

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2021

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission File Number 001-38678

upwork

UPWORK INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)
475 Brannan Street, Suite 430
San Francisco, California
(Address of principal executive offices)

46-4337682
(I.R.S. Employer Identification No.)

94107
(Zip Code)

(650) 316-7500

(Registrant's telephone number, including area code)

Title of Each Class
Common Stock, \$0.0001 par value per share

Securities registered pursuant to Section 12(b) of the Act:

Trading Symbol
UPWK

Name of Each Exchange on Which Registered
The Nasdaq Stock Market LLC

Securities registered pursuant to Section 12(g) of the Act:

None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes x No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No x

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes x No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes x No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

x

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No x

The aggregate market value of voting stock held by non-affiliates of the registrant, as of June 30, 2021, the last business day of the registrant's most recently completed second quarter, was \$6,809,077,335 (based on the closing price for shares of the registrant's common stock as reported by The Nasdaq Global Select Market on that date).

As of January 31, 2022, there were 129,215,625 shares of the registrant's common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive proxy statement for its 2022 Annual Meeting of Stockholders, or Proxy Statement, to be filed within 120 days after the end of the fiscal year covered by this Annual Report on Form 10-K, are incorporated by reference in Part III. Except with respect to information specifically incorporated by reference in this Annual Report, the Proxy Statement shall not be deemed to be filed as part hereof.

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Unless otherwise expressly stated or the context otherwise requires, references in this Annual Report on Form 10-K, which we refer to as this Annual Report or report, to “Upwork,” “Company,” “our,” “us,” and “we” and similar references refer to Upwork Inc. and its wholly-owned subsidiaries.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report contains forward-looking statements within the meaning of the federal securities laws. All statements contained in this Annual Report, other than statements of historical fact, including statements regarding our future operating results and financial position, our business strategy and plans, potential growth or growth prospects, active clients, future research and development, sales and marketing and general and administrative expenses, provision for transaction losses, our objectives for future operations, and potential impacts of the ongoing COVID-19 pandemic, or expectations regarding actions we may take in response to the pandemic, are forward-looking statements. Words such as “believes,” “may,” “will,” “estimates,” “potential,” “continues,” “anticipates,” “intends,” “expects,” “could,” “would,” “projects,” “plans,” “targets,” and variations of such words and similar expressions are intended to identify forward-looking statements.

We have based these forward-looking statements largely on our current expectations and projections as of the date of this filing about future events and trends that we believe may affect our financial condition, results of operations, business strategy, short-term and long-term business operations and objectives, and financial needs. These forward-looking statements are subject to a number of risks, uncertainties and assumptions, including those described in Part I, Item 1A, “Risk Factors” in this Annual Report and the impact of the ongoing COVID-19 pandemic. Readers are urged to carefully review and consider the various disclosures made in this Annual Report and in other documents we file from time to time with the Securities and Exchange Commission, which we refer to as the SEC, that disclose risks and uncertainties that may affect our business. Moreover, we operate in a very competitive and rapidly changing environment. New risks emerge from time to time. It is not possible for us to predict all risks, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements we may make. In light of these risks, uncertainties, and assumptions, the future events and circumstances discussed in this Annual Report may not occur and actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements.

You should not rely upon forward-looking statements as predictions of future events. The events and circumstances reflected in the forward-looking statements may not be achieved or occur. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, performance, or achievements. In addition, the forward-looking statements in this Annual Report are made as of the date of this filing, and we do not undertake, and expressly disclaim any duty, to update such statements for any reason after the date of this Annual Report or to conform statements to actual results or revised expectations, except as required by law.

You should read this Annual Report and the documents that we reference herein and have filed with the SEC as exhibits to this Annual Report with the understanding that our actual future results, performance, and events and circumstances may be materially different from what we expect.

Item 1. Business.**Overview**

We operate the world's largest work marketplace that connects businesses, which we refer to as clients, with independent talent, as measured by gross services volume, which we refer to as GSV.¹

Independent talent on our work marketplace, which we refer to as talent, and, together with clients, as users, includes independent professionals and agencies of varying sizes and is an increasingly sought-after, critical, and expanding segment of the global workforce. We define clients as users that work with talent through our work marketplace. During the year ended December 31, 2021, our work marketplace enabled \$3.5 billion of GSV.

For talent, we serve as a powerful marketing channel to find rewarding, engaging, and flexible work. Talent benefits from access to quality clients, simplified invoicing, and secure and timely payments while enjoying the freedom to run their own businesses, create their own schedules, and work from their preferred locations. Moreover, talent has real-time visibility into opportunities that are in high demand, so that they can invest their time and focus on developing sought-after skills.

For clients, our work marketplace provides fast, secure, and efficient access to high-quality talent with over 10,000 skills across over 90 categories, such as sales and marketing, customer service, data science and analytics, design and creative, and web, mobile, and software development. We offer a direct-to-talent approach as an alternative to traditional intermediaries such as staffing firms, recruiters, and agencies by providing high-quality independent talent and features that help build trusted relationships and instill trust in remote work, including the ability to engage talent as either independent contractors or as employees of third-party staffing providers. Our work marketplace also enables clients to streamline workflows, such as talent sourcing, outreach, and contracting. In addition, our work marketplace provides clients with access to essential functionality for remote engagements with talent, including communication and collaboration, the ability to receive all talent invoices through our work marketplace, and payment protection. Our clients range in size from small businesses to Fortune 100 companies.

We believe that a key differentiator and driver of our growth is our track record of creating trust and enabling our users to successfully connect at scale. As the world's largest work marketplace that connects businesses with independent talent, as measured by GSV, we benefit from network effects that drive growth in both the number of clients posting jobs and the number of talent seeking work. Our growth is driven by long-term and recurring use of our work marketplace by our users.

We generate revenue from both talent and clients, with a majority of our revenue generated from service fees charged to talent for access to our work marketplace. We also generate revenue from fees charged to both clients and talent for other services, such as for transacting payments through our work marketplace, premium offerings, purchases of "Connects" (virtual tokens that allow talent to bid on projects on our work marketplace), foreign currency exchange when clients choose to pay in currencies other than the U.S. dollar, and our Upwork Payroll offering. In addition, we provide a managed services offering where we engage talent to complete projects, directly invoice the client, and assume responsibility for work performed.

COVID-19 Impact on Our Business

The ongoing COVID-19 pandemic and the resulting restrictions intended to prevent its spread have continued to accelerate the secular shift toward remote and independent work. As a result of our unique, remote-based business model, the pandemic has not impacted our clients' access to highly-skilled talent to complete short- and long-term projects on our work marketplace. In 2021, we prioritized our advertising, marketing, and product development efforts to reach those new and existing clients seeking to engage remote talent in light of the shift toward remote work, due in part to the COVID-19 pandemic. As a result of these efforts, our 2021 results were fueled by both existing and new clients, who used Upwork to address their changing business needs. We expect our business to continue to grow over time, and while we have not incurred significant disruptions to our business thus far from the COVID-19 pandemic, we are continuously evaluating the nature of, and extent to which, the ongoing pandemic will impact our business, operating results, and financial condition. For a more detailed discussion of the potential impact of the COVID-19 pandemic, the associated economic disruptions, and the actual operational and financial

¹ GSV represents the total amount that clients spend on both our marketplace offerings and our managed services offering as well as additional fees we charge to talent for other services. For additional information related to how we calculate GSV, see the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations—Overview—Business" and "—Key Financial and Operational Metrics."

impacts that we have experienced to date, see the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations."

Our Work Marketplace

We operate the world's largest work marketplace that connects businesses with independent talent, as measured by GSV. We believe the following core aspects of our work marketplace provide us with a competitive advantage:

Trusted Work Marketplace

Our work marketplace fosters trust and credibility among talent and clients, while reducing the friction associated with searching for, contracting and collaborating with, and paying highly-skilled independent talent for short-term and longer-term projects. We use a combination of the latest technology, data science, product features, and our skilled team to position our work marketplace as a trusted online marketplace to get work done. We build and use software to highlight relevant talent, facilitate security and identity verification for account ownership, and flag suspicious posts. We provide clients with tools to validate work performed by talent and to provide both public and private feedback once the work is completed. Our feedback system enables talent to build their business reputation by establishing long-term credibility with project review and verified client feedback. Talent profiles also include data from their work history on our work marketplace, including client feedback, number of hours billed, projects completed, and amount earned. This validated expertise is a critical factor to build trust and promote brand loyalty, giving clients confidence in hiring talent for their next project. Additionally, we provide escrow services to help ensure that clients on our work marketplace only pay for work that has been completed and talent is paid by their clients in full and on time.

Proprietary Data Drives Increasing Efficiencies

We have built an expansive and unique repository of data on our work marketplace. Our proprietary database maintains detailed and dynamic information, including skills provided by talent, feedback, and success indicators of talent and clients transacting on our work marketplace. Using this data in our machine learning algorithms enables us to provide a trusted, convenient, and effective experience for both new and existing users and enables clients to better connect with available talent for their projects. Moreover, our machine learning algorithms leverage our closed-loop transaction data on millions of completed projects. The large volume of transactions on our work marketplace positions us to improve the effectiveness of our search algorithms and product features.

Robust Functionality

Our work marketplace includes a proposal tracking system, search engine and collaboration functionality, artificial intelligence-driven talent matching and proposal ranking capabilities, time tracking and invoicing systems, and payments services. The robust functionality of our work marketplace is designed to enable talent to more easily run their businesses and clients to find and work with high-quality talent on a global scale.

Powerful Global Network Effects

We have heavily invested in building a robust work marketplace with features and functionalities to connect talent and clients at scale. We believe our work marketplace provides a strong value proposition for both clients and talent and our scale creates powerful network effects that strengthen our competitive position. In turn, as more clients use and post projects on our work marketplace, we are able to attract more talent. As a result, we have been able to scale our business and our global community of users efficiently and without the need for local physical presence.

Business Model with Strong Retention Metrics

The growth of our business is driven by long-term and recurring use of our work marketplace by talent and clients, which leads to increased revenue visibility. In addition, we believe the scale of our work marketplace incentivizes talent to build their business reputations on, and continue to use, our work marketplace.

Our Offerings

We have marketplace offerings and a managed services offering. Our marketplace offerings include Upwork Basic, Upwork Plus, Upwork Enterprise, and Upwork Payroll.

Upwork Basic

Our Upwork Basic offering provides clients with access to independent talent with verified work history on our work marketplace and client feedback, the ability to instantly match with the right talent, and built-in collaboration features.

Upwork Plus

Our Upwork Plus offering is designed for teams looking to stand out to quality talent and scale hiring quickly. In addition to receiving all the product features of Upwork Basic, Upwork Plus clients can access personalized assistance, whether strategic or job-specific. They also receive perks such as a verified client badge and highlighted job posts, which stand out to top talent and help clients achieve results.

Upwork Enterprise

Our Upwork Enterprise offering is designed for larger clients with at least 250 employees. Upwork Enterprise clients receive all the product features of Upwork Plus, in addition to consolidated billing and monthly invoicing, a dedicated team of advisors, detailed reporting with company insights and trends to enable clients to hire faster and more successfully, and the opportunity for clients to onboard pre-existing independent talent onto our work marketplace. Upwork Enterprise also offers access to additional product features, premium access to top talent, professional services, and payment terms flexibility. Additionally, through our enterprise compliance offering, clients can engage us to determine whether talent should be classified as an employee or an independent contractor based on the scope of talent services agreed between the client and talent and other factors.

Upwork Payroll

Our Upwork Payroll offering, one of our premium offerings, is available to clients when they choose to work with talent they engage through Upwork as employees. With Upwork Payroll, clients have access to third-party staffing providers to employ their workers so that they can meet their talent needs through our work marketplace.

Managed Services

Through our managed services offering, we engage talent directly or as employees of third-party staffing providers to perform services for clients on our behalf, directly invoice the client, and assume responsibility for work performed.

Escrow Services

We are licensed as an internet escrow agent by the California Department of Financial Protection and Innovation, which we refer to as the DFPI. Pursuant to applicable regulations, funds that we hold on behalf of users are held in our escrow account and are released only according to escrow instructions that have been agreed upon by users. For fixed-price contracts, the client deposits funds that are held in escrow, in whole or by milestone, before talent starts work. The escrow funds are then released to talent upon completion of a project or a milestone. For hourly contracts, talent submits their billings to their clients on a weekly basis on Sunday, at which point the funds are placed in escrow. The client has several days to review, after which the funds are then released to talent, unless the client files a dispute. We have a dedicated team focused on facilitating a resolution of any disputes between talent and clients over funds held in escrow.

Our Team and Culture

Our mission—to create economic opportunities so people have better lives—is integral to our culture and how we build amazing teams and products to lead our industry. We enable remote work not only through our work marketplace for our users, but also for our own team members for whom we are proud to offer a remote-first work model, which has environmental, as well as other benefits. Our team consists of independent talent that we engage through our work marketplace, corporate employees, and advisors. Our team members are distributed around the world, and while we have corporate offices, we do not solely rely on in-person collaboration. Our team works with a variety of tools and has adopted practices to ensure all voices are heard, innovation is fostered, and results are achieved. Our hybrid team, and its belief in our mission, values, and vision is critical to our success. With the consistent investment in the development of our team and our commitment to diversity, inclusion, and belonging, we cultivate an environment where people are able to be themselves at work and perform to the best of their abilities.

Our People

Our mission not only drives the creation and continuous development of our work marketplace, but it is also integral to how we engage our employees and our approach to creating and fostering an inclusive environment that promotes and encourages diversity, inclusion, belonging, career development, and wellness. As of December 31, 2021, we had approximately 650 employees, and throughout 2021, we engaged approximately 1,800 independent team members through our work marketplace to provide services to us on a variety of internal projects. None of our team members are represented by a labor union or are covered by a collective bargaining agreement. We believe the positive relationship between us and our team members and our unique, strong culture differentiate us and are key drivers of our business success.

Diversity, Inclusion, and Belonging

We put our people and their experiences first. We view belonging as a feeling, inclusion as a practice, and diversity as an outcome.

We foster belonging through our Upwork Belonging Communities—employee resource groups that build empathy and promote inclusive skill-building. We cultivate inclusion by equipping managers with tools to effectively build and lead amazing and inclusive teams that amplify team members' voices. Additionally, we practice multi-dimensional compensation and mobility reviews during our semi-annual employee performance evaluation process. This is led by a cross-functional team of human resource and legal leaders to help ensure we are fair in our rewards and recognition strategy. To bolster our diversity, inclusion, and belonging efforts, we also conduct an internal review to facilitate equity in internal mobility practices throughout the Company as an ongoing priority. Diversity, inclusion, and belonging is a journey, not a destination, and, as such, we will continue to explore ways to cultivate an inclusive culture where every team member belongs.

Training and Development

As an organization built on talent and skills development, we understand the value of providing our employees with ongoing professional development and leadership opportunities so that they can advance their careers. Led by our dedicated learning and development team, we offer our team members an array of learning and development opportunities, including a variety of training sessions and workshops.

Benefits and Competitive Compensation

Beyond our training and development efforts, we take pride in offering competitive, market-based compensation and benefits to our employees. We engage compensation consultants to benchmark our employee compensation with external sources to ensure fair and equitable pay practices, and utilize equity grants to align employee compensation with stockholder interests. Merit increases and promotions are awarded based on an individual's impact within the organization and an established business need, and in consideration with market data. Knowing our employees have diverse needs and life priorities, we also provide expanded benefits to those eligible, which include core benefits such as medical, dental, vision, and disability insurance, in addition to benefits tailored to the specific needs of our employees, such as mental health, fertility, family back-up care, and adoption support.

Team Member Feedback

We engage our workforce in meaningful ways and take timely action in response to their feedback. While our culture and engagement process starts during the new team member onboarding process, one way we sustain our feedback loop is via an industry-recognized team member engagement platform. Through the platform, we survey our team members on a regular basis to gather feedback. In 2021, our average employee response rate was 86%, and we received notably high scores with respect to our leadership and purpose, with the survey results reflecting that many team members feel invested in our future and continue to regard Upwork as a workplace they would recommend to others. In these surveys, team members also consistently recognize our efforts to cultivate an inclusive workplace. Responses to these surveys and other employee feedback guide our team engagement efforts. We believe that ensuring that our people feel valued, supported, and heard helps us attract, retain, and develop the right talent to lead the Company and successfully execute our corporate strategy.

Employee Wellness

Employee safety and well-being is of paramount importance to us in any year and continued to be of particular focus in 2021 in light of the COVID-19 pandemic. We provide productivity and collaboration tools and resources for employees, including training and toolkits to help leaders effectively lead and manage remote teams. In

addition, we enhanced and promoted programs to support our employees' physical, financial, and mental well-being. For example, we regularly conduct internal surveys to assess the well-being and needs of our employees, and we significantly expanded employee assistance and mindfulness programs to help employees and their families manage anxiety, stress, sleep, and overall well-being. Additionally, we believe that our employees are at their best when they take the time to recharge. In order to encourage our employees to recharge and make their well-being a priority, we provide company-wide "ChargeUp Days"—paid time off that is in addition to our company-recognized holidays.

Board of Directors Oversight

Our board of directors recognizes the critical importance of our team and the necessity to ensure a diverse, inclusive, and creative work environment that is centered around a values-based culture. Our board of directors meets regularly with management to discuss issues impacting our team members and ways to support our workforce. Our focus on culture comes from our board of directors and flows throughout our Company. In evaluating our Chief Executive Officer and management team, emphasis is put on their contributions to our overall culture.

Sales and Marketing

Our sales and marketing organizations work closely together to increase awareness, generate user demand, build a strong sales pipeline, and grow account relationships across businesses of all sizes, from small businesses to Fortune 100 companies, to accelerate GSV and revenue growth.

Marketing

We have a holistic and integrated marketing strategy with the goal of attracting clients to our work marketplace and helping them select the right product offering based on their business needs. This starts with building awareness of our brand and the key benefits of hiring remote talent over using traditional staffing models, including talent quality, speed to hire, flexibility, and cost effectiveness, all built upon trusted relationships and providing talent and clients more control over their careers and businesses. We draw insights and trends from our work marketplace and primary research studies to drive broad public relations coverage. We also help shape influential conversations around the future of work and the immediate strategic opportunities provided by flexible talent solutions through major media outlets to further drive brand awareness and cement our position as a thought leader.

Building upon our brand positioning, we address key client needs in all our marketing efforts and help point our clients to the right Upwork product based on those needs. We also enjoy the benefits of high Net Promoter Scores, which we refer to as NPS, that generate significant word-of-mouth growth. While a majority of our new client registrations come through direct and non-paid channels, we also increase our new client pipeline with a variety of digital, direct mail, and event marketing programs. We deploy email and lifecycle marketing initiatives to retain, cross-sell, and upsell existing clients. We also engage in offline advertising, as well as TV and radio advertising campaigns.

We have also increased our focus on large enterprise organizations by adding account-based marketing programs that target clients to drive account growth. Once prospects are identified, our enterprise sales team works to broaden adoption of our work marketplace into wider-scale deployments.

Enterprise Sales

Our enterprise sales team consists of business development representatives and other quota-carrying account executives who are focused on acquiring new clients with at least 250 employees. Specifically, our business development representatives are focused on generating qualified opportunities within our target account profile, which include both inbound and self-service customer upgrades. These opportunities are delivered to account executives focused on selling our Upwork Enterprise offering. Additionally, our quota-carrying account management and success teams help new and existing clients scale usage of our work marketplace throughout their organizations. We achieve this by executing awareness campaigns, persona-based workshops, webinars, and account-based marketing campaigns that drive additional client spend through our work marketplace. We believe this land-and-expand strategy helps clients ramp their usage of our work marketplace and drives more value, awareness, and adoption over time.

Our Technology

We invest substantial resources in research and development to enhance our platform, develop new products and features, and improve our infrastructure. We utilize a flexible systems architecture to allow us to scale easily as our

platform usage increases and to provide a consistent and robust user experience. We host our platform on Amazon Web Services, which we refer to as AWS. The core focus of our technology is on:

Reliability

Our infrastructure is designed to provide high reliability and robust platform performance. There are four components to our reliability strategy:

1. *Modern Distributed Infrastructure.* We have engineered and implemented a modern, distributed core infrastructure design that provides for failures to occur at the individual system level without disrupting service or impacting the user experience.
2. *Services-Oriented Architecture.* We have focused on building a services-oriented architecture that is designed to independently scale, or failover, as needed, leveraging the AWS platform. As a result, we believe we are more resilient to unexpected surges in traffic or to new code changes that we may introduce.
3. *Isolation as a Design Philosophy.* Leveraging the philosophy of domain-driven design, we have divided our platform into multiple sections to reduce the likelihood that a failure in any one section would negatively impact other sections of our platform.
4. *Intelligent Monitoring and Automated Remediation.* Our platform is designed to continuously monitor its own health and act appropriately to maintain its health, particularly during our deployment of new code or in response to any single infrastructure or platform issue.

Security

Our platform is designed to help ensure the security of our data and systems, protect our users' personal information, and to meet the rigorous privacy and security requirements of our enterprise clients. To that end, we have obtained the following security and privacy certifications: ISO 27001 and 27018, SOC 2 Type II certification, SOC 3 certification, PCI-DSS certification, and U.S.-EU and U.S.-Swiss Privacy Shield certifications. We are also TrustArc certified.

Our information security controls operate at multiple levels and are designed to detect, prevent, and mitigate cybersecurity threats that could impact the privacy and security of our data and our users' data. To operate at scale, we have automated several risk mitigation strategies. We have implemented comprehensive trust and safety processes to help prevent and detect suspicious behavior on our platform. Over the years of developing our work marketplace, we have developed and refined specific pattern-matching algorithms to detect unusual behavior on our work marketplace.

Another component of our security strategy is to leverage third parties who provide value-added user verification services. Augmenting user identity verification through these third-party services improves our ability to ensure users are accurately represented and minimize suspicious activity on our platform.

All access to our platform is encrypted using industry-standard transport layer security technology. When users enter sensitive information, such as tax identification numbers, we encrypt the transmission of that information using secure socket layer technology. We also use HTTP strict transport security to add an additional layer of protection for our users. For servers that store personally identifiable information, the data is encrypted. In order to make secure payments through our platform, we are Payment Card Industry Data Security Standard certified, which means we have demonstrated compliance with the Payment Card Industry security standards required for businesses that complete credit card or debit card transactions.

Our users may elect to further secure their account credentials through two-factor authentication that requires them to authenticate on a second device.

Machine Learning Predictive Capabilities

We leverage historical data to create a continuously improving experience for our users. Our platform contains a large repository of closed-loop data for the entire life cycle of work, starting from when clients post projects to when talent and clients match, how they communicate, how and when payment is transferred, and feedback.

Utilizing machine learning capabilities to predict future behavior based on many years of historical use cases, we are able to leverage this data analysis to create stronger user experiences.

During the search process, we leverage our proprietary data to help talent and clients efficiently connect. We leverage machine learning to balance supply and demand within the platform as well. Talent receives data on

market rates based on similar jobs when submitting proposals. When clients post jobs, similar rate resources also appear within the system. Upon registration, our machine learning algorithms assess the potential of talent to be successful on our work marketplace.

Scalability

Our cloud-based platform has been designed to be elastic, scaling automatically with increased usage, supporting sudden traffic spikes by dynamically bringing additional capacity online as required, then scaling back to ensure consistent and predictable cost-management.

Our Impact

Our mission is to create economic opportunities so people have better lives. Everything we do to build a better way to work—from our offerings and services to the policies and programs that guide our operations—is driven by this mission and our commitment to be a force for good.

Empowered by our work marketplace, millions of people from diverse backgrounds and locations can now access economic opportunities previously unavailable to them. We enable workers to access opportunities beyond their local labor market and choose the type of projects they pursue, when and with whom they work, and how much they earn. Upwork provides a new way for talent to market their skills and expertise—one based on merit—and we are promoting inclusive hiring practices through continuous accessibility improvements, analysis of potential underlying bias in our technology, and features like our certified-diverse badges.

We are also powering a more efficient and sustainable way to work. We believe that by facilitating remote work engagements and providing our users with the tools they need to collaborate from afar, we are helping them avoid work-related commutes and business travel. By committing to carbon neutrality and pursuing ways to decrease our own footprint, we are demonstrating how companies across the globe can take on climate change.

Our drive to create a more equitable and sustainable future of work has helped us identify new ways to serve our stakeholders—including our clients and the independent talent on our work marketplace, our hybrid workforce, our investors, and our community partners—and contribute towards long-term value creation. We continuously assess our social and environmental impact and we are committed to addressing both short- and long-term risks and opportunities across our supply chain, operations, and value chain. For this reason, our impact strategy is focused on six key areas: economic opportunity; business integrity; diversity, inclusion, and belonging; health, safety, and human rights; environmental sustainability; and supplier engagement.

Competition

The market segment for independent talent and the clients that engage them is highly competitive, rapidly evolving, fragmented, and subject to changing technology, shifting needs, and frequent introductions of new competitors as well as new offerings and services. The level of competition within, and the frequency and likelihood of increased third-party investment and new competitors entering, this market segment has further intensified due to the ongoing COVID-19 pandemic and the resulting shift toward remote work and other labor market dynamics. We compete with a number of online and offline platforms and services domestically and internationally, as well as traditional staffing firms, to attract and retain users and expand our share of user spend.

We believe the principal competitive factors in our market segment include:

- platform features and functionality, including efficient and accelerated time to hire;
- verified talent work history and client payment history;
- size and engagement of user base, including the ability to attract and retain clients with a need for independent talent services;
- breadth of skill categories offered by a platform's rated quality talent;
- availability of high-quality projects from clients of all sizes, including Fortune 100 companies;
- uniqueness, size, and scope of data assets;
- ease of use;
- brand awareness and reputation;
- level of user satisfaction;
- relationships with third-party partners;

- strength of sales and marketing efforts;
- ability to innovate and develop new or improved offerings and services; and
- pricing.

We believe that we compete favorably with respect to these factors.

Intellectual Property

The protection of our technology and intellectual property is an important aspect of our business. We rely upon a combination of patents, trademarks, trade secrets, copyrights, confidentiality procedures, contractual commitments, and other legal rights to establish and protect our intellectual property. We generally enter into confidentiality agreements and invention or work product assignment agreements with our employees, independent team members that we engage through our work marketplace, advisors, and consultants to control access to, and clarify ownership of, our software and other inventions and intellectual property, documentation, and other proprietary information.

As of December 31, 2021, we held 22 issued U.S. patents. As of December 31, 2021, we held eight registered trademarks in the United States, including Upwork, Elance, oDesk, and "Talent Cloud" and also held 161 registered trademarks in foreign jurisdictions. We continually review our development efforts to assess the existence and patentability of new intellectual property.

Government Regulation

We have a robust regulatory compliance program built to comply with the various applicable U.S. federal and state and foreign laws and regulations that are applicable to internet companies and businesses that operate online marketplaces connecting businesses with independent talent. Our compliance program gives us the ability to pursue products and features that are or may be governed by complex laws and regulatory regimes. These laws and regulations may involve areas such as worker classification, employment, data protection, online payment services, content regulation, intellectual property, taxation, consumer protection, background checks, payment services, money transmitter regulations, anti-corruption, anti-money laundering and sanctions laws, or other subjects. Moreover, we provide escrow services to our users and are therefore licensed as an internet escrow agent by the DFP. Many of the laws and regulations that are or may be applicable to our business are still evolving and being tested in courts and could be interpreted in ways that could adversely impact our business. In addition, the application and interpretation of these laws and regulations often are uncertain, particularly in the industry in which we operate. We continue to monitor existing and pending laws and regulations and while the impact of regulatory changes cannot be predicted with certainty, we do not expect compliance to have a material adverse effect.

Corporate Information

We were incorporated in the State of Delaware in December 2013 prior to and in connection with the combination of Elance, Inc., which we refer to as Elance, and oDesk Corporation, which we refer to as oDesk. In connection with the combination, we changed our name to Elance-oDesk, Inc. in March 2014, and then to Upwork Inc. in May 2015. In 2015, we commenced consolidation of the Elance platform and the oDesk platform and following the consolidation in 2016, began operating under a single work marketplace.

Our principal executive office is located at 475 Brannan Street, Suite 430, San Francisco, California 94107, and our mailing address is 655 Montgomery Street, Suite 490, Department 17022, San Francisco, California 94111. Our telephone number is (650) 316-7500. Our website address is www.upwork.com. The information contained on, or that can be accessed through, our website is not a part of this Annual Report. Investors should not rely on any such information in deciding whether to purchase our common stock. Unless otherwise expressly stated or the context otherwise requires, references in this Annual Report to "Upwork," the "Company," "our," "us," and "we" and similar references refer to Upwork Inc. and its wholly-owned subsidiaries.

Upwork, the Upwork logo, Upwork Enterprise, Elance, oDesk, "Talent Cloud," and other registered or common law trade names, trademarks, or service marks of Upwork appearing in this Annual Report are the property of Upwork. This Annual Report contains additional trade names, trademarks, and service marks of ours and of other companies. We do not intend our use or display of other companies' trade names, trademarks, or service marks to imply a relationship with these other companies, or endorsement or sponsorship of us by these other companies. Other trademarks appearing in this Annual Report are the property of their respective holders. Solely for convenience, our trademarks and trade names referred to in this Annual Report appear without the ® and ™ symbols, but those references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights, or the right of the applicable licensor, to these trademarks and trade names.

Available Information

We file annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to reports filed or furnished pursuant to Sections 13(a) and 15(d) of the Exchange Act with the SEC. The SEC maintains a website at www.sec.gov that contains reports, proxy and information statements and other information that we file with the SEC electronically. Copies of our reports on Form 10-K, Forms 10-Q, and Forms 8-K, and amendments to those reports may also be obtained, free of charge, electronically through our investor relations website located at the web address appearing below as soon as reasonably practicable after we file such material with, or furnish it to, the SEC.

We use our investor relations website (investors.upwork.com), our Twitter handle (twitter.com/Upwork), and Hayden Brown's Twitter handle (twitter.com/hydnbrwn) and LinkedIn profile (linkedin.com/in/haydenbrown) as a means of disseminating or providing notification of, among other things, news or announcements regarding our business or financial performance, investor events, press releases, and earnings releases and as a means of disclosing material non-public information and for complying with our disclosure obligations under Regulation FD. The content of our websites and information that we may post on or provide to online and social media channels, including those mentioned above, and information that can be accessed through our websites or these online and social media channels are not incorporated by reference into this Annual Report or in any other report or document we file with the SEC, and any references to our websites or these online and social media channels are intended to be inactive textual references only.

Item 1A. Risk Factors.

A description of the risks and uncertainties associated with our business is set forth below. You should carefully consider the risks and uncertainties described below, as well as the other information in this Annual Report, including our consolidated financial statements and the related notes and "Management's Discussion and Analysis of Financial Condition and Results of Operations." The occurrence of any of the events or developments described below, or of additional risks and uncertainties not presently known to us or that we currently deem immaterial, could materially and adversely affect our business, results of operations, financial condition, and growth prospects. In such an event, the market price of our common stock could decline and you could lose all or part of your investment.

Summary of Risk Factors

Some of the more material risks that we face include:

- Our growth depends on our ability to attract and retain a community of talent and clients, and the failure to maintain or grow our community of users could adversely impact our business.
- If we fail to maintain or increase activity by existing users in a cost-effective manner or at all, our revenue will grow more slowly than expected or may decline and our business will be adversely impacted.
- We have experienced growth in recent periods and expect to continue to invest in our growth for the foreseeable future. If we are unable to maintain similar levels of growth or manage our growth effectively, our business, revenue and profits, and financial condition could be adversely affected.
- Our business experienced, and may again experience, an adverse impact from the ongoing COVID-19 pandemic, including as new variants of COVID-19 emerge. In addition, the positive impacts on our business resulting from the shift to remote work during the pandemic may not continue as the pandemic subsides and the restrictions intended to prevent its spread are relaxed or lifted.
- We have a limited operating history under our current business strategy and pricing model, and will continue to evolve our business strategy and pricing model, which makes it difficult to evaluate our business and future prospects.
- Changes to our offerings and pricing model have in the past adversely affected, and could in the future adversely affect, our business.
- We face payment and fraud risks that could adversely impact our business.
- If we are unable to maintain our payment partner relationships on favorable terms, or at all, our business could be adversely affected.
- Our revenue growth and ability to achieve and sustain profitability will depend in part on being able to increase the productivity, effectiveness, and efficiency of our sales force.
- Because we derive the substantial majority of our revenue from our marketplace offerings, our inability to generate revenue from our marketplace offerings would adversely affect our business operations, financial results, and growth prospects.
- We face intense competition and could lose market share to our competitors, including if we fail to continue to develop and enhance our existing offerings and services, which could adversely affect our business, operating results, and financial condition.
- If we fail to develop, maintain, and enhance our brand and reputation cost-effectively, our business and financial condition may be adversely affected.
- If the market for independent talent and the services they offer develops more slowly than we expect, our growth may slow or stall, and our operating results could be adversely affected.
- Because a substantial portion of the services offered by talent and sought by clients on our work marketplace is information technology services, a decline in talent offering information technology services or the market for information technology service providers on our work marketplace could adversely affect our business.
- Errors, defects, or disruptions in our work marketplace, including any security breach, other hacking or phishing attack, or other privacy or security incident, could diminish demand, adversely impact our financial results, and subject us to liability.

- Our sales efforts are increasingly primarily targeted at large enterprise and other clients and prospects with larger, longer-term independent talent needs, and as a result we may encounter greater pricing, implementation, and customization challenges, and we may incur additional costs, each of which could adversely impact our business and operating results.
- Users circumvent our work marketplace, which adversely impacts our business.
- We and our users may be subject to new and existing laws and regulations, both in the United States and internationally.
- Having an international community of users and engaging talent internationally exposes us to risks that could have an adverse effect on our business, operating results, and financial condition, and these risks could increase as we seek to expand our international footprint.
- There may be adverse tax, legal, and other consequences if the contractor classification or employment status of talent that use our work marketplace is challenged, and our business could be adversely affected by changes in laws regarding contractor classification.
- The success of our business relies on demand for talent and any change that affects demand for talent, including regulatory or tax changes, or adverse perception regarding use of talent, would adversely affect our business.
- We have a history of net losses, anticipate increasing our operating expenses in the future, and may not achieve or sustain profitability.
- Our operating results may fluctuate from quarter to quarter, which makes our future results difficult to predict.
- The stock price of our common stock has been and may continue to be volatile, and you could lose all or part of your investment.
- Our indebtedness could limit the cash flow available for our operations and expose us to risks that could adversely affect our business, financial condition, and results of operations.
- Adverse or changing economic and political conditions may negatively impact our business.
- We may be adversely affected by natural disasters and other catastrophic events, including the ongoing COVID-19 pandemic, by man-made problems such as terrorism, or failures of technology, that could disrupt our business operations and our business continuity and disaster recovery plans may not adequately protect us from a serious disaster.

Risks Related to our Business Operations, Execution, and Growth

Our growth depends on our ability to attract and retain a community of talent and clients, and the failure to maintain or grow our community of users could adversely impact our business.

The size of our community of users, including both talent and clients, is critical to our success. Our ability to achieve significant growth in revenue in the future will depend, in large part, upon our ability to attract new users, including large enterprise and other clients with larger, longer-term independent talent needs, as well as talent that meet the criteria sought by such clients, to, and retain existing users on, our work marketplace.

Talent have many different ways of marketing their services, securing clients, and obtaining payments from clients, including advertising to, and engaging with, prospective clients through other online or offline platforms and methods, signing up for online or offline third-party agencies and staffing firms, using other payment services, or finding employment directly with a business. Likewise, there may be impediments to talent who would like to use our work marketplace, including geopolitical events, military conflicts, sanctions regimes, the talent's inability to access technology or internet, or other external causes, and these events in areas where certain talent resides, such as Russia or Ukraine, could impact our business. If we fail to attract new talent; the quality or types of services provided by talent on our work marketplace are not satisfactory to clients; talent are not located in geographic regions in which clients are seeking to engage remote talent; talent decrease their use of, or cease using, our work marketplace or prefer to take remote employment opportunities or to use other online remote work platforms, both of which are increasingly available as a result of the shift to remote work, clients may decrease their use of, or cease using, our work marketplace and our revenue may be adversely impacted.

Clients have similarly diverse options to find and engage service providers, such as finding service providers through other online or offline platforms or through staffing firms and agencies, engaging service providers directly,

using other talent sourcing services, or hiring temporary, full-time, or part-time employees directly or through an agency.

Beginning in the second half of 2019, we began evolving our offerings, services, brand positioning, and marketing to better address large enterprise and mid-market prospects and other clients with larger, longer-term independent talent needs. And more recently, we have prioritized our advertising, marketing, and product development efforts to reach those new and existing clients seeking to engage remote talent in light of the acceleration in the shift toward remote work, due in part to the COVID-19 pandemic. To further achieve our goals, we expect to increasingly engage in sophisticated, costly, and lengthy sales and marketing and internationalization or localization efforts that may not result in additional users that transact on our work marketplace or effectively retain our current users that transact on our work marketplace, or may not do so in a cost-effective manner. The evolution of these and other efforts, either individually or in the aggregate, may not be successful in attracting and retaining users or growing client spend from these target clients, and in the event these efforts result in the loss of or reduction in spend by other clients that is not offset by increased activity from these target clients, they may result in a temporary or long-term deceleration in GSV growth. In addition, any increase in user acquisition resulting from the COVID-19 pandemic may slow or decline as the impact of the COVID-19 pandemic subsides. For example, growth in the number of active clients decelerated on a year-over-year basis in the third and fourth quarters of 2021. See “—Active Clients and GSV per Active Client” below for the definition of active client.

We may also modify our pricing model, or introduce new, modify, or consolidate existing offerings or other services and features to attract and retain users. Such actions may not have the intended effect of attracting and retaining users at the levels we anticipated and may have unintended negative consequences, such as a loss of users or a reduction of user activity or spend on our work marketplace.

If we fail to maintain or increase activity by existing users in a cost-effective manner or at all, our revenue will grow more slowly than expected or may decline and our business will be adversely impacted.

