

# TERMS OF SERVICES

## User Agreement

**PLEASE READ THIS USER AGREEMENT AND ALL OTHER AGREEMENTS AND POLICIES REFERENCED HEREIN COLLECTIVELY DEFINED BELOW AS THE "TERMS OF SERVICE" CAREFULLY AS THEY CONTAIN IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES, AND OBLIGATIONS. THESE INCLUDE VARIOUS LIMITATIONS AND EXCLUSIONS AND A BINDING ARBITRATION AGREEMENT AND CLASS ACTION WAIVER.**

This User Agreement (this “**Agreement**”) is a contract between you (“**you**” or “**User**”) Upwork Global Inc. (“**Upwork**,” “**we**,” or “**us**”) and our affiliates Upwork Escrow Inc. (“**Upwork Escrow**”) and, to the extent expressly stated, Elance Limited (“**Elance Ltd.**”). You must read, agree to, and accept all of the terms and conditions contained in this Agreement to be a User of our website located at [www.upwork.com](http://www.upwork.com) or any part of the rest of the Site (defined in the [Site Terms of Use](#)) or the Site Services (defined in the [Site Terms of Use](#)).

This Agreement includes and hereby incorporates by reference the following important agreements, as they may be in effect and modified from time to time: [Site Terms of Use](#); [Fee and ACH Authorization Agreement](#); [Cookie Policy](#); [Privacy Policy](#); [Mark Use Guidelines](#); [Freelancer Membership Agreement](#); [Proprietary Rights Infringement Reporting Procedures](#); [Upwork App Software License Agreement](#); [API Terms of Use](#); and the escrow instructions as applicable to any Service Contract you enter into with another User, specifically the [Hourly, Bonus, and Expense Payment Agreement with Escrow Instructions](#); and [Fixed-Price Escrow Instructions](#). This Agreement also incorporates, for any User using the Upwork Direct Contract Service, [Upwork Direct Contract Terms](#) and Direct Contract Escrow Instructions. These agreements are collectively, with this Agreement, called the “[Terms of Service](#)”.

Subject to the conditions set forth herein, Upwork may, in its sole discretion, amend this Agreement and the other 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, providing notice on the Site, and/or sending you notice 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 or any temporary or promotional Fee change. Any revisions to the Terms of Service will take effect on the noted effective date (each, as applicable, the “**Effective Date**”).

YOU UNDERSTAND THAT BY USING THE SITE OR SITE SERVICES AFTER THE EFFECTIVE DATE, YOU AGREE TO BE BOUND BY THE TERMS OF SERVICE, INCLUDING THE ARBITRATION PROVISION IN SECTION 14 OF THIS AGREEMENT (SUBJECT TO YOUR RIGHT TO OPT OUT OF THE ARBITRATION PROVISION AS PROVIDED IN SECTION 14). IF YOU DO NOT ACCEPT THE TERMS OF SERVICE IN ITS ENTIRETY, YOU MUST NOT ACCESS OR USE THE SITE OR THE SITE SERVICES AFTER THE EFFECTIVE DATE EXCEPT AS PERMITTED BY THE SITE TERMS OF USE.

IF YOU AGREE TO THE TERMS OF SERVICE ON BEHALF OF AN ENTITY OR AGENCY, OR IN CONNECTION WITH PROVIDING OR RECEIVING SERVICES ON BEHALF OF AN ENTITY OR AGENCY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND THAT ENTITY OR AGENCY TO THE TERMS OF SERVICE AND AGREE THAT YOU ARE BINDING BOTH YOU AND THAT ENTITY OR AGENCY TO THE TERMS OF SERVICE. IN THAT EVENT, “YOU” AND “YOUR” WILL REFER AND APPLY TO YOU AND THAT ENTITY OR AGENCY.

## **TABLE OF CONTENTS**

- 1. Upwork Accounts
  - 1.1 Registration and Acceptance
  - 1.2 Account Eligibility
  - 1.3 Account Profile
  - 1.4 Account Types
  - 1.5 Account Permissions
  - 1.6 Identity and Location Verification
  - 1.7 Usernames and Passwords
- 2. Purpose of Upwork
  - 2.1 Relationship with Upwork
  - 2.2 Taxes and Benefits
  - 2.3 Marketplace Feedback and User Content
- 3. Contractual Relationship Between Client and Freelancer
  - 3.1 Service Contracts
  - 3.2 Disputes Among Users
  - 3.3 Confidential Information
- 4. Worker Classification and Upwork Payroll
  - 4.1 Worker Classification
  - 4.2 Upwork Payroll Services
- 5. Upwork Fees
  - 5.1 Fees For Freelancers
  - 5.2 Client Fees
  - 5.3 VAT and Other Taxes
  - 5.4 No Fee for Introducing or Finding Projects

## 6. Payment Terms and Escrow Services

### 6.1 Escrow Services

### 6.2 Client Payments on Service Contracts

### 6.3 Disbursements to Freelancers on Service Contracts

### 6.4 Non-Payment

### 6.5 No Return of Funds and No Chargebacks

### 6.6 Payment Methods

### 6.7 U.S. Dollars and Foreign Currency Conversion

## 7. Non-Circumvention

### 7.1 Making Payments Through Upwork

### 7.2 Opting Out

## 8. Records of Compliance

## 9. Warranty Disclaimer

## 10. Limitation of Liability

## 11. Release

## 12. Indemnification

## 13. Agreement Term and Termination

### 13.1 Termination

### 13.2 Account Data on Closure

### 13.3 Survival

## 14. Disputes Between You and Upwork

### 14.1 Dispute Process, Arbitration, and Scope

### 14.2 Choice of Law

### 14.3 Informal Dispute Resolution

### 14.4 Binding Arbitration and Class Action/Jury Trial Waiver

## 15. General

### 15.1 Entire Agreement

### 15.2 Modifications; Waiver

### 15.3 Assignability

### 15.4 Severability; Interpretation

15.5 Force Majeure

15.6 Prevailing Language and Location

15.7 Access of the Site Outside the United States

15.8 Consent to Use Electronic Records

16. Definitions

## **1. UPWORK ACCOUNTS**

*Section 1 discusses what you must agree to before using the Site or Site Services and the different types of accounts that can be created on the Site, as detailed below.*

### **1.1 REGISTRATION AND ACCEPTANCE**

By registering for an account to use the Site or Site Services (an “**Account**”), by using the Site or Site Services after the Effective Date if you had an Account on the Effective Date, or by clicking to accept the Terms of Service when prompted on the Site, you agree to abide by this Agreement and the other Terms of Service.

