

## UPWORK INDEPENDENT CONTRACTOR AGREEMENT

**THIS UPWORK INDEPENDENT CONTRACTOR AGREEMENT** (this “**Agreement**”) is entered into by and between Upwork Global Inc., a Delaware corporation (“**Upwork**”) and Freelancer as of the date Freelancer accepts this Agreement via the Site (the “**Effective Date**”). Upwork and Freelancer are sometimes referred to collectively herein as the “**Parties**” and individually as a “**Party**.” Upwork and Freelancer agree as follows:

### 1. BACKGROUND AND INITIAL OBLIGATIONS.

**1.1 Use of Platform.** Upwork and Freelancer agree to use the marketplace for services owned and operated by Upwork at the domain and sub-domains of <http://www.upwork.com> (the “**Site**”) for the designation of, delivery of and payment for Freelancer’s services under this Agreement. Upwork and Freelancer specifically incorporate into this Agreement and agree to be bound by the Site’s Terms of Service available at <https://www.upwork.com/legal/> (“**Terms of Service**”), as they may be amended from time to time, excluding the Upwork Payroll Agreement. Capitalized terms not defined in this Agreement have the meanings given to them in the Terms of Service. To the extent that any provision of this Agreement conflicts with a provision of the Terms of Service, the applicable provision of this Agreement will control.

**1.2 Identity of Freelancer.** The “**Freelancer**” is the self-employed individual or entity whose legal name and address are listed in the Tax Information section of the Account on the Site of the User accepting this Agreement via the Site.

(a) Any person who accepts this Agreement on behalf of a corporation, limited company or other legal entity represents and warrants that they accept this Agreement on behalf of such legal entity and that they have the legal authority and authorization to contractually bind that legal entity. A Freelancer that is a legal entity further represents and warrants that it is in good standing under the laws of the jurisdiction(s) where Freelancer conducts business and will promptly provide proof of its organization, registration and good standing upon request.

(b) If Freelancer was awarded the job as an Agency Member, Freelancer represents and warrants that it is accepting this Agreement on behalf of the Agency whose Agency Account it is associated with and that Freelancer has the legal authority and authorization to do so. In such cases, except as used in this paragraph, the term “Freelancer” in this Agreement refers to and includes the Agency.

**1.3 Work for Upwork.** Upwork has contracted with the Freelancer to provide certain services or deliverables to Upwork as described in the Service Contract on the Site (the “**Project**”).

**1.4 The Project.** Freelancer agrees to complete the Project and to comply with all requirements contained in the Project description on the Site, all terms and specifications in the Contract Overview and Milestones section of the Site related to the Project, and all terms or specifications about the work to be performed agreed to by the Freelancer in the Upwork Messages section of the Site related to the Project (collectively, “**Project Terms**”). Freelancer further agrees that all such Project Terms are incorporated into this Agreement by this reference.

**1.5 Use of the Upwork Site.** Freelancer will use the Site, including Upwork Messages, for all communications with Upwork, to record time spent working on hourly contracts, to request payment for meeting contract milestones, and to submit any other invoice authorized by Upwork. Freelancer acknowledges and agrees that Upwork will disregard communications, requests for payments, and invoices submitted other than through the Site and Upwork will have no liability or responsibility to Freelancer for failing to respond to such communications or otherwise failing to make any such payments.

**1.6 Information Provided by Freelancer.** Freelancer represents and warrants that the information that is and has been provided to Upwork is accurate and that Freelancer will provide notice of any material changes, including, without limitation, changes to Freelancer's location, insurance coverage, tax residence or identification number, or changes to Freelancer's business licensure, registration, or similar status.

## **2. PROJECT AND PERFORMANCE OF SERVICES.**

**2.1 Project Work Product.** Freelancer agrees to complete the Project specified by Upwork in strict accordance with the Project Terms and to deliver the Work Product (defined below) to Upwork on a timely basis. Upwork will pay Freelancer for Work Product in accordance with this Agreement and the Project Terms. As used in this Agreement, the term "**Work Product**" means any and all work and work product developed by Freelancer to complete the Project in accordance with the Project Terms or delivered to Upwork in the performance of the Project.

**2.2 Performance of Services.** Freelancer will perform the services necessary to complete the Project in accordance with this Agreement and the Project Terms, in a timely and professional manner, consistent with industry standards, at a location, place and time that Freelancer deems appropriate. Freelancer has the sole right to determine and control the manner and means of performing the Project. In completing the Project, Freelancer will provide and use Freelancer's own equipment, tools, and other materials at Freelancer's own expense. Freelancer will not include in the Work Product any material that is owned by, copyrighted by, or that requires licensing, permission or authorization from a third party without the advance written permission of Upwork.

**3. COMPENSATION.** Upwork will, subject to the terms and conditions of this Agreement, pay Freelancer the fee specified for the Project in the Contract Overview and Milestones section of the Site. Payment will be made by Upwork to Freelancer through the Site in accordance with the applicable provisions of the Terms of Service. Freelancer will be responsible for all expenses incurred in performing services under this Agreement.

**4. INDEPENDENT CONTRACTOR RELATIONSHIP.** Freelancer's relationship with Upwork and any of its parents, subsidiaries, affiliates, or successors will be that of an independent contractor, and nothing in this Agreement should be construed to create a partnership, joint venture, or employer-employee relationship.

**4.1 No Employment or Agency.** Freelancer acknowledges and agrees that Freelancer (a) is not an employee of Upwork or any of its parents, subsidiaries, affiliates, or successors; (b) is not the agent of Upwork or any of its parents, subsidiaries, affiliates, or successors; (c) is not authorized to make or hold itself out as authorized to make any statement, representation, contract, or commitment on behalf of Upwork or any of its parents, subsidiaries, affiliates, or successors; (d) is not authorized to communicate with the press, an investor or potential investor, investment analysts, brokers or securities dealers on behalf of Upwork or any of its parents, subsidiaries, affiliates, or successors or to disclose any Confidential Information to any such persons; (e) will not be entitled to any of the benefits that Upwork or any of its parents, subsidiaries, affiliates, or successors makes available to its employees, such as group insurance, stock plans, profit-sharing or retirement benefits (and waives the right to receive any such benefits); (f) is actively engaged in the business of providing services (other than management services and other than as an employee); and (g) is unrelated to Upwork or any affiliate of Upwork.

**4.2 Tax and Regulatory Compliance.** Freelancer is and will at all times remain solely responsible for all tax returns and payments required to be filed with or made to any national, federal, state, or local tax authority with respect to Freelancer's performance of services and receipt of fees under this Agreement. If applicable, Upwork will report amounts paid to Freelancer by filing a Form 1099 with the Internal Revenue Service, as required by law. Freelancer agrees to complete the tax information fields on

the Site and, as required by Upwork, to complete an IRS Form W-9 or Form W-8. Freelancer accepts sole and exclusive liability for complying with all applicable national, federal, state, provincial and local laws, including laws governing self-employed individuals, such as laws related to payment of taxes, social security, disability, and other contributions based on fees paid to Freelancer under this Agreement. Where such coverage is required by law, Freelancer represents and warrants that it has appropriate workers' compensation coverage or, if it does not already have such coverage, agrees to obtain coverage before beginning work under this Agreement. Neither Upwork nor any Upwork Client will withhold or make payments for social security, any pension or social insurance plan, unemployment insurance or disability insurance contributions, any employer health taxes or other payroll taxes, including penalties and interest, or obtain workers' compensation insurance on Freelancer's behalf. Freelancer hereby agrees to make any such payments and obtain any required insurance and to indemnify and defend and hold harmless Upwork from and against any and all such taxes or contributions, including penalties and interest. Freelancer agrees to provide proof of payment of appropriate taxes on any fees paid to Freelancer under this Agreement upon reasonable request by Upwork.

**4.3 Withholding.** Upon execution of this Agreement and thereafter as may be reasonably requested by Upwork, Freelancer shall complete and provide to Upwork any form reasonably requested by Upwork or required by a relevant taxing authority in order to certify that Upwork is not required to withhold from Freelancer's fees or pay on Freelancer's behalf any income or other tax withholding on any payment of fees under this Agreement. In the event any such tax is required by law to be withheld by Upwork on compensation payable under this Agreement, Upwork may terminate this Agreement immediately. If Upwork elects to continue the Agreement, Upwork will have the right to pay such tax on behalf of Freelancer to the appropriate governmental authority, offset the compensation by such tax and furnish Freelancer with proof of payment of such tax. Any such tax required to be withheld will be an expense of and borne by Freelancer.

## **5. INTELLECTUAL PROPERTY RIGHTS.**

**5.1 Inventions and Intellectual Property Rights.** As used in this Agreement, the term "**Invention**" means any ideas, concepts, information, materials, processes, data, programs, know-how, improvements, discoveries, developments, designs, artwork, formulae, other copyrightable works, and techniques and all Intellectual Property Rights therein. The term "**Intellectual Property Rights**" means all trade secrets, copyrights, trademarks, mask work rights, patents, moral rights, and other intellectual property rights recognized by the laws of any country.

**5.2 Background Technology.** As used in this Agreement, the term "**Background Technology**" means all Inventions developed by Freelancer other than in the course of providing services hereunder and all Inventions acquired or licensed by Freelancer that Freelancer uses in performing services under this Agreement or incorporates in the Work Product. Freelancer will disclose in advance in writing to Upwork and in the Project Terms any Background Technology that Freelancer proposes to incorporate into Work Product or upon which use or distribution of the Work Product will depend. Upwork will have the right to reject the use or incorporation of such Background Technology in Upwork's sole and absolute discretion. If Freelancer discloses no Background Technology, Freelancer warrants that it will not incorporate any Background Technology into Work Product. Freelancer will separately provide, with each delivery of Work Product to Upwork, a third-party bill of materials that identifies all Background Technology and other third-party materials that have been incorporated into the Work Product and provides, for each item of Background Technology identified, (a) the name and any associated version number (b) the applicable license or licensing terms, (c) whether the item has been modified by Freelancer, and (d) how the item has been incorporated into, is used by, or is relied upon by the Work Product. Notwithstanding the foregoing, unless otherwise agreed in the Project Terms, Freelancer agrees that it will not incorporate into Work Product or otherwise deliver to Upwork any software code for which the use or distribution of the code will create (or purport to create) obligations for Upwork to grant any rights or immunities under Upwork's Intellectual Property Rights to a third party, including, without limitation, any obligation that the Work Product or Upwork software combined with, derived from, or distributed with

such Work Product (x) be disclosed or distributed in source code form, (y) be licensed for the purpose of making derivative works, or (z) be redistributable at no charge.

**5.3 Ownership and Assignment of Work Product.** Upon receipt of payment of undisputed amounts from Upwork, Freelancer hereby unconditionally and irrevocably assigns to Upwork, without further consideration, all right, title and interest worldwide in and to all Work Product, including without limitation all Intellectual Property Rights in the Work Product. Except as set forth below, Freelancer retains no rights to use the Work Product and agrees not to challenge the validity of Upwork's exclusive rights in and ownership of the Work Product, including without limitation all Intellectual Property Rights in the Work Product. Freelancer hereby waives unconditionally and irrevocably for the benefit of Upwork and its successors and assigns, without further consideration, any and all moral or similar rights in or to any Work Product (including without limitation, any rights of identification of authorship; any rights of approval; or restrictions or limitations on use, subsequent modification or development of derivative works) in which copyright may subsist in each jurisdiction throughout the world, to the extent that such rights may be waived in each respective jurisdiction. Freelancer agrees to, at the request of Upwork and without any right to further consideration, sign all lawful papers, make all rightful oaths and execute all divisional, continuing, continuation-in-part or reissue applications, all assignments, all registration applications and all other instruments or papers, to carry into full force and effect, the assignment hereby made or intended to be made and generally do everything necessary or helpful for title to the Work Product, and all Intellectual Property Rights therein, to be clearly and exclusively owned and held by Upwork. Freelancer hereby grants to Upwork a power of attorney to execute any of the aforementioned documents on Freelancer's behalf in order to give effect to the assignment hereby made.

**5.4 License to Background Technology.** Freelancer hereby automatically upon receipt of payment of undisputed amounts from Upwork, and without further consideration, grants to Upwork a non-exclusive, perpetual, fully-paid and royalty-free, irrevocable, non-terminable and world-wide right, with rights to sublicense through multiple levels or tiers of sublicensees, to reproduce, make derivative works of, distribute, publicly perform, and publicly display in any form or medium, whether now known or later developed, make, have made, use, sell, import, offer for sale, and exercise any and all present or future rights in the Background Technology incorporated or used in the Work Product.

**5.5 License to or Waiver of Other Rights.** If Freelancer has any right to the Work Product that cannot be assigned by Freelancer to the Upwork Client, Freelancer hereby automatically upon receipt of payment of undisputed amounts from Upwork unconditionally and irrevocably grants to the Upwork Client, without further consideration and during the term of such rights, an exclusive, even as to Freelancer, irrevocable, perpetual, non-terminable, worldwide, fully paid and royalty-free license, with rights to sublicense through multiple levels or tiers of sublicensees, to reproduce, make derivative works of, distribute, publicly perform and publicly display in any form or medium, whether now known or later developed, make, use, sell, import, offer for sale and exercise any and all such rights. If Freelancer has any rights to the Work Product that cannot be assigned or licensed to the Upwork Client, Freelancer hereby automatically upon receipt of payment of undisputed amounts from Upwork unconditionally and irrevocably, without further consideration, waives the enforcement of such rights around the world, and all claims and causes of action of any kind against Upwork, its successors and assigns, or related to Upwork's customers, with respect to such rights, and agrees, at Upwork's request and expense, to consent to and join in any action to enforce such rights.

