

This Writer Services Agreement is part of the Writer Contract (defined below) between the Writer and Mr. Anshul Motwani, Age 23, residing at Bunglow No.8, NCL Co. Op. Hsg. Sc., Panchvati, Pashan, Pune, owner of the domain name and the website [www.wittypen.com](http://www.wittypen.com) ('Site'), effective upon Writer's acceptance of a Job on the Site. This Services Agreement incorporates all terms, conditions, rules, policies, and guidelines on the Site, including the WittyPen 'Terms of Service'. The terms not defined in this agreement shall bear the same meaning as defined in the WittyPen Terms of Service.

This Services Agreement is effective as of October 22, 2015.

## **1. DEFINITIONS:**

### **a. Writer Contract**

Upon an extension of an offer to contract for a Job and on the Writer's acceptance of the said Job, the Writer agrees to deliver the Services in accordance with this Agreement.

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

### **c. "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.**

### **d. "Submission" means any and all Submission developed by Writer as part of the Writer Services as required to complete the Job and delivered to WittyPen.**

### **e. "WittyPen" means the owner of the Site and shall include his representatives, legal heirs, successors, assigns and employees.**

## **2. RESPONSIBILITIES AND PERFORMANCE**

Writer agrees that he is responsible for the performance and quality of the Writer Services in accordance with the Writer Contract in a timely and professional manner, consistent with industry practice. The manner and means that Writer chooses to perform the Job are within Writer's sole discretion and control. In performing the Job, Writer agrees to use/provide its own equipment, tools, and other materials at its own expense. The Writer agrees to not write/ publish or attempt to be done or cause to be done any such act that may result in any kind of loss/defamation or an act that may prove to be detrimental to WittyPen. The Writer further also agrees to be always diligent and shall be fair during performing his duties under the contract.

## **3. DURATION OF SERVICES & EDITS**

The performance of the Writer Services under the Writer Contract commences and terminates on the dates specified in the Job Terms, unless agreed mutually otherwise by WittyPen and the writer.

#### **4. NON DELEGATION**

A Writer is exclusively assigned to a particular Job and is strictly prohibited from delegating the job further. The Writer shall execute the Job exclusively by himself. In an event of such delegating of the job, the Writer shall be permanently banned from the WittyPen platform.

#### **5. EDITS AND REVISIONS**

WittyPen may, at its sole discretion, require the Writer to perform edits to a Submission. The writer may also perform edits and amendments to his submission subject to only two times.. In the event that a piece is eligible for edits, the rejected first Submission shall be returned to the Writer with comments, edits or any remarks in order to allow a Writer to make a second Submission. If a Writer's second Submission is rejected, WittyPen is not obligated to review any additional Submissions from the Writer in connection with that Job.

#### **6. INDEPENDENT CONTRACTOR RELATIONSHIP**

6.1 The Writer is:

- a. not an agent of WittyPen;
- b. not authorized to make any representations, contracts, or commitments on behalf of WittyPen, including contacting WittyPen Clients;
- c. not entitled to any of the benefits that WittyPen makes available to its employees;
- d. is solely responsible for the content of the Submissions and WittyPen shall not be directly or indirectly held liable for the content of the Submissions; and
- e. solely responsible for all tax returns and payments required to be filed with or made to any federal, state, or local tax authority with respect to Writer's performance of services and receipt of fees under the Writer Contract.

6.2 Writer has the right to be employed by, contract or otherwise perform similar services for other individuals or entities (specifically including direct competitors of WittyPen) during the term of this Agreement. In doing so, Writer shall not make use of, or disclose, directly or indirectly, any confidential or proprietary information of WittyPen or its clients or Buyers.. Writer shall furnish and maintain at its expense all certifications, licenses, continuing education, equipment and materials used to provide the Services, including, but not limited to a telephone, computer equipment, and high-speed internet access. Writer is solely and exclusively liable for complying with all applicable state, federal and international laws, including laws governing self-employed individuals, and other contributions based on fees paid to Writer under the Writer Contract. WittyPen will not withhold or make payments for social security, unemployment insurance or disability insurance contributions, or obtain workers' compensation insurance on Writer's behalf. Writer hereby agrees to indemnify and defend WittyPen against any and all such taxes or contributions, including penalties and interest.

