IMPORTANT NOTE: These Optional Service Contract Terms are effective May 20, 2018 for all Users who registered before they were posted on April 20, 2018, and effective when posted for everyone else.

Users who enter into a Service Contract on the Site with another User are free to agree to these Optional Service Terms in whole or in part, or to agree to different or additional terms for their Service Contract(s). However, if and to the extent that the Users who are party to a Service Contract have not agreed to different terms, then they agree to incorporate these Optional Terms. Users may not, by agreement amongst themselves, alter the rights or responsibilities of Upwork or Upwork Escrow, including any provision of the Escrow Instructions, or agree to any terms that would violate the Terms of Service. Neither Upwork, Upwork Escrow, nor any affiliate of Upwork is a party to any Service Contract by or between Users regardless of whether these Optional Terms are incorporated.

You acknowledge and agree that Users have discretion whether to contract with each other and will negotiate and determine the specific terms of their Service Contracts with each other. The Optional Service Terms is a sample only, which may not be appropriate for all Service Contracts and which may be adjusted and added to as Users deem appropriate. Users choose whether to use the Optional Service Terms in whole or in part.

1. PARTIES

Client and Freelancer identified on the Site under the Service Contract are the parties to the Services Contract. The address of each party is the address entered under the tax information on the Site. Upwork is not a party to the Service Contract.

2. SERVICES

Client and Freelancer agree that the Freelancer is performing services as an independent contractor and that Freelancer is not an employee or agent of Client. Freelancer will perform the Freelancer Services in a professional and workmanlike manner and will timely deliver any agreed upon Work Product. The manner and means of performing the Freelancer Services will be determined and controlled solely by Freelancer, which is engaged by Client as an independent contractor.

The terms concerning the services to be performed under the Service Contract described on the Site form part of the Service Contract. Users agree that, once accepted, the terms of the Service Contract cannot be modified by a User without obtaining the consent of the other before making changes to the Service Contract, including by adding additional or different milestones, by closing a Service Contract, or making other changes to the Service Contract on the Site. If consent of the other party is not first obtained, the other party may reject such changes by terminating the Service Contract or accept such changes by continuing to work on the Service Contract.

3. RESPONSIBILITY FOR EMPLOYEES AND SUBCONTRACTORS, INCLUDING AGENCY MEMBERS

If a User subcontracts with or employs third parties to perform Freelancer Services on behalf of the User for any Engagement, the User represents and warrants that it does so as a legally recognized entity or person and in compliance with all applicable laws and regulations. Further, at all times a User that agreed to perform services under a Services Contract remains responsible for the quality of the services.

4. CLIENT PAYMENTS AND BILLING

Freelancer agrees to accurately report hourly invoices by billing hours worked under the Account of the User that worked the hours, including, if applicable, Agencies billing their Clients for hourly work done by Agency Members.

5. TERMINATION OF A SERVICE CONTRACT

Under Hourly Contracts, either Client or Freelancer has the right to terminate the Service Contract after providing any agreed-upon notice, or immediately on the end date specified in the Service Contract terms and/or upon completion of the Freelancer Services, in the event of a material breach, or with the consent of the other party. Except as required by law or as otherwise may be agreed to by the Parties, Client remains obligated to pay the Freelancer Fees for any Freelancer Services provided prior to termination of the Hourly Contract.

Under Fixed-Price Contracts, once a Client's Payment Method has been charged to fund the escrow account for the Engagement, absent a full refund to Client by Freelancer, the Service Contract does not terminate until the Freelancer Services are completed. However, either Client or Freelancer has the right to terminate a Fixed-Price Contract at any time with the consent of the other party or in the event of a material breach. If a Fixed-Price Contract is terminated, Client does not have the right to recover any payments already released to Freelancer from the escrow account for the Engagement.

6. INTELLECTUAL PROPERTY RIGHTS

6.1 THIRD-PARTY RIGHTS

Freelancer represents and warrants that Freelancer will not incorporate or use the materials of any third party including those of any other client or any employer, in performing the Freelancer Services that are not generally available for use by the public or have not been legally transferred to the Client.

6.2 BACKGROUND TECHNOLOGY

Freelancer will disclose in the Engagement terms any Background Technology which Freelancer proposes to incorporate into Work Product or upon which use or distribution of the Work Product will depend. If Freelancer discloses no Background Technology, Freelancer warrants that it will not incorporate any Background Technology into Work Product provided pursuant thereto. Freelancer will separately provide, with each delivery of Work Product to Client, a 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 Engagement terms, Freelancer agrees that it will not incorporate into Work Product or otherwise deliver to Client any software code for which the use or distribution of the code will create (or purport to create) obligations for Client to grant any rights or immunities under Client intellectual property to a third-party, including without limitation any obligation that the Work Product or Client 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.