**5.6 Assistance.** Freelancer agrees to assist Upwork in every way, both during and after the term of this Agreement, to obtain and enforce United States and foreign Intellectual Property Rights relating to Work Product in all countries.

**6. CONFLICTING PROJECTS.** Freelancer may enter into other contracts and accept work from any other persons or entities during the term of this Agreement, except Freelancer agrees not to enter into a contract or accept an obligation that would prevent Freelancer from meeting its obligations under this Agreement. Freelancer represents and warrants that there is no such contract or obligation in effect as of

the Effective Date. Freelancer further agrees not to disclose to, deliver to, or induce Upwork to use any confidential information that belongs to anyone other than Upwork or Freelancer.

## **7. CONFIDENTIAL INFORMATION OF UPWORK.**

**7.1 Confidentiality Obligation.** Freelancer agrees that during the term of this Agreement and thereafter, except as expressly authorized in writing by Upwork, it (a) will not use or permit the use of Confidential Information (defined below) in any manner or for any purpose not expressly set forth in this Agreement; (b) will not disclose, lecture upon, publish, or permit others to disclose, lecture upon, or publish any such Confidential Information to any third party without first obtaining Upwork's express written consent on a case-by-case basis; (c) will limit access to Confidential Information to Freelancer Personnel who need to know such information in connection with their work for Upwork and who are likewise bound by non-use and non-disclosure obligations at least as restrictive as those set forth in this section; (d) will inform Upwork if Freelancer becomes aware of a potential inadvertent disclosure of nonpublic information that may be material; and (e) will not remove any tangible embodiment of any Confidential Information from Upwork's premises without Upwork's prior written consent. "**Confidential Information**" means and includes, but is not limited to, all Work Product and all information related to the business of Upwork or any of its parents, subsidiaries, affiliates, or successors and the actual or anticipated research and development of Upwork or any of its parents, subsidiaries, affiliates, or successors, including without limitation (i) trade secrets, inventions, ideas, processes, computer source and object code, formulae, data, databases, programs, other works of authorship, know-how, improvements, discoveries, developments, designs, and techniques; (ii) information regarding products or plans for research and development, marketing and business plans, budgets, financial statements, contracts, prices, suppliers, and customers; (iii) information regarding the skills and compensation of Upwork's employees, contractors, and any other Freelancers; (iv) the existence of any business discussions, negotiations, or agreements between Upwork and any third party; and (v) all such information related to any third party that is disclosed to Upwork or to Freelancer during the course of the Project. Notwithstanding the foregoing, it is understood that Freelancer is free to use information that is generally known in the trade or industry, information that is not gained as a result of a breach of this Agreement, and Freelancer's own skill, knowledge, know-how, and experience. To the extent Freelancer (1) collects, stores, transmits, discloses, processes, and/or otherwise uses information that identifies a particular individual ("**Personal Information**") or (2) accesses Upwork's computer systems or networks in providing services under this Agreement, Freelancer will comply with the privacy and security requirements in Exhibit 1 to this Agreement: Privacy and Information Security Exhibit ("**Exhibit 1**"), and will ensure Freelancer Personnel comply with such requirements, for the purpose of conforming with applicable laws.

**7.2 Immunity for Certain Disclosures.** As set forth in the Defend Trade Secrets Act, 18 U.S.C. section 1832, please note that a disclosure of trade secrets or other Confidential Information, is immune from prosecution or civil action under U.S. federal or state trade secret law, if the disclosure: (a) is made (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (b) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

**8. TERMS OF ACCEPTABLE USE OF UPWORK SYSTEMS.** If Freelancer is given access to Upwork's network or information systems and resources, including software and hardware (collectively, "**Information Technology Resources**"), in order to provide services under this Project, then this section 8 governs such access. All relevant provisions of this Agreement apply to Freelancer's use of Upwork systems, including obligations concerning the use and disclosure of Confidential Information.

**8.1 Use of Upwork Systems and Resources.** Upwork provides Information Technology Resources solely for the purpose of Freelancer providing services to Upwork. Freelancer may not represent its personal opinions as those of Upwork or disclose any Confidential Information on social media, or any bulletin board, news group, or by participating in a chat room. Freelancer may not use Information Technology Resources to conduct any personal commercial activity, or for personal gain or profit. Freelancer must ensure that all links and references to other websites in its email and other electronic

messages are relevant, appropriate to Upwork's website and business needs, and comply in all respects with this Agreement. Freelancers may not transmit or disseminate any material on or through Information Technology Resources that is protected by copyright, patent, trademark, service mark, or trade secret, unless such disclosure is properly authorized and bears the appropriate notations. Freelancer may not post any Upwork information for anything but legitimate business purposes related to the services provided to Upwork, and only with express consent from Upwork. Freelancer shall not use Information Technology Resources to use, upload, post, mail, display, or otherwise transmit in any manner any content, communication or information that, among other inappropriate uses:

- is hateful, harassing, threatening, libelous or defamatory, pornographic, profane, or sexually explicit;
- may offend, or is deemed by Upwork to offend, any person based on race, ancestry, national origin, sex, gender, gender identity, gender expression, sexual orientation, age, religion, physical or mental disability or medical condition, genetic information, marital status, employment status, housing status, military/veteran status, or any other characteristic or category that may be protected by applicable civil rights laws;
- constitutes or furthers any criminal offense, gives rise to civil liability, under any applicable law, including without limitation U.S. export control laws;
- contains a virus, Trojan horse, logic bomb, worm or other harmful component;
- constitutes a chain letter or a mail-list, or any auto-response program or service;
- violates the security of any computer or network or security encryption code;
- impersonates any person living or dead, organization, business, or other entity;
- harasses any person;
- degrades the performance of network systems;
- deprives an authorized user access to Upwork resources;
- divulges Confidential Information, including trade secrets, proprietary information or competitive advantage information.

## **8.2 Security Measures and Encryption.**

**(a)** Freelancer may not transmit any Upwork Confidential unless it is encrypted and for an authorized business purpose consistent with Freelancer providing services under this Agreement.

**(b)** Unauthorized access or use of another user's computer or network credentials is strictly prohibited. Freelancer may never allow any consultant, visitor, friend, family member, customer, vendor or other unauthorized person to use the Freelancer's network credentials, email address or other Information Technology Resources. Freelancer shall be responsible for any action taken by any person or automated process that accesses the Upwork network using the Freelancer's login information. Freelancer shall notify Upwork immediately if it has reason to believe that any such login information or other credential has been compromised.

**(c)** Freelancer may not download, install or run security programs or utilities, for the purpose of detecting weaknesses in the security of the Upwork network. Concerns about system security should be directed to Upwork at [talentinnovation@upwork.com](mailto:talentinnovation@upwork.com).

**8.3 Upwork's Rights in Its Systems and Resources.** Upwork has the right, but not the duty, to monitor, block or restrict access to Information Technology Resources, or remove content, without prior notice, that is deemed, in Upwork's sole discretion, harmful, offensive, inappropriate, or otherwise in violation of these terms of use, or any other applicable contractual provisions, laws or regulations.

**8.4 Freelancer's Responsibilities.** Freelancer and all users have the responsibility of ensuring that all software, files, and data entering Upwork's computing environment or Information Technology Resources are properly scanned for all potential viruses. Violations must be reported to [talentinnovation@upwork.com](mailto:talentinnovation@upwork.com). All reports of alleged violations of these terms of use will be investigated and, during the course of the investigation, access privileges may be suspended. Violations of the terms of use may result in termination of the Freelancer's services contract and/or civil and criminal prosecution.

**8.5 Return of Upwork Property.** Once Freelancer is no longer providing services to Upwork or no longer requires access to Upwork's Information Technology Resources to provide services to Upwork, Freelancer agrees to return all Upwork property, including any computers, electronic devices, software or other equipment that were provided to Freelancer by Upwork. Freelancer also agrees to (a) cease using Confidential Information, (b) return or destroy Confidential Information and all copies, notes or extracts thereof within seven (7) business days of the end of the User's contract with Upwork, and (c) upon request of Upwork, confirm in writing that Freelancer has complied with the obligations set forth in this section 8.4. Confidential Information shall be destroyed in a manner reasonably designed to render the data unusable, unreadable, and indecipherable by persons or automated processes.

**8.6 Freelancer Acknowledgement.** By accepting this Agreement, Freelancer acknowledges it has received, has read, understands and accepts this section 8 and agrees to abide by the terms of use for Information Technology Resources. At the end of any contract with the Company, Freelancer agrees to return any and all Upwork property in its possession, custody or control, including any computers, mobile devices, or other equipment, documents, data or materials, and to return or destroy any Confidential Information.

**9. FREELANCER'S AGENTS AND SUBCONTRACTORS.** If at any time Freelancer has an employee, independent contractor or any other person or entity performing work on Freelancer's behalf in connection with the Project, Freelancer agrees it remains responsible for the quality of the Work Product and agrees to the following representations and obligations:

**9.1 Project and Performance of Services.**

**(a) General Contractual Requirements and Confidential Information.** Before any employee, independent contractor or other person or entity employed or engaged by Freelancer (collectively, "**Freelancer Personnel**") performs any services in connection with the Project or has access to any Confidential Information, Freelancer will enter into a binding written agreement with such Freelancer Personnel that contains provisions substantially equivalent to or with the same effect as the Agreement sections titled "Intellectual Property Rights," and "Confidential Information of Upwork" and that specifies that Freelancer Personnel do not have any employment relationship with Upwork or any of its parents, subsidiaries, affiliates, or successors and are not entitled to or eligible for any benefits that Upwork or any of its parents, subsidiaries, affiliates, or successors may make available to any of their respective employees. In addition, Freelancer will limit access to Confidential Information to Freelancer Personnel who have a reasonable need to have such access in order to perform services for the Project. Freelancer may not provide any Freelancer Personnel with access to Upwork Information Technology Resources, without express advance written authorization from Upwork.

**(b) Freelancer Personnel Not Employed by Upwork.** Freelancer acknowledges and agrees that Freelancer Personnel are not engaged by, supervised by, directed by or assigned work by Upwork. Freelancer further acknowledges and agrees that Upwork does not determine or control, or have the right to determine or control, any terms and conditions of employment or Project of any Freelancer Personnel, including without limitation their selection, hiring, work assignment, work hours, compensation, work methods, discipline, working conditions, or termination. For the

avoidance of doubt, Freelancer Personnel are not employees of Upwork. Freelancer will be fully responsible for the acts, work and safety of Freelancer Personnel at all times.

**(c) Freelancer Personnel Compensation, Taxes and Benefits.** In accordance with all applicable law, Freelancer will be solely responsible for determining and paying all compensation of Freelancer Personnel and will be solely responsible for and pay any taxes, contributions and/or benefits owed to or on behalf of Freelancer Personnel. Upwork will not be liable to Freelancer or to Freelancer Personnel for Freelancer's failure to perform Freelancer's compensation, tax or benefit obligations with respect to Freelancer Personnel. Freelancer will indemnify, defend and hold Upwork harmless from and against all such taxes, contributions and benefits and will comply with all associated governmental regulations, including the filing of all necessary reports and tax returns.

**(d) Background Screening of Freelancer Personnel.** If requested by Upwork and permitted by applicable law, Freelancer will conduct background checks, drug tests or other reasonable and background screening measures with respect to Freelancer Personnel (the "Screenings") and will be responsible for all costs and fees relating to Screenings. Freelancer will conduct such screening in accordance with applicable laws and will obtain written authorization from Freelancer Personnel to share the results of such screening with Upwork upon request.

**(e) Work Diary.** Freelancer agrees to record and invoice through Work Diary all work performed by any Freelancer Personnel for Projects performed on a time and material or hourly basis under this Agreement. Freelancer acknowledges that Upwork has no obligation to pay Freelancer, and may not approve payment of Freelancer, for time spent on hourly Projects that is not recorded in the Work Diary.

## **9.2 Freelancer Responsible for Freelancer Personnel.**

**(a) Employees.** With respect to Freelancer Personnel, Freelancer is solely responsible for and will comply with all applicable employment laws, including without limitation laws governing workers' compensation, unemployment and disability insurance, health insurance and other employee benefits, wage and hour, employment discrimination and harassment, leaves of absence, and health and safety. Freelancer is responsible for providing meal and rest breaks to employees in accordance with any applicable laws and for complying with all paycheck requirements. If applicable, Freelancer will also comply with all licensing and other regulatory steps necessary to employ workers. Freelancer assumes full responsibility for any claims brought by, on behalf of or in connection with Freelancer's employees (or other Freelancer Personnel alleging they are or should have been classified as employees) and agrees to indemnify, defend and hold Upwork harmless from and against any such claims.

**(b) Independent Contractors.** With respect to Freelancer Personnel, Freelancer is solely responsible for properly classifying and engaging any Freelancer Personnel as independent contractors or as its employees and will comply with all applicable laws defining or governing the independent contractor or employment relationship. Freelancer assumes full responsibility for any claims brought by, on behalf of or in connection with Freelancer Personnel working as independent contractors and agrees to indemnify, defend and hold Upwork harmless from and against any such claims.

**9.3 Intellectual Property Rights.** Freelancer agrees that all copyrightable material, notes, records, drawings, designs, inventions, improvements, developments, discoveries and trade secrets conceived, discovered, developed or reduced to practice by Freelancer Personnel, solely or in collaboration with others, during the term of this Agreement that relate in any manner to the business of Upwork will belong exclusively to Upwork. Freelancer will ensure that Freelancer Personnel execute appropriate agreements with Freelancer to confirm such ownership, narrowed if and to the extent required by applicable law to be enforceable in the applicable jurisdiction, and to confirm that Freelancer Personnel will not challenge the validity of Upwork's ownership in Work Product, including without limitation the Intellectual Property Rights in Work Product.



