

This oDesk User Agreement (the "Agreement") is entered into by and between the company or individual specified during this online registration process ("User") and oDesk Corporation, a California corporation with its principal place of business at 901 Marshall Street, Redwood City, California U.S.A. ("oDesk"). Capitalized terms are defined throughout the Agreement and in Section 14.

The policies, terms and conditions below limit oDesk's liability and obligations to you and allow oDesk to change, suspend or terminate your access to and use of the oDesk Platform. We urge you to carefully read the following terms and conditions. This Agreement may be modified at any time by oDesk without prior notice to or the consent of Users.

The terms Employer and Contractor for purposes of this agreement are used in a generic sense and are not meant to define the legal nature of the agreement and should not be construed as an admission or any indication of the type or nature of the Services rendered by Contractor(s).

Your access to and use of the oDesk Platform is also governed by information and guidelines made available on the oDesk Website (the "Site"). To the extent that there are any conflicts between the terms, conditions or policies of this Agreement and the Site, the terms, conditions and policies of this Agreement will govern.

YOU UNDERSTAND THAT BY CHECKING THE BOX AND CLICKING THE "**SUBMIT**" BUTTON, BY USING THE ODESK PLATFORM (INCLUDING ANY CONTENT PROVIDED THEREIN) OR YOUR ODESK ACCOUNT, HAVING ANY FORM OF COMMUNICATION WITH AN EMPLOYER OR CONTRACTOR OR BY POSTING ANY CONTRACTS VIA THE ODESK PLATFORM, YOU ARE AGREEING TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT ACCEPT THIS AGREEMENT IN ITS ENTIRETY, YOU MAY NOT ACCESS OR USE THE ODESK PLATFORM. IF YOU AGREE TO THESE TERMS AND CONDITIONS ON BEHALF OF A BUSINESS, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND THAT BUSINESS TO THIS AGREEMENT AND YOUR AGREEMENT TO THESE TERMS WILL BE TREATED AS THE AGREEMENT OF THE BUSINESS. IN THAT EVENT, "YOU" AND "YOUR" WILL REFER AND APPLY TO THAT BUSINESS.

1. THE ODESK PLATFORM.

1.1 Purpose of the oDesk Platform. The oDesk Platform is an online portal and website located at www.odesk.com (the "Site") provided by oDesk where Users may locate Employers who purchase Services or Contractors that provide Services and access and use the oDesk Resources (collectively, the "oDesk Platform"). In addition, payments for the Services contracted for through the oDesk Platform are made through the oDesk Platform. On the oDesk Platform, Employers may post open jobs to invite applications or proposals by Contractors and Contractors may post information about their capabilities and bid on Contracts. For Hourly-Rate Contracts, oDesk provides time-tracking systems and reporting.

1.2 Eligibility. The oDesk Platform is available only to legal entities/persons who are at least eighteen (18) years old and are otherwise capable of forming legally binding contracts under applicable law. Without limiting the foregoing, the oDesk Platform is not available to temporarily or indefinitely suspended Users. Users are not employees, agents or contractors of oDesk at any time and do not have the authority to enter into any contracts on behalf of oDesk, except as may otherwise be provided herein.

User agrees that he/she/it is not (a) a citizen of or reside in a country in which use or participation is prohibited by law, decree, regulation, treaty or administrative act; (b) a citizen or resident of, or located in, a country or region that is subject to U.S. sanctions or embargoes including without limitation Cuba, Iran, North Korea, Sudan and Syria; or (c) an individual or an individual employed by or associated with an entity identified on the U.S. Department of Commerce's Denied Persons or Entity List, the U.S. Department of Treasury's Specially Designated Nationals or Blocked Persons Lists, or the Department of State's Debarred Parties List or otherwise ineligible to receive items subject to U.S. export control laws and regulations.

1.3 Role of Service Contracts and the Role of oDesk. If an Employer accepts a Contractor's bid for a Contract, a services contract is formed directly between such Employer and Contractor subject to the terms specified in Section 3 (Service Contract Terms Between Employer and Contractor) and/or any other terms and conditions that Employer and Contractor may agree upon through the oDesk Platform ("Service Contract"). oDesk is not a party to any Service Contract between Employers and Contractors and oDesk itself does not deliver any Contracts or Work Product, nor does oDesk make any representations regarding the quality thereof, except as may be otherwise explicitly set forth by oDesk. Any agreement or attempted agreement between Employer and Contractor, in connection with a Service Contract, requiring that payment be made outside of the oDesk Platform shall constitute a material breach of this Agreement and be subject to the "Buy-Out" provision set forth in the Billing and Payments Policy below.

1.4 Acknowledgement of oDesk's Interest in Proper Performance of Service Contracts. User acknowledges and agrees that the reputation and goodwill of oDesk may be adversely affected if, as an Employer or Contractor, the User engages in violations of the Service Contract. oDesk has the right to take action, including legal action, against the User as oDesk, in its sole discretion, deems necessary to protect the interests of oDesk. oDesk reserves the right to place a financial hold on and reclaim funds

available in the User's account in the event of a material breach of this Agreement. Nothing in this provision should be construed as providing oDesk with the right or obligation to supervise or monitor the actual Services performed by the Contractor.

- 1.5 Payment of oDesk Fee. User agrees that oDesk shall be paid a fee (the "oDesk Fee") for services and technology including but not limited to maintaining the oDesk Platform, providing online management resources, and/or managing payment between Users. The amount of such fee and the method of its payment are set forth below in Section 2 (oDesk Policies).

2. ODESK POLICIES.

- 2.1 oDesk Fee. oDesk will charge a fee equal to 10% of the Employer's payment and remit the remaining 90% to the Contractor. No modification or amendment to this pricing shall be binding upon either party unless included in a written instrument signed by a duly authorized representative of each party (and, for the purposes of this Section 2.1, a written instrument shall expressly exclude electronic communications such as email and electronic notices but shall include facsimiles).
- 2.2 General User Obligations. oDesk has created a marketplace to connect Employers and Contractors of Services using our systems and resources. oDesk is not a service company and does not manage individual Services or individual Contractors or their work, in any manner. oDesk expects a consistent and high level of courtesy, respect and professionalism from all of its Users toward each other and reserves the right to expel any User from our network at any time. Users agree to use good judgment when posting information, comments, feedback or other content regarding other Users, oDesk or any other third party anywhere within the oDesk Platform. Users may be held legally responsible for damages suffered by other Users, oDesk or any third party as a result of legally actionable or defamatory comments, remarks or other information or content posted to the oDesk Platform. All Employers and Contractors are to comply with any policies which are incorporated into this Agreement by reference. These policies may be modified from time to time at oDesk's discretion and the current effective policy will be deemed to be part of this Agreement.

Under federal law, oDesk is not legally responsible for any remarks, information or other content posted or made available on the oDesk Platform by any User or third party, even if such information or content is defamatory or otherwise legally actionable. oDesk is not responsible for and does not monitor or censor content for accuracy or reliability. However, oDesk reserves the right to remove or restrict access to any information or content posted or made available on the oDesk Platform if ordered to do so by a court or if oDesk considers such information or content to be in violation of this Agreement. Violation of the Agreement may result in suspension or termination.