To access and use certain portions of the Site and the Site Services, you must register for an Account. Subject to the Site Terms of Use, certain portions of the Site are available to Site Visitors, including those portions before your Account registration is accepted. Upwork reserves the right to decline a registration to join Upwork or to add an Account of any type (i.e., as a Client or Freelancer), for any lawful reason, including supply and demand, cost to maintain data, or other business considerations.

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. Your privacy is important to Upwork and your information will be handled in accordance with our Privacy Policy, which is part of the Terms of Service, and applicable law.

### **1.2 ACCOUNT ELIGIBILITY**

Upwork offers the Site and Site Services for your business purposes only and not for personal, household, or consumer use. To register for an Account or use the Site and Site Services, you must, and hereby represent that you: (a) are an employee or agent of and authorized to act for and bind an independent business (whether it be as a self-employed individual/sole proprietor or as a corporation, limited liability company, or other entity); (b) will use the Site and Site 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 the provision of Freelancer Services; and (d) are either a legal entity or an individual who is 18 years or older (or have otherwise reached the age of majority in the jurisdiction in which you conduct business) in each case who can form legally binding contracts.

### **1.3 ACCOUNT PROFILE**

To register for an Account to join the Site, 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 true, accurate, and complete information on your Profile and all registration and other forms you access on the Site or provide to us and to update your

information to maintain its truthfulness, accuracy, and completeness. You agree not to provide any false or misleading information about your identity or location, your business, your skills, or the services your business provides and to correct any such information that is or becomes false or misleading.

## **1.4 ACCOUNT TYPES**

As described in this Section, there are a number of different Account types. Once you register for one Account type, you can add the other Account types under the same username and password. For example, if you already have a Freelancer Account (defined below), you can add a Client Account (defined below) as a separate account type in settings without re-registering. You agree not to have or register for more than one Account without express written permission from us. We reserve the right to revoke the privileges of the Account or access to or use of the Site or Site Services, and those of any and all linked Accounts without warning if, in our sole discretion, false or misleading information has been provided in creating, marketing, or maintaining your Profile or Account.

### **1.4.1 CLIENT ACCOUNT**

You can register for an Account or add an Account type to use the Site and Site Services as a Client (a “**Client Account**”). Each User under a Client Account (“**Team Member**”) can be given different permissions to act on behalf of 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 Site and Site Services as a Freelancer (a “**Freelancer Account**”).

**Agency and Agency Member:** A specific type of Freelancer Account you can add is an “**Agency Account**”, the owner of which is referred to as an “**Agency**”. An Agency Account allows permissions to be granted to Users under the Agency Account which can be given different permissions to act on behalf of the Agency (each, an “**Agency Member**”).

You acknowledge and agree that the Agency 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 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 agree not to request or allow another person to create an Account on your behalf, for your use, or for your benefit, except that an authorized employee or agent 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 and warrant that: (a) the User is authorized to act on your behalf; and (b) you are fully responsible and liable for the User’s acts and omissions, including for obligations and liabilities relating to making payments and entering into Service Contracts and the Terms of Service. If any such User violates the Terms of Service, it may affect your ability to use the Site and Site Services. Upon closure of an Account, Upwork may close any or all related Accounts.

## **1.6 IDENTITY AND LOCATION VERIFICATION**

When you register for an Account and from time to time 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 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, but is not limited to, providing official government or legal documents. During verification some Account features may be temporarily limited. When a verification is successfully completed, Account features will be restored.

## **1.7 USERNAMES AND PASSWORDS**

When you register for an Account, you will be asked to choose a username and password for the Account. You are entirely responsible for safeguarding and maintaining the confidentiality of your username and password and agree not to share your username or password with any person who is not authorized to use your Account. You authorize Upwork to assume that any person using the Site with your username and password, either is you or is authorized to act for you. You agree to notify us immediately if you suspect or become aware of any unauthorized use of your Account or any unauthorized access to the password for any Account. You further agree not to use the Account or log in with the username and password of another User of the Site if (a) you are not authorized to use both or (b) the use would violate the Terms of Service.

## **2. PURPOSE OF UPWORK**

*Section 2 discusses what Upwork does and does not do when providing the Site and Site Services and some of your responsibilities when using the Site to find or enter into a Service Contract with a Freelancer or Client, as detailed below.*

The Site is a 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 Site Services to Users, including hosting and maintaining the Site, facilitating the formation of Service Contracts, and assisting Users in resolving disputes which may arise in connection with those Service Contracts. When a User enters a Service Contract, the User uses the Site to invoice and pay any amounts owed under the Service Contract.

### **2.1 RELATIONSHIP WITH UPWORK**

Upwork merely makes the Site and Site Services available to enable Freelancers and Clients to find and transact directly with each other. Upwork does not introduce Freelancers to Clients, find Projects for Freelancers, or find Freelancers for Clients. Through the Site and Site Services, Freelancers may be notified of Clients that may be seeking the services they offer, and Clients may be notified of Freelancers that may offer the services they seek; at all times, however, Users are responsible for evaluating and determining the suitability of any Project, Client or Freelancer on their own. If Users decide to enter into a Service Contract, the Service Contract is directly between the Users and Upwork is not a party to that Service Contract.

