

**This is important:** This User Agreement (“**Agreement**”) contains important information about your legal rights, remedies, and obligations, and is a legally binding agreement between you (“**you**” or “**User**”) and Upwork Global Inc. (“**Upwork**,” “**we**,” or “**us**”), Upwork Escrow Inc. (“**Upwork Escrow**”), and to the extent expressly stated, Elance Limited (“**Elance Ltd.**”), governing your use of Upwork’s [Site](#) and [Site Services](#) (collectively, “**Services**”). You understand that by using the Upwork Site or Site Services (which generally means using in any way our work marketplace Upwork.com or our applications), and by clicking accept when prompted on the Site, you agree to be bound by all agreements which constitute Upwork’s [Terms of Service](#), and you agree that the “**Terms of Service**” means every agreement linked herein and includes the [Fee and ACH Authorization Agreement](#), [Privacy Policy](#), [Terms of Use](#), applicable [Escrow Instructions](#) and this User Agreement, including Section 14 which contains an arbitration agreement and class action waiver that applies to claims brought against Upwork in the United States. You have an opportunity to opt out of arbitration as provided in Section 14. This Agreement also incorporates, for any User using the Upwork Direct Contract Service, Upwork [Direct Contract Terms](#) and [Direct Contract Escrow Instructions](#), and for any User using the Any Hire Services, the [Any Hire Terms](#) and the [Any Hire Escrow Instructions](#). You should read all of our terms carefully because you are promising not to break any agreements in the Terms of Service.

If you want to use our work marketplace or any of our services (which we refer to altogether as Services), whether just by looking around or by registering an account, you must first read and agree to this Agreement (including the dispute resolution and arbitration provisions in Section 14). If you don’t understand this Agreement or you don’t agree to all of its terms and conditions, you may not use our Services. If you do not understand or agree to this Agreement, do not click to accept this Agreement, “Sign Up”, “Create My Account”, or similar, and do not visit Upwork.com, use our mobile applications, or otherwise use our Services. If you are using our Services on behalf of a business or legal entity, you may only do so if you have authority to agree to the Terms of Service on behalf of that business or legal entity.

To make these terms a little easier to understand, we capitalize certain terms and capitalizing them means they have a special meaning. Section 16 provides the definitions of some capitalized terms and others are defined throughout the Terms of Service (look for quotation marks and bold font).

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When you see this  symbol, look for a simple summary for each section. We wrote these to help you get a quick overview, but you'll need to read the sections completely to get all the details of what you're agreeing to.

## 1. UPWORK ACCOUNTS



How you can register for an Upwork account and the different types of accounts that you can have.

### 1.1 REGISTRATION

You must register for an account to have full access to our Services, and your registration is subject to our approval.

You must register for an account with us (“**Account**”) to access and use certain portions of our Services. Registered users of our Services are “**Users**”, and unregistered users are “**Site Visitors**”.

Your Account registration is subject to approval by Upwork. We reserve the right to decline a registration either to join Upwork or to add an Account of any type, for any lawful reason, including supply and demand, cost to maintain data, or other business considerations.

## 1.2 ACCOUNT ELIGIBILITY



*You promise to use our Services for business purposes only. You also promise that you are eligible to enter into this Agreement, including because you are 18 years or older.*

Upwork offers the Services for your business purposes only and not for personal or consumer use. By registering for an Account or by using our Services, you represent that you: (a) are doing business under your own name as a self-employed individual/sole proprietor or are an employee or agent of an independent business (such as a corporation, limited liability company, or other entity); (b) will use our Services for business purposes only; (c) will comply with any licensing, registration, or other requirements with respect to your business, or the business for which you are acting, and any offering or provision of Freelancer Services; and (d) are either a legal entity or an individual who is at least 18 years old (or the age of majority in your country if the age of majority is over 18), and that you can form legally binding contracts.

## 1.3 ACCOUNT PROFILE



*You must provide accurate personal information when you sign up and you must update your account if your personal information changes. We can suspend or terminate your account if the information you give us is false, outdated, or incomplete.*

To register for an Account to use our Services, you must complete a User profile (“**Profile**”), which you consent to be shown to other Users and, unless you change your privacy settings, to be shown to the public. You agree to provide accurate and complete information on your Profile—and on all registration and other forms you access while using our Services or provide to us—and you agree to keep that information current. You agree not to provide any false or misleading information about your identity or location, your business, the beneficial owner(s) of your business, your skills, or the services your business provides, and you agree to correct any information that is or becomes false or misleading. We reserve the right to suspend or terminate the Account, or access to our Services, of anyone who provides false, inaccurate, or incomplete information in creating, marketing, or maintaining a Profile or an Account.

## 1.4 ACCOUNT TYPES



*We offer three types of accounts (“**Account Types**”): Client, Freelancer, and Agency (which is a special kind of Freelancer account). Once you register for an Account, you can add Account Types without re-registering. You promise to register for only one Account that requires a unique log in. This Account will house all of your Account Types. Never share your Account password with anyone; you can give permissions to other Users to act under your Account Types as Team Members or Agency Members if needed.*

We offer several different Account Types. Once you register for your Account (only one per User), you can add other Account Types under the same username and password. For example, if you already have a Freelancer Account Type (defined below), you can add a Client Account Type (defined below) to your Account without re-registering. You agree not to register for or maintain more than one Account and Profile without express written permission from us.

**If you create an Account as an employee or agent on behalf of a company, you represent and warrant that you are authorized to enter into binding contracts, including the Terms of Service, on behalf of yourself and the company. More than one person can create an Account as an employee or agent on behalf of the same company.**

### 1.4.1 CLIENT ACCOUNT

You can register for an Account or add an Account Type to use the Services as a Client (a “**Client Account**”). Client

Account Types have a feature that allows the account owner to give permissions to other Users (“**Team Members**”) to act on behalf of the Client Account. Each Team Member must have their own Account to be added as a Team Member on the Client Account.

#### 1.4.2 FREELANCER, AGENCY, AND AGENCY MEMBER ACCOUNT

**Freelancer:** You can register for an Account or add an Account Type to use the Services as a Freelancer (a “**Freelancer Account**”).

**Agency and Agency Member:** A specific type of Freelancer Account you can add is an “**Agency Account**”, which is referred to as an “**Agency**”. Agency Account Types have a feature that allows the Agency owner to give permissions to other Users (“**Agency Member**”) to act on behalf of the Agency. Each Agency Member must have their own Account to be added as an Agency Member on the Agency Account.

You acknowledge and agree that the Agency Account owner is solely responsible, and assumes all liability, for: (a) the classification of your Agency Members as employees or independent contractors; and (b) paying your Agency Members in accordance with applicable law or contract for work performed on behalf of the Agency for Projects. You further acknowledge and agree that (i) the Agency may determine the Profile visibility and pricing/rate information of any of its Agency Members; and (ii) Agency Members’ Profiles may display work history that includes work done under the Agency Account, including after the Agency Member is no longer an Agency Member.

#### 1.5 ACCOUNT PERMISSIONS



*You are responsible for all activity on your Account.*

You may provide other Users permissions to act on your Account only as described in Section 1.4 and in this Section 1.5. You agree not to request or allow another person to create an Account for you, your use, or your benefit, except that authorized employees or agents may create an Account on behalf of your business. By granting other Users permissions under your Account, including as a Team Member or Agency Member, you represent that: (a) the User is authorized to act on your behalf; and (b) you are fully responsible and liable for what the User does and does not do, including with respect to making payments and entering into Service Contracts and the Terms of Service. If any User granted permissions under your Account violates the Terms of Service, it may affect your ability to use our Services. When an Account is closed, Upwork may close any related Accounts as well.

#### 1.6 IDENTITY AND LOCATION VERIFICATION



*You will allow us to verify your identity, location, and business affiliations from time to time.*

When you register for an Account and periodically thereafter, your Account will be subject to verification, including but not limited to validation against third-party databases or the verification of one or more official government or legal documents that confirm your identity, your location, and your ability to act on behalf of your business on Upwork. You authorize Upwork, directly or through third parties, to make any inquiries necessary to validate your identity, your location, and confirm your ownership of your business, email address or financial accounts, subject to applicable law. When requested, you must timely provide us with complete information about yourself and your business, which includes providing official government or legal documents, and cooperating with other reasonable requests we make to verify your identity. During verification some Account features may be temporarily limited but will be restored if verification is successfully completed.

#### 1.7 USERNAMES AND PASSWORDS



*You will keep your username and password secret and will not share them, and you will not use anyone else's username and password.*

Each person who uses our Services must register for their own Account with a username and password. You are responsible for safeguarding and maintaining the confidentiality of your username and password, and agree not to share your username or password with anyone. You are responsible for safeguarding your username and password and for any use of our Services with your username and password. You agree to notify us immediately if you suspect or become aware of any unauthorized use of your Account or any unauthorized access to your password. You further agree not to use the Account or log in with the username and password of another User. See Sections 1.4 Account Types and 1.5 Account Permissions for information on allowing another registered User to act on your behalf in your Account.

## **2. PURPOSE OF UPWORK**



*What we do and do not do when providing our Services and some of your responsibilities when using our Services.*

The Upwork Site is a work marketplace where Clients and Freelancers can identify each other and advertise, buy, and sell Freelancer Services online. Subject to the Terms of Service, Upwork provides the Services to Users, including hosting and maintaining the Upwork Site, facilitating the formation of Service Contracts and Direct Contracts, and assisting Users in resolving disputes which may arise in connection with those contracts. When a User enters a Service Contract, the User agrees to use the Services exclusively to invoice, receive, and pay any amounts owed under the Service Contract.

### **2.1 RELATIONSHIP WITH UPWORK**



*We offer a work marketplace: an online platform for Users to find and connect with each other. We are not involved directly in your negotiations or the delivery of Freelancer Services and are not a party to any agreements you may make with other Users. You are solely responsible for your content published to Upwork and for your agreements with other Users, including vetting each other and performance under the agreements.*

Upwork offers a platform that enables Users to find one another, enter into service relationships and agreements, receive and provide Freelancer Services, and make and receive payments through escrow. Upwork neither performs nor employs individuals to perform Freelancer Services. You acknowledge and agree that Upwork does not supervise, direct, control, or monitor Users in the performance of any contractual obligations they may have under a Service Contract or Direct Contract and agree that: (a) Upwork is not responsible for ensuring the accuracy or legality of any User Content, for which Users are solely responsible; (b) Upwork is not responsible for the offering, performance, or procurement of Freelancer Services, (c) Upwork does not make any representations about or guarantee any particular User's offered services, and (d) nothing will create an employment, agency, or joint venture relationship between Upwork and any User offering services. While Upwork may provide certain badges on Freelancer or Client profiles, such badges are not guarantees, including of quality or ability or willingness of the badged Freelancer or Client to complete a Service Contract.