**9.4 Indemnification.** In addition to the indemnification obligations set forth elsewhere in this Agreement, Freelancer will defend, indemnify, and hold harmless Upwork and its parents, subsidiaries, affiliates, or successors, individually and collectively, against any damage, cost, loss or expense arising from any claim, suit, proceeding, investigation, government inquiry or other action brought against Upwork and/or its parents, subsidiaries, affiliates, or successors (a) alleging that any Freelancer Personnel is an employee of Upwork or any of its parents, subsidiaries, affiliates, or successors or (b) arising out of the failure (whether negligent, willful, intentional, or unintended in cases of strict liability) of Freelancer to comply with this Agreement or any applicable law or regulation.

## **10. FREELANCER'S COVENANTS, REPRESENTATIONS AND WARRANTIES.**

**10.1 Work Product.** Freelancer hereby covenants, represents and warrants to Upwork that (a) Freelancer will perform the services necessary to perform the work required by Upwork in a timely and professional manner, consistent with industry standards, and all in accordance with this Agreement; (b) except any pre-approved Background Technology used or incorporated as part of the Work Product, the Work Product will be an original work of Freelancer and any third parties will have executed assignment of rights prior to being allowed to participate in the development of the Work Product; (c) the Work Product will fully conform to the requirements and terms set forth in this Agreement, including any Project Terms; (d) the Work Product will not contain any virus, Trojan horse, malicious code, trap door, time bomb, or shutdown mechanism, or any other software code or functionality that will "lock" or prevent the use of or access to the Work Product or otherwise cause the Work Product to cease functioning, or which is otherwise designed to harm Upwork systems, servers, computers or websites or those of any of Upwork's parents, subsidiaries, affiliates, or successors; (e) neither the Work Product nor any element thereof will infringe or misappropriate the Intellectual Property Rights of any third party; (f) neither the Work Product nor any element thereof will be subject to any restrictions or to any mortgages, liens, pledges, security interests, or encumbrances; (g) Freelancer will not grant, directly or indirectly, any rights or interest whatsoever in the Work Product to third; (h) Freelancer has full right and power to enter into and perform this Agreement without the consent of any third party; (i) Freelancer has an unqualified right to grant the license to all Background Technology as set forth in the section titled "License to Background Technology"; (j) if Freelancer is required to possess or maintain any license or registration necessary to provide the Work Product or to provide independent contractor services under this Agreement, then it possess such license or registration and will maintain such license or registration during the term of this Agreement; (k) Freelancer will not use or incorporate as part of the Work Product any Open Source Code other than as expressly authorized in this Agreement; and (l) Freelancer will comply with all laws and regulations applicable to Freelancer's obligations under this Agreement.

**10.2 Compliance with Applicable Law.** Freelancer will comply at all times with all applicable laws in providing services under this Agreement or with respect to the use or disclosure of Confidential Information. Without limiting the foregoing, Freelancer represents and warrants that Freelancer will comply with (a) Upwork's Code of Business Conduct, attached hereto as **Exhibit 2**, (b) all securities laws and Upwork's Insider Trading Policy, attached hereto as **Exhibit 3**, and (c) anti-money laundering laws, anti-terrorism laws, and anti-bribery laws, including the Foreign Corrupt Practices Act ("FCPA") and the UK Bribery Act. If Freelancer engages with any government employee, official, or agent (or such other person covered by anti-bribery laws, each such person a "**Government Representative**") in performing services under this Agreement, Freelancer hereby acknowledges and agrees that Freelancer is not authorized to and will not make, allow to be made, or accept any gift, bribe or payment to or from a Government Representative or any third party if Freelancer has reason to know the third party received or may offer the gift, bribe, or payment to a Government Representative.

## **11. UPWORK DISCLAIMER; LIMITATION OF LIABILITY.**

**11.1 Disclaimer.** UPWORK MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE PROJECT, THE PROJECT TERMS, OR IN CONNECTION WITH UPWORK'S PERFORMANCE OF ITS OBLIGATIONS AND RESPONSIBILITIES HEREUNDER, AND FREELANCER ACKNOWLEDGES AND AGREES THAT THE SAME ARE BEING PROVIDED OR

PERFORMED HEREUNDER “AS IS” AND WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND. UPWORK HEREBY EXPRESSLY DISCLAIMS ALL SUCH REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED, WRITTEN, ORAL OR STATUTORY, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, AND/OR VALIDITY. SOME STATES AND JURISDICTIONS DO NOT ALLOW FOR ALL THE FOREGOING EXCLUSIONS, SO TO THAT EXTENT, IF ANY, SOME OR ALL OF THESE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY.

**11.2 Limitation of Liability.** IN NO EVENT WILL UPWORK OR ANY OF ITS PARENTS, SUBSIDIARIES, AFFILIATES, OR SUCCESSORS BE LIABLE TO FREELANCER FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL (INCLUDING WITHOUT LIMITATION, LOST PROFITS), EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF UPWORK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE THEORY OF LIABILITY UNDER WHICH ANY SUCH DAMAGES ARE SOUGHT. SOME STATES AND JURISDICTIONS DO NOT ALLOW FOR ALL THE FOREGOING EXCLUSIONS AND LIMITATIONS OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO TO THAT EXTENT, IF ANY, SOME OR ALL OF THESE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY.

**12. INDEMNIFICATION.** Freelancer will defend, indemnify, and hold harmless Upwork and any of its parents, subsidiaries, affiliates, or successors, individually and collectively, against any and all damage, cost, loss or expense arising from any claim, suit or proceeding, actual or alleged, brought or asserted against Upwork and/or any of its parents, subsidiaries, affiliates, or successors (a) alleging that any Work Product that Freelancer delivers pursuant to this Agreement or the Project infringes upon any intellectual property rights; (b) alleging that any Work Product that Freelancer delivers pursuant to this Agreement or the Project misappropriates any trade secrets of Upwork, and any of its parents and affiliates, or any third party; (c) arising from or related to Freelancer’s breach of any representation or warranty; (d) arising from or related to Freelancer’s failure to pay any taxes or fees due as a result of Freelancer’s work under this Agreement; (e) arising from or related to Freelancer’s failure to comply with any applicable law or regulation; or (f) arising from or related to Freelancer’s breach of any other terms of this Agreement.

**13. INSURANCE.** Freelancer, at its sole cost and expense, will maintain appropriate insurance in accordance with any applicable laws and regulations and in no event less than industry standards and applicable law, including but not limited to unemployment and workers’ compensation insurance. Upon request, Freelancer will furnish proof of insurance in a form acceptable to Upwork.

#### **14. TERM AND TERMINATION.**

**14.1 Term.** The term of this Agreement (the “**Term**”) will begin on the Effective Date and will terminate on the first to occur of: (a) the end date recorded in the Contract Overview section of the Site for the Project; or (b) the date that the Project is completed and thus ended on the Site.

**14.2 Termination with Cause.** Either Party has the right to terminate this Agreement immediately in the event that the other Party has breached the Agreement and, if such breach is curable, fails to cure such breach within 15 days of receipt of notice by the non-breaching Party, setting forth in reasonable detail the nature of the breach. If such breach is material or non-curable, the non-breaching Party may terminate the Agreement immediately by providing written notice, setting forth in reasonable detail the nature of the breach and why it is material or non-curable.

**14.3 Return of Property.** Upon termination of the Agreement or upon Upwork’s request at any other time, Freelancer will deliver to Upwork all of Upwork’s property together with all copies thereof and any other documents or materials that contain any Work Product or Confidential.

**14.4 Survival.** The following provisions will survive the expiration or termination of this Agreement for any reason: sections 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14.3, 14.4, 15, and 16, each including subsections. For purpose of clarity, Freelancer acknowledges and agrees that the license rights and other rights granted by Freelancer in section 5 above are perpetual in nature and will continue in perpetuity notwithstanding the expiration or termination of this Agreement, regardless of the cause, and the expiration or termination of this Agreement will not affect, limit, or otherwise impair such license rights and other rights.

## **15. REPORTING CONCERNS; DISPUTES; ARBITRATION PROVISION.**

**15.1 Reporting Concerns.** Freelancer agrees to report any known and suspected violations of laws, governmental rules and regulations, including federal securities laws and the rules and regulations thereunder to the Freelancer's contact at Upwork or to Upwork's legal department at [legalnotices@upwork.com](mailto:legalnotices@upwork.com). Freelancer may instead report any known or suspected violations anonymously by:

Calling Upwork's compliance hotline toll-free at  
English speaking USA and Canada: 844-630-0060  
Spanish speaking North America: 800-216-1288 (from Mexico user must dial 001-800-216-1288)  
Employees outside of North America: 800-603-2869  
Online at [www.lighthouse-services.com/upwork](http://www.lighthouse-services.com/upwork); or  
By email: [reports@lighthouse-services.com](mailto:reports@lighthouse-services.com) (include Upwork's name in the report);  
By Fax: (215) 689-3885 (include Upwork's name in the report).

**15.2 Dispute Process.** The Parties agree to resolve any claim, dispute, or controversy that arises out of or relates to (a) this Agreement, (b) Freelancer's relationship with Upwork or any of its parents, subsidiaries, affiliates, or successors (including without limitation any claimed employment) or the termination of that relationship, and/or (c) the Site or the Site Services (each, a "**Claim**") in accordance with this section.

**15.3 Informal Dispute Resolution.** Before serving a demand for arbitration of a Claim, or otherwise seeking relief for any Claim, Freelancer and Upwork agree to first notify the other Party (the "**Notice**") and seek informal resolution of the Claim. The Notice must be in writing and include Freelancer's name, pertinent account information, a brief description of the Claim, and the Party's contact information, so that the other Party may evaluate and attempt to informally resolve the Claim. The Party will have 60 days from the date of its receipt of the Notice to informally resolve the Claim, which, if successful, will avoid the need for further action. Notice to Upwork of the Claim will be sent to Upwork, Attn: Legal, via email to [legalnotices@upwork.com](mailto:legalnotices@upwork.com). Notice to Freelancer will be provided to the most current physical or email address on the Site.

**15.4 Mandatory Binding Arbitration and Class Action/Jury Trial Waiver (Does Not Apply to Freelancers Located Outside the United States and Its Territories).** This Mandatory Binding Arbitration and Class Action/Jury Trial Waiver provision ("**Arbitration Provision**") applies to all Freelancers except Freelancers 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, Freelancer and Upwork and any of their parents, subsidiaries, affiliates, or successors agree to resolve the Claim by binding arbitration before an arbitrator from JAMS. JAMS may be contacted at [www.jamsadr.com](http://www.jamsadr.com).

#### **A. Scope of Arbitration Agreement and Conduct of Arbitration**

Arbitration as provided in this Arbitration Provision is governed by the United States Federal Arbitration Act (9 U.S.C. §§ 1 et seq.). This Arbitration Provision applies to any and all Claims (as defined in section 15.2). For the avoidance of doubt, Claims include, but are not limited to, all claims, disputes, or controversies arising out of or relating to this Agreement, the Project, the Terms of Service, escrow payments or agreements, any payments or monies Freelancer claims are due, trade secrets, unfair competition, false advertising, consumer protection, privacy, compensation, classification, minimum wage, seating, expense reimbursement, overtime, breaks and rest periods, termination, discrimination or harassment and all claims arising under the Uniform Trade Secrets Act as enacted in any state, the Civil Rights Act of 1964, the Americans With Disabilities Act, the Age Discrimination in Employment Act, the Family Medical Leave Act, the Fair Labor Standards Act, the Employee Retirement Income Security Act, the Affordable Care Act, the Genetic Information Non-Discrimination Act, all 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 Freelancer's relationship with Upwork or any of its parents, subsidiaries, affiliates, or successors and/or the termination of that relationship. Only with respect to the Arbitration Provision, Claims do not include disputes that may not be subject to a pre-dispute arbitration agreement as provided by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203) and are excluded from the coverage of the Arbitration Provision. 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 under the Optional Expedited Arbitration Procedures then in effect for JAMS. Notwithstanding the foregoing, any Claims by Freelancers that allege employment or worker classification claims will be conducted within 25 miles of where the Freelancer is located in accordance with the JAMS Employment Arbitration Rules and Procedures then in effect. The 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" or "JAMS Employment Arbitration Rules." The Parties agree that any Party will have the right to appear at the arbitration by telephone and/or video rather than in person.

The Parties 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. 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 to which Freelancer is a party that is or was already pending in a state or federal court before the Effective Date. This Arbitration Provision also does not apply to claims for workers compensation, state disability insurance or unemployment insurance benefits. Either Freelancer or Upwork may apply to a court of competent jurisdiction for provisional injunctive relief in connection with an arbitrable controversy, but only upon the ground that the award to which that party may be entitled may be rendered ineffectual without such relief; the arbitrator will render the final judgment in the matter.

Regardless of any other terms of this Arbitration Provision, a claim may be brought by or to, and remedies awarded by, an administrative agency if applicable law permits the agency to adjudicate, investigate or prosecute the claim notwithstanding the existence of this agreement to arbitrate. Such administrative claims include without limitation claims or charges brought before the U.S. Equal Employment Opportunity Commission, the U.S. Department of Labor, or the National Labor Relations Board. Nothing in this Arbitration Provision will be deemed to preclude or excuse a Party from bringing an

administrative claim before any agency in order to fulfill the Party's obligation to exhaust administrative remedies before making a claim in arbitration, if any.