You acknowledge, agree, and understand that Upwork is not a party to the relationship or any dealings between Client and Freelancer. Without limitation, Users are solely responsible for: (a)

ensuring the accuracy and legality of any User Content; (b) determining the suitability of other Users for a Service Contract (such as any interviews, vetting, background checks, or similar actions); (c) negotiating, agreeing to, and executing any terms or conditions of Service Contracts; (d) performing Freelancer Services; or (e) paying for Freelancer Services. You further acknowledge, agree, and understand that you are solely responsible for assessing whether to enter into a Service Contract with another User and for verifying any information about another User, including Composite Information (defined below). Upwork does not make any representations about or guarantee the truth or accuracy of any Freelancer's or Client's listings or other User Content on the Site; does not verify any feedback or information provided by Users about Freelancers or Clients; and does not vet or otherwise perform background checks on Freelancers or Clients. You acknowledge, agree, and understand that Upwork does not, in any way, supervise, direct, control, or evaluate Freelancers or their work and is not responsible for any Project, Project terms or Work Product. Upwork makes no representations about and does not guarantee, and you agree not to hold Upwork responsible for, the quality, safety, or legality of Freelancer Services; the qualifications, background, or identities of Users; the ability of Freelancers to deliver Freelancer Services; the ability of Clients to pay for Freelancer Services; User Content and statements or posts made by Users; or the ability or willingness of a Client or Freelancer to actually complete a transaction.

You also acknowledge, agree, and understand that Freelancers are solely responsible for determining, and have the sole right to determine, which Projects to accept; the time, place, manner, and means of providing any Freelancer Services; the type of services they provide; and the price they charge for their services or how that pricing is determined or set. You further acknowledge, agree, and understand that: (i) you are not an employee of Upwork, and you are not eligible for any of the rights or benefits of employment (including unemployment and/or workers compensation insurance); (ii) Upwork will not have any liability or obligations, including under or related to Service Contracts and/or Freelancer Services for any acts or omissions by you or other Users; (iii) Upwork does not, in any way, supervise, direct, or control any Freelancer or Freelancer Services; does not impose quality standards or a deadline for completion of any Freelancer Services; and does not dictate the performance, methods or process Freelancer uses to perform services; (iv) Freelancer is free to determine when and if to perform Freelancer Services, including the days worked and time periods of work, and Upwork does not set or have any control over Freelancer's pricing, work hours, work schedules, or work location, nor is Upwork involved in any other way in determining the nature and amount of any compensation that may be charged by or paid to Freelancer for a Project; (v) Freelancer will be paid at such times and amounts as agreed with a Client in a given Service Contract, and Upwork does not, in any way, provide or guarantee Freelancer a regular salary or any minimum, regular payment; (vi) Upwork does not provide Freelancers with training or any equipment, labor, tools, or materials related to any Service Contract; (vii) Upwork does not provide the premises at which Freelancers will perform the work. Freelancers are free to use subcontractors or employees to perform Freelancer Services and may delegate work on fixed-price contracts or by agreeing with their Clients to have hourly contracts for Freelancer's subcontractor(s) or employee(s); and (viii) Upwork does not provide shipping services for any physical Work Product. If a Freelancer uses subcontractors or employees, Freelancer further agrees and acknowledges that this Section applies to Upwork's relationship, if any, with Freelancer's subcontractors and employees as well and Freelancer is solely responsible for Freelancer's subcontractors and employees.

Without limiting the foregoing paragraph, if you are an Agency or Agency Member, you expressly acknowledge, agree, and understand that: (1) the Agency is solely responsible for paying its Agency Members for work performed on behalf of the Agency and that such payments will not be made through the Site; (2) Upwork is not a party to any agreement between the Agency and its Agency Members and does not have any liability or obligations under or related to any such agreement, even if the Agency or Agency Member defaults; (3) neither Agencies nor Agency Members are employees or agents of Upwork; (4) Upwork does not, in any way, supervise, direct, or control the Agency or Agency Members; (5) Upwork does not set Agencies' or Agency Members' contract terms amongst themselves or with Clients (including determining whether the contract will be hourly or fixed price), fees, pricing, work hours, work schedules, or location of work; (6) Upwork does not provide Agencies or Agency Members with training or any equipment, labor, tools, or materials needed for any Service Contract; (7) Upwork does not provide the premises at which the Agency or Agency Members will perform the work; and (8) Upwork makes no representations as to the reliability, capability, or qualifications of any Agency or Agency Member or the ability or willingness of any Agency to make payments to or fulfill any other obligations to Agency Members, and Upwork disclaims any and all liability relating thereto.

Nothing in this Agreement is intended to prohibit or discourage (nor should be construed as prohibiting or discouraging) 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.

## **2.2 TAXES AND BENEFITS**

Freelancer acknowledges and agrees that Freelancer is solely responsible (a) for 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; (b) to obtain any liability, health, workers' compensation, disability, unemployment, or other insurance needed, desired, or required by law, and that Freelancer is not covered by or eligible for any insurance from Upwork; (c) for determining whether Freelancer is required by applicable law to issue any particular invoices for the Freelancer Fees and for issuing any invoices so required; (d) for determining whether Freelancer is required by applicable law to remit to the appropriate authorities any value added tax or any other taxes or similar charges applicable to the Freelancer Fees and remitting any such taxes or charges to the appropriate authorities, as appropriate; and (e) if outside of the United States, for determining if Upwork is required by applicable law to withhold any amount of the Freelancer Fees and for 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**

**You hereby acknowledge and agree that Users publish and request Upwork to publish on their behalf information on the Site about the User, such as feedback, composite feedback, geographical location, or verification of identity or credentials. However, such information is based solely on unverified data that Freelancers or Clients voluntarily submit to Upwork and does not constitute and will not be construed as an introduction, endorsement, or**



**recommendation by Upwork; Upwork provides such information solely for the convenience of Users.**

You acknowledge and agree that User feedback benefits the marketplace, all Users, and the efficiency of the Site and you specifically request that Upwork post composite or compiled feedback about Users, including yourself, on User Profiles and elsewhere on the Site. You acknowledge and agree that feedback results for you, including your Job Success Score, wherever referenced, and other User Content highlighted by Upwork on the Site or otherwise (“**Composite Information**”), if any, may include User comments, User ratings, indicators of User satisfaction, and other feedback left exclusively by other Users. You further acknowledge and agree that Upwork will make Composite Information available to other Users, including composite or compiled feedback. Upwork provides its feedback system as a means through which Users can share their opinions of other Users publicly, and Upwork does not monitor, influence, contribute to or censor these opinions. 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.

