

If Client and Freelancer enter into an Hourly Contract, if Client makes a bonus or expense payment to Freelancer, or if you use Upwork Payroll, this Hourly, Bonus, and Expense Payment Agreement with Escrow Instructions (“**Agreement**”) applies.

To the extent permitted by applicable law, we may modify this Agreement, and the Escrow Instructions it contains, without prior notice to you, and any revisions to the Agreement will take effect when posted on the Site unless otherwise stated. Please check the Site often for updates.

This Agreement hereby incorporates by reference the Terms of Service. Capitalized terms not defined in this Agreement are defined in the [User Agreement](#), elsewhere in the Terms of Service, or have the meanings given such terms on the Site. The Escrow Instructions in this Agreement do not apply to Fixed-Price Escrow Accounts, except that they govern the making and receiving of bonus, expense and other miscellaneous payments for Fixed-Price Contracts.

Escrow services are provided by Payment Escrow Inc. (“**Payment Escrow**”) pursuant to Internet Escrow Agent license no. 9635086, issued by the California Department of Financial Protection and Innovation.

## 1. DIGITAL SIGNATURE

By clicking to accept an Hourly Contract or make a bonus payment, Client and Freelancer are deemed to have executed this Agreement electronically, effective on the date Freelancer clicks to accept an Hourly Contract, pursuant to California Civil Code section 1633.8 and the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Sec. 7001, et seq., as amended from time to time (the “**E-Sign Act**”). Doing so constitutes an acknowledgement that Client and Freelancer agree to conduct the transaction electronically, and are able to electronically receive, download, and print this Agreement and the Escrow Instructions it contains.

A Client’s election of a Contract Value Adjustment through the Site’s rate change flow constitutes an electronic signature and irrevocable instruction for purposes of this Agreement, effective upon the Client’s confirmation of the rate change as described in Section 2.1.1 of the Fee and ACH Authorization Agreement.

## 2. MAKING OR RECEIVING AN HOURLY PAYMENT

### 2.1 WEEKLY HOURLY INVOICES

For Hourly Contracts, the weekly billing cycle starts Monday at 00:00 midnight UTC and ends Sunday at 23:59 UTC. Invoices for hours recorded on Upwork in the Work Diary are generated each Monday following the week in which the hours were billed (the “**Hourly Invoice Deadline**”). Freelancer irrevocably authorizes and instructs Upwork, as its agent, to (i) create an invoice on behalf of Freelancer for payment due based upon the hours that the freelancer recorded in the Work Diary before the Hourly Invoice Deadline (such invoice, the “**Hourly Invoice**”); and (ii) submit the Hourly Invoice on behalf of Freelancer to Freelancer’s Client for payment. For the avoidance of doubt, the “**Work Diary**” is the section of Upwork where hours can be recorded on an Hourly Contract.

By recording time in the Work Diary and allowing an Hourly Invoice to be created based on the time recorded, Freelancer represents and warrants that (y) Freelancer has completed the applicable

Freelancer Services fully and satisfactorily; and (z) the hours Freelancer reports are true, accurate, and complete.

**Contract Value Adjustments.** Where a Client has made a valid Contract Value Adjustment election in accordance with Section 2.1.1 of the Fee and ACH Authorization Agreement, the hourly rate used to calculate the Hourly Invoice for all billing cycles after the effective date of the election is the Adjusted Rate as defined in that section, not the Freelancer's originally quoted rate. The Adjusted Rate is the rate of record for all purposes under these Escrow Instructions, including for the calculation of the Freelancer Service Fee deducted by Payment Escrow prior to crediting the Freelancer Escrow Account. The Contract Value Adjustment election applies prospectively only, it does not apply to any billing cycle already invoiced, in the Dispute Period, or released prior to the effective date of the election. The Adjusted Rate replaces the previously agreed hourly rate for all subsequent billing cycles on the same Hourly Contract and is irrevocable upon Client's confirmation of the rate change, as described in Section 2.1.1 of the Fee and ACH Authorization Agreement.