#### **7. INTELLECTUAL PROPERTY RIGHTS**

7.1 Writer agrees that each Submission is a work made for hire. Upon Writer's Submission of Job, any Intellectual Property Rights in the Submission will be the sole and exclusive property of WittyPen, and WittyPen will be deemed to be the author thereof.

If Writer has any rights to such Intellectual Property Rights that are not owned by WittyPen upon Writer's Submission, Writer hereby automatically irrevocably assigns to WittyPen all right, title and interest worldwide in and to such Intellectual Property Rights. Except as set forth below, Writer retains no rights to use such Intellectual Property Rights and agrees not to challenge the validity of WittyPen's ownership in such Intellectual Property Rights. Writer hereby waives any moral rights, rights of paternity, integrity, disclosure and withdrawal or inalienable rights under applicable law in and to the Submission.

### 7.2 License to or Waiver of Other Rights

If Writer has any right to such Intellectual Property Rights in the Submission that cannot be assigned by Writer, Writer hereby automatically upon receipt of payment from WittyPen unconditionally and irrevocably grants to WittyPen during the term of such rights, an exclusive, even as to Writer, irrevocable, perpetual, worldwide, fully paid and royalty-free license, with rights to sublicense through multiple levels of sublicensees, to reproduce, make derivative works of, distribute, publicly perform and publicly display in any form or medium, whether now known or later developed, make, use, sell, import, offer for sale and exercise any and all such rights.

### 7.3 Assistance

Writer agrees to assist WittyPen in every way, both during and after the term of the Writer Contract, to obtain and enforce India and foreign Intellectual Property Rights relating to Submission in all countries. WittyPen will reimburse Writer for any out-of-pocket costs associated with such obtaining and enforcement. In the event WittyPen is unable for any reason, after reasonable effort, to secure Writer's signature on any document needed in connection with the actions specified above in this Section "Intellectual Property Rights," Writer hereby designates and appoints WittyPen 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 Writer.

## **8. BILLING AND PAYMENT TERMS**

8.1 When an Assigned Writer makes a final Submission, such request is:

- a. Writer's representation that it has completed the applicable Writer Services fully and satisfactorily; and
- b. Writer's irrevocable instruction to WittyPen to process a payment request in accordance with the Job terms.

### 8.2 Partial Payment

- a. Where a Writer, acting in good faith and with best efforts, makes a Submission on a Job and the Buyer rejects such Submission after making one previous attempt, WittyPen agrees to compensate Writer for those services by paying Writer 50% of the identified rate for that Job.. WittyPen may also offer Writer a partial payment for a Submission if it determines that it is warranted by the circumstances. All such partial payments are determined in WittyPen's sole discretion and all such determinations are final and binding on Writers.

- b. Writer can refuse such a partial payment based on a rejected Submission by notifying WittyPen in writing within 5 days of such a rejection.
- c. To the extent a Writer makes a Submission after the posted deadline, and such Submission is accepted by WittyPen, Writer agrees that WittyPen may apply, at its discretion, a late penalty of 10% of the identified amount for the Job.

### 8.3 Withdrawal of Funds

See the WittyPen Terms of Service for information on this point.

### 8.4 Expenses

WittyPen shall not be obligated to reimburse Writer for any expenses incurred while engaged in the performance of Services under this Agreement. Writer shall be solely responsible for all such expenses, including, but not limited to, the cost of equipment, materials, training, licenses, and insurance.

### 8.5 Tax Deducted at Source

Payment will be released by WittyPen subjected to deduction of withholding tax.

## **9. CONFIDENTIAL INFORMATION**

9.1 “Confidential Information” means all information related to WittyPen and/or a Buyer’s business and its actual or anticipated research and development or related to a Submission delivered or agreed to be delivered from Writer to WittyPen, including without limitation (i) trade secrets, inventions, ideas, processes, computer source and object code, formulae, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs, and techniques; (ii) information regarding products or plans for research and development, marketing and business plans, budgets, financial statements, contracts, prices, suppliers, and customers; and (iii) information designated by WittyPen, either in writing or orally, as Confidential Information. Notwithstanding the foregoing, it is understood that Writer 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 Writer Contract, and Writer’s own skill, knowledge, know-how, and experience. Confidential Information shall not include information that was known to Writer prior to WittyPen’s disclosure hereunder or that becomes publicly available through no fault of Writer.

