

# Confidential

This Upwork Select User Agreement (“Select Agreement”) defines the agreement between you and Upwork regarding Upwork Select services, as described in these terms (“Select Services”) and are part of and incorporate by reference the Upwork User Agreement and other Terms of Service. The Select Agreement are in addition to and, except where explicitly stated, do not supersede, replace, or limit other similar terms in the Terms of Service. Capitalized terms not defined herein are defined in the User Agreement or elsewhere in the Terms of Service.

IN ORDER TO USE UPWORK’S SELECT SERVICES YOU AGREE TO BE BOUND BY THE SELECT CONTRACT TERMS AND THE **DISPUTE PROCESS AND ARBITRATION AND CLASS ACTION WAIVER** IN THE USER AGREEMENT. IF YOU DO NOT ACCEPT THESE TERMS, INCLUDING THE ARBITRATION AND CLASS ACTION WAIVER, YOU MAY NOT ACCESS OR USE ANY SELECT SERVICES.

## 1. HOW IT WORKS

With the Select Services, Upwork will provide assistance to Users to use the Site to source Freelancers and enter into contractual relationships between Clients and Freelancers to receive services. Acting at the request and as agent of Client, Upwork will enter into a contractual relationship with Freelancer on Client’s behalf (once accepted, the “Select Contract”). For purposes of the Select Contract, Upwork will enter into contractual relationships on behalf of Client and Freelancer and add the direction of and with the authority of Client and Freelancer (as such, Upwork is an “Agent of Record”). For avoidance of doubt, Client agrees that Upwork is acting as an agent on behalf of Client when entering into a Select Contract on behalf of Client. Upon acceptance of the Service Contract and instruction by the Freelancer, Upwork will, acting as Agent of Record for the Freelancer, request the Client to place the Select Contract project funds, inclusive of Upwork Select Fees (defined below) in escrow via our escrow services (“Select Contract Funds”). When the work is completed, the Freelancer will request, via Upwork’s Freelancer Agent of Record services, that the Client release the Select Contract Funds from escrow, which, upon receiving instruction from Client, Upwork will do on Client’s behalf. If the Client approves the work, Upwork will provide the instruction on behalf of Client to Upwork Escrow, which will release the Select Contract Funds. Once the Select Contract Funds are released from Escrow for all milestones, the Select Contract will end.

The relationship is specifically defined to clarify that Upwork is acting as agent of record for Client and at Clients’ direction, and is not controlling or guaranteeing the work product, does not guarantee payment to freelancer (except to the extent CL pays Upwork). Client will select the freelancer, client and freelancer agree on the scope of work, and take up any issues with the work scope between each other.

## 2. ELIGIBILITY

Upwork Select is currently available to Clients by invitation only. An invited Client must meet the eligibility requirements in the **User Agreement** in order to use Upwork Select. Upwork Select is available to any Freelancer who enters into a Select Contract with an invited Client, acting as an Agent of Record.

## 3. ESCROW SERVICES

Client acknowledges and agrees that the Direct Contract Escrow Instructions apply to Select Contracts. For purposes of

Select Contracts, Client understands and agrees that Upwork will act as Agent of Record for Freelancer for purposes of the [Direct Contract Escrow Instructions](#), and for the purposes of such instructions “Freelancer” as used in the instructions shall mean either “Freelancer” or “Upwork acting as Agent of Record for Freelancer”, as applicable.

## 4. ROLE OF UPWORK AND USER RESPONSIBILITIES

### a. Agent of Record Services

In acting as Agent of Record on behalf of Client and Freelancer, Upwork acts only at the direction of and with the authority of Client and Freelancer, as applicable. Upwork is not taking on any additional responsibilities by acting as Agent of Record except as expressly provided.

### b. Role of Upwork

You understand and agree that Upwork is not involved in or responsible for any work performed by Freelancers, is not involved in or responsible for any payment made under a Select Contract except as provided in Section 5(c) (Payment Services), and has no control over any Freelancer or Client. Upwork does not guarantee that Client or Freelancer will perform on the Select Contract. Upwork does not have any power or authority to, and does not, determine any eligibility standards for any Select Contract, select or contract any Freelancer to provide services to a Client, determine or control any term or condition of the Select Contract or Project, or cause any Freelancer to accept any Select Contract or perform any Freelancer Services.

### c. Payment Services

Upwork Escrow provides escrow services, but does not guarantee that Freelancer will be paid except and only to the extent that all of the following are true: (a) Upwork holds funds on behalf of Client, (b) Client has directed such funds to be released to Freelancer, and (c) any hold or security period has passed. Upwork otherwise does not guarantee that Client is able to or will pay Freelancer.

### d. Service Fees; Upwork Fees

Client understands that Upwork, acting as Agent of Record for Freelancer and on instruction from Freelancer, will collect from Client the fees that Freelancer will receive as agreed in the Select Contract and the fees that Upwork receives for the services provided under this Select Agreement. Upwork will remit to Freelancer only that portion of the fees agreed to with Freelancer and will retain the fees for Upwork’s services.