You further acknowledge and agree that Users, and not Upwork, are solely responsible for (a) evaluating and determining the suitability of any Project, Client, or Freelancer; (b) assessing whether to enter into a Service Contract or Direct Contract with another User and for verifying any information about another User, including Composite Information; (c) deciding whether to enter into a Service Contract or Direct Contract on Upwork as well as the contract terms, and (d) negotiating, agreeing to, and executing any terms or conditions of the contracts and for performing and monitoring performance under them. All Service and Direct Contracts between Users are directly between the Users and Upwork is not a party to those contracts.

If you are an Agency or Agency Member, you expressly acknowledge and agree that, in addition to the provisions above, the Agency is solely responsible for paying its Agency Members for work performed on behalf of the Agency.

Nothing in this Agreement is intended to or does prohibit or discourage any User from engaging in any other business activities or providing any services through any other channels they choose, provided, if applicable, Users comply with the Opt Out provisions described in Section 7. Users are free at all times to engage in such other business activities and services and are encouraged to do so.

As part of our constant effort to improve our Services for our customers, we may test or otherwise temporarily offer certain features and beta tools for your use. We will generally flag on the Site or in related customer forums when a particular tool is being tested and how the feature works, but we do not guarantee that the Site, or any of its tools or features, will be available at any given time.

## 2.2 TAXES AND BENEFITS



*Freelancers are responsible for paying their own taxes, obtaining their own insurance, and ensuring they comply with applicable laws and regulations.*

Freelancer acknowledges and agrees that Freelancer is solely responsible for: (a) all tax liability associated with payments received from Freelancer's Clients and through Upwork, and that Upwork will not withhold any taxes from payments to Freelancer unless required to under applicable law; (b) obtaining any liability, health, workers' compensation, disability, unemployment, or other insurance needed or required by law, and that Freelancer is not covered by or eligible for any insurance from Upwork; (c) determining and fulfilling Freelancer's obligations under applicable laws and regulations with respect to invoicing and reporting, collecting, or remitting any applicable taxes or charges; and (d) if outside of the United States, determining if Upwork is required by applicable law to withhold any amount of the Freelancer Fees and notifying Upwork of any such requirement and indemnifying Upwork for any requirement to pay any withholding amount to the appropriate authorities (including penalties and interest). In the event of an audit of Upwork, Freelancer agrees to promptly cooperate with Upwork and provide copies of Freelancer's tax returns and other documents as may be reasonably requested for purposes of such audit, including but not limited to records showing Freelancer is engaging in an independent business as represented to Upwork.

## 2.3 MARKETPLACE FEEDBACK AND USER CONTENT



*Users publish and ask Upwork to publish information and feedback on the Site. We are not responsible for that content, and your publication or use of it is at your own risk.*

You acknowledge and agree that Users publish and request Upwork to publish on their behalf information on the Site such as feedback, composite feedback, or geographical location. Such information is based on data that Freelancers or Clients voluntarily submit to Upwork and does not constitute an introduction, endorsement, or recommendation by Upwork. You agree that Upwork is not responsible for verifying such information and provides it solely for the convenience of Users, but providing false or misleading information violates this Agreement and may result in revocation of your access to use the Site Services.

You acknowledge and agree that User feedback benefits the marketplace and its Users, and you specifically request and agree that Upwork may make available to other Users individual and composite feedback about Users, including you. You acknowledge and agree that any feedback results for you, including your Job Success Score and other User Content highlighted by Upwork on the Site or otherwise ("**Composite Information**"), may include User comments, User ratings, indicators of User satisfaction, and other feedback left by other Users. Upwork is not responsible for monitoring,



influencing, contributing to or censoring these opinions. You agree to notify Upwork of any error or inaccurate statement in your feedback results, including the Composite Information, and you agree that Upwork may rely on the accuracy of such information if you do not. Upwork provides its feedback system as a means for Users to share their working experiences with and opinions of other Users publicly, and you acknowledge and agree that posted composite or compiled feedback and any other Composite Information relates only to the business advertised in the Profile and not to any individual person. You agree not to use the Composite Information to make any employment, credit, credit valuation, underwriting, or other similar decision about any other User.

By using the Services, you may encounter content or information that might be inaccurate, incomplete, delayed, misleading, illegal, offensive or otherwise harmful. Upwork generally does not review or monitor User Content. You agree that we are not responsible for User Content. We cannot always prevent the misuse of our Services, and you agree that we are not responsible for any such misuse. Upwork reserves the right (but is under no obligation) to remove posted feedback or information that Upwork determines violates the Terms of Service or negatively affects our marketplace, diminishes the integrity of the feedback system or otherwise is inconsistent with the business interests of Upwork.

### 3. CONTRACTUAL RELATIONSHIP BETWEEN CLIENT AND FREELANCER



*This section discusses the relationships you may decide to enter into with another User, including contracts to buy or sell Freelancer Services with another User.*

#### 3.1 SERVICE CONTRACTS AND DIRECT CONTRACTS



*Users, not Upwork, are responsible for deciding whether to enter into agreements with other Users and for determining what the terms of those agreements will be.*

As provided in Section 2.1 above, if a Client and a Freelancer decide to enter into a Service Contract, the contract is a contractual relationship directly between the Client and the Freelancer; Upwork is not responsible for and is not a party to any Service Contract and under no circumstances will any such contract create an employment or any service relationship between Upwork and any User.

With respect to any Service Contract, Clients and Freelancers may enter into any agreements that they deem appropriate (e.g., confidentiality agreements, invention assignment agreements, assignment of rights, etc.), provided that those agreements do not conflict with, narrow, or expand Upwork's rights and obligations under the Terms of Service, including this Agreement and the applicable Escrow Instructions.

The parties to a Service Contract can, if the parties prefer, agree to the Optional Service Contract Terms in whole or in part, in addition to or instead of other such agreements. The parties to a Service Contract expressly agree that the Optional Service Contract Terms will and do apply to their contract to the extent that they have not agreed to other terms or agreements that conflict with the Optional Service Contract Terms. Users are solely responsible for deciding whether to use the Optional Service Contract Terms, and Upwork does not assume any responsibility for any consequence of using the Optional Service Contract Terms, which are provided as a sample only and may not be appropriate for all jurisdictions or all contracts. The Optional Service Contract Terms are not intended to and do not (a) constitute legal advice, (b) create an attorney-client relationship, or (c) constitute advertising or a solicitation of any type. You should seek legal advice from a licensed attorney for your particular needs.

#### 3.2 DISPUTES AMONG USERS



*You agree to try to resolve your disputes with other Users by following the dispute resolution process in the*



*Escrow Instructions that apply to your contract.*

For disputes arising between Clients and Freelancers, you agree to abide by the dispute resolution process that is explained in the Escrow Instructions that apply to your particular Service Contract or Direct Contract. If that process does not resolve your dispute, you may pursue your dispute independently, but you acknowledge and agree that Upwork will not and is not obligated to provide any further dispute resolution assistance.

If Freelancer or Client seeks an order from an arbitrator or court that might direct Upwork, Upwork Escrow, or our Affiliates to take or refrain from taking any action with respect to an Escrow Account, that party will (a) give us at least five (5) business days' prior notice of the hearing on the order; (b) include in any such order a provision that, as a precondition to any obligation affecting Upwork or Upwork Escrow, we be paid in full for any amounts to which we would otherwise be entitled; and (c) include in any such order a provision that, as a precondition to any obligation affecting Upwork or Upwork Escrow, Upwork be paid for the reasonable value of the services the order obligates us to undertake.

### **3.3 CONFIDENTIAL INFORMATION**



*Users can agree to their own confidentiality terms. If they do not, these terms apply. Users agree to keep other Users' confidential information a secret.*

Users may agree to any terms they deem appropriate with respect to confidentiality, including those set forth in the Optional Service Contract Terms. If Users do not agree to their own confidentiality terms, this Section 3.3 (Confidential Information) applies.

To the extent a User provides Confidential Information to another User, the recipient will take reasonable steps to keep that information confidential. On a User's written request, the party that received Confidential Information will promptly destroy or return the disclosing party's Confidential Information and any copies of it contained in or on its premises, systems, or any other equipment otherwise under its control. Users specifically agree that this Section 3.3 applies to information exchanged for purposes relating to evaluating whether to enter into a Service Contract, even if such contract is never agreed to.

## **4. WORKER CLASSIFICATION AND UPWORK PAYROLL**



*Users determine whether a Freelancer is an employee or independent contractor and agree to use Upwork Payroll for employment relationships.*

### **4.1 WORKER CLASSIFICATION**



*Clients, not Upwork, are responsible for deciding whether to engage Freelancers as employees or independent contractors.*

Client is solely responsible for and assumes all liability for determining whether Freelancers should be engaged as independent contractors or employees and engaging them accordingly. Client warrants its decisions regarding classification are correct and its manner of engaging Freelancers complies with applicable laws, regulations, and rules. Upwork is not responsible for worker classification as between Client and Freelancer, and nothing in this Agreement is intended to or should be construed to create a partnership, joint venture, franchisor/franchisee or employer-employee relationship between Upwork and a User..

### **4.2 UPWORK PAYROLL SERVICES**



*If Clients engage Freelancers as employees, Clients agree to enroll in Upwork Payroll.*

Client agrees to enroll in Upwork Payroll if it will receive services from a Freelancer under terms and conditions that would give rise to an employment relationship (unless Client elects instead to pay the Conversion Fee (see Section 7)). When the Client enrolls in Upwork Payroll, Client will engage Upwork's third-party staffing vendor (the "**Staffing Provider**") through the Site. The Staffing Provider will hire Freelancer at the request of Client and Freelancer according to the terms described on the Site and otherwise agreed to by the Staffing Provider, Client and/or Freelancer, and subject to the [Upwork Payroll Agreement](#). The employer of Freelancer will be the Staffing Provider and not Upwork.

Freelancer acknowledges and agrees that Upwork will have no control over and is not responsible for the terms and conditions of any employment relationship that may arise between Freelancer and Staffing Provider or Client, including the selection process, pay rate, work hours, employment dates, or working conditions.