Upwork does not generally investigate any remarks posted by Users or other User Content for accuracy or reliability and does not guarantee that User Content is accurate. You are solely responsible for your User Content, including the accuracy of any User Content, and are solely responsible for any legal action that may be instituted by other Users or third parties as a result of or in connection with your User Content. Upwork is not legally responsible for any feedback or comments posted or made available on the Site by any Users or third parties, even if that information is defamatory or otherwise legally actionable. In order to protect the integrity of the feedback system and protect Users from abuse, Upwork reserves the right (but is under no obligation) to remove posted feedback or information that, in Upwork’s sole judgment, 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. You acknowledge and agree that you will notify Upwork of any error or inaccurate statement in your feedback results, including the Composite Information, and that if you do not do so, Upwork may rely on the accuracy of such information.

### **3. CONTRACTUAL RELATIONSHIP BETWEEN CLIENT AND FREELANCER**

*Section 3 discusses the relationship you may decide to enter into with another User, including Service Contracts between Users, as detailed below.*

#### **3.1 SERVICE CONTRACTS**

If a Client and Freelancer decide to enter into a Service Contract, the Service Contract is a contractual relationship directly between the Client and Freelancer. Client and Freelancer have complete discretion both with regard to whether to enter into a Service Contract with each other and with regard to the terms of any Service Contract. You acknowledge, agree, and understand that Upwork is not a party to any Service Contract, that the formation of a Service Contract between Users will not, under any circumstance, create an employment or other service relationship between Upwork and any User or a partnership or joint venture between Upwork and any User.

With respect to any Service Contract, Clients and Freelancers may enter into any written agreements that they deem appropriate (e.g., confidentiality agreements, invention assignment agreements, assignment of rights, etc.) provided that any such 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. Only to the extent that they have not entered into another agreement or terms with respect to a Service Contract, the parties to a Service Contract agree that the Optional Service Contract Terms apply to their Service Contract.

The Optional Service Contract Terms are provided as a sample only and may not be appropriate for all jurisdictions or all contracts. Users are responsible for complying with any local requirements, including applicable laws, rules, and regulations. Upwork does not assume any responsibility for any consequence of using the Optional Service Contract Terms. 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. Each situation is highly fact-specific and requirements vary by situation and jurisdiction and therefore any party should seek legal advice from a licensed attorney in the relevant jurisdictions. Upwork expressly disclaims any and all liability with respect to actions or omissions based on the Optional Service Contract Terms.

Please refer to the Upwork Payroll Agreement for Service Contracts using Upwork Payroll.

### **3.2 DISPUTES AMONG USERS**

For disputes arising between Clients and Freelancers, you agree to abide by the dispute process that is explained in the Escrow Instructions that apply to your particular Service Contract. If the dispute 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 dispute assistance beyond what is provided in the Escrow Instructions.

If Freelancer or Client intends to obtain an order from any arbitrator or any 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 business days' prior notice of the hearing; (b) include in any such order a provision that, as a precondition to obligation affecting Upwork or Upwork Escrow, we be paid in full for any amounts to which we would otherwise be entitled; and (c) be paid for the reasonable value of the services to be rendered pursuant to such order.

### **3.3 CONFIDENTIAL INFORMATION**

Users may agree to any terms they deem appropriate with respect to confidentiality, including those set forth in the Optional Service Contract Terms. If and to the extent that the Users do not articulate any different agreement with regard to confidentiality, then they agree that this Section 3.3 (Confidential Information) applies.

To the extent a User provides Confidential Information to the other, the recipient will protect the secrecy of the discloser's Confidential Information with the same degree of care as it uses to protect its own Confidential Information, but in no event with less than due care. 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 thereof contained in or on its premises, systems, or any other equipment otherwise under its control.

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

*Section 4 discusses what you agree to concerning whether a Freelancer is an employee or independent contractor and when you agree to use Upwork Payroll, as detailed below.*

### **4.1 WORKER CLASSIFICATION**

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.

Client is solely responsible for and has complete discretion with regard to selection of any Freelancer for any Project. Client is solely responsible for and assumes all liability for determining whether Freelancers should be engaged as independent contractors or employees of Client 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 will have no input into, or involvement in, worker classification as between Client and Freelancer and Users agree that Upwork has no involvement in and will have no liability arising from or relating to the classification of a Freelancer generally or with regard to a particular Project.

### **4.2 UPWORK PAYROLL SERVICES**

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**"), which is an Agency on Upwork, 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 and Client and/or Freelancer, and subject to the Upwork Payroll Agreement. For all purposes with Upwork Payroll, the employer of Freelancer will be the Staffing Provider and not Upwork under any circumstances.

Freelancer, acknowledges, understands, and agrees that Upwork will have no control over, or involvement in determining or influencing, the terms and conditions of any employment relationship that may arise between Freelancer and Staffing Provider or Client, including the selection of an employee, pay rate, work hours, employment dates and working conditions. Freelancer will not have any contract on the Site or contact with Upwork regarding such employment terms. Where Freelancer and Client have enrolled in Upwork Payroll the Site is provided for, and Users agree to use the Site for, the sole purpose of enabling Freelancer to communicate with the Staffing Provider and the Client.