- 2.3 Identity. All identity information associated with an oDesk User Account must be real and verifiable. Each User Account must be used by only one person, and each person is allowed to use only one User account. oDesk reserves the right to validate User information at any time, including but not limited to the verification of one or more official government or legal documents that confirm the User's identity. Failure to provide identity verification when requested is a violation of this Agreement. The User is solely responsible for ensuring and maintaining the secrecy and security of the oDesk password. User agrees not to disclose this password to any third party and shall be solely responsible for any use of or action taken through the use of such password on oDesk. User will not allow third parties to perform any action, including but not limited to, posting jobs, bidding for or performing Services under the User's oDesk account.
- 2.4 Job Postings and Applications.
- 2.4.1 Posting a Job. All jobs posted to oDesk must be in English and not contain any information enabling or requests for contact or payment outside of the oDesk Platform. Job postings must be of a professional nature and accurately describe the Services requested. They should be free of offensive language or advertisements for other products or services. Job postings may not request any service that is illegal or violates intellectual property rights, copyrights or the terms of service of another service, product or website. Job postings of an adult or potentially offensive nature should notify potential readers in the title of the Job Posting.
- 2.4.2 Applying to a job. All information provided in an application must be true, accurate and complete. oDesk reserves the right to verify any and all information provided on a User's profile or job application. By applying to a job, the User is attesting that he/she/it has the skills and ability to perform the requested Services by the deadline stated in the job posting.
- 2.5 Managing and Working on Contracts
- 2.5.1 Managing Contracts. Employers agree to regularly review the Work Diaries, Time Logs, and interim work product and respond promptly to communications with and requests for information from the Contractor.

- 2.5.2 Working on Contracts. Contractors agree to use the oDesk Team application and Work Diaries to track all time associated with Hourly-Rate Contracts. Time not logged to the Work Diary via 1) oDesk Team, or 2) entering offline time, will not be paid. Time logged for a Contract must be directly related to the completion of that Contract. If the Contractor bills offline time, those hours are subject to dispute by the Employer and not guaranteed by oDesk. The Contractor is responsible for providing all tools and resources necessary to complete the Contract, unless explicitly stated in advance by the Employer. Contractors agree to respond to all Employer communications and requests for information within one business day. If the Contractor will be unable to meet this requirement due to an absence, he is expected to notify the Employer at least 2 weeks prior. After the completion of a Contract, the Contractor agrees to provide timely, honest and objective feedback on the Employer.
- 2.6 Billing and Payments.
- 2.6.1 Hourly-Rate Contracts. Employers agree that there is no guarantee of the perceived or real quality of work for Hourly-Rate Contracts. The Employer is paying for the hours worked associated with the Contract, and not for any specific deliverable(s) or results-based compensation plan. If the Employer wishes to only pay for performance based on milestones or deliverables, he should hire Contractors via a Fixed-Price Contract. Employers have the right to dispute time worked in accordance with the Dispute Resolution Policy.
- 2.6.2 Fixed-Price Contracts. Contractors agree that there is no guarantee of payment for Fixed-Price Contracts. Employers have complete and sole discretion on the satisfactory completion of a Fixed-Price Contract and are under no obligation to pay unless the terms of the Contract are met by the Contractor.
- 2.6.3 Disintermediation. Except pursuant to the Buyout Policy below, Employer shall (i) make all payments relating to, or in any way connected with, a Contract (including, without limitation, bonuses) through the payment channels provided or specified by oDesk, and (ii) not make any such payments directly to a Contractor or through any other payment channels. Any action that encourages or solicits complete or partial payment outside of the oDesk system is a violation of this Agreement. Should an Employer be found in violation of this section of this Agreement, it will owe oDesk fees equal to the greater of a) \$2,500; or b) the applicable fees had the payments been processed through the oDesk system plus 18%. Employer shall immediately notify oDesk if a Contractor requests that Employer make a payment directly to it or through any channels other than those provided or specified by oDesk. Contractor shall not accept any payments relating to a Contract (including, without limitation, bonuses) from an Employer directly or through any payment channels other than those provided or specified by oDesk. Contractor shall immediately notify oDesk if an Employer or any of its agents attempt to make a payment to Contractor directly or through any payment channels other than those provided or specified by oDesk.
- 2.6.4 Buyout. Notwithstanding the provisions set forth above, Users may agree to provide or receive Services outside of the oDesk system with Users identified through the oDesk marketplace. If the services are rendered more than three (3) years after the Contractor is identified through oDesk, no oDesk fees or buyout provisions apply. If Services are rendered outside of oDesk within three (3) years of identification of the Contractor through oDesk, payments for such Services will not be subject to the oDesk Fees provided that the Employer of such Services pays oDesk a "Buy-Out" fee in accordance with the procedure set forth below:
- i) Prior to contracting outside of oDesk to receive Services from a User identified through the oDesk system, the Employer will notify oDesk in writing of its intent to pay the Buy-Out fee in lieu of using the oDesk Payment Service and paying the oDesk Fees.
 - ii) Together with such notice, the Employer will provide a good faith estimate of the then anticipated amount to be paid to the Contractor for such Services during the fifty-two week period immediately following the date of such notice.
 - iii) Together with such notice, the Employer will pay or authorize oDesk to deduct from its account the greater of (i) fifteen percent (15%) of the good faith estimate described above; (ii) fifty-two (52) times the "Average Weekly oDesk Fees" (as defined below); or (iii) five hundred dollars (\$500). For purposes of the foregoing, the "Average Weekly oDesk Fees" means the average weekly amount of oDesk Fees that became due to oDesk based upon work performed for Employer by the applicable Contractor over the four (4) weeks immediately preceding the buy-out notice described above, not counting any weeks in which no oDesk Fees became due.
- 2.7 Payment accounts. oDesk provides the Payment Service and requires you to use it to make all payments to oDesk and to make and accept payments from other Users in the purchase and sale of Services through the oDesk Platform. Each Contractor must properly discharge and credit its Employer for all payments oDesk receives through the Payment Service from such Employers. Amounts transferred or stored in the Payment Service are not insured deposits. Solely for purposes of the Payment Service and

not for any other Services available through the oDesk Platform, oDesk acts as your agent and not as a trustee or fiduciary with respect to such funds or payments. However, you understand and agree that oDesk will not hold funds delivered as payments to oDesk from Users in a separate account, but may commingle and deposit such funds with other funds to be paid to other Users and with funds of oDesk. In addition, you understand that such commingled funds could be used to pay other Users and by oDesk for general corporate purposes or otherwise, provided that oDesk will remain contractually obligated to make payment to you, as a Contractor, for any purchases and sales of Services provided by you through the oDesk Platform. Except pursuant to the Hold On Funds Policy below, to the extent oDesk is obligated to make payment to you as a Service Contractor, you will be an unsecured creditor of oDesk.