#### **B. Interpretation and Enforcement of this Arbitration Provision**

This Arbitration Provision is the full and complete agreement relating to the formal resolution of Claims. For the avoidance of doubt, this Arbitration Provision covers, and the arbitrator will 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 will be decided by an arbitrator and not by a court. The Parties expressly agree that the arbitrator and not a court or jury will decide any question of whether the parties agreed to arbitrate, including but not limited to any claim that all or part of this Agreement 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 subsection C, below, of this Arbitration Provision is deemed to be unenforceable, the Parties agree that this Arbitration Provision will be enforced to the fullest extent permitted by law.

#### **C. Class Action and Jury Trial Waiver**

The parties understand that this arbitration provision affects their ability to participate in class, collective or representative actions. The Parties agree to bring any dispute in arbitration on an individual basis only, and not on a class, collective, or representative basis on behalf of others. There will be no right or authority for any dispute to be brought, heard or arbitrated as a class, collective, representative or private attorney general action, or as a member in any such class, collective, representative or private attorney general proceeding ("Class Action Waiver"). The Class Action Waiver does not prevent bringing a Claim in arbitration as a private attorney general solely on the Party's own behalf and not on behalf of others. Notwithstanding any other portion of this Arbitration Provision or the JAMS Rules, the arbitrator will have authority to hear any Claim on a class, collective, or representative basis if, only if, and only to the extent that, the arbitrator determines that the waiver of such class, collective, or representative Claim is unenforceable. Freelancer Party will not be retaliated against, disciplined or threatened with discipline as a result of exercising any rights under Section 7 of the National Labor Relations Act, if applicable, by filing or participating in a class, collective or representative action in any forum. However, any Party may lawfully seek enforcement of this arbitration provision and the Class Action Waiver under the Federal Arbitration Act and seek dismissal of such class, collective or representative actions or claims.

### **16. GENERAL PROVISIONS**

**16.1 Choice of Law.** Except as otherwise specifically provided herein, this Agreement and any Claims 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 resided at the time the Project was performed.

**16.2 Severability.** If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will be unimpaired and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. Section 15.4(C) governs severability of the Class Action Waiver.

**16.3 No Assignment.** This Agreement, and the Parties' respective rights and obligations herein, may not be assigned or otherwise transferred by either Party without the other's prior written consent, and any attempted assignment or transfer in violation of the foregoing will be null and void; provided, however Upwork may assign this Agreement, its rights and its obligations to an affiliate or to any successor to its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise. The terms of this Agreement will be binding upon assignees.

**16.4 Injunctive Relief.** Freelancer acknowledges that, because its services are personal and unique and because Freelancer will have access to Confidential Information of Upwork and Upwork Client, any breach of this Agreement by Freelancer would cause irreparable injury to Upwork or Upwork Client for which monetary damages would not be an adequate remedy and, therefore, will entitle Upwork or Upwork Client to injunctive relief (including specific performance). The rights and remedies provided to each Party in this Agreement are cumulative and in addition to any other rights and remedies available to such Party at law or in equity not otherwise waived by this Agreement.

**16.5 Waiver.** Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**16.6 Export.** Freelancer agrees not to export, directly or indirectly, any U.S. technical data acquired from Upwork, Upwork or Upwork Client, or any products utilizing such data, to countries outside the United States, because such export could be in violation of the United States export laws or regulations.

**16.7 Entire Agreement.** This Agreement is the final, complete and exclusive agreement of the Parties with respect to the subject matters hereof and supersedes and merges all prior discussions between the Parties with respect to such subject matters. No modification of or amendment to this Agreement, or any waiver of any rights under this Agreement, will be effective unless in writing and signed by Freelancer and Upwork.

**16.8 Electronic Acceptance.** The Parties expressly agree that this Agreement may be electronically signed and accepted, and that the Site's record of Freelancer's acceptance will be treated, for purposes of validity, enforceability and admissibility, the same as written signatures.

**THE PARTIES AGREE THAT BY ACCEPTING THIS AGREEMENT VIA THE SITE, FREELANCER HAS BOUND ITSELF TO THIS AGREEMENT AND CREATED AN AGREEMENT THAT IS ENFORCEABLE AGAINST BOTH FREELANCER AND UPWORK.**

**FREELANCER ACKNOWLEDGES AND AGREES THAT FREELANCER HAS BEEN GIVEN THE OPPORTUNITY TO OBTAIN INDEPENDENT LEGAL ADVICE WITH RESPECT TO THIS AGREEMENT BEFORE ACCEPTING IT, AND THAT FREELANCER VOLUNTARILY AGREES TO BE BOUND BY THIS AGREEMENT WITH FULL KNOWLEDGE AND UNDERSTANDING OF ITS TERMS.**

**EXHIBIT 1**  
**Privacy and Information Security Exhibit**

To the extent Freelancer (1) collects, stores, transmits, discloses, processes, and/or otherwise uses information that identifies a particular individual (“Personal Information”) or (2) accesses Upwork’s computer systems or networks in providing services under this Agreement, Freelancer will comply with the privacy and security requirements in this Exhibit for the purpose of conforming with applicable laws regarding protection of Personal Information. Freelancer is expected to be familiar with such laws and take whatever additional security measures may be warranted by the particular circumstances.

**Privacy Requirements**

1. **Personal Information:** Freelancer will collect, store, transmit, disclose, process, destroy, or otherwise process Personal Information only (a) for purposes of providing the Services and as otherwise instructed by Upwork, (b) in accordance with this Exhibit 1, and (c) in compliance with applicable law. In the event of any conflict between applicable law and this Exhibit 1, Freelancer will comply with applicable law. Personal Information includes any information related to an identified or identifiable natural person where such information is protected under applicable data protection law.
2. **Notification of Security Incident:** Freelancer will notify Upwork of any actual or suspected security incident involving Personal Information as soon as possible after becoming aware of the incident, but never later than 24 hours after learning of the incident. Freelancer will cooperate with Upwork on any investigation of the security incident. A “security incident” is a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Information transmitted, stored or otherwise processed.
3. **Security Standards:** Freelancer will utilize reasonable and physical, technical and administrative safeguards to protect Personal Information and comply at all times with applicable laws concerning the protection and securing of Personal Information. For as long as Freelancer has access to Personal Information or to Upwork’s systems/networks, Freelancer will update security practices and controls at Freelancer’s own cost.
4. **Malware Protection:** Freelancer will use up-to-date, commercially reasonable virus protection software (i.e. anti-virus) for the duration of the Engagement.
5. **Device and Software Management:** Before the start of the Engagement and at all times while Freelancer accesses any Personal Information or Upwork’s systems/networks, Freelancer will:
  - a. Use up-to-date software and firmware that includes any current patches and updates and that is configured to automatically update/patch;
  - b. Use a firewall to protect Freelancer’s own information systems;
  - c. Use strong, unique passwords of at least 8 characters (with a mix of letters, numbers, and special characters where possible) for access to devices and applications;
  - d. Use password-activated screensavers to lock hardware or devices after a period of inactivity;
  - e. Configure devices and applications to require new passwords at least every 90 days;

- f. Ensure that multiple failed login attempts (no more than 10) to devices and applications result in lockout (check security settings on applications); and
- g. Disable Bluetooth on devices (except when use is necessary).

**6. Secure Practices:**

- a. Freelancer will only connect to trusted, private wireless networks that use complex passwords not known or easily accessible to the public (e.g., not Starbucks).
- b. Freelancer will not share hardware or devices with other people (roommates, spouses, children, etc.) while performing the Engagement until all Personal Information is removed/destroyed from the hardware or device. Hardware and devices shall be housed in secure places when not in use.
- c. Freelancer will not download and install unsolicited software. Software downloaded to hardware or devices that connect to Upwork's systems/network could be used to distribute malware.
- d. Freelancer will not share passwords used to access Personal Information with anyone or post passwords near hardware or devices.

**7. Disposal:** When no longer needed for the Engagement, and always upon completion of the Engagement or at Upwork's request, Freelancer will return all Personal Information received, compiled or created in the course of the Engagement. Further, Freelancer will securely delete any and all copies of such Personal Information (including backups) in Freelancer's possession (e.g., hard copies shredded, desktop/email trashcan emptied, etc.). Personal Information in electronic form will be deleted with a "wiping" program that overwrites data on the hardware; paper documents containing Personal Information will be shredded. Deleting files using standard keyboard commands is not sufficient because data may remain on the computer's hard drive. Wiping programs are available at most office supply stores. Freelancer understands that a failure to delete Personal Information in Freelancer's possession after completion of the Engagement may constitute theft of Personal Information.

**8. Data Protection:**

- a. Freelancer will not disclose Personal Information to a subcontractor without Upwork's prior, written consent. Freelancer will not disclose Personal Information to any other third party without Upwork's prior, written consent except as required by law. Freelancer will not ever sell Personal Information. Freelancer will promptly notify Upwork of any legally binding request for the production or disclosure of Personal Information (unless prohibited by law from doing so) to allow Upwork sufficient time to object to the request.
- b. Freelancer will not attempt to link, identify, or otherwise create a relationship between Personal Information made available to Freelancer by Upwork with any other data without the express authorization of Upwork.
- c. In the event Freelancer access to, or storage of, Personal Information results in the transfer of Personal Information to a country outside the country where the Personal Information originated, Freelancer will, at Upwork's request and to the extent required by applicable law, take such reasonable steps as Upwork deems necessary



(e.g., execute a data transfer agreement) to comply with any law in the country of origin that restricts the international transfer of Personal Information.

- d. Freelancer will cooperate with Upwork's reasonable request for assistance in responding to a request to Upwork by an individual to exercise his or her rights under applicable data protection law, including but not limited to requests to delete Personal Information and requests to access Personal Information. In the event Freelancer receives such a request directly from an individual concerning Personal Information in Freelancer's possession, Freelancer will promptly forward the request to Upwork so that Upwork can respond to the individual.
- e. Freelancer will make available, upon Upwork's reasonable request, information necessary to demonstrate compliance with this Exhibit 1 and will allow for audits or inspection by Upwork or its designee concerning Freelancer's handling of Personal Information in accordance with this Exhibit 1.
- f. In the event the Personal Information relates to an individual located in the European Economic Area, Upwork's Privacy Policy describes the nature and purpose of the processing of Personal Information, the type of Personal Information processed, and the categories of data subjects.

Additional information on best practices for protecting Personal Information may be found at <https://www.bulkorder.ftc.gov/publications/protecting-personal-information-guide-business>. Freelancer is encouraged to obtain and read a copy of this free publication.

## EXHIBIT 2

<b>Policy Name: Code of Business Conduct and Ethics</b>	<b>Public</b>
<b>Owner: Compliance Officer</b>	<b>Policy applies to: All employees, independent contractors, officers and directors (collectively, "Service Providers")</b>
<b>Last Updated: August 30, 2018</b>	

### General Statement of Policy

Upwork Inc. (collectively with its subsidiaries, "**Upwork**", "**we**", "**our**" or "**us**") is committed to promoting high standards of honest and ethical business conduct and compliance with applicable laws, rules and regulations that are applicable to its business. As part of this commitment, Upwork has adopted this Code of Business Conduct and Ethics (this "**Code**"). The Board of Directors (the "**Board**") and Upwork's management have adopted this Code to set expectations and provide guidance applicable to every Upwork Service Provider.

It is the policy of Upwork that all of its Service Providers adhere to the following principles:

- Honesty and candor in our activities, including observance of the spirit, as well as the letter of the law;
- Avoidance of conflicts between personal interests and the interests of Upwork, or even the appearance of such conflicts;
- Avoidance of payments to candidates running for government posts or other government officials;
- Compliance with generally accepted accounting principles and controls;
- Maintenance of our reputation and avoidance of activities which might reflect adversely on Upwork; and
- Integrity in dealing with the Upwork's assets.

Upwork will take appropriate action if anyone violates the standards in this Code, including disciplinary action, which, in appropriate circumstances, may include termination of employment for cause (for employees), termination of contract or assignment, removal from the Board (for directors), legal action or referral for criminal prosecution.

### Responsibilities

- *Understand the Policy.* You are responsible for reading and understanding this Code, and using it as a guide to the performance of your work for Upwork.
- *Do Not Encourage Violations.* No one has the authority to make you violate this Code, and any attempt to direct or otherwise influence someone else to commit a violation is unacceptable.

- *Use Common Sense.* This Code cannot address every ethical issue or circumstance that may arise; so, in complying with the letter and spirit of this Code, it is your responsibility to apply common sense, together with high personal standards of ethics, honesty and accountability, in making business decisions where there is no specific guideline under this Code.
- *Conduct of Family Members.* You should consider not only your own conduct, but also that of your family members. Throughout this Code, the term “family member” refers to a person’s spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such Service Provider’s home.

In addition, we expect you to comply with all other Company policies and procedures that may apply to you, many of which supplement this Code by providing more detailed guidance. We may modify or update these specific policies and procedures from time to time, and adopt new Company policies and procedures in the future. Service Providers are responsible for reviewing the policies posted on Upwork’s intranet on Jostle, What’s Up (<https://platform.jostle.us/>).

Nothing in this Code is intended to alter existing legal rights and obligations of Upwork or any of its Service Providers, including “at will” employment arrangements (for employees) or the terms of any service-related agreement we may have with you.

### Scope

- *Expectations.* We expect all of our directors, executives, managers and other supervisory personnel to act with honesty and integrity, use due care and diligence in performing responsibilities to Upwork to help maintain a sense of commitment to this Code among all our Service Providers, and foster a culture of fairness, honesty and accountability within Upwork.
- *Agents and Contractors.* We also expect Upwork’s agents and contractors to conform to the standards of this Code when working on our behalf, especially when such agents and contractors have been engaged by Upwork’s Board or its committees, and for Service Providers to notify the Compliance Officer regarding potential violations.