Users can generally decide to cease using our work marketplace and related services at any time. Users may stop using our work marketplace and related services if the quality of the user experience on our work marketplace, including our support capabilities, does not meet their expectations or keep pace with the quality of the user experience generally offered by competitive products and services. Users may also choose, and in the past have chosen, to cease using our work marketplace if they perceive that our pricing model, including associated fees, is not in line with the value they derive from our work marketplace, or for other reasons, including cost-cutting measures. Moreover, as discussed below in the risk factor titled “Users circumvent our work marketplace, which adversely impacts our business,” users circumvent the payment services on our work marketplace and talent receive payment directly or through another service, which is likely to happen more frequently during a macroeconomic downturn, as users may be more cost sensitive during such period. In addition, expenditures by clients may be cyclical and may reflect overall macroeconomic conditions or budgeting patterns.

Additionally, one client accounted for more than 10% of our trade and client receivables as of December 31, 2021 and three clients each accounted for more than 10% of our trade and client receivables as of December 31, 2020. Although for the years ended December 31, 2021 and December 31, 2020, we did not have any clients that accounted for more than 10% of our revenue, a decrease in spend from any of our larger clients, or failure of our larger clients to pay us, could have an adverse effect on our operating results.

Any decrease in the attractiveness of our work marketplace, failure to retain users, or reduced spending by clients could lead to decreased activity, diminished network effects, or a drop in GSV on our work marketplace, which could adversely affect our business, revenue, financial condition, and operating results. We expect our GSV to fluctuate between periods due to a number of factors, including the number of active clients on our work marketplace, seasonality in the labor market, the volume and characteristics of projects that are posted by clients on our work marketplace, such as size, duration, pricing, and the availability and qualification of talent to complete client projects, and other factors.

If users stop using, or reduce their use of, our work marketplace and related services for any reason, including the foregoing reasons, our revenue and business would be adversely affected.

We have experienced growth in recent periods and expect to continue to invest in our growth for the foreseeable future. If we are unable to maintain similar levels of growth or manage our growth effectively, our business, revenue and profits, and financial condition could be adversely affected.

We have experienced growth in a relatively short period of time. For example, our total revenue for the year ended December 31, 2021 was \$502.8 million, representing a period-over-period growth rate of 35% over the same period in 2020. This revenue growth was due in part to the shift toward remote work resulting from the COVID-19

pandemic and therefore may not be indicative of future growth. For example, future period-over-period revenue growth rates, when compared against the quarterly and full-year results of 2021, may fail to meet the expectations of investors or securities analysts given the accelerated revenue growth experienced during such periods due to the COVID-19 pandemic and the resulting increased adoption of remote work and reduced seasonality experienced during such periods. Moreover, typical seasonality in the labor market may be exaggerated (for example, extended vacations during the summer and holiday seasons) as the COVID-19 pandemic subsides and the restrictions intended to prevent its spread are relaxed or lifted, which may further impact period-over-period revenue growth rates. Sustaining our growth will place significant demands on our management as well as on our administrative, operational, and financial resources. To manage our growth, we must continue to improve our operational, financial, and management information systems and processes; expand, motivate, retain, and effectively manage and train our workforce; and effectively collaborate with our third-party partners, all of which can be more difficult with an increasingly remote workforce and an increasingly competitive labor market. If we are unable to manage our growth successfully without compromising the quality of our offerings or user experience, or if new systems that we implement to assist in managing our growth do not produce the expected benefits, our business, operating results, financial condition, and ability to successfully market our work marketplace and serve our users could be adversely affected.

Our recent and historical growth should not be considered indicative of our future performance. We have encountered, and will encounter in the future, risks, challenges, and uncertainties, including those frequently experienced by growing companies in rapidly changing and highly competitive industries. If our assumptions regarding these risks, challenges, and uncertainties, which we use to plan and operate our business, are incorrect or change, or if we do not address these risks successfully, our financial condition and operating results could differ materially from our expectations and those of investors and securities analysts, our growth rates may slow, and our business would be adversely impacted.

Our business experienced, and may again experience, an adverse impact from the ongoing COVID-19 pandemic, including as new variants of COVID-19 emerge. In addition, the positive impacts on our business resulting from the shift to remote work during the pandemic may not continue as the pandemic subsides and the restrictions intended to prevent its spread are relaxed or lifted.

The COVID-19 pandemic adversely impacted our business for a period of time and resulted in reductions in demand for our offerings and services by some of our clients, including small- and medium-sized business clients, which have been the most impacted by the resulting macroeconomic downturn and uncertainty and from which we derive a substantial portion of our GSV and revenue. Conversely, beginning in 2020 we experienced an increase in GSV and revenue growth driven by an acceleration in the shift toward remote work, due in part to the COVID-19 pandemic. These positive impacts may not continue as the pandemic subsides and the restrictions intended to prevent its spread are relaxed or lifted, which may negatively impact our GSV and revenue growth.

The extent to which the ongoing COVID-19 pandemic will adversely affect our business, financial condition, results of operations, and cash flow will depend on future developments, which are highly uncertain and cannot reasonably be predicted with confidence at this time, including the duration, spread, and severity of the outbreak, or the occurrence of additional “waves” of the outbreak; the emergence of variant strains of the virus; the availability, utilization, and efficacy rates of vaccinations; government responses to the pandemic and potential restrictions on our business and the businesses of our users; the impact of the pandemic on the U.S. and global economies and demand for our offerings; how quickly and to what extent normal economic and operating conditions resume; and the reaction of users and potential users to these developments, among others. The potential impacts of such developments include, but are not limited to:

- decline or reduction in demand on our work marketplace, resulting in lower GSV and revenue growth, during and following relaxation or lifting of restrictions intended to prevent the spread of COVID-19, including the impact of resulting exaggerated seasonality;
- reduced client spend on our offerings and services;
- diminished ability to acquire new clients, particularly large enterprise and other clients with larger, longer-term independent talent needs;
- increased competition as new competitors enter our market segment due to the accelerated shift toward remote work;
- increased costs as a result of marketing and promotional efforts;

- increased risk of data breach or cybersecurity incidents as a result of additional workers accessing corporate systems remotely;
- increased risk of fraud, cybersecurity attacks, or other illegal activity conducted by bad actors seeking to take advantage of our users or us due to the uncertainty around the COVID-19 pandemic;
- increased employee and contractor attrition and reduced availability of key personnel to conduct important business activities, such as providing support to users and developing new offerings or services;
- reduced ability to retain, attract, train, and integrate highly skilled personnel;
- any impairment charges on our operating lease asset and related leasehold improvements being recognized as a general and administrative expense due to a reduction to our office space and our potential sublease of such office space at a rental rate that is less than our rent expense for such office space, or any termination fees we may incur as a result of our termination of the operating lease for such office space. For example, as a result of our shift to a flexible work model for our workforce, in 2021 we subleased the entirety of our former headquarters in Santa Clara, California and a portion of our current headquarters in San Francisco, California, and, as a result, we incurred impairment charges of \$8.7 million;
- reduced spend by clients or availability of talent located in areas or regions more affected by the COVID-19 pandemic;
- reduced GSV and revenue as a result of increased user circumvention of our work marketplace;
- reduced GSV and revenue as a result of talent reducing the fees they charge to clients due to an excess number of talent joining our work marketplace;
- difficulty in business planning and forecasting due to significant uncertainty in the impact of the COVID-19 pandemic on all aspects of our business and on our clients, talent, and other business partners;
- longer sales cycles due to slower decision-making, reduced budgets, or delays in planned work by existing and potential clients;
- impacts on payment partners, disbursement partners, or other critical third-party partners that may cause delays in processing payments to talent or other important functions of our work marketplace, result in an increase in payment transaction costs, lead to loss of revenue, or cause a decline in quality or availability of services, negatively affect our reputation or user activity on our work marketplace, or increase our operating costs;
- delayed or missed client payments to us or talent, which may also result in reductions in revenue, increased transaction losses, numbers of disputes with users, and costs as we seek to compel payment, which we may not be able to recover;
- significant disruption of global financial markets, which may impact our ability to access capital now or in the future or make capital available only on terms less favorable to us;
- reduced sublease income as a result of our sublease tenants being unable or unwilling to make the rental payments set forth in their respective sublease agreement;
- impairments to our goodwill or other long-term assets if their carrying value exceeds their fair value;
- increased obligations to satisfy our escrow funding requirements with our own funds or by drawing on our line of credit as a result of more frequent declines of client payment methods or increased client-issued chargebacks, which would negatively impact our cash flows and may result in higher credit card processing fees; and
- de-globalization, which may result in clients being less willing to connect with non-U.S. users of our work marketplace.

Although the COVID-19 pandemic did not have a material adverse impact on our financial results for the year ended December 31, 2021, the rapidly changing market and macroeconomic conditions caused by the COVID-19 pandemic have impacted the business of many of our clients, which resulted in a reduction in spend on our work marketplace for some of those affected clients. There can be no assurance that the positive impacts from the COVID-19 pandemic, such as increased talent and client acquisitions, increased client spend, and increased client retention, will continue to offset those parts of our business that have been adversely impacted. Many of these risk factors are unpredictable and outside of our control, and any of these factors could amplify the other risks and uncertainties described elsewhere in this Annual Report. It is uncertain what impact that the various legislative and

other government responses being undertaken in the United States and other countries, including with respect to the approval and distribution of vaccines, in which our users are located will have on the economy, our industry, our partners, our users, and our company. In connection with the COVID-19 pandemic, we have also implemented measures to protect the health of our workforce, including by adopting a flexible work model for our workforce that we believe will result in most of our employees working remotely even after the pandemic is over. These measures may negatively impact the health and safety of our employees, impact workforce productivity, increase the risk of data security breaches and other privacy and security incidents, and may cause other disruptions to our business. As and to the extent offices reopen, our efforts to comply with applicable health guidelines may not prove sufficient to protect the health of our employees and other visitors to our offices, and our adoption of these measures may adversely affect our business operations. Even after the COVID-19 pandemic has subsided, we may continue to experience adverse impacts to our business. For example, any increase in client acquisition due to the shift toward remote work as a result of the COVID-19 pandemic may slow or decline as the impact of the COVID-19 pandemic subsides and users are no longer subject to restrictions intended to prevent the spread of COVID-19.

We have a limited operating history under our current business strategy and pricing model, and will continue to evolve our business strategy and pricing model, which makes it difficult to evaluate our business and future prospects.

We recently evolved, and will continue to evolve, our sales, marketing, and brand positioning efforts, as well as our business strategy. Recently, we have undertaken a rebranding effort and expanded our focus on large enterprise and other clients and prospects with larger, longer-term independent talent needs. In an effort to better serve this market segment, we recently expanded our Upwork Enterprise offering, which is designed to help large enterprise businesses connect with talent and provide clients with additional offerings and services. We continue to evaluate and revise our current offerings and pricing model and create and test additional offerings, pricing models, features, and services to serve these and other market segments. We regularly launch new offerings such as "Project Catalog," a feature through which talent can market pre-scoped projects that are easily purchased via a click-and-buy experience. Creating new offerings is expensive and time consuming, diverts the attention of our management, and not all offerings achieve market acceptance at the levels we expect and therefore may not be cost-effective to maintain. For example, in 2019, we launched our Upwork Business offering, focused on mid-market businesses. In the fourth quarter of 2020, we decided that it was no longer cost-effective for our sales team to sell our Upwork Business offering. This decision resulted in a reduction in force of approximately one-third of our sales employees in the fourth quarter of 2020. Moreover, if an offering does not achieve sufficient market acceptance or otherwise does not achieve its intended effect, we may expend additional resources and divert the attention of management to implement modifications in an effort to improve the offering, and these efforts may not be successful.

Changes in our offerings and pricing, and the continued evolution of our business strategy, subject us to a number of uncertainties, including our ability to plan for and model future growth and make accurate projections regarding our future performance. In addition, we have in the past seen, and may in the future see, unexpected or unintended negative effects, as a result of changes to our pricing model, offerings, and sales, brand positioning, and marketing efforts, including a failure to attract and retain quality talent or attract new clients that spend on our work marketplace or the loss of spend from existing clients. We cannot ensure that we will be successful in addressing these and other challenges we may face in the future, and our business may be adversely affected if we do not manage these challenges successfully.

Changes to our offerings and pricing model have in the past adversely affected, and could in the future adversely affect, our business.

From time to time we have made, and will continue to make, changes to our offerings and pricing model, including in 2019 when we launched new paid membership types for clients and new Connects pricing for talent, which resulted in user dissatisfaction and negatively impacted fill rates for projects on our work marketplace. From time to time, we will make further changes to our offerings and pricing model, including with respect to Connects, due to a variety of reasons, including changes to the market for our offerings and services or our business strategy, as new competitors enter our market segment, as we introduce, refine, or consolidate our offerings, as competitors introduce new products and services, and to grow our user base. Changes to any components of our pricing model have in the past, and may in the future, among other things, result in user dissatisfaction, increased circumvention, lead to a loss of GSV, revenue, or users, result in a change to the way we recognize revenue, reduce the amount of revenue we generate as a percentage of GSV, affect the taxability of our services and increase our tax exposure, reduce the rate or size of projects that get posted or completed on our work marketplace, negatively impact fill rates for projects on our work marketplace, or otherwise negatively impact our reputation, operating results, financial condition, and cash flows.

We face payment and fraud risks that could adversely impact our business.

Our work marketplace systems and controls relating to customer identity verification, user authentication, and fraud detection are complex. If such systems and controls are not effective, our work marketplace may be perceived as not being secure, our reputation may be harmed, we may face regulatory action, and our business may be adversely impacted. In addition, bad actors around the world use increasingly sophisticated methods to engage in illegal activities involving personal information, such as unauthorized or fraudulent use of another's identity, payment information, or other information; misrepresentation of the user's identity, location, or skills, including using accounts that they have purchased, borrowed, or leased; and the improper acquisition or use of credit or debit card details and banking or other payment account information. These types of illegal activities may increase as platforms like ours gain more prominence, including due to the ongoing shift toward remote work or in the event of a macroeconomic downturn, and as we become more visible as a result of our brand promotion efforts, as bad actors seek to take increasing advantage of us or our users. This conduct on our website could result in any of the following, each of which could adversely impact our business:

- bad actors may use our work marketplace, including our payment processing and disbursement methods, to engage in unlawful or fraudulent conduct, such as money laundering, moving funds to regions or persons restricted by sanctions or export controls, terrorist financing, fraudulent sale of services, bribery, breaches of security, unauthorized acquisition of data, extortion or use of ransomware, distribution or creation of malware or viruses, piracy or misuse of software and other copyrighted or trademarked content, and other misconduct;
- we may be, and historically have been, held liable for the unauthorized use of credit or debit card details and banking or other payment account information and required by card issuers, banks, and other payment partners to return the funds at issue and pay a chargeback or return fee, and if our chargeback or return rate becomes excessive, credit card networks may also require us to pay fines or other fees or cease doing business with us and the California Department of Financial Protection and Innovation, which we refer to as the DFPI, may require us to hold larger cash reserves or take other action with respect to our internet escrow license;
- we may be subject to additional risk and liability exposure, including for negligence, fraud, or other claims, if employees or third-party service providers, including talent that provide services to us, misappropriate our banking, payment, or other information or user information for their own gain or to facilitate the fraudulent use of such information;
- users that are subjected or exposed to the unlawful, fraudulent, or improper conduct of other users or other third parties may seek to hold us responsible for the conduct of or content posted by users, may lose confidence in our work marketplace, decrease or cease use of our work marketplace, seek to obtain damages and costs, or publicize their negative experiences, and law enforcement or administrative agencies could seek to hold us responsible for the conduct of or content posted by users, impose fines and penalties, bring criminal action, or require us to change our business practices, and private or public enforcement may increase depending on interpretations of and possible changes to intermediary liability provisions such as Section 230 of the Communications Decency Act of 1996;
- we may be subject to additional risk if clients fail to pay talent for services rendered, as talent may seek to hold us responsible for the clients' conduct and may lose confidence in our work marketplace, may decrease or cease use of our work marketplace, may publicize their negative experiences, or seek to obtain damages and costs;
- if talent misstate their qualifications or location, provide misinformation about their skills, identity, or otherwise, perform services they are not qualified or authorized to provide, produce insufficient or defective work product or work product with a viral or other harmful effect, clients or other third parties may seek to hold us responsible for the talents' acts or omissions and may lose confidence in our work marketplace, decrease or cease use of our work marketplace, or seek to obtain damages and costs; and
- we may suffer reputational damage adversely impacting our business as a result of the occurrence of any of the above.

We do not have control over users of our work marketplace and cannot ensure that any measures we have taken to detect, prevent, and mitigate these risks will stop or minimize the use of our work marketplace for, or to further, illegal or improper purposes. We have received in the past, and are likely to continue to receive in the future, complaints and inquiries from clients, talent, and other third parties, including law enforcement, administrative agencies, and the press, concerning misuse of our work marketplace and wrongful conduct of other users. We have

also brought claims against clients and other third parties for their misuse of our work marketplace, and may be required to bring similar claims in the future. Even if these claims do not result in litigation or are resolved in our favor, these claims, and the time and resources necessary to resolve them, could divert the attention and resources of our management, negatively impact our reputation, and adversely affect our business and operating results.

If we are unable to maintain our payment partner relationships on favorable terms, or at all, our business could be adversely affected.

Our payment partners consist of payment processors and disbursement partners. We rely on banks and payment partners to provide us with corporate banking services, escrow trust accounts, and clearing, processing, and settlement functions for the funding of all transactions on our work marketplace, and disbursement of funds to users, and we do not always have a sufficient surplus of vendors in the event one or more relationships is terminated for any reason.

Our payment partners are critical to our business. In order to maintain these relationships, we have in the past been, and may in the future be, forced to agree to terms that are unfavorable to us. If we are unable to maintain our agreements with current payment partners on favorable terms, or at all, or we are unable to enter into new agreements with new payment partners on favorable terms, or at all, our ability to collect payments and disburse funds and our revenue and business may be adversely affected. This could occur for a number of reasons, including the following with respect to our payment partners:

- our partners may be unable or unwilling to perform the services we require of them, such as processing payments to talent in a timely manner, including in a manner that is satisfactory to us as it relates to compliance with U.S. federal, state, and international laws and regulatory requirements;
- we may choose to cease doing business with our partners for a number of reasons, including as a result of their failure to comply with applicable payment or banking regulations or due to allegations of fraud or other impropriety by them or their third-party partners;
- our partners may be subject to investigation, regulatory enforcement, or other proceedings that result in their inability or unwillingness to provide services to us or our unwillingness to continue to partner with them;
- our partners may be unable to effectively accommodate changing service needs, such as those which could result from rapid growth or higher volume or those which relate to international expansion and local jurisdictions;
- our partners could, and, in some cases, have notified us in the past that they would, increase the rates that they charge us or our users, especially in light of changes in those partners' interpretation and enforcement of their rules, increased declines of client payment methods, or increased client-issued chargebacks;
- our partners could choose to terminate or not renew their agreements with us, or only be willing to renew on different or less advantageous terms;
- our partners could reduce the services provided to us, cease doing business with us, or cease doing business altogether;
- our partners could be subject to delays, limitations, or closures of their own businesses, networks, partners, or systems, causing them to be unable to process payments or disburse funds for certain periods of time; or
- we may be forced to cease doing business with certain partners if card association operating rules, certification requirements and laws, regulations, or rules governing electronic funds transfers to which we are subject, change or are interpreted to make it difficult or impossible for us to comply.

For example, in June 2020, Wirecard AG, a prepaid card issuer used by one of our payment partners to issue prepaid cards to our non-U.S. users, filed for insolvency and was ordered by the UK Financial Conduct Authority to cease all licensed activity. As a result, our non-U.S. users who previously chose to withdraw their funds to a prepaid card could not access their funds for several days. The order was eventually lifted, allowing those users to access their funds; however, this incident or any similar future incident concerning our payment partners or their respective vendors could cause our users to lose trust in our work marketplace and could have an adverse impact on our business.

Our revenue growth and ability to achieve and sustain profitability will depend in part on being able to increase the productivity, effectiveness, and efficiency of our sales force.

In order to increase our revenue from our premium offerings and achieve and sustain profitability, we must improve the effectiveness and efficiency of our sales force and generate additional revenue from new and existing users. For

example, in the fourth quarter of 2020, we completed an evaluation of the efficiency, productivity, and effectiveness of our sales force at generating revenue from our Upwork Business offering, as well as our other premium offerings. As part of this evaluation, we undertook a reduction in force of approximately one-third of our sales employees in an effort to drive efficiencies in our sales organization. Moreover, in the fourth quarter of 2021, we began increasing our investment in sales by expanding our sales team and we expect this expansion to continue through 2022 as we increase our efforts to acquire clients for our Upwork Enterprise offering.

There is significant competition for sales personnel with the skills and technical knowledge required to maintain a productive and efficient sales force. Our ability to achieve significant revenue growth will depend, in large part, on our success in recruiting, training, effectively deploying, and retaining sufficient numbers of sales and sales support personnel to support our growth. It is difficult to find, and we may be unable to retain, a sufficient number of sales personnel with the specific skills and technical knowledge needed to sell our Upwork Enterprise and other premium offerings, particularly in light of the current global labor shortage. Furthermore, hiring and effectively deploying sales personnel, particularly in new markets, is complex and requires additional costs that we may not recover if the sales personnel fail to achieve full productivity. Even if we are able to hire qualified sales personnel, doing so may be costly and lengthy, as new sales personnel require significant training and can take a number of months to achieve full productivity. In addition, new sales personnel do not always achieve productivity milestones within the timelines that we have projected, negatively impacting our ability to achieve our long-term financial projections associated with such personnel. Not all of our sales personnel and planned hires have or will become productive, or do so as quickly as we expect. When our new sales personnel do not become fully productive on the timelines that we have projected, or at all, our revenue will not increase at anticipated rates, or at all, and our ability to achieve long-term projections may be negatively impacted. The COVID-19 pandemic and restrictions intended to prevent its spread adversely affected the productivity of our sales force for a period of time, and may adversely affect it again as the COVID-19 pandemic subsides, as the productivity of our sales force may diminish as users return more frequently to physical offices or are otherwise no longer subject to restrictions related to the COVID-19 pandemic. If our sales personnel are not successful in obtaining new business or increasing sales to our existing user base, our business and results of operations will be adversely affected.

Our revenue growth depends in part on the success of our strategic relationships with third parties and their continued performance.

To grow our business, we need to continue to establish and maintain relationships with third parties, such as staffing providers, banks, software and technology vendors, and payment processing and disbursement providers. For example, we work with third-party staffing providers, upon which we are dependent to support our employment offering, Upwork Payroll. As our agreements with third-party partners terminate or expire, we may be unable to renew or replace these agreements on favorable terms, or at all. Moreover, we cannot guarantee that the parties with which we have strategic relationships will continue to offer the services for which we rely on them at economically reasonable terms or at all, devote the resources necessary to expand our reach, increase our distribution, or support an increased number of users and associated use cases. Our dependence on any single third-party supplier increases when our supply of a particular service is more heavily concentrated with that third-party. Some of our strategic partners offer, or could offer, competing products and services or also work with our competitors, the likelihood of which may increase due to the ongoing shift toward remote work. As a result of these factors, many of our third-party partners may choose to develop or support alternative products and services in addition to, or in lieu of, our work marketplace, either on their own or in collaboration with others, including our competitors. If we are unsuccessful in establishing or maintaining our relationships with third parties on favorable terms, our ability to compete or to grow our total revenue could be impaired and our operating results may be adversely impacted. Even if we are successful in establishing and maintaining these relationships with third parties on favorable terms, we cannot ensure that these relationships will result in increased usage of our work marketplace or increased revenue.

We are subject to disputes with or between users of our work marketplace.

Our business model involves enabling connections between talent and clients that contract directly through our work marketplace. Talent and clients are free to negotiate any contract terms they choose, but we also provide optional service contract terms that they can elect to use. Disputes sometimes arise between talent and clients with regard to their contract terms, work relationship, or otherwise, including with respect to service standards, payment, confidentiality, work product, and intellectual property ownership and infringement. These disputes may occur more frequently during a macroeconomic downturn. If either party believes the contract terms were not met, our standard terms and some individually negotiated services agreements provide a mechanism for the parties to request assistance from us, and, for some contracts, if that is unsuccessful, they may choose to resolve the dispute with the help of a third-party arbitrator. Whether or not talent and clients decide to seek assistance from us, if these disputes

are not resolved amicably, the parties might escalate to formal proceedings, such as by filing claims with a court or arbitral authority. Given our role in facilitating and supporting these arrangements, claims are sometimes brought against us directly as a result of these disputes and talent or clients bring us into any claims filed against each other, particularly when the other user is insolvent or facing financial difficulties. Through our terms of service and services agreements for premium offerings, we disclaim responsibility and liability for any disputes between users (except with respect to specified dispute assistance programs and services); however, we cannot guarantee that these terms will be effective in preventing or limiting our involvement in user disputes or that these terms will be enforceable or otherwise effectively prevent us from incurring liability as a result of disputes between users. In addition, from time to time users assert claims against us regarding their experience on our work marketplace, including related to their search ranking results, their feedback ratings, our advertising or marketing, our dispute resolution process, or admission or non-admission to the work marketplace or other programs and badges, including those designed to highlight successful talent. Moreover, for some premium offerings, we provide enhanced services and assistance with respect to disputes over work product, and clients or talent may pursue claims against us if they are not satisfied with those enhanced services. Disputes between clients and talent and between users and our company may become more frequent based on conditions outside our control, such as a macroeconomic downturn. Such disputes, or any increase in the number of disputes, may result in an adverse effect on our company, such as a loss of goodwill with users, reputational harm, lost GSV and revenue, and an increase in costs to us. Even if these claims do not result in litigation or are resolved in our favor, these claims, and the time and resources necessary to resolve them, could result in legal, settlement, or other financial costs; divert the resources of our management; and adversely affect our business and operating results.

Our business depends largely on our ability to attract and retain talented employees, including senior management and key personnel. If we lose the services of Hayden Brown, our President and Chief Executive Officer, or other members of our senior management team or key personnel, we may not be able to execute on our business strategy.

Our future success depends in large part on the continued services of senior management and other key personnel and our ability to attract, retain, and motivate them. In particular, we are dependent on the services of Hayden Brown, our President and Chief Executive Officer, and our future vision, strategic direction, work marketplace, and technology could be compromised if she were to take another position, become ill or incapacitated, or otherwise become unable to serve as our President and Chief Executive Officer. We rely on our leadership team and other key personnel in the areas of product, engineering, operations, security, marketing, sales, support, corporate development, and general and administrative functions. Our senior management and other key personnel are all employed on an at-will basis, which means that they could terminate their employment with us at any time, for any reason, and without notice, and we do not maintain any "key-person" life insurance policies. If we lose the services of senior management or other key personnel, if our succession plans prove inadequate, or if we are unable to retain, attract, train, and integrate the highly skilled personnel we need, our business, operating results, and financial condition could be adversely affected.

We have made, and may continue to make, changes that have been and will be disruptive to our personnel, such as changes to the composition of our leadership team and other key personnel and reorganizations of reporting lines of our workforce. These changes have resulted, and future personnel changes may result, in increased attrition or reduced productivity of our personnel, including senior management and key personnel, stemming from organizational restructuring, as new reporting relationships are established, and as other companies may increasingly target our executives and other key personnel, particularly during the current highly competitive market for qualified personnel. Any such changes may also result in a loss of institutional knowledge, cause disruptions to our business, impede our ability to achieve our objectives, or distract or result in diminished morale in, or the loss of, workers.

Our future success also depends on our continuing ability to retain, attract, train, and integrate highly skilled personnel, including software engineers and sales personnel. We face intense competition for qualified personnel from numerous software and other technology companies. In addition, competition for qualified software engineers is particularly intense. This competition has become exacerbated by the increase in employee resignations currently taking place throughout the United States as a result of the COVID-19 pandemic, which is commonly referred to as the "great resignation." We may not be able to retain our current key personnel or attract, train, integrate, or retain other highly skilled personnel in the future, all of which may be more difficult given our shift to a flexible work model for our workforce. We may incur significant costs to attract and retain highly skilled personnel, we may lose employees to our competitors or other technology companies before we realize the benefit of our investment in recruiting and training them, and our succession plans may be insufficient to ensure business continuity if we are unable to retain key personnel or were to lose a significant portion of our personnel. Further, even highly skilled

personnel may fail to be productive, and our adoption of remote work may result in a loss of productivity of our workforce. To the extent we move into new geographies, including internationally, we would need to attract and recruit skilled personnel in those areas.

Volatility or lack of appreciation in our stock price may also affect our ability to attract new skilled personnel and retain our key personnel. The market price of our common stock has been, and may continue to be, particularly volatile, in part due to broader stock market fluctuations, and as a result, the equity held by our senior management and other key personnel may have depreciated in value relative to the original purchase or issue price and therefore have less retentive power. If we are unable to attract and retain suitably qualified individuals who are capable of meeting our growing technical, operational, and managerial requirements, on a timely basis or at all, or if we need to increase our compensation expense to retain our employees, our business, operating results, financial condition, and cash flows may be adversely affected.

Clients sometimes fail to pay their invoices, necessitating action by us to compel payment.

In connection with our Upwork Enterprise offering, and for certain legacy clients, we advance payments to talent for invoiced services on behalf of the client and subsequently invoice the client for such services. In order to maintain these relationships, we have in the past been, and may in the future be, forced to agree to terms that are unfavorable to us, including extended payments terms. In addition, in certain instances, we will advance payment on a talent invoice if the client issues a chargeback or their payment method is declined and the talent assigns us the right to recover any funds from the client. From time to time, clients fail to pay for services rendered by talent, and as a result, we may be adversely affected both from the inability to collect amounts due and the cost of enforcing the applicable agreement or our terms of service, including through arbitration or litigation. Furthermore, some clients may seek bankruptcy protection or other similar relief and fail to pay amounts due, or pay those amounts more slowly, either of which could adversely affect our operating results, financial position, and cash flow. All of these risks are made more likely during a macroeconomic downturn and could result in increased costs to us as we advance payments to talent and seek to compel payment from our clients.

We may be unable to integrate acquired businesses and technologies successfully or to achieve the expected benefits of such acquisitions. We may acquire or invest in additional companies, which may divert our management's attention, result in additional dilution to our stockholders, and consume resources that are necessary to sustain our business.

Our business strategy may, from time to time, include acquiring complementary products, technologies, businesses, or other assets. We also may enter into relationships with other businesses to expand our work marketplace or our ability to provide our work marketplace in foreign jurisdictions, which could involve preferred or exclusive licenses, additional channels of distribution, discount pricing, or investments in other companies. Negotiating these transactions can be time-consuming, difficult, and expensive, and our ability to close these transactions may often be subject to approvals that are beyond our control. Consequently, these transactions, even if undertaken and announced, may not close, and any acquisition, investment, or business relationship may result in unforeseen or additional operating difficulties, risks, and expenditures. For one or more of those transactions, we may:

- use cash that we may need in the future to operate our business;
- become subject to different laws and regulations due to the nature or location of the acquired business, products, technologies, or other assets, or become subject to more stringent scrutiny or differing applications of laws and regulations to which we are currently subject as a result of such transactions;
- issue additional equity or convertible debt securities that would dilute our stockholders' ownership interest;
- incur expenses or assume substantial liabilities;
- encounter difficulties retaining key personnel of the acquired company or integrating diverse software codes, operations, or business cultures;
- encounter difficulties in assimilating acquired operations and development cultures or otherwise fail to realize the anticipated benefits of such transactions;
- encounter diversion of management's attention to other business concerns;
- become subject to adverse tax consequences, substantial depreciation, or deferred compensation charges;
- incur debt on terms unfavorable to us or that we are unable to repay; or
- be required to adopt new, or change our existing, accounting policies.

Any of these risks could adversely impact our business and operating results.

Risks Related to Our Industry, Offerings, and Services

Because we derive the substantial majority of our revenue from our marketplace offerings—with most of our marketplace revenue derived from our Upwork Basic, Plus, and Enterprise offerings—our inability to generate revenue from our marketplace offerings would adversely affect our business operations, financial results, and growth prospects.

We derive, and expect to continue to derive in the near future, the substantial majority of our revenue from our marketplace offerings, with most of our marketplace revenue derived from our Upwork Basic, Plus, and Enterprise offerings. As such, market acceptance of our marketplace offerings, including new offerings, is critical to our continued success, and any failure of our marketplace offerings to meet users' expectations with respect to user experience or the failure of specific features to be effective in attracting and retaining users will have a negative impact on our business. Demand for our marketplace offerings is affected by a number of factors beyond our control, including the timing and success of new offerings and services by our competitors, our ability to respond to technological change and to effectively innovate and grow, contraction in our market, client spending patterns, talent activity levels, the size and price of projects on our work marketplace, changes in adoption of remote work, macroeconomic effects, such as those resulting from the COVID-19 pandemic, and the other risks identified herein. If we are unable to meet user demands, to expand our offerings or the categories of services offered on our work marketplace, or to achieve and maintain more widespread market acceptance of our marketplace offerings, our business operations, financial results, and growth prospects will be adversely affected.

We face intense competition and could lose market share to our competitors, which could adversely affect our business, operating results, and financial condition.

The market segment for independent talent and the clients that engage them is highly competitive, rapidly evolving, fragmented, and subject to changing technology, shifting needs, and frequent introductions of new competitors as well as new offerings and services. The level of competition within, and the frequency and likelihood of increased third-party investment and new competitors entering, this market segment has further intensified due to the ongoing COVID-19 pandemic and the resulting shift toward remote work and other labor market dynamics. We compete with a number of online and offline platforms and services domestically and internationally, as well as traditional staffing firms, to attract and retain users and expand our share of user spend. Our main competitors fall into the following categories:

- traditional contingent workforce and staffing service providers and other outsourcing providers, such as The Adecco Group, Randstad, Recruit, Allegis Group, and Robert Half International;
- online freelancer platforms that serve either a diverse range of skill categories, such as Fiverr, Guru, and Freelancer.com, or specific skill categories;
- other online providers of products and services for individuals or businesses seeking work or to advertise their services, including personal and professional social networks, such as LinkedIn and GitHub (each owned by Microsoft), employment marketplaces, platforms providing compliance services, recruiting websites, and project-based deliverable providers;
- software and business services companies focused on talent acquisition, management, invoicing, or staffing management products and services, such as Workday;
- payment businesses, such as PayPal and Payoneer, that can facilitate payments to and from businesses and service providers;
- businesses that provide specialized professional services, including consulting, accounting, marketing, and information technology services; and
- online and offline job boards, classified ads, and other traditional means of finding work and service providers, such as Craigslist, CareerBuilder, Indeed, Monster, and ZipRecruiter.

In addition, well-established internet companies, such as Google, LinkedIn, and Amazon, social media platforms, such as Meta, and businesses that operate driving, delivery, and other commoditized marketplaces, such as Uber Technologies, have entered or may decide to enter into our market segment. Some of these companies have launched or may launch, or have acquired or may acquire companies or assets that offer products and services that directly compete with our work marketplace. For example, LinkedIn launched ProFinder in 2016 and Open for Business in 2019, and in 2021 launched a new offering called Services Marketplaces, each of which is a service to connect LinkedIn members with one another for freelance service relationships. Many of these established internet

companies and other competitors are considerably larger than we are, have considerably greater financial and other resources than we do, and could offer products and services similar to our offerings for lower fees.

Internationally, we compete against online and offline channels and products and services in most countries. Local competitors, or competitors that have invested more in international expansion, might have greater brand recognition than us in other countries and a stronger understanding of local or regional culture and commerce. Some competitors also offer their products and services in local languages and currencies that we do not offer. As our business grows internationally and we expand and grow our services offerings, we may increasingly compete with these international companies. We also compete against locally sourced service providers and traditional, offline means of finding work and procuring services, such as staffing businesses, personal and professional networks, classified ads, and recruiters.

We also compete with companies that utilize emerging technologies and assets, such as blockchain, artificial intelligence, augmented reality, cryptocurrency, and machine learning. These competitors may offer products and services that may, among other things, provide automated alternatives to the services that talent provide on our work marketplace, use machine learning algorithms to connect businesses with service providers more effectively than we do, or otherwise change the way that businesses engage or pay service providers so as to make our work marketplace less attractive to users. Many of the companies and services that utilize these technologies in our market are still new and not yet fully mature in their capabilities or network scale; however, we may face increased competition should these companies or services, or new entrants, succeed.

Many of our current and potential competitors, both online and offline, enjoy substantial competitive advantages, such as greater name recognition and more prominent brand reputation; pre-existing relationships with desirable clients; more experience with international operations and localization of their offerings; longer operating histories; greater financial, technical, and other resources; more users; newer technologies; greater appeal to certain segments of users, such as those entering the workforce; and, in some cases, the ability to rapidly combine online platforms with traditional staffing and contingent worker solutions. These companies may use these advantages to offer products and services similar to ours at a lower price, develop different or superior products and services to compete with our work marketplace, or respond more quickly and effectively than we do to new or changing opportunities, technologies, standards, regulatory conditions, or user preferences or requirements. In addition, while we compete intensely in more established markets, we also compete in developing technology markets that are characterized by dynamic and rapid technological change, many and different business models, and frequent disruption of incumbents by innovative online and offline entrants. The barriers to entry into these markets can be low, and businesses easily and quickly can launch online or mobile platforms and applications at nominal cost by using commercially available software or partnering with various established companies in these markets.

Moreover, current and future competitors may also make strategic acquisitions or establish cooperative relationships among themselves or with others, including our current or future third-party partners. By doing so, these competitors may increase their ability to meet the needs of our existing or prospective users. These developments could limit our ability to obtain revenue from existing and new users. For all of these reasons, we may not be able to compete successfully against our current and future competitors. If we are unable to compete successfully against current and future competitors, our business, operating results, and financial condition would be adversely impacted.

If we fail to develop, maintain, and enhance our brand and reputation cost-effectively, our business and financial condition may be adversely affected.