- 2.8 Charge-backs, cancellation of credit card and any other intentional non-payment. If Employer instructs his bank or credit card company to issue a chargeback on any payment, cancels a credit card prior to a weekly billing charge or engages in any other intentional non-payment, it will be deemed a payment made in bad faith and a violation of the contract. All projects will be frozen, refunded or dealt with in a manner oDesk deems appropriate. Additionally, Employer agrees that oDesk may pursue whatever legal means become necessary to secure repayment of the entire amount of the bad faith payment from the Employer, including by offsetting any amounts due against any amounts held by oDesk in any Employer account or that become due to Employer from any other User. Employer agrees to pay all oDesk costs in securing such payment, including collection agency costs and reasonable attorneys' fees.
- 2.9 Hold on funds. oDesk will make funds deposited in your account generally available for you to use or withdraw. oDesk reserves the right, at its sole discretion, to place a hold on funds for Employer payments to clear or if oDesk suspects monies may be subject to charge back or if fraud is suspected. oDesk will release a hold as soon as deemed appropriate. In cases of fraud, abuse or violation of this Agreement, the oDesk payment guarantee shall be revoked and all monies in the account may be held and/or reclaimed, not just those from the Contract(s) under investigation.
- 2.10 Dispute Resolution. For Hourly-Rate Contracts only, Employers may dispute hours during the 4 days following the close of a weekly invoice period. It is the Employer's responsibility to review the Work Diary and Time Log of every Contract on a weekly basis and filing any disputes on a timely basis. Once the dispute period has passed, the charges are accepted by the Employer and can no longer be disputed and can only be refunded by the Contractor. Disputes can only address the hours billed, not the quality of the work performed or deliverables.
- 2.11 Ratings and Feedback. oDesk provides its feedback and rating system as a means through which Users can express their opinions publicly and oDesk does not monitor or censor these opinions or investigate any remarks posted by Users for accuracy or reliability. You acknowledge and agree that the oDesk Platform will contain public feedback from Users with whom you have transacted. You acknowledge that feedback results for you may consist of comments and ratings left by other Users and that oDesk may calculate a composite feedback number based on these individual ratings. You may be held legally responsible for damages suffered by other oDesk Users or third parties as a result of these remarks if a court finds that these remarks are legally actionable or defamatory. oDesk is not legally responsible for any feedback or comments posted or made available on the oDesk Platform by any Users or third parties, even if that information is defamatory or otherwise legally actionable. Any effort to falsify feedback, manipulate or coerce another User by threatening negative feedback or offering to sell or buy Services in exchange for feedback is in violation of this Agreement. oDesk reserves the right to delete ratings and feedback as it deems appropriate.
- 2.12 oDesk Skill Tests. oDesk may provide skills tests through its own means or third parties. These tests are optional for the Contractors. They are meant as a data point in evaluating Contractors and are in no way a certification by oDesk of the User's ability to perform Services associated with a test. Manipulating test scores by providing or receiving answers to the test, allowing others to take the tests or any other attempt at falsifying credentials is a violation of this Agreement.
- 2.13 Privacy. By submitting personal information through the oDesk Platform, you expressly consent to the processing of your personal information according to this Privacy Policy. Your personal information may be processed by oDesk in the country where it was collected, as well as other countries (including the United States) where laws regarding processing of personal information may be less stringent than the laws in your country. oDesk reserves the right to use the general data (not personally identifiable) it obtains from Users' use of the system, including all statistical information. You acknowledge that such data belongs to oDesk and that oDesk shall have the right to use such general data as it determines in its sole discretion. oDesk may send you email communications including information that we may think may be of interest to you. We do not send any of your Personally Identifiable Information to our advertisers, and your Personally Identifiable Information will never be released to a third party without your express consent, with the exception of our credit card processing and payment partners where release is required to receive or make payments.

- 2.13.1 **Security.** We will use commercially reasonable methods to keep Personally Identifiable Information securely in our files and systems. Our Payment System is operated using secure Internet connections, including SSL (Secure Sockets Layer) encryption, to help protect your financial data.
- 2.13.2 **Information gathered during registration.** If you register to buy or sell Services using oDesk, we collect and store information that specifically identifies you or your account ("Personally Identifiable Information"). At this time, the most information you would be required to submit is information about your skills, abilities to perform service work, your first name, last name, password, address, city, state, zip/postal code, country and email address. US Contractors are also required to submit information necessary to complete their W-9s, including but not limited to social security/tax identification number. Employers wishing to pay for Services are also required to enter a valid credit card number and name as it appears on the credit card or other information such as bank routing and account numbers to facilitate ACH payments. We may, in the future, include other optional requests for information from you, to help us to tailor the site for you and deliver personalized information to you. We may supplement our information with additional information purchased from third parties for marketing purposes. Credit card information and any bank information will be transmitted via SSL encryption for your protection.
- 2.13.3 **Use of Personally Identifiable Information.** We use Personally Identifiable Information for our own internal purposes including contacting you via email to inform you about updates to the oDesk Platform and providing you with services and information relating to e-commerce transactions that you conduct on the site. We reserve the right to disclose your information as required by law. oDesk will never rent, sell or provide personally identifiable information to third parties unless required to provision a service explicitly requested and agreed to by the User. Any Personally Identifiable Information you agree to provide may be received by third party and could be stored and used by the party according to their privacy policy.
- 2.13.4 **Links to other sites.** oDesk is not responsible for the privacy practices or the content of any other web sites to which the site links or which link to the site. By clicking on a link, logo or other item, please note that you may no longer be on the oDesk Platform. To check what Internet location you are on, note the URL at the top and/or bottom of your browser. We encourage you to read the posted privacy statement of that web site whenever interacting with any site.
- 2.13.5 **Automatically gathered information.** oDesk automatically collects your browser type and browser software version to tailor the presentation of the oDesk Platform to your platform and to maintain a record of your activity on the site. oDesk uses cookies to enable Users to specify unique preferences and to track User trends and patterns. Users always have the option of disabling cookies via their browser preferences. If you disable cookies on your browser, please note that some parts of our site may not function as effectively or may be considerably slower. As an automatic process, our webserver software records a log file of IP addresses that access the oDesk Platform. We also collect IP address and other system information for purposes of statistical analysis and to maintain the trust and security of the oDesk Platform. We will not use IP addresses or other system information to identify a User unless we determine, in our sole discretion, that it is necessary to enforce compliance without various policies to protect our service, site, customers and others. Notwithstanding the foregoing, oDesk gathers only that information that is reasonably necessary for it to operate the oDesk Platform and otherwise conduct its business. oDesk uses commercially reasonable efforts to ensure that its collection of such relevant information does not interfere with the operation or security of your system.
- 2.13.6 **oDesk Team, Work Diary and Time Logs.** These areas of the site are provided for the benefit of Users. The private and shared areas of the site help to facilitate communication and the exchange and sharing of information between Employers and Contractors once a Contract has started. These areas of the site only collect such information as is reasonably necessary for oDesk to maintain the Platform and otherwise conduct its business. Such information includes, but is not limited to: (i) event (sampling|login|resume|aftersleep), (ii) screensaver on? (true|false), (iii) oDesk credentials, (iv) computer uid (client data), (v) versions of all installed oDesk applications, (vi) timestamp (client data), (vii) memo (oDesk data), (viii) task information (oDesk data), (ix) os version (client data), (x) active window title (client data), (xi) active application/process (client data), (xii) list of running processes (client data), (xiii) screenshot plus screenshot metadata (dimensions), (xiv) webcam shot (if present/enabled), (xv) keyboard events (# of keys pressed), (xvi) mouse events (# of mouse clicks) and (xvii) events per minute (sum of keyboard events plus mouse events over each minute). oDesk may use non-Personally Identifiable Information from these and other areas of the site for statistical analysis, product development, marketing and research. oDesk reserves the right to monitor communications throughout our site and, if we believe that a User is violating this Agreement or any international, federal or state laws, we may terminate such usage. oDesk uses commercially reasonable efforts to insure that its collection of such relevant information does not interfere with the operation or security of your system.
- 2.13.7 **Payment System.** oDesk offers a payment system that allows Employers and Contractors to pay with a credit card or via ACH (the "Payment System"). If you make use of this service, oDesk will collect your credit card number and/or other entered financial institution information and will use that information to bill you any fees and/or to perform the billing operation on

behalf of the Contractor, including but not limited to the use and disclosure of such credit card number and information to third parties as necessary to complete such billing operation.

