

MASTER SUBSCRIPTION AGREEMENT - ENTERPRISE CORE

This Master Subscription Agreement governs the Order Form (collectively, the “**Agreement**”) entered into by Upwork Global Inc. (“**Upwork**”) and the subscriber identified in the Order Form (“**Subscriber**”). Any term used in this Master Subscription Agreement that is defined in the Order Form and is not otherwise defined herein will have the meaning ascribed to it in the Order Form. The parties hereby agree:

1. **DEFINITIONS.** The following terms will have the meanings ascribed to them below when used in this Agreement:

1.1 “**Affiliate**” means an entity which directly or indirectly controls, is controlled by, or is under common control with Subscriber or Upwork (as applicable), 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 or Upwork (as applicable).

1.2 “**Authorized Recipients**” means employees and representatives of the party receiving Confidential Information that have a bona fide need to receive such Confidential Information.

1.3 “**Authorized Users**” means Subscriber’s representatives who are permitted to access and use the Platform on Subscriber’s behalf.

1.4 “**BYO Freelancer**” means a Freelancer that Subscriber brings to the Platform that is not already a registered freelancer on the Platform.

1.5 “**BYO Service Fee**” means the fee specified in the Order Form that is payable by Subscriber to Upwork that applies to Engagements involving a BYO Freelancer.

1.6 “**Claims**” means any and all third-party claims, suits or proceedings, including without limitation claims or actions by applicable government agencies. For the purposes of Upwork’s indemnities owed to Subscriber in Section 8.1, the term “Claims” excludes Excluded Claims.

1.7 “**Confidential Information**” means any information or materials (regardless of form or manner of disclosure) that are disclosed by or on behalf of one party to the other party that (i) are marked, flagged, or communicated as being “confidential” or “proprietary” at the time of such disclosure; (ii) the disclosing party orally discloses to the receiving party and identifies as being confidential or proprietary at the time of disclosure and confirms to be such in writing promptly after such disclosure; or (iii) a reasonable person should know to be confidential, even if not so marked. The term “Confidential Information” does not include any information or materials that: (a) are or become generally known or available to the public through no breach of this Agreement or other wrongful act or omission by the receiving party; (b) were already known by the receiving party; (c) are acquired by the receiving party without restriction from a third party who has the right to make such disclosure; or (d) are independently developed by or on behalf of the receiving party without reference to any Confidential Information.

1.8 “**Effective Date**” means the later of either the “Contract Start Date” listed on the first Order Form signed by the parties or the date that the first Order Form is fully executed by the parties.

1.9 “**Engagement**” means an engagement for Freelancer Services and Freelancer Work Product that a Freelancer provides to a Subscriber.

1.10 “**Enterprise Billing Services**” means Upwork’s Service of issuing Freelancer Payments on Subscriber’s

behalf as due for each Engagement and then billing Subscriber in arrears on a monthly basis for all such payments as further described in Section 3.1 (Enterprise Billing Services).

1.11 “**Excluded Claims**” means claims to the extent arising from (i) Subscriber’s direct engagement of a Freelancer before, after or outside of an Engagement under this Agreement, or (ii) Subscriber’s breach of this Agreement.

1.12 “**Freelancer**” means a user that advertises and provides services via the Platform. Freelancers collectively refers to all BYO Freelancers and Platform Freelancers, regardless of their classification.

1.13 “**Freelancer Information**” means any information regarding a Freelancer on the Platform.

1.14 “**Freelancer Payments**” means all payments made by Upwork on behalf of Subscriber to Freelancers in accordance with this Agreement.

1.15 “**Freelancer Services**” means the services that a Freelancer has agreed to perform for Subscriber, including Subscriber’s project post and description on the Platform.

1.16 “**Freelancer Work Product**” means all work, work product, and deliverables created by a Freelancer for Subscriber based on Subscriber’s project post and description on the Platform.

1.17 “**Order Form**” means the applicable enterprise order form executed by Subscriber and Upwork that references this Agreement.

1.18 “**Platform**” means the website located at www.upwork.com, including any pages tailored to or viewable by a specific client thereon.

