

# MASTER SUBSCRIPTION AGREEMENT (UPWORK COMPLIANCE)

Updated: October 3, 2018

This Master Subscription Agreement governs each Order Form (collectively, the “**Agreement**”) entered into by Upwork Global Inc. (“**Upwork**”) and the subscriber identified in the Order Form (“**Subscriber**”) (each, a “**Party**” and together, the “**Parties**” to this Agreement). Any term used in this Agreement but not defined herein shall have the meaning ascribed to it in the Order Form. By executing the Order Form, you agree to the terms below.

## 1. DEFINITIONS

When used in this Agreement with the initial letters capitalized, in addition to the terms defined elsewhere in this Agreement, the following terms have the following meanings:

- a. “**Affiliate**” means an entity which directly or indirectly controls, is controlling, or is under common control with Subscriber, whereby “control” (including, with correlative meaning, the terms “controlled by” and “under common control”) means direct or indirect ownership or control of more than 50% of the voting interests of Subscriber.
- b. “**BYO Freelancer**” means a Freelancer that (i) Subscriber brings to its Talent Cloud® network from outside the Platform and (ii) has not (as of the time Subscriber introduces the Freelancer to the Platform) registered as a freelancer on the Platform.
- c. “**Claims**” means any and all third-party claims, suits or proceedings, including without limitation claims or actions by applicable government agencies, and do not include Excluded Claims.
- d. “**Custom Compliance Costs**” means all third-party costs incurred by Upwork, its affiliates or Employment Provider for any background checks, drug tests or other compliance or screening measures.
- e. “**Effective Date**” means the “Contract Start Date” listed on the first Order Form signed by the Parties.
- f. “**Employment Provider**” means Upwork’s third party employment provider.
- g. “**Employment Related Costs**” means any additional employment related costs, if applicable, for items Subscriber requires or that are required by law, including overtime premium pay, expense reimbursements, paid sick leave, and Affordable Care Act (ACA) health insurance contributions, paid vacation, severance, notice or termination costs, jurisdictional costs, and other similar benefits.
- h. “**Excluded Claims**” means claims arising, in whole or in part, from (x) Subscriber’s direct engagement (whether as an employee or independent contractor) of Freelancer before, after or outside of Upwork’s engagement of Freelancer to provide Freelancer Services to Subscriber under this Agreement, (y) Subscriber’s direction, participation or involvement with the Freelancer or Freelancer Services, or (z) (i) Upwork’s misclassification of a Freelancer; (ii) Employment Provider’s failure to comply with applicable wage and hour laws or regulations; or (iii) Upwork or Employment Provider’s failure to make a payment to Freelancer, if, with respect to part “(z)”, the underlying misclassification, failure to comply or failure to pay was based in whole or in part on incomplete or inaccurate information provided by Subscriber or which Subscriber failed to update or was caused by Subscriber.
- i. “**Exclusivity Period**” means the period that starts on the day the Platform Freelancer is engaged by Subscriber and ends on the two-year anniversary of that day.
- j. “**Freelancer**” means a user that advertises and provides services on the Platform.
- k. “**Freelancer Information**” means any information regarding a Freelancer on the Platform.
- l. “**Freelancer Payments**” means all payments made by Upwork or Employment Provider on behalf of Subscriber to Freelancers in accordance with this Agreement, including bonuses authorized by Subscriber or expenses reimbursed by Upwork or Employment Provider to a Freelancer.
- m. “**Freelancer Payments and Costs**” means Freelancer Payments, Custom Compliance Costs and Employment Related Costs.

- n. **"Freelancer Services"** means the services that a Freelancer performs for Subscriber based on the Subscriber's project post and description on the Platform.
- o. **"Freelancer Work Product"** means all work, work product and deliverables associated with the Freelancer Services.
- p. **"Independent Contractor Agreement"** means the Independent Contractor Agreement between Upwork Talent Group and the Freelancer, in substantially the form located at [www.upwork.com/legal#independent-contractor-agreement](http://www.upwork.com/legal#independent-contractor-agreement).
- q. **"Order Form"** means the applicable enterprise order form executed by Subscriber and Upwork that references this Agreement.
- r. **"Platform"** means [www.upwork.com](http://www.upwork.com).
- s. **"Platform Freelancer"** means a Freelancer that is not a BYO Freelancer.
- t. **"PO"** means purchase order.
- u. **"Program Management"** means services provided to Subscriber to help Subscriber use its Upwork account on the Platform, including without limitation, assistance by Upwork to help determine Subscriber's project needs, suggestion of certain talent and skills needed to complete Subscriber's project and help in drafting Subscriber's project posts.
- v. **"Services"** means Upwork's products and/or services provided to Subscriber in connection with this Agreement, and as further set forth on the Order Form, and any Technology provided by Upwork in connection with the operation and/or provision of such products and/or services, including access to the Platform.
- w. **"Taxes"** means taxes, duties, levies, tariffs, and other governmental charges, including, without limitation, VAT, GST and similar taxes.
- x. **"Technology"** means all ideas, concepts, inventions, systems, platforms, software, interfaces, tools, utilities, templates, forms, documentation, content, training materials, techniques, methods, processes, algorithms, know-how, trade secrets and other technologies, implementations and information.
- y. **"Term"** has the meaning ascribed to it in the Order Form.
- z. **"UTC"** means Universal Time Coordinated.
- aa. **"Upwork Payroll Services"** means a service provided by Upwork whereby Employment Provider will handle certain administrative and legal requirements relating to the hiring of the Freelancer, including offering, tracking and paying Freelancers legally-required sick leave, employment agreements, policies and notices, wage payment, payroll taxes, workers' compensation, unemployment insurance, and Affordable Care Act (ACA), if applicable, in addition to any other benefits required by law.
- ab. **"Work Diary"** means the feature on the Platform that acts as a visual record of each Freelancer's hours and shows each Freelancer's hours worked and work-in-progress screenshots.