## **5. UPWORK FEES**

*Section 5 describes what fees you agree to pay to Upwork in exchange for Upwork providing the Site and Site Services to you and what taxes Upwork may collect, as detailed below.*

### **5.1 FEES FOR FREELANCERS**

**Service Fees.** Freelancers will pay Upwork a service fee for the use of the Site Services as set forth in the Fee and ACH Authorization Agreement and the Direct Contract Terms, for using the Site Services, including the communication, invoicing, reporting, dispute resolution and payment services, including facilitating arbitration services and Hourly Payment Protection, as described in the applicable Escrow Instructions (the “**Service Fees**”). The Service Fees (to use the Site Services) are paid solely by Freelancer. 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. In the event the Freelancer chooses to withdraw funds in a currency other than U.S. dollars, there may also be a foreign currency conversion charge imposed by Upwork Escrow or an affiliate and the rate may differ from rates that are in effect on the date of the payment and 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 Service, by payment of subscription membership fees and by purchasing "Connects" as described in and subject to the terms of the Freelancer Membership Agreement.

**Disbursement Fees.** Freelancers will pay Upwork a disbursement fee for remitting payments to their preferred payment method (“**Disbursement Fee**”). The Disbursement Fee is paid to Upwork in consideration of costs incurred and administration of disbursements via the disbursement method requested by Freelancer and varies by disbursement method. The Disbursement Fee for each disbursement method is listed under Fees and Schedules on the Site as revised from time to time.

In addition to fees charged by Upwork, your disbursement method may also charge activation, maintenance, or other account fees.

## **5.2 CLIENT FEES**

Clients pay Upwork a fee for payment processing and administration 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 a premium membership plan to access additional features and Site Services, as described in the Fee and ACH Authorization Agreement.

Clients do not pay fees if they use the Site solely for Direct Contracts.

## **5.3 VAT AND OTHER TAXES**

Upwork may be required by applicable law to collect taxes or levies including, without limitation, withholding income tax or VAT (while some countries may refer to VAT using other terms, e.g. GST, we’ll just refer to VAT, GST and any local sales taxes collectively as “**VAT**”) in the jurisdiction of the Freelancer (the “**Taxes**”). In such instances, 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 and does not help Freelancers secure Projects. Upwork merely makes the Site and Site Services available to enable Freelancers to do so themselves and may from time to time highlight Projects 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 public feedback and composite or compiled feedback, including Composite Information.

## 6. PAYMENT TERMS AND ESCROW SERVICES

*Section 6 discusses your agreement to pay Freelancer Service Fees on Service Contracts, and describes how Upwork's Escrow Services work, what happens if a Client doesn't pay, and related topics, as detailed below.*

### 6.1 ESCROW SERVICES

Upwork Escrow provides escrow services to Users to deliver, hold, and/or 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 Business Oversight 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

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. If you authorize or instruct Upwork Escrow to release or make a payment of funds from an Escrow Account associated with you, Upwork Escrow may release or pay those funds as instructed 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, and/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.

**Upwork Payroll Engagements.** If Users use Upwork Payroll (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 waiting period for the disbursement of funds to the Staffing Employee.

## 6.1.2 ESCROW ACCOUNTS

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

(a) **Client Escrow Account.** After entering into a Service 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, 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.

(c) **Fixed-Price Escrow Account.** When you enter into a Fixed-Price Contract, Upwork Escrow will establish and maintain a “**Fixed-Price Escrow Account**” to receive, hold, and release payments pursuant to the Fixed-Price Escrow Instructions for the Project that is the subject of that Fixed-Price Contract.

(d) **Direct Contract Escrow Account.** When you enter into a Direct Contract, Upwork Escrow will establish and maintain a “**Direct Contract Escrow Account**” to receive, hold, and release payments pursuant to the Direct Contract Escrow Instructions for the Project that is the subject of that Direct Contract.

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

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 and its wholly-owned subsidiaries, as your agent to obtain funds on your behalf and credit them to your Freelancer Escrow Account as applicable. Because Upwork Escrow is Freelancer’s agent, Freelancer must, and hereby does, fully discharge and credit Freelancer’s Client for all payments and releases 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. 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. The 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, § 541(d), Upwork Escrow holds only legal title to, and not any equitable interest in, the escrow trust account and any funds deposited therein. This Agreement is supplementary to the Service Contract and to any other agreement between Client and Freelancer concerning the Project, as provided in 11 United States Bankruptcy Code, § 365(n).

### **6.1.5 NO INTEREST**

You agree that you will not receive interest or other earnings on the funds held in your Escrow Account. 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 they provide as provided in Section 5 and the Fee and ACH Authorization Agreement.

### **6.1.6 ESCROW AGENT DUTIES**

We undertake to perform only 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 acting or refraining from acting upon, 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. To the extent permitted by applicable law, we will not be liable for anything done, suffered, or omitted in good faith by us in accordance with the advice or opinion of any such counsel, accountants, or other skilled persons. If we are uncertain as to our duties or rights hereunder or receive instructions, claims, or demands from any party hereto 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 have the right, in our sole discretion, but not the obligation, to institute arbitration or, if no arbitration provision applies, other legal proceedings, including depositing funds held in the Escrow Account with a court of competent jurisdiction, and to resolve any dispute between Client and Freelancer related to the Escrow Account. Any provision of this Agreement and the applicable Escrow Instructions to the contrary notwithstanding and regardless whether we are identified as a party in interest in any dispute, arbitration, or other legal proceeding, nothing herein 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 without further act to the extent permitted by applicable law.

## **6.2 CLIENT PAYMENTS ON SERVICE CONTRACTS**

**Hourly Contracts.** Freelancer will invoice Client for Freelancer Fees on a weekly basis through Upwork, and Client will pay invoices consistent with the Hourly Escrow Instructions. When Client approves an Hourly Invoice for an Hourly Contract, Client automatically and irrevocably authorizes and instructs Upwork or its Affiliate, 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 on the Site, 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**

Under the relevant Escrow Instructions, Upwork Escrow disburses funds that are available in the applicable Freelancer Escrow Account and payable to a Freelancer upon Freelancer's request. A Freelancer can request disbursement of available funds any time on a one-time basis or by setting up an automatic disbursement schedule. If Freelancer does not request a disbursement, Upwork will automatically disburse available funds no more than 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. 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.

**Hourly Contracts.** Freelancer Fees become available to Freelancers following the expiration of the dispute period and the five-day security period.