1.19 “**Platform Content**” means content (including text, images, video, audio, and other materials or information) that is submitted, uploaded, or posted to Upwork and the Platform for the purposes of such content being displayed on the Platform for the purpose of finding Freelancers. “Platform Content” does not include Freelancer Work Product or Subscriber’s Confidential Information.

1.20 “**Platform Freelancer**” means a Freelancer that is not a BYO Freelancer.

1.21 “**Program Management Services**” means, upon Subscriber's request, one initial review of Subscriber's draft project post. Program Management Services do not include project management or oversight of the Freelancer, the Freelancer Services, or other aspects of the actual Engagement.

1.22 “**Service Contract**” means the contractual provisions that govern each Engagement, including any independent contractor agreement, non-disclosure agreement, or other agreement between Subscriber and Freelancer in connection with the Engagement, and the provisioning of Freelancer Services and Freelancer Work Product, including the Engagement terms awarded and accepted on the Platform, applicable project descriptions and Freelancer rates, hours, and milestones, provided, however, that in each case, such terms will not, and will not purport to, expand Upwork’s obligations or restrict Upwork’s rights under this Agreement. In the event that Subscriber does not provide its own independent contractor agreement for an Engagement, Subscriber will have the ability to use the Platform’s optional service contract terms by default as a convenience.

1.23 “**Service Fee**” means the fee specified in the Order Form that is payable by Subscriber to Upwork that applies to Engagements involving a Platform Freelancer.

1.24 “**Services**” means Upwork’s products and services that are 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 or provision of such products and services, including provisioning access to the Platform. The

“Services” are separate from and do not include Freelancer Services or Freelancer Work Product.

1.25 “**Talent Sourcing Services**” means, upon Subscriber's request, the provision of one short list per project post of Freelancers advertising the skills that Subscriber seeks.

1.26 “**Taxes**” means all taxes, levies, imposts, duties, and similar governmental assessments arising in connection with this Agreement, including but not limited to sales, use, VAT, GST, excise, service, business, service, and similar transactional taxes imposed by any jurisdiction, and the interest and penalties for non-compliance by Subscriber. The term “Taxes” does not include taxes levied on Upwork’s own income and property.

1.27 “**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.

1.28 “**UTC**” means Universal Time Coordinated.

2. PLATFORM AND SERVICES.

2.1 **Platform Access.** Subject to the terms and conditions of this Agreement, Upwork (i) shall use commercially reasonable efforts to make the Platform available to Subscriber and (ii) hereby grants to Subscriber and its Authorized Users the right to access and use the Platform to (a) find, communicate with, and engage Freelancers through the Platform, (b) receive, review, and approve Freelancer Services and Freelancer Work Product, and (c) review Freelancer billing records for payment by Upwork on behalf of Subscriber. Subscriber acknowledges that Upwork’s implementation of Subscriber’s Platform account requires Subscriber’s reasonable cooperation and agrees to promptly provide the information required by Upwork for such implementation. During the Term, Upwork may modify the features and functionality of the Platform provided the modifications do not materially degrade the Services. Subscriber is responsible for its Authorized Users’ use of the Platform and compliance with this Agreement and agrees to be directly responsible for all costs and fees incurred by such Authorized User. Subscriber shall take reasonable steps to prevent unauthorized access to the Platform, including without limitation by protecting and instructing Authorized Users to protect passwords and login information. Subscriber shall promptly notify Upwork if it becomes aware of any unauthorized use of the Platform and will reasonably cooperate with Upwork to remediate such breaches.

2.1.1 **Affiliate Order Form.** Subscriber’s Affiliates are permitted to contract for Services and to use the Platform pursuant to the terms of this Master Subscription Agreement by either (i) directly entering into a separate Order Form with Upwork, which will be governed under the same terms of this Master Subscription Agreement (an “**Affiliate Order Form**”) or (ii) if authorized by Subscriber, using the Platform as an Authorized User under Subscriber’s existing account. By entering into an Affiliate Order Form directly with Upwork under romanette (i), Subscriber’s Affiliate will receive its own separate Platform account and shall sign their own Master Subscription Agreement.