9.2 Writer agrees that during the term of the Writer Contract and thereafter, except as expressly authorized in writing by WittyPen, Writer (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 Writer Contract; (b) will not disclose or publish any Confidential Information to any third party without first obtaining WittyPen’s express written consent on a case-by-case basis; (c) will limit access to Confidential Information to Writer personnel who need to know such information in connection with their work for WittyPen; and (d) will not remove any tangible embodiment of any Confidential Information from WittyPen’s premises without WittyPen’s prior written consent.

## **10. WRITER REPRESENTATIONS AND WARRANTIES**

Writer hereby represents and warrants that:

- a. the Submission will be an original work of Writer and Writer will have executed assignment agreement(s) consistent with this Agreement prior to being allowed to participate in the development of the Submission;
- b. the Submission will fully conform to the requirements and terms set forth on the Site and in the Writer Contract;
- c. neither the Submission nor any element thereof will infringe or misappropriate the Intellectual Property Rights of any third party;
- d. neither the Job nor any element thereof will be subject to any restrictions or to any mortgages, liens, pledges, security interests, or encumbrances including any third party rights;
- e. Writer will not grant, directly or indirectly, any rights or interest whatsoever in the Submission to third parties;
- f. Writer has full right and power to enter into and perform the Writer Contract without the consent of any third party;
- g. Writer will comply with all laws and regulations applicable to Writer's obligations under the Writer Contract;
- h. Writer is solely responsible for the acquisition and payment of any and all third-party clearances, permissions, fees, and licenses that are necessary in connection with Writer Services including with respect to the use of any copyrighted or trademarked materials and the use of any names, likenesses or biographical materials; and
- i. Writer shall perform the services in a professional manner and all Submissions or Jobs shall use proper English spelling, proper grammar and punctuation and shall contain factually correct statements. , In addition, Writer will verify all facts in each Submission. Writer agrees that Writer will not hold himself, herself or itself out as being an employee of WittyPen or its clients or buyers to any third party, including, but not limited to, any state unemployment agency. Writer agrees that he, she or it is an independent contractor with respect to all Services provided pursuant to this Agreement.

## **11. INDEMNIFICATION**

Writer will defend, indemnify, and hold harmless WittyPen, its affiliates, licensees (in particular, any Buyers that contracted with WittyPen for the Job concerning the Submission at issue), directors, employees, agents and advisors against any damage, cost, loss or expense arising from a claim, suit or proceeding brought against WittyPen (i) alleging that any Submission that Writer delivers pursuant to the Writer Contract or the Job infringes upon any Intellectual Property Rights (provided, however, the infringement claim does not pertain to revisions to the Submission performed by WittyPen or others); (ii) alleging that any Submission that Writer delivers pursuant to the Writer Contract misappropriates any trade secret, of any third party; [iii] any activity performed by Writer under this Agreement of in performance of the Services, or (iv) arising from Writer's breach of the terms of this Agreement.

## **12. TERMINATION**

Termination with Cause. Either party has the right to terminate the Writer Contract in connection with a Job immediately in the event that the other party has materially breached the Writer Contract and fails to cure such breach within fifteen (15) days of receipt of notice sent by the non-breaching party, setting forth in reasonable detail the nature of the breach.

WittyPen may also terminate the Writer Contract immediately in its sole discretion in the event of an assigned Writer's material breach of the Sections titled "Intellectual Property Rights," "Writer Representations and Warranties," and "Confidential Information."

### **13. RETURN OF PROPERTY**

Upon termination of the Writer Contract or upon WittyPen's request at any other time, Writer will deliver to WittyPen all of WittyPen's property together with all copies thereof, and any other material containing or disclosing any Confidential Information.

### **14. SURVIVAL**

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

### **15. DISCLAIMER OF WARRANTIES**

OTHER THAN THE WARRANTIES EXPRESSLY STATED HEREIN OR IN THE TERMS OF SERVICE, WITTYPEN 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.