- 2.14 **Agencies and Agency Contractors.** An Agency is an organization seeking to make money on oDesk by selling the Services of Agency Contractors. An Agency Contractor is a Contractor under contract to do work on oDesk on behalf of an Agency. An Agency has a manager responsible for the actions of all its members, including its Agency Contractors, administrators in charge of maintaining the company's finances, roster, and profile, and staffing managers in charge of finding and supervising Contracts. One User may serve in all or multiple roles. Every person who will do work for an Agency must have an individual user account and Contractor profile. These profiles must be associated with your Agency on oDesk. Agencies must comply with Section 2.3 ("Identity") above. If an Agency Contractor is no longer working for your Agency, you may not use the Contractor's profile in any way. Contractors leaving an Agency must contact the Agency manager to remove their association. Agencies may not refuse to release an Agency Contractor. When leaving the Agency, Agency Contractors keep their profiles, including their work and feedback histories. Their histories are meant to reflect work done by them. The Agency's work and feedback history will retain the Contracts of Contractors who have since left the company. Former Agency Contractors must comply with non-compete agreements signed outside of the oDesk system, but only if such agreements are valid where Contractors reside. (In California, for example, non-compete agreement generally are not valid under California Business & Professions Code § 16600.) Accordingly, Section 13.11 (Choice of Law) notwithstanding, non-compete agreements shall be governed by and construed in accordance with the laws of the local jurisdiction where the Contractor resides. If a Contractor violates an Agency's valid non-compete agreement, oDesk retains the right to suspend the Contractor until the parties reach a mutually agreeable resolution. An Agency that requests the immediate suspension of a Contractor must provide the documents and supporting legal authority that prove, to oDesk's satisfaction, that the non-compete agreement is valid.
- 2.15 **Enforcement of User Agreement and Policies.** oDesk has the right, but not the obligation, to suspend or cancel your account if it believes that you have violated or acted inconsistently with the letter or spirit of this Agreement or violated our rights or those of another party. Without limiting oDesk's other remedies, we may suspend or terminate your account, reclaim any available funds and refuse to provide any further access to the oDesk Platform to you if (a) you breach any terms and conditions of this Agreement or other written policies and procedures posted on the Site; (b) we are unable to verify or authenticate any information you provide to us; or (c) we believe that your actions may cause legal liability for you, our Users or for oDesk. Once suspended or terminated, you MAY NOT continue to use the oDesk service under a different account or re-register under a new account. If you attempt to use the oDesk service under a different account, we reserve the right to reclaim available funds in that account and/or use an available payment method to pay for any amounts outstanding. In addition, violations of this Agreement may be prosecuted to the fullest extent of the law and may result in additional penalties and sanctions. If a User engages in actions or activities which circumvent the oDesk Platform or otherwise reduces fees owed oDesk under this Agreement, that User will be liable to oDesk for the fees due and may be subject to additional sanctions including, but not limited to, suspension or termination of your oDesk account. oDesk reserves the right to terminate any User for any reason, at its sole discretion and to refuse to provide registration and membership to you in the future. We will notify you if we cancel your membership, unless in our judgment giving notice would cause a risk of further violation or damages. However, we will notify you that your account will be canceled if the law requires such notification. When your membership is canceled, you may no longer have access to any parts of the oDesk Platform, including data, messages, files and other material you keep on oDesk. All intellectual property provided by Employers for the purposes of completing Contracts will be returned immediately upon termination.

3. SERVICE CONTRACT TERMS BETWEEN EMPLOYER AND CONTRACTOR.

User agrees that all Service Contracts between User and any Employer or Contractor regarding particular Contracts shall: (i) include but not be limited to substantially the same material terms and conditions provided in Sections 3.1 through 3.10 below ("**Standard Terms**"); (ii) name oDesk as an express third party beneficiary under the Service Contract; and (iii) make no representations or warranties or enter into any contracts on behalf of oDesk, except as may be otherwise provided for herein. Notwithstanding the foregoing, to the extent that Employer and Contractor agree to terms in their Service Contract materially different than the Standard Terms, nothing in such Service Contract will in any way limit or modify oDesk's rights.

- 3.1 **Services.** Contractor shall perform Services in a professional and workmanlike manner. Under Fixed-Price Contracts, Contractor shall deliver the agreed-upon Work Product. Under Hourly-Rate Contracts, Contractor shall use reasonable efforts to create the desired Work Product.
- 3.2 **Agency.** Work performed on Hourly-Rate Contracts under a Contractor's profile must be performed by the Contractor represented. If the Contractor wishes to subcontract with third parties to perform Services on behalf of the Contractor on Hourly-Rate Contracts, the Contractor must do so as an Agency. In the event Contractor establishes him/her/itself through

oDesk as an Agency, Contractor and Agency agree and acknowledge that Agency's employees or contract personnel are not employees of oDesk or Employer. Agency is solely responsible for all wages, costs, and expenses of Agency's employees or contract personnel and has the sole and exclusive right to supervise and control them. Neither Employer, nor oDesk, will require Agency's employees or contract personnel to devote full time to performing the Contracts entered into by Contractor and/or Agency as required by this Agreement. Furthermore, both Contractor and Agency acknowledge and agree that neither it, nor any of its employees or agents, shall have any claim under this Agreement for overtime pay, sick leave, holiday or vacation pay, retirement benefits, worker's compensation benefits, unemployment benefits, or any other employee benefits of any kind from oDesk or Employer.

3.3 Fees. Employer shall pay Contractor the agreed-upon fees for time spent (under Hourly-Rate Contracts) or delivery of the Work Product (under Fixed-Price Contracts). All amounts paid by Employer shall be paid through the oDesk Platform as set forth above.

3.4 Termination of a Service Contract. Under Hourly-Rate Contracts, either party may terminate the Service Contract at any time for any or no reason. However, the Employer remains obligated to pay for any time the Contractor worked prior to termination.

For Fixed-Price Contracts, the Employer may terminate at any time but may not recover any payments made to the Contractor unless mutually agreeable. The Contractor may terminate Fixed-Price Contracts at any time if no payment has been made. If a payment has been made on a Fixed Price Contract, the Contractor may terminate only with written agreement from the Employer or after the payment has been refunded.

3.5 Employer Deliverables. Employer grants Contractor a limited, non-exclusive, revocable (at any time, at Employer's sole discretion) right to use the Employer Deliverables as necessary for the performance of the Services. Employer reserves all other rights and interest, including, without limitation, all Proprietary Rights, in and to the Employer Deliverables. Upon completion or termination of the Contract, or upon written request by the Employer, Contractor shall immediately return all Employer Deliverables to the Employer and further agrees to purge all copies of Employer Deliverables and Work Product contained in or on Contractor's premises, systems, or any other equipment otherwise under Contractor's control. Contractor agrees to provide written certification to the Employer certifying the return or purging of Employer Deliverables within ten (10) days after the receipt of the Employer's written request to certify.

3.6 Work Product. Any copyrightable works or works for hire prepared by Contractor in connection with a Fixed-Price Contract for Employer shall be owned by the Contractor until payment has been made by the Employer and accepted by the Contractor. If the Employer pays an amount less than the amount agreed to in the terms of the Contract, the Contractor may refund the amount paid within two (2) weeks of the payment date and retain ownership of the Work Product.

For Hourly-Rate Contracts, the Employer is considered the author and owner of works created once payment for the period of time in question has been made in full, assuming that all hours worked are properly tracked using the oDesk resources. Once payment has been made in accordance with the above, Contractor shall be deemed to have assigned all Proprietary Rights to Work Product to Employer.