2.2 **Program Management and Talent Sourcing Services.** At its discretion, Subscriber may request Upwork’s optional Program Management Services and/or Talent Sourcing Services. Any use by Subscriber of Program Management Services or Talent Sourcing Services will not alter, reduce or eliminate any Subscriber responsibilities under this Agreement, including without limitation worker classification.

2.3 Freelancer Services.

2.3.1 **Freelancer Relationship.** If and after the Freelancer has agreed to provide Freelancer Services to Subscriber and has executed a Service Contract and any other necessary agreements that Subscriber may

require, Subscriber and Freelancer will work directly together. Upwork will not supervise, control, or otherwise be responsible for the performance of the Freelancer Services by Freelancer. 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 to either Subscriber or Freelancer with respect to such dispute. For the avoidance of doubt, Subscriber is responsible for the appropriate classification of each Freelancer. This enterprise Platform account may only be used to engage Freelancers properly classified by Subscriber as independent contractors in accordance with applicable law. Subscriber agrees not to engage Freelancers that it has or should have classified as employees using this enterprise Platform account. If Subscriber classifies (or should classify) a Freelancer as an employee, Subscriber acknowledges and agrees that such engagements may only be supported on Upwork by creating a marketplace account and engaging such Freelancer through the [Upwork Payroll](#) solution.

2.3.2 Hourly Work for Independent Contractors. For hourly work performed by Freelancers classified as independent contractors, Subscriber can dispute the Freelancer billing entries as described by this Section. The Freelancer invoice will cover the billing period that 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 records 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 (i) Subscriber will be deemed to have approved the time billed and accepted the Freelancer Services during the time reflected on the Platform at the end of the Subscriber Review Period, and (ii) Upwork will be authorized and instructed to make payment to Freelancer for time reflected on the Platform. Once approved by Subscriber, Upwork will make payment to Freelancer and such payment cannot be revoked by Subscriber.

2.3.3 Milestone Work. For Engagements where Freelancer Payments are tied to completing milestones, Subscriber must approve or reject milestone approval requests through the Platform within 14 calendar 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 calendar day period, then (i) the Freelancer Services or Freelancer Work Product reflected in the milestone approval request will be deemed accepted by Subscriber, and any payment associated with the milestone will be deemed approved by Subscriber and (ii) Upwork will be authorized and instructed to make payment to Freelancer for such milestone. Once approved by Subscriber, Upwork will make payment to Freelancer and such payment cannot be revoked by Subscriber.

2.3.4 Arbitration with Freelancer. Subscriber shall enter into an agreement with each Freelancer for each Engagement that includes a provision requiring that any and all disputes between Subscriber and Freelancer will be subject to individual arbitration and include a waiver of all class and collective actions. In addition, the arbitration provision must expressly identify Upwork, including its affiliates, officers, and directors, as a third-party beneficiary of such arbitration provision.

2.4 Legal Compliance. Upwork shall comply with applicable laws and regulations governing its obligations under this Agreement pertaining to its provision of Services including payment to Freelancers. Subscriber shall comply with applicable laws and regulations governing its use of the Platform and Services and Engagement of Freelancers including, but not limited to, workplace safety or conduct if Subscriber requires onsite work.

2.5 Restrictions. Subscriber will not nor attempt to: (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 Platform, the Services or their systems or networks for any reason that is not expressly authorized under this Agreement, including, without limitation, in order to (a) build a competitive product or service, or for any benchmarking or competitive purposes using similar ideas, features, functions or graphics of the Service, or (b) scrape the Platform for data or content or copy any ideas, features, functions or graphics of the Services, or (c) interfere with the integrity or performance of the Services or data contained in it, including engaging in denial of service attacks; (iv) transmit information that identifies or relates to natural persons or confidential financial information through the Platform unless requested by Upwork; (v) submit or post Platform Content or other material to the Platform that (a) is fraudulent, discriminatory, abusive, spamming, infringing, obscene, threatening, defamatory, unlawful, tortious, or that Upwork in its reasonable discretion determines is inappropriate or objectionable; (b) violates the privacy rights, publicity rights, or intellectual property rights of any third party; or (c) contains viruses, worms, Trojan horses, spam, or other harmful computer code, files, scripts, agents, or programs. Subscriber will not encourage any third party to violate these restrictions.

