

If a Client and a Freelancer enter into a Fixed-Price Contract, these Fixed-Price Escrow Instructions (“Escrow Instructions”) apply. These Escrow Instructions govern Fixed Price Escrow Accounts. If you have a Fixed-Price Contract and wish to make or receive a miscellaneous or bonus payment, those activities are governed by the [Hourly, Bonus, and Expense Payment Agreement with Escrow Instructions](#).

These Escrow Instructions are effective August 7, 2015. To the extent permitted by applicable law, we may modify these Escrow Instructions without prior notice to you, and any revisions to these Escrow Instructions will take effect when posted on the Site unless otherwise stated. Please check the Site often for updates.

These Escrow Instructions hereby incorporate by reference all Site usage terms, conditions, policies and guidelines, including the [Terms of Service](#) (“Terms of Service”). Capitalized terms not defined in these Escrow Instructions are defined in the [User Agreement](#), elsewhere in the Terms of Service, or have the meanings given such terms on the Site. These Escrow Instructions do not apply to Hourly Contracts.

1. Digital Signature

By clicking to fund Escrow (a “Funding Approval”) or to accept a Fixed-Price Contract, Client and Freelancer are deemed to have executed these Escrow Instructions electronically, effective on the date Freelancer clicks to accept the engagement, pursuant to California Civil Code section 1633.8 and the federal Electronic Signatures in Global and National Commerce Act (the E-Sign Act) (15 U.S.C. Sec. 7001, et seq.). Doing so constitutes an acknowledgement that you are able to electronically receive, download, and print these Escrow Instructions. All references to the Escrow in these Escrow Instructions will include the initial Funding Approval and any additional Funding Approval for the Engagement.

2. Release and Delivery of Amounts in Escrow

Client and Freelancer irrevocably authorize and instruct EEC to release applicable portions of the Fixed Price Escrow Account (each portion, a “Release”) to their Freelancer Escrow Account or Client Escrow Account, as applicable, via the Site, in accordance with one or more Release Conditions provided below or as otherwise permitted by applicable law. The amount of the Release will be delivered to the applicable Escrow Account in accordance with Freelancer’s or Client’s instructions, as applicable, these Escrow Instructions, and the other Terms of Service.

Release Conditions

As used in these Escrow Instructions, “Release Condition” means any of the following:

1. Client clicks to release funds to Freelancer.
2. Freelancer ends the contract before a milestone payment has been released.
3. Client and Freelancer have submitted joint written instructions for a Release.
4. Client and Freelancer agree to close the contract.
5. Client or Freelancer has failed to make its Arbitration payment initiated by the other Party pursuant to the Dispute Assistance Policy in Section 5 of these instructions.
6. Client and Freelancer have failed to timely submit to Arbitration for an unresolved Dispute as such term is defined in the Dispute Assistance Policy in Section 5 of these instructions.
7. Client or Freelancer has failed timely to respond to an Upwork Dispute Assistance notification as required by the Dispute Assistance Policy in Section 5 of these instructions.
8. Client or Freelancer has failed timely to pay for its share of Arbitration costs as required by the Dispute Assistance Policy in

Section 5 of these instructions.

9. Client or Freelancer otherwise has failed to comply with the Dispute Assistance Policy in Section 5 of these instructions.
10. Submittal of the final binding award of an arbitrator appointed pursuant to the Dispute Assistance Policy in Section 5 of these instructions.
11. Issuance of the final order of a court of competent jurisdiction from which appeal is not taken.
12. We believe, in our discretion, that one Member has committed or is attempting to commit fraud, illicit acts, or has violated Upwork's Terms of Service, in which case Upwork may instruct EEC to take such actions as we deem appropriate in our sole discretion and in accordance with applicable law.

3. Dormant Engagements

To be fair to Clients and Freelancers, Upwork has a procedure for Fixed-Price Contract that appear Dormant. For purposes of determining Dormant status, "activity" means business term or milestone updates or requests, Fixed-Price Escrow Funding, Fixed-Price Escrow Release, Fixed-Price Escrow Refunds, Funding requests, Release requests, Engagement Cancellation requests, Status Report submittals, or actions under the Fixed Price Dispute Assistance Policy.

If a Fixed-Price Contract has a Fixed-Price Escrow Account with a balance but has had no activity for 90 consecutive days after the last milestone date contained in the business terms, then the Engagement will be "Dormant." Dormant Engagements are subject to the following rules:

1. Upwork will notify Client when the Engagement becomes Dormant ("Dormant Date").
2. If no activity other than Release requests has occurred within 7 days after the Dormant Date, Upwork will notify the Freelancer that the Engagement is Dormant.
3. If Freelancer and Client take no action for 7 days after the Dormant Date, Freelancer and Client agree that EEC is authorized and irrevocably instructed to immediately release escrow funds to Client.
4. If Freelancer submits a Release request and client does not take any action for 14 days from the date of the Release request, Freelancer and Client agree that EEC is authorized and irrevocably instructed to immediately release to Freelancer the amount related to the milestone with Release request.
5. All funds released to Freelancer under this Section, Dormant Engagements, will be subject to the applicable Service Fees for Freelancers.