## 5. UPWORK FEES



*Users agree to pay Upwork certain fees in exchange for Upwork providing the Services and agree that Upwork may collect certain taxes.*

### 5.1 FEES FOR FREELANCERS

**Service Fees.** Freelancers agree to pay Upwork a service fee for the use of the Services (including marketing, invoicing, reporting, payment, and dispute resolution services), as set forth in the [Fee and ACH Authorization Agreement](#) and the [Direct Contract Terms](#) (the "**Service Fees**"). Freelancer is responsible for paying all Service Fees. When a Client pays a Freelancer for a Project or when funds related to a Project are otherwise released to a Freelancer as required by the applicable Escrow Instructions (see Section 6.1), Upwork Escrow will credit the Freelancer Escrow Account for the full amount paid or released by the Client, and then subtract and disburse to Upwork the Service Fee. Freelancer hereby irrevocably authorizes and instructs Upwork Escrow to deduct the Service Fee from the Freelancer Escrow Account and pay Upwork on Freelancer's behalf. If Freelancer chooses to withdraw funds in a currency other than U.S. dollars, Upwork Escrow (or an affiliate) will impose a foreign currency conversion charge, and the rate may differ from rates that are in effect on the date of the payment. You may be able to obtain a better rate from your bank or financial institution.

**Membership Fees and Connects.** Freelancers may subscribe to different levels of participation and privileges on the Site to access additional features and Site Services, by payment of subscription membership fees and by purchasing "**Connects**" as described in the [Freelancer Membership Agreement](#).

**Disbursement Fees.** Freelancers will pay Upwork a disbursement fee for remitting payments to their preferred payment method. This fee is paid to Upwork in consideration of administrative costs and costs incurred via the disbursement method, and may vary by disbursement method. The fee for each disbursement method is listed on the Site [here](#) and is subject to change.

### 5.2 CLIENT FEES

Clients pay Upwork a Marketplace Fee for accessing the Services, and for administration and facilitation of payments related to the Freelancer Fees they pay to Freelancers they engage through the Site, as described in the [Fee and ACH Authorization Agreement](#).

Clients may also choose to pay for access to additional features and Services, as described in the [Fee and ACH Authorization Agreement](#).

### 5.3 VAT AND OTHER TAXES

Upwork Fees are exclusive of taxes. Upwork does not collect taxes it is not required to collect, but Upwork may be required by applicable law to collect certain taxes or levies, including income tax or VAT (which some jurisdictions refer to as GST or local sales taxes). These collection requirements and rates may change based on changes to the law in your area. Any amounts Upwork is required to collect or withhold for the payment of any such taxes shall be collected in addition to the fees owed to Upwork under the Terms of Service.

#### 5.4 NO FEE FOR INTRODUCING OR FOR FINDING PROJECTS

Upwork does not introduce Clients to Freelancers. Upwork offers a platform that enables Freelancers to introduce themselves and may from time to time highlight Projects or Freelancers that may be of interest. Therefore, Upwork does not charge a fee when a Freelancer finds a suitable Client or finds a Project. In addition, Upwork does not charge any fee or dues for posting or viewing feedback, including Composite Information.

### 6. PAYMENT TERMS AND ESCROW SERVICES



*This section describes how Upwork's Escrow Services work and discusses your agreement to pay Freelancer Service Fees on Service Contracts and Direct Contracts, what happens if a Client doesn't pay, and related topics.*

#### 6.1 ESCROW SERVICES

Upwork Escrow provides escrow services to Users to deliver, hold, and receive payment for a Project, and to pay fees to Upwork ("**Escrow Services**"). [Upwork Escrow](#) is a Delaware corporation and a licensed Internet escrow agent that holds California Department of Financial Protection and Innovation License No. 963 5086. The Escrow Services are intended for business use, and you agree to use the Escrow Services only for business purposes and not for consumer, personal, family, or household purposes.

##### 6.1.1 ESCROW INSTRUCTIONS



*We follow what is in the applicable Escrow Instructions when we give the money held by us in escrow to the Freelancer or back to the Client for a Service Contract.*

Upwork Escrow will use and release funds deposited in an Escrow Account only in accordance with this Agreement and the applicable Escrow Instructions. You acknowledge and agree that Upwork Escrow acts merely as an Internet escrow agent. Upwork Escrow has fully delivered the Escrow Services to you if Upwork Escrow provides the Escrow Services described in this Agreement and the applicable Escrow Instructions. Upwork Escrow is only obligated to perform those duties expressly described in this Agreement and any applicable Escrow Instructions. Upwork will release funds from any Escrow Account in reliance on your authorization, this Agreement, and the applicable Escrow Instructions or as required by applicable law.

**Fixed-Price Projects.** If Users choose fixed-price compensation, then the Users agree that they will be bound by, and Upwork Escrow will follow, the [Fixed-Price Escrow Instructions](#).

**Hourly Projects, Bonus Payments, or Expense Payments.** If Users choose hourly compensation or if the Client makes bonus or expense payments, then the Users agree that they will be bound by, and Upwork Escrow will follow, the [Hourly, Bonus and Expense Payment Agreement with Escrow Instructions](#).

**Direct Contracts.** If Users enter into a Direct Contract, then the Users agree that they will be bound by, and Upwork Escrow will follow, the Direct Contract Escrow Instructions applicable to the contract ([Fixed Price](#) or [Hourly](#)).

**Any Hire Contracts.** If Users enter into an Any Hire Contract, then the Users agree that they will be bound by, and Upwork

Escrow will follow, the [Any Hire Escrow Instructions](#).

**Upwork Payroll Engagements.** If Users use Upwork Payroll (see Section 4) for a particular Project, then the Staffing Employee is paid directly by the Staffing Provider. A Client will be invoiced through the Site by the Staffing Provider, and the applicable Escrow Instructions will apply. However, the Client will not be able to dispute hours reported by the Staffing Employee and there is no dispute waiting period for the disbursement of funds to the Staffing Employee.

### 6.1.2 ESCROW ACCOUNTS



*Upwork Escrow will create and maintain an account to hold funds for you—called an Escrow Account—based on your needs. You authorize Upwork Escrow to be your escrow agent, which means to hold your funds and to follow your instructions on the funds held in your Escrow Account.*

Upwork Escrow will use and release funds deposited in an Escrow Account only in accordance with this Agreement, the applicable Escrow Instructions, and applicable law. Depending on your needs and the applicable Escrow Instructions, Upwork Escrow will establish and maintain one of two different types of Escrow Accounts:

**(A) Client Escrow Account.** After entering into a Service Contract (hourly or fixed price) or Direct Contract, the first time a Client makes a payment for a Project, Upwork Escrow will establish and maintain a “**Client Escrow Account**” to hold funds for the Client to use to make payments for Projects, to receive refunds in connection with Projects, and to make payments to Upwork.

**(B) Freelancer Escrow Account.** After entering into a Service Contract (hourly or fixed price) or Direct Contract, the first time a Freelancer uses the Site to receive payment for a Project, Upwork Escrow will establish and maintain a “**Freelancer Escrow Account**” for Freelancer to receive payments for Projects, withdraw payments, make payments to Upwork and issue refunds to Clients.

You hereby authorize and instruct Upwork Escrow to act as escrow agent in connection with the Escrow Accounts and the payment, holding, and receipt of funds for each Project and other specified purposes in accordance with the Terms of Service and the applicable Escrow Instructions. Client and Freelancer may access current information regarding the status of an Escrow Account on the Site.

### 6.1.3 FREELANCER APPOINTMENT OF UPWORK ESCROW AND SUBSIDIARIES AS AGENT



*Freelancers authorize Upwork Escrow to act for them to collect and hold payments from Clients.*

If you are a Freelancer and you request payment related to an Hourly Contract or the release of funds from a Fixed-Price Escrow Account, you hereby appoint Upwork Escrow as your agent to obtain funds on your behalf and credit them to your Freelancer Escrow Account as you agree in the applicable Escrow Instructions. Because Upwork Escrow is Freelancer’s agent, Freelancer must, and hereby does, fully discharge and credit Freelancer’s Client for all payments and releases of funds that Upwork Escrow receives on Freelancer’s behalf from or on behalf of such Client.

### 6.1.4 TITLE TO FUNDS



*Upwork, Upwork Escrow, and our Affiliates are not banks. We will safeguard your money and not voluntarily make your money available to our creditors.*

Upwork, Upwork Escrow, and our Affiliates are not banks. Upwork Escrow deposits and maintains all Escrow Account funds in an escrow trust account at a bank insured by the Federal Deposit Insurance Corporation and approved to receive, hold, and deliver escrow funds under applicable laws and regulations. Upwork Escrow may utilize an interest-

bearing escrow trust account held at Wells Fargo Bank N.A. to maintain Escrow Account funds in accordance with applicable laws. Upwork Escrow may transfer funds between interest and non-interest bearing escrow trust accounts but will not release Escrow Account funds except in accordance with applicable Escrow Instructions. Any escrow trust account is separate from the operating accounts of Upwork and each of our Affiliates. Upwork Escrow will not voluntarily make funds deposited in the escrow trust account available to its creditors, or the creditors of its Affiliates, in the event of a bankruptcy, or for any other purpose. As provided in United States Bankruptcy Code, Section 541(d), Upwork Escrow holds only legal title to, and not any equitable interest in, the escrow trust account and any funds deposited in it. This Agreement is supplementary to the Service Contract and to any other agreement between Client and Freelancer concerning the Project, as provided in Title 11 of the United States Code, Section 365(n).

#### 6.1.5 NO INTEREST



*You will not earn any interest on the money we hold in your Escrow Account and you understand that we charge fees for our services, as explained in Section 5.*

You agree that you will not receive interest or other earnings on the funds held in your Escrow Account. If any interest is earned then you agree that all interest is assigned to Upwork Global Inc. In no event will you receive any interest earnings, including if the Project or payment fails, is canceled, or escrow funds are returned to you. Any interest accrued in an escrow trust account may be retained in the interest-bearing escrow account until the end of the current calendar month.

Upwork, Upwork Escrow, or our Affiliates may charge or deduct fees, may receive a reduction in fees or expenses charged, and may receive other compensation in connection with the services we provide as provided in Section 5 and the Fee and ACH Authorization Agreement.