2.6 Upgrading/Downgrading. If Subscriber requests to change its subscription to a different enterprise product, then, upon execution of the new subscription agreement, Subscriber authorizes and directs Upwork to migrate Freelancer contracts related to existing Engagements by opening a new Freelancer contract under the new subscription and then closing the old Freelancer contract under the old subscription.

2.7 Beta Access. Subscriber may, from time to time, be given the option to access certain beta versions of the Platform and/or Services ("**Beta Products**") for the purpose of testing and providing feedback to Upwork. Access to Beta Products is permitted only for Subscriber's internal evaluation. Subscriber acknowledges that Beta Products are provided 'as is' and may contain bugs, errors, or other issues. Upwork makes no warranties of any kind, either express or implied, regarding the Beta Products. The use of Beta Products is entirely at Subscriber's own risk, and Upwork shall not be liable for any damages arising from the use of such Beta Products.

3. FEES AND PAYMENTS.

3.1 Enterprise Billing Services. Upwork will make, or cause to be made, Freelancer Payments on behalf of Subscriber in accordance with this Agreement. Upwork will bill Subscriber in arrears on a monthly basis 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 credit for Subscriber. Upwork may grant, deny, limit, extend, withdraw, increase or decrease credit to Subscriber at its sole discretion.

3.2 Billing and Payment. Subscriber shall pay Upwork the fees as set forth in the Order Form, in addition to all Freelancer Payments, 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 charge equal to the lesser of 2% per month or the maximum permitted by law, plus reimbursement for collection expenses. All amounts specified in the Order Form are in U.S. dollars. All amounts hereunder will be invoiced in, and must be paid in, U.S. dollars. Upwork has the right to immediately suspend or terminate Subscriber's account if Upwork does not receive payment from Subscriber by the due date in this Agreement.

3.3 Freelancer Service Fee. Upwork normally charges Freelancers a fee stated on the Platform. However, Upwork will not charge such fee to the Freelancer for any work the Freelancer performs for Subscriber as a BYO Freelancer.

3.4 Taxes. All amounts payable to Upwork under this Agreement are exclusive of Taxes. Subscriber will be responsible for promptly paying or reimbursing, as the case might be, all Taxes arising in connection with this Agreement and all invoiced amounts shall be paid to Upwork in full, without any offset, deduction or withholding. If

applicable for countries outside of the United States, Subscriber shall either (a) provide to Upwork its VAT or GST identification number(s) for the country where Subscriber (i) has established its business, and/or (ii) uses the Services for Subscriber's business use, or (b) pay such Taxes via reverse charge mechanism to the appropriate tax authority. Upon request, Subscriber shall promptly provide Upwork with proof of Tax payments made to applicable authorities. If Subscriber provides a valid tax exemption certificate, Upwork will not charge Subscriber any Taxes from which it is exempt.

3.5 Non-Circumvention. If Subscriber engages (or directs a third party to engage) the services of a Platform Freelancer that Subscriber found on the Platform through a source other than Upwork within two years after the date that such Platform Freelancer is first engaged by Subscriber, then Subscriber agrees to pay Upwork \$10,000 for each such Freelancer. If upon Subscriber's request, Upwork finds a Freelancer that was not on the Platform and Subscriber engages that Freelancer through a source other than Upwork, Subscriber agrees to pay Upwork \$10,000 for each such Freelancer. This provision does not apply to (i) BYO Freelancers or (ii) Freelancers responding independently (without direct solicitation) to Subscriber's indirect solicitations (such as employment agency referrals and internet job postings).

4. TERM AND TERMINATION.

4.1 Term. This Agreement will begin on the Effective Date and will continue for the duration of the initial term length specified in the Order Form (the "**Initial Term**") unless sooner terminated in accordance with the terms of this Agreement. Following the Initial Term, Subscriber's Order Form subscription will automatically renew for successive one-year terms unless either party provides the other party notice of non-renewal at least 30 days before the end of the then-current Term (each a "**Renewal Term**", all of which together with the Initial Term are referred to as the "**Term**"). The pricing during any Renewal Term will remain unchanged unless Upwork provides written notice of a price change at least 60 days before the end of the then-current Term.