4. Refunds and Cancellations

Client and Freelancer are encouraged to come to a mutual agreement if refunds or cancellations are necessary. If there are no funds in escrow, Client or Freelancer can cancel the contract at any time by clicking to close the contract. If funds are held in escrow, refunds and cancellations must be initiated by Client or Freelancer by following the steps below.

Cancellation by Freelancer

If Freelancer wants to cancel a contract with funds held in escrow, Freelancer must click to close the contract. When Freelancer clicks to close the contract, Freelancer and Client agree that EEC is authorized and irrevocably instructed to immediately release to Client all Escrow funds associated with the contract.

Cancellation by Client

If Client wants to cancel a contract with funds held in escrow, Client must click to close the contract. Freelancer must either click to approve or dispute the Client's cancellation within 7 days. If Freelancer approves the cancellation, Freelancer and Client agree that EEC is authorized and irrevocably instructed to immediately release to Client all escrow funds associated with the contract. If Freelancer takes no action within 7 days from the date Freelancer was notified of the cancellation, Freelancer and Client agree that EEC is authorized and irrevocably instructed to immediately release to Client all Escrow funds associated with the contract. If Freelancer disputes the cancellation, Freelancer and Client will be offered Upwork Dispute Assistance.

5. Dispute Assistance Policy

If Client and Freelancer fail to come to a mutual resolution by way of the Refund and Cancellation process as stated in Section 4, Upwork provides this Dispute Assistance Policy as a mechanism to resolve the Dispute.

Definitions and Key Dates.

- a. **"Arbitration"** means binding non-appearance based Arbitration by a neutral third party as described in Section 5.
- b. **"Arbitration Payment"** means Client or Freelancer's applicable portion of the costs of Arbitration as more particularly described in Section 5 below.
- c. **"Arbitration Limitations Date"** means the date 30 days after the date a Dispute is filed via the platform or via support ticket with Upwork.
- d. **"Dispute Assistance Deadline"** means the date 30 days after the Client was billed for the last milestone.
- e. **"Upwork Dispute Assistance"** means the Dispute assistance provided by Upwork as set forth in this Policy.

Availability of Upwork Dispute Assistance.

Dispute Assistance is only available (i) after initial funding of the Fixed Price Escrow Account associated with the Engagement, and (ii) prior to the Dispute Assistance Deadline. Dispute Assistance is not available to either the Freelancer or the Client via the Site after the Dispute Assistance Deadline.

Non-Binding Assistance.

Upwork will first attempt to assist Client and Freelancer by reviewing the Dispute and proposing a mutual, non-binding resolution.

- The Disputes team will notify Client and Freelancer via ticket by providing a notice of dispute along with a request for information and supporting documentation (if any).
- If both Client and Freelancer respond to the notice and request for information, then the Disputes team will review the documentation submitted and any information available on the Site that pertains to the Dispute. After review, the Disputes team will propose a mutual, non-binding resolution based on the results of the review.
- The proposed resolution is non-binding; Client and Freelancer can choose whether or not to agree to it. If Client and Freelancer agree in writing to the proposed resolution, Client and Freelancer agree that EEC is authorized and irrevocably instructed to immediately release Escrow funds in accordance with the final resolution.
- If Client and/or Freelancer disagree with Upwork's proposed, non-binding resolution, they may proceed to

Arbitration. If Client and Freelancer do not choose to arbitrate, Freelancer and Client agree that EEC is authorized and irrevocably instructed to immediately release to Client all funds held in Escrow.

- If Client and/or Freelancer choose to arbitrate by notifying Upwork via support ticket of their intent to arbitrate, Upwork will notify Client and/or Freelancer via ticket that they must make the Arbitration Payment within 5 business days of the notice. If both parties pay the Arbitration invoice (including after initial notice of non-payment), then Upwork will deliver instructions for initiating Arbitration.
- If Client or Freelancer does not make the Arbitration Payment within 5 business days of the notice, Freelancer and Client will be deemed to have irrevocably authorized and instructed EEC to, and EEC will, release the disputed funds to the party that paid the Arbitration Payment to the extent that any disputed funds remain in the Escrow Account. If no funds remain in the Escrow, Upwork will close the Dispute.
- If Client and Freelancer both do not make the Arbitration Payment by the Arbitration Limitations Date, then Client and Freelancer will be deemed to have authorized and instructed EEC to, and EEC will, release the disputed funds to Client, to the extent that any disputed funds remain in the Escrow Account, if no funds remain Upwork will close the Dispute.