#### 6.1.6 ESCROW AGENT DUTIES



*We only agree to do what is described in this Agreement, the applicable Escrow Instructions, and the rest of the Terms of Service.*

We only agree to perform such duties as are expressly set forth in this Agreement, the applicable [Escrow Instructions](#), and the other [Terms of Service](#), and no other duties will be implied. We have no liability under, and no duty to inquire as to, the provisions of any agreement, other than the Terms of Service (including this Agreement and the applicable Escrow Instructions). We will be under no duty to inquire about or investigate any agreement or communication between Client and Freelancer, even if posted to the Site. We have the right to rely upon, and will not be liable for relying on, any written notice, instruction, or request furnished to us by Client or Freelancer in accordance with this Agreement or the applicable Escrow Instructions, if we reasonably believe that such notice, instruction, or request is genuine and that it is signed or presented by the proper party or parties. We have no duty to inquire about or investigate the validity, accuracy, or content of any such notice, instruction, or request. We have no duty to solicit any payments or releases that may be due to or from any Escrow Account. We may execute any of our powers and perform any of our duties under this Agreement and the applicable Escrow Instructions directly or through agents or attorneys (and will be liable only for the careful selection of any such agent or attorney) and may consult with counsel, accountants, and other skilled persons to be selected and retained by us. If we are uncertain as to our duties or rights under this Agreement or receive instructions, claims, or demands from any party to this Agreement that, in our opinion, conflict with any of the provisions of this Agreement or the applicable Escrow Instructions, we will be entitled to refrain from taking any action, and our sole obligation will be to keep safely all property held in the Escrow Account until we are directed otherwise in writing by Client and Freelancer or by a final order or judgment of an arbitrator or court of competent jurisdiction.

### 6.1.7 ESCROW AGENT RIGHT



*We may choose to start a dispute process if there is a disagreement between a Client and a Freelancer related to an Escrow Account.*

We have the right to institute arbitration or other legal proceedings if applicable, including depositing funds held in the Escrow Account with a court of competent jurisdiction, in order to resolve any dispute between Client and Freelancer related to the Escrow Account. Except as expressly provided, nothing in this Agreement will be construed to limit our legal and equitable rights, including, but not limited to, depositing funds held in the Escrow Account with a court of competent jurisdiction. Any corporation or association into which Upwork Escrow may be merged or converted or with which Upwork Escrow may be consolidated, or any corporation or association to which all or substantially all the escrow business of Upwork Escrow may be transferred will succeed to all the rights and obligations of Upwork Escrow as escrow holder and escrow agent under this Agreement and the applicable Escrow Instructions to the extent permitted by applicable law.

### 6.2 CLIENT PAYMENTS ON SERVICE CONTRACTS



*This section describes when and how Client payments are made on their contracts with Freelancers.*

**Hourly Contracts.** Freelancer will invoice Client for Freelancer Fees on a weekly basis through Upwork, and Client will pay invoices consistent with the [Hourly, Bonus, and Expense Payment Agreement with Escrow Instructions](#) or [Hourly Direct Contract Escrow Instructions](#), depending on whether the contract is a Service Contract or a Direct Contract, respectively. When Client approves an Hourly Invoice for an Hourly Contract, Client automatically and irrevocably authorizes and instructs Upwork or its affiliates Upwork Escrow or Elance Ltd. to charge Client's Payment Method for the Freelancer Fees.

**Fixed-Price Contracts.** Client becomes obligated to pay applicable amounts into the Escrow Account immediately upon sending a Fixed-Price Contract offer (for the full amount or for the first milestone, if milestones are used) or upon activating any additional milestone. When Client authorizes the payment of the Freelancer Fees for a Fixed-Price Contract under the [Fixed Price Service Contract Escrow Instructions](#) or the [Fixed Price Direct Contract Escrow Instructions](#), Client automatically and irrevocably authorizes and instructs Upwork or its affiliates Upwork Escrow or Elance Ltd. to charge Client's Payment Method for the Freelancer Fees.

Client acknowledges and agrees that for both Hourly Contracts and Fixed-Price Contracts, failure by Client to decline or dispute an Hourly Invoice or request for payment is an authorization and instruction to release payment, as described more fully in the applicable Escrow Instructions.

### 6.3 DISBURSEMENTS TO FREELANCERS ON SERVICE CONTRACTS OR DIRECT CONTRACTS



*This section describes when Freelancers receive their funds that we were holding for the Freelancers in escrow.*

Upwork Escrow disburses funds that are available in the applicable Freelancer Escrow Account and payable to a Freelancer as described in the relevant [Escrow Instructions](#). A Freelancer can request disbursement of available funds any time on a one-time basis or by setting up an automatic disbursement schedule. Otherwise, except as provided in the following paragraph, Upwork will automatically disburse available funds no more than ninety (90) days after the Freelancer Fees are released to the Freelancer Escrow Account, unless the amount in the Escrow Account is less than the Minimum Threshold. For purposes of the Terms of Service, a "Minimum Threshold" is either (a) \$100 for Freelancers within the United States, or (b) \$1,000 for Freelancers outside the United States. Except as provided in the following paragraph, when the funds in the Freelancer Escrow Account are below the Minimum Threshold, the automatic



disbursement schedule is paused and the available and payable funds are released on the earlier of: (i) Freelancer's request; (ii) on the first scheduled automatic disbursement occurring after the amount exceeds the Minimum Threshold; or (iii) 180 days after the funds are available in the Freelancer Escrow Account.

If a Freelancer that is located outside of the United States is not able to withdraw funds due to economic sanctions applicable to Upwork or our payment partners, or due to Upwork's payment partners' refusal to service certain geographic areas, Upwork will suspend automatic disbursement as provided in the prior paragraph and will safeguard such funds in an Escrow Account, or in another suitable account, as determined in Upwork's sole discretion, until the earlier of (a) the Freelancer is able to and does in fact withdraw the funds, or (b) Upwork is required by law to escheat the funds to an appropriate legal authority, after which the Freelancer can seek to recover the funds from such authority.

**Hourly Contracts.** Freelancer Fees become available to Freelancers no later than following the expiration of the five-day security period and dispute period.

**Fixed-Price Contracts.** Freelancer Fees become available to Freelancers no later than following the expiration of the five-day security period. The security period begins after Client accepts work submitted by Freelancer and approves payment.

Except as expressly provided in the Terms of Service or the Escrow Instructions and as prohibited by applicable law, Upwork Escrow may refuse to process, may hold the disbursement of the Freelancer Fees or any other amounts and offset amounts owed to us, or take such other actions with respect to the Escrow Account as we deem appropriate in our sole discretion if: (a) we require additional information, such as Freelancer's tax information, government-issued identification or other proof of identity, address, or date of birth; (b) we have reason to believe the Freelancer Fees may be subject to dispute or chargeback; (c) we suspect a User has committed or attempted to commit fraud or other illicit acts on or through the Site or is using the Site unlawfully; (d) we believe there are reasonable grounds for insecurity with respect to the performance of obligations under this Agreement or other Terms of Service; or (e) we deem it necessary in connection with any investigation, required by applicable law, or necessary due to circumstances outside of our control after a commercially reasonable effort has been made by us due to such circumstances. If, after investigation, we determine that the hold on the disbursement of the Freelancer Fees is no longer necessary, Upwork Escrow will release the hold as soon as practicable.

In addition, except as expressly provided in the Terms of Service or the Escrow Instructions and to the extent permitted by applicable law, we reserve the right to seek reimbursement from you, and you will reimburse us, if we: (i) suspect fraud or criminal activity associated with your payment, withdrawal, or Project; (ii) discover erroneous or duplicate transactions; or (iii) have supplied our services in accordance with this Agreement yet we receive any chargeback from the Payment Method used by you or your Client despite our provision of the Services in accordance with this Agreement. You agree that we have the right to obtain such reimbursement by instructing Upwork Escrow (and Upwork Escrow will have the right) to charge your account(s), offset any amounts determined to be owing, deduct amounts from future payments or withdrawals, charge your Payment Method, or use other lawful means to obtain reimbursement from you. If we are unable to obtain such reimbursement, we may, in addition to any other remedies available under applicable law, temporarily or permanently revoke your access to the Services and close your Account.

## 6.4 NON-PAYMENT OR DEFAULT



*This section describes the actions Upwork can take if a Client does not pay fees on time. Upwork is not responsible for a Client's non-payment of fees.*

If Client is in “**default**”, meaning the Client fails to pay the Freelancer Fees or any other amounts when due under the Terms of Service, or a written agreement for payment terms incorporating the Terms of Service (signed by an authorized



representative of Upwork), Upwork will be entitled to the remedies described in this Section 6.4 in addition to such other remedies that may be available under applicable law or in such written agreement. For the avoidance of doubt, Client will be deemed to be in default on the earliest occurrence of any of the following: (a) Client fails to pay the Freelancer Fees when due; (b) Client fails to pay a balance that is due or to bring, within a reasonable period of time but no more than 30 days after accrual of the charge, an account current after a credit or debit card is declined or expires; (c) Client fails to pay an invoice issued to the Client by Upwork within the time period agreed or, if no period is agreed, within 30 days; (d) Client initiates a chargeback with a bank or other financial institution resulting in a charge made by Upwork for Freelancer Fees or such other amount due being reversed to the Client; or (e) Client takes other actions or fails to take any action that results in a negative or past-due balance on the Client's account.

If Client is in default, we may, without notice, temporarily or permanently close Client's Account and revoke Client's access to the Services, including Client's authority to use the Site to process any additional payments, enter into Service Contracts or Direct Contracts, or obtain any additional Freelancer Services from other Users through the Site. However, Client will remain responsible for any amounts that accrue on any open Projects at the time a limitation is put on the Client's Account as a result of the default. Without limiting other available remedies, Client must pay Upwork upon demand for any amounts owed, plus interest on the outstanding amount at the lesser of one and one-half percent (1.5%) per month or the maximum interest allowed by applicable law, plus attorneys' fees and other costs of collection to the extent permitted by applicable law.

At our discretion and to the extent permitted by applicable law, Upwork, Upwork Escrow, Elance Ltd. or its other Affiliates may, without notice, charge all or a portion of any amount that is owed to any Payment Method on file on the Client's Account; set off amounts due against other amounts received from Client or held by for Client by Upwork, Upwork Escrow or another Affiliate; make appropriate reports to credit reporting agencies and law enforcement authorities; and cooperate with credit reporting agencies and law enforcement authorities in any investigation or prosecution.

Upwork does not guarantee that Client is able to pay or will pay Freelancer Fees, and Upwork is not liable for and may reverse Freelancer Fees if Client is in default or initiates a chargeback of funds with their financial institution. Freelancer may use the dispute process as described in the applicable Escrow Instructions in order to recover funds from Client in the event of a default or may pursue such other remedies against Client as Freelancer chooses. If Upwork recovers funds from a Client who initiated a chargeback or who is in default pursuant to this Section 6.4, Upwork will disburse any portion attributable to Freelancer Fees to the applicable Freelancer to the extent not already paid by Client or credited by Upwork through any Payment Protection program.