## 2. PLATFORM AND SERVICES

- a. **Platform Access.** Subject to the terms and conditions of this Agreement, Upwork (i) shall use commercially reasonable efforts to make the Services available to Subscriber and (ii) grants to Subscriber a limited, terminable, non-exclusive, non-sublicensable (except as otherwise authorized herein), non-transferable (except as otherwise authorized herein) world-wide license to access and use the Platform to (a) access Subscriber's Talent Cloud® network, (b) find and select Freelancers through the Platform, (c) receive and review Freelancer Services, and (d)

approve Freelancer billing records or completed milestones and deliverables for payment by Upwork or the Employment Provider on behalf of Subscriber. During the Term, Upwork may modify the features and functionality of the Services.

- b. **Worker Classification.** Upwork will determine the appropriate worker classification (either independent contractor or employee) for each Freelancer based on the information that Subscriber and Freelancer provide about the applicable engagement between them. Determining the proper classification for a Freelancer depends on a variety of factors, including information in Subscriber's control. If Upwork requests information within Subscriber's knowledge or control related to the engagement, the classification of a Freelancer or otherwise, Subscriber will provide Upwork with the requested information in a timely, accurate, and complete manner and agrees to provide notice to Upwork immediately in the event that to Subscriber's knowledge, any such information has changed.
- c. **Freelancer Engagement.** Upwork will, based on its worker classification: (i) engage the Freelancer as an independent contractor or (ii) hire the Freelancer as an employee. Upwork may delegate the engagement of Freelancers (and other obligations with respect to Freelancers under this Agreement) to one or more third parties. Upwork and Employment Provider reserve the right not to engage or hire a Freelancer in its sole discretion. Upwork will cause each Freelancer classified as an independent contractor to execute the Independent Contractor Agreement. If Freelancer is hired as an employee, Upwork will cause the Freelancer (through Employment Provider) to execute an employment agreement with confidentiality and intellectual property assignment provisions consistent with this Agreement.
- d. **Custom Requirements.** At Subscriber's request, where legally permitted by local law and the applicable worker classification, and subject to

separate fees, Upwork will establish and administer mutually-agreeable custom onboarding requirements, including background checks and drug tests.

- e. **Legal Compliance.** Upwork or Employment Provider, as applicable, will comply with applicable laws and regulations governing the engagement and payment of Freelancers, including laws related to worker classification and overtime pay (for any worker employed by Employment Provider) within the jurisdiction in which Freelancer Services will be provided; provided that accurate, complete, and current information regarding the engagement is provided to Upwork by Subscriber.
- f. **Program Management and Other Services.** From time to time, Subscriber may request Program Management services from Upwork via a signed order form or via electronic mail. If Subscriber requests Program Management services from Upwork, Subscriber authorizes Upwork personnel to access Subscriber's Upwork Enterprise account and take actions on the Platform on behalf of Subscriber as directed by Subscriber, including without limitation, posting projects, preparing and extending offers to Freelancers on behalf of Subscriber, and releasing payments. Subscriber agrees that all actions performed by Program Management personnel in its Upwork Enterprise account shall be considered to be actions by Subscriber. Any use by Subscriber of Program Management services or other services listed on the Order Form will not alter, reduce or eliminate any Subscriber responsibilities under this Agreement. Any charged Program Management services are subject to the Service Fee.
- g. **Affiliates.** An Affiliate may receive services under this Agreement by directly entering into an order form with Upwork. By entering into an order form, each Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto. Subscriber agrees to be responsible for its Affiliates' compliance with this Agreement and each Affiliate's order

form. All rights granted to an entity as an Affiliate hereunder will automatically and immediately cease as of the time such entity ceases to be an Affiliate.