## 2.2 HOURLY INVOICE REVIEW

Client must review and approve or dispute the Hourly Invoice by 11:59 PM UTC of the Friday following submission of the Hourly Invoice. Payments will be held in escrow during the Dispute Period (defined below), providing four additional days to review and dispute the invoice before funds are released. During the Dispute Period, Client may initiate a Dispute as to some or all of the time invoiced on the Hourly Invoice.

On the Friday of the week following submission of the Hourly Invoice, Client will be deemed to have approved all undisputed amounts on the Hourly Invoice, and irrevocably instructed Upwork's Affiliate, Payment Escrow, to release escrow funds as described in this Agreement.

Notwithstanding the foregoing, all hours recorded and submitted by Payroll Employee on the Upwork website will be deemed approved by Client automatically, and Client authorizes and irrevocably instructs Payment Escrow to release payments for those hours to be paid to the Staffing Provider by Client's account each Monday following the week in which the hours were worked. Client may not reject time or file a Dispute for Payroll Employee time worked.

## 3. MAKING OR RECEIVING A BONUS OR EXPENSE PAYMENT

Client may also make a bonus, tip, expense, or other miscellaneous payment to Freelancer using the Site. To make such a payment to a Freelancer, Client must follow the instructions and links on the Site and provide the information requested. If Client clicks to pay such a payment to Freelancer, Client irrevocably instructs Payment Escrow to and Payment Escrow will release escrow funds as described in this Agreement.

## 4. INSTRUCTIONS TO PAY IRREVOCABLE

Client's instruction to Payment Escrow and its wholly owned subsidiaries to pay a Freelancer is irrevocable. Such instruction is Client's authorization to transfer funds to Freelancer from the Client Escrow Account or authorization to charge Client's Payment Method. Such instruction is also Client's

representation that Client has received, inspected, and accepted the subject work or expense. Client acknowledges and agrees that upon receipt of Client's instruction to pay Freelancer, Payment Escrow will transfer funds to the Freelancer and that Upwork, Payment Escrow, and other Affiliates have no responsibility to and may not be able to recover such funds. Therefore, and in consideration of services described in this Agreement, Client agrees that once Payment Escrow or its subsidiary has charged Client's Payment Method, the charge is non-refundable.

## 5. RELEASE AND DELIVERY OF AMOUNTS IN ESCROW

In addition, Payment Escrow is authorized to and will release applicable portions of the Client Escrow Account (each portion, a "**Release**") to the Freelancer Escrow Account, upon the occurrence of and in accordance with one or more Release Conditions provided below or as otherwise required by applicable law or the Terms of Service. The amount of the Release will be delivered to the Freelancer Escrow Account, in accordance with Freelancer's and Client's instructions, as applicable, these Escrow Instructions, and the other Terms of Service.

### 5.1 RELEASE CONDITIONS

As used in these Escrow Instructions, "**Release Condition**" means any of the following:

1. Client and Freelancer have submitted joint written instructions for a Release.
2. Client has approved all or a portion of the Freelancer's Hourly Invoice. This Release Condition will only apply to amounts invoiced by the Freelancer that Client has approved. Client's failure to dispute an Hourly Invoice, or a portion of an Hourly Invoice, within the Dispute Period pursuant to this Agreement, or as otherwise provided in the Escrow Instructions, constitutes approval by the Client for purposes of this Release Condition.
3. Freelancer is a Payroll Employee and has submitted an Hourly Invoice under a Services Contract that involves the use of Upwork Payroll.
4. Upwork reviews Client's dispute of amounts invoiced on Freelancer's Hourly Invoice for an Hourly Contract with Work Diaries pursuant to this Agreement and determines (1) that the time is related to the Hourly Contract requirements or Client's instructions and (2) that Freelancer met any applicable Work Product delivery deadline or provided 24 hours' advance notice of Freelancer's inability to meet the deadline.
5. Client initiates a Dispute with respect to Freelancer's Hourly Invoice for an Hourly Contract without Work Diaries pursuant to this Agreement and Client and Freelancer resolve the dispute without the assistance of Upwork.
6. Issuance of a final order of a court or arbitrator of competent jurisdiction from which appeal is not taken, in which case the funds will be released in accordance with such order.
7. We believe, in our sole discretion, that fraud, an illegal act, or a violation of Upwork's Terms of Service has been committed or is being committed or attempted, in which case Client and Freelancer hereby irrevocably authorize and instruct Payment Escrow to take such actions as we deem appropriate in our sole discretion and in accordance with applicable law, in order to

