

If a Client signs up to use Upwork Payroll, this Upwork Payroll Agreement (this “**Agreement**”) applies to Client. Your use of the Site after the effective date will signify your acceptance of and agreement to this Agreement. Please refer to the [Terms of Service](#) for the complete terms governing your usage of the Site and Site Services. Capitalized terms not defined in this Agreement have the meanings in the Terms of Services.

This Agreement is a binding legal agreement by and between Client (“**Client**” and “**you**”) and Upwork Global Inc. (“**Upwork**” or “**we**”) and supersedes and replaces all prior agreements between Client and Upwork concerning Upwork Payroll.

1. UPWORK PAYROLL STAFFING PROVIDER

When a Client uses Upwork Payroll, which is described on the Site [here](#) (“**Upwork Payroll**”), a third-party staffing vendor will employ the Freelancer (the “**Staffing Provider**”). Freelancer (if accepted for employment as described below) will become an employee of the Staffing Provider. The Staffing Provider will assign Freelancer to work for Client, and Client will be responsible for supervising Freelancer. When, and only if, a Freelancer has been accepted for employment by the Staffing Provider and assigned to Client, Freelancer becomes a “**Payroll Employee**” for purposes of this Agreement, but also remains a Freelancer under the Terms of Service.

Your ability to use Upwork Payroll may depend on certain factors, including, without limitation, the location of the Freelancer, the estimated length of the engagement, the wage to be paid, and the nature of the work to be performed. A request to use Upwork Payroll may be rejected for any lawful reason.

2. INTERNATIONAL PAYROLL SERVICES

Upwork Payroll is currently only available for Freelancers who will work in the United States. Requests regarding international employment and associated fees can be addressed on a case-by-case basis by contacting payroll@upwork.com.

3. HIRING PROCESS

As a Client, you will select a Freelancer to be employed by the Staffing Provider and assigned to work for you via Upwork Payroll. No work can begin until the engagement is active on the Upwork Site, and Client is informed that the Freelancer has started employment and may begin work. After Freelancer’s employment begins, Client will continue to pay for each Freelancer’s services through the Site unless Client pays the Opt-Out Fee.

4. HIRING DECISIONS; LIMITATIONS ON HIRING

Client acknowledges and agrees that Client selects a Freelancer to become a Payroll Employee based upon Client’s determination that Freelancer possesses the skills, background, and education to satisfy the requirements of the assignment. Upwork does not (a) select the Freelancer; (b) have the authority or ability to decide to engage or end the engagement of the Freelancer on behalf of Client; (c) make any independent evaluation or investigation or otherwise conduct any due diligence regarding Freelancers, their resumes, qualifications, skills, background, or prior experience; or (d) make any representations or warranties as to the skills, experience, background, or education of any Freelancer or Payroll Employee. All information regarding a Payroll Employee posted on or to the Site or provided by Upwork is intended to be indicative or illustrative only and is not intended to be a guarantee or warranty on the part of Upwork. Upwork is not responsible for and shall have no liability for Client’s use of or reliance on any Freelancer information posted or provided by Upwork.

The Staffing Provider has the right not to hire a Freelancer for any lawful reason or no reason at all, including if the Freelancer does not meet the Staffing Provider’s standards for employment or the job is considered, in the Staffing Provider’s sole discretion, too hazardous or not covered by the applicable workers’ compensation insurance policy. No Payroll Employee may be engaged to perform services that require the Payroll Employee to handle hazardous materials or operate heavy machinery.

5. DISCLAIMER OF LIABILITY FOR UPWORK

Client acknowledges and agrees that Client and Freelancer are solely responsible for Freelancer Services and for all work performed and Work Product. Upwork provides no express warranty of, will have no implied warranty of, and will have no responsibility for, the Staffing Provider's services, Freelancer Services and/or Work Product. Upwork expressly disclaims all express and implied warranties for Freelancer Services and/or Work Product, including, without limitation, warranties of non-infringement, merchantability, and fitness for a particular purpose. As between Upwork and Client, Freelancer Services, Work Product, and deliverables are provided AS IS.