### Assistance

*Contact Your Supervisor or the Compliance Officer.* If you need help understanding this Code, or how it applies to conduct in any given situation, you should contact your supervisor, if applicable, or the Compliance Officer. The Compliance Officer and his or her contact information are identified under the “Legal” section on Upwork’s intranet on Jostle, What’s Up (<https://platform.jostle.us/>).

- *Report Violations.* In addition, you should be alert to possible violations of this Code by others and should report suspected violations, without fear of any form of retaliation, as described in Upwork’s Whistleblower Policy.

### **Obey the Law**

### Legal Compliance

- *Understand the Legal and Regulatory Requirements.* It is essential that you know and understand the legal and regulatory requirements that apply to our business and to your specific area of responsibility or work. While you are not expected to have complete mastery of these laws, rules and regulations, you are expected to be able to recognize situations that require you to consult with others to determine the appropriate course of action. If you have a question in the area of legal compliance, you should approach your supervisor or the Compliance Officer immediately.
- *Obey the Law.* You must always obey the law while performing your work for Upwork.

### Insider Trading

- *Do Not Trade Upwork Securities Based on Non-public Information.* Every Service Provider is prohibited from using “inside” or material nonpublic information about Upwork, or about companies with which we do business, in connection with buying or selling our or such other companies’ securities, including “tipping” others who might make an investment decision on the basis of this information. Service Providers who have access to inside information are not permitted to use or share inside information for stock trading purposes or for any other purpose except to conduct Company business.
- *Exercise Care.* Service Providers must exercise the utmost care when in possession of material nonpublic information. Upwork’s Insider Trading Policy provides guidance on the types of information that might be nonpublic and material for these purposes, and guidelines on when and how you may purchase or sell shares of Upwork stock or other Upwork securities.

Please review Upwork’s Insider Trading Policy for additional information.

### International Business Laws

We expect Service Providers to comply with U.S. laws, rules and regulations governing the conduct of business by U.S. citizens and corporations outside the United States. You are also expected to comply with all applicable laws wherever you travel on Company business, including laws prohibiting bribery, corruption or the conduct of business with specified individuals, companies or countries.

These U.S. laws, rules and regulations, which extend to all our activities outside the United States, include:

- the U.S. Foreign Corrupt Practices Act;
- United States embargoes;
- travel and export controls; and
- antiboycott compliance.

For more information, please see Upwork’s Anti-Corruption Policy, Export Control Guidelines and any other related policies that Upwork may adopt from time to time. If you have a question as to whether

an activity is restricted or prohibited, please contact your supervisor, if applicable, or the Compliance Officer before taking any action.

### Lawsuits and Legal Proceedings

- *Record Preservation.* Upwork complies with all laws and regulations regarding the preservation of records. Lawsuits, legal proceedings and investigations concerning Upwork must be handled promptly and properly. You must contact the Chief Legal Officer immediately if you receive a court order or a court issued document, or notice of a threatened lawsuit, legal proceeding or investigation.
- *Do Not Alter or Destroy Documents During a Legal Hold.* A legal hold suspends all document destruction procedures in order to preserve appropriate records under special circumstances, such as litigation or government investigations. When there is a “legal hold” in place, you may not alter, destroy or discard documents relevant to the lawsuit, legal proceeding or investigation. The Chief Legal Officer determines and identifies what types of records or documents are required to be placed under a legal hold and will notify employees if a legal hold is placed on records for which they are responsible.
- *Do Not Discuss Legal Disputes.* If you are involved on Upwork’s behalf in a lawsuit or other legal dispute, you must avoid discussing it with anyone inside or outside of Upwork without prior approval of the Legal Department. Employees are required to cooperate fully with the Legal Department in the course of any lawsuit, legal proceeding or investigation.

### Ethical Obligations

#### Candor Among Employees and in Dealing with Auditors and Counsel

- *Do Not Conceal Violations.* Upwork’s senior management must be informed at all times of matters that might adversely affect Upwork’s reputation, regardless of the source of such information. Moreover, complete candor is essential in dealing with Upwork’s independent auditors and attorneys. You should inform your direct manager or Human Resources (for employees) or the head of the Talent Innovation Program or the Compliance Officer (for other Service Providers) of any such information of which you become aware.

### Conflicts of Interest

- *Definition.* A “conflict of interest” occurs when a personal interest interferes in any way (or even appears or could reasonably be expected to interfere) with the interests of Upwork as a whole.
- *Avoid Conflicts of Interest.* We expect our Service Providers to avoid actual or apparent conflicts of interest with Upwork.
- *Outside Interests.* Sometimes conflicts of interest arise when a Service Provider takes some action or has some outside interest, duty, responsibility or obligation (including a fiduciary interest owed to others) that conflicts with an interest of Upwork or his or her duty to Upwork. For example, a full-time employee’s primary work obligation is to Upwork. Outside activities,

such as a second job or self-employment, must be kept entirely separate from employment with Upwork.

- *Family Members.* A conflict of interest can arise when a Service Provider or relative of the Service Provider takes actions or has interests that may make it difficult for the Service Provider to perform his or her duties objectively and effectively. Conflicts of interest can also arise when a Service Provider or relative of the Service Provider receives improper personal benefits as a result of a relationship with the Company.

In evaluating whether an actual or contemplated activity may involve a conflict of interest, you should consider:

- whether the activity would appear improper to an outsider;
- whether the activity could interfere with the performance of your obligations to Upwork or that of another Service Provider;
- whether you or the Service Provider has access to confidential Company information or influence over significant Company resources or decisions;
- the potential impact of the activity on Upwork's business relationships, including relationships with users, partners, suppliers and other Service Providers;
- the extent to which the activity could benefit the Service Provider or a family member of the Service Provider, directly or indirectly;
- any overlap between your specific duties to Upwork and duties to another person or company; and
- if an investment is in a publicly traded or non-publicly traded company.

A few examples of activities that could involve conflicts of interests include:

- *Aiding our competitors in violation of your obligations to Upwork.* For example, this could take the form of service as an employee or a member of the board of directors of a competitor, passing confidential Company information to a competitor, or accepting payments or other benefits from a competitor.
- *Involvement with any business that does business with us or seeks to do business with us.* Employees, officers and directors are discouraged from being employed by or providing service on the board of directors of a user, partner, supplier or service provider, and you must seek authorization in advance if you plan to have such a relationship.
- *Owning a significant financial interest in a competitor or a business that does business with us or seeks to do business with us.* In evaluating such interests for conflicts, both direct and indirect interests that a Service Provider may have should be considered, along with factors such as the following:

- the size and nature of the Service Provider's interest;
- the nature of Upwork's relationship with the other entity;
- whether the Service Provider has access to confidential Company information; and
- whether the Service Provider has an ability to influence Company decisions that would affect the other entity.

If you have or wish to acquire a significant financial interest in a competitor, or in a user, partner, supplier or Service Provider with which you have direct business dealings on behalf of Upwork (or approval responsibilities, if applicable), you must consult with the Compliance Officer. Similarly, if you experience a change of position or seniority, if applicable, that results in your having direct business dealings with a user, partner, supplier or Service Provider in which you already have a significant financial interest, you must consult with the Compliance Officer.

- *Soliciting or accepting payments, gifts, loans, favors or preferential treatment from any person or entity that does or seeks to do business with us.* See "Gifts and Entertainment" below for further discussion of the issues involved in this type of conflict.
- *Taking personal advantage of corporate opportunities.* See "Corporate Opportunities" below for further discussion of the issues involved in this type of conflict.
- *Having authority on behalf of Upwork over a coworker who is also a family member, or transacting business on behalf of Upwork with a family member.* The Service Provider who may be involved in such a situation should consult with his or her supervisor and the Compliance Officer to assess the situation and an appropriate resolution.

You must avoid these situations (and others like them) where your loyalty to Upwork could be compromised. If you believe that you are involved in a potential conflict of interest, you are expected to discuss it with the Compliance Officer.

- *Directors' Conflicts of Interest.* Like other Service Providers, directors also should seek to avoid conflicts of interest with their obligations to Upwork. See "Corporate Opportunities" below for more information.

### ***Special Note Regarding Loans***

Loans to certain Service Providers or their family members by Upwork, or guarantees of their loan obligations, could constitute an improper personal benefit to the recipients of these loans or guarantees. Accordingly, beginning with the adoption of this Code, Company loans and guarantees for executive officers and directors are expressly prohibited by law and Company policy. In addition, Compensation Committee approval is required for any Company loan to any other employee.

### **Corporate Opportunities**

Service Providers may not exploit or take advantage of business opportunities that are discovered through the use of Upwork's property or information or your services to Upwork for personal gain

unless the opportunity is disclosed fully in writing to Upwork and Upwork declines to pursue such opportunity. Service Providers should consult the Compliance Officer to determine an appropriate course of action if interested in pursuing an opportunity discovered through the use of Upwork's property or information or your services to Upwork.

#### Maintenance of Corporate Books, Records, Documents and Accounts; Financial Integrity; Public Reporting

We strive to maintain integrity of our records and public disclosure. Our corporate and business records, including all supporting entries to our books of account, must be completed honestly, accurately and understandably. We depend on our books, records and accounts accurately and fairly reflecting, in reasonable detail, our assets, liabilities, revenues, costs and expenses, as well as all transactions and changes in assets and liabilities.

To help ensure the integrity of our records and public disclosure, we require that:

- no entry be made in our books and records that is intentionally false or misleading;
- transactions be supported by appropriate documentation;
- the terms of sales and other commercial transactions be reflected accurately in the documentation for those transactions and all such documentation be reflected accurately in our books and records;
- Service Providers comply with our system of internal controls and be held accountable for their entries;
- any off-balance sheet arrangements of Upwork are clearly and appropriately disclosed;
- Service Providers work cooperatively with Upwork's independent auditors in their review of Upwork's financial statements and disclosure documents;
- no cash or other assets be maintained for any purpose in any unrecorded or "off-the-books" fund; and
- records be retained or destroyed according to Upwork's document retention policies or procedures then in effect.

Our disclosure controls and procedures are designed to help ensure that Upwork's reports and documents filed with or submitted to the United States Securities and Exchange Commission (the "**SEC**") and other public disclosures are complete, fair and accurate, fairly present our financial condition and results of operations and are timely and understandable.

Service Providers who collect, provide or analyze information for or otherwise contribute in any way in preparing or verifying these reports should adhere to all disclosure controls and procedures and generally assist Upwork in producing financial disclosures that contain all of the information about



Upwork that is required by law and would be important to enable investors to understand our business and its attendant risks. In particular:

- no Service Provider may take or authorize any action that would cause Upwork's financial records or financial disclosure to fail to comply with generally accepted accounting principles, the rules and regulations of the SEC or other applicable laws, rules and regulations;
- all Service Providers must cooperate fully with our finance department, as well as our independent auditors and legal counsel, respond to their questions with candor and provide them with complete and accurate information to help ensure that Upwork's books and records, as well as its reports filed with the SEC, are accurate and complete; and
- no Service Provider should knowingly make (or cause or encourage any other person to make) any false or misleading statement in any of Upwork's reports filed with the SEC or knowingly omit (or cause or encourage any other person to omit) any information necessary to make the disclosure in any of such reports accurate in all material respects.

In connection with the preparation of the financial and other disclosures that we make to the public, including by press release or filing a document with the SEC, directors must, in addition to complying with all applicable laws, rules and regulations, follow these guidelines:

- act honestly, ethically and with integrity;
- comply with this Code;
- endeavor to ensure complete, fair, accurate, timely and understandable disclosure in our filings with the SEC;
- raise questions and concerns regarding our public disclosures when necessary and ensure that such questions and concerns are appropriately addressed;
- act in good faith in accordance with the director's business judgment, without misrepresenting material facts or allowing independent judgment to be subordinated by others; and
- comply with our disclosure controls and procedures and internal controls over financial reporting.

If you become aware that our public disclosures are not full, fair and accurate, or if you become aware of a transaction or development that you believe may require disclosure, you should report the matter immediately to your supervisor, if applicable, or the Compliance Officer.

#### Conduct of Senior Financial Personnel

Our finance department has a special responsibility to promote integrity throughout the organization, with responsibilities to stakeholders both inside and outside of Upwork. As such, the Board requires that the Chief Executive Officer and senior personnel in our finance department adhere to the following ethical principles and accept the obligation to foster a culture throughout Upwork as a whole that ensures the accurate and timely reporting of our financial results and condition.

Because of this special role, we require that the Chief Executive Officer, Chief Financial Officer, Controller and any other persons performing similar functions ("**Senior Financial Employees**") to:

- act with honesty and integrity and use due care and diligence in performing his or her responsibilities to Upwork;
- avoid situations that represent actual or apparent conflicts of interest with his or her responsibilities to Upwork, and disclose promptly to the Nominating and Governance Committee any transaction or personal or professional relationship that reasonably could be expected to give rise to such an actual or apparent conflict. Without limiting the foregoing, and for the sake of avoiding an implication of impropriety, Senior Financial Employees will not:
  - accept any material gift or other gratuitous benefit from a user, business partner, supplier or vendor of products or services, including professional services, to Upwork (this prohibition is not intended to preclude ordinary course entertainment or similar social events);
  - except with the approval of the disinterested members of the Board, directly invest in any privately-held company that is a user, business partner, supplier or vendor of Upwork where the Senior Financial Employee, either directly or through people in his or her chain of command, has responsibility or ability to affect or implement Upwork's relationship with the other company; or
  - maintain more than a passive investment of greater than 1% of the outstanding shares of a public company that is a user, business partner, supplier or vendor of Upwork;
- provide constituents with information that is accurate, complete, objective, relevant, timely and understandable, including information for inclusion in our submissions to governmental agencies or in public statements;
- comply with applicable laws, rules and regulations of federal, state and local governments, and of any applicable public or private regulatory and listing authorities; and
- achieve responsible use of and control over all assets and resources entrusted to each Senior Financial Employee.