**Fixed-Price Contracts.** Freelancer Fees become available to Freelancers following the expiration of the five-day security period after the funds are released as provided in the applicable Escrow Instructions. The security period begins after Client accepts and approves work submitted by Freelancer.



Notwithstanding any other provision of the Terms of Service or the Escrow Instructions, Upwork Escrow, in its sole discretion and except as prohibited by applicable law, 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; (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 or required by applicable law. If, after investigation, we determine that the hold on the disbursement of the Freelancer Fees is no longer necessary, Upwork Escrow will release such hold as soon as practicable.

In addition, notwithstanding any other provision of 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 used by your Client if you are a Freelancer, despite our provision of the Site Services in accordance with this Agreement. You agree that we have the right to obtain such reimbursement by instructing Upwork Escrow to (and Upwork Escrow will have the right to) charge the applicable Escrow Account, and any other accounts you hold with us, offsetting any amounts determined to be owing, deducting amounts from future payments or withdrawals, charging your Payment Method, or obtaining reimbursement from you by any other lawful means. 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 Site and Site Services and close your Account.

## **6.4 NON-PAYMENT**

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 Site and Site Services, including Client's authority to use the Site to process any additional payments, enter into Service 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 or its Affiliates, Upwork Escrow or Elance Ltd., may, without notice, charge all or a portion of any amount that is owed on any Account to Upwork or as Freelancer Fees or otherwise 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 Freelancer Fees if Client is in default. 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 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**

Client acknowledges and agrees that Upwork or its Affiliates, Upwork Escrow or Elance Ltd., will 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 and that 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 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 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 the foregoing 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 and institute collection action against Client and take such other action it deems appropriate.

## **6.6 PAYMENT METHODS**

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 and authorizing payments with the Payment Method, Client represents, warrants, and covenants 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 and warrants 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**

The Site and the Site 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 may display foreign currency conversion rates that Upwork, Upwork Escrow, or our 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 or its Affiliate, 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 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. Upwork, Upwork Escrow, Elance Ltd., and our Affiliates are not responsible for currency fluctuations that occur when receiving or sending payments to and from the Escrow Account.

## 7. NON-CIRCUMVENTION

*Section 7 discusses your agreement to make and receive payments only through Upwork for two years from the date you first identify or meet your Client or Freelancer on the Site, unless you pay a Conversion Fee; violating this Section 7 is a serious breach and your Account may be permanently suspended for violations, as detailed below.*

### 7.1 MAKING PAYMENTS THROUGH UPWORK

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 when you identify or are identified by another person through the Site or Site 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 out of your relationship with that person 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**”). For the avoidance of doubt, 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. 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.

By way of illustration and not in limitation of the foregoing, you agree not to:

- 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 further agree you will not initiate unsolicited communications with any User outside of the Site, including, without limitation, using any information found on the Site such as name, company name, or other information on the Site, to solicit, contact, or attempt to solicit or contact or to or find the contact information of any other User.

You agree to notify Upwork immediately if a person suggests to you 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 any provision in this Section 7.1 is a material breach of the Terms of Service. Your Account may be permanently suspended and charged the Conversion Fee (defined above) if you violate this Section 7.1. If you refuse to accept any new version of the Terms of Service or elect not to comply with certain conditions of using the Site,

such as minimum rates supported on the Site, and therefore choose to cease using the Site, you may pay the Conversion Fee for each other User you wish to continue working with on whatever terms you agree after you cease using the Site.

## **7.2 OPTING OUT**

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.

You agree that the Conversion Fee is 12% 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 the highest of (a) the highest hourly rate charged by the Freelancer on any Service Contract, if any; (b) the highest hourly rate proposed by the Freelancer in any proposal, if any; or (c) the hourly rate in the Freelancer’s profile.

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 inquire about or pay the Conversion Fee, send an email message to [conversionfee@upwork.com](mailto:conversionfee@upwork.com).

You understand and agree that if Upwork determines, in its sole discretion, that you have violated Section 7, Upwork or its Affiliates may, to the maximum extent permitted by law (x) 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, (y) close your Account and revoke your authorization to use the Site and Site Services, and/or (z) charge you for all losses and costs (including any and all time of Upwork’s employees) and reasonable expenses (including attorneys’ fees) related to investigating such breach and collecting such fees.

## **8. RECORDS OF COMPLIANCE**

*Section 8 discusses your agreement to make and keep all required records, as detailed below.*

Users will each (a) create and maintain records to document satisfaction of their respective obligations under this Agreement, including, without limitation, their respective payment obligations and compliance with tax and employment laws, and (b) provide copies of such records to Upwork upon request. Nothing in this subsection requires or will be construed as requiring Upwork to supervise or monitor a User’s compliance with this Agreement, the other Terms of Service, or a Service Contract. You are solely responsible for creation, storage, and backup of your business records. This Agreement and any registration for or subsequent use of the Site will not be construed as creating any responsibility on Upwork’s part to store, backup, retain, or grant access to any information or data for any period.

## **9. WARRANTY DISCLAIMER**

*Section 9 discusses your agreement and understanding that the Site and Site Services may not always be available or work perfectly, as detailed below.*

YOU AGREE NOT TO RELY ON THE SITE, THE SITE SERVICES, ANY INFORMATION ON THE SITE OR THE CONTINUATION OF THE SITE. THE SITE AND THE SITE SERVICES ARE PROVIDED “AS IS” AND ON AN “AS AVAILABLE” BASIS. UPWORK MAKES NO REPRESENTATIONS OR WARRANTIES WITH REGARD TO THE SITE, THE SITE SERVICES, WORK PRODUCT, USER CONTENT, OR ANY ACTIVITIES OR ITEMS RELATED TO THIS AGREEMENT OR THE TERMS OF SERVICE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, UPWORK DISCLAIMS ALL EXPRESS AND IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, ACCURACY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. SOME JURISDICTIONS MAY NOT ALLOW FOR ALL OF THE FOREGOING LIMITATIONS ON WARRANTIES, SO TO THAT EXTENT, SOME OR ALL OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. SECTION 13 (AGREEMENT TERM AND TERMINATION) STATES USER’S SOLE AND EXCLUSIVE REMEDY AGAINST UPWORK WITH RESPECT TO ANY DEFECTS, NON-CONFORMANCES, OR DISSATISFACTION.