### e. No Other Freelancer Service Fees

The Service Fees typically charged to Freelancers described in the [Fee and ACH Authorization Agreement](#) or the [Upwork Direct Service Contract Terms](#) do not apply to payments on Select Contract engagements. The Fee and ACH Authorization Agreement otherwise remains in full force and effect, including, without limitation, on any Service Contract if a Freelancer or Client, who uses Select Contracts, has a Service Contract (as defined in the User Agreement).

## 5. Freelancer Engagement

## a. Engagement

Acting as an Agent of Record, Upwork will engage the Freelancer as an independent contractor or hire the Freelancer as an employee by a third-party employer of record provider (“Employment Provider”) through Upwork Payroll Services. Upwork will engage the worker consistent with applicable law. Upwork may delegate the Engagement of Freelancers (and other obligations regarding Freelancers under this Select Agreement) to one or more third parties. Upwork and Employment Provider reserve the right not to engage or hire a Freelancer in their sole discretion. If Upwork or Employment Provider decline to hire a Freelancer, Upwork will assist Client to source a satisfactory replacement. Upwork will cause each Freelancer classified and engaged as an independent contractor to execute an independent contractor agreement. Upwork (through Employment Provider) will cause each Freelancer classified and hired as an employee to execute an employment agreement containing confidentiality and intellectual property assignment provisions consistent with this Select Agreement.

## b. Legal Compliance

Upwork, Employment Provider, or any third party acting to engage a Freelancer, as applicable, will comply with applicable laws and regulations governing the Engagement and payment of Freelancers; except that Upwork or Employment Provider shall not be liable for any non-compliance of Client.

## c. Ownership of Freelancer Work Product

Ownership of all Freelancer Work Product will be governed by the Independent Contractor Agreement or employee agreement with the Freelancer, as applicable, both of which will contain a provision that requires a Freelancer to assign all ownership rights in Freelancer Work Product to Client. Upwork will not own any Freelancer Work Product. In the event that ownership rights in Freelancer Work Product arising from a Select Contract accrue to the benefit of Upwork, Upwork hereby assigns such rights to Client.

# 6. Client Actions

## a. Select Contracts

Client will inform Upwork 72 hours in advance, if possible, or as soon as possible thereafter, of the termination of any Select Contract, immediately inform Upwork of any complaint made by Freelancer concerning any employment-related matter, such as request for a leave of absence or disability accommodation or a complaint about harassment or discrimination..

## b. Nondiscrimination; Compliance with Laws

Client will comply with, and will require any personnel who may interact with Freelancer to comply with, Upwork’s [Nondiscrimination Statement](#), and with all applicable laws in connection with the engagement of Freelancers, including without limitation, as applicable, worker safety laws, nondiscrimination laws, accommodation and leave laws, privacy laws.

## c. Non-Circumvention

Client agrees and understands that the [non-circumvention provisions of the User Agreement](#), together with the remainder of the User Agreement, apply to this engagement. For purposes of the non-circumvention provision, you agree that the

“Hourly Rate” shall be the highest hourly rate you have paid on any Select Contract with the applicable Freelancer.

## d. Client Acknowledgements

Other than as stated in this Select Agreement, Client expressly acknowledges, agrees, and understands that: (i) except for the Agent of Record services, Upwork is not a party to the dealings between Client and Freelancer, including the substantive terms of posts, the selection of a Freelancer, the decision to contract with a Freelancer, and the performance or receipt of Freelancer Services or provisioning of Freelancer Work Product; (ii) Upwork does not, in any way, supervise, direct, or control the Freelancer or Freelancer Services; (iii) Upwork makes no representations as to the quality, security, or legality of any Freelancer Services or Freelancer Work Product, and Upwork disclaims any and all liability relating thereto; (iv) Upwork does not set Freelancer’s work hours, work schedules, or location of work; (v) Upwork will not provide Freelancer with training or any equipment, tools, labor, or materials needed to complete their work; (vi) Upwork does not provide the premises at which the Freelancer will perform the work; (viii) if there is a dispute between Client and Freelancer, that dispute is solely between Client and the Freelancer and Upwork will not be responsible or liable with respect to such dispute except for the dispute assistance described in the [Direct Contract Escrow Instructions](#); (ix) neither Upwork nor its Affiliates is an employer of or joint employer or integrated or single enterprise with any independent contractor Freelancer or Client; and (x) unless otherwise agreed as part of the relevant Select Contract, independent contractor Freelancers may hire employees or engage contractors or subcontractors (at his or her sole expense) to assist with providing the Freelancer Services. Upwork makes no representations about and does not guarantee the truth or accuracy of Freelancer’s listings on the Site; the ability of Freelancers to deliver the Freelancer Services; or that Client or Freelancer can or will actually complete a transaction.