**h. Freelancer Services.**

- i. Hourly Work for Independent Contractors.** For hourly work performed by Freelancers classified as independent contractors, Subscriber will have the opportunity to dispute the Freelancer billing entries as described by this paragraph. The Freelancer billing period begins Mondays at 00:00 midnight UTC and ends Sundays at 23:59 UTC (the “**Weekly Billing Period**”). Following each Weekly Billing Period, Subscriber has from Monday at 12 noon UTC until Friday at 23:59 UTC to review the Freelancer’s billing entries in their Work Diary and file a dispute through the Platform if Subscriber disputes the hours billed by the Freelancer (the “**Subscriber Review Period**”). If Subscriber does not file a dispute during the Subscriber Review Period, then (a) Subscriber will be deemed to have irrevocably approved the time billed and irrevocably accepted the work performed by the Freelancer during the time reflected on the Platform and (b) Upwork will be authorized and instructed to make payment to Freelancer for time reflected on the Platform.
- ii. Hourly Work for Employees.** For hourly work performed by Freelancers classified as employees, (y) Subscriber will be deemed to have automatically approved all hours worked, including overtime and (z) Subscriber authorizes and instructs Upwork to make payment to Freelancer for time reflected on any time sheet, including overtime payments. For Freelancers engaged by Upwork or Employment Provider as employees, Subscriber agrees to comply with all applicable laws (e.g., not requiring or encouraging any Freelancer to work without recording

time, not discouraging or prohibiting Freelancers from taking any meal or rest periods authorized by law) and acknowledges and agrees that overtime wages are included in the Freelancer Payments and Costs to be reimbursed by Subscriber.

- iii. **Milestone Work.** For deliverables-based work tied to milestones, Subscriber must approve or reject milestone approval requests through the Platform within 14 days after such approval requests are submitted through the Platform. Subscriber acknowledges and agrees that in the event Subscriber fails to approve or reject a submitted milestone approval request within such 14 day period, then (a) the deliverable reflected in the milestone approval request will be deemed irrevocably accepted by Subscriber, and any payment associated with the milestone will be deemed irrevocably approved by Subscriber and (b) Upwork will be authorized and instructed to make payment to Freelancer for such milestone.
  
- i. **Workplace.** Subscriber is responsible for the safety and protection of Freelancers, Subscriber's other service providers, and Subscriber's property while such Freelancers are performing Freelancer Services on Subscriber's premises or at such other location(s) as designated by Subscriber. Subscriber will comply at all times with all applicable laws and regulations related to Freelancer's performance of the Freelancer Services, including without limitation, laws and regulations related to work environment safety and conduct and laws related to illegal discrimination, harassment and retaliation.
  
- j. **Sensitive Duties.** Subscriber will bear the entire risk of allowing Freelancers to handle sensitive duties, financial instruments (including credit cards and electronic payments), and any personal information. If Subscriber assigns a Freelancer any supervisory duties or gives a

Freelancer authority to sign tax returns, render accounting or legal opinions, issue negotiable instruments, or make final decisions of the nature of those generally made by Subscriber's executives, officers, or directors, Subscriber (and not Upwork) is solely responsible for any such decisions or actions.

- k. **Restrictions.** Subscriber will not: (i) license, sublicense, sell, resell, distribute, transfer, assign or otherwise commercially exploit or make available to any third party, the Platform or the Services, except as expressly permitted herein; (ii) modify or make derivative works based on the Services or otherwise violate Upwork's intellectual property rights in the Services; (iii) reverse engineer or access the Services for any reason that is not expressly authorized under this Agreement, including in order to (a) build a competitive product or service or access the Services for the purposes of monitoring performance, availability, functionality, or for any benchmarking or competitive purposes, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Services; (iv) send or store infringing, obscene, threatening, libelous or otherwise unlawful or tortious material to the Services; (v) send or store material containing viruses, worms, Trojan horses, spam or other harmful computer code, files, scripts, agents or programs to or from the Services; (vi) interfere with or disrupt the integrity or performance of the Services or the data contained in it, including engaging in denial of service attacks; (vii) attempt to gain unauthorized access to the Services or its systems or networks; or (viii) use the Services in violation of applicable law.

### 3. FEES AND PAYMENTS

- a. **Enterprise Billing Services.** Upwork will make, or cause to be made, Freelancer Payments and Costs on behalf of Subscriber in accordance with this Agreement. Upwork will bill Subscriber in arrears for all such payments made by Upwork and all applicable fees and costs.

Subscriber's ability to use Enterprise Billing services described in this section is subject to Upwork's approval of a credit limit for Subscriber and limited by the amount of that approval. Upwork may at any time without notice, grant, deny, limit, extend, withdraw, increase or decrease credit to Subscriber at its sole discretion.