## **10. LIMITATION OF LIABILITY**

*Section 10 discusses your agreement that Upwork usually will not have to pay you damages relating to your use of the Site and Site Services and, if it is, at most it will be required to pay you \$2,500, as detailed below.*

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:

- your use of or your inability to use our Site or Site Services;
- delays or disruptions in our Site or Site Services;
- viruses or other malicious software obtained by accessing, or linking to, our Site or Site Services;
- glitches, bugs, errors, or inaccuracies of any kind in our Site or Site Services;
- damage to your hardware device from the use of the Site or Site Services;
- the content, actions, or inactions of third parties’ use of the Site or Site Services;
- a suspension or other action taken with respect to your Account;
- 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
- 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 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**

*Section 11 discusses your agreement not to hold us responsible for any dispute you may have with another User, as detailed below.*

In addition to the recognition that Upwork is not a party to any contract between Users, you hereby release Upwork, our 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**

*Section 12 discusses your agreement to pay for any costs or losses we have as a result of a claim brought against us related to your use of the Site or Site Services or your illegal or harmful conduct, as detailed below.*

You will indemnify, defend, and hold harmless Upwork, our 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) the use of the Site and the Site Services by you or your agents, including any payment obligations or default (described in Section 6.4 (Non-Payment)) incurred through use of the Site Services; (b) any Work Product or User Content developed, provided, or otherwise related to your use of the Site 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; the classification of Upwork as an employer or joint employer of Freelancer; any employment-related claims, such as those relating to employment termination, employment discrimination, harassment, or retaliation; and any claims for unpaid wages or other compensation, overtime pay, sick leave, holiday or vacation pay, retirement benefits, worker’s compensation benefits, unemployment benefits, or any other employee benefits; (d) failure to comply with the Terms of Service by you or your agents; (e) failure to comply with applicable law by you or your agents; (f) negligence, willful misconduct, or fraud by you or your agents; and (g) defamation, libel, violation of privacy rights, unfair competition, or infringement of Intellectual Property Rights or allegations thereof to the extent caused by you or your agents. For purposes of this Section 12, your agents includes 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 reasonable attorneys’ fees and all related costs and expenses) 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**

*Section 13 discusses your and Upwork’s agreement about 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, as detailed below.*

### **13.1 TERMINATION**

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 herein. 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 Site and Site Services is automatically revoked, and your Account will be closed. Upwork is not a party to any Service Contract between Users. Consequently, User understands and acknowledges 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 (a) you hereby 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; (c) Upwork will continue to perform those Site Services necessary to complete any open Project or related 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 Site 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, but are not obligated to, temporarily or indefinitely revoke or limit access to the Site or Site Services, deny your registration, or permanently revoke your access to the Site and refuse to provide any or all Site Services to you if: (i) you breach the letter or spirit of any terms and conditions of this Agreement or any other provisions of the Terms of Service; (ii) we suspect or become aware that you have provided false or misleading information to us; or (iii) we believe, in our sole discretion, that your actions may cause legal liability for you, our Users, or Upwork or our Affiliates; may be contrary to the interests of the Site or the User community; or may involve illicit or illegal activity. If your Account is temporarily or permanently closed, you may not use the Site under the same Account or a different Account or reregister under 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 User's Account status to all Users, including both yourself and other Users who have entered into Service Contracts with you. You therefore agree as follows: **IF UPWORK DECIDES TO TEMPORARILY OR PERMANENTLY CLOSE YOUR ACCOUNT, UPWORK HAS THE RIGHT WHERE ALLOWED BY LAW BUT NOT THE OBLIGATION TO: (A) NOTIFY OTHER USERS THAT HAVE ENTERED INTO SERVICE CONTRACTS WITH YOU TO INFORM THEM OF YOUR CLOSED ACCOUNT STATUS, (B) 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 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 for any reason, you will no longer have access to data, messages, files, or other material you keep on the Site and any closure of your Account may involve deletion of any content stored in your Account for which Upwork will have no liability whatsoever. Upwork, in its sole discretion and as permitted or required by law, may retain some or all of your Account information.

### **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 requiring arbitration, permitting audits, protecting intellectual property, requiring non-circumvention, indemnification, payment of fees, reimbursement and setting forth limitations of liability each, by their nature, contemplate performance or observance after this Agreement terminates. Without limiting any other provisions of the Terms of Service, 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 that thereafter may accrue in respect of 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, 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, as detailed below.*

### 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 claim, dispute, or controversy that arises out of or relates 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 Site Services (each, a “**Claim**”) in accordance with this Section 14 (sometimes referred to as the “**Arbitration Provision**”).

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 Site, Site Services, the Terms of Service, any Service Contract, escrow payments or agreements, any payments or monies you claim are due to you from Upwork or our Affiliates or successors, trade secrets, unfair competition, false advertising, consumer protection, privacy, compensation, classification, minimum wage, seating, expense reimbursement, overtime, breaks and rest periods, termination, discrimination, retaliation or harassment and claims arising under the Defend Trade Secrets Act of 2016, Civil Rights Act of 1964, Rehabilitation Act, Civil Rights Acts of 1866 and 1871, Civil Rights Act of 1991, the Pregnancy Discrimination Act, Americans With Disabilities Act, Age Discrimination in Employment Act, Family Medical Leave Act, Fair Labor Standards Act, Employee Retirement Income Security Act (except for claims for employee benefits under any benefit plan sponsored by the Company and (a) covered by the Employee Retirement Income Security Act of 1974 or (b) funded by insurance), Affordable Care Act, Genetic Information Non-Discrimination Act, Uniformed Services Employment and Reemployment Rights Act, Worker Adjustment and Retraining Notification Act, Older Workers Benefits Protection Act of 1990, Occupational Safety and Health Act, Consolidated Omnibus Budget Reconciliation Act of 1985, False Claims Act, state statutes or regulations addressing the same or similar subject matters, and all other federal or state legal claims arising out of or relating to your relationship with Upwork or the termination of that relationship.