Arbitration for a Fixed Price Engagement

Freelancer and Client each have the right to demand Arbitration of a Fixed Price Engagement before the Arbitration Limitations Date if the Fixed Price Escrow associated with the Engagement has been funded at least once. If either Client or Freelancer demands Arbitration in accordance with this Policy and you are not the party that requested Arbitration, you agree to submit to the Arbitration and pay your share of the Arbitration fees detailed below. In any Arbitration, each of you and the other Member is a “Dispute Party,” and collectively you are the “Dispute Parties.”

Any such Arbitration will be conducted by a neutral third-party Arbitration services: the [American Arbitration Association](#) (“AAA”). The Arbitration rules and fees for each are set out in Appendix A (for the AAA) to this Policy. By default, Arbitration will be conducted by AAA unless Upwork chooses another Arbitration service.

Filing the Case with the Arbitrator

When a User (the “Arbitration Plaintiff”) demands Arbitration, or when the circumstances dictate that Upwork notify that Member of its right to file for Arbitration as described above, Upwork will provide that Member with instructions on initiating the Arbitration. After the parties have initiated the Arbitration, Upwork will provide the arbitrator with supporting documentation including but not limited to the documents submitted to Upwork during the Informal Mediation process, information available via the Site, and access to the Site.

If the Arbitration Plaintiff pays the invoice, Upwork will contact the other party (“Arbitration Respondent”) to request that the Arbitration Respondent pay its portion of the Arbitration fees as well. If the Arbitration Respondent fails pay Arbitration fees and submit to such Arbitration within five calendar days after the First Arbitration Notice, Upwork will suspend the Arbitration Respondent’s then both parties will be deemed to have irrevocably authorized and instructed EEC to, and EEC will, release the funds sought by the Arbitration Plaintiff in the demand for Arbitration, to the extent such funds remain in the Fixed Price Escrow Account. If no funds remain in the Fixed Price Escrow Account, Upwork will close the Dispute.

If both parties pay their portion of the Arbitration fees, Upwork will instruct the parties on the process for initiating the Arbitration with the Arbitration service provider. After the parties have initiated the Arbitration, Upwork will provide the arbitrator with the Dispute Notice Form, the Dispute Response, and documents packaged and sent by Upwork to AAA which include contents of the workroom.

Authorization to Collect Arbitration Fees

When you electronically authorize to pay the invoice sent to you by Upwork for your portion of Arbitration fees via the Site, you irrevocably authorize and instruct (i) EEC and its wholly owned subsidiaries, as your agent, to charge your Payment Method for the amount of the payment for credit to your Escrow Account; and (ii) EEC, as escrow agent, to immediately release that amount from your

Escrow Account and pay it to Elance. If EEC or its wholly owned subsidiaries cannot collect sufficient funds to fulfill the Escrow for any reason, EEC has no obligation with respect to making the payment to Upwork on your behalf, and you will be considered as not having paid your portion of the Arbitration fees as required by this Policy.

Limitations Period for Arbitrations

If both Freelancer and Client fail to demand binding Arbitration for an unresolved Dispute by the Arbitration Limitations Date, then Client and Freelancer will be deemed to have irrevocably authorized and instructed EEC to, and EEC will, Release all funds in the Fixed Price Escrow Account to Client.

Arbitration Award

You agree that the arbitrator is authorized to decide the Dispute within its discretion. You agree that the arbitrator's award is final, that it may be entered in and enforced by any court of competent jurisdiction, and that if the arbitrator delivers notice of any award to Upwork, then Upwork and EEC have the right to treat such notice as conclusive and act in reliance thereon.

Service Fees for Escrow Funds Released Following Dispute Assistance

All Escrow Funds released under this policy are subject to the normal Service Fees associated with Escrow Accounts, as detailed in the User Agreement and applicable Escrow Instructions.

6. Notices.

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

7. Failure to Comply with this Policy.

All claims, disputes or other disagreements between you and another User that are covered by the Dispute Assistance Policy must be resolved in accordance with the terms in this Policy. This Policy incorporates all terms, conditions, rules, policies and guidelines on the Site, including the provisions relating to chargebacks contained in the other Terms of Service. All claims filed or brought contrary to this Policy will be considered improperly filed, and Upwork will have the right to take any other action, including suspension or termination of your Account and any other legal action as Upwork deems appropriate in its sole discretion.

8. Abuse.

Upwork, in its sole discretion, reserves the right to suspend or terminate your Account immediately upon giving notice to you if Upwork believes you may be abusing this Policy or as otherwise permitted by the other [Terms of Service](#). However, any Disputes for any Engagements that existed prior to termination will be subject to the Terms of Service.

9. Contacting Us

If you need additional assistance, please contact Customer Support at: <https://support.upwork.com>.