### **16. EXCLUSIONS AND LIMITATIONS LIABILITY**

IN NO EVENT SHALL WITTYPEN BE LIABLE TO WRITER FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES PURSUANT TO THE WRITER CONTRACT, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF BUSINESS OPPORTUNITIES OR LOSS OF GOODWILL, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT WILL WITTYPEN BE LIABLE TO WRITER FOR ANY ACTION OR CLAIM RELATED TO THE SERVICES PROVIDED FOR THE JOB, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE OR ANY OTHER THEORY OF LIABILITY, IN AN AMOUNT IN EXCESS OF THE AMOUNT THE WITTYPEN PAID TO THE WRITER THROUGH THE SITE DURING THE ONE (1) YEAR PERIOD IMMEDIATELY PRECEDING THE DETERMINATION OF SUCH LIABILITY.

### **17. ARBITRATION**

17.1 Writer and WittyPen agree and acknowledge that they will utilize final and binding arbitration to resolve all disputes that may arise out of or relate to this Agreement, the Services and Writer's relationship with WittyPen, including retroactively requiring the use of arbitration for any dispute that may have arisen from the time that Writer began providing services to WittyPen. Both WittyPen and Writer agree that any claim, dispute, and/or controversy that either Writer may have against

WittyPen (or its owners, directors, officers, managers, employees, agents, and parties affiliated with its employee benefit and health plans) or WittyPen may have against Writer, arising from, related to, or having any relationship or connection whatsoever with Writer's contract relationship with WittyPen, including the classification of Writer as an independent contractor shall be submitted to and determined exclusively by arbitration. This Arbitration Agreement is governed by the Arbitration and Conciliation Act, 1996, and Writer acknowledges that this Agreement evidences a transaction in commerce. Included within the scope of this Arbitration Agreement are all disputes, whether based on tort, contract, statute equitable law, or otherwise (excluding workers compensation, state disability insurance and unemployment insurance claims).

- 17.2 The location of the arbitration proceeding shall be either Mumbai or Pune.
- 17.3 The parties shall each bear their respective costs for legal representation at any such arbitration, except to the extent attorney's fees are explicitly provided by law. The parties shall split any initial administrative fee charged by the Arbitrator. The cost of the arbitrator and court reporter, if any, shall initially be borne by WittyPen; however, the Arbitrator shall have the discretion to award appropriate costs to the prevailing party, as provided by law, and/or to require the parties to split the costs associated with the arbitrator and/or court reporter.
- 17.4 Except as stated herein, if any term or provision, or portion of this Arbitration Agreement is declared void or unenforceable it shall be severed and the remainder of this Arbitration Agreement shall be enforceable.

WRITER'S SIGNATURE, ELECTRONIC OR OTHERWISE, INCLUDING THE ACCEPTANCE OF A JOB AND PERFORMANCE OF THE SERVICES, ATTESTS TO THE FACT THAT WRITER HAS READ, UNDERSTOOD, AND AGREED TO BE LEGALLY BOUND TO ALL OF THE ABOVE TERMS OF THE ARBITRATION AGREEMENT, SPECIFICALLY INCLUDING THE CLASS ACTION WAIVER.

## **18. CLAIMS OF COPYRIGHT INFRINGEMENT**

- 18.1 WittyPen respects the intellectual property of others. If you believe that your copyrighted work has been copied and is accessible on the Site in a way that constitutes copyright infringement, you are encouraged, as a first step, to contact the involved party in an attempt to resolve the issue directly.
- 18.2 You may in addition or as a next step send a notification of claimed copyright infringement to WittyPen's designated agent along with the following information:
- a. The electronic or physical signature of the owner of the copyright or the person authorized to act on the owner's behalf;
  - b. A description of the copyright work that you claim has been infringed and a description of the infringing activity;
  - c. Identification of the location where the original or an authorized copy of the copyrighted work exists, for example the URL of the Site where it is posted or the name of the book in which it has been published;

- d. Identification of the URL or other specific location on the Site where the material that You claim is infringing is located, including enough information to allow WittyPen to locate the material;
- e. Your name, address, telephone number, and email address;
- f. A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
- g. A statement by you, made under penalty of perjury, that the above information in Your Notice is accurate and that you are the copyright owner or are authorized to act on the copyright owner's behalf.