To the extent that under applicable law, Proprietary Rights cannot be assigned, Contractor hereby irrevocably agrees to grant, and hereby grants, to Employer an exclusive (excluding also Contractor), perpetual, irrevocable, unlimited, worldwide, fully paid, and unconditional license to use and commercialize Work Product in any manner now known or in the future discovered. To the extent such license grant is not fully valid, effective or enforceable under applicable law, Contractor hereby irrevocably agrees to grant, and hereby grants, to Employer, such rights as Employer reasonably requests in order to acquire, as close as possible, all rights equivalent to full legal ownership. In order to ensure that Employer will be able to acquire, perfect and use such Proprietary Rights, Contractor will: (i) transfer possession, ownership, and title to media, models, and other tangible objects containing Work Product to Employer; (ii) sign any documents at Employer's request to assist Employer in the documentation, perfection and enforcement of its rights; and (iii) provide Employer with support and reasonable access to information for recording, perfecting, securing, defending, and enforcing such Proprietary Rights. Contractor also irrevocably authorizes Employer to act and sign on Contractor's behalf and take any necessary steps in order to perfect Employer's rights under this Agreement. In case that under applicable law, Contractor retains any rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as "moral rights" (collectively "Moral Rights") or other inalienable rights to Work Product or Confidential Information under this Agreement, Contractor irrevocably agrees to waive, and hereby waives, all such rights, or, to the extent Contractor cannot waive such rights, Contractor agrees not to exercise such rights, until Contractor has provided prior written notice to Employer and then only in accordance with any reasonable instructions that Employer issues in the interest of protecting its rights. Contractor agrees to assist Employer in every proper way to obtain and enforce the Proprietary Rights and other legal protections for the Work Product in any and all countries. Contractor will sign documents that the Employer may reasonably request for use in obtaining and enforcing such protection,

including, but not limited to, any assignment deed which the Employer may select at its sole discretion. Contractor's obligations under this Section 3.6 will continue even after Contractor deregisters from or ceases use of the oDesk Platform. Contractor appoints Employer as Contractor's attorney-in-fact to execute documents on Contractor's behalf for the purposes set forth in this Section 3.6.

3.7 Pre-existing IP in Work Product. User shall ensure that no Work Product created or delivered by User as a Contractor includes any pre-existing software, technology or other IP, whether such pre-existing IP is owned by User or a third party including, without limitation, code written by proprietary software companies or developers in the open source community, (collectively "Pre-existing IP") without obtaining the prior written consent of the Employer to the inclusion of such Pre-existing IP in the Work Product. User acknowledges that, without limiting any other remedies, User shall not be entitled to payment for, and shall refund any Contractor Fees paid to User for, any Services performed on a Contract if the Work Product contains any Pre-existing IP that was not approved in accordance with this Section 3.7.

3.8 Worker classification. Employer assumes all liability for proper classification of workers as independent contractors or employees based on IRS and other federal, state and local guidelines. Employer and Contractor further acknowledge and agree that the relationship exists specifically and expressly between Employer and Contractor and that no employment relationship exists between Employer and oDesk or Contractor and oDesk. This Agreement does not create a partnership or agency relationship between Employer and Contractor. Contractor does not have authority to enter into written or oral – whether implied or express - contracts on behalf of Employer.

Contractor recognizes, acknowledges and agrees that he/she/it is not an employee of oDesk and does not receive any training from oDesk. Contractor acknowledges that oDesk does not, in any way, supervise, direct, or control Contractor's work or Services performed in any manner. oDesk does not set Contractor's work hours and location of work. oDesk will not provide Contractor with any equipment, labor or materials needed for a particular Contract.

oDesk will not deduct any amount for withholding, unemployment, Social Security, or other taxes as it would in the case of an employee. Employer and Contractor will be solely responsible for all tax returns and payments required to be filed with or made to any federal, state, or local tax authority with respect to Contractor's performance of Services.

For Contracts classified as independent contractor relationships, Employer may not require an exclusive relationship between Employer and Contractor. A Contractor classified as independent contractor is free at all times to provide Services to persons or businesses other than Employer, including any competitor of Employer.

For Contracts classified as employer-employee relationships, Employer will manage the Contract through oDesk's payrolling program, where the Contractor becomes an hourly employee of oDesk's staffing affiliate and Contractor and Employer must enter into an oDesk User Agreement for Payrolling Program. If Employer elects to not utilize this program, Employer and Contractor shall be solely responsible for all obligations for tax withholding, the payment of taxes and/or providing the benefits associated with an employment relationship.

Employer and Contractor agree to indemnify, hold harmless and defend oDesk from any and all claims asserted by Contractor arising out of or related to the independent contractor relationship, including but not limited to claims that Contractor was misclassified as an independent contractor, any liabilities arising from a determination by a court, arbitrator, government agency or other body that Contractor was misclassified as an employee (including, but not limited to, taxes, penalties, interest and attorney's fees), any claim that oDesk was an employer or joint employer of Contractor, as well as claims under any employment-related laws, including, but not limited to, claims arising under the California Fair Employment and Housing Act; Business and Professions Code 17200; Title VII of the Civil Rights Act of 1964, as amended; the Unruh Act; the Fair Labor Standards Act; the Employee Retirement and Income Security Act; the Americans with Disabilities Act; 42 U.S.C. § 1981; the Age Discrimination in Employment Act of 1967, as amended ("ADEA"); the Family and Medical Leave Act; the California Family Rights Act; the California Labor Code; the California Civil Code; the California Constitution; and any and all other federal, state or local laws and regulations relating to employment termination, employment discrimination, harassment or retaliation, as well as any claims for overtime pay, sick leave, holiday or vacation pay, retirement benefits, worker's compensation benefits, unemployment benefits, or any other employee benefits, inasmuch as is permissible by federal, state, local or municipal law.

3.9 General. Service Contracts shall be governed by Sections 6 (Confidential Information) 13 (General) and 14 (Definitions) of this Agreement, as applicable either directly or by way of analogy.

3.10 Entire Agreement. The terms and conditions set forth in this Section 3 and/or any additional or different terms expressly agreed by Employer and Contractor through the oDesk Platform shall constitute the entire agreement and understanding of Employer

and Contractor with respect to each Service Contract and shall cancel and supersede any other prior or contemporaneous discussions, agreements, representations, warranties, and/or other communications between them.

4. ACKNOWLEDGMENTS BY USER OF ODESK'S ROLE.

- 4.1 Service Contracts. User expressly acknowledges, agrees and understands that: (i) the oDesk Platform is merely a venue where Users may act as Employers or Contractors; (ii) oDesk is not a party to any Service Contracts between Employers and Contractors; (iii) User recognizes, acknowledges and agrees that he/she/it is not an employee of oDesk and that oDesk does not, in any way, supervise, direct, or control User's work or Services; (iv) oDesk shall not have any liability or obligations under or related to Service Contracts or any acts or omissions by Users; (v) oDesk has no control over Contractors or over the Services promised or rendered by Contractors; and, (vi) oDesk makes no representations as to the reliability, capability, or qualifications of any Contractor or the quality, security or legality of any Service, and oDesk disclaims any and all liability relating thereto.
- 4.2 oDesk Resources. oDesk and its licensors reserve all Proprietary Rights in and to the oDesk Resources. User may not use the oDesk Resources except as necessary for the purposes of discharging its obligations under this Agreement and any Service Contract entered into pursuant to this Agreement and on the terms set out in the License Agreement. Without limiting the terms of Section 12.5, oDesk reserves the right to suspend or terminate User's access to the oDesk Platform and oDesk Resources at any time in its sole discretion, and to withdraw, expand and otherwise change the oDesk Platform and oDesk Resources (including the functionality of the oDesk Resources) at any time in oDesk's sole discretion. Without limiting any provisions contained in the License Agreement, User shall not be entitled to create any "links" to the oDesk Resources, or "frame" or "mirror" any content contained on, or accessible through, the oDesk Resources, on any other server or internet-based device.
- 4.3 oDesk's Compensation. oDesk is paid its fees for the maintenance of the oDesk Platform. All fees are non-refundable, whether or not Contracts were satisfactorily completed.