- b. **Billing and Payment.** Subscriber shall be responsible for and shall pay to Upwork the fees set forth in the Order Form in accordance with the terms and conditions contained therein, in addition to all Freelancer Payments and Costs. Subscriber shall pay all invoices within the time period stated on the Order Form, measured from the date of the invoice. Payment obligations are non-cancelable and non-refundable. Any late payments are subject to a finance charge of 2.0% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection. All amounts in the Order Form and invoice are stated in, and shall be paid in, U.S. dollars. The pricing during any Renewal Term shall be the same as that during the prior Initial Term or Renewal Term, as applicable, unless Upwork has provided written notice of a price change at least thirty (30) days before the end of such prior Initial Term or Renewal Term, as applicable, in which case the pricing increase shall be effective upon the commencement of the Renewal Term. Billing for any pricing increases will commence in the month following the renewal month in which the Order Form was renewed.
- c. **Freelancer Service Fee.** Upwork charges Freelancers the service fee stated on the Platform. If a Freelancer is a BYO Freelancer or if the Freelancer is engaged via Upwork Payroll Services, Upwork will not charge a service fee to the Freelancer for any work the Freelancer performs for Subscriber.
- d. **Upwork Payroll Services.** If Subscriber requests Upwork to hire a Freelancer classified as an employee via Upwork's Payroll Services, Subscriber will pay the Upwork Payroll Fee. In such case, the Standard

Service Fee or BYO Service Fee, as applicable, will be applied to (i) Freelancer Payments and Costs and (ii) the Upwork Payroll Fee. The Upwork Payroll Fee and all Employment Related Costs will be provided to Subscriber prior to the Employment Provider hiring the relevant Freelancer.

- e. **Taxes.** All amounts and fees stated or referred to in this Agreement are exclusive of Taxes. Subscriber shall be responsible for paying all Taxes associated with the services provided in this Agreement (without any offset or deduction to the fees paid to Upwork) other than U.S. Taxes based on Upwork's net income. Subscriber agrees to hold Upwork harmless from all claims and liability arising from Subscriber's failure to report or pay any such Taxes.
- f. **Purchase Order.** Notwithstanding any other provision in this Agreement, if Subscriber requires a PO to issue payment under this Agreement and Upwork has not received a copy of such PO, Upwork reserves the right to suspend Subscriber's access to the Platform until such purchase order has been received. If Subscriber requires a valid PO number to be attached to or entered in an invoice submission to Subscriber's portal, but a valid PO has not been provided to Upwork in a timely manner, the net payment term in the Service Order will be based on the date of the invoice generated by Upwork and not the date of invoice submission to Subscriber's portal.
- g. **Non-Circumvention.** If an employee or agent of Subscriber directly or indirectly engages the services of a Platform Freelancer through a source other than Upwork during the Exclusivity Period, Subscriber agrees to pay Upwork ten thousand dollars (\$10,000) for each such Freelancer. If upon Subscriber's request, Upwork finds a Freelancer that was not on the Platform and Subscriber engages such Freelancer through a source other than Upwork, Subscriber agrees to pay Upwork ten thousand dollars (\$10,000) for each such Freelancer.

#### 4. TERM AND TERMINATION

- a. **Term.** This Agreement will begin on the Effective Date and will continue until through the duration of the Term unless terminated in accordance with this Agreement.
- b. **Termination.** Upon a material breach of this Agreement by either Party, the non-breaching Party may terminate this Agreement immediately if such default continues and is not remedied within thirty (30) days following written notice of default from the non-breaching Party. Either Party will have the right to terminate this Agreement immediately if the other Party (i) becomes subject to any bankruptcy or insolvency proceeding under federal or state statute that is not dismissed within 30 days, (ii) becomes subject to direct control by a trustee, receiver or similar authority, or (iii) has wound up or liquidated, voluntarily or otherwise. Notwithstanding the foregoing, Upwork has the right to immediately suspend or terminate Subscriber's account and this Agreement if Upwork does not receive payment from Subscriber by the due date in this Agreement and all amounts owed under the Agreement will become immediately due.
- c. **Post-Termination Obligations.** Except for Subscriber's termination under the "Termination" section above, if Subscriber terminates its subscription to the Services or this Agreement prior to the end of the Term, in addition to other amounts Subscriber may owe Upwork, Subscriber will immediately pay any then unpaid Subscription Fees associated with the remainder of the current Term.
- d. **Effect of Termination and Survival.** As of the date either Party provides notice of termination to the other, Subscriber will no longer be able to engage Freelancers for new jobs via the Platform. All projects in a working status as of the date such notice is provided (each a "**Final Engagement**") will remain active until completed, even if completion of the Final Engagement follows the termination date, unless otherwise

agreed by the Parties and the affected Freelancer(s). Notwithstanding any termination of this Agreement, Subscriber remains responsible for payment of all fees and payments owed to Upwork under this Agreement, including any Freelancer Payments and Costs. The sections and subsections titled “Fees and Payments”, “Effect of Termination and Survival”, “Intellectual Property”, “Representations, Warranties and Disclaimers”, “Confidentiality”, “Indemnification”, “Limitation of Liability”, “Miscellaneous” and all of Subscriber’s outstanding obligations, will survive any termination or expiration of this Agreement.