6. UPWORK PAYROLL SERVICES

The following are the services provided by the Staffing Provider for Payroll Employees assigned to Client: (a) calculation and payment of wages (including any applicable overtime wages) based upon submitted timesheets; (b) collection, payment, and reporting of all required taxes on such wages; (c) unemployment insurance and workers' compensation coverage; (d) administration of legally required benefits, including health insurance, disability insurance, paid sick leave, paid vacation, severance, notice or termination costs, retirement benefits or other welfare or pension benefits; and (e) administration of legally required leaves of absence, wage garnishments, and unemployment claims.

7. WORK ENVIRONMENT

Client acknowledges and agrees that neither Upwork nor the Staffing Provider will control the work environment in which a Payroll Employee will perform services for Client. Client will be solely responsible for ensuring that the work environment is safe and free from harassment and discrimination as required by applicable law.

8. PAYROLL EMPLOYEE SUPERVISION AND LIMITATIONS ON SCOPE OF EMPLOYMENT

Client will be solely responsible for protecting its property, including by implementing and enforcing any agreements, policies or procedures to protect Client's intellectual property and confidential information.

If Client assigns a Payroll Employee any supervisory duties or gives a Payroll Employee authority to sign tax returns, render accounting or legal opinions, issue negotiable instruments, or make final decisions of the nature of those generally made by Client's executives, officers, or directors, Client agrees that Client and Freelancer are solely responsible for any such decisions or actions by the Payroll Employee.

Client will inform Staffing Provider through Upwork (at payroll@upwork.com) if any Payroll Employee supervises other Client employees or Payroll Employees or will handle hazardous materials or operate heavy machinery.

If a Payroll Employee is required to possess or maintain any license or be supervised by a supervisor with a special license, Client will be responsible for verifying such license and/or providing such supervision.

Client acknowledges and agrees that Payroll Employees are not employees of Upwork and that Upwork does not supervise or control Payroll Employees. Client further acknowledges and agrees that (a) Upwork does not have the power or ability to require a Freelancer to start or stop work; (b) Upwork does not determine or control any term or condition of Freelancer's employment (including, but not limited to, pay, work hours, work schedules, work locations, performance evaluations, discipline, and termination); (c) Upwork merely provides the platform for Client to assign work to Freelancer and separately facilitates the relationship between Staffing Provider and Freelancer; and (d) Upwork is not an employer or joint employer of the Freelancer.

9. COMPLIANCE WITH LEGAL REQUIREMENTS

With respect to all Payroll Employees, Client will comply with all applicable legal requirements, including without limitation all laws prohibiting discrimination, harassment, and retaliation and all laws concerning meal and rest breaks, expense reimbursements, leave, and safety. Client will also comply with all reasonable directives by the Staffing Provider regarding the Payroll Employee.

Client will immediately inform Staffing Provider through Upwork (at payroll@upwork.com) of (a) any complaint by or against a Payroll Employee of harassment, discrimination, retaliation or unlawful activity; or (b) any request by a Payroll Employee for a leave of absence or disability accommodation or any awareness by Client of a potential disability or need for leave or accommodation. Client will cooperate with Staffing Provider to complete a prompt and thorough investigation of any complaint or to provide any leave or accommodation required by law.

All Payroll Employees must be paid on an hourly, non-exempt basis unless the Staffing Provider explicitly approves an exempt determination. If the Staffing Provider approves an exempt determination, the Client is solely responsible for ensuring the determination remains appropriate. Client agrees never to request, encourage, or require Payroll Employees to work off the clock or without reporting time to the Staffing Provider. Client will not prohibit or discourage any Payroll Employee from taking any meal or rest break authorized by law and/or by the Staffing Provider.

10. PAYING PAYROLL EMPLOYEES

10.1 General Payment Obligations

Your payments for Upwork Payroll are governed by the terms below, as well as the [Hourly and Miscellaneous Payment Agreement with Escrow Instructions](#).