## 7. Client Authorization

Client represents and warrants that it has the authority to agree to this Select Agreement on behalf of him- or herself and the business entity he or she represents. Client authorizes, and represents that he or she has the authority to authorize, Upwork personnel to assist Client by taking actions on the Site and communicate with Freelancers on behalf of Client as directed by Client, including without limitation, posting projects, creating Content, preparing and offering contracts to Freelancers, releasing payments, and closing such contracts upon completion of the work. All actions performed by Upwork personnel on the Site at Client’s direction, express or implied, will be considered to be actions by and at the direction of Client.

## 8. Indemnification

### a. Interaction with User Agreement

This Select Agreement shall control any express conflicts between the User Agreement and this Select Agreement concerning indemnification obligations and limitation of liability of Upwork or Client.

### b. Indemnification by Upwork

Upwork will indemnify, defend, and hold harmless Client and its directors, officers, agents and employees from and against any and all losses, damages, liabilities, judgments, or settlements awarded for Claims to the extent caused by: (i) Upwork’s misclassification of a Freelancer under the Fair Labor Standards Act, the Internal Revenue Code, state wage and hour law or any other law; (ii) the failure of Upwork or Employment Provider to make, when due, a payment to a Freelancer related to this Select Agreement; (iii) Employment Provider’s failure to comply with applicable wage and hour

laws or regulations; or (iv) Employment Provider's violation of any law or regulation related to workplace safety or conduct, including laws related to illegal discrimination or harassment.

### c. Indemnification by Client

Client will indemnify, defend and hold harmless Upwork and its Affiliates and their directors, officers, agents and employees from and against any and all Claims, and/or any and all losses, costs, damages, liabilities, judgments, or settlements awarded for such Claims to the extent arising out of, resulting from or in connection with (i) Client's violation of any law or regulation, including laws related to illegal discrimination or harassment; (ii) the misuse or unauthorized use of the Site; (iii) Client's Content; (iv) Client's failure to comply with applicable wage and hour laws or regulations or any such failure by Upwork or the Employment Provider based on inaccurate or incomplete information provided by Client or which Client failed to update or was caused by Client; (v) Client's direction, participation or involvement with the Freelancer or Freelancer Services; or (vi) Client's breach of its obligations in Section 7 (Client's Actions).

### d. Indemnification Requirements

The indemnification obligations of each party (the "Indemnifying Party") are contingent upon the other party (the "Indemnified Party") providing the Indemnifying Party with: (i) prompt written notice of any Claim for which indemnification may be sought under this Select Agreement; (ii) control over the defense and settlement of any such Claim with counsel of the Indemnifying Party's choice; and (iii) proper and full information and assistance, at the Indemnifying Party's expense and request, to settle or defend any such Claim. Each Indemnified Party will be entitled to participate in, through its own counsel at its own cost and expense, but not to determine or conduct, any defense or settlement of a Claim.

## 9. LIMITATION OF LIABILITY

IN NO EVENT WILL EITHER PARTY BE LIABLE FOR LOST PROFITS OR CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY (INCLUDING NEGLIGENCE), EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR (I) AMOUNTS DUE UPWORK FROM CLIENT UNDER THIS AGREEMENT, (II) AMOUNTS PAYABLE TO THIRD PARTIES PURSUANT TO INDEMNIFICATION OBLIGATIONS HEREIN AND (III) BREACHES OF CONFIDENTIALITY UNDER SECTION 7.1 (CONFIDENTIALITY) WITH RESPECT TO CONFIDENTIAL INFORMATION, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR AN AMOUNT GREATER THAN THE TOTAL FEES PAID BY CLIENT TO UPWORK DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM FOR WHICH LIABILITY IS SOUGHT TO BE IMPOSED. CLIENT ACKNOWLEDGES THAT THE AMOUNTS PAYABLE UNDER THIS AGREEMENT ARE BASED IN PART ON THESE LIMITATIONS, AND FURTHER AGREES THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

## 10. OTHER TERMS

Together with the Upwork User Agreement and other Terms of Service, these Select Agreement represent the entire agreement with Upwork and supersede all prior agreements and understandings with respect to the matters covered. To the extent of an express conflict between this Select Agreement and the Other Terms of Service, this Select Agreement shall govern. You agree that you did not accept the Select Agreement based on any representations, whether written or oral, other than those contained herein. No modification of or amendment to the Select Agreement, nor any waiver of any rights, will be effective unless in writing signed by you and Upwork. Notwithstanding the foregoing, to the extent permitted

by applicable law, Upwork may amend the Select Agreement with prior notice at any time. Your continued use of the Select Services after the effective date of a revised version of the Select Contract Terms or notice to you of updated Select Agreement constitutes your acceptance of its terms and agreement to be bound by its terms.