

## CONFIDENTIAL

This Upwork Talent Scout Agreement (“Talent Scout Agreement”) defines the agreement between you (the “Client”) and Upwork Global Inc. (“Upwork”) regarding Talent Scout services, as described in this Talent Scout Agreement (“Talent Scout Services”), and are part of and incorporate by reference the Upwork User Agreement and other Terms of Service (collectively, the “Agreement”). The Talent Scout Agreement is in addition to and, except where explicitly stated, does 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 TALENT SCOUT SERVICES, YOU AGREE TO BE BOUND BY THE TALENT SCOUT 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 TALENT SCOUT SERVICES.

### 1. TALENT SCOUT SERVICES

Upwork agrees to provide assistance to Client engaging Talent Scout Services to use the Site to source Freelancers and enter into contractual relationships between Client and Freelancers to receive services. Acting at the request and as agent of Client (“Agent of Record”), Upwork will enter into a contractual relationship with Freelancer on Client’s behalf (once accepted, the “Talent Scout Contract”). For the avoidance of doubt, the Talent Scout Services include acting as Agent of Record on behalf of each Client and Freelancer for purposes of each Talent Scout Contract; Upwork is entering into contractual relationships on behalf of Client and Freelancer in each case at the direction of and with the authority of Client and Freelancer, as applicable. Once the Service Contract has been accepted by the Freelancer, Upwork will, acting as Agent of Record for the Freelancer, request the Client to place the Talent Scout Contract project funds, inclusive of Upwork Talent Scout Fees (defined below) (collectively, “Talent Scout Contract Funds”), in escrow via Upwork’s escrow services. As provided in the applicable escrow instructions (see below), when the work is completed, the Freelancer will request, via Upwork’s Freelancer Agent of Record services, that the Client release the Talent Scout Contract Funds from escrow, which, upon receiving instruction from Client, Upwork will do on Client’s behalf.

### 2. ELIGIBILITY

Client agrees that it meets the eligibility requirements in the [User Agreement](#) related to use of Upwork Talent Scout. Upwork Talent Scout is available to any Freelancer who enters into a Talent Scout Contract with Client.

### 3. ESCROW SERVICES

Client acknowledges and agrees that the Direct Contract Escrow Instructions apply to Client’s Talent Scout Contracts. For purposes of Talent Scout 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

#### A. AGENT OF RECORD SERVICES

Client agrees that, in regards to Client activity in connection with Upwork Talent Scout, Upwork acts only at the direction of and with the authority of Client. Client further understands and agrees that, through its additional agreement with Freelancer, Upwork will act as Agent of Record of Freelancer. Client agrees that Upwork is not taking on any additional responsibilities or liabilities by acting as Agent of Record except as expressly provided in this Talent Scout Agreement.

## B. UPWORK LIMITATIONS

Client understands and agrees that Upwork is not involved in or responsible for any work performed by Freelancer(s), is not involved in or responsible for any payment made under a Talent Scout Contract except as provided in Section 4(c) (Payment Services), and has no control over any Freelancer or Client. Upwork does not guarantee that Client or Freelancer will perform on the Talent Scout Contract. Upwork does not have any power or authority to, and does not, determine any eligibility standards for any Talent Scout Contract, select or contract any Freelancer to provide services to Client, determine or control any term or condition of the Talent Scout Contract or Project, or cause any Freelancer to accept any Talent Scout Contract or perform any Freelancer Services. The Parties agree that Client will select the freelancer, that the scope of work will be set exclusively by agreement between Client and Freelancer, and that Client and Freelancer will take up any issues with the work and/or its scope between each other.

## 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 Talent Scout Contract and the fees that Upwork receives for the services provided under this Talent Scout Agreement. Client agrees that Upwork will remit to Freelancer only that portion of the fees agreed to with Freelancer and Upwork will retain the fees for Upwork's services.

## D. 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 Talent Scout 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 Talent Scout 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 (the "Engagement") 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 Freelancer(s) (and other obligations regarding Freelancer(s) under this Talent Scout Agreement) to one or more third parties. Upwork and Employment Provider as applicable, reserve the right not to engage or hire a Freelancer in their sole discretion. If Upwork or Employment Provider decline to engage a Freelancer, Upwork will assist Client in sourcing 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 agreement containing confidentiality and intellectual property assignment provisions consistent with this Talent Scout 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 or caused by 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 Talent Scout Contract accrue to the benefit of Upwork, Upwork hereby assigns such rights to Client.

## 6. CLIENT RESPONSIBILITIES

### A. TALENT SCOUT CONTRACTS

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

### B. NONDISCRIMINATION; COMPLIANCE WITH LAWS

Client agrees to comply with, and to require any person who may interact with Freelancer on behalf of Client 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, and 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 Talent Scout Agreement. For purposes of the non-circumvention provision, you agree that the "Hourly Rate" shall be the highest hourly rate you have paid on any Talent Scout Contract with the applicable Freelancer.

### D. CLIENT ACKNOWLEDGEMENTS

Other than as stated in this Talent Scout 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; (vii) 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 Talent Scout Contract, independent contractor Freelancer(s) 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 Talent Scout 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 communicating 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 Talent Scout Agreement shall control any express conflicts between the User Agreement and this Talent Scout Agreement concerning indemnification obligations and limitation of liability of Upwork or Client with respect to Talent Scout Services only.

### 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 Talent Scout 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 Client's or any director, officer, agent, employee of Client, or any other person with apparent or actual authority to act on behalf of Client: (i) violation of any law or regulation, including laws related to illegal discrimination or harassment; (ii) misuse or unauthorized use of the Site; (iii) content posted by or on behalf of Client or at Client's direction; (iv) 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) direction, participation or involvement with the Freelancer or Freelancer Services; or (vi) breach of Client's obligations in Section 6 (Client Responsibilities).

### 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 Talent Scout 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 an indemnified 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

This Agreement, including this Talent Scout Agreement along with the Upwork User Agreement and other Terms of Service, represents the entire agreement with Upwork and supersedes all prior agreements and understandings with respect to Talent Scout Services. To the extent of an express conflict between this Talent Scout Agreement and the other Terms of Service, this Talent Scout Agreement shall govern any matters involving Talent Scout Services. Provisions of the User Agreement and other Terms of Service that do not expressly conflict with any provision of the Talent Scout Agreement or are being applied to any products or services other than the Talent Scout Services apply in full force and effect. Without voiding or affecting the applicability of any other provision of the User Agreement to the Talent Scout Agreement, Client specifically reiterates its agreement to comply with the **DISPUTE PROCESS AND ARBITRATION AND CLASS ACTION WAIVER** contained in Upwork's User Agreement, and agrees that this provision applies with full force and effect to the Talent Scout Agreement.

You agree that you did not accept the Talent Scout Agreement based on any representations, whether written or oral, other than those contained in this Talent Scout Agreement along with the Upwork User Agreement and other Terms of Service. No modification of or amendment to the Talent Scout Agreement, nor any waiver of any rights, will be effective unless in writing signed by you and Upwork.