

This Upwork Any Hire Terms (“Any Hire Terms”) defines the agreement between you (the “Client” or the “Freelancer”, as applicable) and Upwork Global Inc. (“Upwork”) regarding Any Hire services offered through the Site at [www.upwork.com/anyhire](http://www.upwork.com/anyhire) as described in these Any Hire Terms (“Any Hire Services”), and are part of and incorporate by reference the Upwork User Agreement and other Terms of Service (collectively, the “Agreement”). The Any Hire Terms 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 Any Hire Services, you agree to be bound by the Any Hire 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 use or access any Any Hire Services.

## **1. ESCROW SERVICES**

Client and Freelancer acknowledge and agree that the [Any Hire Contract Escrow Instructions](#) apply to any engagements via the Any Hire Services (each such engagement, an “Any Hire Contract”). 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 has received funds from Client on behalf of the Freelancer, (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. Client and Freelancer acknowledge that these escrow services are intended for business use, and agree to use these escrow services only for business purposes and not for consumer, personal, family, or household purposes.

## **2. ROLE OF UPWORK**

Client and Freelancer understand and agree 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 Any Hire Contract except as provided in Section 1 (Escrow Services), and has no control over any Freelancer or Client. Upwork does not guarantee that Client or Freelancer will perform on the Any Hire Contract. Upwork does not have any power or authority to, and does not, determine any eligibility standards for any Any Hire Contract, select or contract any Freelancer to provide services to Client, determine or control any term or condition of the Any Hire Contract or Project, or cause any Freelancer to accept any Any Hire 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.

## **3. ANY HIRE COMPLIANCE SERVICES**

### **3.1 WORKER CLASSIFICATION**

Upwork will determine the appropriate worker classification (e.g., independent contractor or employee) for each Engagement based on the information that Client and Freelancer provide about the applicable Any Hire Contract. Determining the proper classification for a Freelancer depends on many factors, including information in Client’s control. Client and Freelancer agree to provide Upwork with all information requested that is related to the Any Hire Contract and the classification of a Freelancer in a timely, accurate, and complete manner and notify Upwork immediately if any such information changes.

### **3.2 FREELANCER ENGAGEMENT**

If Client accepts Upwork’s worker classification, Upwork will, based on its worker classification, either: (i) engage the Freelancer as an independent contractor for up to a six-month term, with Upwork Talent Group Inc. acting as agent of

record for Client for such purpose, or (ii) cause the Freelancer to be hired as an employee through Upwork Payroll Services (as defined in the [Upwork Payroll Agreement](#)). Upwork may delegate the engagement of Freelancers (and other obligations regarding Freelancers under this Agreement) to one or more third parties. Upwork and Staffing Provider reserve the right not to engage or hire a Freelancer in their sole discretion. Upwork will cause each Freelancer classified under Upwork's classification services and engaged as an independent contractor to execute an Independent Contractor Agreement. Upwork (through Staffing 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 Agreement.

At the end of any six-month independent contractor agreement term, Client may seek to re-engage the Freelancer via Any Hire, and the engagement and worker classification process will begin again.

### **3.3 OPTION TO REJECT CLASSIFICATION SERVICES**

A Client may choose to decline the worker classification services described in Section 3.1. If Client does not accept Upwork's worker classification, the Client may engage the Freelancer as the Client so chooses, but Upwork shall not be responsible for the classification of the worker or the engagement of the worker. Client shall have sole responsibility of engaging the Freelancer (including preparing any independent contractor agreement or using the [Optional Service Contract Terms](#)). In addition, if Client declines the worker classification services and still engages the Freelancer, Section 8.2 shall not apply; Client shall have no right to indemnity or any other remedy against Upwork, except as provided in the User Agreement [Section 10](#), [Section 11](#), and [Section 12](#), all three of which shall be deemed to control any conflict with these Upwork Any Hire Terms.

### **3.4 LEGAL COMPLIANCE**

Upwork, Staffing Provider, or any third party acting to engage a Freelancer, as applicable, shall 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 associated with any information provided by Client.

### **3.5 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 an Any Hire Contract accrue to the benefit of Upwork, Upwork hereby assigns such rights to Client.

## **4. CLIENT RESPONSIBILITIES**

### **4.1 ANY HIRE CONTRACTS**

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. Client further acknowledges and agrees that Client will not dispute and is responsible for payment for all hours worked on an engagement that uses Upwork Payroll Services.

### **4.2 UPWORK PAYROLL AGREEMENTS**

Client will inform Upwork 72 hours in advance, if possible, or as soon as possible thereafter, of the termination of any Any Hire Contract that uses Upwork Payroll Services. For hourly work performed by Freelancers classified as employees, (i) Client will be deemed to have automatically approved all hours worked at the time Client is invoiced for the work, including overtime and (ii) Client authorizes and instructs Upwork to make payment to Freelancer for time reflected on any weekly

time sheet, including overtime payments. For Freelancers engaged by Upwork or Staffing Provider as employees, Client agrees to comply with all applicable laws (e.g., not requiring or encouraging any Freelancer to work without recording time, not discouraging or prohibiting Freelancers from taking any meal or rest periods authorized by law) and acknowledges and agrees it is responsible to pay that overtime wages.

#### **4.3 NONDISCRIMINATION; COMPLIANCE WITH LAWS**

Client 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.