## 5. INTELLECTUAL PROPERTY.

All rights in and to the Platform and Services are and will remain the sole and exclusive property of Upwork. All rights not expressly granted to Subscriber are reserved by Upwork, and Subscriber will not take or permit any third party to take any action with respect to the Platform or Services that is not expressly authorized under this Agreement.

## 6. REPRESENTATIONS, WARRANTIES AND DISCLAIMERS

- a. **Representations and Warranties.** Each Party represents and warrants that: (i) it is a corporation duly organized and validly existing under the laws of the jurisdiction in which it is incorporated; (ii) it has full corporate power and authority, and has obtained all corporate approvals, permissions and consents necessary, to enter into this Agreement and to perform its obligations hereunder; (iii) this Agreement is legally binding upon it and enforceable in accordance with its terms; and (iv) the execution, delivery and performance of this Agreement does not and will not conflict with any agreement, instrument, judgment or understanding, oral or written, to which it is a party or by which it may be bound.
  
- b. **Subscriber Acknowledgements.** Other than as stated in this Agreement, Subscriber expressly acknowledges, agrees, and understands that: (a) Subscriber will comply with all applicable law; (b) Upwork is not a party to the dealings between Subscriber and Freelancer, including posts, proposals, selection, contracting, and performance of Freelancer Services; (c) Upwork does not, in any way, supervise, direct, or control the

Freelancer or Freelancer Services; (d) Upwork makes no representations as to the quality, security, or legality of any Freelancer Services, and Upwork disclaims any and all liability relating thereto; (e) Upwork does not introduce Freelancers to clients (including Subscriber) or help Freelancers find engagements; (f) Upwork merely makes the Platform available to enable Freelancers to identify and determine the suitability of clients at Freelancers' discretion and to enable clients, such as Subscriber, to identify and determine the suitability of Freelancers at Subscriber's discretion; (g) Upwork does not set Freelancer's work hours, work schedules, or location of work, nor is Upwork involved in determining if the Freelancer fees will be set at an hourly or fixed rate for a project; (h) Upwork will not provide Freelancer with training or any equipment, labor, or materials needed for a particular project (i) Upwork does not provide the premises at which the Freelancer will perform the work; (j) if there is a dispute between Subscriber and Freelancer, that dispute is solely between Subscriber and the Freelancer and Upwork will not be responsible or liable with respect to such dispute. Upwork makes no representations about, and does not guarantee the truth or accuracy of Freelancer's listings on the Platform; the ability of Freelancers to deliver the Freelancer Services; or that Subscriber or Freelancer can or will actually complete a transaction.

- c. **Subscriber Responsibilities for Freelancers Hired as Employees.** In addition to Subscriber's responsibilities set forth herein, if a Freelancer is classified as an employee by Upwork, Subscriber shall: (a) not request or allow the Freelancer to commence work until Subscriber receives notice from Upwork or its Employment Provider that employment paperwork has been completed and employment has started; (b) absent exigent circumstances, (i) provide at least 72 hours advance notice before terminating a worker's employment assignment, or (ii) immediately provide notice of any voluntary termination; otherwise, Subscriber will be responsible for any penalties or costs for violating or complying with

laws governing final paycheck requirements; and (c) immediately inform Upwork of any request for a leave of absence or disability accommodation or if Subscriber becomes aware of a potential disability or need for leave or accommodation and provide any legally protected accommodation or leave.

- d. **Actions Affecting Freelancers.** Subscriber will ensure (i) that Subscriber's benefit plans for Subscriber's U.S.-based employees (including without limitation retirement plans, insurance plans, stock plans, stock option plans, and any plan governed by the Consolidated Omnibus Reconciliation Act (COBRA), the Health Insurance Portability and Accountability Act (HIPAA) and/or the Employee Retirement Income Security Act (ERISA)) all contain provisions expressly excluding eligibility for individuals who are not paid directly by Subscriber or an affiliate of Subscriber; (ii) that Subscriber owns or has necessary licenses to all content that Subscriber posts to the Platform or provides to Freelancers for jobs or via the Platform; (iii) that Subscriber will not direct or exercise any control over a Freelancer that is classified as an independent contractor; (iv) Subscriber will not enter into any agreement or provide Freelancers with any document, including provision of a code of conduct or amendment of contract terms, that could affect the classification of a Freelancer without prior approval from Upwork; and (v) all information provided by Subscriber to Upwork regarding Subscriber and the engagements on the Platform will be accurate and Subscriber will update all such information on the Platform or provide notice to Upwork immediately to the extent Subscriber is aware that such information has changed.
- e. **Freelancer Information.** Upwork does not independently evaluate, investigate, or otherwise conduct any due diligence regarding Freelancers, their resumes, qualifications, skills, background, or prior experience. Accordingly, Upwork makes no representations as to the