4.2 Termination for Cause. Either party may terminate this Agreement (i) if the other party fails to cure a material breach of this Agreement within 30 days after written notice, or (ii) immediately if the other party becomes subject to any bankruptcy or insolvency proceeding under federal or state statute that is not dismissed within 30 days, becomes subject to direct control by a trustee, receiver or similar authority, or has wound up or liquidated, voluntarily, or otherwise.

4.3 Effect of Termination and Survival. As of the date either party provides notice of termination to the other, Subscriber shall not enter into new Engagements via the Platform. For Engagements in a working status as of the termination date of this Agreement (each a "**Final Engagement**"), Enterprise Billing Services may continue until completion of the Final Engagement for up to a maximum of 30 days after the effective termination date of this Agreement at which point Upwork is directed to close all open Final Engagements, 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. 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.

5.1 Ownership of the Platform and Services. All rights in and to the Platform and Services, including any modifications made thereto and derivatives thereof, exclusively belong to and at all times will remain the sole and

exclusive property of Upwork. All rights not expressly granted to Subscriber and its Authorized Users with respect to the Platform and Services are reserved by Upwork. 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 or that is inconsistent with Upwork's ownership interest herein.

5.2 Platform Content. Subscriber is solely responsible for all Platform Content submitted, uploaded, or otherwise posted by it to the Platform. Upwork reserves the right to delete Platform Content (in whole or in part) that it reasonably determines may violate this Agreement. By providing Platform Content, Subscriber hereby grants (and represents and warrants that it has the right to grant) Upwork and its representatives the worldwide, royalty-free, perpetual, and sublicensable right to use and publish the Platform Content without limitation.

5.3 User Feedback. Upwork will own, without restriction or obligation of any kind, any feedback, insights, and suggestions provided by or on behalf of Subscriber to Upwork concerning the Platform or Services ("**User Feedback**"). User Feedback is provided "AS IS" and Subscriber will not be identified as the source without Subscriber's permission.

5.4 Ownership of Freelancer Work Product. Ownership of all Freelancer Work Product will be governed by the Service Contract. Upwork will not own any Freelancer Work Product. In the event that ownership rights in Freelancer Work Product arising from an Engagement accrue to the benefit of Upwork, Upwork hereby assigns such rights to Subscriber.

6. REPRESENTATIONS, WARRANTIES, AND DISCLAIMERS.

6.1 Representations and Warranties. Each party represents and warrants that: (i) it is an entity that is duly organized and validly existing under the laws of the jurisdiction in which it is established; (ii) it has full power and authority, and has obtained all required 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.

6.2 Subscriber Acknowledgements. Other than as stated in this Agreement, Subscriber expressly acknowledges, agrees, and understands that: (i) Upwork is not a party to the dealings between Subscriber and Freelancer, including the substantive terms of project posts, the selection of a Freelancer, the decision to contract with a Freelancer, and the performance or receipt of Freelancer Services or provisioning of Freelancer Work Product; (ii) Upwork does not, in any way, supervise, direct, or control the Freelancer or Freelancer Services; (iii) Upwork is not a party to any Service Contract and will not have any liability or obligations under or related to Service Contracts for any acts or omissions by Freelancers; (iv) Upwork makes no representations as to the quality, security, or legality of any Freelancer Services or Freelancer Work Product, and Upwork disclaims any and all liability relating thereto; (v) Upwork does not determine the suitability of Freelancers for Subscriber; (vi) 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 Service Contract or what those rates will be; (vii) Upwork will not provide Freelancer with training or any equipment, tools, labor, or materials needed to complete their work; (viii) Upwork does not provide the premises at which the Freelancer will perform the work; (ix) 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; (x) Upwork is not an employer of or joint employer or integrated or single enterprise with any independent contractor Freelancer or Subscriber; and (xi) unless otherwise agreed as part of the relevant Engagement, independent contractor Freelancers may hire

employees or engage contractors or subcontractors (at the Freelancer's sole expense) to assist with providing the Freelancer Services. 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 an Engagement.

6.3 Freelancer Information. Upwork does not independently evaluate, investigate, or otherwise conduct any due diligence regarding Freelancers' profiles, portfolios, 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, is intended to be illustrative only and is not intended to be a guarantee or warranty by 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 to evaluate Freelancer Information.