#### **4.4 FREELANCER ELIGIBILITY LIMITATIONS**

Any Hire Contracts may only be offered to Freelancers that do not have a pre-existing relationship with Upwork (e.g., a previously established Freelancer Account). If a Freelancer has a pre-existing relationship with Upwork, the Freelancer can be engaged through one of our other offerings, subject to the fees and other terms and conditions of such offerings.

#### **4.5 CLIENT ACKNOWLEDGEMENTS**

Other than as stated in these Any Hire Terms, 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; (ix) neither Upwork nor its Affiliates is an employer of or joint employer or integrated or single enterprise with any Freelancer or Client; and (x) unless otherwise agreed as part of the relevant Any Hire 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.

#### **5. FREELANCER ACKNOWLEDGEMENTS**

Other than as stated in these Any Hire Terms, Freelancer 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; (ix) neither Upwork nor its Affiliates is an employer of or joint employer or integrated or single

enterprise with any Freelancer or Client; and (x) unless otherwise agreed as part of the relevant Any Hire 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 Client's listings on the Site; the ability of Clients to pay for the Freelancer Services; or that Client or Freelancer can or will actually complete a transaction.

## **6. FEES**

### **6.1 CLIENT FEES**

Client agrees to pay a flat fee per Any Hire Contract ("**Any Hire Fee**") per two-week billing period ("**Billing Period**") or any portion of a Billing Period as follows:

Freelancer engaged as an independent contractor: \$49USD per month, billed each two-week billing period at \$22.62USD

Freelancer engaged through Upwork Payroll: \$49USD per month, billed each two-week billing period at \$22.62USD, plus the amount quoted for the individual engagement

Client also acknowledges and agrees that Client is responsible for applicable taxes and any Staffing Provider costs (to be communicated at the start of the Any Hire Contract), as well as the Payment Processing Fee. All fees are invoiced on the Monday after the end of the Billing Period. Client acknowledges and understands that payment is due in full the day the invoice is sent. Client agrees and authorizes Upwork to charge Client's Payment Method the full amount invoiced during a Billing Period on the same day the invoice is issued.

### **6.2 FREELANCER FEES**

Freelancers engaged on an Any Hire Contract are not charged Freelancer Service Fees (see Sections 2.1, 2.2, and 2.3 of the Fee and ACH Agreement) for such Any Hire Contract. However, Freelancers will pay any other applicable fees (see Section 2.4 of the Fee and ACH Agreement). If such Freelancer enters into a Service Contract other than an Any Hire Contract, such Service Contract will be subject to Service Fees as applicable.

## **7. CLIENT AND FREELANCER AUTHORIZATION**

Client and Freelancer represent and warrant that it has the authority to agree to these Any Hire Terms on behalf of themselves and the business entity they represent. Any 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 FOR CLIENT**

### **8.1 INTERACTION WITH OTHER TERMS OF SERVICE**

These Any Hire Terms controls for any express conflicts between the User Agreement or the [Upwork Payroll Agreement](#) and these Any Hire Terms concerning indemnification obligations and limitation of liability of Upwork or Client with respect to Any Hire Services only, except as provided in Section 3.3.

### **8.2 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, up to a maximum of \$50,000USD per Freelancer engaged under an Any Hire Contract, 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 these Any Hire Terms; (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.

### **8.3 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) in excess of \$50,000USD per Freelancer engaged under an Any Hire Contract; (ii) violation of any law or regulation, including laws related to illegal discrimination or harassment; (iii) misuse or unauthorized use of the Site; (iv) content posted by or on behalf of Client or at Client's direction; (v) 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; (vi) direction, participation or involvement with the Freelancer or Freelancer Services; or (vii) breach of Client's obligations in Section 5 (Client Responsibilities).

### **8.4 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 these Any Hire Terms; and (ii) 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. NO INDEMNIFICATION FOR FREELANCER**

For the avoidance of doubt, Freelancer shall have no right to indemnity or any other remedy against Upwork, except as provided in the User Agreement [Section 10](#), [Section 11](#), and [Section 12](#), all three of which shall be deemed to control any conflict with these Upwork Any Hire Terms.

### **10. LIMITATION OF LIABILITY**

THIS SECTION 10 (LIMITATION OF LIABILITY) ONLY APPLIES TO AN ANY HIRE CONTRACT AND IS NOT CUMULATIVE TO ANY OTHER 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, AND (II) AMOUNTS PAYABLE TO THIRD PARTIES PURSUANT TO INDEMNIFICATION OBLIGATIONS HEREIN. EXCEPT AS PROVIDED IN SECTION 8 WITH RESPECT TO CLIENTS, IN NO EVENT WILL UPWORK BE LIABLE FOR AN AMOUNT GREATER THAN \$50,000. 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.

### **11. OTHER TERMS**

This Agreement, including these Any Hire Terms 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 Any Hire Services. To the extent of an express conflict between these Any Hire Terms and the other Terms of Service,

these Any Hire Terms shall govern any matters involving Any Hire Services. Provisions of the User Agreement and other Terms of Service that do not expressly conflict with any provision of the Any Hire Terms or are being applied to any products or services other than the Any Hire Services apply in full force and effect. Without voiding or affecting the applicability of any other provision of the User Agreement to the Any Hire Terms, 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 Any Hire Terms.

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