reliability, capability, background, identity or qualifications of any Freelancer. Freelancer Information posted on or to the Platform (including the Talent Cloud) is intended to be illustrative only and is not intended to be a guarantee or warranty on the part of Upwork. Upwork is not responsible for and will have no liability for Subscriber's use of or reliance on any Freelancer Information, and Subscriber acknowledges and agrees that Subscriber will be solely responsible for undertaking the necessary research and due diligence and/or having the proper knowledge, skill, and experience to evaluate the Freelancer Information.

- f. **Disclaimer.** UPWORK, ITS AFFILIATES AND PARTNERS HEREBY EXPRESSLY DISCLAIM ANY AND ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING THOSE OF ACCURACY, SYSTEM INTEGRATION, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, VALIDITY, NON-INFRINGEMENT, THOSE ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE WITH RESPECT THERETO, THOSE MADE BY A FREELANCER TO SUBSCRIBER OR RELATING TO ANY SERVICE, DELIVERABLE OR WORK PRODUCT PROVIDED BY A FREELANCER TO SUBSCRIBER. THE SERVICES PROVIDED UNDER THIS AGREEMENT ARE PROVIDED "AS IS" AND WITH ALL FAULTS. LIABILITY FOR FREELANCER'S WORK PRODUCT AND THE FREELANCER SERVICES ARE SOLELY THAT OF THE FREELANCER. NEITHER UPWORK NOR ANY OF ITS AFFILIATES OR PARTNERS PROVIDE ANY EXPRESS WARRANTY OF, HAVE ANY IMPLIED WARRANTY OF, OR HAVE ANY RESPONSIBILITY FOR, FREELANCER SERVICES OR FREELANCER WORK PRODUCT.

## 7. CONFIDENTIALITY

- a. **Confidential Information.** All information disclosed by one Party (the "Discloser") to the other (the "Recipient") that (i) is marked "confidential" or "proprietary" before its disclosure to the Recipient; or (ii) the Discloser

orally discloses to the Recipient, identifies as confidential or proprietary at the time of disclosure, and confirms to be such in writing within 10 days of such disclosure is “**Confidential Information**” under this Agreement. Confidential Information does not include information which: (i) is now, or later becomes, through no act or failure to act on the part of the Recipient, generally known or readily available to the public; (ii) was acquired by the Recipient before receiving such information from the Discloser and without restriction as to use or disclosure; (iii) is furnished to the Recipient by a third party rightfully entitled to it, without restriction as to use or disclosure; or (iv) was independently developed by the Recipient without reference to the Discloser’s Confidential Information. This Agreement, its terms and all exhibits, is the Confidential Information of Upwork.

- b. **Use and Restrictions.** The Recipient agrees: (i) to hold the Discloser’s Confidential Information in strict confidence, (ii) not to disclose the Discloser’s Confidential Information to any third parties except as reasonably necessary for the Recipient to perform its obligations hereunder, and (iii) not to use any of the Discloser’s Confidential Information except to perform the Recipient’s obligations under this Agreement. Notwithstanding the foregoing, the Recipient hereto may disclose any Confidential Information of the Discloser hereunder to the Recipient’s agents, attorneys and other representatives (under a duty not to disclose) and having a bona fide need to know such Confidential Information or any court of competent jurisdiction as reasonably required to resolve any dispute between the Parties. In addition, Upwork may disclose Subscriber’s Confidential Information to any Freelancer engaged under this Agreement so long as (i) such disclosure is reasonably required for the Freelancer to perform Freelancer Services, and (ii) the Freelancer has entered into an agreement related to such Confidential Information with terms at least as restrictive as those in this Agreement.

- c. **Legal Obligations.** If Recipient is requested or required by law, government action, subpoena or other court order to disclose any of the Discloser's Confidential Information, Recipient may disclose such information without liability under this Agreement, provided that (i) the Discloser has been given a reasonable opportunity to (a) intervene in any proceeding to try to protect the Confidential Information and (b) review the text or contents of such disclosure before it is made; and (ii) the disclosure is limited to only the Confidential Information specifically required to be disclosed.
  
- d. **Remedies.** Each Party agrees that its obligations provided in this sections under Confidential Information are necessary and reasonable in order to protect the Discloser and its business, and each Party expressly agrees that monetary damages may be inadequate to compensate the Discloser for any breach by the Recipient of its confidentiality covenants and agreements set forth in this Agreement. Accordingly, each Party agrees and acknowledges that any such breach or threatened breach may cause irreparable injury to the Discloser and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the Discloser will be entitled to seek injunctive relief against the threatened breach of this Agreement or the continuation of any such breach by the Recipient, without the necessity of proving actual damages or posting any bond.

