may” means a party has the right to take an action.

“Mandatory Terms” means all provisions of the Terms of Service other than (i) the Independent Contractor Services Agreement; and (ii) if the Client is a Private Talent Cloud Client, the Refund and Cancellation Policy and the Dispute Resolution Policies.

“Member” means a person or legal entity that registers for an Account.

“Member Contract” means (1) the Relationship Agreements applicable to the Engagement; (2) the remaining Terms of Service other than the Relationship Agreements; (3) the Engagement terms, as awarded and accepted on the Site, to the extent not inconsistent with the Mandatory Terms; and (4) any other contractual provisions between Client and Freelancer and uploaded to the Site, to the extent not inconsistent with the Mandatory Terms.

“Payment Method” means a valid credit card issued by a bank acceptable to Elance, a bank account linked to your Account, a PayPal account, or such other method of payment as EEC or Elance may accept from time to time in their sole discretion.

“Payroll Employee” means a Freelancer accepted for employment by a payroll services company selected by Elance and assigned by that company via the Site to provide Freelancer Services to one or more Client(s).

“Private Talent Cloud Client” means a Client that has entered into a separate written agreement with Elance or our Affiliates for Private Talent Cloud services as specified in such written agreement.

“Relationship Agreements” means the (1) Independent Contractor Services Agreement; (2) Fixed Price Escrow Instructions; (3) Hourly and Miscellaneous Payment Agreement with Escrow Instructions; and (4) Payroll Services Agreement.

“Release Condition” means a condition for release of funds from an Escrow Account pursuant to the Escrow Instructions.

“Secure Areas” means portions of the Site that are encrypted using the Hypertext Transfer Protocol Secure (also known as “HTTPS”) or any other encryption mechanism.

“Service Fee” means a fee that Elance earns for creating, hosting, maintaining, and providing the Site and Site Services. Elance does not introduce Freelancers to Clients or help Freelancers to find Engagements, and therefore earns no fee when a Freelancer identifies a suitable Client or finds an Engagement.

“Services Agreement” means the default Independent Contractor Services Agreement that may be modified by Client and Freelancer as described here. A Services Agreement may include specifications, price, milestones, deliverables, hours, payment terms, warranties, and other contractual obligations.

“Site” means the domain and all subdomains of Elance.com and any mobile or web services or applications owned, controlled, or offered by Elance or EEC.
“Site Policies” means the 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 whether provided by Elance, EEC, an Affiliate or a third party, other than a Freelancer. Site Services includes the Third-Party Services, but excludes Freelancer Services.

“Team Account” means an account established by a Member adding Users to the Member’s Account to act on behalf of and perform roles assigned by the Member.

“Team Account Administrator” means a Team Member with account administration privileges for a Team Account.

“Team Member” means any User added to a Team Account.

“Terms of Service” means this Agreement and all the other Site information agreements and policies referenced or linked here.

“Third-Party Services” means all services that are accessible through the Site but delivered by third parties, not Elance or our Affiliates. The term Third-Party Services does not include Elance Services or Freelancer Services.

“Third-Party Sites” means all websites, Third-Party Services, and resources linked to the Site.

“User” means (1) a person who is a Member, using the Site on his or her own behalf, for his or her business purposes, and not for personal, household, or consumer use, or (2) a person who is authorized to use the Site on behalf of a Member that is a company or organization for business purposes, and not for personal, household, or consumer use.

“User Content” means any data, information, content, text, video, music, or other information that you post to any part of the Site.

“Visitor” means a person who only visits the Site and is not a Member or User.

“Workroom” means the place on the Site where a Client and Freelancer communicate about an Engagement.

“you” means a Visitor or Member accessing the Site or using the Site Services on his or her own behalf; and, if the Site Services are used on behalf of a Member, “you” also includes the Member for which the Site Services are used.

21. Contacting Us

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

Web Support: http://www.elance.com/service
Email: support@elance.com
Phone: 1-877-4-ELANCE (1-877-435-2623)
(=Monday 12:01 a.m. through Friday 12:00 a.m. Midnight Pacific Time)
Online Help Topics: http://www.elance.com/help