prevent or remedy such acts, including without limitation to return the funds associated with such acts to their source of payment.

## 6. PAYMENT PROTECTION

Upwork provides limited payment protection to Users as detailed in this Section 6 ("**Hourly Payment Protection**").

### 6.1 FOR FREELANCERS

In the rare event that a Freelancer's Client does not make payment for legitimate services performed by a Freelancer, Upwork will provide Hourly Payment Protection to the Freelancer as detailed in this Section 6.1 as a membership benefit to foster fairness, reward loyalty, and encourage the Freelancer to continue to use the Site Services for their business needs. Hourly Payment Protection will be offered to a Freelancer only if all of the following criteria are met in Upwork's sole discretion:

1. Both Client and Freelancer must have agreed to use Work Diaries upon acceptance of the Hourly Contract, as part of the terms.
2. Client must have an Account in good standing and a valid and verified Payment Method at the start of the Hourly Contract, and must agree to automatically pay for hours billed by Freelancer through Work Diaries.
3. Freelancer's Account must be in good standing at the time of the payment at issue, including, for example, completion of the identity verification process, tax information, and any other similar requests or requirements.
4. Freelancer must have enabled and used Work Diaries to document any and all hours covered by the Hourly Payment Protection for Freelancers.
5. Prior to any Hourly Invoice being submitted, Freelancer must have annotated the screenshots documented in Work Diaries sufficient to demonstrate the work relates to the Hourly Contract.
6. The screenshots documented by Work Diaries must be clearly related to the applicable Hourly Contract requirements or Client instructions.
7. The number of hours billed in the Work Diaries must be within the hours authorized in the Hourly Contract for the week.
8. Freelancer must have rendered services in a professional and workmanlike manner in accordance with the professional experience represented by Freelancer to Client.
9. Freelancer must have responded to Client communications relevant to the Work Product within 7 days, or have provided advance notice of Freelancer's extended absence.
10. Freelancer must have delivered the Work Product within the timeframe agreed upon with Client or provided a minimum of 24 hours' advance notice to Client in the event Freelancer was unable to meet the deadline.

11. Within five days after notification of rejected or unpaid time, Freelancer must submit a Dispute specifically identifying the documented work not otherwise paid for by their Client through the Escrow Services.

Upwork will investigate and determine in its sole discretion whether the above terms and conditions are met.

Hourly Payment Protection does not apply to: (a) hours invoiced for work not agreed to or authorized by Client; (b) bonus payments; (c) refunds; (d) manual time; (e) time added after Client has disputed a billing and before the resolution of that dispute; (6) Fixed-Price Contracts; (f) hours reported by Payroll Employees; (g) any payments on Hourly Contracts where the Hourly Contract or the services provided thereunder are prohibited by the Terms of Service; (h) hours billed by Freelancers whom Upwork believes, in its sole discretion, to be aware of or complicit in another User's violation of this Agreement or the other Terms of Service; or (i) Freelancers whom Upwork believes, in its sole discretion, to be involved in actual fraudulent activities or abuse of this Payment Protection.