WE CAUTION YOU THAT IF YOU KNOWINGLY MISREPRESENT THAT MATERIAL IS OR IS NOT INFRINGING, YOU MAY BE SUBJECT TO HEAVY CIVIL PENALTIES. THESE INCLUDE MONETARY DAMAGES, COURT COSTS, AND ATTORNEYS FEES INCURRED BY US, BY ANY COPYRIGHT OWNER, OR BY ANY COPYRIGHT OWNER'S LICENSEE THAT IS INJURED AS A RESULT OF OUR RELYING UPON YOUR MISREPRESENTATION. YOU MAY ALSO BE SUBJECT TO CRIMINAL PROSECUTION FOR PERJURY.

19. We have a policy of terminating accounts of repeat infringers. A repeat infringer includes any User who has submitted or posted two or more pieces of Content for which we receive a notice of infringement. You agree that if your account is terminated pursuant to these Terms, you will not attempt to establish a new account under any name, real or assumed, and further agree that if you violate this restriction by opening a new account after being terminated you indemnify and hold us harmless from any and all liability that we may incur therefore.

## **20. GENERAL PROVISIONS**

### **20.1 Governing Law and Venue**

This Agreement shall be governed by and construed in accordance with the laws of India without regard to its conflicts of law principles.

### **20.2 Severability**

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

### **20.3 No Assignment**

The Writer Contract, and the party's rights and obligations herein, may not be assigned or otherwise transferred by either party without the other's prior written consent, and any attempted violation of the foregoing will be null and void. The terms of the Writer Contract will be binding upon assignees. Notwithstanding the foregoing, WittyPen may, without the consent of Writer, assign any rights and obligations under the Writer Contract. Any permitted assignment of the Writer Contract shall be binding upon and enforceable by and against WittyPen's and Writer's successors and assigns, provided that any unauthorized assignment shall be null and void and constitute a breach of the Writer Contract.



- 20.4 Notices  
Each party must deliver all notices or other communications required or permitted under the Writer Contract to the other party at:  
Witty Pen-Registered Address: Bungalow No.8, NCL Co. Op. Hsg. Sc., Panchvati, Pashan, Pune, 411045  
Writer: E-mail and address registered on the Site
- 20.5 Injunctive Relief.  
Writer acknowledges that, because its services are personal and unique and because Writer will have access to Confidential Information of WittyPen, any breach of the Writer Contract by Writer would cause irreparable injury to WittyPen for which monetary damages may not be an adequate remedy and, therefore, will entitle WittyPen to injunctive relief (including specific performance). The rights and remedies provided to each party in the Writer Contract are cumulative and in addition to any other rights and remedies available to such party at law or in equity.
- 20.6 Waiver  
The failure of WittyPen to insist upon strict compliance or performance of any of the terms and conditions of this Agreement or in exercise of any optional right or remedy contained in this Agreement shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue to remain in full force and effect. No waiver by WittyPen of any term or provision of this Agreement shall be deemed to have been made unless expressed in writing and signed by WittyPen. No waiver, express or implied, of any term, condition or provision hereof by either Party shall be deemed or construed as to be a waiver of any other term, covenant, condition or provision hereof or be, deemed or construed so as to constitute, a like waiver with respect to any future requirement of performance under such terms, covenants, condition or provision.
- 20.7 Execution and Delivery, Binding Effect  
The parties will evidence execution and delivery of the Writer Contract with the intention of becoming legally bound, by accepting the Terms of Service on the Site.
- 20.8 Entire Agreement  
The Writer 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 Writer Contract, or any waiver of any rights under the Writer Contract, will be effective unless accepted by Writer and WittyPen.

### **Contacting Us**

If you have any questions or complaints regarding these Terms, please submit your questions or complaints via an email to [info@WittyPen.com](mailto:info@WittyPen.com) and if you need an address use Bungalow No.8, NCL Co. Op. Hsg. Sc., Panchvati, Pashan, Pune