#### Gifts and Entertainment

You must be careful to avoid even the appearance of impropriety in giving or receiving gifts other than of nominal value and entertainment. In general, you cannot offer, provide or accept any gifts other than of nominal value or entertainment in connection with your service to Upwork except in a manner consistent with customary business practices, such as customary and reasonable meals and entertainment.

- *Gifts Should Not Be Excessive.* Gifts and entertainment must not be excessive in value, in cash, susceptible of being construed as a bribe or kickback or in violation of any laws. This principle applies to our transactions everywhere in the world, even if it conflicts with local custom.

- *Discuss Potential Gifts With Our Compliance Officer.* Discuss with your supervisor, if applicable, or the Compliance Officer any proposed entertainment or gifts if you are uncertain about their appropriateness, especially with government officials. For additional information, please see Upwork's Anti-Corruption Policy.

#### Political Contributions and Gifts

- *Political Contributions from Upwork.* Upwork does not make contributions or payments that could be considered a contribution to a political party or candidate, or to intermediary organizations such as political action committees without prior approval from the Compliance Officer.
- *Personal Contributions Are Acceptable.* You are free to make personal political contributions within legal limits. You should not make these contributions in a way that might appear to be an endorsement or contribution by Upwork. Upwork will not reimburse you for any political contribution.

#### **Treat Others Inside and Outside of Upwork Fairly and Honestly**

##### Competition and Fair Dealing

We strive to compete vigorously and to gain advantages over our competitors through superior business performance, not through unethical or illegal business practices.

- *Improper Conduct.* No Service Provider may through improper means acquire proprietary information from others, possess trade secret information, or induce disclosure of confidential information from past or present service providers of other companies. If you have obtained information of this variety by mistake, or if you have any questions about the legality of future actions, you must consult your supervisor, if applicable, or the Compliance Officer.
- *Maintain Integrity.* You are expected to deal fairly and honestly with Upwork's users, partners, suppliers and Service Providers, and anyone else with whom you have contact in the course of performing your duties to Upwork. The making of false or misleading statements about Upwork's competitors is prohibited by this Code, inconsistent with Upwork's reputation for integrity and harmful to Upwork's business. You may not take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misuse of confidential information, misrepresentation of material facts or any other unfair business practice.
- *Favoritism is Prohibited.* Service Providers involved in procurement have a special responsibility to adhere to principles of fair competition in the purchase of products and services by selecting suppliers based exclusively on typical commercial considerations, such as quality, cost, availability, service and reputation, and not on the receipt of special favors. Such Service Providers must award orders, contracts and commitment to suppliers of goods or services without favoritism. Company business of this nature must be conducted strictly on the basis of merit.

Service Providers involved in sales have a special responsibility to abide by all Company policies regarding selling activities, including Company policies relevant to revenue recognition. No Service Provider may accept personal fees or commissions in connection with any transactions on behalf of Upwork.

### ***Special Note regarding Antitrust Laws***

Antitrust laws are designed to protect users and the competitive process. These laws generally prohibit Upwork from establishing:

- price fixing arrangements with competitors;
- arrangements with competitors to share pricing information or other competitive marketing information, or to allocate markets or users;
- agreements with competitors or users to boycott particular business partners, users or competitors; or
- a monopoly or attempted monopoly through anti-competitive conduct.

Some kinds of information should never be exchanged with competitors, regardless of how innocent or casual the exchange may be, because even where no formal arrangement exists, merely exchanging information can create the appearance of an improper arrangement.

- *Do Not Discuss Pricing or Other Confidential Information With Customers.* In all contacts with competitors, whether at trade/business association meetings or in other venues, do not discuss pricing policy, contract terms, costs, marketing and product plans, and market surveys and studies; and, of course, any other proprietary or confidential information. Discussion of these subjects or collaboration on them with competitors can be illegal. If a competitor raises any of them, even lightly or with apparent innocence, you should object, stop the conversation immediately and tell the competitor that under no circumstances will you discuss these matters.
- *Consequences of Noncompliance.* Noncompliance with the antitrust laws can have extremely negative consequences for Upwork, including long and costly investigations and lawsuits, substantial fines or damages and negative publicity.
- *Seek Assistance.* Understanding the requirements of antitrust and unfair competition laws of the jurisdictions where Upwork does business can be difficult, and you are urged to seek assistance from your supervisor, if applicable, or the Compliance Officer whenever you have a question relating to these laws.

In summary, disassociate yourself and Upwork from participation in any possibly illegal activity with competitors. Confine your communication to what is clearly legal and proper. If necessary, you should leave the meeting. Finally, report immediately to your direct manager, Human Resources, or the Talent Innovation Program Manager any incident involving a prohibited subject.

### **Confidentiality**

We depend upon our confidential information, and rely on a combination of patent, copyright and trademark laws, trade secrets, confidentiality procedures and contractual provisions to protect it.

- *Confidential Information.* Confidential information includes all nonpublic information that might be useful to competitors or harmful to Upwork or its users if disclosed, including business, marketing, product and service plans, business and pricing strategies, financial information, forecasts, product architecture, non-distributed source code, engineering ideas, designs, databases, salary and personnel information, user lists and data as well as other trade secrets, all of which is more fully described in the invention assignment and confidentiality agreement (or similar agreement) that each Service Provider signed in connection with his or her service to Upwork, and similar types of information provided to us by our users, suppliers and partners.
- *Maintain Confidentiality.* We cannot protect our confidential information without your help. Anyone who has had access to confidential Company information must keep it confidential at all times and use it only for Company purposes, both while providing services for Upwork and after service ends.
- *No Sharing of Confidential Information.* You must not share confidential Company information, or any confidential information of a user, partner, supplier or service provider with anyone who has not been authorized to receive it, except when disclosure is authorized or legally mandated (you should consult with the Compliance Officer if you believe disclosure of such confidential information is legally mandated). Unauthorized use or distribution of this information is extremely serious; it would violate your invention assignment and confidentiality agreement (or similar agreement) and it could be illegal and result in civil liability or criminal penalties.
- *Protect Confidential Information.* You must take precautions to prevent unauthorized disclosure of confidential information. Accordingly, you should also take steps to ensure that business-related paperwork and documents are produced, copied, faxed, filed, stored and discarded by means designed to minimize the risk that unauthorized persons might obtain access to confidential information.
- *Be Careful of Public Forums.* You should not discuss sensitive matters or confidential information in public places, including any social media platforms, and you should avoid discussing confidential information on cellular phones where you can be overheard to the extent practicable.
- *Do Not Forward Information Outside of Upwork.* All Company emails, voicemails and other communications are presumed confidential and should not be forwarded or otherwise disseminated outside of Upwork, except where required for legitimate business purposes.

As applicable, you are required to observe the provisions of any other specific policy regarding privacy and confidential information that we may adopt from time to time.

#### Protection and Proper Use of Company Assets

- *Protect Company Property.* All Service Providers are expected to protect Upwork's assets and ensure their efficient use for legitimate business purposes. Theft, carelessness and waste have a direct impact on Upwork's business and operating results.

- *Use of Company Property.* Company property, such as computer equipment, buildings, furniture and office supplies, should be used only for activities related to your service to Upwork, although incidental personal use is permitted.
- *Monitoring of Company Property.* Please bear in mind that we retain the right to access, review, monitor and disclose any information transmitted, received or stored using our electronic equipment, with or without a Service Provider's or third party's knowledge, consent or approval. Any misuse or suspected misuse of our assets must be immediately reported to your supervisor, if applicable, or the Compliance Officer.

### Environmental, Health and Safety Standards

Upwork and its employees are required to comply with all applicable environmental, health and safety laws and regulations.

### Work Relationships and Equal Employment Opportunity

No employee will give or receive any special consideration to the conditions of employment of another employee due to family or personal relationships. No employment decisions, whether they be decisions to hire, employ, promote, transfer, change compensation, or bar or discharge from employment, shall be based in whole or in part upon considerations of:

- age (40 and above)
- race
- creed
- religion
- color
- national origin
- ancestry, sex, gender
- gender identity or gender expression
- pregnancy (as well as childbirth and related medical conditions)
- disability (mental and physical)
- sexual orientation
- medical condition (including cancer, or a record or history of cancer)
- genetic information
- veteran status
- marital or domestic partnership status
- family and medical care leave status

or any other category protected under federal or applicable state or local law, regulation or ordinance (including, in San Francisco, height and weight) of any individual, unless based upon a bona fide occupational qualification or other exception.

Upwork is an equal opportunity employer. Upwork is dedicated to ensuring the fulfillment of this policy with respect to hiring, placement, promotion, transfer, demotion, lay-off, termination, recruitment, advertising, rates of pay or other forms of compensation, selection for training and general treatment during employment. This includes making reasonable accommodations for applicants and employees

with disabilities unless the accommodation would impose an undue hardship on the operation of our business.

In addition, it is Upwork's policy to prohibit harassment of any employee by a manager, supervisor, co-worker, supplier, independent contractor, user or visitor on the basis of the above-mentioned classifications, including gender. The purpose of this policy is to ensure that at Upwork all employees are free from harassment on the basis of all the above-mentioned classifications including but not limited to gender.

## **Administrative Matters**

### Amendment and Waiver

Any amendment or waiver of this Code that applies to any of Upwork's directors or executive officers must be in writing and must be authorized by our Board or, to the extent permissible under applicable laws, rules and regulations, the Audit Committee. Any such amendment or waiver may be publicly disclosed if required by applicable laws, rules and regulations.

### Compliance Standards and Procedures

#### ***Compliance Resources***

Upwork has an obligation to promote ethical behavior. Every Service Provider is encouraged to talk to his or her supervisor, if applicable, Human Resources, or the Talent Innovation Program Manager and other appropriate personnel when in doubt about the application of any provision of this Code.

In addition to fielding questions with respect to interpretation or potential violations of this Code, the Compliance Officer is responsible for:

- investigating possible violations of this Code;
- training new Service Providers in Code policies;
- conducting training sessions to refresh Service Providers' familiarity with this Code;
- recommending updates to this Code as needed for approval by the Nominating and Governance Committee, to reflect changes in the law, Company operations and recognized best practices, and to reflect Company experience with this Code; and
- otherwise promoting an atmosphere of responsible and ethical conduct.

The Compliance Officer and his or her contact information are identified under the "Legal" section of Upwork's intranet on Jostle, What's Up (<https://platform.jostle.us/>).

- *Contact Your Supervisor, If Applicable.* Your supervisor is the most immediate resource for any matter related to this Code. He or she may have relevant information or may be able to refer questions to another appropriate source.

- *Contact the Talent Innovation Program Manager, If Applicable.* Service Providers engaged through the Talent Innovation Program as independent contractors can reach out to the Talent Innovation Program Manager with any questions related to this Code.
- *Contact Our Compliance Officer.* There may be times when you prefer not to go to your supervisor. In these instances, you should feel free to discuss your concern with the Compliance Officer.
- *Alternate Resources.* If you are uncomfortable speaking with the Compliance Officer because he or she works in your department or is one of your supervisors, please contact the Chair of the Audit Committee (for matters related to accounting, internal accounting, controls or auditing) or the Chair of the Nominating and Governance Committee (for matters related to violations of federal, state or other laws (including securities laws) and all other matters), or follow the procedures outlined in Upwork's Whistleblower Policy, which includes procedures for anonymous submission of reports or complaints, if desired.

### **Clarifying Questions and Concerns; Reporting Possible Violations**

If you encounter a situation or are considering a course of action and its appropriateness is unclear, you should discuss the matter promptly with your supervisor, if applicable, or the Compliance Officer; even the appearance of impropriety can be very damaging to Upwork and should be avoided.

- *Do Not Conceal Violations.* If you are aware of a suspected or actual violation of this Code by others, it is your responsibility to report it. Failure to report such events constitute a violation of this Code. Reporting procedures, including anonymous reporting procedures, are described in the Whistleblower Policy.
- *Retaliation.* You should raise questions or report potential violations of this Code without any fear of retaliation in any form – it is our policy not to retaliate in such circumstances and we will take prompt disciplinary action, up to and including termination of employment for cause, against any director, officer or Service Provider who retaliates against you.

Supervisors and the Talent Innovation Program Manager must promptly report any complaints or observations of Code violations to the Compliance Officer. The Compliance Officer will investigate all reported possible Code violations promptly and with the highest degree of confidentiality that is possible under the specific circumstances. As needed, the Compliance Officer will consult with the Legal Department, the Human Resources Department, the Nominating and Governance Committee and/or the Audit Committee.

If the investigation indicates that a violation of this Code has probably occurred, we will take such action as we believe to be appropriate under the circumstances. If we determine that a Service Provider is responsible for a Code violation, he or she will be subject to disciplinary action up to, and including, termination of service arrangement for cause, if applicable, and, in appropriate cases, civil action or referral for criminal prosecution. Appropriate action may also be taken to deter any future Code violations.



### Anonymous Reporting of Possible Violations

Employees who wish to anonymously submit a concern or complaint regarding a possible violation of this Code should follow the procedures outlined in Upwork's Whistleblower Policy.

### **No Rights Created**

This Code is a statement of fundamental principles, policies and procedures that govern the conduct of Upwork's Service Providers in the conduct of Company business. It is not intended to and does not create any legal rights for any user, partner, supplier, vendor, competitor, stockholder or any other non-employee or entity.