We believe that developing, maintaining, evolving, and enhancing awareness and integrity of our brand and reputation in a cost-effective manner are important to achieving widespread acceptance and use of our work marketplace and are important elements in attracting new users and retaining existing users. Successful promotion and positioning of our brand, offerings, and business model depend on, among other things, the effectiveness of our marketing efforts and brand messaging, our ability to provide a reliable, trustworthy, and useful work marketplace and offerings at competitive prices, the perceived value of our work marketplace and offerings, and our ability to provide quality support. In order to reach the brand awareness and acceptance levels of some of our competitors, we need to continuously invest in marketing programs that may not be successful in achieving meaningful awareness and acceptance levels, particularly during early phases of expansion into newer user awareness segments, such as international users. Some of the marketing programs and brand promotion efforts we implement may be new and unproven and therefore their likelihood of success may be uncertain. Further, brand promotion activities may not resonate with existing or potential users or yield increased revenue, and even if they do, the increased revenue may not offset the expenses we incur in building, evolving, and maintaining our brand and reputation. For example, since 2019, we have made significant investments in sales and marketing to acquire new

clients and drive brand awareness, and expect to increase these investments throughout 2022. It is not certain that these investments have had or will have sufficient positive impact on our brand to be cost effective. Likewise, publicity efforts or news coverage may undermine our brand promotion efforts or harm our reputation or may not resonate with existing or potential users. We have also recently evolved, and will continue to evolve, our marketing and brand positioning efforts, including a rebranding effort which we undertook in the second quarter of 2021, expanding our focus on large enterprise and other clients and prospects with larger, longer-term independent talent needs. These efforts may not be successful in achieving the brand awareness and acceptance levels in a cost-effective manner, or without harming other areas of our business.

We also rely on our community of users in a variety of ways, including their willingness to give us feedback regarding our work marketplace, and failure of our users to provide feedback on their experience on our work marketplace or our failure to adequately address any concerns could negatively impact the willingness of them or prospective users to use our work marketplace. For example, the prior changes made in the pricing and packaging of Connects purchases resulted in user dissatisfaction and negatively impacted fill rates for projects on our work marketplace for a period of time. If we fail to promote and maintain our brand successfully, address user concerns, or to maintain loyalty among our users, or if we incur substantial expenses in unsuccessful attempts to promote and maintain our brand, we may fail to attract new users or retain our existing users and our business and financial condition may be adversely affected.

If the market for independent talent and the services they offer develops more slowly than we expect, our growth may slow or stall, and our operating results could be adversely affected.

The market for online independent talent and the services they offer is relatively new, rapidly evolving, and unproven. Our future success will depend in large part on the continued growth and expansion of this market and the willingness of businesses to engage independent talent to provide services and independent talent to engage as service providers. It is difficult to predict the size, growth rate, and expansion of this market, whether any expansion will be long-term or temporary, particularly as the COVID-19 pandemic subsides and restrictions intended to prevent its spread are relaxed or lifted, the success of competitive products and services, or technological, macroeconomic, legal, regulatory, or other developments that will impact the overall demand for independent talent. Furthermore, many businesses may be unwilling to engage independent talent for a variety of reasons, including perceived negative connotations with outsourcing work, quality of work, or privacy or data security concerns or the rapidly evolving regulations that may impact the demand for independent contractor services more generally, including as discussed further in the risk factor titled "There may be adverse tax, legal, and other consequences if the contractor classification or employment status of talent that use our work marketplace is challenged." Likewise, with the greater adoption of remote work and increased flexibility in employment relationships resulting from the COVID-19 pandemic, more skilled independent talent may choose traditional employment. If the market for independent talent and the services they offer does not achieve widespread adoption, or there is a reduction in demand for independent talent, including as the COVID-19 pandemic subsides, it could result in decreased revenue and our business could be adversely affected.

If we are not able to develop and release new offerings and services, or develop and release successful enhancements, new features, and modifications to our existing offerings and services, our business could be adversely affected.

The market for our work marketplace is characterized by rapid technological change, frequent product and service introductions and enhancements, changing user demands, and evolving industry standards. The introduction of offerings and services embodying new technologies can quickly make existing offerings and services obsolete and unmarketable. We invest substantial resources in researching and developing new offerings and services and enhancing our work marketplace by incorporating additional features, improving functionality, modernizing our technology, and adding other improvements to meet our users' evolving demands in our increasingly highly competitive industry. For example, in 2020 we invested a significant amount of resources to launch Project Catalog and we continue to invest resources to modify and enhance this and other offerings to increase client traffic and usage and improve the user experience. The success of any enhancements or improvements to, or new features of, our work marketplace or any new offerings and services, such as Project Catalog, depends on several factors, including overall demand and market acceptance consistent with the intent of such offerings or services, competitive pricing, adequate quality testing to ensure an absence of errors, defects, and disruptions on our work marketplace, integration with new and existing technologies on our work marketplace and third-party partners' technologies, and timely completion. We cannot be sure that we will succeed, on a timely or cost-effective basis, in developing, marketing, and delivering enhancements or new features to or modernizing our work marketplace or any new offerings and services that respond to continued changes in the market for independent talent or business services. Any enhancements or new features to our work marketplace or any new offerings and services may not achieve,

and in the past certain features and offerings have not achieved, market acceptance, cost-effectiveness, or the intended effect. In the past, we have experienced unintended negative effects, including reduced client spend, diminished fill rates for projects on our work marketplace, errors and disruptions on our work marketplace, and user dissatisfaction from certain modifications to our offerings, services, and features.

Moreover, even if we introduce new offerings and services, we may experience a decline in revenue from our existing offerings and services that is not offset by revenue from the new offerings or services. In addition, we may lose existing users that choose to use competing products or services. This could result in a temporary or permanent decrease in revenue and adversely affect our business.

Because a substantial portion of the services offered by talent and sought by clients on our work marketplace is information technology services, a decline in talent offering information technology services or the market for information technology service providers on our work marketplace could adversely affect our business.

A substantial portion of the services offered by talent and sought by clients on our work marketplace relates to information technology. If, for any reason, the market for information technology services declines, including as a result of the relaxation or lifting of restrictions intended to prevent the spread of COVID-19, a macroeconomic downturn, geopolitical events, increased use of artificial intelligence, automation, or otherwise, if a sufficient number of qualified talent is not available on our work marketplace or willing to perform these services or businesses satisfy their needs for these services through alternative means, including through use of our competitors' products or traditional employment relationships, or if the talent on our work marketplace are not located or able to work in specific geographic regions in which clients are seeking to engage remote talent, the growth in the number of users on our work marketplace may slow or decline and as a result our revenue and business may be adversely impacted.

If we or our third-party partners experience a security breach, other hacking or phishing attack, ransomware or other malware attack, or other privacy or security incident, whether intentionally or unintentionally caused by us or by third parties, our work marketplace may be perceived as not being secure, our reputation may be harmed, demand for our work marketplace may be reduced, our operations may be disrupted, we may incur significant legal costs, fines, or liabilities, and our business could be adversely affected.

Our business involves the storage, processing, and transmission of users' proprietary, confidential, and personal information as well as the use of third-party partners and vendors who store, process, and transmit users' proprietary, confidential, and personal information. We also maintain certain other proprietary and confidential information relating to our business and personal information of our personnel. Our systems, and the systems of our vendors and third-party partners, may be vulnerable to privacy or security incidents, such as computer viruses and other malicious software, physical or electronic break-ins, or vulnerabilities resulting from intentional or unintentional service provider actions, and similar disruptions that could make all or portions of our website or applications unavailable for periods of time. Any privacy or security incident, whether intentionally or unintentionally caused by us or by third parties, that we experience could result in unauthorized access to, misuse of, or unauthorized acquisition of our, our personnel's, or our users' data; the loss, corruption, or alteration of this data; interruptions in our operations; or damage to our computers or systems or those of our users. Any of these could expose us to claims, litigation, fines, enforcement actions, other potential liability, and reputational harm. Additionally, ransomware or other malware, viruses, social engineering (including business email compromise and related wire-transfer fraud), and general hacking in our industry have become more prevalent and more complex. Bad actors often try to take advantage of us, our users, and our vendors and third-party partners by using social engineering and other methods to persuade their victims to make fraudulent payments, or to download viruses, ransomware, or other malware into computer systems and networks. Because the techniques used to obtain unauthorized access, disable or degrade service, or sabotage systems change frequently and often are not foreseeable or recognized until launched against a target, we and our vendors and third-party partners may be unable to anticipate these techniques or to implement adequate preventative measures, despite our efforts to implement and maintain a robust information security program. Data security breaches and other privacy and security incidents may also result from non-technical means, such as, for example, actions taken by employees or contractors, such as talent that we engage on our work marketplace to perform services for us, and the likelihood of such incidents may increase as a result of our workforce working remotely. If we, our vendors, or third-party partners experience an actual or perceived breach or privacy or security incident, public perception of the effectiveness of our security measures and brand could be harmed, and we could lose users and business. In addition, significant unavailability of our work marketplace due to security breaches or other privacy and security incidents could cause users to decrease their use of or cease using our work marketplace. Any of these effects could adversely impact our business.

Any compromise of our security or the security of our vendors or third-party partners could result in a violation of applicable privacy and other laws, regulatory or other governmental investigations, enforcement actions, litigation, and legal and financial exposure, including potential contractual liability. We may also need to expend significant resources to protect against, and to address issues created by, security breaches and other privacy and security incidents. While we maintain cyber liability insurance, these liabilities may exceed the amounts covered by our insurance; further, we cannot be certain that our insurance coverage will extend to or be adequate for liabilities actually incurred, or that insurance will continue to be available to us on economically reasonable terms, at coverage limits we deem prudent, or at all. Any such compromise could also result in damage to our reputation and a loss of confidence in our security measures.

Depending on the nature of the information compromised, in the event of a security breach or other privacy or security incident, we may also have obligations to notify affected individuals and entities and regulators about the incident, and we may need to provide some form of remedy, such as a subscription to credit monitoring services, pay significant fines to one or more regulators, or pay compensation in connection with a class-action settlement (including under the private right of action under the California Consumer Privacy Act of 2018, which we refer to as the CCPA). Such breach notification laws continue to evolve and may be inconsistent from one jurisdiction to another. Complying with these obligations could cause us to incur substantial costs and could increase negative publicity surrounding any incident that compromises our, our users', our employees', our contractors', or other confidential, proprietary, or personal information.

Our sales efforts are increasingly primarily targeted at large enterprise and other clients and prospects with larger, longer-term independent talent needs, and as a result we may encounter greater pricing, implementation, and customization challenges, and we may incur additional costs, each of which could adversely impact our business and operating results.

Our sales efforts are primarily targeted at large enterprise and other clients and prospects with larger, longer-term independent talent needs. For example, in the fourth quarter of 2021, we began increasing our investment in sales by expanding our sales team and we expect this expansion to continue through 2022 as we increase our efforts to acquire clients of our Upwork Enterprise offering. As a result of our increased focus on these larger clients, we face greater costs, longer sales cycles, and less predictability in completing some of our sales and in increasing spend by existing clients. For larger clients, use of our work marketplace may require approvals by multiple departments and executive-level personnel and require us to provide greater levels of services and client education regarding the uses, benefits, security, privacy, worker classification, payments, and compliance services offered on our work marketplace. Larger enterprises typically have longer decision-making and implementation cycles and may demand more customization, greater indemnification and risk shifting, higher levels of support, a broader range of services, and greater payment flexibility. In addition, larger clients may require greater functionality and scalability that can lead to delays in sales or difficulties in growing client spend. We are often required to spend time and resources to better familiarize potential large enterprise clients with the value propositions of our work marketplace generally. Despite our efforts in familiarizing potential large enterprise clients with the benefits of our work marketplace, these potential clients may decide not to use our work marketplace if, among other reasons, they do not feel that their procurement or compliance needs are or will be met. In addition, sales opportunities with large clients may require us to devote greater sales and administrative support and professional services resources to individual clients, which could increase our costs, lengthen our sales cycle, and divert our own sales and professional services resources to a smaller number of larger clients. We may spend substantial time, effort, and money in our sales efforts without being successful in producing sales or growing client spend.

Even if we reach an agreement with a client to use our work marketplace, the agreement may not be on pricing or other terms that are favorable to us. A significant portion of the fees we typically receive from clients is contingent on the level of spend by the client. If a client negotiates pricing terms that are less favorable to us, does not engage talent on our work marketplace, or uses talent for few projects or projects of low value, our revenue from the relationship may be minimal.

If internet search engines' methodologies or other channels that we utilize to direct traffic to our website are modified to our disadvantage, or our search result page rankings decline for other reasons, our user growth could decline.

We depend in part on various internet search engines, such as Google, as well as other channels to direct a significant amount of traffic to our website. Our ability to maintain the number of visitors directed to our website is not entirely within our control. For example, our competitors' search engine optimization and other efforts such as paid search may result in their websites receiving a higher search result page ranking than ours, internet search engines or other channels that we utilize to direct traffic to our website have in the past and could again revise their

methodologies or implement other changes or penalties that adversely impact traffic to our website, or we may make changes to our website that adversely impact our search engine optimization rankings and traffic to our website in order to comply with applicable regulatory requirements or for other reasons. As a result, links to our website may not be prominent enough to drive sufficient traffic to our website, and we may not be able to influence the results.

Search engines and other channels that we utilize to drive users to our website periodically change their algorithms, policies, and technologies, sometimes in ways that cause traffic to our website to decline. These changes can also result in an interruption in users' ability to access our website or a drop in our search ranking, or have other adverse impacts that negatively affect our ability to maintain and grow the number of users that visit our website. We may also be forced to significantly increase marketing expenditures in the event that market prices for online advertising and paid listings escalate or our organic ranking decreases. Any of these changes could have an adverse impact on our business, user acquisition, and operating results.

Users circumvent our work marketplace, which adversely impacts our business.

Our business depends on users transacting through our work marketplace. Despite our efforts to prevent them from doing so, users circumvent our work marketplace and engage with or take payment through other means to avoid the fees that we charge, and it is difficult or impossible to measure the losses associated with circumvention. Enhancements and changes we make with respect to our offerings, services, and features may unintentionally cause, and may have unintentionally caused in the past, users to circumvent our work marketplace. In addition, circumvention by users of our work marketplace is likely to increase during a macroeconomic downturn, as users may be more cost-sensitive with respect to our fees. Moreover, certain changes we make to decrease circumvention by users have in the past and could again inadvertently result in user dissatisfaction, increased user circumvention, and a decline in user activity on our work marketplace. The loss of revenue associated with circumvention of our work marketplace has an adverse impact on our business, cash flows, operating results, and financial condition. In addition, our efforts to reduce circumvention may be costly or disruptive to implement, have results that are difficult or impossible to measure, fail to have the intended effect or have an adverse effect on our brand or user experience, cause users to cease using our work marketplace, reduce the attractiveness of our work marketplace, divert the attention of management, or otherwise harm our business.

Errors, defects, or disruptions in our work marketplace could diminish demand, adversely impact our financial results, and subject us to liability.

Our work marketplace enables our users to manage important aspects of their businesses, and any errors, defects, or disruptions in our work marketplace, or other performance or availability problems with our work marketplace or infrastructure could harm our brand and reputation, negatively impact our operating results, or otherwise damage our business or the businesses of our users. As the usage of our work marketplace grows, and as we introduce new offerings and services and look to expand our international footprint over time, we will need an increasing amount of technical infrastructure and continued infrastructure modernization, including network capacity and computing power, to continue to operate our work marketplace. We may fail to effectively scale and grow our technical infrastructure to accommodate these increased demands, which may adversely affect our user experience. We also rely on third-party software and infrastructure, including the infrastructure of the internet, to provide our work marketplace. Any failure of or disruption to this software and infrastructure could also make our work marketplace unavailable to our users. For example, these types of disruptions have negatively impacted our work marketplace, such as an inadvertent error by a regulatory agency that prevented users from accessing our website for a brief period of time. Internet shutdowns in certain jurisdictions are becoming more frequent, including in response to civil unrest or prior to contested political elections, and any shutdown in a jurisdiction in which a significant number of our users are located will adversely affect user activity on our work marketplace throughout the duration of such shutdown. Our work marketplace is constantly changing with new updates, which may contain undetected errors when first introduced or released. Any errors, defects, disruptions in service, or other performance or stability problems with our work marketplace, or the inadequacy of our efforts to adequately prevent or timely detect or remedy errors or defects, could result in negative publicity, loss of or delay in market acceptance of our work marketplace, loss of competitive position, our inability to timely and accurately maintain our financial records, interference with our clients' ability to contract for, or the ability of talent to complete, projects on our work marketplace, inaccurate or delayed invoicing of clients, delay of payment to us or talent, claims by users for losses sustained by them, or investigation and corrective action taken by regulatory agencies. In such an event, we may be required, or may choose, for customer relations or other reasons, to expend additional resources in order to help resolve the issue. Accordingly, any errors, defects, or disruptions in our work marketplace could adversely impact our brand and reputation, revenue, and operating results.

Our ability to attract and retain users is dependent in part on ease of use and reliability of our work marketplace and the quality of our support, and any failure to offer high-quality support could adversely impact our business, operating results, and financial condition.

Our ability to attract and retain users is dependent in part on the ease of use and reliability of our work marketplace, including our ability to provide high-quality support. Our users depend on our support organization to resolve any issues relating to our work marketplace, to communicate effectively about their accounts, and to assist in their use of our work marketplace, especially large enterprise clients, which expect higher levels of support. Our ability to provide effective support is largely dependent on our ability to attract, resource, and retain service providers who are both qualified to support users of our work marketplace and well versed in our work marketplace. Offering our website and user support only in English may negatively impact our relationships with our users, particularly users in non-English speaking countries. As we seek to continue to grow our international user base, our support organization will face additional challenges, including those associated with delivering support and documentation in languages other than English. Any failure to maintain high-quality support or effectively communicate with our users, or any market perception that we do not maintain high-quality support or act professionally, fairly, or effectively in our communications and actions with respect to users, could harm our reputation, adversely affect our ability to sell our work marketplace to existing and prospective users, and could adversely impact our business, operating results, and financial condition.

We rely on AWS to deliver our work marketplace to our users, and any disruption of service from AWS or material change to our arrangement with AWS could adversely affect our business.

We currently host our work marketplace, serve our users, and support our operations using AWS, a provider of cloud infrastructure services. We do not have control over the operations of the facilities of AWS that we use. AWS's facilities are vulnerable to failure, damage, or interruption from a number of causes, including from earthquakes, hurricanes, floods, fires, cybersecurity attacks, terrorist attacks, power losses, telecommunications failures, and similar events or could be subject to break-ins, computer viruses, sabotage, intentional acts of vandalism, and other misconduct. The occurrence of any of these events, a decision to close the facilities or cease or limit providing services to us without adequate notice, or other unanticipated problems could result in interruptions to our work marketplace, including lengthy interruptions. Our work marketplace's continuing and uninterrupted performance is critical to our success and users may become dissatisfied by any system failure that interrupts our ability to provide our work marketplace to them. We may not be able to easily switch our AWS operations to another cloud or other data center provider if there are disruptions or interference with our use of AWS, and, even if we do switch our operations, other cloud and data center providers are subject to the same risks. Sustained or repeated system failures could reduce the attractiveness of our work marketplace to users, cause users to decrease their use of or cease using our work marketplace, and adversely affect our business. Moreover, negative publicity arising from these types of disruptions could damage our reputation and may adversely impact use of our work marketplace. We may not carry sufficient business interruption insurance to compensate us for losses that may occur as a result of any events that cause interruptions in our service and we cannot be certain that insurance will continue to be available to us on economically reasonable terms, or at all.

AWS does not have an obligation to renew its agreements with us on commercially reasonable terms, or at all. If we are unable to renew our agreements or unable to renew on commercially reasonable terms, our agreements are prematurely terminated, or we add additional infrastructure providers, we may experience costs or downtime in connection with the transfer to, or the addition of, new data center providers. If these providers charge high costs for or increase the cost of their services, we may have to increase the fees to use our work marketplace and our operating results may be adversely impacted. In the second quarter of 2021 we substantially completed the transition to a different AWS facility in an effort to reduce long-term costs, to gain access to servers with enhanced functionality, and increase operational resilience. The finalization of the migration is ongoing and during this transition, we may incur additional costs, particularly if we encounter an unforeseen issue or incident as we complete the migration. We plan to complete the transition during the first half of 2022.

In addition, we and other customers of AWS have been subject to litigation by third parties claiming that AWS and basic HTTP functions infringe their patents and may be subject to such litigation again in the future. Such litigation has been, and may in the future continue to be, time consuming, and may divert management's attention and adversely impact our operating results.

Our user growth and engagement on mobile devices depend upon third parties maintaining open application marketplaces and effective operation with mobile operating systems, networks, and standards that we do not control.

Mobile devices are increasingly used for marketplace transactions. A significant and growing portion of our users access our work marketplace through mobile devices, including through the use of mobile applications. Our mobile applications rely on third parties maintaining open application store platforms, including the Apple App Store and Google Play, which make current and new applications or new versions of our mobile applications available for download and use on mobile devices. We cannot assure you that the platforms through which we distribute our applications will maintain their current structures or terms of access, that such marketplaces will continue to make our mobile applications or newer versions of our mobile applications available for download, or that such marketplaces will not charge us fees to list our applications for download, or charge us new or additional fees to offer services and offerings through our applications. Additionally, there is no guarantee that popular mobile devices will continue to support our work marketplace, that the use of mobile devices for payments or other transactions on our work marketplace will be available on commercially reasonable terms, or that mobile device users will use our work marketplace rather than competing products. We are dependent on the interoperability of our work marketplace with popular mobile operating systems that we do not control, such as Android and iOS, and any changes in such systems that degrade the functionality of our website or applications or give preferential treatment to competitors could adversely affect the usage of our work marketplace on mobile devices. Additionally, in order to deliver high-quality mobile offerings, it is important that our offerings are designed effectively and work well with a range of mobile devices, technologies, systems, networks, and standards that we do not control. We may not be successful in developing relationships with key participants in the mobile industry or in developing offerings that operate effectively with these devices, technologies, systems, networks, or standards. In the event that it is more difficult for our users to access and use our work marketplace on their mobile devices, our users find our mobile offering is not cost-effective, our users find our mobile offering does not meet their needs, our competitors develop offerings and services that are perceived to operate more effectively on mobile devices, or our users choose not to access or use our work marketplace on their mobile devices or use mobile products that do not offer access to our work marketplace, our user growth, user engagement, and business could be adversely impacted.

Risks Related to Legal and Regulatory Matters

We and our users may be subject to new and existing laws and regulations, both in the United States and internationally.

We and our users are subject to a wide variety of foreign and domestic laws. Laws, regulations, and standards governing issues that may affect us, such as worker classification, employment, worker health, payments, worker confidentiality obligations and whistleblowing, intellectual property, consumer protection, taxation, privacy, and data security are often complex and subject to varying interpretations, in many cases due to their lack of specificity, and, as a result, their enforcement and application in practice may change or develop over time through judicial decisions or as new guidance or interpretations are provided by regulatory and governing bodies, such as federal and state administrative agencies. Many of these laws were adopted prior to the advent of the internet, mobile, and related technologies and, as a result, do not contemplate or address the unique issues of the internet, mobile, and related technologies. Other laws and regulations may be adopted in response to internet, mobile, and related technologies. New and existing laws and regulations (or changes in interpretation of existing laws and regulations), including those concerning worker classification, independent contractors, employment, discrimination and harassment, payments, whistleblowing and worker confidentiality obligations, intellectual property, consumer protection, taxation, privacy, data security, benefits, unionizing and collective action, arbitration agreements and class action waiver provisions, unfair competition, terms of service, website accessibility, background checks (such as the Fair Credit Reporting Act, 15 U.S.C. § 1681), escheatment, and federal contracting may also be adopted, implemented, or interpreted to apply to us and other online services marketplaces or our users. Likewise, these laws affect our users, and their application, or uncertainty around their application, may affect demand for our work marketplace.

New laws, regulations, and orders enacted in response to the COVID-19 pandemic or the resulting macroeconomic downturn and uncertainty may also affect our business in ways that we do not anticipate, and existing laws and regulations may be interpreted and enforced differently than they have in the past in response to the pandemic. These laws may change rapidly and compliance may be costly to us. On the other hand, a loosening of these restrictions as certain geographic areas continue to reopen may result in a decline in user activity on our work marketplace. Likewise, geopolitical events, such as recent tensions between Ukraine and Russia, may cause Russia, Ukraine, the United States, the United Kingdom, European Union, which we refer to as the EU, or other jurisdictions to implement new laws, regulations, or orders, or enforce existing laws, regulations, and orders, in a

manner that is harmful to us or our customers, including implementing sanctions that limit our ability engage with, collect payment from, or remit payment to, customers in Russia or other jurisdictions.

As our work marketplace's geographic scope expands, including efforts to increase adoption by users outside the United States and extending our physical presence internationally, and as we expand or change the offerings and services offered on our work marketplace, regulatory agencies or courts may claim, or we may independently determine, that we, or our users, are subject to additional regulations or requirements, or are prohibited from conducting our business, or conducting business with us, in or with certain jurisdictions, either generally or with respect to certain offerings or services, or that we are otherwise required to change our business practices. If we determine additional legal requirements apply to our business, we may expend resources to comply or obtain licenses to come into compliance with such requirements, and such efforts may be a distraction to the business or require adverse changes to the manner in which we conduct our business or our work marketplace and may themselves cause regulatory agencies to scrutinize our business, including past practices. It is also possible that certain provisions in agreements with our users or service providers, or between talent and clients, or the fees we charge, may be found to be unenforceable or not compliant with applicable law.

The level of regulatory scrutiny on larger companies, technology companies in general, and companies engaged in dealings with independent contractors, payments, or personal information in particular, has increased significantly recently and may continue to increase. Legislators have enacted, and may continue to enact, new laws or regulatory agencies may promulgate new rules or regulations that are adverse to our business or the interests of our users, or they may view matters or interpret or enforce laws and regulations differently than they have in the past or in a manner adverse to our business or the interests of our users. Such legislative or regulatory scrutiny or action may create or enhance different or conflicting obligations on us from one jurisdiction to another.

New approaches to policy-making and legislation may also produce unintended harms to our business, which may impact our ability to operate our business in the manner in which we are accustomed. For example, there has been increased focus on worker classification and independent contractor regulations which led in part to the adoption of legislation in California, and it is possible that other jurisdictions will implement similar laws and regulations, as discussed in the risk factor titled "There may be adverse tax, legal, and other consequences if the contractor classification or employment status of talent that use our work marketplace is challenged." These types of laws and regulations may have a far-reaching impact, including on the independent professionals that use our work marketplace and their clients. Any of these regulations could negatively impact our users, including perceptions regarding their use of our work marketplace, or have a material adverse effect on the demand for talent on our work marketplace or on the manner in which we are able to operate our work marketplace.

As we look to expand our international footprint over time, we may become obligated to comply with additional laws and regulations of the countries or markets in which we operate or have users. We may be harmed if we are found to be subject to new or existing laws and regulations or if those laws are interpreted and applied to us in a manner that harms our business or is inconsistent with the application of U.S. laws, including those concerning worker classification, independent contractors, employment, payments, whistleblowing and worker confidentiality obligations, intellectual property, consumer protection, taxation, privacy, data security, benefits, unionizing and collective action, arbitration agreements and class action waiver provisions, unfair competition, terms of service, website accessibility, background checks, and escheatment. In addition, contractual provisions that are designed to protect and mitigate against risks, including terms of service, services agreements, arbitration and class action waiver provisions, disclaimers of warranties, limitations of liabilities, releases of claims, and indemnification provisions, could be deemed unenforceable as to the application of these laws and regulations by a court, arbitrator, or other decision-making body. If we are unable to comply with these laws and regulations or manage the complexity of global operations and supporting an international user base successfully or in a cost-effective manner, or if these laws and regulations are found to apply to our users or cause a decline in demand for talent services, our business, operating results, and financial condition could be adversely affected.

Having an international community of users and engaging talent internationally exposes us to risks that could have an adverse effect on our business, operating results, and financial condition, and these risks could increase as we seek to expand our international footprint.

Even though we currently have a limited physical presence outside of the United States, our users have a global footprint that subjects us to the risks of being found to do business internationally. We have users of our work marketplace located in over 180 countries, including some markets where we have limited experience, where challenges can be significantly different from those we have faced in more developed markets, and where business practices may create greater internal control risks. Further, certain skills and services are offered by talent concentrated in countries with higher risks of instability and geopolitical uncertainty, such as Russia and Ukraine,

both of which have experienced recent political unrest and are facing potential military conflict, which may interfere with the talent's ability to access our work marketplace and for us to support users in such countries. In addition, we engage talent located in many countries to provide services for our managed services offering and to us for internal projects. Because our website is generally accessible by users worldwide, we have received in the past, and may continue to receive, notices from jurisdictions claiming that we or our users are required to comply with their laws. Laws outside of the United States regulating the internet, payments, escrow, data protection, data residency, privacy, taxation, terms of service, website accessibility, consumer protection, intellectual property ownership, services intermediaries, payment intermediaries, labor and employment, wage and hour, worker classification, worker health, background checks, and recruiting and staffing companies, among others, which could be interpreted to apply to us, are often less favorable to us than those in the United States, giving greater rights to competitors, users, and other third parties. Compliance with international laws and regulations may be more costly than expected, may require us to change our business practices or restrict or modify our offerings, and the imposition of any such laws or regulations on us, our users, or third parties that we or our users utilize to provide or use our services, may adversely impact our revenue and business. In addition, we may be subject to multiple overlapping legal or regulatory regimes that impose conflicting requirements which could lead to additional compliance costs and enhanced legal risks. Moreover, all of these risks will be exacerbated as we expand our operations internationally, including extending our physical presence and registering to do business outside the United States or investing in localization efforts.

Risks inherent in conducting business with an international user base, engaging talent globally, localizing our work marketplace, and expanding our operations internationally include, but are not limited to:

- being deemed to conduct business or have operations in the jurisdictions where users, including talent that provide services to us, are resident and being subject to their laws and regulatory requirements;
- new, changed, or conflicting regulatory requirements;
- varying worker classification standards, regulations, and approaches to enforcement and requirements and expectations of employment;
- compliance with U.S. and foreign laws designed to combat money laundering and the financing of terrorist activities;
- the imposition of taxes on transactions between us and our users or among our users, or the imposition of liability on us for the failure to collect and remit taxes owed by our users;
- compliance with U.S. and foreign laws and regulations regarding privacy, data protection, information security, and the collection, storing, retention, sharing, use, processing, transfer, disclosure, and protection of personal information and other content;
- the cost and burden of complying with a wide variety of laws that may be deemed to apply to us, including those relating to labor and employment matters (including but not limited to requirements with respect to works councils or similar labor organizations, worker classification, and taxation on income or earnings, including the obligation to withhold and remit taxes), payments, consumer and data protection, privacy, network security, encryption, data residency, and taxes, as well as securing expertise in local law and related practices;
- costs of localizing services, including adding the ability for clients to pay in local currencies;
- tariffs, export and import restrictions, restrictions on foreign investments, sanctions, changes to existing trade arrangements between various countries, and other trade barriers or protection measures, including those affecting certain countries with higher risks of instability and geopolitical uncertainty, such as Russia and Ukraine;
- geopolitical instability and security risks, such as armed conflict and civil or military unrest, political instability, human rights concerns, and terrorist activity in countries where we have users, such as the geopolitical uncertainty in Russia and Ukraine;
- retaliatory actions by foreign governments intended to disrupt business like ours in the United States as a result of new or increased sanctions or export controls;
- macroeconomic and political conditions, including in certain foreign jurisdictions such as the evolving relations between the United States and China;
- regional or global public health crises, such as the COVID-19 pandemic;

- difficulties in, and costs of, staffing, managing, and operating international operations or support functions;
- economic weakness or currency-related challenges or crises;
- fluctuations in foreign currency exchange rates;
- lack of acceptance of localized services or of services generally because they are not localized;
- private, corporate or state-sponsored espionage, ransomware, or cyberterrorism;
- weaker intellectual property protection;
- organizing or similar activity by workers, local unions, works councils, or other labor organizations in the U.S. or elsewhere; and
- our ability to adapt to business practices and client requirements in different cultures.

The risks described above may also make it costly or difficult for us to expand our operations internationally. Analysis of, and compliance with, foreign laws and regulations may substantially increase our cost of doing business. We may be unable to keep current with changes in laws and regulations as they develop. Although we have implemented policies and procedures designed to analyze whether these laws apply and, if applicable, support compliance with these laws and regulations, there can be no assurance that we will always maintain compliance, that our interpretations are or will remain correct, or that all of our employees, contractors, partners, users, and agents will comply. Any violations could result in enforcement actions or other proceedings, fines, civil and criminal penalties, damages, interest, costs and fees (including but not limited to legal fees), injunctions, loss of intellectual property rights, or reputational harm. If we are unable to comply with these laws and regulations or manage the complexity of global operations and support an international user base successfully and in a cost-effective manner, our business, operating results, and financial condition could be adversely affected.

There may be adverse tax, legal, and other consequences if the contractor classification or employment status of talent that use our work marketplace is challenged.

Clients are generally responsible for properly classifying the talent they engage through our work marketplace under our terms of service. Some clients opt to classify talent as employees for certain work, while talent in many other cases are classified as independent contractors.

We offer an optional service to users of our Upwork Enterprise offering and other premium offerings, through which we help classify talent as employees of third-party staffing providers or independent contractors. For clients of these services, subject to applicable law and the terms of our agreement with the client, we indemnify clients from misclassification risk and make warranties to the client, such as to compliance with applicable laws. In addition, we offer a number of other premium offerings where we provide increased assistance to users to find and contract with one another, which could increase employment-related risks. Third-party staffing providers employ talent classified as employees for clients, and failure of these staffing providers to comply with all legal and tax requirements could adversely affect our business. Moreover, material business changes by one or more of our third-party staffing providers could negatively impact our business and financial results, including increased costs for clients or us, a reduced profit margin, a diminished user experience, or the inability to offer the staffing provider services in one or more jurisdictions. We also use our work marketplace to find, classify, and engage talent to provide services for us and for our managed services offering. In general, any time a court or administrative agency determines that we or our clients that use our work marketplace have misclassified talent as an independent contractor, we or our users could incur tax and other liabilities for failing to properly withhold or pay taxes on the talent's compensation as well as potential wage and hour and other liabilities depending on the circumstances and jurisdiction. We have in the past been, and may in the future be, subject to administrative inquiries and audits concerning the taxation and classification of our workers and the users of our work marketplace. Certain claims may not be covered by our insurance, and we cannot be certain that any insurance coverage that we have or may obtain will extend to or be adequate for liabilities actually incurred or that insurance will continue to be available to us on economically reasonable terms, or at all.

There is often uncertainty in the application of worker classification laws, and consequently there is risk to us and to users, both talent and clients, that independent contractors could be deemed to be misclassified under applicable law. The tests governing whether a service provider is an independent contractor or an employee are typically highly fact sensitive and vary by governing law. Laws and regulations that govern the status and misclassification of independent contractors are also subject to change as well as to divergent interpretations by various authorities, which can create uncertainty and unpredictability. For example, in California, Assembly Bill 5, which we refer to as AB 5, went into effect on January 1, 2020 and has the stated purpose of codifying the 2018 state supreme court

decision in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*. Together, they retroactively change the standard in California for determining worker classification and are widely viewed as expanding the scope of the definition of “employee” for most purposes under California law. Since the enactment of AB 5, and subsequent amendments and challenges (including California’s Proposition 22) to the law, there is little guidance from the courts or the regulatory authorities charged with its enforcement and there remains a degree of uncertainty regarding its application.

A misclassification determination, allegation, claim, or audit creates potential exposure for users and for us, including but not limited to reputational harm and monetary exposure arising from or relating to failure to withhold and remit taxes, unpaid wages, and wage and hour laws and requirements (such as those pertaining to minimum wage and overtime); claims for employee benefits, social security contributions, and workers’ compensation and unemployment insurance; claims of discrimination, harassment, and retaliation under civil rights laws; claims under laws pertaining to unionizing, collective bargaining, and other concerted activity; and other claims, charges, or other proceedings under laws and regulations applicable to employers and employees, including risks relating to allegations of joint employer liability. Such claims could result in monetary damages (including but not limited to wage-based damages or restitution, compensatory damages, liquidated damages, and punitive damages), interest, fines, penalties, costs, fees (including but not limited to attorneys’ fees), criminal and other liability, assessment, injunctive relief, or settlement. For example, particularly around the onset of the COVID-19 pandemic, these types of claims were more frequent in light of then-deteriorating macroeconomic conditions, more prone to agency error in light of overwhelmed agencies, more commonly submitted on a fraudulent basis, and more difficult to successfully oppose or appeal due to COVID-19 related delays, and such events may increase in frequency again if similar circumstances recur. Claims naming our company became, and may again become, prevalent in light of legislative and regulatory responses to the COVID-19 pandemic. These claims may also become more frequent as our brand awareness increases. Such a claim, allegation, or adverse determination, including but not limited to with respect to the talent that provide services to us, or the requirement for us to indemnify a client, could also harm our brand and reputation, which could adversely impact our business. While these risks are mitigated, in part, by our contractual rights of indemnification against third-party claims, any limitations or obligations that we include in our contracts with clients to limit our exposure to claims could be determined to be unenforceable, could be costly to enforce or ineffective, or may otherwise prove inadequate.

The regulatory landscape regarding contractor classification is rapidly changing, and changes in these laws could adversely affect demand for our services and work marketplace and adversely affect our business.