6.3 CLIENT MATERIALS

Client grants Freelancer a limited, non-exclusive, revocable (at any time, at Client's sole discretion) right to use the Client

Materials as necessary solely for the performance of the Freelancer Services under the applicable Service Contract. Client reserves all other rights and interest, including, without limitation, all Intellectual Property Rights, in and to the Client Materials. Upon completion or termination of the Service Contract, or upon Client's written request, Freelancer will immediately return all Client Materials to Client and further agrees to destroy all copies of Client Materials and Deliverables (except for Background Technology as permitted by the Service Contract) contained in or on Freelancer's premises, systems, or any other equipment or location otherwise under Freelancer's control. Within ten days of such request from Client, Freelancer agrees to provide written certification to Client that Freelancer has returned or destroyed all Client Materials and Work Product as provided in this subsection.

6.4 OWNERSHIP OF WORK PRODUCT AND INTELLECTUAL PROPERTY

Upon Freelancer's receipt of full payment from Client, the Work Product (except for any Background Technology), including without limitation all Intellectual Property Rights in the Work Product (except for any Background Technology), will be the sole and exclusive property of Client, and Client will be deemed to be the author thereof. If Freelancer has any Intellectual Property Rights to the Work Product that are not owned by Client upon Freelancer's receipt of payment from Client, Freelancer hereby automatically irrevocably assigns to Client all right, title and interest worldwide in and to such Intellectual Property Rights. Except as set forth above, Freelancer retains no rights to use, and will not challenge the validity of Client's ownership in, such Intellectual Property Rights. Freelancer hereby waives any moral rights, rights of paternity, integrity, disclosure and withdrawal or inalienable rights under applicable law in and to the Work Product. If payment is made only for partial delivery of Work Product, the assignment described herein applies only to the portion of Work Product delivered and paid for.

6.5 LICENSE TO BACKGROUND TECHNOLOGY

Upon Freelancer's receipt of full payment from Client for delivery of Work Product, Freelancer hereby automatically grants to Client a non-exclusive, perpetual, fully-paid and royalty-free, irrevocable and worldwide right, with rights to sublicense through multiple levels 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 in Work Product delivered for that payment. If payment is made only for partial delivery of Work Product, the license described herein applies only to the portion of Work Product delivered and paid for.

6.6 LICENSE TO OR WAIVER OF OTHER RIGHTS

If Freelancer has any right to the Work Product, including without limitation any Intellectual Property Right, that cannot be assigned to Client by Freelancer, Freelancer hereby automatically, upon Freelancer's receipt of full payment from Client, unconditionally and irrevocably grants to Client during the term of such rights, an exclusive, even as to Freelancer, irrevocable, perpetual, worldwide, fully-paid and royalty-free license to such rights, with rights to sublicense through multiple levels 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 such Work Product that cannot be assigned or licensed, Freelancer hereby automatically, upon Freelancer's receipt of payment from Client, unconditionally and irrevocably waives the enforcement of such rights, and all claims and causes of action of any kind against Client or related to Client's customers, with respect to such rights, and will, at Client's request and expense, consent to and join in any action to enforce such rights. If payment is made only for partial delivery of Work Product, the grant described herein applies only to the portion of Work Product delivered.

6.7 ASSISTANCE

Freelancer will assist Client in every way, including by signing any documents or instruments reasonably required, both during and after the term of the Service Contract, to obtain and enforce Intellectual Property Rights relating to Work Product in all countries. In the event Client is unable, after reasonable effort, to secure Freelancer's signature on any document needed in connection with the foregoing, Freelancer hereby designates and appoints Client and its duly authorized officers and agents as its agent and attorney in fact to act on its behalf to further the purposes of this Section with the same legal force and effect as if executed by Freelancer.

7. CONFIDENTIAL INFORMATION

7.1 CONFIDENTIALITY

To the extent a Client or Freelancer provides Confidential Information to the other, the recipient will protect the secrecy of the discloser's Confidential Information with the same degree of care as it uses to protect its own Confidential Information, but in no event with less than due care, and will: (a) not disclose or permit others to disclose another's Confidential Information to anyone without first obtaining the express written consent of the owner of the Confidential Information; (b) not use or permit the use of another's Confidential Information, except as necessary for the performance of Freelancer Services (including, without limitation, the storage or transmission of Confidential Information on or through the Site for use by Freelancer); and (c) limit access to another's Confidential Information to its personnel who need to know such information for the performance of Freelancer Services.