### **Administration of this Code**

The Audit Committee may request reports from Upwork's senior officers about the implementation of this Code and take any other steps in connection with that implementation as it deems necessary, subject to the limitations set forth in this Code. Upwork will notify employees of any material changes.

\* \* \*

### EXHIBIT 3

<b>Policy Name: Insider Trading Policy</b>	<b>Confidential: Internal Use Only</b>
<b>Owner: Chief Financial Officer and Chief Legal Officer</b>	<b>Policy applies to: All employees, independent contractors, vendors and the Upwork Board of Directors (collectively, “Service Providers”)</b>
<b>Last Updated: October 29, 2019</b>	

#### General Overview

Upwork is committed to high standards of honest and ethical business conduct and compliance with laws, rules and regulations.

Under this Insider Trading Policy, every Service Provider is prohibited from trading in Upwork stock while in possession of material nonpublic information about Upwork, and prohibited from giving material nonpublic information about Upwork or others to anyone who might trade on the basis of that information.

Capitalized terms are in the list of defined terms at the end of this Policy. You may also wish to refer to the list of FAQs about this Policy following the defined terms. The FAQs are part of this Policy and the rules articulated in the FAQs must be followed as well.

Neither Upwork nor the Compliance Officer is liable for any act made under this Policy. Neither Upwork nor the Compliance Officer is responsible for any failure to approve a trade or for imposing any Blackout Period.

#### Scope

1. This Policy covers all Service Providers, as well as the members of their immediate families and persons sharing their households; it also covers entities (such as partnerships, trusts and corporations) that are affiliated or associated with such persons. These Covered Persons are responsible for ensuring compliance with this Policy by members of their immediate families and persons sharing their households, and by entities with which they are affiliated or associated.
2. This Policy applies to all transactions in Upwork securities, including shares of Upwork common stock, restricted stock units and options to purchase common stock, however acquired, and any other type of securities that Upwork may issue, such as preferred stock, convertible notes, warrants and exchange-traded options or other derivative securities.
3. Upwork may impose sanctions for violation of this Policy and may issue stop-transfer orders to our transfer agent to implement it. Sanctions for individuals may include any disciplinary action, including termination of employment or service relationship with Upwork, where applicable. Section 16 Persons and/or Access Persons may be required to certify compliance with this Policy on an annual basis. Notifications and approvals required under this Policy may be provided by electronic mail.

## Statement of Company Policy

### *Prohibited Activities*

- A. No Section 16 Person, and no Access Person, may trade in Upwork securities unless the trade has been approved in advance by the Compliance Officer in accordance with this Policy.
- B. No Covered Person may trade in Upwork securities while possessing material nonpublic information about Upwork. It does not matter if the personal decision to trade was made before coming into possession of material nonpublic information – once the Covered Person comes into possession of the material nonpublic information, he or she cannot trade (other than pursuant to a permitted 10b5-1 Plan).
- C. No Covered Person may trade in Upwork securities outside of the Policy's Trading Windows, or during any Blackout Period designated by the Compliance Officer.
- D. No Covered Person may make a gift, charitable contribution or other transfer without consideration, of Company securities during a period when that Covered Person is not permitted to trade, provided however that a Covered Person may make a gift, charitable contribution or other transfer without consideration, of Company securities to another Covered Person during a period when both the parties are not permitted to trade upon review and approval of the Compliance Officer.
- E. No Covered Person may disclose material nonpublic information about Upwork to any outside person, unless required to do so as part of that Covered Person's regular duties for Upwork or authorized by the Compliance Officer.
- F. No Covered Person may give trading advice of any kind about Upwork to anyone while possessing material nonpublic information about Upwork, except that Covered Persons should advise others not to trade if doing so might violate this Policy or the law. We strongly discourage Covered Persons from giving trading advice concerning Upwork to third parties even when the Covered Persons do not possess material nonpublic information about Upwork.
- G. No Covered Person may: (a) trade in the securities of any other public company while possessing material nonpublic information about that company that was obtained in the course of service as a Covered Person; (b) disclose material nonpublic information about another public company to anyone; or (c) give anyone trading advice about any other public company while possessing material nonpublic information about that company.
- H. No Covered Person may engage in transactions involving options or other derivative securities on Upwork's securities, such as puts and calls, whether on an exchange or in any other market; provided however that a Covered Person may exercise compensatory equity grants issued by Upwork.
- I. No Covered Person may engage in hedging or monetization transactions involving Upwork securities, such as zero-cost collars and forward sale contracts or contribute Upwork securities to exchange funds that could be interpreted as having the effect of hedging in Upwork securities.
- J. No Covered Person may engage in short sales of Upwork's securities, including short sales "against the box."

- K. No Covered Person may use or pledge Upwork securities as collateral in a margin account or as collateral for a loan unless the pledge has been approved by the Compliance Officer.

### ***Section 16 Persons and Access Persons Require Prior Approval of Trades***

The Section 16 Persons and Access Persons (as listed on Exhibit A) must obtain prior approval of all trades in Upwork securities from the Compliance Officer. In addition, Section 16 Persons must notify the Compliance Officer prior to any gifts or other transfers of Upwork securities.

### ***Trading Windows and Blackout Periods***

1. *Trading Windows.* All Covered Persons are permitted to trade in Upwork securities only during the Trading Window period that begins after the close of trading on the next full trading day following the widespread public release of our quarterly or year-end operating results, and ends at the close of trading on the seventh calendar day in the third month of the then-current quarter.
2. *No Trading During Trading Windows While in the Possession of Material Nonpublic Information.* Even if a Trading Window is in effect, no Covered Person possessing material nonpublic information about Upwork may trade in Company securities. Persons possessing such information may trade during a Trading Window only after the close of trading on the next full trading day following our widespread public release of such information.

For example, if Upwork announces earnings after close of trading on a Monday (or before trading begins on a Tuesday), then the first time a Covered Person can trade Upwork securities is after the close of market on Tuesday (effectively the opening of the market on Wednesday for regular trading), assuming the Covered Person is not aware of other material nonpublic information at that time. However, if Upwork announces earnings after trading begins on that Tuesday, then the first time the Covered Person can trade is after the close of market on Wednesday (effectively the opening of the market on Thursday for regular trading).

3. *No Trading During Blackout Periods.* Even if a Trading Window is in effect, the Compliance Officer may designate special trading Blackout Periods that apply to particular individuals or groups of persons (including all Covered Persons), for such time, and with respect to such persons, as the Compliance Officer determines in his or her discretion. No Covered Person may trade in Upwork securities outside of the applicable Trading Windows or during any such Blackout Periods. No Covered Person who learns of such a Blackout Period may disclose to any other person that a Blackout Period has been designated or that one was previously in place. The fact of the Blackout Period is confidential and cannot be disclosed internally or externally. The failure of the Compliance Officer to subject a person to a Blackout Period does not relieve that person of the obligation not to trade while in possession of material non-public information.

### ***Permitted Trades Under 10b5-1 Plans***

We strongly encourage all Section 16 Persons and Access Persons to trade in Upwork securities pursuant to a 10b5-1 Plan.

Certain sales, purchases and other transfers of Upwork securities may be permitted while a Covered Person is aware of material non-public information if they are effected pursuant to a written contract, letter of instruction or plan that (a) complies with the requirements of Rule 10b5-1 under the Exchange

Act and this Policy, (b) is entered into during an open Trading Window and not during any quarterly or Blackout Period, (c) the first trade under the 10b5-1 Plan does not occur until the opening of the next Trading Window following the Compliance Officer's approval of the 10b5-1 Plan, (d) no trades under the 10b5-1 Plan may occur within the period between the first day of a quarter and the end of the first full trading day following the release of quarterly or year-end earnings for the prior quarter, and (e) the person establishing the 10b5-1 Plan has certified to the Compliance Officer in writing, no earlier than two business days prior to the date that the 10b5-1 Plan is formally established, that (i) such person is not in possession of material nonpublic information concerning Upwork and all such trades to be made pursuant to the 10b5-1 Plan will be made in accordance with the trading restrictions of Section 16 of the Exchange Act and Rule 144 of the Securities Act to the extent such Sections are applicable; and (ii) the 10b5-1 Plan complies with the requirements of Rule 10b5-1. Because Section 16 Persons and Access Persons are more likely than other Covered Persons to receive access to material non-public information in their roles with Upwork, they are strongly encouraged to adopt 10b5-1 Plans covering Upwork's securities (subject to meeting the requirements of this Policy). The Compliance Officer may expand or modify this list of permitted individuals.

#### ***Priority of Statutory or Regulatory Trading Restrictions***

The trading prohibitions and restrictions of this Policy are also subject to prohibitions or restrictions prescribed by contract or by federal and state securities laws and regulations (e.g., contractual restrictions on the resale of securities, short-swing trading by Section 16 Persons or compliance with Rule 144 under the Securities Act). Any Covered Person who is uncertain whether other prohibitions or restrictions apply should ask the Compliance Officer.

#### **Reporting Violations; Inquiries**

The Compliance Officer or his or her designee will review, and either approve or prohibit, any proposed trades in Upwork securities as required under this Policy, including proposed trades by Section 16 Persons and Access Persons. The Compliance Officer will administer and interpret this Policy, and enforce compliance as needed. The Compliance Officer may consult with Upwork's outside legal counsel as needed. The Compliance Officer may designate one or more individuals who may perform the Compliance Officer's duties in the event that the Compliance Officer is unable or unavailable to perform such duties.

Any Covered Person who violates this Policy or any federal or state laws governing insider trading or tipping, or knows of any such violation by any other Covered Person, must report the violation immediately to the Compliance Officer.

Please direct all inquiries about this Policy to the Compliance Officer.

## Defined Terms in the Insider Trading Policy

**"10b5-1 Plan"** means a written plan to trade securities that complies with the requirements of Rule 10b5-1 under the Exchange Act.

**"Access Persons"** means persons, other than Section 16 Persons, who have been designated by Upwork as having regular access to material nonpublic information about Upwork in the normal course of their duties. Special provisions of this Policy, such as pre-approval of any trades, apply to Access Persons. The Access Persons are listed on Exhibit A, provided that no such person listed on Exhibit A that is a Section 16 Person should be considered an Access Person. The Compliance Officer may update and amend this list from time to time.

**"Blackout Period"** means any special trading blackouts period specially designated by the Compliance Officer. It may apply to particular individuals or groups of persons (including all Covered Persons), and last for such time as the Compliance Officer determines. No Covered Person may trade in Upwork securities outside of the applicable Trading Windows or during any such Blackout Periods.

**"Upwork"**, **"we"**, **"our"** or **"Company"** means Upwork Inc., a Delaware corporation.

**"Compliance Officer"** for this Policy refers to our Chief Legal Officer (or, if there is nobody with the Chief Legal Officer title, then the attorney in the Company's legal function with the most senior role); in his or her absence our Chief Financial Officer may serve as Compliance Officer.

**"Covered Persons"** refers to all Service Providers, as well as the members of their immediate families and persons sharing their households; it also covers entities (such as partnerships, trusts and corporations) that are affiliated or associated with such persons. An affiliate is someone who directly or indirectly controls or is controlled by, or is under common control with such person. An associate of a Covered Person is (1) a corporation or organization (other than Upwork or a majority-owned subsidiary of Upwork) of which such person is an officer or partner or is directly or indirectly the beneficial owner of 10% or more of any class of equity securities or (2) any trust in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar capacity.

**"Exchange Act"** means the Securities Exchange Act of 1934, as amended from time to time.

**"Policy"** means this Upwork Insider Trading Policy, as adopted and amended from time to time by the Upwork Board of Directors.

**"SEC"** means the U.S. Securities and Exchange Commission.

**"Section 16 Persons"** means the executive officers of Upwork and members of the board of directors, including the principal accounting officer (if separate from the principal financial officer). Special provisions of this Policy, such as pre-approval of any trades, and special SEC reporting requirements, apply to Section 16 Persons.

**"Securities Act"** means the Securities Act of 1933, as amended from time to time.

**"Trading Window"** means the period when trading is normally permitted under the Policy. The Trading Window covers the period beginning after the close of trading on the next full trading day following our widespread public release of quarterly or year-end operating results, and ending at the close of trading on the seventh day of the third month of the then-current quarter.

**Exhibit A**

**Access Persons**

All Vice President level employees and above

All members of the Finance, Accounting and Analytics functions

All members of the Legal function

The administrative assistants to the CEO and CFO

## Frequently Asked Questions

### What is “material nonpublic information?”

Information is “material” if it would be expected to affect the investment or voting decisions of a reasonable investor, or if the disclosure of the information would be expected to alter significantly the total mix of the information in the marketplace about Upwork. In simple terms, material information is any type of information that could reasonably be expected to affect the market price of Upwork’s securities. Both positive and negative information may be material.

The following types of information about Upwork (among others) would often be considered material:

- financial performance, especially quarterly and year-end revenues and earnings, and significant changes in financial performance or liquidity;
- financial and operational forecasts, including projections of future earnings or losses, or other earnings guidance;
- key operational metrics, such as gross services volume (GSV), freelancer earnings, client spend retention, client and freelancer counts (including number of core clients), performance metrics, financial metrics, and any changes in such metrics;
- significant cybersecurity incidents or data breaches;
- user, product, service, pricing, geography and market strategies and shifts;
- status of Upwork’s progress toward achieving significant Company goals;
- potential tender offers, joint ventures, mergers, acquisitions, or material sales of Company assets or subsidiaries or other strategic transactions;
- significant developments regarding clients, freelancers, vendors, partners or financing sources, such as the acquisition or loss of a significant contract;
- stock splits, public or private securities or debt offerings, or changes in Upwork’s dividend policies or amounts;
- significant changes in senior management or the Board of Directors;
- entry into a new strategic relationships, and cancellation of existing strategic relationships;
- introduction of new products and services or significant changes in products, services, research or technologies;
- significant developments about Upwork’s technology or business operations;
- initiation or resolution of significant litigation or regulatory proceedings;
- potential defaults under Upwork’s credit agreements or indentures, or the existence of material liquidity deficiencies; and
- potential restatements of Upwork’s financial statements, changes in Upwork’s auditor or notification that Upwork may no longer rely on an auditor’s report.