Worker classification and independent contractor issues, including AB 5, have been the subject of widespread debate both in the United States and abroad. It is possible that other jurisdictions, including the U.S. federal government, U.S. states, such as New York, Washington, and Illinois, and jurisdictions outside the United States, such as the United Kingdom and the EU through its work on the Platform Workers Directive and other legislative and regulatory instruments, may change their definition of “employment” to include arrangements currently viewed as independent. Additionally, changes to laws and regulation may be subject to challenge in court (e.g. AB 5, which had a retroactive effect, and California’s Proposition 22, which was recently ruled unconstitutional). Likewise, the EU, the United Kingdom, and other jurisdictions are exploring changes to worker classification through a variety of legal instruments, such as the Digital Services Act and Digital Markets Act in the EU. These new and changing laws could alter the legislative and regulatory landscape regarding how governments may choose to regulate independent contractors broadly and in specific sectors. These changes may affect how our users run their businesses. As a result, there is significant uncertainty regarding the worker classification regulatory landscape and what it will look like in future years, and compliance with any new legislation or regulations may be costly and difficult or they may be impossible to comply with in a commercially reasonable manner. In addition, any developments or changes in the regulatory environment impacting worker classification and independent contractors may reduce the demand for independent contractors more generally in one or more jurisdictions and have an adverse effect on our business, operating results, and financial condition.

Changes in laws or regulations relating to privacy or the protection, collection, storage, processing, transfer, or use of personal information, or any actual or perceived failure by us to comply with such laws and regulations or our privacy policies, could adversely affect our business.

We receive, collect, store, process, transfer, and use personal information and other user data. There are numerous federal, state, local, and international laws and regulations regarding privacy, data protection, information security, and the collection, storing, sharing, use, processing, transfer, disclosure, and protection of personal information and other data. The scope of these laws and regulations is changing, subject to differing interpretations, and may be inconsistent among states and countries, or conflict with other laws and regulations. We are also subject to the

terms of our privacy policies and legal and contractual obligations to third parties related to privacy, data protection, and information security. The regulatory framework for privacy and data protection worldwide is, and is likely to remain for the foreseeable future, uncertain and complex, and it is possible that these or other actual or alleged obligations may be interpreted and applied in a manner that we do not anticipate or that is inconsistent from one jurisdiction to another and may conflict with other rules or our practices. Further, any significant change to applicable laws, regulations, or industry practices regarding the collection, use, retention, security, or disclosure of the data of our users, employees, contractors, or others, or their interpretation or enforcement, or any changes regarding the manner in which the express or implied consent of users for the collection, use, retention, or disclosure of such data must be obtained, including in response to the COVID-19 pandemic, could increase our costs and require us to modify our services and features, possibly in a material manner, which we may be unable to complete in a cost-effective manner, or at all, and may limit our ability to store and process user data or develop new services and features.

We also expect that there will continue to be new laws, regulations, and industry standards concerning privacy, data protection, and information security that are proposed and enacted in various jurisdictions. For example, Europe's General Data Protection Regulation, which we refer to as the GDPR, and the U.K. General Data Protection Regulation (which implements the GDPR into U.K. law), impose stringent data protection requirements and provide for significant penalties for noncompliance. Additionally, California enacted legislation, the California Consumer Privacy Act, which we refer to as the CCPA. The CCPA requires, among other things, covered companies to provide new disclosures to California consumers and allows such consumers new abilities to opt-out of certain sales of personal data. The CCPA also provides for civil penalties for violations as well as a private right of action for data breaches that may increase data breach litigation. Further, the California Privacy Rights Act, which was passed in November 2020 and is fully effective in January 2023, significantly modifies the CCPA. These modifications will require us to incur additional costs and expenses in our effort to comply. Virginia and Colorado recently enacted similar data privacy legislation that will take effect in 2023, and several other states and countries are considering expanding or passing privacy laws in the near term. The enactment of more restrictive laws, rules, regulations, or future enforcement actions or investigations could impact us through increased costs or restrictions on our business, and noncompliance could result in regulatory penalties and significant legal liability. Furthermore, the costs of compliance with, and other burdens imposed by, the laws, regulations, and policies that are applicable to the businesses of our users may limit the adoption and use of, and reduce the overall demand for, our work marketplace.

Additionally, if third parties we work with violate applicable laws, regulations, or agreements, such violations may put the data of our users, employees, contractors, and others at risk, could result in governmental investigations or enforcement actions, fines, litigation, claims, or public statements against us by consumer advocacy groups or others, and could result in significant liability, cause our users to lose trust in us, and otherwise have an adverse effect on our reputation and business. Further, public scrutiny of or complaints about technology companies or their data handling or data protection practices, even if unrelated to our business, industry, or operations, may lead to increased scrutiny of technology companies, including us, and may cause government agencies to enact additional regulatory requirements, or to modify their enforcement or investigation activities, which may disrupt the conduct of our business, increase our liability, increase our costs and risks, and adversely affect our business.

We may be subject to escrow, payment services, and money transmitter regulations that may adversely affect our business.

Our subsidiary, Upwork Escrow, is licensed as an internet escrow agent under California's Escrow Law and is subject to regulations applicable to internet escrow agents promulgated by the DFPI. While we have received two inquiries, each prior to 2014, from regulatory authorities inquiring whether we are engaging in payment activities, these inquiries were resolved in our favor and did not require us to obtain a license in the applicable jurisdiction.

Although we are a licensed internet escrow agent and we believe that our operations comply with existing U.S. federal, state, and international laws and regulatory requirements related to escrow, money transmission, and the handling or moving of money, the laws or regulations may change, interpretations of existing laws and regulations may also change, and our operations and offerings may change resulting in new or different regulatory requirements being applicable to or preferable for our business. As a result, we could be required, or choose, to become licensed as an escrow agent or a money transmitter (or other similar licensee) in other U.S. states or other jurisdictions or as a money services business under federal laws and regulations or similar licenses under the laws and regulations of other jurisdictions. It is also possible that we could become subject to regulatory enforcement or other proceedings in those states or other jurisdictions with escrow, money transmission, or other similar statutes or regulatory requirements related to the handling or moving of money, and such risk may increase if we are required or choose to pursue additional or different licenses, which could in turn have a significant impact on our business, even if we

voluntarily sought the licenses or were to ultimately prevail in such proceedings. We may also be required, or choose, to become licensed as a payment institution (or obtain a similar license) under the European Payment Services Directive or other international laws and regulations or may choose to obtain such a license even if not required or in order to support new products or services. Any developments or inconsistencies in the requirements, interpretations or applicability of the laws or regulations related to escrow, money transmission, or the handling or moving of money; material changes to the mandate, purview or regulatory approach at the DFPI; or increased scrutiny of our business may lead to additional compliance costs and administrative overhead.

The application of laws and regulations related to escrow, money transmission, and the handling or moving of money is subject to significant complexity and uncertainty, particularly as those laws relate to new and evolving business models. If we fail to comply with one or more escrow or money transmitter or other similar statutes or regulatory requirements related to the handling or moving of money in any U.S. state or other jurisdiction, we may be subject to the imposition of fines or restrictions on our business, our ability to offer some or all of our services in the relevant jurisdiction may be limited or suspended, and we may be subject to civil or criminal liability and our business, operating results, financial condition, reputation, and brand could be adversely affected.

Failure to comply with anti-corruption, anti-money laundering, and sanctions laws, and similar laws associated with our activities outside of the United States, could subject us to penalties and other adverse consequences.

We have voluntarily implemented an anti-money laundering compliance program designed to address the risk of our work marketplace being used to facilitate money laundering, terrorist financing, or other illegal activity. Our program may not be sufficient to prevent our work marketplace from being used to improperly move money or may be found not to satisfy the expectations of our partners or regulators. In addition, if we or a regulator determines that we are required to comply with the Bank Secrecy Act (BSA), 31 U.S.C. § 5311, or similar laws outside of the United States, we may be required to enhance or alter our anti-money laundering compliance program. We also have policies, procedures, and technology designed to allow us to comply with U.S. economic sanctions laws and prevent our work marketplace from being used to facilitate business in countries, regions, or with persons or entities included on designated lists promulgated by the U.S. Department of the Treasury's Office of Foreign Assets Control, which we refer to as OFAC, and equivalent foreign authorities. Our efforts to comply with OFAC regulations may not be effective, including in preventing users from using our services within the OFAC-sanctioned countries and regions, our partners or regulators may determine they are insufficient, or we may be required to comply with new sanctions laws and regulations, which may require us to further revise or expand our compliance program. For example, geopolitical events, such as recent tensions and possible military conflict between Ukraine and Russia or tensions between Russia and the United States or other countries, may result in new sanctions negatively affecting our users and business. Given the technical limitations in developing controls to prevent, among other things, the ability of users to publish on our work marketplace false or deliberately misleading information or to develop sanctions-evasion methods, it is possible that we may inadvertently and without our knowledge provide services to individuals or entities that have been designated by OFAC or are located in a country subject to an embargo by the United States that may not be in compliance with the economic sanctions regulations administered by OFAC.

Consequences for failing to comply with applicable anti-money laundering and sanctions laws and regulations, even unintentional violations, could include fines, criminal and civil lawsuits, forfeiture of significant assets, or other enforcement actions. We could also be required to make costly and burdensome changes to our business practices or compliance programs as a result of regulatory scrutiny, voluntary changes we may make to our business strategy, or the expansion of our operations internationally, including expanding our presence outside the United States. In addition, any perceived or actual breach of compliance by us, our users, or payment partners with respect to applicable laws, rules, and regulations could have a significant impact on our reputation and could cause us to lose existing users, prevent us from obtaining new users, cause other payment partners to terminate or not renew their agreements with us, negatively impact investor sentiment about our company, require us to expend significant funds to remedy problems caused by violations and to avert further violations, and expose us to legal risk and potential liability, all of which may adversely affect our business, operating results, and financial condition and may cause the price of our common stock to decline.

For example, our and other freelancing platforms and websites have been the subject of additional scrutiny and press attention relating to North Korea. A State Department advisory issued in July 2018 stated that "there are cases where North Korean companies exploit the anonymity provided by freelancing websites to sell their IT services to unwitting buyers." Additionally, press reports have stated that North Korean operatives have used various social media applications and freelancing websites, including ours. Accordingly, although we have controls in place to detect and prevent such OFAC violations and our systems show no access from persons in North Korea,

nor from any other OFAC-sanctioned jurisdictions, we may face higher levels of scrutiny by users, partners, and regulators due to the publishing of this advisory and those or similar press reports.

We are also subject to the U.S. Foreign Corrupt Practices Act, which we refer to as the FCPA, the U.S. domestic bribery statute contained in 18 U.S.C. § 201, the U.S. Travel Act, and the UK Bribery Act 2010, and may be subject to other anti-bribery laws in countries in which we conduct activities or have users. We face significant risks if we fail to comply with the FCPA and other anti-corruption laws. In many foreign countries, particularly in countries with developing economies, it may be a local custom that businesses engage in practices that are prohibited by the FCPA or other applicable laws and regulations. We may have direct or indirect interactions with officials and employees of government agencies or state-owned or affiliated entities, and we may be held liable for the corrupt or other illegal activities of these third-party intermediaries, our employees, representatives, contractors, partners, and agents, even if we prohibit or do not explicitly authorize such activities. We have implemented an anti-corruption compliance policy, but we cannot ensure that all of our employees, users, and agents, as well as those contractors to which we outsource certain of our business operations, will not take actions in violation of our policies or agreements and applicable law, for which we may be ultimately held responsible.

Any violation of the FCPA, other applicable anti-corruption laws, or other anti-bribery, anti-money laundering, or sanctions laws, could result in investigations and actions by federal or state attorneys general or foreign regulators, loss of export privileges, severe criminal or civil fines and penalties or other sanctions, forfeiture of significant assets, whistleblower complaints, and adverse media coverage, which could have an adverse effect on our reputation, business, operating results, and prospects. In addition, responding to any enforcement action may result in a significant diversion of management's attention and resources and significant defense costs and other professional fees. Further, even if we maintain proper controls and remain in compliance with applicable anti-corruption, anti-money laundering, and sanctions laws or regulations, should any of our competitors not implement sufficient controls and be found to have violated such laws or regulations, user perception of online freelance marketplaces in general may decrease and our business, brand, and reputation may be adversely affected.

We may be required to comply with governmental export control laws and regulations. Our failure to comply with these laws and regulations could have an adverse effect on our business and operating results.

We may be subject to export controls and other sanctions regulations that prohibit the shipment or provision of certain products and services to certain countries, governments, and persons, and new export controls and sanctions are promulgated from time to time. For example, geopolitical events, such as recent tensions and possible military conflict between Ukraine and Russia or tensions between Russia and the United States or other countries, may result in new sanctions or export controls affecting our users and business. While we take precautions to prevent aspects of our work marketplace from being exported in violation of these laws, including implementing internet protocol address blocking, we cannot guarantee that the precautions we take will prevent violations of export control and sanctions laws. If we are found to be in violation of U.S. sanctions or export control laws, it could result in substantial fines and penalties for us and for the persons working for us.

In addition, various countries regulate the import and export of certain encryption and other technology, including imposing import and export permitting and licensing requirements, and have enacted laws that could limit our ability to distribute aspects of our work marketplace or could limit our users' ability to access our work marketplace in those countries. Changes in our work marketplace, or future changes in export and import regulations may prevent our international users from utilizing our work marketplace or, in some cases, prevent the export or import of our work marketplace to certain countries, governments, or persons altogether. Any change in export or import regulations, economic sanctions or related legislation, or change in the countries, governments, persons, or technologies targeted by such regulations, could result in decreased use of our work marketplace by existing or potential users with international operations. Any decreased use of our work marketplace or limitation on our ability to export or sell our products would likely adversely affect our business, operating results, and financial results.

We are vulnerable to intellectual property infringement claims and challenges to our intellectual property rights brought against us by third parties.

We operate in a highly competitive industry, and there has been considerable activity in our industry to develop and enforce intellectual property rights. Intellectual property infringement claims against us or our users or third-party partners could result in monetary liability or a material disruption in the conduct of our business. We cannot be certain that aspects of our work marketplace, content, and brand names do not or will not infringe valid patents, trademarks, copyrights, or other intellectual property rights held by third parties, including our competitors. Also, we are now, have in the past been, and may in the future be, subject to legal proceedings and claims relating to the intellectual property of others, including our competitors, in the ordinary course of our business. The likelihood of

intellectual property-related litigation and disputes may increase due to the increased attention on our market segment due to the ongoing shift to remote work. Companies, including non-practicing entities and our competitors, have also sent us demand letters and instituted proceedings alleging that we infringe their intellectual property, seeking licensing fees, royalties and damages, and demanding that we cease certain commercial activity. We may receive such demand letters and be subject to similar proceedings in the future. Our competitors and other third parties have in the past challenged, and may in the future challenge, our registration or use of our trademarks, including “Upwork,” and other intellectual property rights, and such a challenge, even if not successful, could adversely affect our brand and business. Our competitors and others may now and in the future have significantly larger and more mature patent portfolios than we have or trademarks or other rights that pre-date and take precedence over our own. We may also be obligated to indemnify certain clients on our work marketplace or strategic partners or others in connection with such infringement claims, or to obtain licenses from third parties or modify our work marketplace or marketing strategy, and each such obligation would require us to expend additional resources and could divert the attention of management. Some of our infringement indemnification obligations related to intellectual property are contractually capped at a very high amount or not capped at all.

Any litigation or other disputes relating to allegations of intellectual property infringement could subject us to significant legal costs and liability for damages, invalidate our proprietary rights, or force us to do one or more of the following:

- cease conducting certain operations in some or all jurisdictions, or stop using technology that contains the allegedly infringing intellectual property;
- stop using the name “Upwork” or other trademarks in some or all jurisdictions;
- incur significant legal expenses;
- pay substantial damages or ongoing royalty payments to the party whose intellectual property rights we may be found to be infringing;
- pay substantial amounts in settlement to a party that asserts allegations of intellectual property infringement;
- prevent us from offering aspects of our work marketplace or make expensive and disruptive changes to our work marketplace or our methods of doing business; or
- attempt to obtain a license to the relevant intellectual property from third parties, which may not be available on reasonable terms or at all.

Even if intellectual property claims do not result in litigation or are resolved in our favor, these claims, and the time and resources necessary to resolve them, could divert resources and the attention of management and adversely affect our business and operating results. We expect that the occurrence of infringement claims is likely to grow as the market segment for independent talent and the clients that engage them grows. Accordingly, our exposure to damages resulting from infringement claims could increase and this could require us to expend additional financial and management resources.

Failure to protect our intellectual property could adversely affect our business.

Our success depends in large part on our proprietary technology and data. We rely on various intellectual property rights, including patents, copyrights, trademarks, and trade secrets, as well as confidentiality provisions and contractual arrangements, to protect our proprietary rights. In addition, to protect our brand, we also expend substantial resources to register and defend our trademarks and to prevent others from using the same or substantially similar marks. As the adoption of remote work becomes more prevalent and competitors enter our market segment, our exposure to unauthorized copying and use of our work marketplace, technology, intellectual property, and other proprietary information may increase. If we do not protect and enforce our intellectual property rights successfully or cost-effectively, our competitive position may suffer, which would adversely impact our operating results.

Our pending and future patent or trademark applications may not be approved, or competitors or others may challenge the validity, enforceability, or scope of our patents, the registrability or validity of our trademarks, or the trade secret status of our proprietary information. If we are unsuccessful in a dispute or litigation, we may be unable to stop competitors or others from using our marks or confusingly similar marks, and we may suffer dilution, loss of reputation, genericization, or other harm to our brand. Efforts to protect and enforce our intellectual property rights, even if successful, may be costly, negatively impact our brand, negatively affect worker productivity, and be time consuming and distracting to our management. There can be no assurance that additional patents or trademarks

will be issued or that any patents or trademarks that are issued will provide significant protection for our intellectual property. In addition, our patents, copyrights, trademarks, trade secrets, and other intellectual property rights may not provide us a significant competitive advantage. There is no assurance that the particular forms of intellectual property protection that we seek, including business decisions about when and where to file patents or register or renew trademarks and when and how to maintain and protect trade secrets, will be adequate to protect our business, or that common law protection will be sufficient for marks or in jurisdictions where we do not register the marks.

We may not pursue or file patent applications or apply for registration of copyrights or trademarks in the United States and foreign jurisdictions in which we have a presence with respect to our potentially patentable inventions, works of authorship, and marks and logos for a variety of reasons, including the cost of procuring such rights and the uncertainty involved in obtaining adequate protection from such applications and registrations. Moreover, recent amendments to, developing jurisprudence regarding, and possible changes to intellectual property laws and regulations, including U.S. and foreign patent law, may affect our ability to protect and enforce our intellectual property rights or defend against claims alleging we are infringing others' rights. If the intellectual property rights that we develop are not sufficient to protect our proprietary technology and data, our brand, our business, financial condition and operating results could be adversely affected.

In addition, the laws of some countries do not provide the same level of protection for our intellectual property as do the laws of the United States. As our global reputation grows and we expand our international activities, our exposure to unauthorized copying and use of our work marketplace and proprietary information will likely increase. Despite our precautions, our intellectual property is vulnerable to unauthorized access through employee or third-party error or actions, theft, cybersecurity incidents, and other security breaches and incidents. It is possible for third parties to infringe upon or misappropriate our intellectual property, to copy our work marketplace, and to use information that we regard as proprietary to create products and services that compete with ours. Effective intellectual property protection may not be available to us in every country in which our work marketplace is available. In addition, many countries limit the enforceability of patents or other intellectual property rights against certain third parties, including government agencies or government contractors. In these countries, patents or other intellectual property rights may provide limited or no benefit. Further, certain countries impose additional conditions on the transfer of intellectual property rights from individuals to companies, which may make it more difficult for us to secure and maintain intellectual property protection in those countries. We may need to expend additional resources to defend our intellectual property rights domestically or internationally, which could be costly, time consuming, and distracting to management and could impair our business or adversely affect our domestic or international expansion. If we cannot adequately protect and defend our intellectual property, we may not remain competitive, and our business, operating results, and financial condition may be adversely affected.

We rely on trade secrets as an important aspect of our intellectual property program and to cover much of our technology and know-how. We seek to protect our trade secrets and obtain rights in intellectual property developed by service providers through confidentiality and invention assignment or intellectual property ownership agreements with our employees, contractors, and other parties. In addition, for employees of third-party staffing providers or other contractors, the employer agrees to enter into these agreements with individual workers. We also take other measures to protect our information and data, including implementing acceptable use policies, limiting access to our information and data through technological means, and monitoring and limiting the dissemination of our information and data outside of company-owned information systems. We cannot ensure that these agreements, or all the terms thereof, will be enforceable or compliant with applicable law, or these agreements and other measures will be effective in controlling access to, use of, and distribution of our proprietary information or in effectively securing and maintaining exclusive ownership of intellectual property developed by our current or former employees and contractors. Most of our employees and all of the contractors with which we work are remote, which may make it more difficult to control use of confidential materials, increasing the risk that our source code or other confidential or trade secret information may be exposed. Further, these agreements with our employees, contractors, and other parties may not prevent other parties from independently developing technologies that are substantially equivalent or superior to our work marketplace. Any failure to protect intellectual property that we develop or our proprietary technology and data would adversely affect our business, operating results, and financial condition.

We spend significant time and resources securing and monitoring our intellectual property rights, and we may or may not be able to detect infringement by third parties. Our competitive position may be adversely impacted if our efforts to secure and protect our intellectual property are not successful, or we cannot detect infringement or enforce our intellectual property rights quickly or at all. In some circumstances, we may choose not to pursue enforcement because an infringer may have a dominant intellectual property position or for other business reasons. In addition, competitors might avoid infringement by designing around our intellectual property rights or by developing non-

infringing competing technologies. We have in the past been, and may in the future be, forced to rely on litigation, opposition, and cancellation actions, and other claims and enforcement actions to protect our intellectual property, including to dispute registration, use of marks that may be confusingly similar to our own marks, or use of technologies that infringe on our intellectual property. Similar claims and other litigation may be necessary in the future to enforce and protect our intellectual property rights. Litigation brought to protect and enforce our intellectual property rights could be costly, time-consuming, and distracting to management, and could result in the impairment or loss of portions of our intellectual property. Further, our efforts to enforce our intellectual property rights may be met with defenses; counterclaims attacking the scope, validity, and enforceability of our intellectual property rights; or counterclaims and countersuits asserting infringement by us of third-party intellectual property rights. Our failure to secure, protect, and enforce our intellectual property rights could adversely affect our brand and our business, and we could lose the right to use certain intellectual property or lose the opportunity to license our technology to others or to collect royalty payments based upon successful protection and assertion of our intellectual property against others.

Our work marketplace contains open source software components, and failure to comply with the terms of the underlying licenses could restrict our ability to market or operate our work marketplace.

Our work marketplace incorporates certain open source software. An open source license typically permits the use, modification, and distribution of software in source-code form subject to certain conditions. Some open source licenses contain conditions that any person who distributes a modification or derivative work of software that was subject to an open source license make the modified version subject to the same open source license. Distributing software that is subject to this kind of open source license can lead to a requirement that certain aspects of our work marketplace be distributed or made available in source code form. Although we do not believe that we have used open source software in a manner that might condition its use on our distribution of any portion of our work marketplace in source code form, the interpretation of open source licenses is complex and, despite our efforts, it is possible that we may be liable for copyright infringement, breach of contract, or other claims if our use of open source software is adjudged not to comply with the applicable open source licenses.

Moreover, we cannot ensure that our processes for controlling our use of open source software in our work marketplace will be effective. If we have not complied with the terms of an applicable open source software license, we may need to seek licenses from third parties to continue offering our work marketplace and the terms on which such licenses are available may not be economically feasible, to re-engineer our work marketplace to remove or replace the open source software, to discontinue offering our work marketplace if re-engineering could not be accomplished on a timely basis, to pay monetary damages, or to make available the source code for aspects of our proprietary technology, any of which could adversely affect our business, operating results, and financial condition.

In addition to risks related to license requirements, use of open source software can involve greater risks than those associated with use of third-party commercial software, as open source licensors generally do not provide warranties or assurances of title, performance, or non-infringement, nor do they control the origin of the software. There is typically no support available for open source software, and we cannot ensure that the authors of such open source software will implement or push updates to address security risks or will not abandon further development and maintenance. Many of the risks associated with the use of open source software, such as the lack of warranties or assurances of title or performance, cannot be eliminated, and could, if not properly addressed, negatively affect our business.

Litigation could have a material adverse impact on our operating results and financial condition.

From time to time, we are involved in litigation and make and receive demands and claims threatening possible litigation. The outcome of any litigation (including class actions and individual lawsuits or arbitration), regardless of its merits, is inherently uncertain. Regardless of the merits or ultimate outcome of any claims that have been or may be brought against us or that we may bring against others, pending or future litigation could result in a diversion of management's attention and resources and reputational harm, and we may be required to incur significant expenses defending against these claims or pursuing claims against third parties. If we are unable to prevail in litigation, we could incur substantial liabilities. We may also determine that the most cost-effective and efficient way to resolve a dispute is to enter into a settlement agreement, and terms of any such settlement agreements are increasingly limited by legislation. Where we can make a reasonable estimate of the liability relating to pending litigation and determine that it is probable, we record a related liability. As additional information becomes available, we assess the potential liability and revise estimates as appropriate. However, because of uncertainties relating to litigation, the amount of our estimates could be wrong as determining reserves for pending litigation is a complex, fact-intensive process that is subject to judgment calls. Any adverse determination related to litigation or adverse terms contained in a settlement agreement could require us to change our technology or our business practices in

costly ways, prevent us from offering certain offerings or services, require us to pay monetary damages, fines, or penalties, or require us to enter into royalty or licensing arrangements, and could adversely affect our operating results and cash flows, harm our reputation, or otherwise negatively impact our business.

Risks Related to Finance, Accounting, and Tax Matters

We have a history of net losses, anticipate increasing our operating expenses in the future, and may not achieve or sustain profitability.

We have a history of incurring net losses, and we expect to incur net losses for the foreseeable future. For the years ended December 31, 2021 and 2020, we incurred net losses of \$56.2 million and \$22.9 million, respectively. As of December 31, 2021, we had an accumulated deficit of \$251.1 million. We have made, and expect to continue to make, significant expenditures related to the development and expansion of our business, including investing in marketing programs and activities, such as brand promotion efforts, including those designed to reach new and existing clients seeking to engage remote talent in light of the ongoing shift toward remote work; expanding our sales force; enhancing our Upwork Enterprise and other premium offerings; expanding our services and features; expanding our international user base; localizing our offerings in select locations; broadening and deepening the categories on our work marketplace; promoting client engagement of the talent that typically optimize to deliver larger projects, including through our Upwork Payroll offering; enhancing our mobile product offering and our U.S.-to-U.S. domestic marketplace offering; and in connection with legal, accounting, and other administrative expenses related to operating as a public company. For example, in the fourth quarter of 2021, we increased our investment in brand marketing and to a lesser extent, our investment in sales by expanding our sales team. These and other efforts may prove more expensive than we currently anticipate, and we may not succeed in increasing our revenue sufficiently, or at all, to offset these higher expenses. While our revenue has grown in recent years, we may not be able to sustain the same level of growth in future periods, or at all. For example, we experienced a reduction in the growth of GSV and revenue in the second quarter of 2020 due to the effects of the COVID-19 pandemic and could experience a similar reduction in GSV and revenue growth once the impact of the COVID-19 pandemic subsides and users return more frequently to physical offices or are otherwise no longer subject to restrictions related to the COVID-19 pandemic. If our revenue declines or fails to grow at a rate faster than increases in our operating expenses, we will not be able to achieve and maintain profitability in future periods. As a result, we may continue to generate losses. We cannot ensure that we will achieve profitability in the future or that, if we do become profitable, we will be able to sustain profitability.

Our operating results may fluctuate from quarter to quarter, which makes our future results difficult to predict.

Our quarterly operating results have fluctuated in the past and may fluctuate in the future, particularly during the macroeconomic uncertainty caused by the COVID-19 pandemic. Additionally, we have a limited operating history under our current business strategy and pricing model, and we make pricing, product, and other changes from time to time, all of which make it difficult to forecast our future results. As a result, you should not rely upon our past quarterly operating results as indicators of future performance. You should take into account the risks, difficulties, and uncertainties frequently encountered by companies in highly competitive and rapidly evolving markets. Our operating results in any given quarter can be influenced by numerous factors, many of which are unpredictable or are outside of our control, including:

- uncertainty regarding demand for our work marketplace following the COVID-19 pandemic;
- ongoing uncertainty and impact on the global economy and spending by large, medium, and small companies relating to the COVID-19 pandemic, the shift to remote work, availability of qualified and in-demand talent, and uncertainty regarding the timing and nature of any future macroeconomic downturn, as discussed further below;
- our ability to generate significant revenue from our Upwork Basic, Plus, and Enterprise offerings, and our other premium offerings, including newly introduced offerings;
- due to our tiered pricing model for talent service fees, the mix in any period between talent that have billed larger amounts to clients on our work marketplace, where we charge a lower rate on billings, and talent that have billed clients less on our work marketplace, where we charge a higher rate on billings;
- our ability to maintain and grow our community of users, including our ability to acquire large enterprise and other clients with larger, longer-term independent talent needs and qualified and in-demand talent;

- our ability to attract and retain talent that provide the types and quality of services sought by clients on our work marketplace, particularly talent that provide services for which client demand exceeds supply on our work marketplace, or, in geographic regions in which clients are seeking to engage remote talent;
- the demand for and types and quality of skills and services that are offered on our work marketplace by talent;
- spending patterns of clients, including whether those clients that use our work marketplace frequently or for larger projects, reduce their spend, stop using our work marketplace, or change their method of payment to us, including in each case as a result of the implementation of macroeconomic or other external factors such as increased competition, pricing changes, or the introduction of new or modified offerings or services on our work marketplace, such as changes made in the pricing and packaging of Connects;
- our ability to respond to competitive developments, including new and emerging competitors, pricing changes, and the introduction of new products and services by our competitors;
- the success of our marketing and brand positioning efforts;
- the productivity and effectiveness of our sales force, including our ability to hire and adequately train qualified sales personnel;
- the length and complexity of our sales cycles;
- our ability to generate a profit and significant revenue from new offerings and services;
- our ability to introduce new offerings and services or enhance existing offerings and services without adversely affecting our existing revenue;
- the impact of consolidating or terminating existing offerings and services;
- fluctuations in gross margin and revenue as a result of increased use of our managed services offering due to our recognition of the entire GSV from our managed services offering as revenue, including the amounts paid to talent;
- our ability to attract, retain, and grow small- and medium-sized business clients;
- ongoing uncertainty regarding U.S. and global political conditions, including military conflicts in geographic locations where a portion of our remote workforce and a large number of our users reside;
- the number of users circumventing our work marketplace and our fees, which could increase during macroeconomic downturns;
- the disbursement methods chosen by talent and changes in the mix of disbursement methods offered;
- changes to our offerings and pricing model, including associated fees, and any resulting change in our ability to generate revenue, such as the pricing and packaging of Connects purchases, how we recognize revenue, or changes in user behavior in response to such changes;
- fluctuations in the prices that talent charge clients on our work marketplace, including as a result of a rise in inflation, which may impact the amount of revenue we recognize as a percentage of GSV due to our tiered pricing model for talent service fees;
- ransomware, data security, or privacy breaches or incidents and associated remediation costs and reputational harm;
- spending patterns and project bidding behavior of talent with respect to the offerings and services available to them on our work marketplace, such as membership fees and Connects purchases;
- revenue recognition fluctuations for arrangements subject to our tiered pricing model for talent service fees;
- litigation, regulatory investigations or enforcement actions, and adverse judgments, settlements, or other litigation-related costs;
- seasonal spending patterns by clients or work patterns by talent, seasonality in the labor market, exaggerated impact of typical seasonality in the labor market (for example, extended vacations during the summer and holiday seasons) as the COVID-19 pandemic subsides and the resulting relaxation or lifting of restrictions intended to prevent its spread as well as the number of business days, the number of Mondays (i.e., the day we have the contractual right to bill and recognize revenue for a substantial portion of our client fees each week) or the number of Sundays (i.e., the day we have the contractual right to bill and

recognize revenue for the majority of our talent service fees each week) in any given quarter, as well as local, national, or international holidays;

- any impairment charges on our operating lease asset and related leasehold improvements being recognized as a general and administrative expense due to a reduction to our office space and our potential sublease of such office space at a rental rate that is less than our rent expense for such office space, or any termination fees we may incur as a result of our termination of the operating lease for such office space. For example, as a result of our shift to a flexible work model for our workforce, in 2021 we subleased the entirety of our former headquarters in Santa Clara, California and a portion of our current headquarters in San Francisco, California, and, as a result, we incurred impairment charges of \$8.7 million;
- increases in, and timing of, operating expenses that we may incur to grow and expand our operations and to remain competitive, such as advertising and other marketing expenses, including those associated with evolving our brand positioning and as we seek to grow our international user base;
- the impact of sales, use, and other tax laws and regulations in jurisdictions in which we have users, including the requirement in certain jurisdictions to collect indirect taxes on user fees, to withhold and remit taxes related to income or earnings, or to pay any such taxes or resulting penalties as a result of our failure to comply with such requirements;
- changes in the mix of products and services that our enterprise clients or other users demand;
- potential costs to attract, onboard, retain, and motivate qualified personnel to perform services for us;
- changes in the law, application of the law (including as a result of changes in our services or offerings), or interpretation of law, or in the statutory, legislative, or regulatory environment, such as with respect to privacy, data security, wage and hour regulations, worker classification (including classification of independent contractors or similar workers and classification of employees as exempt or non-exempt), internet regulation, payments, payment processing, global trade, or tax obligations;
- fluctuations in the mix of payment provider costs and the revenue generated from payment providers;
- the episodic nature of freelance work generally or changes to demand for freelance work or interest in freelancing due to political or regulatory changes or uncertainty;
- costs related to the acquisition of businesses, personnel, technologies, or intellectual property, including potentially significant amortization costs and possible write-downs;
- the cost and time needed to develop and upgrade our work marketplace to incorporate new technologies or develop new or improved offerings;
- the impact of outages of, and other errors, defects or disruptions on, our work marketplace and associated reputational harm;
- the impact of public health pandemics, especially the COVID-19 pandemic, or other global or regional events or conditions;
- fluctuations in trade and client receivables due to the timing of cash receipts from clients and the number of transactions on our work marketplace;
- changes in the mix of countries in which our users are located, which impacts the amount of revenue we derive from currency exchange;
- the impact of reductions in our workforce or involuntary or voluntary separations, including claims against us from departing employees or others;
- changes to financial accounting standards and the interpretation of those standards that may affect the way we recognize and report our financial results, including changes in accounting rules governing recognition of revenue;
- general economic and political conditions and government regulations in the countries where we currently have significant numbers of users or where we currently operate or may expand in the future;
- fluctuations in transaction losses;
- fluctuations in currency exchange rates;
- operating lease expenses and other real estate expenses;

- lease termination fees or rent expense that is in excess of sublease income for a particular office space;
- losses and expenses from indemnification, dispute assistance, and similar contractual obligations we owe to clients; and
- non-cash accounting charges such as stock-based compensation expense, including those related to executive compensation arrangements, and depreciation and amortization.

The impact of one or more of the foregoing and other factors may cause our operating results and performance metrics to vary significantly. As such, we believe that quarter-to-quarter comparisons of our operating results and performance metrics may not be meaningful and should not be relied upon as an indication of future performance. For example, future period-over-period revenue growth rates, when compared against the quarterly and full year results of 2021, may fail to meet the expectations of investors or securities analysts given the accelerated revenue growth experienced during such periods due to the COVID-19 pandemic and the resulting increased adoption of remote work and reduced seasonality experienced during such periods. If we fail to meet or exceed the expectations of investors or securities analysts, the trading price of our common stock could fall substantially, and we could face costly lawsuits, including securities class action suits.

We track certain performance metrics with internal tools and do not independently verify such metrics. Certain of our performance metrics may not accurately reflect certain details of our business, are subject to inherent challenges in measurement, and real or perceived inaccuracies in such metrics may harm our reputation and negatively affect our business.

We track certain performance metrics, including active clients and GSV per active client, both of which we have just recently begun reporting, as well as GSV and marketplace take rate with internal tools, which are not independently verified by any third-party. Our internal tools have a number of limitations and our methodologies for tracking these metrics may change over time, which could result in unexpected changes to our metrics, including the metrics we report. If the internal tools we use to track these metrics undercount or overcount performance or contain algorithmic or other technical errors, the data we report may not be accurate. In addition, limitations or errors with respect to how we measure data (or the data that we measure) may affect our understanding of certain details of our business, which could affect our longer-term strategies. If our performance metrics are not accurate representations of our business, user base, or traffic levels; if we discover material inaccuracies in our metrics; or if the metrics we rely on to track our performance do not provide an accurate measurement of our business, our reputation may be harmed, we may be subject to legal or regulatory actions, and our operating and financial results could be adversely affected. In addition, from time to time we may change the performance metrics that we track, including metrics that we report, and any new performance metrics will also be subject to the foregoing limitations and risks. For example, in order to provide more relevant insight into our current business performance and align with how management views the business, beginning in the third quarter of 2021, we ceased reporting the performance metrics tracking the number of core clients and client spend retention, and instead began reporting last quarter the performance metrics tracking the number of active clients and GSV per active client.

If we fail to maintain an effective system of disclosure controls and internal control over financial reporting, our ability to produce timely and accurate financial statements or comply with applicable laws and regulations could be impaired.

A material weakness is a deficiency or combination of deficiencies in our internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our consolidated financial statements would not be prevented or detected on a timely basis. As previously disclosed, we identified a number of adjustments relating to previously issued consolidated financial statements that resulted in a revision to our consolidated financial statements as of and for the year ended December 31, 2016 and determined that this control deficiency constituted a material weakness in our internal control over financial reporting. We successfully remediated the material weakness during the year ended December 31, 2020.

If we experience additional material weaknesses or otherwise fail to maintain an effective system of internal controls in the future, we may not be able to accurately or timely report our financial condition or results of operations or prevent fraud, which may adversely affect investor confidence in us and, as a result, the value of our common stock. We cannot assure you that all of our existing material weaknesses have been identified, or that we will not in the future identify additional material weaknesses. Any failure to maintain effective disclosure controls and internal control over financial reporting could have an adverse effect on our business and results of operations and could adversely impact our business, operating results, and financial condition.