6.4 Disclaimer. EXCEPT AS SET FORTH IN SECTION 6.1 OF THIS AGREEMENT, UPWORK, ITS AFFILIATES, PARTNERS, AND SUBCONTRACTORS 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 FREELANCER SERVICE OR FREELANCER WORK PRODUCT. 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 SUBCONTRACTORS HAVE ANY RESPONSIBILITY FOR FREELANCER SERVICES OR FREELANCER WORK PRODUCT.

7. CONFIDENTIALITY.

7.1 Obligations and Restrictions. The receiving party will: (i) keep the disclosing party's Confidential Information confidential; (ii) not disclose such Confidential Information to any third party other than an Authorized Recipient without the disclosing party's prior written permission; (iii) exclusively use such Confidential Information for its intended purpose; and (iv) not remove any copyrights, trademark notices, or other indications of confidentiality from such Confidential Information. The receiving party may disclose Confidential Information to Authorized Recipients provided that each such Authorized Recipient is bound by confidentiality obligations that are at least as restrictive as the terms contained in this Agreement. The receiving party is responsible for its Authorized Recipients' use and disclosure of Confidential Information and will take reasonable steps to ensure their compliance with this Agreement. Subscriber acknowledges that Freelancers working on their Engagements will have access to Confidential Information that is shared through the Platform with respect to such Engagements. Subscriber authorizes Upwork to collect data related to Subscriber's use of the Services and Platform, to de-identify (with respect to Subscriber and any user) any such data, and to use and disclose any such data that is not identifiable to a specific person or to Subscriber.

7.2 Compelled Disclosure. This Agreement does not prohibit a party from complying with (but only to the extent of) a valid legal requirement to disclose Confidential Information, but such party must make reasonable efforts to give the other party reasonable advance notice of such requirement. Subscriber and Upwork further acknowledge receipt of this notice under 18 U.S.C § 1833(b)(1) and that an individual will not be held criminally or civilly liable under any Federal or State trade secret law for disclosing a trade secret that (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 to report or

investigate 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.

7.3 Retention of Confidential Information. Upon termination of this Agreement or at the disclosing party's request, the receiving party will promptly destroy the disclosing party's Confidential Information that is in its or its Authorized Recipients' possession (including materials containing or based upon such Confidential Information). Upon request, the receiving party will also certify in writing its compliance with this provision. However, each party is permitted to retain a copy of any Confidential Information to the extent required by law or as automatically archived pursuant to standard backup processes provided that, notwithstanding the expiration of this Agreement, the confidentiality terms of this Agreement will continue to apply to any Confidential Information that remains in the possession of the receiving party or its Authorized Recipients for as long as it remains in their possession.

7.4 Equitable Relief. The receiving party acknowledges that the unauthorized use or disclosure of the disclosing party's Confidential Information may cause the disclosing party irreparable harm and significant damages that may be difficult to calculate. Therefore, the disclosing party will have the right to seek equitable relief to prevent or stop any actual or threatened unauthorized use or disclosure of its Confidential Information in addition to any other rights and remedies that it may have.

8. INDEMNIFICATION.

8.1 Indemnification by Upwork. Upwork will indemnify Subscriber and its directors, officers, agents and employees from and against any losses or liabilities related to Claims to the extent caused by the infringement or alleged infringement of U.S. intellectual property rights of a third party 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 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) Platform Content; (vi) Freelancer Services; or (vii) Freelancer Work Product.

8.2 Indemnification by Subscriber. Subscriber will indemnify Upwork and its Affiliates and their directors, officers, agents and employees from and against any and all losses and liabilities related to Claims to the extent caused by (i) Subscriber's violation of applicable law or regulation related to its Engagement of Freelancers; (ii) the misuse or unauthorized use of the Platform; (iii) Platform Content; or (iv) the misclassification of a Freelancer under applicable classification laws and regulations.

8.3 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. 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. Indemnifying Party is not permitted to enter into any settlement with respect to a Claim other than one for purely money paid by Indemnifying Party with a full release of liability with respect to Indemnified Party without Indemnified Party's prior written consent, which will not be unreasonably withheld.