You recognize and agree that all hours recorded and submitted to the Staffing Provider by your Payroll Employees will automatically be deemed approved by you, and you authorize those hours to be paid by you. In addition, Payroll Employees do not pay any Service Fees to Upwork. Instead, the Client pays the fees, as described below. Client also understands and agrees that Client is responsible for covering the cost of all Payroll Employee wages, even if, for example, a Payroll Employee reports having worked more than the number of hours authorized by Client.

10.2 Client Bill Rate; Payroll Employee Pay Rate

The total amount the Client pays is the “**Bill Rate**”, which includes the Payroll Employee’s hourly rate or salary amount (the “**Pay Rate**”) as well as Upwork fees. The Client will pay Upwork’s service fees for the use of the platform and the use of Upwork Payroll (collectively, the “**Payroll Service Fees**”). The Payroll Service Fees are 23% of the Bill Rate. For example, if the Client Bill Rate is \$25.00 per hour, the Payroll Employee’s Pay Rate would be \$19.25. All fees are paid by the Client, and there are no Upwork fees paid by Freelancers for engagements using Upwork Payroll.

To use Upwork Payroll, Client acknowledges and agrees that the Pay Rate on Upwork must be at least the minimum wage in the location where the Payroll Employee works.

In addition to the Bill Rate, Client acknowledges and agrees that it will be responsible for any additional costs required under applicable law. These additional costs vary based on the location of the Payroll Employee and include overtime premiums, expense reimbursements, sick leave, vacation, severance, notice or termination costs, health insurance (including costs under the Affordable Care Act), and other similar benefits (collectively, “**Additional Costs**”). For more information on these Additional Costs, please email payroll@upwork.com.

10.3 Funding and Making Payments

Client's payments of amounts for wages, expense reimbursements, miscellaneous invoices, and bonuses are governed by the [Hourly, Bonus and Expense Payment Agreement with Escrow Instructions](#).

The workweek begins at 00:00 midnight UTC on Monday and ends at 23:59 UTC on Sunday. The workday begins at 00:00 midnight UTC and ends at 23:59 UTC. The Bill Rate (for employees who are paid by salary) or the Bill Rate multiplied by the number of hours worked for the previous workweek, including any overtime premium pay (for employees paid by the hour) will be charged to Client's Payment Method on the Monday following the end of the workweek or at such other time as communicated by Upwork or Staffing Provider in writing. Additional Costs will be charged to Client's Payment Method after Client is provided notice of the Additional Costs. Bonuses and expense reimbursements will be charged to Client's Payment Method after they are approved by Client.

11. REQUIRED NOTIFICATIONS

Client can provide notices required under this Agreement to payroll@upwork.com.

Client will provide written notice within 24 hours of its own receipt of any notice of a work-related accident or injury, and within three days of its receipt of any notice of any garnishment orders, involuntary deduction orders, notices of IRS liens, and other forms of legal process affecting the payment of wages to a Payroll Employee.

Client will provide written notice within three days of any changes to the job description or work hours of a Payroll Employee, including any change from part-time to full-time status.

Client will provide written notice of the termination of a Payroll Employee's assignment (whether initiated by Client or the Payroll Employee) by providing notice of the termination, including the Payroll Employee name, Client, and termination date to payroll@upwork.com either (a) at least three business days before the Payroll Employee's last day of employment; (b) immediately if employee quits without notice; or (c) such longer time as may be required to provide the Payroll Employee with adequate notice of termination under the law where the Payroll Employee resides or is legally organized. Failure to timely provide notice may result in additional obligations to the Payroll Employee under applicable law, and Client agrees to pay any such costs.

Client also will provide Upwork notice, as provided above, if a Payroll Employee performs no work for Client for more than 10 consecutive Business Days due to any reason other than planned time off or legally required leave (which includes, without limitation, legally required medical or family leave).