APPENDIX A

RULES AND FEES FOR ARBITRATIONS CONDUCTED BY THE AMERICAN ARBITRATION ASSOCIATION

This Appendix A Summarizes Certain Pertinent Contractual Terms That American Arbitration Association (AAA) Has Agreed To In Providing Arbitration Services To Clients And Freelancers Who Choose AAA As Their Arbitrator. AAA Is Solely A Third-Party Service Provider. Upwork And Our Affiliates Have No Direct Or Indirect Affiliate, Partnership, Joint Venture, Ownership Or Control Relationship With Or Interest In AAA. Upwork And Our Affiliates Assume No Responsibility Or Liability For The Services Of AAA.

Appointment of the Arbitrator

All Arbitrations by the AAA are conducted by a single arbitrator.

The AAA will provide the parties the opportunity to participate in arbitrator selection through a strike-and-rank process of pre-qualified arbitrators.

- i. Each party will be provided with an identical list of five potential arbitrators and may have up to three calendar days to strike two potential arbitrators and rank the remaining in order of preference. If any party does not return the list within five calendar days, all persons named therein will be deemed acceptable.
- ii. From among the arbitrators approved on both lists and in accordance with the designated order of mutual preference, the AAA will invite the arbitrator to serve. If for any reason the appointment cannot be made according to this procedure, the AAA will have the power to make the appointment without submission of additional lists.
- iii. Any arbitrator will be impartial and independent and will perform his or her duties with diligence and in good faith, and will be subject to disqualification for any grounds provided by applicable law.
- iv. Neither Upwork nor any party or party representative will communicate ex parte with an arbitrator or candidate for arbitrator concerning the Arbitration. Notwithstanding the above, Upwork and an arbitrator may communicate ex parte solely for the purpose of enabling the arbitrator to access and use the Site and/or the Workroom associated with the Engagement in Dispute.

Rules of the Proceedings

- i. The amount at issue in any claims or counterclaims relating to an Engagement will be limited to the sum still held in Escrow and the sum previously released from Escrow for the Engagement.
- ii. The Arbitration Plaintiff may submit a statement of the case ("**Initial Statement**"), not to exceed 1,500 words, within three Business Days of being notified that the case has been filed with the AAA. The Arbitration Plaintiff will post the Initial Statement to the Workroom.
- iii. The Arbitration Respondent may submit a response ("**Response Statement**"), not to exceed 1,500 words, within three Business Days of receiving the Initial Statement. The Arbitration Respondent will post the Response Statement to the Workroom.

- iv. Either party may elect to use their Dispute Notice Form or Dispute Response (as applicable) in lieu of creating a separate Initial Statement or Response Statement for the Arbitration. No party may submit new or different claims after the case has been initiated.
- v. All proceedings will be “on documents” and the evidence admissible will consist solely and exclusively of Workroom contents at the time the Dispute was submitted to the Upwork Dispute resolution process. Any communication taking place outside the Workroom must have been posted to the Workroom within 24 hours of the original transmission of that communication in order to be admissible. Once Arbitration is initiated, the arbitrator can make an award based solely on the Workroom contents and material submitted to initiate the Arbitration. The failure of one party or the other to respond to an arbitrator request or otherwise continue to participate in the Arbitration will not prevent the arbitrator from making an award.
- vi. The language of the Arbitration will be English.
- vii. At the arbitrator’s sole discretion, the arbitrator may permit or require the submission of additional written statements from the parties (“**Additional Arguments**”). The arbitrator is not required to permit Additional Arguments. If the arbitrator permits Additional Arguments, the arbitrator will establish the schedule and rules for the submission of such Additional Arguments, including any limits on the length of such Additional Arguments.
- viii. The Arbitration will conclude within 30 calendar days from the date of submission to the AAA, and the arbitrator may grant an extension for good cause not to exceed 14 calendar days.
- ix. Communications by either party to the arbitrator will be shared with all parties.
- x. All awards will be final, non-appealable and enforceable by any court of competent jurisdiction.
- xi. Neither the AAA nor any arbitrator in a proceeding under these rules and procedures is a necessary or proper party in judicial proceedings relating to the Arbitration. The parties to an Arbitration under these rules and procedures will be deemed to have consented that neither the AAA nor any arbitrator will be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any Arbitration under these rules and procedures.

The Award

The AAA will provide Upwork and the parties with a written award promptly upon the conclusion of the Arbitration, and in no event later than 14 calendar days after conclusion of the Arbitration. At the arbitrator’s sole discretion, the arbitrator may provide, but is not required to provide, written reasons for the Award to the parties.

Fees

The fee for Arbitrations by the AAA is \$875, regardless of the amount at issue.

Each of the Dispute Parties and Upwork will share the cost equally (\$291 each).

Client and Freelancer will solely bear and pay any other costs it incurs related to the Arbitration.