7.2 RETURN

If and when Confidential Information is no longer needed for the performance of the Freelancer Services for a Services Contract or at Client's or Freelancer's written request (which may be made at any time at Client's or Freelancer's sole discretion), the party that received Confidential Information, will, at its expense, promptly destroy or return the disclosing party's Confidential Information and any copies thereof contained in or on its premises, systems, or any other equipment otherwise under its control. The party that received Confidential Information agrees to provide written certification to the party disclosing the Confidential Information of compliance with this subsection within ten days after the receipt of disclosing party's written request for such certification.

7.3 PUBLICATION

Without limiting Section 7 (Confidentiality), Client and Freelancer will not publish, or cause to be published, any other party's Confidential Information or Work Product, except as may be necessary for performance of Freelancer Services for a Services Contract.

7.4 IMMUNITY

A disclosure of information will be immune from prosecution or civil action under the Defend Trade Secrets Act, 18 U.S.C. Sec. 1832, if it: (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. DEFINITIONS

The following capitalized terms have the following meanings:

"Background Technology" means all Inventions developed by Freelancer other than in the course of providing Freelancer

Services to Client under the Service Contract and all Inventions that Freelancer incorporates into Work Product.

“Client” means any person who entered into a Service Contract to obtain Freelancer Services from a Freelancer.

“Client Deliverables” means requests, intellectual property, and any other information or materials that a Freelancer receives from a Client to perform Freelancer Services.

“Client Materials” means requests, intellectual property, and any other information or materials that Client provides to Freelancer for Freelancer to perform Freelancer Services.

“Confidential Information” means Client Deliverables, Freelancer Deliverables, Work Product, and any other information provided to, or created by, a User for a Service Contract or to perform or assist in performing Freelancer Services, regardless of whether in tangible, electronic, verbal, graphic, visual, or other form. Confidential Information does not include material or information that is known to the public or that: (a) is generally known by third parties as a result of no act or omission of Freelancer or Client; (b) subsequent to disclosure hereunder, was lawfully received without restriction on disclosure from a third party having the right to disseminate the information; (c) was already known by User prior to receiving it from the other party and was not received from a third party in breach of that third party’s obligations of confidentiality; or (d) was independently developed by User without use of another person’s Confidential Information.

“Engagement” means an engagement for Freelancer Services that a Freelancer provides to a Client under a Service Contract on the Site.

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

“Fixed-Price Contract” means a Service Contract for which Client is charged a fixed fee agreed between a Client and a Freelancer, prior to the commencement of a Service Contract, for the completion of all Freelancer Services contracted by Client for such Service Contract.

“Freelancer” means any person who entered into a Service Contract to perform Freelancer services for a Client.

“Freelancer Deliverables” means requests, intellectual property, and any other information or materials that a Client receives from a Freelancer for a particular Service Contract.

“Freelancer Fees” means: (a) for an Hourly Contract, an amount equal to the number of hours recorded by Freelancer in any Hourly Invoice, multiplied by the hourly rate set by the Freelancer; (b) for a Fixed-Price Contract, the fixed fee agreed between a Client and a Freelancer; and (c) any bonuses or other payments made by a Client.

“Freelancer Services” means all services performed for or delivered to Clients by Freelancers.

“Hourly Contract” means a Service Contract for which Client is charged based on the hourly rate set by the Freelancer.

“Hourly Invoice” means the report of hours recorded for a stated period by a Freelancer for the Freelancer Services performed for a Client.

“Intellectual Property Rights” means all patent rights, copyright rights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights and other intellectual property rights as may now exist or hereafter come into existence, and all applications therefore and registrations, renewals and extensions thereof, under the laws of any state, country, territory or other jurisdiction.

“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.

“Service Contract” means, as applicable, (a) the contractual provisions between a Client and a Freelancer governing the Freelancer Services to be performed by a Freelancer for Client for an Engagement; or (b) if you use Upwork Payroll, the contractual provisions between Freelancer and the Staffing Provider for the provision of services to Client.

“Work Product” means any tangible or intangible results or deliverables that Freelancer agrees to create for, or actually delivers to, Client as a result of performing the Freelancer Services, including, but not limited to, configurations, computer programs, or other information, or customized hardware, and any intellectual property developed in connection therewith.