## 8. INDEMNIFICATION

- a. **Indemnification by Upwork.** Upwork will indemnify, defend and hold harmless Subscriber and its directors, officers, agents and employees from and against any and all Claims and any and all losses, damages, liabilities, judgments, or settlements awarded for such Claims, that are based on: (a) Upwork's misclassification of a Freelancer under applicable employee/contractor classification laws and regulations; (b) Upwork or Employment Provider's failure to make, when due, a payment to a

Freelancer related to this Agreement; (c) Employment Provider's failure to comply with applicable wage and hour laws or regulations; or (d) Employment Provider's violation of any law or regulation related to workplace safety or conduct, including laws related to illegal discrimination or harassment. Upwork will further indemnify, defend and hold harmless Subscriber and its directors, officers, agents and employees from and against any and all Claims and/or any and all losses, costs, damages, liabilities, judgments, or settlements awarded for such Claims, arising out of, resulting from or in connection with any infringement or alleged infringement of U.S. intellectual property rights due to Subscriber's use of the Platform or Services, excluding infringement or alleged infringement that arises or results from (i) Subscriber's use of the Services or Platform in a way not authorized by Upwork; (ii) any modification to the Platform made by Upwork under specifications provided by Subscriber; (iii) use of the Services or Platform in combination with any other service, platform, process or materials with which the Services or Platform is not intended to be combined; (iv) Subscriber's continued use of the infringing or allegedly infringing Services or Platform after Subscriber has been provided with modifications or other remedies to avoid the alleged infringement; (v) Freelancer Services or (vi) Freelancer Work Product.

- b. **Indemnification by Subscriber.** Subscriber will indemnify, defend and hold harmless Upwork and its directors, officers, agents and employees from and against any and all Claims, and/or any and all losses, costs, damages, liabilities, judgments, or settlements awarded for such Claims, based on (i) Subscriber's violation of any law or regulation, including laws related to illegal discrimination or harassment; (ii) misclassification of a Freelancer under applicable employee/Freelancer classification laws and regulations based on inaccurate or incomplete information provided to Upwork by Subscriber or which Subscriber failed to update or was caused by Subscriber; (iii) Subscriber's failure to comply with applicable

wage and hour laws or regulations or any such failure by Upwork or the Employment Provider based on inaccurate or incomplete information provided by Subscriber or which Subscriber failed to update or was caused by Subscriber; (iv) the misuse or unauthorized use of the Platform; (v) Subscriber's direction, participation or involvement with the Freelancer or Freelancer Services; and (vi) Subscriber's breach of its obligations in Section 6(c) (Actions Affecting Freelancers).

- c. **Indemnification Requirements.** The indemnification obligations of each Party (the "Indemnifying Party") are contingent upon the other Party (the "Indemnified Party") providing the Indemnifying Party with: (i) prompt written notice of any Claim for which indemnification may be sought under this Agreement; (ii) control over the defense and settlement of any such Claim with counsel of the Indemnifying Party's choice; and (iii) proper and full information and assistance, at the Indemnifying Party's expense and request, to settle or defend any such Claim. Each Indemnified Party will be entitled to participate in, through its own counsel at its own cost and expense, but not to determine or conduct, any defense or settlement of a Claim.

## 9. LIMITATION OF LIABILITY.

IN NO EVENT WILL EITHER PARTY BE LIABLE FOR LOST PROFITS OR CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY (INCLUDING NEGLIGENCE), EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR (I) AMOUNTS DUE UPWORK FROM SUBSCRIBER UNDER THIS AGREEMENT, (II) AMOUNTS PAYABLE TO THIRD PARTIES PURSUANT TO INDEMNIFICATION OBLIGATIONS HEREIN AND/OR (III) AMOUNTS PAYABLE PURSUANT TO BREACH OF THE CONFIDENTIALITY PROVISIONS OF THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR AN AMOUNT GREATER THAN THE TOTAL FEES PAID BY SUBSCRIBER TO UPWORK DURING THE 365 DAYS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM FOR WHICH LIABILITY IS SOUGHT TO BE IMPOSED. SUBSCRIBER ACKNOWLEDGES THAT THE AMOUNTS PAYABLE UNDER THIS AGREEMENT ARE BASED IN PART ON THESE LIMITATIONS, AND FURTHER AGREES THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

## 10. MISCELLANEOUS

- a. **Records and Audit.** Upwork will maintain reasonable records related to the engagement of Freelancers under this Agreement ("Engagement Records") for at least five years following the termination of the

Freelancer's work for Subscriber. Subject to restrictions imposed by laws and regulations related to the privacy of the Freelancer, Subscriber, at its sole cost and expense and no more than once per calendar year, may audit Engagement Records at any time during Upwork's normal business hours after providing Upwork with 15 days written notice of such audit. Such Engagement Records will automatically be deemed Upwork's Confidential Information and any outside auditor engaged by Subscriber with respect to such audit will (i) be reasonably acceptable to Upwork; and (ii) enter into a confidentiality and non-use agreement in such form provided by Upwork with respect to the Engagement Records.