## 6.5 NO RETURN OF FUNDS AND NO CHARGEBACKS



*Clients agree that, once Upwork charges their Payment Methods, the charge cannot be refunded except on a condition agreed in the Escrow Instructions. Clients agree not to initiate any chargebacks from their credit card companies, banks, or the like.*

Client acknowledges and agrees that Upwork or its affiliates Upwork Escrow or Elance Ltd. may charge or debit Client's designated Payment Method for the Freelancer Fees incurred as described in the applicable Escrow Instructions and the Fee and ACH Authorization Agreement. Once Upwork or its affiliates Upwork Escrow or Elance Ltd. charges or debits the Client's designated Payment Method for the Freelancer Fees, the charge or debit is non-refundable, except as provided in the applicable Escrow Instructions or as otherwise required by applicable law. Client also acknowledges and agrees that the Terms of Service provide a dispute resolution process as a way for Client to resolve disputes. To the extent permitted by applicable law, Client therefore agrees not to ask its credit card company, bank, or other Payment Method provider to charge back any Freelancer Fees or other fees charged pursuant to the Terms of Service for any reason. A chargeback in breach of this obligation is a material breach of the Terms of Service. If Client initiates a chargeback in violation of this

Agreement, Client agrees that Upwork or its affiliates Upwork Escrow or Elance Ltd. may dispute or appeal the chargeback, institute collection action against Client, close Client's account, and take such other action it deems appropriate.

## 6.6 PAYMENT METHODS



*Clients agree to designate a Payment Method and authorize us to charge that Payment Method.*

In order to use certain Site Services, Client must provide account information for at least one valid Payment Method.

Client hereby authorizes Upwork, Upwork Escrow, and Elance Ltd., as applicable, to run credit card authorizations on all credit cards provided by Client, to store credit card and banking or other financial details as Client's method of payment consistent with our [Privacy Policy](#), and to charge Client's credit card (or any other Payment Method) for the Freelancer Fees and any other amounts owed under the Terms of Service. To the extent permitted by applicable law and subject to our Privacy Policy, you acknowledge and agree that we may use certain third-party vendors and service providers to process payments and manage your Payment Method information.

By providing Payment Method information through the Site or by authorizing payments with the Payment Method, Client represents that: (a) Client is legally authorized to provide such information; (b) Client is legally authorized to make payments using the Payment Method(s); (c) if Client is an employee or agent of a company or person that owns the Payment Method, that Client is authorized by the company or person to use the Payment Method to make payments on Upwork; and (d) such actions do not violate the terms and conditions applicable to Client's use of such Payment Method(s) or applicable law.

When Client authorizes a payment using a Payment Method via the Site, Client represents that there are sufficient funds or credit available to complete the payment using the designated Payment Method. To the extent that any amounts owed under this Agreement or the other Terms of Service cannot be collected from Client's Payment Method(s), Client is solely responsible for paying such amounts by other means.

Upwork is not liable to any User if Upwork does not complete a transaction as a result of any limit by applicable law or your financial institution, or if a financial institution fails to honor any credit or debit to or from an account associated with such Payment Method. Upwork will make commercially reasonable efforts to work with any such affected Users to resolve such transactions in a manner consistent with this Agreement and any applicable Escrow Instructions.

## 6.7 U.S. DOLLARS AND FOREIGN CURRENCY CONVERSION



*If your Payment Method uses a currency other than U.S. Dollars, we may show you foreign currency conversion rates for us to change your currency into U.S. Dollars. The rates we show you may be different than the rates that apply to us and may not be the best rate available to you*

The Services operate in U.S. Dollars. If a User's Payment Method is denominated in a currency other than U.S. Dollars and requires currency conversion to make or receive payments in U.S. Dollars, the Site will display foreign currency conversion rates that Upwork, Upwork Escrow, Elance Ltd., or our other Affiliates currently make available to convert supported foreign currencies to U.S. Dollars. These foreign currency conversion rates adjust regularly based on market conditions. Please note that the wholesale currency conversion rates at which we or our Affiliates obtain foreign currency will usually be different than the foreign currency conversion rates offered on the Site. Each User, at its sole discretion and risk, may authorize the charge, debit, or credit of its Payment Method in a supported foreign currency and the conversion of the payment to U.S. Dollars at the foreign currency conversion rate displayed on the Site. A list of supported foreign currencies is available on the Site. If foreign currency conversion is required to make a payment in U.S. Dollars and

Upwork, its affiliates Upwork Escrow or Elance Ltd., as applicable, does not support the foreign currency or the User does not authorize the conversion of such payment at the foreign currency conversion rate displayed on the Site, Upwork Escrow or one of our Affiliates will charge, debit, or credit the User's Payment Method in U.S. Dollars and the User's Payment Method provider will convert the payment at a foreign currency conversion rate selected by the User's Payment Method provider. The User's Payment Method provider may also charge fees directly to the Payment Method even when no currency conversion is involved. The User's authorization of a payment using a foreign currency conversion rate displayed on the Site is at the User's sole risk. Upwork, Upwork Escrow, Elance Ltd., and our other Affiliates are not responsible for currency fluctuations that occur when billing or crediting a Payment Method denominated in a currency other than U.S. Dollars or for currency fluctuations that occur when receiving or sending payments to and from the Escrow Account.

## 7. NON-CIRCUMVENTION



*You agree to communicate through the Site and make and receive payments only through the Site for two years from the date you first identify or meet your Client or Freelancer on the Site, unless you pay a Conversion Fee. Violations of this Section constitute a serious breach and may result in permanent suspension of your Account.*

### 7.1 MAKING PAYMENTS THROUGH UPWORK



*You agree to exclusively use Upwork to make payments for work that arises out of a relationship you made through Upwork for two years from the date you first established the relationship.*

You acknowledge and agree that a substantial portion of the compensation Upwork receives for making the Site available to you is collected through the Service Fee described in Section 5.1 and that in exchange a substantial value to you is the relationships you make with other Users identified through the Services (the **"Upwork Relationship"**). Upwork only receives the Service Fee when a Client and a Freelancer pay and receive payment through the Site. Therefore, except as set out in Section 7.2, for 24 months from the start of an Upwork Relationship (the **"Non-Circumvention Period"**), you agree to use the Site as your exclusive method to request, make, and receive all payments for work directly or indirectly with that person or arising from that relationship and not to circumvent the Payment Methods offered on the Site unless you pay a fee to take the relationship off of the Site (the **"Conversion Fee"**). If you use the Site as an employee, agent, or representative of another business, then the Non-Circumvention Period applies to you and other employees, agents, or representatives of the business or its successor when acting in that capacity with respect to the other User. If you, or the business you represent, did not identify and were not identified by another person through the Site, such as if you and another User worked together before meeting on the Site, then the Non-Circumvention Period does not apply. By way of example only, you agree that during the Non-Circumvention period you will not:

- Offer or solicit or accept any offer or solicitation from parties identified through the Site to contract, hire, invoice, pay, or receive payment in any manner other than through the Site.
- Invoice or report on the Site or in a Conversion Fee request an invoice or payment amount lower than that actually agreed, made, or received between Users.
- Refer a User you identified on the Site to a third party who is not a User of the Site for purposes of making or receiving payments other than through the Site.

You agree to notify Upwork immediately if a person suggests making or receiving payments other than through the Site in violation of this Section 7 or if you receive unsolicited contact outside of the Site. If you are aware of a breach or potential

breach of this non-circumvention agreement, please submit a confidential report to Upwork [here](#).

You acknowledge and agree that a violation of this Section 7.1 is a material breach of the Terms of Service, and may result in your Account being permanently suspended and charged the Conversion Fee (defined above). This Section still applies if you choose to cease using the Site, and you must pay the Conversion Fee for each other User you wish to continue working with after you cease using the Site.

## 7.2 COMMUNICATING THROUGH THE SITE; NOT SHARING CONTACT DETAILS



*Prior to entering into a Service Contract, you agree to communicate with other Users exclusively through Upwork.*

The provisions of this Section 7.2 apply to any interaction between Users where the Client has a Basic, Plus, or Marketplace Account, and do not apply to any interaction between Users where the Client is an Enterprise Client. For purposes of the Terms of Service, “Enterprise Client” means a Client, including an Enterprise client or an Upwork Business Client, that has the following “**Enterprise**” badge displayed on its job post or search tile:



For Users subject to this Section 7.2, Users agree to use the communication services available on the Site to communicate with other Users prior to entering into a Service Contract. You agree that prior to entering into a Service Contract, you (a) will use Upwork as the sole manner to communicate with other Users; (b) will not provide your Means of Direct Contact (defined below) to any other User or another person that you identified or were identified by through the Site; (c) will not use Means of Direct Contact of another user to attempt to or to communicate with, solicit, contact, or find the contact information of a User outside of Upwork; (d) will not ask for, provide, or attempt to identify through public means the contact information of another User; and (e) will not include any Means of Direct Contact or means by which your contact information could be discovered in any profile, proposal, job posting, invitation, or pre-hire communication through the Site’s communications services (including in each case in any attached file), except as otherwise provided on the Site.

For purposes of the Terms of Service, “**Means of Direct Contact**” means any information that would allow another person to contact you directly, including, without limitation, phone number, email address, physical address, a link to a contact form or form requesting contact information, any link to an applicant management system or means to submit a proposal or application outside of the Site, or any information that would enable a user to contact you on social media or other website or platform or application that includes a communications tool, such as Skype, Slack, Wechat, or Facebook. Information is a Means of Direct Contact if it would enable another user to identify any of the information above through other sources, such as going to a website that included an email address or identifying you through social media.

You acknowledge and agree that a violation of this Section 7.2 is a material breach of the Terms of Service and your Account may be permanently suspended for such violations.

## 7.3 OPTING OUT



*You may opt out of the non-circumvention agreement if you pay a fee.*

You may opt out of the obligations in Section 7.1 with respect to each Upwork Relationship only if the Client or Freelancer pays Upwork a Conversion Fee which is a minimum of \$1,000 USD and up to \$50,000 USD for each Upwork

Relationship, unless Client and Freelancer have had an Upwork Relationship for at least two (2) years.

The Conversion Fee may be calculated differently for Upwork Relationships when the Client is an Enterprise Client if the Enterprise Client contract with Upwork provides for different terms.

To learn more about the Conversion Fee or how to pay it visit our Help Center [here](#).

You understand and agree that if Upwork determines that you have violated Section 7, it may (a) charge your Payment Method the Conversion Fee (including interest) if permitted by law or send you an invoice for the Conversion Fee (including interest), which you agree to pay within 30 days, (b) close your Account and revoke your authorization to use the Services, and (c) charge you for all losses and costs (including any and all time of Upwork's internal workforce) and reasonable expenses (including attorneys' fees) related to investigating such breach and collecting such fees.