12. INDEMNIFICATION

In addition to the indemnification obligations set forth in the [User Agreement](#), Client agrees to (a) release, indemnify, hold harmless, protect, and defend Upwork and its respective partners, employees, directors, officers, agents, affiliates, and subsidiaries (each an "Indemnified Party") from and against any and all claims by any person or entity, including a Freelancer or Payroll Employee; and (b) reimburse any Indemnified Party for any claims, expenses, costs (including attorneys' fees and court costs), obligations, losses, and damages (whether joint or several and including special, consequential, compensatory, or punitive damages), whether arising in contract, tort, or otherwise, related to: (i) actual or alleged acts, errors, or omissions (including, but not limited to, breaches of contract or violations of statutes, laws, rules, or regulations) by Client, its employees (including Payroll Employee(s)), partners, agents, affiliates, members, subsidiaries, representatives, and officers; (ii) any breach of or failure to perform under this Agreement, including, but not limited to, Client's failure to accurately or timely report wages, hours, expenses, and other reimbursements owed a Payroll Employee or payment of taxes for which Client is responsible; (iii) any alleged failure to properly classify one or more Payroll Employees as exempt from overtime; (iv) actual or alleged errors in any timesheet(s) provided to Upwork and/or the Staffing Provider; (v) Client's failure to pay a timesheet properly submitted for payment by Payroll Employee; (vi) the actual or alleged failure of Client to comply in any respect with any workplace law or law related to the employment of persons, including, but not limited to, any location's laws with respect to the payment of wages or the treatment of employees, and including, without limitation, the Fair Labor Standards Act, the Occupational Safety and Health Act, the Americans With Disabilities Act, the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, the Family and Medical Leave Act of 1993, and Title VII of the 1964 Civil Rights Act (collectively, "**Employment Laws and Regulations**"), or (vii) the actual or alleged failure of Upwork or the Staffing Provider to comply in any respect with the Employment Laws and Regulations based in whole or in part (A) on any instruction(s), act(s), or failure(s) to act of Client; or (B) on any incorrect, misleading, or false information provided by Client to Upwork or the Staffing Provider. This indemnification provision will survive the

expiration or other termination of this Agreement or Client's relationship with Upwork.

13. CHANGE OF STAFFING PROVIDER

Upwork may enter into a contract with a new provider or multiple providers to act as the employer of Payroll Employees ("**New Company**") and may end or change contracts with existing providers. If requested as a result of such changes, Client will cooperate with such New Company in every reasonable manner to ensure uninterrupted performance of Upwork Payroll.

14. TERMINATION OF UPWORK PAYROLL

Without limiting Upwork's ability to terminate services provided to Client under other Terms of Service, Upwork may terminate Upwork Payroll at any time after providing Client with notice of such termination at least 30 days in advance of the final day Upwork Payroll will be offered (the "**Termination Date**"). The Staffing Provider will have the obligation for wages and benefits accrued to Payroll Employees through and including the Termination Date, at which point such duties will cease. Additionally, all obligations of the Staffing Provider to maintain workers' compensation insurance coverage and/or health care coverage on behalf of Payroll Employees will cease on the Termination Date.

Client, or another third party designated by Client in Client's sole discretion and only if it elects to designate a third party, as the case may be, will immediately assume all federal, state, and local obligations of an employer to the Payroll Employees and will immediately assume full responsibility for providing payroll services and workers' compensation coverage. Client will inform Payroll Employees that they are no longer covered by the Staffing Provider's workers' compensation and/or health care policies.

Upon the Termination Date, Upwork will immediately be released from such obligations as are permitted by law, but Upwork and the Staffing Provider will not be relieved of any such obligations that accrued or occurred prior to the Termination Date.

15. GENERAL PROVISIONS

15.1 Governing Law

This Agreement 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). Clients located in the United States and its territories agree that any Claim between Client and Upwork 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.**"

15.2 Severability

If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement 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.

15.3 No Assignment

This Agreement, and the parties' rights and obligations herein, may not be assigned, subcontracted, delegated, or otherwise transferred by a party without the other party's prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void.

15.4 Waiver

Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

15.5 Execution and Delivery; Binding Effect

The parties will evidence execution and delivery of this Agreement with the intention of becoming legally bound, by accepting the Terms of Service on the Site.

16. CONTACTING US

If you have any questions, or need assistance, please contact payroll@upwork.com.