If we are unable to assert that our internal control over financial reporting is effective, or if our independent registered public accounting firm is unable to express an opinion on the effectiveness of our internal control, we

could lose investor confidence in the accuracy and completeness of our financial reports, which would cause the price of our common stock to decline, and we may be subject to investigation or sanctions by the SEC. Furthermore, investor perceptions of our company may suffer if, in the future, material weaknesses are found, and this could cause the price of our common stock to decline. In addition, if we are unable to continue to meet these requirements, we may not be able to remain listed on The Nasdaq Global Select Market.

The applicability of sales, use, and other tax laws or regulations on our business is uncertain. Adverse tax laws or regulations could be enacted or existing laws could be interpreted as applying or otherwise applied to us or users of our work marketplace, which could subject us or our users to additional tax liability and related interest and penalties, and adversely impact our business.

The application of federal, state, local, and international tax laws to services provided over the internet is evolving. In addition to income taxes, in the United States and various foreign jurisdictions, we may also be subject to non-income based taxes, such as payroll, sales, use, value-added, and goods and services taxes (including the "digital service tax"), and we may also be subject to increased obligations as a withholding agent. Many of the fundamental statutes and regulations that impose these taxes were established before the adoption and growth of the internet and ecommerce. In addition, governments are increasingly looking for ways to increase revenue, which has resulted in aggressive enforcement and new interpretations of existing tax laws, enacting new laws and promulgating new regulations (particularly those establishing an economic nexus as a basis to collect taxes from companies with no local presence), discussions about tax reform, and other legislative action to increase tax revenue, including through indirect taxes. New income, payroll, sales, use, value-added, goods and services, platform, intermediary, digital services, or other tax laws, statutes, rules, regulations, or ordinances are regularly enacted and could be enacted at any time (possibly with retroactive effect), could be applied solely or disproportionately to services provided over the internet, could target certain offerings and services offered on our work marketplace, or could otherwise affect our or our users' tax obligations or financial position and operating results. For example, a number of U.S. states and other jurisdictions have, within the past few years, enacted taxes on marketplace facilitators requiring online marketplaces to collect and remit taxes for first- and third-party sales on their websites. A successful assertion that we should be collecting taxes or remitting taxes directly to states or other jurisdictions beyond those that we already collect or remit could result in substantial tax liabilities for past transactions and additional administrative expenses, and could cause us to accrue additional estimates of taxes due, including interest and penalties. Moreover, many countries in the EU, as well as the United Kingdom, India, and a number of other countries and organizations, such as the Organisation for Economic Co-operation and Development, have recently proposed or recommended changes to existing tax laws or have enacted new laws that could impact our tax obligations. The impact and burden of these regulations and proposed regulations on our business and the businesses of our users is uncertain, but may have a negative impact on our business.

We currently collect and remit indirect taxes on our fees in a number of jurisdictions and may begin collecting and remitting indirect taxes in additional jurisdictions. Our collection of indirect taxes on our fees in these jurisdictions may increase costs to our users or cause our users to use other platforms or other alternatives that do not collect indirect taxes on their fees, which may in turn affect our financial results. In addition, tax authorities may raise questions about, challenge or disagree with our determination as to whether we are obligated to collect indirect taxes or our calculation, reporting, or collection of taxes and may require us to remit additional taxes and interest, and could impose associated penalties and fees. Should any new taxes become applicable or the application of existing taxes be deemed to apply to us or our users, or if the taxes we pay are found to be deficient, our business could be adversely impacted. We have in the past been, and may in the future be, audited by tax authorities with respect to non-income taxes, and we may have exposure to additional non-income tax liabilities, which could have an adverse effect on our operating results and financial condition. In addition, our future effective tax rates could be favorably or unfavorably affected by changes in tax rates, changes in the valuation of our deferred tax assets or liabilities, the effectiveness of our tax planning strategies, or changes in tax laws or their interpretation. Such changes could have an adverse impact on our operating results and financial condition.

Moreover, state, local, and foreign tax jurisdictions have differing rules and regulations governing reporting, sales, income, use, value-added, payroll, services, and other taxes, and these rules and regulations can be complex and are subject to varying interpretations and enforcement positions that may change over time. Existing tax laws, statutes, rules, regulations, or ordinances could be interpreted, changed, modified, or applied adversely to us or our users (possibly with retroactive effect), which could require us or our users to pay additional tax amounts on prior sales and going forward, as well as require us or our users to pay fines, penalties, and interest for past amounts. Although our terms of service require our users to pay all applicable sales and other taxes and to indemnify us for any requirement that we pay any withholding amount to the appropriate authorities, our work marketplace does not include functionality to easily enable users to charge any applicable taxes to one another, users may be unwilling or

unable to pay back taxes and associated interest or penalties and may fail to indemnify us, we may determine that it would not be commercially feasible or cost-effective to seek reimbursement, the indemnification obligation may be deemed unenforceable, or the functionality and indemnification provisions may cause users to seek out other platforms. If we are required to collect and pay back taxes and associated interest and penalties, or we are unsuccessful in collecting such amounts from our users, we could incur potentially substantial unplanned expenses, thereby adversely impacting our operating results and cash flows. In addition, tax laws and regulations may subject us to audit by tax regulators and require us to provide certain data and information, including user information, from our work marketplace to tax regulators in certain jurisdictions. If we are obligated to provide such information to tax regulators in any jurisdiction, users may choose to use other platforms or other alternatives, which may in turn adversely affect our operating results and financial condition.

Also, federal and state tax rules require collection of certain data and reporting transactions or payments above certain thresholds. Under certain circumstances, a failure to comply with such reporting obligations may cause us to become liable to withhold a percentage of the amounts paid to talent and remit such amounts to the taxing authorities. Due to the large number of users and transaction volume on our platform, process failures with respect to these data collection or reporting obligations could result in financial liability and other consequences to us if we were unable to remedy such failures in a timely manner.

Additionally, our corporate structure and intercompany arrangements are subject to the tax laws of various jurisdictions, and we could be obligated to pay additional taxes, which could adversely impact our operating results. The taxing authorities of the jurisdictions in which we operate may challenge our methodologies for pricing intercompany transactions pursuant to the intercompany arrangements or disagree with our determinations as to the income and expenses attributable to specific jurisdictions or specific affiliates. If such a challenge or disagreement were to occur, and our position was not sustained, we could be required to pay additional taxes, interest, and penalties.

We accrue liabilities related to tax obligations on our consolidated financial statements based on our best estimate of these liabilities, however, the ultimate amount of tax obligations we owe may differ from the amounts recorded in our financial statements and any such difference may adversely impact our operating results in future periods in which we change our estimates of our tax obligations or in which the ultimate tax outcome is determined.

If currency exchange rates fluctuate substantially in the future, the results of our operations, which are reported in U.S. dollars, could be adversely affected.

As we expand our international footprint and make more services available to our users internationally, we will become more exposed to the effects of fluctuations in currency exchange rates. Although we expect an increasing number of sales contracts to be denominated in currencies other than the U.S. dollar in the future, all of our sales contracts are and have historically been denominated in U.S. dollars. However, we offer clients the option to settle invoices denominated in U.S. dollars in the local currencies of several non-U.S. countries, and therefore, a portion of our revenue is subject to foreign currency risk. While we currently use derivative instruments to hedge certain exposures to fluctuations in foreign currency exchange rates, the use of such hedging activities may not offset any, or more than a portion, of the adverse financial effects of unfavorable movements in foreign exchange rates over the limited time the hedges are in place. Moreover, a strengthening of the U.S. dollar could increase the real cost of transacting on our work marketplace to clients located outside of the United States and could result in a loss of such clients, which could adversely affect our business, operating results, financial condition, and cash flows.

Our ability to use our net operating loss carryforwards and certain other tax attributes is limited.

As of December 31, 2021, we had net operating loss carryforwards for U.S. federal income tax purposes and California state income tax purposes of \$444.6 million and \$90.4 million, respectively, available to offset future taxable income. Our federal net operating loss carryforward amounts began to expire in 2019, including \$14.5 million that expired in 2019, \$15.1 million that expired in 2020, and \$21.6 million that expired in 2021, and will continue to expire in 2022 and future years. The California state net operating loss carryforward amounts will begin to expire in 2028. Realization of these net operating loss carryforwards depends on future income, and there is a risk that our existing carryforwards could expire unused and be unavailable to offset future income tax liabilities, which could materially and adversely affect our operating results.

In addition, under Sections 382 and 383 of the Internal Revenue Code of 1986, as amended, if a corporation undergoes an "ownership change," generally defined as a greater than 50% change (by value) in its equity ownership over a three-year period, the corporation's ability to use its pre-change net operating loss carryforwards and other pre-change tax attributes, such as research tax credits, to offset its post-change income may be limited. In addition, we may experience ownership changes in the future as a result of subsequent shifts in our stock

ownership. As a result, if we earn net taxable income, our ability to use our pre-change net operating loss carry-forwards and other tax attributes to offset U.S. federal taxable income may be subject to limitations, which could potentially result in increased future tax liability to us.

We may require additional capital to fund our business and support our growth, including in connection with any future acquisitions or strategic investments, and any inability to generate or obtain such capital may adversely affect our operating results and financial condition.

In order to support our growth and respond to business challenges, such as developing new features or enhancements to our work marketplace, acquiring new technologies, and improving our infrastructure, we have made significant financial investments in our business and we intend to continue to make such investments. In addition, we may, from time to time, seek to acquire or strategically invest in other complementary products, technologies, or businesses. As a result, we may need to engage in equity or debt financings to obtain the funds required for these investments, acquisitions, and other business endeavors. If we raise additional funds through equity or convertible debt issuances, our existing stockholders may suffer significant dilution and these securities could have rights, preferences, and privileges that are superior to those of holders of our common stock. If we obtain additional funds through debt financing, we may not be able to obtain such financing on terms favorable to us. Such terms may involve additional restrictive covenants making it difficult to engage in capital raising activities and pursue business opportunities, including potential acquisitions and strategic investments. If we are unable to obtain adequate financing or financing on terms satisfactory to us when we require it, our ability to continue to support our business growth and to respond to business challenges could be significantly impaired and our business may be adversely affected, requiring us to delay, reduce, or eliminate some or all of our operations.

Risks Related to Ownership of Our Common Stock

The stock price of our common stock has been and may continue to be volatile, and you could lose all or part of your investment.

The market price of our common stock has been and may continue to be volatile, particularly as a result of broader stock market fluctuations and in light of the macroeconomic uncertainty created by the COVID-19 pandemic, including as new variants of COVID-19 emerge. The market price of our common stock may fluctuate significantly in response to numerous factors, many of which are beyond our control and some of which will be impacted by the COVID-19 pandemic and the resulting restrictions intended to prevent its spread and macroeconomic uncertainty, including:

- actual or anticipated fluctuations in our revenue and other operating results;
- changes in the financial projections we may provide to the public or our failure to meet these projections;
- overall performance of the equity markets;
- the economy as a whole and market conditions in our industry;
- speculative trading practices by stockholders and other market participants;
- rumors and market speculation involving us or other companies in our industry and/or other industries;
- failure of securities analysts to initiate or maintain coverage of us, inaccurate or unfavorable research by analysts, changes in financial estimates by any securities analysts who follow our company, or our failure to meet these estimates or the expectations of investors;
- lawsuits threatened or filed against or by us or against our key personnel, litigation involving our industry, or lawsuits threatened or filed against our users relating to their use of our work marketplace;
- recruitment or departure of key personnel;
- increased interest and trading in our stock from retail investors;
- developments or disputes concerning our or other parties' products, services, or intellectual property rights;
- negative publicity related to the real or perceived quality or security of our work marketplace, as well as the failure to timely launch new offerings and services that gain market acceptance;
- acquisitions, strategic partnerships, joint ventures, or capital commitments;
- sales of shares of our common stock by us or our stockholders, including sales of large blocks of our stock relative to the size of our public float;

- new laws or regulations or new interpretations of existing laws or regulations applicable to our business, including those governing worker classification, taxation of workers, or withholding and remitting taxes on income or earnings;
- announcements by us or our competitors of new or terminated products or services, commercial relationships, or significant technical innovations;
- changes in accounting standards, policies, guidelines, interpretations, or principles;
- political changes or events, such as the ongoing U.S. and global political and international relations environment; and
- other events or factors, including those resulting from war, incidents of terrorism, or responses to these events.

In addition, the stock markets have experienced extreme price and volume fluctuations that have affected and continue to affect the market prices of equity securities of many companies. Stock prices of many companies, and technology companies in particular, have fluctuated in a manner unrelated or disproportionate to the operating performance of those companies and are attributable, in part, to outside factors such as the COVID-19 pandemic and its impact on the global economy. In the past, stockholders have instituted securities class action litigation following periods of market volatility. If we were to become involved in securities litigation, it could subject us to substantial costs, divert resources and the attention of management from our business, and adversely affect our business.

Sales of substantial amounts of our common stock in the public markets, particularly sales by our directors, executive officers, and significant stockholders, or the perception that these sales could occur, could cause the market price of our common stock to decline and may make it more difficult for you to sell your common stock at a time and price that you deem appropriate.

The market price of our common stock could decline as a result of sales of a large number of shares of our common stock in the market, particularly sales by our directors, executive officers, and significant stockholders. The perception that these sales might occur may also cause the market price of our common stock to decline. All shares of our common stock are freely tradable, generally without restrictions or further registration under the Securities Act of 1933, as amended, which we refer to as the Securities Act, subject to certain exceptions for shares held by our "affiliates" as defined in Rule 144 under the Securities Act. In addition, the shares issued upon exercise of outstanding stock options or settlement of outstanding restricted stock units, which we refer to as RSUs, will be available for immediate resale in the United States on the open market.

Moreover, certain holders of our common stock have rights, subject to certain conditions, to require us to file registration statements for the public resale of such shares or to include such shares in registration statements that we may file for us or other stockholders.

We may also issue our shares of common stock or securities convertible into shares of our common stock from time to time in connection with a financing, an acquisition, investments, or otherwise. We also expect to grant additional equity awards to employees, directors, and consultants under our 2018 Equity Incentive Plan and rights to purchase our common stock under our 2018 Employee Stock Purchase Plan. Any such issuances could result in substantial dilution to our existing stockholders and cause the market price of our common stock to decline.

We do not intend to pay dividends for the foreseeable future.

We have never declared or paid any cash dividends on our common stock and do not intend to pay any cash dividends in the foreseeable future. We anticipate that for the foreseeable future we will retain all of our future earnings for use in the development of our business and for general corporate purposes. Any determination to pay dividends in the future will be at the discretion of our board of directors. Accordingly, investors must rely on sales of their common stock after price appreciation, which may never occur, as the only way to realize any future gains on their investments.

Provisions in our charter documents and under Delaware law could make an acquisition of our company more difficult, limit attempts by our stockholders to replace or remove our current management, limit our

stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, or employees, and limit the market price of our common stock.

Provisions in our restated certificate of incorporation and amended and restated bylaws may have the effect of delaying or preventing a change of control or changes in our management. Our restated certificate of incorporation and amended and restated bylaws include provisions that:

- provide that our board of directors is classified into three classes of directors with staggered three-year terms;
- permit the board of directors to establish the number of directors and fill any vacancies and newly created directorships;
- require super-majority voting to amend some provisions in our restated certificate of incorporation and amended and restated bylaws;
- authorize the issuance of "blank check" preferred stock that our board of directors could use to implement a stockholder rights plan;
- provide that only the chairperson of our board of directors, our chief executive officer, president, lead independent director, or a majority of our board of directors will be authorized to call a special meeting of stockholders;
- prohibit stockholder action by written consent, which requires all stockholder actions to be taken at a meeting of our stockholders;
- provide that the board of directors is expressly authorized to make, alter, or repeal our amended and restated bylaws; and
- establish advance notice requirements for nominations for election to our board of directors or for proposing matters that can be acted upon by stockholders at annual stockholder meetings.

In addition, our restated certificate of incorporation provides that the Court of Chancery of the State of Delaware is the exclusive forum for any derivative action or proceeding brought on our behalf, any action asserting a breach of fiduciary duty, any action asserting a claim against us arising pursuant to the Delaware General Corporation Law, which we refer to as the DGCL, our restated certificate of incorporation, or our amended and restated bylaws, or any action asserting a claim against us that is governed by the internal affairs doctrine. Our amended and restated bylaws also provide that the federal district courts of the United States would be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act. Any person or entity purchasing or otherwise acquiring any interest in any of our securities shall be deemed to have notice of and consented to this provision.

These choice of forum provisions may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or any of our directors, officers, or other employees, which may discourage lawsuits against us and our directors, officers, and other employees.

Moreover, Section 203 of the DGCL may discourage, delay, or prevent a change of control of our company. Section 203 imposes certain restrictions on mergers, business combinations, and other transactions between us and holders of 15% or more of our common stock.

Risks Related to Our Convertible Senior Notes

Our indebtedness could limit the cash flow available for our operations and expose us to risks that could adversely affect our business, financial condition, and results of operations.

In August 2021, we issued convertible senior promissory notes, which we refer to as the Notes, which have an aggregate principal amount of \$575.0 million. The Notes are senior, unsecured obligations of the Company and will bear interest at a rate of 0.25% per year. The Notes will mature on August 15, 2026, unless earlier redeemed, repurchased, or converted in accordance with the terms of the Notes. As of December 31, 2021, we had \$575.0 million indebtedness. We may also incur additional indebtedness to meet future financing needs. Our indebtedness could have significant negative consequences for our stockholders and our business, results of operations and financial condition by, among other things:

- increasing our vulnerability to adverse economic and industry conditions;
- limiting our ability to obtain additional financing;

- requiring the dedication of a substantial portion of our cash flow from operations to service our indebtedness, which will reduce the amount of cash available for other purposes;
- limiting our flexibility to plan for, or react to, changes in our business;
- diluting the interests of our existing stockholders as a result of issuing shares of our common stock upon conversion of the Notes; and
- placing us at a possible competitive disadvantage with competitors that are less leveraged than us or have better access to capital.

Our business may not generate sufficient funds, and we may otherwise be unable to maintain sufficient cash reserves, to pay amounts due under our indebtedness and our cash needs may increase in the future.

The capped call transactions may affect the value of our common stock.

In connection with the Notes, we entered into capped call transactions, which we refer to as Capped Calls, with various financial institutions, which we refer to as the option counterparties. The Capped Calls are expected generally to reduce the potential dilution to our common stock upon any conversion of the Notes and/or offset any potential cash payments we are required to make in excess of the principal amount upon conversion of any Notes, with such reduction and/or offset subject to a cap.

In addition, the option counterparties and/or their respective affiliates may modify their hedge positions by entering into or unwinding various derivatives with respect to our common stock and/or purchasing or selling our common stock in secondary market transactions (and are likely to do so following any conversion of Notes, any repurchase of the Notes by us on any fundamental change repurchase date, any redemption date, or any other date on which the Notes are retired by us). This activity could also cause or avoid an increase or a decrease in the market price of our common stock.

The potential effect, if any, of these transactions and activities on the market price of our common stock will depend in part on market conditions and cannot be ascertained at this time. Any of these activities could adversely affect the value of our common stock.

General Risks

Adverse or changing economic conditions may negatively impact our business.

Our business depends on the overall demand for labor and on the economic health of current and prospective clients that use our work marketplace. Any significant weakening of the economy in the United States or Europe or of the global economy, including the worsening of the ongoing labor shortage or the continued rise in inflation, more limited availability of credit, a reduction in business confidence and activity, decreased government spending, economic and political uncertainty, financial turmoil affecting the banking system or financial markets, trade wars and higher tariffs, a more limited market for independent professional service providers or information technology services, shifts away from remote work, and other adverse economic or market conditions may adversely impact our business and operating results. Global economic and political events or uncertainty, including the current geopolitical uncertainty in, and potential military conflict between, Russia and Ukraine, may cause some of our current or potential users to curtail their use of our work marketplace, and may ultimately result in new regulatory and cost challenges to our operations, including sanctions imposed in response to such events. In addition, in January 2020, the United Kingdom formally withdrew from the EU, which we refer to as Brexit. The economic relations between the United Kingdom and the EU are now on more restricted terms than before and there remains uncertainty around the post-Brexit regulatory environment. This uncertainty could cause significant economic disruption and further depress consumer confidence and the economy of the United Kingdom. Our results of operations derived from revenue earned from clients and talent in the United Kingdom may be adversely affected by such uncertainty. Brexit could also contribute to instability in global financial and foreign exchange markets, including volatility in the value of the Euro and the British Pound, which are currencies in which we transact business. In addition, small- and medium-sized businesses were disproportionately impacted by the macroeconomic downturn caused by the COVID-19 pandemic, some of which businesses reduced their spend on our work marketplace. These adverse conditions resulted, and may again result, in reductions in revenue, increased operating expenses, longer sales cycles, and increased competition. There is also risk that when overall global economic conditions are positive, our business could be negatively impacted by a decreased demand for talent as businesses utilize more full-time employees relative to their use of independent contractors. We cannot predict the timing, strength, or duration of any economic slowdown, or any subsequent recovery generally. If the conditions in the general economy deteriorate, as a result of the COVID-19 pandemic or otherwise, our business, financial condition, and operating results could be adversely affected.

We may be adversely affected by natural disasters and other catastrophic events, including the ongoing COVID-19 pandemic, by man-made problems such as terrorism, or failures of technology, that could disrupt our business operations and our business continuity and disaster recovery plans may not adequately protect us from a serious disaster.

A significant natural disaster, such as an earthquake, blizzard, hurricane, fire, flood, or other catastrophic event, such as a power loss or telecommunications failure, or other technological failure resulting in the permanent destruction of data, could have a material adverse impact on our business, financial condition, and operating results. In the event of natural disaster or other catastrophic event, we may be unable to continue our operations and may endure system interruptions, reputational harm, delays in development of our work marketplace, lengthy interruptions in service, security breaches, and loss of critical data, all of which could have an adverse effect on our operating results. Certain of our departments are situated primarily in one geographical area and any natural disaster or catastrophic event to such area or the surrounding communities where our employees live may impact productivity or revenue generating activities by employees based in that office. Our corporate headquarters and many key personnel are located in the San Francisco Bay Area, a region known for seismic activity and catastrophic fires. In addition, natural disasters and other catastrophic events could affect our partners' ability to perform services for users on a timely basis. In the event any such partners' information technology systems or service abilities are hindered by any of the events discussed above, our ability to provide our work marketplace and other services may be impaired, resulting in missing financial targets for a particular quarter or year, or longer period. Further, if a natural disaster or other catastrophic event occurs in a region from which we derive a significant portion of our revenue, users in that region may delay or forego use of our work marketplace or other services, which may adversely impact our operating results. In addition, acts of terrorism, civil disorder, public health pandemics (including the COVID-19 pandemic), or military conflict (including the potential conflict between Russia and Ukraine) could cause disruptions in our business or the business and activity of our partners, users, or the economy as a whole. These disruptions may be more severe than in the case of natural disasters. All of the aforementioned risks may be exacerbated if our or our partners' business continuity and disaster recovery plans prove to be inadequate. To the extent that any of the above results in delays or reductions in platform availability, activities or other services, our business, financial condition, and operating results would be adversely affected.

Item 1B. Unresolved Staff Comments.

Not applicable.

Item 2. Properties.

Our corporate headquarters are located in San Francisco, California, where we occupy facilities totaling approximately 18,500 square feet under a lease agreement that expires in August 2024.

We also lease office space in Chicago, Illinois and rent working space in Oslo, Norway.

Given our shift to a flexible work model for our workforce, in 2021, we subleased the entirety of our former headquarters in Santa Clara, California and subleased a portion of our current headquarters in San Francisco, California. We may determine to either close or sublease certain of our other offices. On the other hand, we may procure additional space as we expand geographically or as we add employees. See "Note 5—Balance Sheet Components" of the notes to our consolidated financial statements included elsewhere in this Annual Report for additional information on our leased properties.

We believe that our facilities are adequate to meet our needs for the immediate future, and that, should it be needed, suitable additional space will be available to accommodate any such expansion of our operations.

Item 3. Legal Proceedings.

We are not a party to any material pending legal proceedings. From time to time, we may be subject to legal proceedings and claims arising in the ordinary course of business.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.

Market Information for Common Stock

Our common stock has been traded on The Nasdaq Global Select Market under the symbol "UPWK" since October 3, 2018. Prior to that time, there was no public market for our common stock.

Holders of Record

As of January 31, 2022, there were approximately 780 holders of record of our common stock. Because many of our shares of common stock are held by brokers and other institutions on behalf of stockholders, we are unable to estimate the total number of beneficial owners of our common stock represented by these record holders.

Dividend Policy

We have never declared or paid cash dividends on our capital stock. We currently intend to retain all available funds and any future earnings for use in the operation of our business and do not anticipate paying any dividends on our capital stock in the foreseeable future. Any future determination to declare dividends will be made at the discretion of our board of directors, subject to applicable laws, and will depend on our financial condition, operating results, capital requirements, general business conditions, and other factors that our board of directors may deem relevant.

Securities Authorized for Issuance Under Equity Compensation Plans

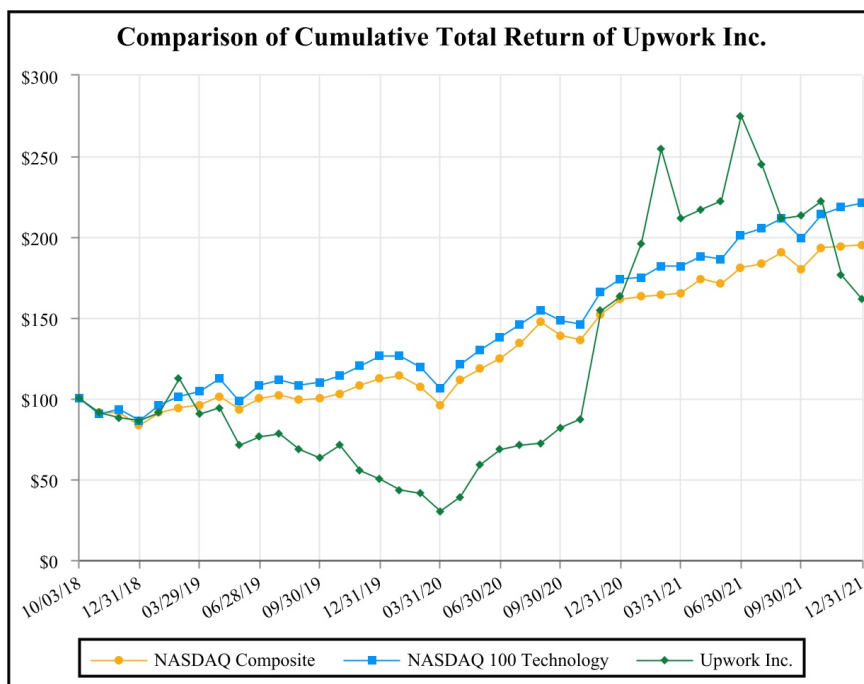
The information required by this item will be included in our Proxy Statement for the 2022 Annual Meeting of Stockholders to be filed with the SEC within 120 days of the fiscal year ended December 31, 2021, and is incorporated herein by reference.

Stock Performance Graph

This performance graph shall not be deemed "soliciting material" or to be "filed" with the SEC for purposes of Section 18 of the Exchange Act, or otherwise subject to the liabilities under that Section, and shall not be deemed to be incorporated by reference into any filing of Upwork Inc. under the Securities Act or the Exchange Act.

The following graph shows a comparison from October 3, 2018 (the date our common stock commenced trading on The Nasdaq Global Select Market), through December 31, 2021, of the cumulative total returns for our common stock, the NASDAQ Composite Index and the NASDAQ 100 Technology Index, respectively. The graph assumes \$100 was invested at the market close on October 3, 2018 in the common stock of Upwork Inc. Such returns are

based on historical results and are not intended to suggest future performance. The NASDAQ Composite Index and the NASDAQ 100 Technology Index assume reinvestment of any dividends.



Recent Sales of Unregistered Securities

In November 2021, we issued 49,989 shares of our common stock upon the cashless exercise of a warrant to purchase up to an aggregate of 500,000 shares of common stock. The warrant was exercised as to all 50,000 then-vested and exercisable shares. In lieu of a cash payment, the holder of the warrant surrendered 11 shares of common stock to cover the exercise price in accordance with the terms of the warrant. The offer, sale, and issuance of these securities was deemed to be exempt from registration under the Securities Act in reliance on Section 4(a)(2) of the Securities Act. The recipient of securities acquired the securities for investment only and not with a view to or for sale in connection with any distribution thereof and appropriate legends were affixed to the securities issued in this transaction. The recipient of the securities was an accredited or sophisticated person and had adequate access, through business or other relationships, to information about us. See “Note 8—Preferred and Common Stock” of the notes to our consolidated financial statements included elsewhere in this Annual Report for additional information on the common stock warrant.

Use of Proceeds

None.

Issuer Purchases of Equity Securities

None.

Item 6. [Reserved]

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

You should read the following discussion and analysis of our financial condition and results of operations together with the sections titled "Business" and "Risk Factors" and the consolidated financial statements and related notes included elsewhere in this Annual Report. This discussion contains forward-looking statements based upon current expectations that involve risks and uncertainties, as well as assumptions that may never materialize or that may be proven incorrect. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of various factors, including those discussed in the sections titled "Special Note Regarding Forward-Looking Statements" and "Risk Factors" and in other parts of this Annual Report.

Overview

Business

Independent talent is an increasingly sought-after, critical, and expanding segment of the global workforce. We operate the world's largest work marketplace that connects businesses with independent talent, as measured by GSV. GSV represents the total amount that clients spend on both our marketplace offerings and our managed services offering as well as additional fees we charge to talent for other services. Talent includes independent professionals and agencies of varying sizes. The clients on our work marketplace range in size from small businesses to Fortune 100 companies. With users in over 180 countries, our work marketplace enabled \$3.5 billion of GSV for the year ended December 31, 2021. For purposes of determining countries where we enable GSV, we include both the countries in which the clients that paid for the applicable services are located, as well as the countries in which talent that provided those services are located.

As a global work marketplace that connects talent and clients regardless of their location, our GSV originates from around the world. Of the \$3.5 billion of GSV enabled on our work marketplace in 2021, approximately 25% was generated from U.S. talent, which is our largest talent geography in each of 2021, 2020, and 2019, as measured by GSV, while talent in India and the Philippines remained our next largest talent geographies in all three years. Of the \$2.5 billion and \$2.1 billion of GSV enabled on our work marketplace in 2020 and 2019, respectively, approximately 25% and 27%, respectively, was generated from talent in the United States.

Approximately 66% of our GSV in 2021 was generated from U.S. clients, compared to approximately 67% and 68% of GSV in 2020 and 2019, respectively, with clients in no other country representing more than 10% of our GSV in any year.

We generate revenue from both talent and clients, with a majority of our revenue generated from service fees charged to talent. We also generate revenue from fees charged to both clients and talent for other services, such as for transacting payments through our work marketplace, premium offerings, purchases of Connects, foreign currency exchange when clients choose to pay in currencies other than the U.S. dollar, and our Upwork Payroll offering. In addition, we provide a managed services offering where we engage talent to complete projects, directly invoice the client, and assume responsibility for work performed.

Financial Highlights for 2021

In 2021, we continued to evolve our offerings, brand positioning, and marketing to better address large enterprise and other clients and prospects with larger, longer-term independent talent needs. We prioritized our advertising, marketing, and offering development efforts to reach those new and existing clients seeking to engage remote talent in light of the shift toward remote work, due in part to the COVID-19 pandemic. As a result of these efforts, our work marketplace enabled \$3.5 billion of GSV in 2021, representing a year-over-year increase of 41%, and we experienced increases in user acquisition and the number of active clients, which fueled marketplace revenue. For the year ended December 31, 2021, marketplace revenue increased by \$124.2 million, or 37%, compared to 2020. Additionally, we increased our investment in brand marketing and to a lesser extent, our investment in sales by expanding our sales team. We generated a net loss of \$56.2 million in 2021 compared to a net loss of \$22.9 million in 2020. Our adjusted EBITDA was \$19.1 million in 2021, an increase of 36% from 2020. Adjusted EBITDA is a financial measure that is not prepared in accordance with, and is not an alternative to, financial measures prepared in accordance with U.S. GAAP. See "—Non-GAAP Financial Measures" below for the definition of adjusted EBITDA and information regarding our use of adjusted EBITDA and a reconciliation of net loss to adjusted EBITDA.

The ongoing COVID-19 pandemic and the resulting restrictions intended to prevent its spread have continued to accelerate the secular shift toward remote and independent work, and, with our unique, remote-based business model, the pandemic has not impacted our clients' access to highly-skilled talent to complete short- and long-term projects on our work marketplace. While we have not incurred significant disruptions to our business thus far from

the ongoing COVID-19 pandemic, at this time, we are unable to fully assess the aggregate impact it will have on our business due to various uncertainties, which include, but are not limited to, the duration of the pandemic, its effect on the economy, its impact to the businesses of our clients, actions that may be taken by governmental authorities related to the pandemic, and other factors identified in Part I, Item 1A "Risk Factors" in this Annual Report, including the risk factor titled "Our business experienced, and may again experience, an adverse impact from the ongoing COVID-19 pandemic, including as new variants of COVID-19 emerge. In addition, the positive impacts on our business resulting from the shift to remote work during the pandemic may not continue as the pandemic subsides and the restrictions intended to prevent its spread are relaxed or lifted."

Key Financial and Operational Metrics

We monitor the following key financial and operational metrics to evaluate our business, measure our performance, identify trends affecting our business, formulate business plans, and make strategic decisions.

Our key metrics were as follows as of or for the periods presented:

(In thousands, except percentages)	As of or for the Year Ended December 31,					
	2021	% Change	2020	% Change	2019	% Change
GSV	\$ 3,546,774	41 %	\$ 2,523,649	21 %	\$ 2,087,055	19 %
Marketplace revenue	\$ 462,340	37 %	\$ 338,152	26 %	\$ 268,284	20 %
Marketplace take rate	13.2 %	(0.4)%	13.6 %	0.5 %	13.1 %	0.1 %
Net loss	\$ (56,240)	(146)%	\$ (22,867)	(37)%	\$ (16,659)	16 %
Adjusted EBITDA ⁽¹⁾	\$ 19,127	36 %	\$ 14,022	89 %	\$ 7,438	95 %
Active clients	771	22 %	633	17 %	540	9 %
GSV per active client	\$ 4,599	15 %	\$ 3,989	3 %	\$ 3,864	9 %

⁽¹⁾ Adjusted EBITDA is not prepared in accordance with, and is not an alternative to, financial measures prepared in accordance with U.S. GAAP. See "—Non-GAAP Financial Measures" below for the definition of adjusted EBITDA and for information regarding our use of adjusted EBITDA and a reconciliation of adjusted EBITDA to net loss, the most directly comparable financial measure prepared under U.S. GAAP.

As discussed below with respect to each key metric, we believe these key financial and operational metrics are useful to evaluate period-over-period comparisons of our business and in understanding our operating results, and management uses these metrics to track our performance. For a discussion of limitations in the measurement of our key financial and operational metrics, see "Risk Factors—We track certain performance metrics with internal tools and do not independently verify such metrics. Certain of our performance metrics may not accurately reflect certain details of our business, are subject to inherent challenges in measurement, and real or perceived inaccuracies in such metrics may harm our reputation and negatively affect our business."

Gross Services Volume (GSV)

GSV includes both client spend and additional fees charged for other services. Client spend, which we define as the total amount that clients spend on both our marketplace offerings and our managed services offering, is the primary component of GSV. GSV also includes fees charged to talent, such as for transacting payments through our work marketplace, user memberships, and purchases of Connects, and foreign currency exchange.

GSV is an important metric because it represents the amount of business transacted through our work marketplace. Our marketplace revenue is primarily comprised of the service fees paid by talent as a percentage of the total amount talent charges clients for services accessed through our work marketplace. Therefore, marketplace revenue is correlated to GSV, and we believe that our marketplace revenue will grow as GSV grows, although they could grow at different rates. For a discussion of how we measure and evaluate the correlation between marketplace revenue and GSV, see "—Marketplace Take Rate" below. Growth in the number of active clients and GSV per active client are the primary drivers of GSV, and we expect the trends discussed in "—Active Clients and GSV per Active Client," below, to affect the rate at which GSV grows. We derive a substantial portion of our GSV and revenue from small- and medium-sized businesses. In 2021, we continued to evolve our offerings, brand positioning, and marketing to better address large enterprise and other clients and prospects with larger, longer-term independent talent needs. Additionally, we have prioritized our advertising, marketing, and product development efforts to reach those new and existing clients seeking to engage remote talent in light of the acceleration in the shift toward remote work, due in part to the pandemic. As a result, of these efforts, our work marketplace enabled \$3.5 billion of GSV in 2021, representing a year-over-year increase of 41%. We expect our GSV to fluctuate between periods due to a

number of factors, including the current COVID-19 pandemic and its impact on our clients' businesses; the number of Sundays (i.e., the day we have the contractual right to bill and recognize revenue for the majority of our talent service fees each week) or the number of Mondays (i.e., the day we have the contractual right to bill and recognize revenue for a substantial portion of our client fees each week) in any given quarter; and the volume of projects that are posted by clients on our work marketplace, the characteristics of those projects, such as size, duration, and pricing, and the availability and qualifications of talent to complete those projects.

Marketplace Revenue

Marketplace revenue, which represents the majority of our revenue, consists primarily of revenue derived from our Upwork Basic, Plus, and Enterprise offerings. We generate marketplace revenue from both talent and clients. Revenue from our Upwork Basic and Plus offerings are primarily comprised of talent service fees, and to a lesser extent, payment processing and administration fees charged to clients. Revenue from our Upwork Enterprise offering, which we refer to as Enterprise Revenue, includes all client fees, subscriptions, and talent service fees. We also generate marketplace revenue from fees for premium offerings associated with our Upwork Basic, Plus, and Enterprise offerings, including talent memberships, purchases of Connects, and other services, such as foreign currency exchange when clients choose to pay in currencies other than the U.S. dollar, and our Upwork Payroll offering.