The maximum rate per hour protected by Upwork to Freelancer under the Hourly Payment Protection for Freelancers is the lesser of: (i) the rate provided in the Hourly Contract terms (which, where a Contract Value Adjustment is in effect, is the Adjusted Rate as defined in Section 2.1.1 of the Fee and ACH Authorization Agreement); (ii) the usual hourly rate billed by Freelancer on the Site across all Clients; and (iii) the going rate for the same skills on the Site in Freelancer's area (such determination to be made in Upwork's sole discretion). The maximum amount of coverage under the Hourly Payment Protection for Freelancers for the life of a relationship between the same Client and Freelancer is \$2,500 or 50 hours logged in Work Diary at Freelancer's average hourly rate billed to Client, based on whichever is less.

## 6.2 FOR CLIENTS

Freelancer authorizes and instructs Upwork to adjust the Hourly Invoice to remove invoiced hours that are not (a) clearly related to either the Hourly Contract terms or work agreed to by the Client, and (b) within the hours authorized in the Hourly Contract for the week, subject to and conditioned on the following terms:

- Both Client and Freelancer must agree to use Work Diaries as part of the Hourly Contract terms.
- Client must have an Account in good standing and a valid and verified default Payment Method, and Client must agree to automatically pay for hours billed by Freelancer in the Hourly Invoices.
- Additionally, Client must either:
  - Within the Hourly Invoice Review Period, submit a Dispute specifically identifying the time billed that is not clearly related to either the Hourly Contract requirements or Client instructions in the Work Diaries, or else identify an agreed upon timeframe for delivery of Work Product that was not met and specify that Freelancer did not provide 24 hours' advance notice that the deadline would not be met; OR
  - Have previously submitted a complaint that Freelancer has failed to render services in a professional and workmanlike manner in accordance with the professional experience represented by the Freelancer to the Client or has taken more than 7 seven days to respond

to Client communications relevant to the Work Product, without Freelancer having previously notified Client of Freelancer's extended absence.

Upwork will investigate and determine in its sole discretion whether the above terms and conditions are met.

Hourly Protection for Clients only protects Client from the obligation to pay for Freelancer's work if the documented hours worked are not clearly related to the Hourly Contract requirements or Client instructions in the Work Diaries. If Client has requested that the Freelancer use functionality of the Site or third-party software that hides, blurs, or distorts images in the Work Diary, the screenshots will be deemed to be "clearly related" to the Hourly Contract requirements for purposes of the Client's eligibility for Hourly Payment Protection. Hourly Payment Protection for Clients does not create any warranties, express or implied, beyond those expressly stated in the User Agreement.

Hourly Protection for Clients does not apply to: (1) Fixed-Price Contracts; (2) Hourly Contracts using Upwork Payroll; or (3) hours billed by Freelancers who are aware of or complicit in another User's violation of this Agreement or the Terms of Service.

## 7. DISPUTES BETWEEN CLIENT AND FREELANCER

For Hourly Contracts, Client may dispute Freelancer's hours invoiced on the Hourly Invoice for the prior week (Sunday 12:00 a.m. midnight UTC to Sunday 11:59 p.m. UTC) during the five days following the close of the weekly invoice period (Monday 12:00 a.m. midnight UTC to Friday 11:59 p.m. UTC) (the "**Dispute Period**"). It is Client's responsibility to review the Hourly Invoice of every Hourly Contract on a weekly basis and to file any disputes during the Dispute Period. Once the Dispute Period expires, Client will be deemed to have accepted the Freelancer Services and Freelancer Fees and can no longer dispute them. Disputes handled by Upwork can only address the hours billed, not the quality of the Freelancer Services or the Work Product provided under Hourly Contracts. If Client disputes Freelancer's hours invoiced in the Hourly Invoice under an Hourly Contract during the Dispute Period, Client and Freelancer are encouraged to resolve the dispute between themselves. If Client and Freelancer fail to come to a resolution, Upwork will promptly investigate the Hourly Invoice and determine, in our sole discretion, whether an adjustment is appropriate consistent with Client's and Freelancer's instructions in these Escrow Instructions. Upwork's determination of such dispute shall be final.