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 TO UPWORK FROM SUBSCRIBER UNDER THIS AGREEMENT, (II) AMOUNTS PAYABLE TO THIRD PARTIES PURSUANT TO INDEMNIFICATION OBLIGATIONS HEREIN AND (III) BREACHES OF CONFIDENTIALITY UNDER SECTION 7.1 (CONFIDENTIALITY) WITH RESPECT TO CONFIDENTIAL INFORMATION, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR AN AMOUNT GREATER THAN THE TOTAL FEES PAID BY SUBSCRIBER TO UPWORK DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO LIABILITY. 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.

10.1 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, for the duration of the Term, 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. Subscriber will conduct audits in a manner that is designed to minimize disruptions to Upwork’s business operations. If errors are identified by an audit, then Upwork shall take prompt action to correct such errors.

10.2 Insurance. Upwork shall maintain at minimum the following types and limits of insurance at its own expense at all times during the Term:

- (i) Commercial General Liability covering products/operations, bodily injury, property damage, and personal injury with limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- (ii) Automobile Liability with a combined single limit of \$1,000,000 for bodily injury and property damage covering both hired and non-owned automobiles used by Upwork to provide Services to Subscriber under this Agreement.
- (iii) Statutory Workers Compensation coverage as required by state law with employer’s liability limits of at least \$1,000,000 per claim and \$1,000,000 in the aggregate.
- (iv) Errors and Omissions coverage including network security and privacy liability that includes third parties with limits of at least \$10,000,000 per claim and in the aggregate.

The foregoing policies will be issued on an occurrence basis and provided by a carrier with a rating of at least A-VII. The existence of these insurance policies will neither limit nor expand Upwork’s liability hereunder. Upon Subscriber’s request, Upwork will provide Subscriber with a certification evidencing the coverage described in this Section.

10.3 Service Delivery. Notwithstanding any other provision in this Agreement, Upwork has the right, in its sole discretion, to provide the Platform and its Services through, an Affiliate or a third-party subcontractor. Upwork will at

all times remain responsible for its Affiliates' or subcontractors' compliance with the terms of this Agreement.

10.4 Governing Law. The laws of California will govern this Agreement and its interpretation without reference to its principles of conflicts of laws. All disputes arising out of this Agreement between Upwork and Subscriber will be subject to the exclusive jurisdiction of and a venue located in the federal or state courts of San Francisco County, California. Subscriber and Upwork hereby consent to the personal and exclusive jurisdiction and venue of these courts and waive any objection (and right to object) to such venue or jurisdiction on the basis that such forum is an inconvenient forum.

10.5 Assignment. Neither party will be permitted to assign this Agreement to a third party other than an Affiliate or successor to its business or assets without the other party's prior written consent. For avoidance of doubt, this clause does not restrict (or require consent in connection with) the transfer or assignment of this Agreement in connection with a merger, sale of assets, sale of stock, reorganization, or otherwise by a party.

10.6 Entire Agreement. This Agreement represents the entire agreement between the parties with respect to those certain Upwork products and services set forth on the Order Form 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. This Agreement hereby incorporates by reference all policies posted on the Platform, as applicable, 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 issued by Subscriber relating to this Agreement will be for administrative purposes only and will have no legal effect.

10.7 Force Majeure. Except for the obligation to make payments hereunder, both parties will 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, and gave 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.

10.8 Severability. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, then such provision will be deemed to be severed from this Agreement and have no legal effect. Provided that the fundamental terms of this Agreement remain valid and enforceable following such severance, the remaining provisions of this Agreement will remain in full force and effect and binding upon the parties.

10.9 Waiver. The waiver of one breach or default or any delay in exercising any rights hereunder will not constitute a waiver of any subsequent breach or default of such rights.

10.10 Notices. All notices permitted or required under this Agreement must be in writing and will be delivered by electronic mail to legalnotices@upwork.com for Upwork or the email address listed on the Order Form for Subscriber, as applicable, 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 or email address of the party specified in this Agreement, or such other address or email address as either party may specify in writing. Such notice will be deemed to have been given upon receipt.

10.11 **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.

10.12 **Export Law Assurances.** Subscriber understands that the deliverables provided to Subscriber by Freelancers 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.

10.13 **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.