Marketplace revenue is the primary driver of our business, and we believe it provides comparability to other online marketplaces. The growth rate of marketplace revenue fluctuates in relation to the growth rate of GSV. Therefore, marketplace revenue is correlated to GSV, and we believe that our marketplace revenue will grow as GSV grows, although they could grow at different rates. In 2021, we prioritized our advertising, marketing, and product development efforts to reach those new and existing clients seeking to engage remote talent in light of the acceleration in the shift toward remote work, due in part to the COVID-19 pandemic. As a result, we experienced increases in user acquisition and growth in the number of active clients, which drove an increase in talent billings, and, in turn, drove an increase in marketplace revenue. We expect our marketplace revenue growth rates to continue to vary from period to period due to a variety of other factors such as the impact of the COVID-19 pandemic and any resulting macroeconomic impact on the businesses and spending behavior of our current and prospective clients; the number of Sundays (i.e., the day we have the contractual right to bill and recognize revenue for the majority of our talent service fees each week) or the number of Mondays (i.e., the day we have the contractual right to bill and recognize revenue for a substantial portion of our client fees each week) in any given quarter; the lapping of significant launches of new products, pricing changes, and other monetization efforts; the number of active clients and their spend on our work marketplace; and the ability of the recent and continued investment in our enterprise sales team to accelerate the acquisition of, and achieve increased spend from, Upwork Enterprise clients, and the timing of those results.

Marketplace Take Rate

Marketplace take rate measures the correlation between marketplace revenue and marketplace GSV and is calculated by dividing marketplace revenue by marketplace GSV. Marketplace take rate is an important metric because it is the key indicator of how well we monetize spend on our work marketplace from our Upwork Basic, Plus, Enterprise, and other premium offerings. More higher value relationships and higher spend per client results in a larger percentage of business activity on our work marketplace being priced at the lower rates of our tiered service fee structure. During the year ended December 31, 2021, our marketplace take rate decreased as clients matured into higher value clients and continue to increase their spend with particular talent, which resulted in a higher mix of talent at the lower rates of our tiered service fee structure. Additionally, in the fourth quarter of 2020, to drive GSV, we increased the number of free Connects issued to talent, which drove revenue and GSV but also resulted in talent purchasing fewer Connects and memberships during the year ended December 31, 2021, which resulted in slightly lower revenue as a percentage of GSV during the year ended December 31, 2021. On the other hand, we intend to continue our efforts to better address large enterprise and other clients and prospects with larger, longer-term independent talent needs through our Upwork Enterprise and other premium offerings. These offerings have take rates that are higher than the rest of our business, which partially offsets the trend of lower rates as relationships and clients mature into higher value clients with increased spend. Additionally, we are working on a number of initiatives that could also have a positive impact on marketplace take rate, and we will continue to introduce new or modify existing offerings or other services and features. As a result of these efforts, over the course of 2022, we expect marketplace take rate to increase slightly. However, we also generally expect our marketplace take rate to vary from period to period as marketplace revenue and GSV vary as a result of a variety of factors, such as the number of Sundays (i.e., the day we have the contractual right to bill and recognize revenue for the majority of our talent service fees each week) or the number of Mondays (i.e., the day we have the contractual right to bill and recognize revenue for a substantial portion of our client fees each week) in any given quarter; pricing

changes; the ability of the recent and continued investment in our enterprise sales team to accelerate the acquisition of, and achieve increased spend from, our Upwork Enterprise clients and the timing of those results; and ongoing efforts to improve processes on our work marketplace, including project proposals and purchases of Connects, among others.

Active Clients and GSV per Active Client

We define an active client as a client that has had spend activity on our work marketplace during the 12 months preceding the date of measurement. GSV per active client is calculated by dividing total GSV during the four quarters ended on the date of measurement by the number of active clients on the date of measurement. We believe that the number of active clients and GSV per active client are indicators of the growth and overall health of our business. The number of active clients is a primary driver of GSV and, in turn, marketplace revenue.

In 2021, we continued to execute on our strategic initiatives, including investing in research and development to build new product features and prioritizing our advertising and marketing efforts to drive brand awareness and accelerate the acquisition of new and existing clients seeking to engage independent talent. As a result, the number of active clients increased 22% as of December 31, 2021 compared to December 31, 2020. Additionally, we have seen continued acceleration in the growth of GSV per active client as an increasing number of clients continue to mature into higher-value clients and expand their spend on our work marketplace. As a result, our GSV per active client increased 15% as of December 31, 2021 compared to December 31, 2020.

We continue to see businesses of all sizes use our work marketplace in a recurring way for larger, more complex projects, and we expect the number of active clients and GSV per active client to continue to increase over time but could vary quarter by quarter depending, in part, on the extent to which the COVID-19 pandemic and any resulting macroeconomic downturn impacts our business, the businesses of our clients, and other factors identified in the section titled "Risk Factors" included elsewhere in this Annual Report, including the risk factor titled "Our business experienced, and may again experience, an adverse impact from the ongoing COVID-19 pandemic, including as new variants of COVID-19 emerge. In addition, the positive impacts on our business resulting from the shift to remote work during the pandemic may not continue as the pandemic subsides and the restrictions intended to prevent its spread are relaxed or lifted."

While continued use of our work marketplace by talent is a factor that impacts our ability to attract and retain clients, we currently have a significant surplus of talent in relation to the number of clients actively engaging talent for most categories of services on our work marketplace. As a result of this surplus, we primarily focus our efforts on retaining client spend and acquiring new clients, as opposed to acquiring new talent and retaining existing talent. Moreover, we generate revenue when clients engage and pay talent, and therefore, our key metrics and operating results are directly impacted by client spend. Additionally, the number of talent retained between periods is merely one of many factors that may impact client spend in a particular period and is not a primary driver of our key metrics and operating results.

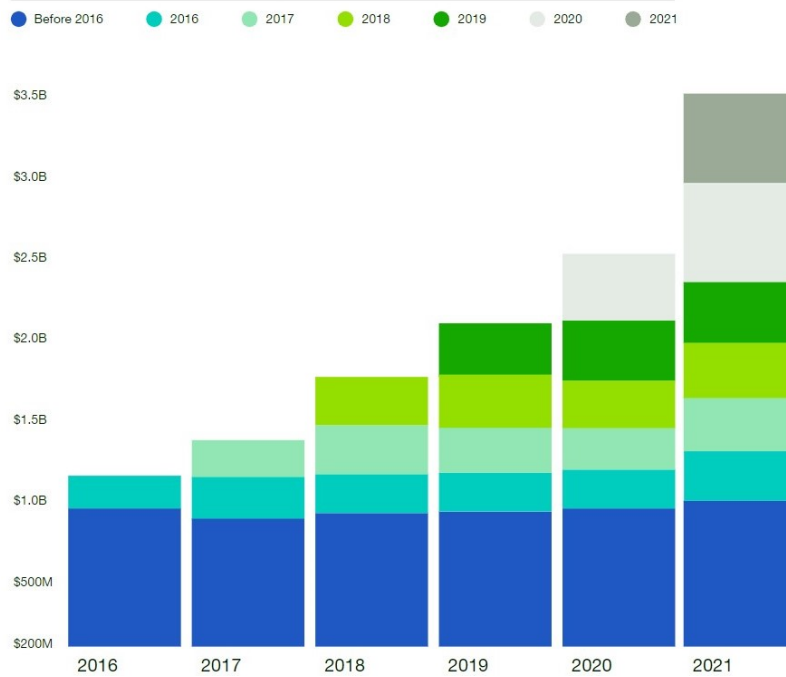
Cohort Analysis

Client Spend by Annual Client Cohort

Our growth has been driven, in significant part, by retaining client spend from existing clients as we grow our client base. As illustrated in the chart below, we have been able to retain client spend over long periods of time with clients in historical cohorts continuing to spend meaningfully on our work marketplace. A client belongs to an annual cohort based on the date of first spend activity with talent. For example, the 2016 cohort includes all clients that had their first spend activity with talent between January 1, 2016 and December 31, 2016. Since 2016, each new annual cohort's first-year spend has exceeded the first-year spend of the prior year's annual cohort. For example, for the

years ended December 31, 2021, 2020, and 2019, client spend from new client cohorts was \$537.9 million, \$407.9 million, and \$298.8 million, respectively.

Client Spend by Annual Client Cohort



Components of Our Results of Operations

Revenue

Marketplace Revenue. Marketplace revenue is generated from our Upwork Basic, Plus, Enterprise, and other premium offerings. Under these marketplace offerings, we generate revenue from both talent and clients. Marketplace revenue, which represents the majority of our total revenue, is primarily comprised of the service fees paid by talent as a percentage of the total amount that talent charge clients for services accessed through our work marketplace and, to a lesser extent, payment processing and administration fees paid by clients.

Our Upwork Basic and Plus offerings provide clients with access to talent with verified work history and client feedback on our work marketplace, the ability to instantly match with the right talent, and built-in collaboration features. For talent working with clients that are on our Upwork Basic and Plus offerings, we have a tiered talent service fee schedule based on cumulative lifetime billings by talent to each client. Talent typically pays us 20% of the first \$500, 10% for the next \$9,500, and then 5% for any amount over \$10,000 they bill to each client through our work marketplace. We recognize revenue on Sundays of each week for the majority of our tiered talent service fees as that is the day we have the contractual right to bill talent for the service fees. To a lesser extent, we also generate revenue from talent through membership fees, purchases of Connects, and withdrawal and other fees.

In addition, we generate marketplace revenue from our Upwork Basic and Plus offerings by charging clients a payment processing and administration fee. Clients using our Upwork Basic offering pay a fee equal to 3% of their client spend. We recognize revenue on Mondays of each week for a substantial portion of our client fees as that is the day we have the contractual right to bill the fees. Clients using our Upwork Plus offering pay a flat fee of approximately \$50 per month for additional features and pay a fee equal to 3% of their client spend unless they pay via ACH (in which case, provided all eligibility criteria are met, the fee is waived). To a lesser extent, we also

generate revenue from clients through foreign currency exchange fees when clients choose to pay in currencies other than the U.S. Dollar.

Our Upwork Enterprise offering, which is designed for larger clients with at least 250 employees, includes access to additional product features, premium access to top talent, professional services, custom reporting, and flexible payment terms. For our Upwork Enterprise offering, we charge clients a monthly or annual subscription fee and a service fee calculated as a percentage of the client's spend on talent services, in addition to the service fees paid by talent. Additionally, Upwork Enterprise clients can also subscribe to a compliance offering that includes worker classification services for an additional fee and may also choose to use our work marketplace to engage talent that were not originally sourced through our work marketplace for a lower fee percentage.

One of our premium offerings, Upwork Payroll, is available to clients when talent are classified as employees for engagements on our work marketplace. The client enters into an Upwork Payroll agreement with us, and we separately contract with unrelated third-party staffing providers that provide employment services to such clients.

In 2021, we prioritized our advertising, marketing, and product development efforts to reach those new and existing clients seeking to engage remote talent. We intend to continue to focus on these efforts to attract new users, including large enterprise and other clients and prospects with larger, longer-term independent talent needs, as well as talent that meet the criteria sought by such clients.

Managed Services Revenue. Through our managed services offering, we are responsible for providing services and engaging talent directly or as employees of third-party staffing providers to perform services for clients on our behalf. The talent providing services in connection with our managed services include independent talent and agencies of varying sizes. Under U.S. GAAP, we are deemed to be the principal in these managed services arrangements and therefore recognize the entire GSV of managed services projects as managed services revenue, as compared to recognizing only the percentage of the client spend that we receive, as we do with our marketplace offerings. Managed services revenue grew at a slower rate than our marketplace revenue in 2021 compared to 2020, as we primarily focused on increasing client usage of and spend on our marketplace offerings during the year ended December 31, 2021.

Cost of Revenue and Gross Profit

Cost of Revenue. Cost of revenue consists primarily of the cost of payment processing fees, amounts paid to talent to deliver services for clients under our managed services offering, personnel-related costs for our services and support personnel, third-party hosting fees for our use of AWS, and the amortization expense associated with capitalized internal-use software and platform development costs. We define personnel-related costs as salaries, bonuses, benefits, travel and entertainment, and stock-based compensation costs for employees and the costs related to other service providers we engage.

We expect cost of revenue to increase in absolute dollars in future periods due to higher payment processing fees, personnel-related costs, and third-party hosting fees in order to support growth on our work marketplace. Amounts paid to talent in connection with our managed services offering are tied to the volume of managed services used by our clients. The level and timing of all of these items could fluctuate and affect our cost of revenue in the future.

Gross Profit and Gross Margin. Our gross profit and gross margin may fluctuate from period to period. Such fluctuations may be influenced by our revenue, the mix of payment methods that our clients choose, the timing and amount of investments to expand hosting capacity, our continued investments in our services and support teams, the timing and amounts paid to talent in connection with our managed services offering, and the amortization expense associated with capitalized internal-use software and platform development costs. In addition, gross margin will be impacted by fluctuations in our revenue mix between marketplace revenue and managed services revenue. For example, our managed services revenue grew at a slower rate than our marketplace revenue in 2021 compared to 2020, which caused gross margin to increase. We expect gross profit to increase in absolute dollars in future periods, although gross margin, expressed as a percentage of total revenue, may vary from period to period.

Operating Expenses

Research and Development. Research and development expense primarily consists of personnel-related costs. Research and development costs are expensed as incurred, except to the extent that such costs are associated with internal-use software and platform development that qualifies for capitalization. In 2021, we made significant investments to build new product features, launch new offerings, and increase the size of our research and development workforce, and we believe continued investments in research and development are important to attain our strategic objectives. As a result, we expect research and development expense to increase in absolute dollars in future periods, although this expense, expressed as a percentage of total revenue, may vary from period to period.

Sales and Marketing. Sales and marketing expense consists primarily of expenses related to advertising and marketing activities, as well as personnel-related costs, including sales commissions, which we expense as they are incurred. In 2021, we continued evolving our offerings, products, brand positioning, and marketing to better address large enterprise and other clients and prospects with larger, longer-term independent talent needs. We made significant investments in marketing to acquire new clients and drive brand awareness, and we expect to increase these investments in 2022. Additionally, in the fourth quarter of 2021, we began increasing our investment in sales by expanding our sales team, and we expect this expansion to continue through 2022 as we increase our efforts to acquire clients through our Upwork Enterprise offering. As a result, we expect this expense to increase in absolute dollars in future periods, although this expense expressed as a percentage of total revenue may vary from period to period.

General and Administrative. General and administrative expense consists primarily of personnel-related costs for our executive, finance, legal, human resources, and operations functions; outside consulting, legal, and accounting services; impairment expense; and insurance.

To achieve our strategic objectives, we expect to continue to invest in corporate infrastructure and to incur additional general and administrative expenses, including increased stock-based compensation expense related to executive compensation arrangements, legal and accounting costs, insurance premiums, and compliance costs. Additionally, in 2020 we shifted to a flexible work model for our workforce and are evaluating our current need for office space. As a result, we may determine to either close or sublease certain of our offices, either of which could result in further impairment charges being recognized in general and administrative expense. As a result, we expect general and administrative expense to increase in absolute dollars in future periods, although this expense, expressed as a percentage of total revenue, may vary from period to period.

Provision for Transaction Losses. Provision for transaction losses consists primarily of losses resulting from fraud and bad debt expense associated with our trade and client receivables balance and transaction losses associated with chargebacks. Provisions for these items represent estimates of losses based on our actual historical incurred losses and other factors. We expect provisions for transaction losses to increase proportionally as GSV grows. As a result, we expect provision for transaction losses to increase in absolute dollars in future periods, although expressed as a percentage of total revenue, this expense may vary from period to period.

Interest Expense

Interest expense consists of interest on our outstanding borrowings.

Other (Income) Expense, Net

Other (income) expense, net consists primarily of gains and losses from foreign currency exchange transactions and interest income that we earn from our deposits in money market funds and investments in marketable securities.

Income Tax Benefit (Provision)

We account for income taxes in accordance with the asset and liability method. Under the asset and liability method, deferred assets and liabilities are recognized based upon anticipated future tax consequences attributable to differences between financial statement carrying amounts of assets and liabilities and their respective tax bases. The provision for income taxes is comprised of the current tax liability and the change in deferred tax assets and liabilities. We establish a valuation allowance to the extent that it is more likely than not that deferred tax assets will not be recoverable against future taxable income.

Deferred tax assets and liabilities are measured using the enacted tax rates that will be in effect for the years in which those tax assets are expected to be realized or settled. We regularly assess the likelihood that deferred tax assets will be realized from recoverable income taxes or recovered from future taxable income based on the realization criteria set forth in the relevant authoritative guidance. To the extent that we believe any amounts are less likely than not to be realized, we record a valuation allowance to reduce our deferred tax assets. The realization of deferred tax assets is dependent upon future earnings, if any, the timing and amount of which are uncertain. Accordingly, the net deferred tax assets have been fully offset by a valuation allowance. If we subsequently realize deferred tax assets that were previously determined to be unrealizable, the respective valuation allowance would be reversed, resulting in an adjustment to earnings in the period such determination is made.

In addition, the calculation of tax liabilities involves dealing with uncertainties in the application of complex tax regulations. We recognize potential liabilities based on an estimate of whether, and the extent to which, additional taxes will be due. We account for uncertain tax positions in accordance with the relevant guidance, which prescribes a recognition threshold and measurement approach for uncertain tax positions taken or expected to be taken in our

income tax return, and also provides guidance on recognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. The guidance utilizes a two-step approach for evaluation of uncertain tax positions. The first step is to determine if the weight of available evidence indicates a tax position is more likely than not to be sustained upon audit. The second step is to measure the tax benefit as the largest amount that is more likely than not to be realized on ultimate settlement. A liability is reported for unrecognized tax benefits resulting from uncertain tax positions taken or expected to be taken in a tax return. Any interest and penalties related to unrecognized tax benefits are recorded as income tax expense.

Results of Operations

The following table sets forth our consolidated results of operations for the years ended December 31, 2021, 2020, and 2019:

<i>(In thousands)</i>	2021	2020	2019
Revenue:			
Marketplace	\$ 462,340	\$ 338,152	\$ 268,284
Managed services	40,457	35,476	32,278
Total revenue	502,797	373,628	300,562
Cost of revenue ⁽¹⁾	135,508	104,267	88,144
Gross profit	367,289	269,361	212,418
Operating expenses			
Research and development ⁽¹⁾	119,083	83,471	64,027
Sales and marketing ⁽¹⁾	183,294	133,225	95,891
General and administrative ⁽¹⁾	113,081	71,518	67,327
Provision for transaction losses	6,048	3,555	3,905
Total operating expenses	421,506	291,769	231,150
Loss from operations	(54,217)	(22,408)	(18,732)
Interest expense	2,180	778	1,306
Other income, net	(279)	(469)	(3,407)
Loss before income taxes	(56,118)	(22,717)	(16,631)
Income tax provision	(122)	(150)	(28)
Net loss	\$ (56,240)	\$ (22,867)	\$ (16,659)

⁽¹⁾ Includes stock-based compensation expense as follows:

Cost of revenue	\$ 794	\$ 779	\$ 456
Research and development	16,232	9,783	6,471
Sales and marketing	5,923	4,440	2,609
General and administrative	30,643	10,506	9,262
Total	\$ 53,592	\$ 25,508	\$ 18,798

A discussion regarding our financial condition and results of operations for the year ended December 31, 2020 compared to the year ended December 31, 2019 is included in Part II, Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations—Results of Operation," included in our Annual Report on Form 10-K for the year ended December 31, 2020, filed with the SEC on February 24, 2021.

Comparison of the Years Ended December 31, 2021 and 2020

Revenue

	Year Ended December 31,		Change	
	2021	2020	\$	%
<i>(In thousands, except percentages)</i>				
Marketplace	\$ 462,340	\$ 338,152	124,188	37 %
Percentage of total revenue	92 %	91 %		
Managed services	\$ 40,457	\$ 35,476	4,981	14 %
Percentage of total revenue	8 %	9 %		
Total revenue	\$ 502,797	\$ 373,628	\$ 129,169	35 %

For the year ended December 31, 2021, total revenue was \$502.8 million, representing an increase of \$129.2 million, or 35%, as compared to 2020.

In 2021, we continued to execute on our strategic initiatives, including investing in research and development to build new product features, prioritizing our advertising efforts to reach new and existing clients seeking to engage independent talent, and investing in marketing to accelerate the acquisition of new clients and drive brand awareness. As a result, the number of active clients increased 22% as of December 31, 2021 compared to December 31, 2020, and our GSV per active client increased 15% as of December 31, 2021 compared to December 31, 2020. The growth in active clients and GSV per active client contributed to the growth of GSV and marketplace revenue. For the year ended December 31, 2021, GSV increased 41%, as compared to the same period in 2020. Marketplace revenue was driven by client spend, which for the year ended December 31, 2021, drove an increase in talent service fees of 36%, as compared to the same period in 2020, and an increase in client payment processing and administrative fees of 42%, as compared to the same period in 2020.

Additionally, in 2021, we continued our efforts to better address large enterprise and other clients and prospects with larger, longer-term independent talent needs through our Upwork Enterprise and other premium offerings. As a result, Enterprise Revenue increased 73% to \$34.9 million, which fueled marketplace revenue for the year ended December 31, 2021. Marketplace revenue represented 92% of total revenue and increased by \$124.2 million, or 37%, compared to 2020. Marketplace revenue grew more slowly than GSV from our marketplace offerings in 2021, and for the year ended December 31, 2021, our marketplace take rate was 13.2%, as compared to 13.6% for the same period in 2020. This trend was the result of a few factors. In particular, clients are maturing into higher value clients and continue to increase their spend with particular talent, which resulted in a higher mix of talent at the lower rates of our tiered service fee structure. Additionally, in the fourth quarter of 2020, to drive GSV, we increased the number of free Connects issued to talent, which drove revenue and GSV but also resulted in talent purchasing fewer Connects and memberships during the year ended December 31, 2021, which resulted in slightly lower revenue as a percentage of GSV during the year ended December 31, 2021.

Managed services revenue represented 8% and 9% of total revenue for the years ended December 31, 2021 and 2020, respectively. For the year ended December 31, 2021, managed services revenue increased by \$5.0 million, or 14%, compared to 2020.

Cost of Revenue and Gross Margin

	Year Ended December 31,		Change	
	2021	2020	\$	%
<i>(In thousands, except percentages)</i>				
Cost of revenue	\$ 135,508	\$ 104,267	\$ 31,241	30 %
Components of cost of revenue:				
Costs of talent services to deliver managed services	31,871	28,703	3,168	11 %
Other components of cost of revenue	103,637	75,564	28,073	37 %
Total gross margin	73 %	72 %		

For the year ended December 31, 2021, cost of revenue increased by \$31.2 million, or 30%, compared to 2020. For the year ended December 31, 2021, cost of revenue increased primarily as a result of increases in payment processing fees of \$23.1 million, as compared to the same period in 2020, primarily due to increased client spend, as well as increases in cost of talent services to deliver managed services resulting from increases in managed services revenue for the year ended December 31, 2021, as compared to the same period in 2020. Additionally, for

the year ended December 31, 2021, third-party hosting costs increased \$2.4 million, as compared to the same period in 2020, driven by our use of two AWS data centers during the period in connection with our migration from the AWS facility in California to the AWS facility in Oregon.

Research and Development

	Year Ended December 31,		Change	
	2021	2020	\$	%
(In thousands, except percentages)				
Research and development	\$ 119,083	\$ 83,471	\$ 35,612	43 %
Percentage of total revenue	24 %	22 %		

For the year ended December 31, 2021, research and development expense increased by \$35.6 million, or 43%, as compared to 2020. The increase was primarily due to our ongoing and significant investments to build new product features, launch new offerings, and enhance the user experience. Specifically, investments we made to increase the size of our research and development workforce resulted in increases in personnel-related costs of \$26.0 million, as compared to the same period in 2020, as well as increases in software licenses of \$2.6 million, outside consultants of \$1.5 million, and depreciation and other costs of \$3.1 million. Additionally, due to the timing of new projects, we capitalized less internal-use software and platform development costs than we did in 2020, when we capitalized an incremental \$2.4 million.

Sales and Marketing

	Year Ended December 31,		Change	
	2021	2020	\$	%
(In thousands, except percentages)				
Sales and marketing	\$ 183,294	\$ 133,225	\$ 50,069	38 %
Percentage of total revenue	36 %	36 %		

For the year ended December 31, 2021, sales and marketing expense increased by \$50.1 million, or 38%, as compared to 2020. This increase was primarily due to increases in marketing and brand awareness campaigns of \$37.1 million, as compared to the same period in 2020, as well as increases in personnel-related costs of \$11.1 million.

General and Administrative

	Year Ended December 31,		Change	
	2021	2020	\$	%
(In thousands, except percentages)				
General and administrative	\$ 113,081	\$ 71,518	\$ 41,563	58 %
Percentage of total revenue	22 %	19 %		

For the year ended December 31, 2021, general and administrative expense increased by \$41.6 million, or 58%, as compared to 2020. This increase was primarily due to increases in personnel-related costs of \$29.5 million, as compared to the same period in 2020, primarily because of increased stock-based compensation expense related to executive compensation arrangements. In 2021, we incurred impairment charges of \$8.7 million related to certain of our operating lease assets and associated property and equipment.

Provision for Transaction Losses

	Year Ended December 31,		Change	
	2021	2020	\$	%
(In thousands, except percentages)				
Provision for transaction losses	\$ 6,048	\$ 3,555	\$ 2,493	70 %
Percentage of total revenue	1 %	1 %		

For the year ended December 31, 2021, provision for transaction losses increased by \$2.5 million, or 70%, as compared to 2020, and represented approximately 1% of revenue for each period.

Interest Expense and Other Income, Net

	Year Ended December 31,		Change	
	2021	2020	\$	%
(In thousands, except percentages)				
Interest expense	\$ 2,180	\$ 778	\$ 1,402	180 %
Other income, net	(279)	(469)	190	(41)%

For the year ended December 31, 2021, interest expense increased as a result of the issuance of the Notes. See "Note 7—Debt" of the notes to our consolidated financial statements included elsewhere in this Annual Report for additional information.

Non-GAAP Financial Measures

In addition to our results determined in accordance with U.S. GAAP, adjusted EBITDA is a non-GAAP measure that we believe is useful in evaluating our operating performance.

We define adjusted EBITDA as net income (loss) adjusted for stock-based compensation expense; depreciation and amortization; interest expense; other (income) expense, net; income tax (benefit) provision; and, if applicable, other non-cash transactions. Adjusted EBITDA is not prepared in accordance with, and is not an alternative to, financial measures prepared in accordance with U.S. GAAP.

The following table presents a reconciliation of net loss, the most directly comparable financial measure prepared in accordance with U.S. GAAP, to adjusted EBITDA for each of the periods indicated:

	Year Ended December 31,		
	2021	2020	2019
(In thousands)			
Net loss	\$ (56,240)	\$ (22,867)	\$ (16,659)
Add back (deduct):			
Stock-based compensation expense	53,592	25,508	18,798
Depreciation and amortization	10,261	10,172	6,661
Interest expense	2,180	778	1,306
Other income, net	(279)	(469)	(3,407)
Income tax provision	122	150	28
Tides Foundation common stock warrant expense	750	750	711
Impairment expense	8,741	—	—
Adjusted EBITDA	\$ 19,127	\$ 14,022	\$ 7,438

We use adjusted EBITDA as a measure of operational efficiency. We believe that this non-GAAP financial measure is useful to investors for period-to-period comparisons of our business and in understanding and evaluating our operating results for the following reasons:

- adjusted EBITDA is widely used by investors and securities analysts to measure a company's operating performance without regard to items such as stock-based compensation expense; depreciation and amortization; interest expense; other (income) expense, net; income tax (benefit) provision; and, if applicable, other non-cash transactions that can vary substantially from company to company depending upon their financing, capital structures, and the method by which assets were acquired;
- our management uses adjusted EBITDA in conjunction with financial measures prepared in accordance with U.S. GAAP for planning purposes, including the preparation of our annual operating budget, as a measure of our core operating results and the effectiveness of our business strategy, and in evaluating our financial performance; and
- adjusted EBITDA provides consistency and comparability with our past financial performance, facilitates period-to-period comparisons of our core operating results, and also facilitates comparisons with other peer companies, many of which use similar non-GAAP financial measures to supplement their U.S. GAAP results.

Our use of adjusted EBITDA has limitations as an analytical tool, and you should not consider it in isolation or as a substitute for analysis of our financial results as reported under U.S. GAAP. Some of these limitations are as follows:

- adjusted EBITDA excludes stock-based compensation expense, which has recently been, and will continue to be for the foreseeable future, a significant recurring expense for our business and an important part of our compensation strategy;
- although depreciation and amortization expense are non-cash charges, the assets being depreciated and amortized may have to be replaced in the future, and adjusted EBITDA does not reflect cash capital expenditure requirements for such replacements or for new capital expenditure requirements;
- adjusted EBITDA does not reflect: (a) changes in, or cash requirements for, our working capital needs; (b) interest expense, or the cash requirements necessary to service interest or principal payments on our debt, which reduces cash available to us; or (c) tax payments that may represent a reduction in cash available to us; and
- other companies, including companies in our industry, may calculate adjusted EBITDA or similarly titled measures differently, which reduces the usefulness of this measure for comparative purposes.

Because of these and other limitations, you should consider adjusted EBITDA along with other financial performance measures, including net loss and our other financial results prepared in accordance with U.S. GAAP.

Liquidity and Capital Resources

Our principal sources of liquidity are our cash and cash equivalents and marketable securities, including the net proceeds from the sale of the Notes. Our cash equivalents and marketable securities primarily consist of money market funds, commercial paper, treasury bills, corporate bonds, U.S. government securities, asset-backed securities, and Yankee bonds. As of December 31, 2021 and 2020, we had \$187.2 million and \$94.1 million in cash and cash equivalents, respectively. As of December 31, 2021 and 2020, we had \$497.6 million and \$75.6 million in marketable securities, respectively.

We believe our existing cash and cash equivalents, marketable securities, and cash flow from operations (in periods in which we generate cash flow from operations) will be sufficient for at least the next 12 months to meet our requirements and plans for cash, including meeting our working capital requirements and capital expenditure requirements. In the long term, our ability to support our working capital and capital expenditure requirements will depend on many factors, including our revenue growth rate, the timing and the amount of cash received from users, the expansion of sales and marketing activities, the timing and extent of spending to support research and development efforts, the cost to host our work marketplace, the introduction of new offerings and services, the continuing market adoption of our work marketplace, any acquisitions or investments that we make in complementary businesses, products, and technologies and our ability to obtain equity or debt financing. Our principal commitments consist of obligations under our non-cancellable operating leases for office space and the Notes. As of December 31, 2021, our future lease commitments were \$26.5 million (excluding adjustments for discount to present value), including \$6.6 million for 2022. For additional information about our Notes, see the section titled "—Convertible Senior Notes Due 2026."

We anticipate satisfying our short-term cash requirements with our existing cash and cash equivalents and may satisfy our long-term cash requirements with cash and cash equivalents on hand or with proceeds from a future equity or debt financing. To the extent existing cash and cash equivalents, cash from marketable securities, and cash from operations (in periods in which we generate cash flow from operations) are insufficient to fund our working capital and capital expenditure requirements, or should we require additional cash for other purposes, we will need to raise additional funds. In the future, we may attempt to raise additional capital through the sale of equity securities or through equity-linked or debt financing arrangements, as we did in the third quarter of 2021. If we raise additional funds by issuing equity or equity-linked securities, the ownership and economic interests of our existing stockholders will be diluted. If we raise additional financing by incurring additional indebtedness, we will be subject to additional debt service requirements and could also be subject to additional restrictive covenants, such as limitations on our ability to incur additional debt, and other operating restrictions that could adversely impact our ability to conduct our business. Any future indebtedness we incur may result in terms that could also be unfavorable to our equity investors. There can be no assurances that we will be able to raise additional capital on terms we deem acceptable, or at all. The inability to raise additional capital as and when required would have an adverse effect, which could be material, on our results of operations, financial condition, and ability to achieve our business objectives.

We also believe that our principal sources of liquidity will allow us to manage the impact of the COVID-19 pandemic on our business operations for the foreseeable future, which could include reductions in revenue and delays in payments from users, as further described above in "Risk Factors—Our business experienced, and may again experience, an adverse impact from the ongoing COVID-19 pandemic, including as new variants of COVID-19 emerge. In addition, the positive impacts on our business resulting from the shift to remote work during the pandemic may not continue as the pandemic subsides and the restrictions intended to prevent its spread are relaxed or lifted." The challenges posed by the COVID-19 pandemic on our business are expected to continue to evolve. Consequently, we will continue to evaluate our financial position in light of future developments, particularly those relating to the pandemic.

We did not have during the periods presented, and we do not currently have, any commitments or obligations, including contingent obligations, arising from arrangements with unconsolidated entities or persons that have or are reasonably likely to have a material current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, cash requirements or capital resources.

Escrow Funding Requirements

As a licensed internet escrow agent, we offer escrow services to users of our work marketplace and, as such, we are required to hold our users' escrowed cash and in-transit cash in trust as an asset and record a corresponding liability for escrow funds held on behalf of talent and clients on our balance sheet. We expect the balances of our funds held in escrow, including funds held in transit, and the related liability to grow as GSV grows and may vary from period to period. Escrow regulations require us to fund the trust with our operating cash to cover shortages due to the timing of cash receipts from clients for completed hourly billings. Talent submit their billings for hourly contracts to their clients on a weekly basis every Sunday, and the aggregate amount of such billings is added to escrow funds payable to talent on the same day. As of each Sunday of each week, we have not yet collected funds for hourly billings from clients as these funds are in transit. Therefore, in order to satisfy escrow funding requirements, every Sunday we fund the shortage of cash in trust with our own operating cash and typically collect this cash shortage from clients within the next several days. As a result, we expect our total cash and cash flows from operating activities to be impacted when a quarter ends on a Sunday. As of December 31, 2021 and 2020, funds held in escrow, including funds in transit, were \$160.8 million and \$135.0 million, respectively.

Term and Revolving Loans

In August 2021, in connection with our issuance of the Notes, we paid off outstanding amounts under, and terminated, our loan and security agreement with Silicon Valley Bank, as amended, which we refer to as the Loan Agreement.

Convertible Senior Notes Due 2026

In August 2021, we issued the Notes pursuant to an Indenture between us and Wells Fargo Bank, National Association, as trustee, which we refer to as the Indenture.

The Notes are senior, unsecured obligations and will bear interest at a rate of 0.25% per year, payable semiannually in arrears, and are due August 15, 2026. Upon conversion, we have an option to pay or deliver, as the case may be, cash, shares of our common stock, or a combination of cash and shares of our common stock. The net proceeds from the issuance of the Notes were approximately \$560.1 million, after deducting debt issuance costs. We used approximately \$49.4 million of the net proceeds from the Notes offering to pay the cost of the Capped Calls. We intend to use the remainder of the net proceeds from the offering for general corporate purposes, including marketing, brand awareness and sales, and which may include working capital, capital expenditures, and investments in and acquisitions of other companies, products or technologies that we may identify in the future. See "Note 7—Debt" of the notes to our consolidated financial statements included elsewhere in this Annual Report for additional information regarding the Notes.

Capped Calls

In connection with the issuance of the Notes, we entered into the Capped Calls. The Capped Calls are expected generally to reduce the potential dilution to our common stock upon any conversion of the Notes and/or offset any cash payments we are required to make in excess of the principal amount of converted Notes, as the case may be, with such reduction and/or offset subject to a cap based on the cap price.

The initial cap price of the Capped Calls is \$92.74 per share of common stock, subject to certain customary adjustments under the terms of the Capped Calls. See "Note 7—Debt" of the notes to our consolidated financial statements included elsewhere in this Annual Report for additional information regarding the Notes and the Capped Calls.

Cash Flows

The following table summarizes our cash flows for the years ended December 31, 2021, 2020, and 2019:

<i>(In thousands)</i>	2021	2020	2019
Net cash provided by operating activities	\$ 10,836	\$ 22,365	\$ 1,058
Net cash used in investing activities	(428,980)	(4,146)	(100,924)
Net cash provided by financing activities	537,739	54,641	29,402
Net change in cash, cash equivalents, and restricted cash ⁽¹⁾	\$ 119,595	\$ 72,860	\$ (70,464)

⁽¹⁾ Includes increases in funds held in escrow, including funds in transit of \$25.8 million, \$26.3 million, and \$10.5 million during the years ended December 31, 2021, 2020, and 2019, respectively.

Operating Activities

Our largest source of cash from operating activities is revenue generated from our work marketplace. Our primary uses of cash from operating activities are for personnel-related expenditures, marketing activities, including advertising, payment processing fees, amounts paid to talent to deliver services for clients under our managed services offering, and third-party hosting costs. In addition, because we are licensed as an internet escrow agent, our total cash and cash provided by operating activities may be impacted by the timing of the end of our fiscal quarter as discussed in the section titled “—Liquidity and Capital Resources—Escrow Funding Requirements.”

Net cash provided by operating activities during 2021 was \$10.8 million, which resulted from non-cash charges of \$83.5 million, offset by a net loss of \$56.2 million and net cash outflows of \$16.5 million from changes in operating assets and liabilities. The change in operating assets and liabilities primarily resulted from the increase in trade and client receivables. Due to fluctuations in revenue and the number of transactions on our platform, coupled with fluctuations in the timing of cash receipts from clients, our trade and client receivables will likely continue to fluctuate in the future.

Net cash provided by operating activities during 2020 was \$22.4 million, which resulted from non-cash charges of \$43.0 million and net cash inflows of \$2.2 million from changes in operating assets and liabilities, offset by a net loss of \$22.9 million. The change in operating assets and liabilities primarily resulted from changes in trade and client receivables, accrued expenses, and other current and long-term liabilities.

Net cash provided by operating activities during 2019 was \$1.1 million, which resulted from non-cash charges of \$32.2 million, offset by a net loss of \$16.7 million and net cash outflows of \$14.4 million from changes in operating assets and liabilities. The change in operating assets and liabilities primarily resulted from the increase in trade and client receivables of \$10.9 million.