5. FEES AND PAYMENTS.

- 5.1 Formal Invoices and Taxes. oDesk shall have no responsibility for determining the necessity of or for issuing any formal invoices, or for determining, remitting, or withholding any taxes applicable to Contractor Fees. Instead, Contractor shall be solely responsible for determining whether it is required by applicable law to issue any formal invoices for the Contractor Fees and for issuing any invoices so required. Contractor shall also be solely responsible for: (a) determining whether Contractor or oDesk is required by applicable law to remit to the appropriate authorities any value added tax or any other taxes or similar charges applicable to the Contractor Fees, and remitting any such taxes or charges to the appropriate authorities on behalf of itself or oDesk, as appropriate; and (b) determining whether oDesk is required by applicable law to withhold any amount of the Contractor Fees, notifying oDesk of any such requirement and indemnifying oDesk (either by permitting oDesk to offset the relevant amount against a future payment of Contractor Fees or by refunding to oDesk the relevant amount, at oDesk's sole discretion) for any requirement to pay any withholding amount to the appropriate authorities. oDesk shall have the right, but not the obligation, to audit and monitor Contractor's compliance with applicable tax laws as required by this Section 5.1. Further, in the event of an audit of oDesk, Contractor agrees to promptly cooperate with oDesk and provide copies of Contractor's state and federal income tax returns, and other documents as may be reasonably requested for purposes of such audit.
- 5.2 Invoices to Employer. For Hourly-Rate Contracts, Employer will be invoiced for hourly Contractor Fees on a weekly basis. For bonuses, milestone payments and Fixed-Price payments, Employer is billed immediately. If Employer believes an Hourly-Rate Contract charge to be incorrect, Employer shall notify oDesk within the time period set forth in the Billing and Payments Policy, in which case oDesk will promptly investigate the Time Log to determine, in its sole discretion, whether an adjustment is appropriate. oDesk's determination shall be final. If Employer does not notify oDesk within this time set forth in the Billing and Payments Policy, the charge automatically becomes final and Employer cannot appeal it.
- 5.3 Payment. Employer hereby authorizes oDesk to run credit card authorizations on all credit cards provided by Employer, to store credit card details as Employer's method of payment for Services, and to charge Employer's credit card (or any other form of payment authorized by oDesk or mutually agreed to between Employer and oDesk).
- 5.4 Dispute Resolution Policy Between Contractor and Employer. All disputes between a Contractor and an Employer regarding the chargeable nature of the number of hours recorded in the Time Logs shall be resolved pursuant to oDesk's Dispute Resolution Policy (Section 2.10 above).

- 5.5 **Payment Guarantee.** oDesk will guarantee payment to Contractors working on Hourly-Rate Contracts where the Employer has a verified payment method, the time represented is captured online using the oDesk Team software, the work performed and captured pertains directly to the Contract billed, and each Time Log is annotated with appropriate work memos describing the work performed. Determination of whether these criteria have been met is at the sole discretion of oDesk. The Payment Guarantee will not apply to Contractors or Contracts in violation of this Agreement, where the Contractor is aware of or complicit in another User's violation of this Agreement, or where there is any other involvement in fraudulent activities or abuse of this Payment Guarantee.
- 5.6 **Access to Contractor Funds.** Amounts available in the account of a Contractor may be held or reclaimed by oDesk only if oDesk has found the Contractor to be in violation of this Agreement, or where there is suspicion or confirmation of fraudulent activities or abuse. Funds held by oDesk do not expire.

6. CONFIDENTIAL INFORMATION.

- 6.1 **Confidentiality.** To the extent an Employer or Contractor provides Confidential Information to the other and/or to oDesk, the recipient shall protect the secrecy of the 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 shall not: (i) disclose Confidential Information to anyone except, in the case of oDesk, to any Employer or Contractor engaged in a Contract; and (ii) use the Confidential Information, except as necessary for the performance of Services for the relevant Contract (including, without limitation, the storage or transmission of Confidential Information on or through oDesk Resources for use by Contractor).
- 6.2 **Return.** If and when Confidential Information is no longer needed for the performance of Services for the relevant Contract, or at the Employer's or Contractor's written request (which may be made at any time at Employer's or Contractor's sole discretion), Employer, Contractor or oDesk (as the case may be) shall promptly destroy or return all Confidential Information and any copies thereof contained in or on its premises, systems, or any other equipment otherwise under its control. Employer, Contractor and oDesk agree to provide written certification to the party disclosing the Confidential Information of compliance with this Section 6.2 within ten (10) days after the receipt of disclosing party's written request to certify.
- 6.3 **Publications.** Without limiting Section 6.1 (Confidentiality), Employer, Contractor and oDesk shall not publish, or cause to be published, any Confidential Information or Work Product, except as may be necessary for performance of Services for a relevant Contract.

7. WARRANTY DISCLAIMER.

ODESK MAKES NO EXPRESS REPRESENTATIONS OR WARRANTIES WITH REGARD TO THE SERVICES, WORK PRODUCT, ODESK RESOURCES, ODESK PLATFORM OR ANY ACTIVITIES OR ITEMS RELATED TO THIS AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED BY LAW, ODESK DISCLAIMS ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. SECTION 9.2 (TERMINATION) STATES USER'S SOLE AND EXCLUSIVE REMEDY AGAINST ODESK WITH RESPECT TO ANY DEFECTS, NON-CONFORMANCES OR DISSATISFACTION.

8. LIMITATION OF LIABILITY.

IN NO EVENT WILL ODESK BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR INDIRECT COSTS OR DAMAGES, LITIGATION COSTS, INSTALLATION AND REMOVAL COSTS, OR LOSS OF DATA, PRODUCTION OR PROFIT. THE LIABILITY OF ODESK TO ANY USER FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE GREATER OF: (A) U.S. \$2,500; AND (B) ANY ODESK FEES RETAINED BY ODESK WITH RESPECT TO CONTRACTS ON WHICH USER WAS INVOLVED AS EMPLOYER OR CONTRACTOR DURING THE SIX (6) MONTH PERIOD PRECEDING THE DATE OF THE CLAIM. THESE LIMITATIONS SHALL APPLY TO ANY LIABILITY, ARISING FROM ANY CAUSE OF ACTION WHATSOEVER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH COSTS OR DAMAGES AND EVEN IF THE LIMITED REMEDIES PROVIDED HEREIN FAIL OF THEIR ESSENTIAL PURPOSE.

9. INDEMNIFICATION.

- 9.1 **Proprietary Rights.** Each User shall indemnify, defend and hold harmless (on a monthly basis, as costs are incurred) oDesk and its subsidiaries, affiliates, officers, agents, employees, representatives and co-branders or other partners (each an "Indemnified Party" for purposes of this Section 9) from any and all claims, damages, liabilities, costs, and expenses (including, but not

limited to, reasonable attorneys' fees and all related costs and expenses) arising from or relating to any claim, judgment, or adjudication that any Work Product, Services or action or omission by such User infringes Proprietary Rights or other rights of any third party.