The SEC has stated there is no fixed quantitative threshold amount for determining materiality, and that even very small quantitative changes can be qualitatively material if they would result in a movement in the price of Upwork’s securities.



Information is “nonpublic” if it has not been widely disseminated to the public (e.g., through major newswire services, national news services, SEC Form 8-K or other filings, webcasts or financial news services). For the purposes of this Policy, information will be considered public, i.e., no longer “nonpublic,” only after the close of trading on the next full trading day following Upwork’s widespread public release of the information.

Covered Persons who are unsure whether the information that they possess is material or nonpublic are encouraged to consult the Compliance Officer for guidance.

### **What are the penalties for failing to comply with the Policy?**

The consequences of prohibited insider trading or tipping can be severe. Persons violating insider trading or tipping laws may be required to disgorge profits made or losses avoided by trading, pay the loss suffered by the persons who purchased securities from or sold securities to the insider tipper, pay civil penalties of up to three times the profit made or loss avoided, pay a criminal penalty of up to \$5 million and serve a prison term of up to 20 years. Upwork and/or the supervisors of the person violating the rules may also be required to pay major civil or criminal penalties and could under certain circumstances be subject to private lawsuits by contemporaneous traders for damages suffered as a result of illegal insider trading or tipping by persons under Upwork’s control.

Violation of this Policy, or federal or state securities laws governing insider trading, may subject the violator to disciplinary action by Upwork up to and including termination of employment for cause (in the case of an employee or further service in the case of a contractor) or removal proceedings (in the case of a director). A violation of this Policy is not necessarily the same as a violation of law. In fact, for the reasons indicated above, this Policy is intended to be broader than the law. Upwork reserves the right to determine, in its own discretion and on the basis of the information available to it, whether this Policy has been violated. Upwork may determine that specific conduct violates this Policy, whether or not the conduct also violates the law. It is not necessary for Upwork to await the filing or conclusion of a civil or criminal action against the alleged violator before taking disciplinary action.

### **Are these FAQs part of the Insider Trading Policy?**

Yes, these FAQs are part of the policy, and you must comply with their provisions.

### **How does the Policy apply to trades under Upwork’s Equity Incentive Plan?**

The trading prohibitions and restrictions of this Policy do not apply to the exercise of a stock option with cash, or settlement of a restricted stock unit, or to automatic tax withholding. The trading prohibitions and restrictions of this Policy do apply to the use of outstanding Company securities to serve as all or a portion of the exercise price of any stock option or to net-exercise an option (if permitted). Sales of Company securities acquired under that plan are subject to this Policy.

### **I know trades in Company stock are not permitted in a closed Trading Window. Can I still exercise a stock option, if I am not going to sell any shares?**

Yes. For clarity, exercise of a vested stock option, not accompanied by a sale, is not considered a “trade” under this Policy.

### **How does the Policy apply to trades under Upwork's Employee Stock Purchase Plan?**

The trading prohibitions and restrictions of this Policy do not apply to periodic wage withholding contributions to the 2018 Employee Stock Purchase Plan or any successor employee stock purchase plan that are used to purchase Company securities under that plan (or the purchases made under the plan in accordance with its terms), including (i) purchases of Company securities resulting from lump sum contributions to such plan, provided that the election to participate by lump sum payment was made by the participant at the beginning of the applicable enrollment period, and (ii) any alteration by a Covered Person of his or her instructions about the level of withholding or purchase of Company securities under that plan. However, sales of Company securities acquired under that plan are subject to this Policy.

### **How does the Policy apply to tax withholding arrangements?**

The trading prohibitions and restrictions of this Policy do apply to any elective tax withholding right (i.e., pursuant to which an election has been made to have Upwork withhold shares subject to such awards to satisfy tax withholding requirements), as well as to any sales of Company common stock, including as part of a broker-assisted cashless exercise of an option, or any other market sale for the purpose of generating the cash needed to pay the exercise price of an option or satisfy tax withholding requirements.

### **What are the procedures for getting approval of a proposed trade in compliance with the Policy?**

No Section 16 Person or Access Person may trade in Company securities until the following steps are completed:

- (a) The person trading has notified the Compliance Officer of the amount and nature of the proposed trade no later than two business days prior to the proposed trade. The trading person can initiate this process during an open Trading Window by either emailing [tradeapprovals@upwork.com](mailto:tradeapprovals@upwork.com) or by accessing the Shareworks approval tool in Shareworks by selecting "Create Pre-Clearance Request" in the "Restricted Trades" tab.
- (b) The person trading will have certified (i) that such person is not in possession of material nonpublic information concerning Upwork and (ii) that the proposed trade does not violate the trading restrictions of Section 16 of the Exchange Act, Rule 144 of the Securities Act (if applicable) or any other securities laws.
- (c) The Compliance Officer or its designee has approved the trade either in writing (including via email) or through the Shareworks approval tool. The Compliance Officer is not obligated to approve any trades requested by any person.
- (d) The trading person makes the trade within five business days after receiving approval from the Compliance Officer.

### **What does "immediate family member" mean?**

For purposes of this Policy, an immediate family member means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of a person security holder, and includes any person (other than a tenant or employee) sharing the household of that person.

**Is a gift of Company stock covered by the Policy?**

Yes. A Covered Person may not make a gift, charitable contribution or other transfer without consideration, of Company securities during a period when that Covered Person is not permitted to trade, provided however that a Covered Person may make a gift, charitable contribution or other transfer without consideration, of Company securities to another Covered Person during a period when both the parties are not permitted to trade upon review and approval of the Compliance Officer.

**Is a purchase of Company stock considered a “trade” under the Policy? Or only sales of Company stock?**

Both purchases and sales of Company stock are considered “trades” under the Policy.

**Are transactions in derivative securities covered by the Policy?**

Yes. No Covered Person may acquire, sell, trade or participate in any interest or position relating to the future price of Company securities, such as a put option, a call option, or a short sale (including a short sale “against the box”).

**What is a short sale, and what is a short sale “against the box?”**

A short sale is a sale of securities that you do not own (i.e. borrowed securities). A short sale “against the box” is a sale of securities you own, but with delayed delivery.

**Are contributions to exchange funds covered by this Policy?**

Yes. No Covered Person may contribute Upwork securities to exchange funds that could be interpreted as having the effect of hedging in Upwork securities.

**Are standing and limit orders covered by the Policy?**

Unless part of a 10b5-1 Plan, standing or limit orders should be used only for a very brief period of time, if at all. A standing order placed with a broker to sell or purchase Upwork stock at a specified minimum or maximum price leaves you with no control over the timing of the transaction. The limit order could be executed by the broker when you are aware of material nonpublic information, which would result in unlawful insider trading. Irrespective, for Covered Persons they cannot extend beyond the Trading Window and for Section 16 and Access Persons, they cannot extend beyond the preclearance period.

**Can I hold Upwork securities in a margin account?**

Securities held in a margin account or pledged as collateral for a loan may be sold without your consent—by the broker if you fail to meet a margin call, or by the lender in foreclosure if you default on the loan. Because a margin or foreclosure sale may occur at a time when you are aware of material nonpublic information or otherwise are not permitted to trade in Upwork securities, you are prohibited from holding Upwork securities in a margin account or pledging Upwork securities as collateral for a loan.

**Under what circumstances can I pledge Upwork securities as collateral for a loan?**

An exception to the prohibition on using Upwork securities as collateral for a loan (not including margin debt) may be granted by the Compliance Officer where you have clearly demonstrated the financial

capacity to repay the loan without resort to the pledged securities. If you wish to pledge Upwork securities as collateral for a loan, you must submit a request for approval to the Compliance Officer at least two weeks prior to the proposed execution of documents evidencing the proposed pledge.

**I have a hardship or other urgent need to sell Company shares, or exercise a stock option so I can sell some Company shares. Is that okay?**

It does not matter that there may exist a justifiable reason for a purchase or sale apart from the nonpublic information; if the Covered Person has material nonpublic information, the prohibition still applies.

**I know that disclosures of material nonpublic information are prohibited under the Policy; is it okay if I monitor or participate in a chat room?**

No. A Covered Person may not participate, in any manner other than passive observation, in any investment or stock-related Internet “chat” rooms, blogs, social media sites, message boards or other similar online forums relating to Upwork without the prior approval of the Compliance Officer and in compliance with Upwork’s Corporate Communications and Social Media Policies and any other applicable policy.

**What are the procedures for trading under a 10b5-1 Plan?**

In addition to the procedures for trades not under a 10b5-1 Plan, the person seeking to trade under a 10b5-1 Plan must put in place such a plan that complies with the requirements of Rule 10b5-1. Compliance Officer approval of a 10b5-1 Plan shall not be considered a determination by Upwork or the Compliance Officer that the 10b5-1 Plan satisfies the requirements of Rule 10b5-1. Upwork reserves the right to prevent any transactions in Company securities, even those pursuant to a 10b5-1 Plan, in the sole discretion of the Compliance Officer.

No trades shall be treated as having been made pursuant to a 10b5-1 Plan under this Policy unless:

- (a) the 10b5-1 Plan complies with the requirements of Rule 10b5-1;
- (b) the 10b5-1 Plan is entered into during an open Trading Window and not during any quarterly or Blackout Period;
- (c) the first trade under the 10b5-1 Plan may not occur until the opening of the next Trading Window following the Compliance Officer’s approval of the 10b5-1 Plan;
- (d) no trades under the 10b5-1 Plan may occur within the period between the first day of a quarter and the end of the first full trading day following the release of quarterly or year-end earnings for the prior quarter; and
- (e) the person establishing the 10b5-1 Plan has certified to the Compliance Officer in writing, no earlier than two business days prior to the date that the 10b5-1 Plan is formally established, that (i) such person is not in possession of material nonpublic information concerning Upwork and all such trades to be made pursuant to the 10b5-1 Plan will be made in accordance with the trading restrictions of Section 16 of the Exchange Act and Rule 144 of the Securities Act to the extent such Sections are applicable; and (ii) the 10b5-1 Plan complies with the requirements of Rule 10b5-1.

The Compliance Officer is not obligated to approve any trades requested by any person, or to approve any 10b5-1 Plan. When approval is sought, there is no set timeline for how long such approval might take.

The establishment and implementation of any 10b5-1 Plan shall be the sole responsibility of the person seeking to establish such a plan.

Any amendment to a 10b5-1 Plan requires approval by the Compliance Officer and the amendment can be made only during a time when it would have been permitted under this Policy and also lawful to enter into a new 10b5-1 Plan. An amendment cannot be effective until the opening of the next Trading Window after it is adopted, during which time the original 10b5-1 Plan remains in effect. A 10b5-1 Plan may be terminated with immediate effect provided such request for termination has been approved by the Compliance Officer. Once a 10b5-1 Plan is terminated, any new plan adopted post-termination must meet the requirements above for new 10b5-1 Plans.

An individual may have no more than one 10b5-1 Plan adopted at any point in time (i.e., multiple concurrent plans are prohibited).

Once a 10b5-1 Plan is adopted, the person must not exercise any influence over the amount of securities to be traded, the price at which they are to be traded or the date of the trade. The 10b5-1 Plan must either:

- Clearly specify in advance the amount, pricing and timing of transactions (including by formula or algorithm), or
- Delegate discretion on those matters to an independent third party (such as a securities broker or investment manager). Of course, the independent third party cannot make discretionary investment decisions on behalf of the individual while the independent third party is in possession of material nonpublic information about Upwork.

Unless otherwise approved by the Compliance Officer and Chief Financial Officer, all 10b5-1 Plans must be implemented through a broker included in a list approved by the Compliance Officer. The Compliance Officer may amend this list from time to time.

#### **What are my obligations once I am no longer providing services to Upwork?**

You should observe the Trading Window restrictions for 90 days following the termination of your employment or service relationship. Further, if you are aware of material nonpublic information when your employment or service relationship terminates, you may not trade in Upwork securities until that information has become public or is no longer material.

#### **How does the Policy apply to trades by the Compliance Officer?**

The Compliance Officer may not trade in Company securities unless the trade has been approved by Upwork's Chief Financial Officer (or Chief Executive Officer if the Compliance Officer is the Chief Financial Officer) in accordance with this Policy.

#### **What are the additional duties does the Compliance Officer have?**

In addition to the duties of the Compliance Officer specified in the Policy, the Compliance Officer or its designee, shall:

- Respond to inquiries relating to this Policy and its procedures.
- Designate and announce special trading Blackout Periods during which Covered Persons may not trade in Company securities.
- Revise this Policy as necessary to reflect changes in federal or state laws and regulations, subject to approval by Upwork's Board of Directors or a duly authorized committee thereof. The list of individuals who may adopt 10b5-1 Trading Plans and the list of Access Persons may be amended by the Compliance Officer.
- Maintain as Company records originals or copies of all documents required by the provisions of this Policy or the procedures set forth herein, and copies of all required SEC reports relating to insider trading, including without limitation Forms 3, 4, 5 and 144 and Schedules 13D and 13G.