



Independent Contractor Services Agreement

Effective Date: May 5, 2015

If a Client and a Freelancer enter an independent contractor relationship, then this Independent Contractor Services Agreement (this “**Services Agreement**”) will apply. Your use of the Site after the effective date will signify your acceptance of and agreement to this Services Agreement. To the extent permitted by applicable law, we may modify this Services Agreement without prior notice to you, and any revisions to this Services Agreement will take effect when posted on the Site, unless otherwise stated in the revised Services Agreement. Please check the Site often for updates.

This Services Agreement incorporates all terms, conditions, rules, policies, and guidelines on the Site, including the [Terms of Service](#) (the “**Terms of Service**”). Capitalized terms not defined in this Services Agreement are defined in the [User Agreement](#) or in the other Terms of Service or have the meanings given such terms on the Site.

In some cases, Freelancers may be deemed to be employees under applicable law. If you are not certain that your Engagement 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 Services described [here](#). In that case, your Engagement will be subject to the [Payroll Services Agreement](#) in lieu of this Services Agreement.

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

1. Member Contract

Client agrees to purchase, and Freelancer agrees to deliver, the Freelancer Services in accordance with their Member Contract. Client and Freelancer may agree to Engagement terms or other contractual provisions uploaded to the Workroom that modify this Services Agreement. However, no Engagement 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 Engagement terms, as awarded and accepted in the Workroom; (3) other contractual provisions as uploaded to the Workroom and accepted by Client and Freelancer; and (4) this Services Agreement.

CLIENT AND FREELANCER 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 WILL REMAIN VALID AND BINDING.

2. Responsibilities and Performance

Client is responsible for specifying its Engagement, screening, engaging, inspecting, accepting, and paying for Freelancer Services in accordance with the Member Contract in a timely and professional manner. Freelancer is responsible for the performance and quality of the Freelancer Services in accordance with the Member Contract and providing the Freelancer Services in a timely and professional manner, consistent with industry practice, at a location, place, and time that Freelancer deems appropriate. Client and Freelancer 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 Engagement terms, unless both Client and Freelancer otherwise agree in the Workroom.

4. Independent Contractor Relationship

Freelancer'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. Freelancer is not the agent of Client and is not authorized to make any representation, contract, or commitment on behalf of Client. Freelancer will choose the manner and means to perform the Freelancer Services. Freelancer will provide its own equipment, tools,

and other materials at its own expense. Freelancer, at its sole cost and expense, will maintain appropriate insurance in accordance with generally accepted industry standards.

Freelancer is solely and exclusively liable for complying with, and making all payments under, all applicable local, 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 Freelancer 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 Freelancer's behalf. Freelancer hereby agrees to indemnify and defend Client and Elance and our Affiliates against any and all such taxes or contributions, including penalties and interest. Freelancer will provide proof of payment of appropriate taxes on fees paid to Freelancer upon 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 Freelancer, other than in the course of providing the Freelancer Services to Client under the Member Contract, and all Inventions that Freelancer incorporates into Work Product.

"Client Materials" means instructions, requests, intellectual property, and any other information or materials that Client provides to Freelancer for a Member Contract.

"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 Freelancer as required to complete the Engagement and delivered to Client in the performance of the Engagement, excluding Background Technology.

Background Technology

Freelancer will disclose in the Engagement Terms any Background Technology that Freelancer proposes to incorporate into Work Product or upon which use or distribution of the Work Product will depend. If Freelancer discloses no Background Technology, Freelancer warrants that it will not incorporate any Background Technology into Work Product provided pursuant to the Member Contract. Freelancer will separately provide, with each delivery of Work Product to Client, a third-party bill of materials that identifies all Background Technology and other third-party materials that have been incorporated into the Work Product and provides, for each item of Background Technology identified, (a) the name and any associated version number (b) the applicable license or licensing terms, (c) whether the item has been modified by Freelancer, and (d) how the item has been incorporated into, is used by, or is relied upon by the Work Product. Notwithstanding the foregoing, unless otherwise agreed in the Engagement Terms, Freelancer agrees that it will not incorporate into Work Product or otherwise deliver to Client any software code for which the use or distribution of the code will create (or purport to create) obligations for Client to grant any rights or immunities under Client's Intellectual Property Rights to a third party, including, without limitation, any obligation that the Work Product or Client software combined with, derived from, or distributed with such Work Product (x) be disclosed or distributed in source code form, (y) be licensed for the purpose of making derivative works, or (z) be redistributable at no charge.

License to Background Technology

Upon Freelancer's receipt of payment from Client, Freelancer hereby automatically grants to Client a non-exclusive, perpetual, fully-paid and royalty-free, irrevocable, and worldwide 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.

Client Materials

Client grants Freelancer a limited, non-exclusive, revocable (at any time, at Client's sole discretion) right to use the Client Materials as necessary solely for the performance of the Freelancer Services under the applicable Member Contract. Client reserves all other rights and interest, including, without limitation, all Intellectual Property Rights, in and to the Client Materials. Upon completion or termination of the Member Contract, or upon Client's written request, Freelancer will immediately return all Client Materials to Client and destroy all copies of Client Materials and Deliverables (except for Background Technology as permitted by the Member Contract and/or this Services Agreement) contained in or on Freelancer's premises, systems, or any other equipment or location otherwise under Freelancer's control. Within ten days of such request from Client, Freelancer agrees to provide written certification to Client that Freelancer has returned or destroyed all Client Materials and Work Product as provided in this subsection.