Upwork further reserves the right to review the Freelancer's work for 30 days prior to the date of the Dispute for compliance with Hourly Payment Protection requirements, to make adjustments to invoices, and to direct Payment Escrow to make appropriate releases to Client if it finds work that, in Upwork's sole discretion, clearly does not relate to Hourly Contract requirements or to Client instructions in the Work Diaries or violations of the Terms of Service during its review of the work.

If Client's payment is unsuccessful, Upwork will review the Weekly Invoice to determine if it qualifies for Hourly Payment Protection. If Upwork, in its sole discretion, determines that the Weekly Invoice qualifies for Hourly Payment Protection, it will make payment to the Freelancer to cover the Hourly Invoice on behalf of the Client. In the event that Upwork makes payment on behalf of the Client, Freelancer hereby irrevocably assigns any right, title or interest in any payment from Client to Upwork for the amount paid by Upwork.

Client may choose to approve Freelancer's Weekly Invoice prior to the end of the Dispute Period thereby releasing payment for the Weekly Invoice. If Client releases payment to Freelancer prior to the end of the Dispute Period, Client certifies that it approves the Weekly Invoice, accepts the work, and waives any further right to dispute the work or Weekly Invoice.

You acknowledge and agree that Payment Escrow or its Affiliates may, at its sole discretion, withhold or delay payment in the event of dispute between a Client and a Freelancer. You further acknowledge and agree that Upwork and Affiliates are not and will not be a party to any dispute between a Client and Freelancer over an Hourly Invoice or Hourly Contract.

Clients may not dispute hours worked with respect to any worker engaged as an employee through Upwork Payroll. The Dispute Period does not apply and payments are released immediately upon completion of the Hourly Invoice for the prior week for Hourly Contracts where the Client has one or more Service Contracts using Upwork Payroll.

## 8. REFUNDS AND CANCELLATIONS

Client and Freelancer are encouraged to come to a mutual agreement if refunds or cancellations are necessary. If there are no funds in escrow, Freelancer may issue a refund via the Upwork platform up to the full amount paid on the Hourly Contract.

## 9. NOTICES

All notices to a User required by these Escrow Instructions will be made via email sent by Upwork to the User's registered email address. Users are solely responsible for maintaining a current, active email address registered with Upwork, for checking their registered email address and for responding to notices sent by Upwork to the User's registered email address.

## 10. COOPERATION WITH THE DISPUTES PROGRAM

All claims, disputes or other disagreements between you and another User are subject to the requirements of, and must be resolved in accordance with, the terms of Section 7 above covering Disputes Between Client and Freelancer. All claims filed or brought contrary to Section 7 will be considered improperly filed, unless otherwise required by law, and Upwork will have the right to take any other action, including suspension or termination of your User Account, as defined in Section 1.4 of the User Agreement, which may impact your ability to withdraw funds, and any other legal action as Upwork deems appropriate in its sole discretion.

## 11. ABUSE

Upwork, in its sole discretion, reserves the right to suspend or terminate your User Account, as defined in Section 1.4 of the User Agreement, immediately upon giving notice to you if Upwork believes you may be abusing the Disputes Program or as otherwise permitted by the [Terms of Service](#), which may impact your ability to withdraw funds. However, any disputes for any contracts that existed prior to termination will be subject to the Terms of Service.

## **12. NO RESPONSIBILITY FOR SERVICES OR PAYMENTS**

Upwork and Affiliates merely provide a platform for Internet payment services. Upwork and Affiliates do not have any responsibility or control over the Freelancer Services that Client purchases. Nothing in this Agreement deems or will be interpreted to deem Upwork or any Affiliate as Client's or Freelancer's agent with respect to any Freelancer Services, or expand or modify any warranty, liability or indemnity stated in the Terms of Service. For example, Upwork does not guarantee the performance, functionality, quality, or timeliness of Freelancer Services or that a Client can or will make payments.