You agree that the Conversion Fee is 13.5% of the estimated earnings over a twelve (12) month period, which is calculated by taking the Hourly Rate (defined below) and multiplying it by 2,080. "**Hourly Rate**" means (a) the highest hourly rate charged by the Freelancer on any Service Contract with the Client, if any; or (b) if there is no hourly rate on a Service contract, the hourly rate in the Freelancer's profile when the conversion is requested. The Conversion Fee includes all applicable taxes and is not subject to the Marketplace Fee. If Client and Freelancer have had an Upwork Relationship for at least two (2) years, the Conversion Fee is a nominal \$1 USD for administrative purposes. The Conversion Fee is not refundable. Upwork will apply a discount on the Conversion Fee that is equal to the total amount of Marketplace Fees that Client has paid to Upwork in the preceding twelve (12) months on each marketplace Service Contract between the Client and the Freelancer. In no event shall the Conversion Fee be discounted below the minimum of \$1,000 USD.

## 8. RECORDS OF COMPLIANCE



*You agree to make and keep all required records.*

You are solely responsible for creation, storage, and backup of your business records. You agree that Upwork has no obligation to store, maintain or provide you a copy of any content or information that you provide, except to the extent required by applicable law.

## 9. WARRANTY DISCLAIMER



*We are not responsible for the quality, safety, or reliability of our Services.*

Upwork and its affiliates make no representation or warranty about the services, including that the services will be uninterrupted or error-free, and provide the Services (including content and information) on an "as is" and "as available" basis. To the maximum extent permitted by applicable law, Upwork and its affiliates disclaim any implied or statutory warranty, including any implied warranty of title, accuracy of data, non-infringement, merchantability or fitness for a particular purpose.

## 10. LIMITATION OF LIABILITY



*Any liability we may have to you is limited.*

Upwork is not liable, and you agree not to hold us responsible, for any damages or losses arising out of or in connection with the Terms of Service, including, but not limited to: (i) your use of or your inability to use our Site or Site Services; (ii) delays or disruptions in our Site or Site Services; (iii) viruses or other malicious software obtained by accessing, or linking

to, our Site or Site Services; (iv) glitches, bugs, errors, or inaccuracies of any kind in our Site or Site Services; (v) damage to your hardware device from the use of the Site or Site Services; (vi) the content, actions, or inactions of third parties' use of the Site or Site Services; (vii) a suspension or other action taken with respect to your Account; (viii) your reliance on the quality, accuracy, or reliability of job postings, Profiles, ratings, recommendations, and feedback (including their content, order, and display), Composite Information, or metrics found on, used on, or made available through the Site; and (ix) your need to modify practices, content, or behavior or your loss of or inability to do business, as a result of changes to the Terms of Service.

**Additionally, in no event will Upwork, our affiliates, our licensors, or our third-party service providers be liable for any special, consequential, incidental, punitive, exemplary, or indirect costs or damages, including, but not limited to, litigation costs, installation and removal costs, or loss of data, production, profit, or business opportunities. The liability of Upwork, our affiliates, our licensors, and our third-party service providers to any User for any claim arising out of or in connection with this Agreement or the other Terms of Service will not exceed the lesser of: (a) \$2,500 or (b) any fees retained by Upwork with respect to service contracts on which User was involved as Client or Freelancer during the six-month period preceding the date of the claim.**

These limitations will apply to any liability, arising from any cause of action whatsoever arising out of or in connection with this Agreement or the other Terms of Service, whether in contract, tort (including negligence), strict liability, or otherwise, even if Upwork has been advised of the possibility of such costs or damages and even if the limited remedies provided herein fail of their essential purpose. Some states and jurisdictions do not allow for all of the foregoing exclusions and limitations, so to that extent, some or all of these limitations and exclusions may not apply to you.

## 11. RELEASE



*You agree not to hold us responsible for any dispute you may have with another User.*

In recognition of the fact that Upwork is not a party to any contract between Users, you hereby release Upwork, Upwork Escrow, our other Affiliates, and our respective officers, directors, agents, subsidiaries, joint ventures, employees and service providers from claims, demands, and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with any dispute you have with another User, whether it be at law or in equity that exist as of the time you enter into this Agreement. This release includes, for example and without limitation, any disputes regarding the performance, functions, and quality of the Freelancer Services provided to Client by a Freelancer and requests for refunds based upon disputes. Procedures regarding the handling of certain disputes between Users are discussed in the Escrow Instructions.

**To the extent applicable, you hereby waive the protections of California Civil Code § 1542 (and any analogous law in any other applicable jurisdiction) which says: “A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”**

This release will not apply to a claim that Upwork failed to meet our obligations under the Terms of Service.

## 12. INDEMNIFICATION



*If you do something using our Services that gets us sued or fined, you agree to cover our costs or losses as described below.*

You will indemnify, defend, and hold harmless Upwork, Upwork Escrow, our other Affiliates, and our respective directors,



officers, employees, representatives, and agents (each an “**Indemnified Party**”) for all Indemnified Claims (defined below) and Indemnified Liabilities (defined below) relating to or arising out of: (a) your or your agents’ use of the Services, including any payment obligations or default (described in Section 6.4 (Non-Payment or Default)) incurred through use of the Services; (b) any Work Product or User Content related to your use of the Services; (c) any Service Contract entered into by you or your agents, including, but not limited to, the classification of a Freelancer as an independent contractor, any employment-related claims; (d) your or your agents’ failure to comply with the Terms of Service; (e) you or your agents’ failure to comply with applicable law; (f) negligence, willful misconduct, or fraud by you or your agents; and (g) you or your agents’ violation of any third-party right, including without limitation any right of privacy, publicity rights or Intellectual Property Rights. For purposes of this Section 12, your agents include any person who has apparent authority to access or use your account demonstrated by using your username and password.

“**Indemnified Claim**” means any and all claims, damages, liabilities, costs, losses, and expenses (including attorneys’ fees) arising from or relating to any claim, suit, proceeding, demand, or action brought by you or a third party or other User against an Indemnified Party.

“**Indemnified Liability**” means any and all claims, damages, liabilities, costs, losses, and expenses (including reasonable attorneys’ fees and all related costs and expenses) arising from or relating to any claim, suit, proceeding, demand, or action brought by an Indemnified Party against you or a third party or other User.

### 13. AGREEMENT TERM AND TERMINATION



*This section discusses when and how long this Agreement will last, when and how either you or Upwork can end this Agreement, and what happens if either of us ends the Agreement.*

#### 13.1 TERMINATION



*You and Upwork both have the right to end this Agreement, but certain rights and obligations will survive after this Agreement ends.*

Unless both you and Upwork expressly agree otherwise in writing, either of us may terminate this Agreement in our sole discretion at any time, without explanation, upon written notice to the other, which will result in the termination of the other Terms of Service as well, except as otherwise provided in this Agreement. You may provide written notice to [legalnotices@upwork.com](mailto:legalnotices@upwork.com). In the event you properly terminate this Agreement, your right to use the Services is automatically revoked, and your Account will be closed.

You agree that Upwork is not a party to any Service Contract between Users. Consequently, you understand and acknowledge that termination of this Agreement (or attempt to terminate this Agreement) does not terminate or otherwise impact any Service Contract or Project entered into between Users. If you attempt to terminate this Agreement while having one or more open Projects, you agree that (a) you thereby instruct Upwork to close any open contracts; (b) you will continue to be bound by this Agreement and the other Terms of Service until all such Projects have closed on the Site and your access to the Site has been terminated; (c) Upwork will continue to perform those Services necessary to complete any open transaction between you and another User; and (d) you will continue to be obligated to pay any amounts accrued but unpaid as of the date of termination or as of the closure of any open Service Contracts, whichever is later, to Upwork for any Services or such other amounts owed under the Terms of Service and to any Freelancers for any Freelancer Services.

Without limiting Upwork’s other rights or remedies, we may revoke or limit access to the Services, deny your registration, or revoke your access to the Site and refuse to provide any or all Services to you if: (i) you breach any terms and



conditions of this Agreement or any portion of the Terms of Service; (ii) we have reasonable reason to believe that you have provided false or misleading information to us; (iii) we conclude that your actions may cause legal liability for you or others; may be contrary to the interests of the Site or the User community; or may involve illicit or illegal activity; or (iv) we are required to by law, legal process, or law enforcement. If your Account is temporarily or permanently closed, you may not use the Site under the same Account or a different Account or re-register for a new Account without Upwork's prior written consent. If you attempt to use the Site under a different Account, we reserve the right to reclaim available funds in that Account and/or use an available Payment Method to pay for any amounts owed by you to the extent permitted by applicable law.

You acknowledge and agree that the value, reputation, and goodwill of the Site depend on transparency of Users' Account status to all Users, including you and other Users who have entered into Service Contracts with you. **You therefore agree that: if Upwork decides to temporarily or permanently close your account, Upwork has the right (but no obligation) where allowed by law to: (y) notify other users that have entered into Service Contracts with you of your closed account status, and (z) provide those users with a summary of the reasons for your account closure. You agree that Upwork will have no liability arising from or relating to any notice that it may or may not provide to any user regarding closed account status or the reason(s) for the closure.**

### 13.2 ACCOUNT DATA ON CLOSURE

Except as otherwise required by law, if your Account is closed, you will no longer have access to information or material you kept on the Site and any content stored in your Account may be deleted, for which Upwork expressly disclaims liability. Upwork may retain some or all of your Account information as permitted or required by law and the Privacy Policy.

### 13.3 SURVIVAL

After this Agreement terminates, the terms of this Agreement and the other Terms of Service that expressly or by their nature contemplate performance after this Agreement terminates or expires will survive and continue in full force and effect. For example, the provisions related to arbitration, audits, intellectual property, non-circumvention, indemnification, fees, reimbursements, and limitations of liability each contemplate performance or observance after this Agreement terminates. The termination of this Agreement for any reason will not release you or Upwork from any obligations incurred prior to termination of this Agreement or other parts of the Terms of Service or that may accrue related to any act or omission prior to such termination.

## 14. DISPUTES BETWEEN YOU AND UPWORK



*Section 14 discusses your agreement with Upwork and our agreement with you about how we will resolve any disputes between us, including that we will both first try to resolve any dispute informally and, if you are in the United States, that we both agree to use arbitration instead of going to court or using a jury if we can't resolve the dispute informally.*

**Please read the following paragraphs carefully because they require you and us to agree to resolve most all disputes between you and us through binding individual arbitration.**

### 14.1 DISPUTE PROCESS, ARBITRATION, AND SCOPE

If a dispute arises between you and Upwork or our Affiliates, our goal is to resolve the dispute quickly and cost-effectively. Accordingly, unless you opt out as provided in Section 14.4.4 below, you, Upwork, and our Affiliates agree to resolve any and all claims, disputes, or controversies that arise out of or relate to this Agreement, the other Terms of Service, your relationship with Upwork (including without limitation any claimed employment with Upwork or one of our Affiliates or successors), the termination of your relationship with Upwork, or the Services (each a “**Claim**” and collectively, “**Claims**”)

through binding arbitration on an individual basis in accordance with this Section 14 (sometimes referred to as the **“Arbitration Provision”**).