- 9.2 Indemnification by Employer. Each Employer shall indemnify, defend and hold harmless the Indemnified Parties from any and all claims, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorneys' fees and all related costs and expenses) arising from or relating to (i) such Employer's use of Services, including without limitation claims by or on behalf of any Contractor for Worker's Compensation or unemployment benefits, or (ii) any Service Contract entered into between such Employer and a Contractor.
- 9.3 Indemnification by Contractor. Each Contractor shall indemnify, defend and hold harmless the Indemnified Parties from any and all claims, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorneys' fees and all related costs and expenses) arising from or relating to (i) such Contractor's provision of Services, or (ii) any Service Contract entered into between such Contractor and an Employer.

10. TERM AND TERMINATION.

- 10.1 Term. The term of this Agreement commences on the Effective Date and continues in effect until for a period of one year unless terminated earlier in accordance with Section 10.2 below.
- 10.2 Termination. Either party may terminate this Agreement at any time, with or without cause, effective immediately upon written notice to the other party, provided that any such termination for convenience shall not affect the validity of any Service Contracts that have been executed prior to termination and this Agreement shall continue to apply with respect to such Service Contracts.
- 10.3 Consequences of Termination. Termination shall not relieve Employer of the requirement to pay for time spent and expenses incurred prior to the effective date of the termination, which fees and expenses, together with any applicable taxes, shall be invoiced to Employer following termination pursuant to Section 5.2 (Invoices to Employer), and charged to Employer's credit card or other form of payment pursuant to Section 5.3 (Payment). Subject to Section 5.4 (Dispute Resolution Policy), oDesk shall pay Contractor, in accordance with the provisions of Section 5 (Fees and Payments), for all time recorded in the Time Logs incurred prior to the effective date of the termination.
- 10.4 Survival. Sections 4 through 14 of this Agreement shall survive any termination thereof.

11. AUDIT RIGHTS.

Employer and Contractor each shall (i) create and maintain records to document satisfaction of its obligations under this Agreement and any Service Contract, including without limitation its payment obligations and compliance with tax laws, and (ii) provide copies of such records to oDesk upon request. oDesk, or oDesk's advisors or agents, shall have the right, but not the obligation, to routinely, but no less frequently than annually, audit Contractor's operations and records to confirm compliance. Nothing in this provision should be construed as providing oDesk with the right or obligation to supervise or monitor the actual Services performed by Contractor.

12. ENTIRE AGREEMENT; PREVIOUS AGREEMENTS AND ONGOING CONTRACTS.

- 12.1 Entire Agreement. This Agreement sets forth the entire agreement and understanding of the parties relating to its subject matter and cancels and supersedes any prior or contemporaneous discussions, agreements, representations, warranties, and other communications between them. In particular, this Agreement cancels and supersedes any oDesk Marketplace Agreement, oDesk Buyer Services Agreement, Freelancer Contractor Services Agreement, and/or Affiliate Services Agreement that User might have previously entered into with oDesk ("Previous Agreements").
- 12.2 Rights and Obligations under Previous Agreements. As of the Transition Date, User shall have no rights against oDesk under Previous Agreements except that User remains entitled to any fees for Services which User has become entitled to receive from oDesk under the terms of such Previous Agreements and which oDesk has not remitted as of the Transition Date. oDesk remains entitled to payment on invoices for Contracts commenced under Previous Agreements with User. User's continued use of the oDesk Platform as an Employer or Contractor on or after the Transition Date shall be solely governed by the terms of this Agreement.

- 12.3 **Ongoing Contracts.** Failure by any Employer to terminate any Contract commenced under a Previous Agreement prior to the Transition Date ("Ongoing Contract") constitutes an offer to the Contractor under such Ongoing Contract to continue the Ongoing Contract under a Service Contract with the terms and conditions set forth in Section 3 (Service Contract Terms Between Employer and Contractor) or any other terms expressly agreed to by the Employer and the Contractor through the oDesk Platform ("Offer to Continue"). A Contractor's continuation of work on any Ongoing Contract on or after the Transition Date constitutes the Contractor's acceptance of the Employer's Offer to Continue such Ongoing Contract.
- 12.4 **Side Agreements.** Section 12.1 notwithstanding, Employers and Contractors may enter into any supplemental or other written agreement that they deem appropriate (e.g., confidentiality agreement, work for hire agreement, assignment of rights, etc.). The terms and conditions of this Agreement, however, will govern and supersede any term or condition in a side agreement that purports to expand oDesk's obligations or restrict oDesk's rights under this Agreement.
- 12.5 **No Violation of Non-Solicitation Provisions.** Under no circumstances shall participation in and interaction with other Users exclusively through the oDesk Platform be viewed as a prohibited solicitation under the terms of any Previous Agreement. Without limiting the generality of Section 12.1, any non-solicitation and/or no-hire clauses under Previous Agreements are cancelled.

13. GENERAL.

- 13.1 **No Employment Relationship.** User acknowledges and agrees that by entering into this Agreement with oDesk, it does not create, establish or otherwise constitute an employment relationship or agreement with oDesk.
- 13.2 **Limited Privacy.** User acknowledges and understands that any Work Product, Time Logs, workstation images and any other information (including the terms of this Agreement) that User provides or makes available on the oDesk Platform as a Contractor may be made available to Employers and others in accordance with oDesk's Privacy policies above.
- 13.3 **Compliance.** User shall not violate any laws or third party rights on or related to the oDesk Platform. Without limiting the generality of the foregoing, User agrees to comply with all applicable import and export control laws and third parties' Proprietary Rights.
- 13.4 **Notices: Consent to Electronic Notice.** You consent to the use of (a) electronic means to complete this Agreement and to deliver any notices pursuant to this Agreement; and (b) electronic records to store information related to this Agreement or your use of the oDesk Platform. Notices hereunder shall be invalid unless made in writing and given (a) by oDesk via email (in each case to the address that you provide), (b) a posting on the oDesk Site or (c) by you via email to support@odesk.com or to such other addresses as oDesk may specify in writing. The date of receipt will be deemed the date on which such notice is transmitted.
- 13.5 **Modifications.** oDesk reserves the right in its sole discretion to amend this Agreement without advance notice. Modifications to this Agreement will be posted on the Site or made in compliance with any notice requirements set forth in this Agreement. Subject to Section 10, if any modification is not acceptable to you, your only recourse is to cease using the oDesk Platform. By continuing to use the oDesk Platform after oDesk has posted any modifications on the Site or provided any required notices, you accept and agree to be bound by the modifications.

Except only as permitted above, no modification or amendment to this Agreement shall be binding upon either party unless in a written instrument signed by a duly authorized representative of each party (and, for the purposes of this Section 13.5, a written instrument shall expressly exclude electronic communications such as email and electronic notices but shall include facsimiles).

- 13.6 **Dates and Timelines.** All references to days shall be to business days (Monday to Friday, UTC, excluding bank holidays), except as expressly noted otherwise.
- 13.7 **No Waiver.** The failure or delay of either party to exercise or enforce any right or claim does not constitute a waiver of such right or claim and shall in no way affect that party's right to later enforce or exercise it, unless such party issues an express written waiver, signed by a duly authorized representative of each party.
- 13.8 **Assignability.** User may not assign this Agreement, or any of its rights or obligations hereunder, without oDesk's prior written consent in the form of a written instrument signed by a duly authorized representative of each party (and, for the purposes of this Section 13.8, a written instrument shall expressly exclude electronic communications such as email and electronic notices but shall include facsimiles). oDesk may freely assign this Agreement without consent of User. For the purposes of this

Agreement an assignment will be deemed a "Change of Control." Any attempted assignment or transfer in violation of this Section will be null and void. A "Change of Control" means (a) the direct or indirect acquisition of either (i) the majority of voting stock of such party or (ii) all or substantially all of the assets of such party, by another entity in a single transaction or a series of transactions; or (b) the merger of such party with another entity. Subject to the foregoing restrictions, this Agreement will inure to the benefit of the successors and permitted assigns of the parties.