- b. **Service Delivery.** Notwithstanding any other provision in this Agreement, Upwork has the right, in its sole discretion, to provide one or more services described in this Agreement through Upwork, any other Upwork affiliate, or other third party service provider.
- c. **Governing Law.** This Agreement will in all respects be is governed by the laws of the State of California and the United States of America without reference to its principles of conflicts of laws. The Parties hereby agree that all disputes arising out of this Agreement will be subject to the exclusive jurisdiction of and venue in the federal and state courts within Santa Clara County, California and Subscriber hereby consents to the personal and exclusive jurisdiction and venue of these courts and waives any objection to venue in such courts and any claim that such forum is an inconvenient forum.
- d. **Assignment.** This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Subscriber may not assign or otherwise transfer this Agreement or any rights or obligations hereunder, in whole or in part, whether by operation of law or otherwise, without Upwork's prior written consent. Any purported transfer, assignment or delegation without such prior written consent will be null and void. Upwork may assign this Agreement to any

affiliate or successor to its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise.

- e. **Entire Agreement.** This Agreement represents the entire agreement between the Parties, and supersedes all prior agreements and understandings with respect to the matters herein. Subject to the terms of this Agreement, no amendment to this Agreement will be effective unless in writing signed by both Parties; provided, however, Upwork may amend the Independent Contractor Agreement from time to time in its sole discretion in light of legal requirements or changes to the Platform provided no such modification adversely changes the rights or obligations of Subscriber. This Agreement hereby incorporates by reference all policies posted on the Platform, as may be modified by Upwork from time to time in its sole discretion. In the event of a conflict between this Agreement and the other policies, this Agreement will control. In the event of a conflict between this Agreement and an Order Form, the terms of the Order Form will govern to the extent of the conflict. The Parties may execute this Agreement in counterparts, which taken together will constitute one instrument. No provision of any pre-printed order form, purchase order, click-through process, or other business form employed by Subscriber will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement will be for administrative purposes only and will have no legal effect.
  
- f. **Force Majeure.** Excluding Subscriber's obligation to make payments to and/or reimburse Upwork hereunder, both Parties shall be excused from performance under this Agreement to the extent that either Party is prevented from performing or is unable to perform any of its obligations under this Agreement as a result of causes beyond its reasonable control, including without limitation, any Act of God, fire, casualty, flood,

earthquake, war, strike, lockout, epidemic, destruction of facilities, riot, insurrection, material unavailability, telecommunications or internet failures, acts of the government, governmental requirements and regulations or restrictions imposed by law, if such Party has used its commercially reasonable efforts to mitigate its effects, such Party will give prompt written notice to the other Party. In such event, the time for the performance will be extended for the period of delay or inability to perform due to such occurrences.

- g. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable, the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.
- h. **Waiver.** The waiver of one breach or default or any delay in exercising any rights will not constitute a waiver of any subsequent breach or default.
- i. **Notices.** All notices permitted or required under this Agreement must be in writing and will be delivered by electronic mail, in person or mailed by first class, registered or certified mail, postage prepaid, or by any nationally reputable overnight courier able to provide a receipt of delivery, to the address of the Party specified in this Agreement, such other address as either Party may specify in writing or such address the Party sending the notice has on file. Such notice will be deemed to have been given upon receipt.
- j. **Independent Contractor.** Neither Party will be deemed to be an agent of the other Party and the relationship between the Parties will only be that of independent contractors. Neither Party will have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of any other Party, whether express or implied, or to bind the other Party in any respect whatsoever.
- k. **Electronic Signatures.** The Parties consent to the use of electronic

signatures for purposes of signing this Agreement, intending to become legally bound.

- i. **Export Law Assurances.** Subscriber understands that the deliverables provided to Subscriber under this Agreement may be subject to export control laws and regulations. SUBSCRIBER MUST NOT EXPORT OR RE-EXPORT ANY FREELANCER WORK PRODUCT OR ANY INFORMATION OR TECHNOLOGY UNDERLYING THE FREELANCER WORK PRODUCT OR FREELANCER SERVICES EXCEPT IN FULL COMPLIANCE WITH ALL UNITED STATES AND OTHER APPLICABLE LAWS AND REGULATIONS, INCLUDING WITHOUT LIMITATION, UNITED STATES EXPORT CONTROL LAWS.
- m. **Costs.** If any action at law or in equity (including arbitration) is necessary to enforce or interpret the terms of this Agreement, the prevailing Party will be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such Party may be entitled.