Disputes between the parties 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) or as provided by an Act of Congress or lawful, enforceable Executive Order, are excluded from the coverage of this Agreement.

## **14.2 CHOICE OF LAW**

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 Delaware, without regard to its conflict of law provisions and excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG); 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 resides. 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 at Attn: Legal, 2625 Augustine Dr., Suite 601, Santa Clara CA 95054 or 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 the Claim. 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, which, if successful, will 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 except Users located outside of 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 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 and survives after your relationship with Upwork ends. 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 herein, 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 or 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 arbitration fees. In any arbitration under the JAMS Employment Arbitration Rules and Procedures, the Freelancer will pay JAMS arbitration fees only to the extent those fees are no greater than the filing or initial appearance fees applicable to court actions in the jurisdiction where the arbitration will be conducted, with Upwork to make up the difference, if any. In any arbitration under the JAMS Comprehensive Arbitration Rules and Procedures’ Optional Expedited Arbitration Procedures then in effect in which a User makes a claim under a consumer protection statute, the User will pay JAMS arbitration fees only to the extent those fees are no greater than the filing or initial appearance fees applicable to court actions in the jurisdiction where the arbitration will be conducted, or \$250.00, whichever is less, with Upwork to make up the difference, if any. The arbitrator must 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 and/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. Except as otherwise provided in this Arbitration Provision, this Arbitration Provision covers, and the arbitrator shall have exclusive jurisdiction to decide, all disputes arising out of or relating to the interpretation, enforcement, or application of this Arbitration Provision, including the enforceability, revocability, scope, or validity of the Arbitration Provision or any portion of the Arbitration Provision. All such matters shall be decided by an arbitrator and not by a court. The parties expressly agree that 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. If any portion of the Class Action Waiver in Section 14.4.3, below, of this Arbitration Provision is deemed to be unenforceable, you and Upwork agree that this Arbitration Provision will be enforced to the fullest extent permitted by law.

#### **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, or validity or breach of the Class Action Waiver may be resolved only by a civil court of competent jurisdiction and not by an arbitrator. In any case in which (1) the dispute is filed as a class or collective action and (2) there is a final judicial determination that all or part of the Class Action Waiver is unenforceable, the class or collective action to that extent must be litigated in a civil court of competent jurisdiction, but the portion of the Class Action Waiver that is enforceable shall be enforced in arbitration. You and Upwork agree that you will not be retaliated against, disciplined or threatened with discipline 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, 2625 Augustine Dr., Suite 601, Santa Clara CA 95054 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. If any portion of the Class Action Waiver in Section 14.4.3, above, is deemed to be unenforceable, you and Upwork agree that this Arbitration Provision will be enforced to the fullest extent permitted by law.

## **15. GENERAL**

*Section 15 discusses 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, as detailed below.*

### **15.1 ENTIRE AGREEMENT**

This Agreement, together with the other Terms of Service, sets forth the entire agreement and understanding between you and Upwork relating to the subject matter hereof and thereof and cancels and supersedes any prior or contemporaneous discussions, agreements, representations, warranties, and other communications between you and us, written or oral, to the extent they relate in any way to the subject matter hereof and thereof. The section headings in the Terms of Service are included for ease of reference only and have no binding effect. Even though Upwork drafted the Terms of Service, you represent that you had ample time to review and decide whether to agree to the Terms of Service. If an ambiguity or question of intent or interpretation of the Terms of Service arises, no presumption or burden of proof will arise favoring or disfavoring you or Upwork because of the authorship of any provision of the Terms of Service.

### **15.2 MODIFICATIONS; WAIVER**

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. 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**

User may not assign the Terms of Service, or any of its rights or obligations hereunder, without Upwork's prior written consent in the form of a written instrument signed by a duly authorized representative of Upwork. Upwork may freely assign this Agreement and the other Terms of Service without User's consent. Any attempted assignment or transfer in violation of this

subsection will be null and void. Subject to the foregoing restrictions, the Terms of Service are binding upon and will inure to the benefit of the successors, heirs, and permitted assigns of the parties.

#### **15.4 SEVERABILITY; INTERPRETATION**

If and 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 that jurisdiction will not in any way affect the legality, validity, or enforceability of such provision in any other jurisdiction or of any other provision in any jurisdiction.

#### **15.5 FORCE MAJEURE**

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

#### **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 is 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 foreign, United States, state, and local laws and regulations, including, but not limited to, export and import regulations, including the Export Administration Regulations maintained by the United States Department of Commerce and the sanctions programs maintained by the 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 Site or Site Services, you must and hereby represent that you are not: (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 Site and Site Services and your license to use the Site or Site Services will be immediately revoked.

## **15.8 CONSENT TO USE ELECTRONIC RECORDS**

In connection with the Site Terms of Use, you may be entitled to receive, or we may otherwise provide, certain records from Upwork or our Affiliates, such as contracts, notices, and communications, in writing. To facilitate your use of the Site and the Site Services, you give us permission to provide these records to you electronically instead of in paper form.

## **16. DEFINITIONS**

*Section 16 gives you some definitions of capitalized terms that appear in the Terms of Service but 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 utilizing the Site or Site Services, including Direct Contract Services, to seek and/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, 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.

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

**“Escrow Instructions”** means the Fixed-Price Escrow Instructions or the Hourly, Bonus, and Expense Payment Agreement with Escrow Instructions.

**“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 utilizing the Site or Site Services, including Direct Contract Services, to advertise or provide Freelancer Services to Clients, including Freelancer Accounts that are Agency Accounts or, if applicable, Agency Members. A Freelancer is a customer of Upwork with respect to use of the Site and Site Services.

**“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; or (c) 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 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 posted 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.