Ownership of Work Product and Intellectual Property

Upon Freelancer'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 Freelancer has any Intellectual Property Rights to the Work Product that are not owned by Client upon Freelancer's receipt of payment from Client, Freelancer hereby automatically irrevocably assigns to Client all worldwide right, title, and interest in and to such Intellectual Property Rights. Except as set forth above, Freelancer retains no rights to use, and will not challenge the validity of Client's ownership in, such Intellectual Property Rights. Freelancer 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 Freelancer has any rights to the Work Product, including, without limitation, any Intellectual Property Rights, that cannot be assigned to Client by Freelancer, Freelancer hereby automatically, upon Freelancer's receipt of payment from Client, unconditionally and irrevocably grants to Client during the term of such rights, an exclusive, even as to Freelancer, 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 Freelancer has any rights to such Work Product that cannot be assigned or licensed, Freelancer hereby automatically, upon Freelancer's 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 will, at Client's request and expense, consent to and join in any action to enforce such rights.

Assistance

Freelancer will 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 Freelancer's signature on any document needed in connection with the foregoing, Freelancer 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 Freelancer.

6. Competitive or Conflicting Engagements

Freelancer agrees, during the term of the Member Contract, not to enter into a contract or accept an obligation that is inconsistent or incompatible with Freelancer's obligations under the Member Contract. Freelancer warrants that there is no such contract or obligation in effect as of the date Freelancer accepts the Engagement and none will take effect thereafter. Freelancer further agrees not to disclose to, deliver to, or induce Client to use any confidential information that belongs to anyone other than Client or Freelancer.

7. Confidential Information

Freelancer agrees that during the term of the Member Contract and thereafter, except as expressly authorized in writing by Client, Freelancer (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 Freelancer personnel who need to know such information in connection with providing the Freelancer Services to Client. **"Confidential Information"** means all information related to Client's business and prospects or related to Work Product delivered or agreed to be delivered from Freelancer to Client, including, without limitation: (i) Client Materials; (ii) 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; (iii) information regarding products or plans for research and development, marketing and business plans, budgets, financial statements, contracts, prices, suppliers, and customers; (iv) information regarding the skills and compensation of Client's employees, contractors, and any other service providers; (v) information designated by Client, either in writing or orally, as Confidential Information, (vi) the existence of any business discussions, negotiations, or agreements between Client and any third party; and (vii) all such information related to any third party that is disclosed to Client or to Freelancer during the course of or in connection with the Engagement or pursuant to the Terms of Service. Notwithstanding the foregoing, it is understood that Freelancer 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 Freelancer's own skill, knowledge, know-how, and experience. Confidential Information does not include information that was known to Freelancer prior to Client's disclosure hereunder or that becomes publicly available through no fault of Freelancer.

8. Freelancer Representations and Warranties

Freelancer hereby represents and warrants that (a) the Work Product will be an original work of Freelancer and any third parties will have executed assignment agreement(s) consistent with this Services 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) Freelancer will not grant, directly or indirectly, any rights or interest whatsoever in the Work Product to third parties; (f) Freelancer has full right and power to enter into and perform the Member Contract without the consent of any third party; (g) Freelancer has an unqualified right to grant the license to all Background Technology as set forth in the subsection titled **"License to Background Technology"**; and (h) Freelancer will comply with all laws and regulations applicable to Freelancer's obligations under the Member Contract.

9. Indemnification

Freelancer 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, misappropriates, or otherwise violates any Intellectual Property Rights, or (ii) arising from Freelancer's breach of the terms of this Services Agreement, the User Agreement, or other Terms of Service.

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 Policies referenced therein. Client may also terminate the Member Contract immediately in its sole discretion in the event of Freelancer's material breach of the sections titled **"Intellectual Property Rights," "Competitive or Conflicting Engagements,"** and **"Confidential Information."**

Return of Property

Upon termination of the Member Contract or upon Client's request at any other time, Freelancer will deliver to Client all of Client's property together with all copies thereof, any other materials containing or disclosing any Work Product that Client has paid for, and 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," "Freelancer**

Representations and Warranties,” “Indemnification,” “Return of Property,” “Survival,” “Exclusion and Limitations of Liability,” and “General Provisions.”

11. Multi-Employee or Multi-Contractor Freelancer

Before any of Freelancer’s employees, contractors, or agents perform services in connection with the Member Contract or have access to Client’s Confidential Information, the employees, contractors, and agents and Freelancer must have entered into a binding written agreement that contains provisions substantially equivalent to the sections titled **“Intellectual Property Rights,” “Competitive or Conflicting Engagements,” “Confidential Information,”** and any modifications thereto. Freelancer 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 those of its employees, contractors, and agents 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, and agents in performing the services or otherwise performing its obligations under the Member Contract, except as set forth in this Services Agreement.

12. Disclaimer of Warranties

Other than the warranties expressly stated in this Services Agreement or other Terms of Service, Freelancer 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 titled **“Confidential Information”**, in no event will either Freelancer 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 Services Agreement, except for a violation of section 7 titled **“Confidential Information”** and as provided under section 9 titled **“Indemnification”**, in no event will either Freelancer or Client be liable to the other for any action or claim related to the services provided for the Engagement, whether based on contract, tort, negligence or any other theory of liability, in an amount in excess of the amount Client paid to Freelancer through the Site during the one-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.

14. General Provisions

Governing Law

This Member Contract and any Claim or action related thereto 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 of the User Agreement titled **“Informal Dispute Resolution”** and **“Mandatory Binding Arbitration and Class Action/Jury Trial Waiver.”**

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 applicable 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 assignment, 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 Freelancer, 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 will be binding upon and enforceable by and against Client's and Freelancer's successors and assigns, provided that any unauthorized assignment will 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 them to the Workroom.

Injunctive Relief

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

Freelancer and Client agree not to, 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. Freelancer and Client also each warrant that they are not prohibited from receiving U.S. origin products, including services or software.

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 Freelancer 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)

(Monday 12:01 a.m. through Friday 12:00 a.m. Midnight Pacific Time)

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