- 13.9 **No Third Party Beneficiary Rights.** Except as specified in Section 3 (Service Contract Terms Between Employer and Contractor), this Agreement shall: (a) create rights and obligations only between oDesk and each individual User that accepts this Agreement; and (b) not create any rights for any other parties. For the avoidance of doubt, without any limitation, no user shall be entitled to enforce the terms of this Agreement as they apply between oDesk and another user.
- 13.10 **Severability.** If and to the extent any provision of this Agreement is held illegal, invalid, or unenforceable in whole or in part under applicable law, such provision or such portion thereof shall be ineffective as to the jurisdiction in which it is illegal, invalid, or unenforceable to the extent of its illegality, invalidity, or unenforceability, and shall be deemed modified to the extent necessary to conform to applicable law so as to give the maximum effect to the intent of the parties. The illegality, invalidity, or unenforceability of such provision in that jurisdiction shall not in any way affect the legality, validity, or enforceability of such provision in any other jurisdiction or of any other provision in any jurisdiction.
- 13.11 **Choice of Law.** With the exception of non-compete agreements entered into by and between Employers and non-California Contractors (see Section 2.14), this Agreement and any controversy, dispute or claim arising out of or relating to this Agreement ("Claims") shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflict of law provisions and excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 13.12 **Informal Dispute Resolution and Arbitration.** oDesk and User hereby agree that any Claims shall first be settled through the oDesk dispute resolution program. Claims that the parties cannot resolve informally and where the amount in controversy is less than USD\$25,000, the parties agree to resolve the Claims in a cost-effective manner through binding non-appearance-based arbitration conducted by a single arbitrator. If a party elects arbitration, that party will initiate the arbitration through an established alternative dispute resolution (ADR) provider mutually agreed upon by the parties or the American Arbitration Association (AAA) if no other service is agreed upon. The arbitrator shall be selected from a list of no less than five names through alternative strikes. Unless the parties mutually agree otherwise, the ADR provider and the parties will proceed as follows:
- a) the arbitration will be conducted by telephone and/or be solely based on written submissions, as specified by the party that initiates the arbitration;
 - b) the arbitration shall not involve any personal appearance by the parties or witnesses; and
 - c) any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

Disputes over \$25,000 that do not involve oDesk may be resolved in whatever forum the parties deem appropriate. The California state courts of San Mateo County (or, if there is exclusive federal jurisdiction, the United States District Court for the Northern District of California) will have jurisdiction and venue over any Claims where oDesk is a party and the amount in controversy exceeds \$25,000; each party hereby irrevocably consents to the personal jurisdiction and venue of these courts. This Agreement does not prevent the filing of charges with a government agency like the Department of Labor or participation in any investigation or proceeding conducted by a government agency.

- 13.13 **Prevailing Language.** The English language version of this Agreement shall be controlling in all respects and shall prevail in case of any inconsistencies with translated versions, if any.

14. DEFINITIONS.

- 14.1 "Agency Contractors" means a Contractor under contract to do work on oDesk on behalf of an Agency.
- 14.2 "Agency" means an organization seeking to make money on oDesk by selling the services of Agency Contractors.
- 14.3 "Contract" means a particular project or set of ongoing tasks for which an Employer has requested Services to be performed by a Contractor.

- 14.4 "Confidential Information" means Employer or Contractor Deliverables, Work Product, and any other information provided to, or created by, a User for a Contract, regardless of whether in tangible, electronic, verbal, graphic, visual or other form. Confidential Information does not include material or information that: (a) is generally known by third parties as a result of no act or omission of Contractor or Employer; (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 Confidential Information.
- 14.5 "Contractor" means any company or individual, including User, utilizing the oDesk Platform to offer Services for Employers and/or to enter into Service Contracts.
- 14.6 "Contractor Deliverables" means instructions, requests, IP and any other information or materials that an Employer receives from a Contractor for a particular Contract.
- 14.7 "Contractor Fees" means: (a) for an Hourly-Rate Contract, an amount equal to the number of hours recorded by Contractor in the Time Logs, multiplied by the Hourly Rate, plus any weekly payments; (b) for a Fixed-Price Contract, the Fixed-Price; and (c) any bonuses paid or other payments made by an Employer for a Contract.
- 14.8 "Effective Date" means the date of acceptance of this Agreement.
- 14.9 "Employer" means any company or individual, including User, utilizing the oDesk Platform to request Services to be performed by a Contractor. The term Employer for purposes of this agreement is used in a generic sense and is not meant to define the legal nature of the agreement and should not be construed as an admission or any indication of the type or nature of the Services rendered by Contractor(s).
- 14.10 "Employer Deliverables" means instructions, requests, IP and any other information or materials that a Contractor receives from an Employer for a particular Contract.
- 14.11 "Fixed-Price" means a fixed fee agreed between an Employer and a Contractor, prior to the commencement of a Contract, for the completion of all Services requested by Employer for such Contract.
- 14.12 "Fixed-Price Contract" means a Contract for which Employer is charged a Fixed-Price.
- 14.13 "Hourly Rate" for a Contract means, in respect of a Contractor, the hourly rate specified for that Contractor in the oDesk Platform.
- 14.14 "Hourly-Rate Contract" means a Contract for which Employer is charged based on the Hourly Rate.
- 14.15 "IP" means any computer programs or routines (in object code, source code, or embedded format, regardless of the medium on which it resides), algorithms, know-how, hardware and/or software configurations, inventions, documentation, translations, text and other works of authorship, data, databases, information, designs, utility models, symbols, logos, marks, names, procedures, processes, technical improvements and any other intangibles as well as the prototypes, samples, copies, and other materialized forms of the foregoing intangibles.
- 14.16 "License Agreement" means the license agreement between User and oDesk relating to use of the oDesk Resources software.
- 14.17 "oDesk Resources" means any software, information and other items provided by oDesk, including, without limitation, oDesk Team, oDesk share, Mailing List, subject to change and update by oDesk from time to time at oDesk's sole discretion.
- 14.18 "oDesk Team" means the online platform accessed using the oDesk Resources software and through which an Employer communicates with a Contractor in relation to a Contract once such Contract has commenced.
- 14.19 "Payment Period" shall mean the weekly period beginning on Monday at 12:00 AM UTC and ending on Sunday a 12:00 AM UTC.
- 14.20 "Proprietary Rights" means any and all rights, title, ownership and interest in and to copyrights, mask works, industrial designs, trademarks, service marks, trade names, trade secrets, patents, and any other rights to IP, recognized in any jurisdiction, whether or not perfected.

- 14.21 "Services" means web development, software development, writing, translation, administrative, marketing, design customer service, sales, general business services and other knowledge-based or online services.
- 14.22 "Time Logs" means the number of hours recorded for a stated period by a Contractor in oDesk Team (or such other Tool as oDesk may nominate from time to time), in compliance with oDesk's Billing and Payments Policy and Policy on Managing and Working on Contracts, for the Services performed in respect of a Contract.
- 14.23 "Transition Date" means the Monday following the end of the last Payment Period under any Previous Agreement between User and oDesk or, if there is no such Previous Agreement, the Effective Date.
- 14.24 "Work Product" means any tangible or intangible results or deliverables that Contractor agrees to create for, or actually delivers to, Employer as a result of performing the Services on a particular Contract, including, but not limited to, configurations, computer programs or other information, or customized hardware, and any IP developed in connection therewith.