Claims that may not be subject to predispute arbitration agreement as provided by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203), Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (Public Law 117-90), or by generally applicable law are excluded from the coverage of this Arbitration Provision.

**By agreeing to arbitrate disputes under this Agreement, THE PARTIES ARE EXPRESSLY GIVING UP ANY AND ALL RIGHTS TO A JURY TRIAL OR COURT TRIAL BEFORE A JUDGE. The parties instead elect to have Claims resolved by arbitration. The arbitrator’s decision shall be final and binding on the parties, subject to review on the grounds set forth in the Federal Arbitration Act (“FAA”).**

## **14.2 CHOICE OF LAW**

This Agreement, the Site Terms of Use, the other Terms of Service, and any Claim will be governed by and construed in accordance with the laws of the State of California, without regard to its conflict of law provisions; provided, however, that any Claims made by any Freelancer located within the United States will be governed by the law of the state in which such Freelancer resided at the time the dispute arose.

However, notwithstanding the foregoing sentence, this Arbitration Provision is governed by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.).

## **14.3 INFORMAL DISPUTE RESOLUTION**

Before serving a demand for arbitration of a Claim, you and Upwork agree to first notify each other of the Claim. You agree to notify Upwork of the Claim by email to [legalnotices@upwork.com](mailto:legalnotices@upwork.com), and Upwork agrees to provide to you a notice at your email address on file (in each case, a **“Notice”**). You and Upwork then will seek informal voluntary resolution of the Claim. Any Notice must include pertinent account information, a brief description of the Claim, and contact information, so that you or Upwork, as applicable, may evaluate the Claim and attempt to informally resolve it. Both you and Upwork will have 60 days from the date of the receipt of the Notice to informally resolve the other party’s Claim and avoid the need for further action.

## **14.4 BINDING ARBITRATION AND CLASS ACTION/JURY TRIAL WAIVER (DOES NOT APPLY TO USERS LOCATED OUTSIDE THE UNITED STATES AND ITS TERRITORIES)**

This Arbitration Provision applies to all Users located in or who reside in the United States and its territories.

In the unlikely event the parties are unable to resolve a Claim within 60 days of the receipt of the applicable Notice, you, Upwork, and our Affiliates agree to resolve the Claim by final and binding individual arbitration before an arbitrator from JAMS, instead of a court or jury. JAMS may be contacted at [www.jamsadr.com](http://www.jamsadr.com).

### **14.4.1 SCOPE OF ARBITRATION AGREEMENT AND CONDUCT OF ARBITRATION**

This Arbitration Provision applies to any Claim (defined above) the parties may have, whether based on past, prevent, or future events, and includes all claims and disputes that arose between the parties before the effective date of this Agreement, and survives after your relationship with Upwork ends. For the avoidance of doubt, Claims covered by this Arbitration Provision include, but are not limited to, all claims, disputes or controversies arising out of or relating to this Agreement, the Terms of Service and the Upwork Payroll Agreement. This Arbitration Provision is intended to apply to the resolution of disputes that otherwise would be resolved in a court of law or before a forum other than arbitration. If for any reason JAMS will not administer the arbitration, either party may apply to a court of competent jurisdiction with authority over the location where the arbitration will be conducted for appointment of a neutral arbitrator.

Except as otherwise provided in this Agreement, arbitration will be conducted in Santa Clara County, California in accordance with the JAMS Comprehensive Arbitration Rules and Procedures' Optional Expedited Arbitration Procedures then in effect. Arbitration of disputes brought by a User that allege a violation of a consumer protection statute also will be subject to the JAMS Consumer Arbitration Minimum Standards, and such arbitrations will be conducted in the same state and within 25 miles of where the User is located. Claims by Freelancers that allege employment or worker classification disputes will be conducted in the state and within 25 miles of where Freelancer is located in accordance with the JAMS Employment Arbitration Rules and Procedures then in effect. The applicable JAMS arbitration rules may be found at [www.jamsadr.com](http://www.jamsadr.com) or by searching online for "JAMS Comprehensive Arbitration Rules and Procedures," "JAMS Employment Arbitration Rules," or "JAMS Consumer Arbitration Minimum Standards." Any dispute regarding the applicability of a particular set of JAMS rules shall be resolved exclusively by the arbitrator. Any party will have the right to appear at the arbitration by telephone and/or video rather than in person.

You and Upwork will follow the applicable JAMS rules with respect to filing or initial appearance and arbitration fees. The arbitrator shall follow applicable law and may award only those remedies that would have applied had the matter been heard in court. Judgment may be entered on the arbitrator's decision in any court having jurisdiction.

This Arbitration Provision does not apply to litigation between Upwork and you that is or was already pending in a state or federal court or arbitration before the expiration of the opt-out period set forth in Section 14.4.4 below. Notwithstanding any other provision of this Agreement, no amendment to this Arbitration Provision will apply to any matter pending in an arbitration proceeding brought under this Section 14 unless all parties to that arbitration consent in writing to that amendment.

This Arbitration Provision also does not apply to claims for workers compensation, state disability insurance, or unemployment insurance benefits.

Nothing in this Arbitration Provision prevents you from making a report to or filing a claim or charge with a government agency, including without limitation the Equal Employment Opportunity Commission, U.S. Department of Labor, U.S. Securities and Exchange Commission, National Labor Relations Board, or Office of Federal Contract Compliance Programs. Nothing in this Arbitration Provision prevents the investigation by a government agency of any report, claim or charge otherwise covered by this Arbitration Provision. This Arbitration Provision also does not prevent federal administrative agencies from adjudicating claims and awarding remedies based on those claims, even if the claims would otherwise be covered by this Arbitration Provision. Nothing in this Arbitration Provision prevents or excuses a party from satisfying any conditions precedent or exhausting administrative remedies under applicable law before bringing a claim in arbitration. Upwork will not retaliate against you for filing a claim with an administrative agency or for exercising rights (individually or in concert with others) under Section 7 of the National Labor Relations Act.

#### **14.4.2 INTERPRETATION AND ENFORCEMENT OF THIS ARBITRATION PROVISION**

This Arbitration Provision is the full and complete agreement relating to the formal resolution of Claims. The arbitrator shall have exclusive jurisdiction to decide all disputes arising out of or relating to the arbitrability of a Claim or the interpretation, enforcement, or application of this Arbitration Provision, including the enforceability, revocability, scope, breach, or validity of the Arbitration Provision or any portion of the Arbitration Provision, except as expressly provided below. All such matters shall be decided by an arbitrator and not by a court. The parties expressly agree that, except as provided by the Class and Collective Waiver section below, the arbitrator and not a court will decide any question of whether the parties agreed to arbitrate, including but not limited to any claim that all or part of this Arbitration Provision, this Agreement, or any other part of the Terms of Service is void or voidable.

In the event any portion of this Arbitration Provision is deemed unenforceable, the remainder of this Arbitration Provision will be enforceable, except as set forth in Section 14.4.3 below.

#### 14.4.3 CLASS AND COLLECTIVE WAIVER

Private attorney general representative actions under the California Labor Code are not arbitrable, not within the scope of this Arbitration Provision and may be maintained in a court of law. However, this Arbitration Provision affects your ability to participate in class or collective actions. Both you and Upwork agree to bring any dispute in arbitration on an individual basis only, and not on a class or collective basis on behalf of others. There will be no right or authority for any dispute to be brought, heard or arbitrated as a class or collective action, or as a member in any such class or collective proceeding (“**Class Action Waiver**”). Notwithstanding any other provision of this Agreement or the JAMS rules, disputes regarding the enforceability, revocability, scope, validity, or breach of the Class Action Waiver may be resolved only by a civil court of competent jurisdiction and not by an arbitrator. If there is a final judicial determination that all or part of the Class Action Waiver is unenforceable or that an arbitration can proceed on a class basis, then the arbitration provision herein shall be considered null and void in its entirety and the class or collective action to that extent must be litigated in a civil court of competent jurisdiction. No arbitration or proceeding will be combined with another without the prior written consent of all parties to all affected arbitrations or proceedings. You and Upwork agree that you will not be retaliated against as a result of your filing or participating in a class or collective action in any forum. However, Upwork may lawfully seek enforcement of this Arbitration Provision and the Class Action Waiver under the Federal Arbitration Act and seek dismissal of such class or collective actions or claims.

#### 14.4.4 RIGHT TO OPT OUT OF THE ARBITRATION PROVISION

You may opt out of the Arbitration Provision contained in this Section 14 by notifying Upwork in writing within 30 days of the date you first registered for the Site. To opt out, you must send a written notification to Upwork at Attn: Legal, 655 Montgomery ST STE 490, DPT 17022, San Francisco, CA 94111-2676 that includes (a) your Account username, (b) your name, (c) your address, (d) your telephone number, (e) your email address, and (f) a statement indicating that you wish to opt out of the Arbitration Provision. Alternatively, you may send this written notification to [legalnotices@upwork.com](mailto:legalnotices@upwork.com).

Opting out of this Arbitration Provision will not affect any other terms of this Agreement.

If you do not opt out as provided in this Section 14.4.4, continuing your relationship with Upwork constitutes mutual acceptance of the terms of this Arbitration Provision by you and Upwork. You have the right to consult with counsel of your choice concerning this Agreement and the Arbitration Provision.

#### 14.4.5 Enforcement of this Arbitration Provision

This Arbitration Provision replaces all prior agreements regarding the arbitration of disputes and is the full and complete agreement relating to the formal resolution of disputes covered by this Arbitration Provision. In the event any portion of this Arbitration Provision is deemed unenforceable, the remainder of this Arbitration Provision will be enforceable.

### 15. GENERAL



*Additional terms of the agreement between you and Upwork, including that the Terms of Service contain our full agreement, how the agreement will be interpreted and applied, and your agreement not to access the Site from certain locations.*

#### 15.1 ENTIRE AGREEMENT

This Agreement, together with the other [Terms of Service](#), is the only agreement between you and us regarding the Services and supersedes all prior agreements for the Services and supersedes any prior agreements between us for actions occurring after the effective date of this Agreement. The only exception to this is a Enterprise Agreement or similar agreement for premium services executed by a duly authorized representative of Upwork (“**Premium Agreement**”), in

which cases these Terms of Service are superseded to the extent stated in such Premium Agreement but otherwise survive; written email or letter communications or verbal agreements cannot constitute a Premium Agreement.