Investing Activities

Net cash used in investing activities during 2021 was \$429.0 million, which was primarily a result of investing \$525.3 million in various marketable securities, as well as \$5.1 million of internal-use software and platform development costs that we paid during the period and purchases of property and equipment of \$1.0 million, partially offset by proceeds from maturities of marketable securities of \$102.5 million.

Net cash used in investing activities during 2020 was \$4.1 million, which was primarily a result of investing \$107.3 million in various marketable securities during 2020, as well as \$8.0 million of internal-use software and platform development costs that we paid during the period and purchases of property and equipment of \$6.3 million primarily for leasehold improvements and furniture related to our office lease in Chicago, Illinois. These uses of cash were partially offset by proceeds from maturities of marketable securities of \$117.5 million.

Net cash used in investing activities during 2019 was \$100.9 million, which was primarily a result of investing \$168.8 million in various marketable securities during 2019, as well as \$5.9 million of internal-use software and platform development costs that we paid during the period and purchases of property and equipment of \$10.8 million primarily for leasehold improvements and furniture related to our new office leases in Santa Clara, California and Chicago, Illinois. These uses of cash were partially offset by proceeds from maturities of marketable securities of \$84.5 million.

Financing Activities

Net cash provided by financing activities during 2021 was \$537.7 million, which resulted primarily from proceeds from the Notes, net of debt issuance costs of \$560.1 million, an increase in escrow funds payable of \$25.8 million,

cash received from stock option exercises of \$7.2 million, and proceeds received from our employee stock purchase plan of \$4.8 million, partially offset by purchases of the Capped Calls of \$49.4 million and repayments of borrowings on debt of \$10.8 million.

Net cash provided by financing activities during 2020 was \$54.6 million, which resulted primarily from cash received from stock option exercises of \$31.0 million, proceeds from our employee stock purchase program of \$4.9 million, and an increase in escrow funds payable of \$26.3 million, partially offset by net repayments of debt of \$7.6 million.

Net cash provided by financing activities during 2019 was \$29.4 million, which resulted primarily from cash received from stock option exercises of \$18.2 million, proceeds from our employee stock purchase program of \$6.4 million, and an increase in escrow funds payable of \$10.5 million, partially offset by net repayments of debt of \$5.7 million.

Critical Accounting Policies and Estimates

Our consolidated financial statements are prepared in accordance with U.S. GAAP. The preparation of the consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue, expenses, and related disclosures. We evaluate our estimates and assumptions on an ongoing basis using historical experience and other factors and adjust those estimates and assumptions when facts and circumstances dictate. Actual results could materially differ from these estimates and assumptions. Certain of our accounting policies require higher degrees of judgement than others in their application. These include certain aspects of accounting for revenue recognition, stock-based compensation, and income taxes.

Revenue Recognition

We primarily generate revenue from talent and clients from marketplace and managed service offerings. We account for revenue in accordance with Topic 606, which we adopted on December 31, 2019 effective as of January 1, 2019 using the modified retrospective method. Revenue is recognized upon transfer of control of promised services to users in an amount that reflects the consideration we expect to receive in exchange for those services.

Determining the method and amount of revenue to recognize requires management to make judgments and estimates. Judgments include determining whether to present revenue gross, as a principal, or net, as an agent, which is based on an evaluation of whether we control the service prior to it being transferred to the client, and certain aspects of applying Topic 606 to our arrangements with talent subject to tiered service fees.

We apply judgement in the application of the portfolio approach practical expedient to our arrangements with talent subject to tiered service fees, which includes estimating the standalone selling price of the material rights and the period of time over which to defer and recognize the consideration allocated to the material rights. Specifically, management applies judgement in assessing the continued appropriateness for the estimates, which include assessing the continued appropriateness of the methodology and relevant data inputs to estimate the likelihood and the period of time over which to defer and recognize the consideration allocated to the material rights. We utilize historical user transaction data in developing these estimates. We recognize revenue related to the material rights based on our estimate of when the material rights are exercised, and adjust revenue for changes in estimates in the period of change on a cumulative catch-up basis.

Stock-Based Compensation

We measure and recognize compensation expense for all stock-based awards granted to service providers, including stock options, RSUs, performance stock units, which we refer to as PSUs, and purchase rights granted under our 2018 Employee Stock Purchase Plan, which we refer to as the 2018 ESPP, based on the estimated fair value of the award on the grant date. We calculate the estimated fair value of stock options and purchase rights granted under the 2018 ESPP on the date of grant using the Black-Scholes option pricing model, which is impacted by the fair value of our common stock, as well as changes in assumptions regarding a number of highly complex and subjective variables. These variables include, but are not limited to, the expected dividend yield, the expected term of the awards, the risk-free interest rates, and the expected common stock price volatility over the term of the option awards. The fair value and derived service period of stock options with market-based conditions is estimated using the Monte Carlo valuation model. We evaluate the assumptions used to value option awards upon each grant of stock options. The grant date fair value of PSUs is determined using the closing common stock price of our common stock on the grant date multiplied by the number of PSUs that are probable of being earned as of the grant date. We use the quoted market price of our common stock as reported on The Nasdaq Global Select Market for the fair value of RSUs, PSUs, stock options, and purchase rights under our 2018 ESPP. We generally recognize the fair value of stock options and RSUs on a straight-line basis over the period during which a service provider is required to provide services in exchange for the award (generally the vesting period). We recognize the fair value of purchase rights granted under the 2018 ESPP as an expense on a straight-line basis over the offering period and

account for forfeitures as they occur. Stock-based compensation expense associated with service- and market-based stock options is recognized over the longer of the expected achievement period for the service condition and market condition. Stock-based compensation expense associated with PSUs is recognized over the longer of the expected achievement period for the performance condition and the service condition.

Income Taxes

We utilize the asset and liability method under which deferred tax assets and liabilities arise from the temporary differences between the tax basis of an asset or liability and its reported amount in the consolidated financial statements, as well as from net operating loss and tax credit carryforwards. Deferred tax amounts are determined by using the tax rates expected to be in effect when the taxes will actually be paid or refunds received, as provided for under current tax law. A valuation allowance is established when necessary to reduce deferred tax assets to the amount expected to be realized. In determining the need for a valuation allowance, we assess, among other things, the historical levels of income and various sources of taxable income. We regularly review our tax positions and benefits to be realized. We recognize tax liabilities based upon our estimate of whether, and the extent to which, additional taxes will be due when such estimates are more likely than not to be sustained. An uncertain income tax position will be recognized only if it is more likely than not to be sustained. We recognize interest and penalties related to income tax matters as income tax expense.

Recent Accounting Pronouncements

See "Note 2—Basis of Presentation and Summary of Significant Accounting Policies" of the notes to our consolidated financial statements included elsewhere in this Annual Report for recently issued accounting pronouncements not yet adopted as of the date of this Annual Report.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk.

We have operations both within the United States and internationally, and we are exposed to market risks in the ordinary course of our business. These risks primarily include interest rate and foreign currency exchange rates.

Interest Rate Risk

The primary objective of our investment activities is to preserve principal while maximizing income without significantly increasing risk. We do not make investments for trading or speculative purposes. Because our cash and cash equivalents have a relatively short maturity, our portfolio's fair value is relatively insensitive to interest rate changes. Borrowings under the Notes have a fixed interest rate. Borrowings under the Loan Agreement had variable interest rates. As of December 31, 2021, we had \$575.0 million aggregate principal amount of borrowings outstanding under the Notes. As of December 31, 2020, we had \$10.8 million aggregate principal amount of borrowings outstanding under our Loan Agreement. We do not believe that a hypothetical increase or decrease in interest rates of 100 basis points would have a material impact on our operating results or financial condition.

Foreign Currency Risk

Our operating results and cash flows are subject to fluctuations due to changes in foreign currency exchange rates. In addition to the U.S. dollar, we offer clients the option to settle invoices denominated in the U.S. dollar in the following currencies: Euro, British Pound, Australian dollar, Canadian dollar, Singapore dollar, South African rand, New Zealand dollar, Polish zloty, Swiss franc, Norwegian krone, Danish krone, Swedish krona, Turkish lira, Japanese yen, and Hong Kong dollar. When clients make payments in one of these currencies, we are exposed to foreign currency risk during the period between when payment is made and when the payment amounts settle. To mitigate this risk, we have entered into forward contracts. As such, the impact of foreign currency exchange rate fluctuations to our operating results have been insignificant to date.

Item 8. Financial Statements and Supplementary Data.

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The supplementary financial information required by this item is included in "Management's Discussion and Analysis of Financial Condition and Results of Operations."

Report of Independent Registered Public Accounting Firm

To the Board of Directors and Stockholders of Upwork Inc.

Opinions on the Financial Statements and Internal Control over Financial Reporting

We have audited the accompanying consolidated balance sheets of Upwork Inc. and its subsidiaries (the "Company") as of December 31, 2021 and 2020, and the related consolidated statements of operations, of stockholders' equity and of cash flows for each of the three years in the period ended December 31, 2021, including the related notes (collectively referred to as the "consolidated financial statements"). We also have audited the Company's internal control over financial reporting as of December 31, 2021, based on criteria established in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2021 and 2020, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2021 in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2021, based on criteria established in *Internal Control - Integrated Framework (2013)* issued by the COSO.

Changes in Accounting Principles

As discussed in Note 2 to the consolidated financial statements, the Company changed the manner in which it accounts for revenue from contracts with customers and the manner in which it accounts for leases in 2019.

Basis for Opinions

The Company's management is responsible for these consolidated financial statements, for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting, included in Management's Report on Internal Control Over Financial Reporting appearing under Item 9A. Our responsibility is to express opinions on the Company's consolidated financial statements and on the Company's internal control over financial reporting based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud, and whether effective internal control over financial reporting was maintained in all material respects.

Our audits of the consolidated financial statements included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

Definition and Limitations of Internal Control over Financial Reporting

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable

assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Critical Audit Matters

The critical audit matter communicated below is a matter arising from the current period audit of the consolidated financial statements that was communicated or required to be communicated to the audit committee and that (i) relates to accounts or disclosures that are material to the consolidated financial statements and (ii) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

Revenue Recognition – Estimation of Standalone Selling Price of the Talent Material Rights and the Period of Time Over Which to Defer and Recognize the Consideration Allocated to the Material Rights

As described in Notes 2 and 12 to the consolidated financial statements, the Company charges talent a service fee as a percentage of talent billings primarily using a tiered service fee model based on cumulative lifetime billings by talent to each client. The Company recorded total revenue of \$502.8 million for the year ended December 31, 2021, of which \$297.0 million related to revenue from talent. Certain of the Company's contracts with talent contain multiple performance obligations in the event management determines a material right exists. Specifically, the arrangements with talent subject to tiered service fees include contract renewal options that represent a material right. For such arrangements, management allocates revenue to each performance obligation based on its relative standalone selling price by applying the portfolio approach practical expedient. Standalone selling prices for offerings subject to tiered service fees are estimated based on observable transactions when these services are sold on a standalone basis. Standalone selling price for a material right is estimated by determining the discount that the talent would obtain when exercising the option, adjusted for the likelihood that the option will be exercised. Management applies significant judgment in the application of the portfolio approach practical expedient, which includes estimating the standalone selling price of the material rights and the period of time over which to defer and recognize the consideration allocated to the material rights. Specifically, management applied significant judgment in assessing the appropriateness of the model for the estimates, which includes assessing the appropriateness of the methodology and relevant data inputs to (i) estimate the standalone selling price of the material rights, which includes the standalone selling price of the services when sold separately and the likelihood of exercise of the material rights, and (ii) estimate the period of time over which to defer and recognize the consideration allocated to the material rights. Management utilized historical client-talent transaction data in developing the estimates. The Company recognizes revenue related to the material rights based on management's estimate of when the material rights are exercised.

The principal considerations for our determination that performing procedures relating to revenue recognition, specifically the estimation of standalone selling price of the talent material rights and the period of time over which to defer and recognize the consideration allocated to the material rights, is a critical audit matter are the significant judgment by management in assessing the appropriateness of the model, methodology and relevant data inputs to estimate the standalone selling price of the material rights, and the period of time over which to defer and recognize the consideration allocated to the material rights. This in turn led to significant auditor judgment, subjectivity and effort in performing procedures and evaluating audit evidence related to management's determination of the standalone selling price of the services when sold separately, the likelihood of exercise of the material rights, and the period of time over which to defer and recognize the consideration allocated to the material rights.

Addressing the matter involved performing procedures and evaluating audit evidence in connection with forming our overall opinion on the consolidated financial statements. These procedures included testing the effectiveness of controls relating to the revenue recognition process, including the assessment of the appropriateness of the model, methodology and relevant data inputs to estimate the material rights standalone selling price and the period of time over which to defer and recognize the consideration allocated to the material rights. These procedures also included, among others, (i) evaluating the appropriateness of management's model used in developing the estimates, the reasonableness of the selected methodology and relevant data inputs used in determining the standalone selling price of the services when sold separately and the likelihood of exercise of the material rights, and the period of time over which to defer and recognize the consideration allocated to the material rights, (ii)

testing the completeness and accuracy of data inputs, and (iii) testing the mathematical accuracy of the model's calculations and the amounts recorded for the material rights in the consolidated financial statements.

/s/ PricewaterhouseCoopers LLP

San Jose, California

February 15, 2022

We have served as the Company's auditor since 2016.

UPWORK INC.
CONSOLIDATED BALANCE SHEETS
As of December 31, 2021 and 2020

(In thousands, except share and per share data)

	2021	2020
ASSETS		
Current assets		
Cash and cash equivalents	\$ 187,205	\$ 94,081
Marketable securities	497,566	75,570
Funds held in escrow, including funds in transit	160,813	135,042
Trade and client receivables – net of allowance of \$3,410 and \$1,661 as of December 31, 2021 and 2020, respectively	66,826	47,018
Prepaid expenses and other current assets	17,243	9,090
Total current assets	929,653	360,801
Property and equipment, net	21,329	28,139
Goodwill	118,219	118,219
Intangible assets, net	—	667
Operating lease asset	10,682	19,729
Other assets, noncurrent	1,178	1,672
Total assets	<u>\$ 1,081,061</u>	<u>\$ 529,227</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities		
Accounts payable	\$ 4,996	\$ 6,455
Escrow funds payable	160,813	135,042
Debt, current	—	7,581
Accrued expenses and other current liabilities	45,742	32,868
Deferred revenue	22,083	16,801
Total current liabilities	233,634	198,747
Debt, noncurrent	561,299	3,142
Operating lease liability, noncurrent	16,753	20,506
Other liabilities, noncurrent	9,858	7,522
Total liabilities	821,544	229,917
Commitments and contingencies (Note 6)		
Stockholders' equity		
Common stock, \$0.0001 par value; 490,000,000 shares authorized as of December 31, 2021 and 2020; 129,130,478 and 124,795,222 shares issued and outstanding as of December 31, 2021 and 2020, respectively	13	12
Additional paid-in capital	510,568	494,122
Accumulated deficit	(251,064)	(194,824)
Total stockholders' equity	259,517	299,310
Total liabilities and stockholders' equity	<u>\$ 1,081,061</u>	<u>\$ 529,227</u>

The accompanying notes are an integral part of these consolidated financial statements.

UPWORK INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
For the Years Ended December 31, 2021, 2020, and 2019

(In thousands, except per share data)

	2021	2020	2019
Revenue	\$ 502,797	\$ 373,628	\$ 300,562
Cost of revenue	135,508	104,267	88,144
Gross profit	<u>367,289</u>	<u>269,361</u>	<u>212,418</u>
Operating expenses			
Research and development	119,083	83,471	64,027
Sales and marketing	183,294	133,225	95,891
General and administrative	113,081	71,518	67,327
Provision for transaction losses	6,048	3,555	3,905
Total operating expenses	<u>421,506</u>	<u>291,769</u>	<u>231,150</u>
Loss from operations	(54,217)	(22,408)	(18,732)
Interest expense	2,180	778	1,306
Other income, net	(279)	(469)	(3,407)
Loss before income taxes	(56,118)	(22,717)	(16,631)
Income tax provision	(122)	(150)	(28)
Net loss	<u>\$ (56,240)</u>	<u>\$ (22,867)</u>	<u>\$ (16,659)</u>
Net loss per share, basic and diluted	\$ (0.44)	\$ (0.19)	\$ (0.15)
Weighted-average shares used to compute net loss per share, basic and diluted	127,164	118,699	109,815

The accompanying notes are an integral part of these consolidated financial statements.

UPWORK INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
For the Years Ended December 31, 2021, 2020, and 2019

(In thousands, except share amounts)

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount			
Balances as of December 31, 2018	106,454,321	\$ 11	\$ 387,233	\$ (143,499)	\$ 243,745
Cumulative effect adjustment from adoption of new accounting pronouncement	—	—	—	(11,799)	(11,799)
Issuance of common stock upon exercise of stock options and common stock warrants	6,429,471	—	18,155	—	18,155
Stock-based compensation expense	—	—	18,616	—	18,616
Tides Foundation common stock warrant expense and other	—	—	975	—	975
Issuance of common stock for settlement of RSUs	163,943	—	—	—	—
Issuance of common stock in connection with employee stock purchase plan	556,663	—	6,391	—	6,391
Net loss	—	—	—	(16,659)	(16,659)
Balances as of December 31, 2019	113,604,398	11	431,370	(171,957)	259,424
Issuance of common stock upon exercise of stock options and common stock warrants	9,115,947	1	31,027	—	31,028
Stock-based compensation expense	—	—	25,677	—	25,677
Tides Foundation common stock warrant expense and other	—	—	1,135	—	1,135
Issuance of common stock for settlement of RSUs	1,590,225	—	—	—	—
Issuance of common stock in connection with employee stock purchase plan	484,652	—	4,913	—	4,913
Net loss	—	—	—	(22,867)	(22,867)
Balances as of December 31, 2020	124,795,222	12	494,122	(194,824)	299,310
Issuance of common stock upon exercise of stock options and common stock warrants	2,085,698	1	7,176	—	7,177
Stock-based compensation expense	—	—	53,671	—	53,671
Tides Foundation common stock warrant expense and other	—	—	202	—	202
Issuance of common stock for settlement of RSUs	1,865,444	—	1	—	1
Issuance of common stock in connection with employee stock purchase plan	384,114	—	4,789	—	4,789
Purchase of capped calls related to convertible senior notes	—	—	(49,393)	—	(49,393)
Net loss	—	—	—	(56,240)	(56,240)
Balances as of December 31, 2021	<u>129,130,478</u>	<u>\$ 13</u>	<u>\$ 510,568</u>	<u>\$ (251,064)</u>	<u>\$ 259,517</u>

The accompanying notes are an integral part of these consolidated financial statements.

UPWORK INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
For the Years Ended December 31, 2021, 2020, and 2019

<i>(In thousands)</i>	2021	2020	2019
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net loss	\$ (56,240)	\$ (22,867)	\$ (16,659)
Adjustments to reconcile net loss to net cash provided by operating activities:			
Provision for transaction losses	5,178	2,919	3,118
Depreciation and amortization	10,261	10,172	6,661
Amortization of debt issuance costs	1,182	61	52
Amortization of premium (accretion of discount) of purchases of marketable securities, net	298	(320)	(1,158)
Amortization of operating lease asset	3,545	3,860	3,945
Tides Foundation common stock warrant expense	750	750	711
Stock-based compensation expense	53,592	25,508	18,798
Impairment expense	8,741	—	—
Loss on disposal of fixed assets	—	44	14
Changes in operating assets and liabilities:			
Trade and client receivables	(24,610)	(20,000)	(10,918)
Prepaid expenses and other assets	(6,960)	(1,198)	(2,069)
Operating lease liability	(1,163)	(1,851)	(1,453)
Accounts payable	(1,445)	5,822	(1,457)
Accrued expenses and other liabilities	10,253	15,438	(2,957)
Deferred revenue	7,454	4,027	4,430
Net cash provided by operating activities	<u>10,836</u>	<u>22,365</u>	<u>1,058</u>
CASH FLOWS FROM INVESTING ACTIVITIES:			
Purchases of marketable securities	(525,343)	(107,281)	(168,786)
Proceeds from maturities of marketable securities	102,500	117,500	84,500
Purchases of property and equipment	(1,027)	(6,320)	(10,752)
Internal-use software and platform development costs	(5,110)	(8,045)	(5,886)
Net cash used in investing activities	<u>(428,980)</u>	<u>(4,146)</u>	<u>(100,924)</u>
CASH FLOWS FROM FINANCING ACTIVITIES:			
Changes in escrow funds payable	25,771	26,321	10,535
Proceeds from exercises of stock options and common stock warrant	7,177	31,028	18,155
Proceeds from employee stock purchase plan	4,789	4,913	6,391
Proceeds from borrowings on debt	—	18,000	50,000
Repayment of debt	(10,750)	(25,621)	(55,679)
Proceeds from issuance of convertible senior notes	575,000	—	—
Payment of debt issuance costs	(14,855)	—	—
Purchases of capped calls related to convertible senior notes	(49,393)	—	—
Net cash provided by financing activities	<u>537,739</u>	<u>54,641</u>	<u>29,402</u>
NET CHANGE IN CASH, CASH EQUIVALENTS, AND RESTRICTED CASH	<u>119,595</u>	<u>72,860</u>	<u>(70,464)</u>
Cash, cash equivalents, and restricted cash—beginning of year	232,463	159,603	230,067
Cash, cash equivalents, and restricted cash—end of year	<u>\$ 352,058</u>	<u>\$ 232,463</u>	<u>\$ 159,603</u>
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION:			
Cash paid for interest	\$ 373	\$ 764	\$ 1,291
SUPPLEMENTAL DISCLOSURES OF NON-CASH INVESTING AND FINANCING ACTIVITIES:			
Property and equipment purchased but not yet paid	22	37	161
Internal-use software and platform development costs incurred but not yet paid	106	286	684

The accompanying notes are an integral part of these consolidated financial statements.

UPWORK INC.

Notes to Consolidated Financial Statements

Note 1—Organization and Description of Business

Upwork Inc., which is referred to as the Company or Upwork, operates a work marketplace that connects businesses, which are referred to as clients, with independent talent. Independent talent on the Company's work marketplace, which are referred to as talent, and, together with clients, as users, include independent professionals and agencies of varying sizes and are an increasingly sought-after, critical, and expanding segment of the global workforce. The Company was originally incorporated in the state of Delaware in December 2013 prior to and in connection with the combination, which is referred to as the Elance-oDesk Combination, of Elance, Inc., which is referred to as Elance, and oDesk Corporation, which is referred to as oDesk. The Company changed its name to Elance-oDesk, Inc. shortly before the Elance-oDesk Combination in March 2014, and later to Upwork Inc. The Company is currently headquartered in San Francisco, California.

Unless otherwise expressly stated or the context otherwise requires, the terms "Upwork" and the "Company" in these notes to the consolidated financial statements refer to Upwork and its wholly-owned subsidiaries.

Note 2—Basis of Presentation and Summary of Significant Accounting Policies

Basis of Presentation and Principles of Consolidation

The accompanying consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States, which is referred to as U.S. GAAP, and include the accounts of Upwork Inc. and its wholly-owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

Use of Estimates

The preparation of the consolidated financial statements in conformity with U.S. GAAP requires management to make certain estimates, judgments, and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenue and expenses during the periods presented. Such estimates include, but are not limited to: the useful lives of assets; assessment of the recoverability of long-lived assets; goodwill impairment; standalone selling price of material rights and the period of time over which to defer and recognize the consideration allocated to the material rights; allowance for doubtful accounts; liabilities relating to transaction losses; stock-based compensation; and accounting for income taxes. Management bases its estimates on historical experience and on various other assumptions that management believes to be reasonable under the circumstances. The Company evaluates its estimates, assumptions, and judgments on an ongoing basis using historical experience and other factors and revises them when facts and circumstances dictate.

Given the Company's shift to a flexible work model for its workforce, in 2021, the Company subleased the entirety of its former headquarters in Santa Clara, California and subleased a portion of its current headquarters in San Francisco, California. As a result, during the year ended December 31, 2021, the Company incurred impairment charges of \$8.7 million related to the associated operating lease assets and property and equipment. The Company may determine to either close or sublease certain of its other offices, either of which may result in further impairment charges. See "Note 5—Balance Sheet Components" for additional information regarding these impairments.

Notwithstanding the foregoing, the Company is not aware of any specific event or circumstance that would require an update to its estimates or judgments or a revision of the carrying value of its assets or liabilities. These estimates may change as new events occur and additional information is obtained. Actual results could differ materially from these estimates under different assumptions or conditions.

Cash and Cash Equivalents

The Company classifies as cash and cash equivalents its cash held in checking and interest-bearing accounts and investments in money market funds, U.S. government securities, and debt securities with maturities of 90 days or less from the date of purchase.

Restricted Cash

As of December 31, 2021 and 2020, the Company maintained restricted cash of \$4.0 million and \$3.3 million, respectively, related to cash reserve requirements under the escrow laws and regulations of the California Department of Financial Protection and Innovation and collateral for letters of credit issued in conjunction with operating leases. Short-term restricted cash included in prepaid expenses and other current assets was \$3.2 million.

and \$2.3 million as of December 31, 2021 and 2020, respectively, and long-term restricted cash included in other assets, noncurrent was \$0.8 million and \$1.0 million as of December 31, 2021 and 2020, respectively.

Funds Held in Escrow, Including Funds in Transit

The Company maintains its users' funds held in escrow in demand or checking accounts at U.S. financial institutions, as well as two California licensed money transmitters. The balance in these accounts was in excess of federally insured limits as of December 31, 2021 and 2020. Users' funds held in escrow are denominated exclusively in U.S. dollars.

The Company is an internet escrow agent and is therefore required to hold its users' escrowed funds and escrow funds in transit in trust as an asset and record a corresponding liability for escrow funds payable on its consolidated balance sheets. For this reason, funds held in escrow, including funds in transit, are restricted cash. Escrow funds in transit arise due to the time it takes to clear transactions through external payment networks. When clients fund their escrow account using credit cards, there is a clearing period before the cash is received and settled. Accordingly, the funds are treated as escrow funds in transit until the transaction is settled to the escrow trust bank account or, in the case of international credit card settlements, to the Company's bank accounts. Escrow regulations require the Company to fund the trust with its own operating cash if there is ever a shortage due to the timing of cash receipts from clients for completed hourly billings. As of December 31, 2021 and 2020, the Company recorded \$160.8 million and \$135.0 million, respectively, as funds held in escrow, including funds in transit.

The below table reconciles cash, cash equivalents, and restricted cash as reported in the consolidated balance sheets to the total of the same amounts shown in the consolidated statements of cash flows for the years ended December 31, 2021, 2020, and 2019:

<i>(In thousands)</i>	2021	2020	2019
Cash and cash equivalents	\$ 187,205	\$ 94,081	\$ 48,392
Restricted cash	4,040	3,340	2,490
Funds held in escrow, including funds in transit	160,813	135,042	108,721
Total cash, cash equivalents, and restricted cash as shown in the consolidated statement of cash flows	<u>\$ 352,058</u>	<u>\$ 232,463</u>	<u>\$ 159,603</u>

Marketable Securities

The Company's marketable securities consist of commercial paper, corporate debt securities, treasury bills, U.S. government securities, asset-backed securities, and Yankee debt securities issued by foreign governments or entities and denominated in U.S. dollars, all of which have contractual maturities within 24 months from the date of purchase. The marketable securities are available for current operations and are classified as available-for-sale. These marketable securities are carried at estimated fair value with unrealized gains and losses, net of taxes, included within the stockholders' equity section of the Company's consolidated balance sheet.

The Company periodically assesses its portfolio of debt investments for impairment. For debt securities in an unrealized loss position, this assessment first takes into account the Company's intent to sell, or whether it is more likely than not that the Company will be required to sell the security before recovery of its amortized cost basis. If either of these criteria are met, the debt security's amortized cost basis is written down to fair value through other (income) expense, net. For debt securities in an unrealized loss position that do not meet the aforementioned criteria, the Company assesses whether the decline in fair value below the amortized cost basis resulted from a credit loss or other factors. In making this assessment, the Company considers factors such as the extent to which fair value is less than the amortized cost basis, the financial condition of the issuer, any changes to the rating of the security by a rating agency, and any adverse conditions specifically related to the security, among other factors. If this assessment indicates that a credit loss may exist, the present value of cash flows expected to be collected from the security are compared to the amortized cost basis of the security. If the present value of cash flows expected to be collected is less than the amortized cost basis, a credit loss exists and an allowance for credit losses will be recorded through other (income) expense, net, limited by the amount that the fair value is less than the amortized cost basis. Any additional impairment not recorded through an allowance for credit losses is recognized in other comprehensive loss. Changes in the allowance for credit losses are reflected as provision for (or reversal of) credit loss expense. Losses are charged against the allowance when management believes the uncollectability of an available-for-sale security is confirmed or when either of the criteria regarding intent or requirement to sell are met. These changes are recorded in other income, net. The Company determines realized gains or losses from the sale of marketable securities on a specific identification method and records such gains or losses as other (income) expense, net within the Company's consolidated statements of operations.

Escrow Funds Payable

Escrow funds payable represent user funds that are held in escrow by the Company on behalf of both talent and clients. Escrow funds payable to talent are comprised primarily of funds available to be withdrawn by talent for work performed and paid by clients. Escrow funds payable to clients primarily represent deposits received from certain clients to set up an account or to apply toward future payments to talent upon completion of the project defined and agreed between the client and talent.

Concentration of Risk

Financial instruments that subject the Company to concentration of risk consist primarily of cash, restricted cash, funds held in escrow, including funds in transit, and trade and client receivables. The Company maintains its cash balances with large, high-credit quality financial institutions and other payment companies. At times, such deposits may be in excess of federally insured limits. The Company has not experienced any losses on its deposits. Credit risk on trade receivables is limited as a result of the large size of the Company's client base as well as a large portion of payments made using pre-authorized credit cards. The Company performs ongoing credit evaluations of its clients and maintains allowances for potential credit losses. For any receivables that are deemed not collectible, losses are recorded when probable and estimable. These losses, when incurred, have been within the range of the Company's expectations.

One client accounted for more than 10% of trade and client receivables as of December 31, 2021. Three clients each accounted for more than 10% of trade and client receivables as of December 31, 2020. For the years ended December 31, 2021 and 2020, the Company did not have any clients that accounted for more than 10% of total revenue. For the year ended December 31, 2019, the Company generated \$32.0 million in revenue from one client, which accounted for more than 10% of revenue during the year ended December 31, 2019.

The Company is dependent upon third parties, such as Amazon Web Services, in order to meet the uptime and performance needs of its users.

Fair Value of Financial Instruments

The Company's financial instruments consist of cash and cash equivalents, restricted cash, funds held in escrow, including funds in transit, marketable securities, trade and client receivables, prepaid and other current assets, escrow funds payable, and debt.

The Company believes that the carrying values of the remaining financial instruments approximate their fair values.

Trade and Client Receivables and Related Allowance for Doubtful Accounts

Trade and client receivables are primarily comprised of amounts receivable from clients for completed work, including amounts in transit. It also includes unbilled amounts due from clients primarily through the Company's managed services offering. Trade and client receivables are recorded and stated at realizable value, net of an allowance for doubtful accounts. Credit is extended generally without collateral to the Company's managed services and marketplace clients with Upwork Enterprise offerings based on an initial and ongoing evaluation of their financial condition and other factors. In aggregate, gross trade receivables were \$19.7 million and \$15.9 million and gross client receivables were \$50.5 million and \$32.8 million as of December 31, 2021 and 2020, respectively.

The allowance for doubtful accounts is the Company's estimate of the probable credit losses on accounts receivable. The Company periodically assesses the collectability of the accounts and determines the allowance recognized by taking into consideration the aging of its receivable balances, historical write-off experience, probability of collection, and other relevant data. Trade and client receivables are written off against the allowance when management determines a balance is uncollectible and no longer actively pursues collection of the receivable.

The following table presents the changes in the allowance for doubtful accounts as of December 31, 2021, 2020, and 2019:

<i>(In thousands)</i>	2021	2020	2019
Allowance for doubtful accounts, beginning balance	\$ 1,661	\$ 2,215	\$ 2,832
Provision for doubtful accounts	4,803	3,143	3,193
Amounts written off	(3,054)	(3,697)	(3,810)
Allowance for doubtful accounts, ending balance	<u>\$ 3,410</u>	<u>\$ 1,661</u>	<u>\$ 2,215</u>

Derivative Instruments

The Company uses derivative financial instruments not designated as hedges, such as foreign currency forward contracts, to minimize the short-term impact of foreign currency exchange rate fluctuations on certain foreign currency denominated assets and liabilities, as well as certain foreign currency denominated expenses, hedging the gains or losses generated by the re-measurement of significant foreign currency denominated monetary assets and liabilities. The Company does not enter into derivative instruments for speculative or trading purposes and these instruments generally have maturities within 12 months.

The foreign currency forward contracts are recorded at fair value and, when in gain positions, are reported within prepaid expenses and other current assets. When in loss positions, the foreign currency forward contracts are recorded within accrued expenses and other current liabilities in the consolidated balance sheets. Gains or losses from changes in the fair value of these foreign currency forward contracts not designated as hedging instruments are recorded in other income, net to offset the changes in the fair value of the underlying assets or liabilities being hedged.

The notional amounts associated with the Company's foreign currency forward contracts at December 31, 2021 and 2020 were \$7.2 million and \$7.6 million, respectively, none of which were designated as cash flow hedges. The carrying values of the foreign currency forward contracts approximated their fair values due to their relatively short settlement durations. The fair values of the Company's outstanding foreign currency forward contracts not designated as hedging instruments as of December 31, 2021 and 2020 were not material. Losses on foreign currency forward contracts not designated as hedging instruments were \$0.5 million for the year ended December 31, 2021. Losses on foreign currency forward contracts not designated as hedging instruments were \$0.6 million for the year ended December 31, 2020. Gains on foreign currency forward contracts not designated as hedging instruments were \$0.9 million for the year ended December 31, 2019.

Leases

The Company accounts for leases in accordance with Financial Accounting Standards Board, which is referred to as the FASB, Accounting Standards Update, which is referred to as ASU, No. 2016-02, Leases (Topic 842), which the Company adopted on December 31, 2019 effective as of January 1, 2019 using the effective date method.

Property and Equipment

Property and equipment are stated at cost, net of accumulated depreciation and amortization. Depreciation is calculated using the straight-line method over the estimated useful lives of the related assets, which are generally two to five years. Leasehold improvements are amortized on a straight-line basis over the shorter of the remaining lease term or their estimated useful lives. Repair and maintenance costs are charged to expense as incurred.

Internal-Use Software and Platform Development Costs

The Company's policy is to capitalize certain costs to develop its internal-use software and platform when (i) preliminary project planning is completed, (ii) the Company has committed project resourcing, and (iii) it is probable that the project will be completed and the software will be used as intended. Costs incurred for enhancements that are expected to result in additional significant functionality are also capitalized. Such costs are generally amortized on a straight-line basis over their estimated useful lives determined on a project-by-project basis, which historically has ranged between two to three years, beginning when the asset is ready for its intended use. Costs incurred prior to meeting these criteria, together with costs incurred for training and maintenance, are expensed as incurred. Amortization of capitalized internal-use software and platform development costs is allocated to functional expense categories based on headcount and the nature and intended use of the project.

Segment Information

The Company has one reportable segment. The Company's chief operating decision maker is its President and Chief Executive Officer, who reviews financial information presented on a consolidated basis for purposes of allocating resources and evaluating financial performance.

Goodwill, Acquired Intangible Assets, and Other Long-Lived Assets

Goodwill represents the excess of the aggregate fair value of the consideration transferred over the fair value of the net tangible and identifiable intangible assets acquired in the Elance-oDesk Combination. Goodwill is not amortized, but rather is assessed for impairment at least annually, or more frequently if events and changes in circumstances indicate that its carrying amount may not be recoverable. The Company performs its annual impairment assessment during the fourth quarter of each calendar year based on a single reporting unit structure by comparing the carrying value of the reporting unit to its fair value. An impairment would occur if the carrying amount of a reporting unit exceeded the fair value of that reporting unit. There has been no impairment of goodwill for any of the periods presented.

The Company's long-lived assets consist of property and equipment and acquired identifiable, finite-lived intangible assets, namely developed technology, user relationships, trade names, and domain names. The finite-lived intangible assets are carried at cost, less accumulated amortization. The Company amortizes the finite-lived intangible assets over their estimated useful lives ranging from two to seven years based on the pattern in which the economic benefits of the intangible assets are consumed, or the straight-line method when the pattern cannot be reliably determined. The Company periodically reviews the remaining estimated useful lives of its long-lived tangible and amortizable intangible assets. If the estimated useful life assumption for any asset is changed, the remaining unamortized balance would be depreciated or amortized over the revised estimated useful life, on a prospective basis. Intangible amortization expense related to developed technology and trade names is recorded as cost of revenue. Intangible amortization expense related to user relationships and domain names is included in operating expenses.

The Company evaluates the recoverability of its long-lived assets, including finite-lived intangible assets, for possible impairment whenever events or circumstances indicate that the carrying amount of such assets may not be recoverable. Recoverability of these assets is measured by comparing the carrying amounts to the future undiscounted cash flows the assets are expected to generate. If it is determined that the asset group is not recoverable, an impairment loss is recorded in the amount by which the carrying amount of the asset group exceeds the aggregate future undiscounted cash flows. When an impairment loss is recognized, the carrying amount of such assets is reduced to fair value.

For 2021, the Company conducted its goodwill impairment testing by performing the first step of the two-step impairment model. The fair value was determined by the Company using quoted market prices of the Company's common stock. The Company determined that the fair value of its reporting unit exceeded the carrying value, and, as such, the Company concluded that there was no impairment of goodwill at the impairment testing date.

There was no impairment of long-lived assets in any of the periods presented.

Convertible Senior Notes

The Company accounts for its convertible senior notes, which are referred to as the Notes, as a single liability measured at amortized cost. The carrying value of the liability equals the proceeds received from the issuance of the Notes less debt issuance costs. See "Note 7—Debt" for additional information.