## 15.2 MODIFICATIONS; WAIVER



*We may modify these terms and will provide you reasonable advance notice of substantial changes.*

Subject to the conditions set forth herein, Upwork may amend this Agreement and any of the other agreements that comprise the Terms of Service at any time by posting a revised version on the Site. Upwork will provide reasonable advance notice of any amendment that includes a Substantial Change (defined below), by posting the updated Terms of Service on the Site and providing notice on the Site or by email. If the Substantial Change includes an increase to Fees charged by Upwork, Upwork will provide at least 30 days' advance notice of the change, but may not provide any advance notice for changes resulting in a reduction in Fees, any temporary or promotional Fee change, or changes that do not constitute a Substantial Change. Any revisions to the Terms of Service will take effect on the noted effective date. No modification or amendment to the Terms of Service will be binding upon Upwork unless they are agreed in a written instrument signed by a duly authorized representative of Upwork or posted on the Site by Upwork. Email will not constitute a written instrument as contemplated by this Section 15.2.

Our failure to act with respect to a breach by you or others does not waive our right to act with respect to subsequent or similar breaches. We do not guarantee we will take action against all breaches of this User Agreement.

## 15.3 ASSIGNABILITY



*You may not transfer any rights you have under our Terms of Service unless we give you approval*

These Terms of Service and any rights or obligations hereunder may not be transferred or assigned by you unless you follow the provisions in this Section.

In order to assign the Terms of Service or your Account to a successor after an acquisition of your company or substantially all of your assets, a merger, or another change in majority ownership of your company, you must provide written notice to Upwork Attn: Legal, 655 Montgomery ST STE 490, DPT 17022, San Francisco, CA 94111-2676 or via email to [legalnotices@upwork.com](mailto:legalnotices@upwork.com) that includes (a) your Account username, (b) your name, (c) your address, (d) your telephone number, (e) your email address, (f) a statement indicating the manner in which your company was acquired, (g) the name and contact information of the acquiror, and (h) the effective date of such change in ownership. If Upwork does not object via email within 5 business days of sending of an email or 7 business days of the mailing of a written notice, then the assignment is permissible, provided in both cases that such notice is properly addressed. The foregoing does not apply to Enterprise Clients.

No other assignments are valid without Upwork's prior written consent, which can be requested via email or letter at the above addresses. Any other attempted transfer or assignment will be null and void.

## 15.4 SEVERABILITY; INTERPRETATION

If any provision of this Agreement is invalid or unenforceable under applicable law, then it will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law, and the remaining provisions of this Agreement will continue in full force and effect. To the extent any provision of this Agreement or the other Terms of Service is held illegal, invalid, or unenforceable in whole or in part under applicable law, such provision or such portion thereof will be ineffective as to the jurisdiction in which it is illegal, invalid, or unenforceable to the extent of its illegality, invalidity, or unenforceability and will be deemed modified to the extent necessary to conform to applicable law

so as to give the maximum effect to the intent of the parties. The illegality, invalidity, or unenforceability of such provision in one jurisdiction will not in any way affect the legality, validity, or enforceability of that or any other provision in any other jurisdiction.

### 15.5 FORCE MAJEURE



*When certain circumstances beyond your or our control arise, we both will be temporarily relieved from performing our obligations under this Agreement.*

The parties to this Agreement will not be responsible for any delay or failure to perform any obligation under this Agreement for a reasonable period due to labor disturbances, accidents, fires, floods, pandemics, telecommunications or Internet failures, strikes, wars, riots, rebellions, terrorism, blockades, acts of government, governmental requirements and regulations or restrictions imposed by law or any other similar event beyond the parties' reasonable control.

### 15.6 PREVAILING LANGUAGE AND LOCATION

The English language version of the Terms of Service will be controlling in all respects and will prevail in case of any inconsistencies with translated versions, if any. The Site is controlled and operated from our facilities in the United States.

### 15.7 ACCESS OF THE SITE OUTSIDE THE UNITED STATES

Upwork makes no representations that the Site or Services are appropriate or available for use outside of the United States. Those who access or use the Site from other jurisdictions do so at their own risk and are entirely responsible for compliance with all applicable laws and regulations, both in the United States and abroad, including export and import regulations (e.g., the Export Administration Regulations maintained by the U.S. Department of Commerce and the sanctions programs maintained by the U.S. Department of the Treasury Office of Foreign Assets Control). You must not directly or indirectly sell, export, re-export, transfer, divert, or otherwise dispose of any software or service to any end user without obtaining any and all required authorizations from the appropriate government authorities. You also warrant that you are not prohibited from receiving U.S. origin products, including services or software.

In order to access or use the Services, you must and hereby represent that neither you, any company you represent, nor any beneficial owner of you or your company are: (a) a citizen or resident of a geographic area in which access to or use of the Site or Site Services is prohibited by applicable law, decree, regulation, treaty, or administrative act; (b) a citizen or resident of, or located in, a geographic area that is subject to U.S. or other sovereign country sanctions or embargoes; or (c) an individual, or an individual employed by or associated with an entity, identified on the U.S. Department of Commerce Denied Persons or Entity List, the U.S. Department of Treasury Specially Designated Nationals or Blocked Persons Lists, or the U.S. Department of State Debarred Parties List or otherwise ineligible to receive items subject to U.S. export control laws and regulations or other economic sanction rules of any sovereign nation. You agree that if your country of residence or other circumstances change such that the above representations are no longer accurate, that you will immediately cease using the Services and your license to use the Services will be immediately revoked.

### 15.8 CONSENT TO USE ELECTRONIC RECORDS

Upwork and its Affiliates may need to provide you with certain communications, notices, agreements, statements or disclosures in writing regarding our Services. You consent to receive these records electronically from Upwork and its Affiliates rather than in paper form.

## 16. DEFINITIONS



*Below we define capitalized terms that appear in this Agreement or other parts of the Terms of Service. Other*



*capitalized terms are defined above, which you can tell because the term is put in quotation marks and bold font.*

Capitalized terms not defined below or above have the meanings described in the Site [Terms of Use](#) or elsewhere in the Terms of Service.

**“Client”** means any authorized User of the Site or Site Services, including Direct Contract Services, to seek or obtain Freelancer Services, including from another User.

**“Confidential Information”** means any material or information provided to, or created by, a User to evaluate a Project or the suitability of another User for the Project, or provided in connection with a Project, regardless of whether the information is in tangible, electronic, verbal, graphic, visual, or other form. Confidential Information does not include material or information that: (a) is generally known by third parties as a result of no act or omission of Freelancer or Client; (b) was lawfully received by User without restriction from a third party having the right to disseminate the information; (c) was already known by User prior to receiving it from the other party and was not received from a third party in breach of that third party’s obligations of confidentiality; or (d) was independently developed by User without use of another person’s Confidential Information.

**“Direct Contract”** means a contract entered into on Upwork between a Freelancer on Upwork and a client of the Freelancer’s who does not and has never had an Upwork Account (or an account with Upwork predecessors, oDesk or Elance). Please see our [Direct Contracts Terms](#) for more details.

**“Escrow Account”** means Client Escrow Account, Freelancer Escrow Account, or Fixed-Price Escrow Account.

**“Escrow Instructions”** means the [Escrow Instructions](#) agreement that is relevant to the Service Contract or Direct Contract.

**“Fixed-Price Contract”** means a Service Contract for which Client is charged a fixed fee agreed between a Client and a Freelancer, prior to the commencement of a Service Contract, for the completion of all Freelancer Services contracted by Client for such Service Contract.

**“Freelancer”** means any authorized User of the Site or Site Services, including Direct Contract Services or Any Hire Services, that utilizes the Site to advertise, provide, or receive payment for the provision of Freelancer Services to Clients, including Agency Member Accounts and Freelancer Accounts that are part of Agency Accounts.

**“Freelancer Fees”** means: (a) for an Hourly Contract, the amount reflected in the Hourly Invoice (the number of hours invoiced by Freelancer, multiplied by the hourly rate charged by Freelancer); (b) for a Fixed-Price Contract, the fixed fee agreed between a Client and a Freelancer; and (c) any bonuses or other payments made by a Client to a Freelancer.

**“Freelancer Services”** means all services performed for or delivered to Clients by Freelancers.

**“Hourly Contract”** means a Service Contract for which Client is charged based on the hourly rate charged by Freelancer.

**“Hourly Invoice”** means the report of hours invoiced for a stated period by a Freelancer for Freelancer Services performed for a Client.

The term **“including”** as used herein means including without limitation.

**“Intellectual Property Rights”** means all patent rights, copyright rights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights and other intellectual property rights as may now exist or hereafter come into existence, and all applications therefore and registrations, renewals and extensions thereof, in each case, under the laws of any state, country, territory or other jurisdiction.

**“Payment Method”** means a valid credit card issued by a bank acceptable to Upwork, a bank account linked to your



Account, a PayPal account, a debit card, or such other method of payment as Upwork may accept from time to time in our sole discretion.

**“Project”** means an engagement for Freelancer Services that a Freelancer provides to a Client under a Service Contract on the Site.

**“Staffing Employee”** means a Freelancer enrolled in Upwork Payroll, accepted for employment by a Staffing Provider, and assigned by the Staffing Provider to provide Freelancer Services to one or more Client(s).

**“Service Contract”** means, as applicable, (a) the contractual provisions between a Client and a Freelancer governing the Freelancer Services to be performed by a Freelancer for Client for a Project; (b) a Direct Contract as defined in the Upwork [Direct Contract Terms](#); (c) an Any Hire Contract as defined in the Upwork [Any Hire Terms](#); or (d) if you use Upwork Payroll, the contractual provisions between Freelancer and the Staffing Provider for the provision of services to Client, if any.

**“Substantial Change”** means a change to the terms of the Terms of Service that materially reduces your rights or increases your responsibilities.

**“Upwork App”** means the online platform accessed using Upwork’s downloaded application or other software that enables time tracking and invoicing, chat, and screenshot sharing with other Users.

**“User Content”** means any comments, remarks, data, feedback, content, text, photographs, images, video, music, or other content or information that you or any Site Visitor or User post to any part of the Site or provide to Upwork, including such content or information that is originally generated through the use of generative AI tools or as a result of questions.

**“Work Product”** means any tangible or intangible results or deliverables that Freelancer agrees to create for, or actually delivers to, Client as a result of performing the Freelancer Services, including, but not limited to, configurations, computer programs, or other information, or customized hardware, and any intellectual property developed in connection therewith.