Debt Issuance Costs

Debt issuance costs incurred in connection with securing the Company's financing arrangements are capitalized and amortized over the term of the respective financing arrangement under the straight-line method as the results obtained are not materially different from those that would result from the use of the effective interest method. Debt issuance costs are generally presented in the Company's consolidated balance sheets as a reduction to the carrying amount of the outstanding borrowings.

Revenue Recognition

The Company primarily generates revenue from clients from its marketplace and managed service offerings and from talent from its marketplace. The Company accounts for revenue in accordance with FASB ASU No. 2014-09, Revenue from Contracts with Customers (Topic 606), which the Company adopted on December 31, 2019 effective as of January 1, 2019 using the modified retrospective method. Revenue is recognized upon transfer of control of

promised services to users in an amount that reflects the consideration the Company expects to receive in exchange for those services.

In the ordinary course of business, the Company makes payments to users when those users provide services in their capacity as vendors. These payments are for distinct services and are at fair value. These transactions are primarily with certain financial institutions that the Company uses as payment processors on the work marketplace. The Company accounts for the consideration payable to these users in their capacity as vendors as a purchase of services from a vendor and records such payments in either cost of revenue or sales and marketing within the consolidated statements of operations.

Marketplace Offerings

The Company's marketplace revenue, which represents the majority of its revenue, consists primarily of revenue derived from Upwork Basic, Plus, and Enterprise offerings. The Company generates marketplace revenue from both talent and clients. Revenue from the Company's Upwork Basic and Plus offerings are primarily comprised of talent service fees, and to a lesser extent, payment processing and administration fees charged to clients. Revenue from the Company's Upwork Enterprise offering, which is referred to as Enterprise Revenue, includes all client fees, subscriptions, and talent service fees. The Company also generates marketplace revenue from fees for premium offerings associated with its Upwork Basic, Plus, and Enterprise offerings, including talent memberships, purchases of Connects, and other services, such as foreign currency exchange when clients choose to pay in currencies other than the U.S. dollar, and the Company's Upwork Payroll offering.

Upwork Basic, Plus, and Other Premium Offerings

The Company earns fees from talent under the Upwork Basic, Plus, and associated premium offerings, which represent a single promise to provide continuous access (i.e. stand-ready performance obligation) to the Company's work marketplace and site services. As each day of providing access to the work marketplace and site services (including, but not limited to, communication, invoicing, reporting, dispute resolution, and payment services) is substantially the same and talent simultaneously receive and consume the benefits as access is provided, the Company's single promise under its Upwork Basic and Plus offerings is comprised of a series of distinct service periods. The Company allocates variable consideration to each distinct service period in which it has the contractual right to bill. The Company's Upwork Basic and Plus arrangements may include fixed and variable consideration, or a combination of the two, comprised of the following:

Service fees. Talent are provided access to the Upwork work marketplace to market their businesses, send proposals to and communicate with prospective clients, and, if engaged by a client, to perform specified services agreed between talent and clients, which are referred to as talent services. Talent charge clients on an hourly or a milestone basis for services rendered to clients through the Upwork work marketplace, which are referred to as talent billings. The Company charges talent a service fee as a percentage of talent billings primarily using a tiered service fee model based on cumulative lifetime billings by talent to each client. The arrangements subject to tiered service fees also include contract renewal options that represent a material right. The Company takes no responsibility for talent services, and therefore, does not control talent services. Additionally, talent and clients negotiate and agree upon the scope and the price for talent services directly with each other, and the Company is not a party to those agreements. Accordingly, for these tiered service fee arrangements, the Company presents revenue on a net basis, as an agent. The Company recognizes the service fees for each distinct service period when it has the contractual right to bill for the services.

Withdrawal fees. The Company charges withdrawal fees to talent when talent withdraw their escrow funds held by the Company. A withdrawal fee is charged for each withdrawal transaction, which represents variable consideration. The Company presents revenue from withdrawal fees on a gross basis as a principal and not net of the third-party payment processing costs incurred because the Company controls the payment processing services prior to providing to the Company's talent. The Company recognizes the withdrawal fees when transactions are processed, which is when it has the contractual right to bill for the services.

Membership fees. The Company charges membership fees to talent. These fees are fixed consideration and are charged monthly. The Company recognizes the revenue over the period of the membership, which is generally monthly, consistent with the common measure of progress for the entire performance obligation.

Connects fees. The Company charges fees to talent for the purchase of Connects, which are virtual tokens that are required for talent to bid on projects on the Company's work marketplace. These fees represent variable consideration and are allocated to and recognized in the distinct service period in which the Connects are used.

The Company earns fees from clients under the Upwork Basic and Plus offerings, which represent a single promise to provide continuous access (i.e. stand-ready performance obligation) to the Company's work marketplace and site services. As each day of providing access to the work marketplace and site services is substantially the same and the client simultaneously receives and consumes the benefits as access is provided, the Company's single promise under its Upwork Basic and Plus offerings is comprised of a series of distinct service periods. The Company allocates variable consideration to each distinct service period in which it has the contractual right to bill. The Company's Upwork Basic and Plus arrangements may include fixed and variable consideration, or a combination of the two, comprised of the following:

Client payment processing and administration fees. The Company charges clients for payment processing services at the time the client is charged for the amounts due from the client. This fee is charged on a per-transaction basis and is variable consideration. Per-transaction payment processing fees are recognized when the client is charged for the amount due and fees charged on a monthly basis are recognized over the month that payment processing services are provided. For client payment processing fees, the Company presents revenue on a gross basis as a principal and not net of the third-party payment processing costs incurred because the Company controls the payment processing and administration services prior to providing to the Company's clients. The Company recognizes the revenue when a payment from a client is processed, which is when it has the contractual right to bill for the services.

Foreign currency exchange fees. The Company charges clients a fixed mark-up above foreign currency exchange rates that are charged to the Company when the Company collects amounts denominated in foreign currency. Foreign currency exchange fees are variable consideration and recognized as they are earned for each transaction processed, which is when the Company has the contractual right to bill for the services.

Membership fees. The Company charges membership fees to clients. These fees are charged monthly, are fixed consideration, and are recognized over the period of the membership, which is generally monthly consistent with the common measure of progress for the entire performance obligation.

Upwork Payroll service fees. The Company charges clients using the Upwork Payroll offering when their talent are classified as employees for engagements on the Upwork work marketplace. The client enters into an Upwork Payroll agreement with the Company, and Upwork separately contracts with unrelated third-party staffing providers that provide employment services to such clients. In such arrangements, talent providing talent services to clients become employees of third-party staffing providers. In arrangements where clients enter into Upwork Payroll agreements, the Company charges Upwork Payroll service fees to clients and does not charge service fees to talent who are employees of the third-party staffing providers. Such service fees are variable consideration and charged as a fixed percentage of the total talent billings. Under an Upwork Payroll agreement, the Company provides the client access to the Upwork work marketplace to procure and manage talent services, as well as access to employment services provided by the third-party staffing providers. The Company presents Upwork Payroll service fees revenue on a net basis as an agent of the client for providing access to employment services provided by the third-party staffing providers. The Company does not control these employment services performed by the third-party on behalf of the client or for the services performed by talent that are employed by the third-party staffing providers. Therefore, the Company is not considered the principal for these services. The Company recognizes the service fees for each distinct service period when it has the contractual right to bill for the services.

Upwork Enterprise and Other Premium Offerings

The Company earns fees from talent under Upwork Enterprise and other associated premium offerings, each of which represent a single promise to provide continuous access (i.e. stand-ready performance obligation) to the Company's work marketplace and site services. As each day of providing access to the work marketplace and site services is substantially the same and talent simultaneously receive and consume the benefits as access is provided, the Company's single promise under its Upwork Enterprise and other premium offerings is comprised of a series of distinct service periods. The Company allocates variable consideration to each distinct service period in which it has the contractual right to bill. These arrangements include variable consideration as follows:

Service fees. The Company provides talent access to the Upwork work marketplace to perform talent services for clients. The Company charges talent a service fee as a percentage of talent billings. The Company earns service fees based on a fixed percentage of talent billings. For service fees charged to talent, the Company presents revenue on a net basis, as an agent, for providing access to the Upwork work marketplace as it does not control talent services provided to clients, and therefore the Company is not considered the principal for talent services. Additionally, talent and clients negotiate and agree upon the scope and the price for talent

services directly with each other, and the Company is not a party to their agreement. The Company recognizes the service fees for each distinct service period in which it has the contractual right to bill for the services.

The Company earns fees from clients under Upwork Enterprise and other premium offerings, each of which represent a single promise to provide continuous access (i.e. stand-ready performance obligation) to the Company's work marketplace and site services. As each day of providing access to the work marketplace and site services is substantially the same and the client simultaneously receives and consumes the benefits as access is provided, the Company's single promise under its Upwork Enterprise and other premium offerings is comprised of a series of distinct service periods. The Company allocates variable consideration to each distinct service period in which it has the contractual right to bill. These arrangements may include fixed and variable consideration, or a combination of the two, comprised of the following:

Client service fees. The Company offers clients access to the Company's work marketplace to source talent in exchange for a client service fee calculated as a percentage of talent billings; these fees represent variable consideration. The Company recognizes the service fees for each distinct service period in which it has the contractual right to bill for the services.

Enterprise compliance service fees. The Company charges fees to its enterprise compliance service clients that engage the Company to provide services to determine whether talent should be classified as an employee or an independent contractor based on the scope of talent services agreed between the client and talent and other factors. The Company charges enterprise compliance service fees as a percentage of talent billings; these fees represent variable consideration. The Company recognizes the service fees for each distinct service period in which it has the contractual right to bill for the services.

Subscription fees. The Company charges monthly or annual subscription fees to clients for subscription services. These subscription fees are fixed consideration and are recognized over the period of the subscription consistent with the common measure of progress for the entire performance obligation.

Upwork Payroll service fees. Upwork Payroll service fees are recognized on the same basis as described under the Upwork Basic and Plus offerings and are variable consideration.

Revenue sharing arrangements

Certain of the Company's offerings include revenue sharing arrangements under which the Company generates a revenue share as a percentage of the fees charged by certain financial institutions to talent for payment withdrawals. These arrangements are considered a single performance obligation comprised of variable consideration and are recognized over time based on transactions processed.

Managed Services

Under a managed services arrangement, the Company is responsible for providing services and engaging talent directly or as employees of third-party staffing providers to perform the services for clients on the Company's behalf. These arrangements are generally time- and materials-based, and are invoiced on a monthly basis. These fees represent variable consideration. The Company controls and directs the services performed on behalf of talent and presents revenue on a gross basis as principal. As each day of providing managed services is substantially the same and the client simultaneously receives and consumes the benefits as services are provided, the Company's single promise under its managed services is comprised of a series of distinct service periods. For managed services arrangements with clients, the Company allocates the variable amounts to each distinct service period within the series in which it has the contractual right to bill and recognizes revenue as each distinct service period is performed.

Arrangements with Multiple Performance Obligations

Certain of the Company's contracts with talent contain multiple performance obligations in the event the Company determines a material right exists. Specifically, the arrangements with talent subject to tiered service fees include contract renewal options that represent a material right. For such arrangements, the Company allocates revenue to each performance obligation based on its relative standalone selling price by applying the portfolio approach practical expedient under Topic 606. Standalone selling prices for offerings subject to tiered service fees are estimated based on observable transactions when these services are sold on a standalone basis. Standalone selling price for a material right is estimated by determining the discount that talent would obtain when exercising the option, adjusted for the likelihood that the option will be exercised. Significant judgment is applied in the application of the portfolio approach practical expedient, which includes estimating the standalone selling price of the material rights and the period of time over which to defer and recognize the consideration allocated to the material rights. Specifically, management applied significant judgment in assessing the appropriateness of the

model for the estimates, which include assessing the appropriateness of the methodology and relevant data inputs to (i) estimate the standalone selling price of the material rights, which includes the standalone selling price of the services when sold separately and the likelihood of exercise of the material rights; and (ii) estimate the period of time over which to defer and recognize the consideration allocated to the material rights. The Company utilized historical user transaction data in developing the estimates. The Company recognizes revenue related to the material rights based on the Company's estimate of when the material rights are exercised and adjusts revenue for changes in estimates in the period of change on a cumulative catch-up basis.

Deferred Revenue

Deferred revenue consists of subscription, membership, and Connects fees collected in advance of performing the service. The Company also recognizes deferred revenue for amounts attributable to unexercised material rights related to arrangements with talent that are subject to tiered service fees.

Cost of Revenue

Cost of revenue consists primarily of the cost of payment processing fees, costs of talent to deliver services under the Company's managed services offering, personnel-related costs for the Company's services and support personnel, third-party hosting fees, and amortization expense associated with acquired intangibles and capitalized internal-use software. The Company defines personnel-related costs as salaries, bonuses, benefits, and stock-based compensation costs for employees, and costs related to other service providers the Company engages to provide internal services to the Company.

Research and Development

Research and development expense primarily consists of personnel-related costs. Research and development costs are expensed as incurred, except to the extent that such costs are associated with internal-use software and platform development that qualify for capitalization.

Advertising Expense

The Company expenses advertising costs as incurred. The Company incurred \$90.8 million, \$51.4 million, and \$37.4 million in advertising expenses during the years ended December 31, 2021, 2020, and 2019, respectively.

Provision for Transaction Losses

Provision for transaction losses consists primarily of losses resulting from fraud on the work marketplace and bad debt expense associated with the Company's trade and client receivables balance and transaction losses expense related to chargebacks. Provision for these items represents estimates of losses based on the Company's actual historical incurred losses and other factors.

Stock-Based Compensation

The Company accounts for stock options with service- and market-based conditions, restricted stock units, which are referred to as RSUs, performance stock units, which are referred to as PSUs, and purchase rights granted under the 2018 Employee Stock Purchase Plan, which is referred to as the 2018 ESPP, to employees and directors based on their estimated fair value on the date of grant. The fair value and derived service period of stock options with market-based conditions is estimated using the Monte Carlo valuation model. The Company evaluates the assumptions used to value option awards upon each grant of stock options. The fair value of RSUs awarded to employees is based on the closing price of the Company's common stock, as reported on The Nasdaq Global Select Market on the date of grant. The grant date fair value of PSUs is determined using the Company's closing common stock price on the grant date multiplied by the number of PSUs that are probable of being earned as of the grant date. The fair value of purchase rights granted under the 2018 ESPP is estimated using the Black-Scholes valuation model. The model requires the Company to make a number of assumptions, including the value of the Company's common stock, expected volatility, expected term, risk-free interest rate, and expected dividends.

Stock-based compensation expense associated with service- and market-based stock options will be recognized over the longer of the expected achievement period for the service condition and market condition. The Company generally recognizes stock-based compensation expense for RSUs on a straight-line basis over the vesting term. Stock-based compensation expense associated with PSUs is recognized over the longer of the expected achievement period for the performance condition and the service condition. Stock-based compensation for purchase rights granted under the 2018 ESPP is recognized over the offering period. The Company accounts for forfeitures as they occur.

Foreign Currency

The functional currency of the Company and its subsidiaries is the U.S. dollar. Transactions with users denominated in currencies other than the U.S. dollar are remeasured at the exchange rate in effect on the date of the transaction. At the end of each reporting period, monetary assets and liabilities are remeasured using exchange rates in effect at the balance sheet date. Foreign currency transaction gains and losses are included in other income, net in the consolidated statements of operations. The Company recorded net foreign currency transaction losses of \$0.5 million for the year ended December 31, 2021, net foreign currency transaction losses of \$0.6 million for the year ended December 31, 2020, and net foreign currency transaction gains of \$0.9 million for the year ended December 31, 2019.

Comprehensive Loss

For the years ended December 31, 2021, 2020, and 2019, net unrealized losses from the Company's marketable securities were immaterial. Comprehensive loss approximates net loss for all periods presented. Accordingly, the consolidated statements of comprehensive loss have been omitted from the consolidated financial statements.

Income Taxes

The Company accounts for income taxes in accordance with the asset and liability method. Under the asset and liability method, deferred assets and liabilities are recognized based upon anticipated future tax consequences attributable to differences between financial statement carrying amounts of assets and liabilities and their respective tax bases. The provision for income taxes is comprised of the current tax liability and the change in deferred tax assets and liabilities. The Company establishes a valuation allowance to the extent that it is more likely than not that deferred tax assets will not be recoverable against future taxable income.

Deferred tax assets and liabilities are measured using the enacted tax rates that will be in effect for the years in which those tax assets are expected to be realized or settled. The Company regularly assesses the likelihood that its deferred tax assets will be realized from recoverable income taxes or recovered from future taxable income based on the realization criteria set forth in the relevant authoritative guidance. To the extent that the Company believes any amounts are not more likely than not to be realized, the Company records a valuation allowance to reduce its deferred tax assets. The realization of deferred tax assets is dependent upon future earnings, if any, the timing and amount of which are uncertain. Accordingly, the net deferred tax assets have been fully offset by a valuation allowance. If the Company subsequently realizes deferred tax assets that were previously determined to be unrealizable, the respective valuation allowance would be reversed, resulting in an adjustment to earnings in the period such determination is made.

In addition, the calculation of tax liabilities involved dealing with uncertainties in the application of complex tax regulations. The Company recognized potential liabilities based on its estimate of whether, and the extent to which, additional taxes will be due. The Company accounts for uncertain tax positions in accordance with the relevant guidance, which prescribes a recognition threshold and measurement approach for uncertain tax positions taken or expected to be taken in a company's income tax return, and also provides guidance on recognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. The guidance utilized a two-step approach for evaluation uncertain tax positions. Step one, Recognition, requires a company to determine if the weight of available evidence indicates a tax position is more likely than not to be sustained upon audit. Step two, Measurement, is based on the largest amount of benefit, which is more likely than not to be realized on ultimate settlement. A liability is reported for unrecognized tax benefits resulting from uncertain tax positions taken or expected to be taken in a tax return. Any interest and penalties related to unrecognized tax benefits are recorded as income tax expense.

Net Loss per Share

Basic net loss per share is computed by dividing the net loss by the weighted-average number of common shares outstanding for the period. Diluted net loss is computed by adjusting net loss to reallocate undistributed earnings based on the potential impact of dilutive securities, including outstanding common stock options, RSUs, PSUs, warrants to purchase common stock, common stock issuable in connection with the 2018 ESPP, and common stock issuable in connection with the Notes. For periods in which the Company has reported net losses, diluted net loss per share is the same as basic net loss per share because dilutive common shares are not assumed to have been issued if their effect is anti-dilutive.

Recent Accounting Pronouncements Not Yet Adopted

The Company has reviewed all recently issued accounting pronouncements and concluded they were either not applicable or not expected to have a material impact on the Company's consolidated financial statements.

Recently Adopted Accounting Pronouncements

In December 2019, the FASB issued ASU No. 2019—12 (Topic 740), Simplifying the Accounting for Income Taxes. This guidance simplifies accounting for income taxes by removing certain exceptions to the general principles and amending existing guidance to improve consistent application. The Company is required to adopt this guidance in the year ended December 31, 2021. The Company concluded that there was not a material impact to its consolidated financial statements as a result of the adoption.

In August 2020, the FASB issued ASU No. 2020—06, Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity, which simplifies the accounting for convertible instruments by reducing the number of accounting models available for convertible instruments. This guidance also eliminates the treasury stock method to calculate diluted earnings per share for convertible instruments and requires the use of the if-converted method. For public companies, this guidance is effective for fiscal years beginning after December 15, 2021 and interim periods within those fiscal years. Early adoption is permitted. The Company early adopted the standard as of January 1, 2021 and applied this guidance to the Notes issued in August 2021. Refer to "Note 7—Debt" for additional information.

Note 3—Revenue

Disaggregation of Revenue

See Note 12 for the Company's revenue disaggregated by type of service and geographic area.

Remaining Performance Obligations

As of December 31, 2021, the Company had approximately \$28.4 million of remaining performance obligations. The Company's remaining performance obligations consist of transaction price that has been allocated to unexercised material rights related to the Company's arrangements with talent subject to tiered service fees, subscriptions, memberships, and Connects. As of December 31, 2021, the Company expects to recognize approximately \$22.1 million over the next 12 months, with the remaining balance recognized thereafter.

The Company has applied the practical expedients and exemptions and does not disclose the value of remaining performance obligations for (i) contracts with an original expected length of one year or less; and (ii) contracts for which the variable consideration is allocated entirely to a wholly unsatisfied promise to transfer a distinct service that forms part of a single performance obligation under the series guidance.

Contract Balances

The following table provides information about the balances of the Company's trade and client receivables, net of allowance and contract liabilities included in deferred revenue and other liabilities, noncurrent as of December 31, 2021 and 2020:

<i>(In thousands)</i>	2021		2020	
Trade and client receivables, net of allowance	\$	66,826	\$	47,018
Contract liabilities				
Deferred revenue		22,083		16,801
Deferred revenue (component of other liabilities, noncurrent)		6,349		4,177

During 2021, changes in the contract liabilities balances were a result of normal business activity and deferral, and subsequent recognition, of revenue related to arrangements with talent subject to tiered service fees and related allocation of transaction price to material rights.

Revenue recognized during the year ended December 31, 2021 that was included in deferred revenue as of December 31, 2020 was \$15.5 million. Revenue recognized during the year ended December 31, 2020 that was included in deferred revenue as of December 31, 2019 was \$13.0 million.

Note 4—Fair Value Measurements and Marketable Securities

The Company defines fair value as the exchange price that would be received from the sale of an asset or paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value must

maximize the use of observable inputs and minimize the use of unobservable inputs. The authoritative guidance describes three levels of inputs that may be used to measure fair value:

- Level I—Observable inputs that reflect unadjusted quoted prices for identical assets or liabilities in active markets;
- Level II—Observable inputs other than Level I prices, such as unadjusted quoted prices for similar assets or liabilities in active markets, unadjusted quoted prices for identical or similar assets or liabilities in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities; and
- Level III—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities. These inputs are based on the Company's own assumptions used to measure assets and liabilities at fair value and require significant management judgment or estimation.

The categorization of a financial instrument within the fair value hierarchy is based upon the lowest level of input that is significant to its fair value measurement. The Company's assessment of the significance of a particular input to the fair value measurement in its entirety requires management to make judgments and consider factors specific to the assets or liabilities.

The Company's financial instruments that are carried at fair value consist of Level I and Level II assets as of December 31, 2021 and 2020. The following tables summarize the Company's cash and available-for-sale marketable securities' amortized cost, gross unrealized gains, gross unrealized losses, and fair value by significant investment category reported as cash and cash equivalents or marketable securities as of December 31, 2021 and 2020:

(In thousands)

December 31, 2021	Amortized Cost	Unrealized Gain	Unrealized Loss	Fair Value	Cash and Cash Equivalents	Marketable Securities
Cash	\$ 16,596	\$ —	\$ —	\$ 16,596	\$ 16,596	\$ —
Level I						
Money market funds	108,204	—	—	108,204	108,204	—
Treasury bills	89,992	1	—	89,993	15,000	74,993
U.S. government securities	94,839	—	(285)	94,554	—	94,554
Total Level I	293,035	1	(285)	292,751	123,204	169,547
Level II						
Commercial paper	171,918	—	—	171,918	29,544	142,374
Corporate bonds	183,303	1	(217)	183,087	17,861	165,226
Asset-backed securities	13,749	—	(11)	13,738	—	13,738
Yankee bonds	6,693	—	(12)	6,681	—	6,681
Total Level II	375,663	1	(240)	375,424	47,405	328,019
Total	\$ 685,294	\$ 2	\$ (525)	\$ 684,771	\$ 187,205	\$ 497,566

UPWORK INC.
Notes to Consolidated Financial Statements—Continued

(In thousands)

December 31, 2020	Amortized Cost	Unrealized Gain	Unrealized Loss	Fair Value	Cash and Cash Equivalents	Marketable Securities
Cash	\$ 22,359	\$ —	\$ —	\$ 22,359	\$ 22,359	\$ —
Level I						
Money market funds	65,723	—	—	65,723	65,723	—
Treasury bills	4,498	1	—	4,499	—	4,499
U.S. government securities	20,082	24	—	20,106	—	20,106
Total Level I	90,303	25	—	90,328	65,723	24,605
Level II						
Commercial paper	56,964	—	—	56,964	5,999	50,965
Total Level II	56,964	—	—	56,964	5,999	50,965
Total	\$ 169,626	\$ 25	\$ —	\$ 169,651	\$ 94,081	\$ 75,570

The Company did not record any impairment charges with respect to its marketable securities during the years ended December 31, 2021, 2020, and 2019.

As of December 31, 2020, the Company had debt obligations outstanding of \$10.8 million under the Company's Loan and Security Agreement, as amended, which is referred to as the Loan Agreement. As of December 31, 2020, the carrying value approximated fair value as borrowings under the Loan Agreement bore interest at variable rates, and the Company believes its credit risk quality is consistent with when the debt was originated. The Company considered the balances outstanding under the Loan Agreement to be Level II liabilities as of December 31, 2020. As of December 31, 2021, the Loan Agreement had been terminated and no amounts thereunder were outstanding. See "Note 7—Debt."

Note 5—Balance Sheet Components

Property and Equipment, Net

Property and equipment, net consisted of the following as of December 31, 2021 and 2020:

(In thousands)	2021	2020
Computer equipment and software	\$ 5,493	\$ 4,819
Internal-use software and platform development costs	25,738	20,727
Leasehold improvements	11,644	14,613
Office furniture and fixtures	3,365	3,354
Total property and equipment	46,240	43,513
Less: accumulated depreciation	(24,911)	(15,374)
Property and equipment, net	\$ 21,329	\$ 28,139

Depreciation expense related to property and equipment was \$3.7 million, \$3.6 million, and \$2.8 million for the years ended December 31, 2021, 2020, and 2019, respectively.

The Company capitalized \$5.0 million, \$8.0 million, and \$6.4 million of internal-use software and platform development costs during the years ended December 31, 2021, 2020, and 2019, respectively.

Amortization expense related to the capitalized internal-use software and platform development costs was \$5.9 million for the year ended December 31, 2021, of which \$3.8 million was included in cost of revenue related to developed technology used on the work marketplace. Amortization expense related to the capitalized internal-use software and platform development costs was \$3.9 million for the year ended December 31, 2020, of which \$2.9 million was included in cost of revenue related to developed technology used on the work marketplace. Amortization expense related to the capitalized internal-use software and platform development costs was \$1.2 million for the year ended December 31, 2019, of which \$0.9 million was included in cost of revenue related to developed technology used on the work marketplace.

Intangible Assets, Net

All of the Company's identifiable intangible assets were fully amortized as of December 31, 2021. Total amortization expense of intangible assets was \$0.7 million for the year ended December 31, 2021. Total amortization expense of intangible assets was \$2.7 million for each of the years ended December 31, 2020 and 2019. Amortization expense is included in general and administrative expenses. As of December 31, 2020, intangible assets, net consisted of the following:

(In thousands)	As of December 31, 2020		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Trade names	\$ 2,293	\$ 2,293	\$ —
User relationships	18,678	18,011	667
Developed technology	10,356	10,356	—
Domain names	529	529	—
Total	\$ 31,856	\$ 31,189	\$ 667

Accrued Expenses and Other Current Liabilities

Accrued expenses and other current liabilities consisted of the following as of December 31, 2021 and 2020:

(In thousands)	2021	2020
Accrued compensation and related benefits	\$ 23,047	\$ 14,007
Accrued vendor expenses	7,728	8,662
Operating lease liability, current	6,315	3,725
Accrued indirect taxes	4,137	3,818
Accrued payment processing fees	2,085	1,219
Accrued talent costs	1,417	1,235
Other	1,013	202
Total accrued expenses and other current liabilities	\$ 45,742	\$ 32,868

Operating Leases

The Company leases office space and certain equipment under various operating leases, with the vast majority of its lease portfolio consisting of operating leases for office space. The Company has also entered into arrangements where it acts as a sublessor in its leases of office space. The Company has not entered into any significant finance, sales-type, or direct financing leases.

The Company's significant judgments include determining whether an arrangement is or contains a lease, the determination of the discount rate used to calculate the lease liability, and whether or not lease incentives are reasonably certain to occur in the initial measurement of the lease liability. Operating lease assets and lease liabilities are recognized at commencement date and initially measured based on the present value of lease payments over the defined lease term. Lease expense is recognized on a straight-line basis over the lease term.

A contract is or contains an embedded lease if the contract meets all of the below criteria:

- There is an identified asset;
- The Company has the right to obtain substantially all of the economic benefit of the asset; and
- The Company has the right to direct the use of the asset.

For initial measurement of the present value of lease payments and for subsequent measurement of lease modifications, the Company is required to use the rate implicit in the lease. Since the majority of the Company's leases do not provide an implicit rate, the Company uses its incremental borrowing rate, which is a collateralized rate. The application of the incremental borrowing rate is performed on a lease-by-lease basis and approximates the rate at which the Company could borrow, on a secured basis for a similar term, an amount equal to its lease payments in a similar economic environment.

The Company's leases have remaining lease terms of approximately one year to eight years, which may include the option to extend the lease. The Company includes lease payments associated with renewal options in its operating

lease asset and liability only when it becomes reasonably certain the company will exercise the renewal option. The Company has not included renewal options for any of its operating leases in its determination of lease liabilities. The Company does not have lease agreements with residual value guarantees, sale leaseback terms, or material restrictive covenants. Leases with an initial term of 12 months or less are not recognized on the consolidated balance sheet. The Company recognizes lease expense for these leases on a straight-line basis over the lease term.

The following table summarizes the Company's operating lease assets and lease liabilities as of December 31, 2021 and 2020:

(In thousands)

Balance Sheet Classification		2021	2020
Assets			
Operating—noncurrent	Operating lease asset	\$ 10,682	\$ 19,729
Liabilities			
Operating—current	Accrued expenses and other current liabilities	6,315	3,725
Operating—noncurrent	Operating lease liability, noncurrent	16,753	20,506
Total lease liabilities		\$ 23,068	\$ 24,231

For the years ended December 31, 2021, 2020, and 2019, operating lease cost, inclusive of variable lease charges, was \$6.0 million, \$6.0 million, and \$5.9 million, respectively, and sublease income recognized was approximately \$0.5 million, \$0.3 million, and \$0.4 million, respectively. For the years ended December 31, 2021, 2020, and 2019, charges related to operating leases that are variable, and therefore not included in the measurement of the lease liabilities, were \$1.2 million, \$0.7 million, and \$0.6 million, respectively. For the years ended December 31, 2021, 2020, and 2019, the Company made lease payments of \$6.4 million, \$3.3 million, and \$3.3 million, respectively.

San Francisco Sublease

In December 2021, the Company executed a sublease agreement to sublease one of the two suites the Company is currently leasing as its headquarters in San Francisco, California. The suite that was not subleased will continue to be utilized by the Company as it was prior to entering into the sublease agreement. The sublease agreement became effective in December 2021 upon receipt of the consent of the Company's landlord. The term of the sublease commences on February 1, 2022 and expires on August 31, 2024, unless terminated earlier in accordance therewith. Rent payments begin on March 1, 2022 and approximate \$0.1 million per month. Rent payments will be recorded within general and administrative expenses within the Company's consolidated statements of operations. Neither party has the option to renew or extend the sublease agreement.

Under the sublease agreement, the Company is not relieved of its original obligation with the master lessor, which expires on August 31, 2024. The Company determined the sublease agreement is an operating lease, which is consistent with the classification of the original sublease with the landlord. As a result of the execution of the sublease agreement, the Company determined that indicators of impairment existed with respect to the asset group that consisted of the operating lease asset and related leasehold improvements associated with the suite being subleased. Accordingly, the Company conducted an impairment test to assess whether the fair value of the asset group was lower than its carrying value. The results of the impairment test indicated that the fair value of the asset group was lower than its carrying value. The Company determined the fair value of the asset group using the discounted cash flow method. The assumptions used in the discounted cash flow analysis included projected sublease income over the remaining term of the original lease with the landlord and a discount rate the Company believes reflects the level of risk associated with these future cash flows. The Company considers these assumptions to be Level III inputs in accordance with the fair value hierarchy described in "Note 4—Fair Value Measurements and Marketable Securities."

As a result of the partial sublease of its San Francisco office, during the year ended December 31, 2021, the Company recorded an impairment charge of \$1.4 million, of which \$1.2 million was allocated to the operating lease asset and \$0.2 million was allocated to the associated leasehold improvements. The Company recorded this impairment charge within general and administrative expenses within its consolidated statement of operations for the year ended December 31, 2021.

Santa Clara Sub-Sublease

In April 2021, the Company executed a sub-sublease agreement to sublease the entirety of its former headquarters in Santa Clara, California. The sub-sublease agreement became effective in May 2021 upon receipt of the consent of the Company's landlord and master lessor. The term of the sub-sublease commenced on June 1, 2021 and expires on May 31, 2024, unless terminated earlier in accordance therewith. Rent payments begin on January 1, 2022 and approximate \$0.1 million per month. Rent payments will be recorded within general and administrative expenses within the Company's consolidated statements of operations. Neither party has the option to renew or extend the sub-sublease agreement.

Under the sub-sublease agreement, the Company is not relieved of its original obligation with the master lessor that expires on October 15, 2028. The Company determined the sub-sublease agreement is an operating lease, which is consistent with the classification of the original sublease with the master lessor. As a result of the execution of the sub-sublease agreement, the Company determined that indicators of impairment existed with respect to the asset group that consisted of the Santa Clara office operating lease asset and associated leasehold improvements, furniture and fixtures, and hardware. Accordingly, the Company conducted an impairment test to assess whether the fair value of the asset group was lower than its carrying value. The results of the impairment test indicated that the fair value of the asset group was lower than its carrying value. The Company determined the fair value of the asset group using the discounted cash flow method. The assumptions used in the discounted cash flow analysis included projected sublease income over the remaining term of the original sublease with the master lessor, expected downtime prior to the commencement of future subleases, and a discount rate the Company believes reflects the level of risk associated with these future cash flows. The Company considers these assumptions to be Level III inputs in accordance with the fair value hierarchy described in "Note 4—Fair Value Measurements and Marketable Securities."

As a result of the sublease of its Santa Clara office, during the year ended December 31, 2021, the Company recorded an impairment charge of \$7.4 million, of which \$4.3 million was allocated to the Santa Clara office operating lease asset, \$2.9 million was allocated to the associated leasehold improvements, and \$0.2 million was allocated to the associated furniture and fixtures and hardware. The Company recorded this impairment charge within general and administrative expenses within its consolidated statement of operations for the year ended December 31, 2021.

Chicago Lease

On January 1, 2020, the Company commenced an operating lease of one additional floor in its Chicago, Illinois office. As a result, the Company recognized a \$1.7 million operating lease asset and \$1.7 million operating lease liability on January 1, 2020, which are included in operating lease asset and operating lease liability, noncurrent, respectively, on the Company's consolidated balance sheet as of December 31, 2020. The lease has an initial term of five years with the option to renew for an additional five years at the end of the initial lease term. Total minimum lease payments under the initial term are \$2.1 million. For the initial measurement of the present value of the lease payments associated with this lease, the Company used its incremental borrowing rate, which is a collateralized rate and approximates the rate at which the Company could borrow, on a secured basis for a similar term, an amount equal to its lease payments in a similar economic environment.

As of December 31, 2021 and 2020, the Company had no material finance leases.

The following table shows the Company's future lease commitments due in each of the next five years and thereafter for operating leases, which excludes amounts received in the form of sublease income discussed above:

(In thousands)

Year Ended December 31,	Leases	
2022	\$	6,588
2023		6,776
2024		5,843
2025		2,356
2026		1,729
Thereafter		3,208
Total lease payments		26,500
Adjustment for discount to present value		(3,432)
Total	\$	23,068

As of and for the year ended December 31, 2021, the weighted-average remaining lease term is 4.6 years, and the weighted-average discount rate is 5.80%.

Note 6—Commitments and Contingencies

Letters of Credit

In conjunction with the Company's operating lease agreements, as of December 31, 2021 and 2020, the Company had three irrevocable letters of credit outstanding in the aggregate amounts of \$0.8 million and \$1.0 million, respectively. The letters of credit are collateralized by restricted cash in the same amount. No amounts had been drawn against these letters of credit as of December 31, 2021 and 2020.

Contingencies

The Company accrues contingent liabilities when it is probable that future expenditures will be made and such expenditures can be reasonably estimated. Potential contingencies may include various claims and litigation or non-income tax matters that arise from time to time in the normal course of business. Due to uncertainties inherent in such contingencies, the Company can give no assurance that it will prevail in any such matters, which could subject the Company to significant liability or damages. Any claims, litigation, or other contingencies could have an adverse effect on the Company's business, financial position, results of operations or cash flows in or following the period that claims, litigation or other contingencies are resolved.

As of December 31, 2021 and 2020, the Company was not a party to any material legal proceedings or claims, nor is the Company aware of any pending or threatened litigation or claims, including non-income tax matters, that could reasonably be expected to have a material adverse effect on its business, operating results, cash flows, or financial condition. Accordingly, the amounts accrued for contingencies for which the Company believes a loss is probable were not material as of and for the years ended December 31, 2021 and 2020.

Indemnification

The Company has indemnification agreements with its officers, directors, and certain key employees to indemnify them while they are serving in good faith in their respective positions. In the ordinary course of business, the Company enters into contractual arrangements under which it agrees to provide indemnification of varying scope and terms to clients, business partners, vendors, and other parties, including, but not limited to, losses arising out of the Company's breach of such agreements, claims related to potential data or information security breaches, intellectual property infringement claims made by third parties, and other liabilities relating to or arising from the Company's offerings and services or its acts or omissions. In addition, subject to the terms of the applicable agreement, as part of the Company's Upwork Enterprise and certain other premium offerings, the Company indemnifies clients that subscribe to worker classification services for losses arising from worker misclassification. It is not possible to determine the maximum potential loss under these indemnification provisions due to the Company's limited history of prior indemnification claims and the facts and circumstances involved in each particular provision.

Note 7—Debt

The following table presents the carrying value of the Company's debt obligations as of December 31, 2021 and 2020:

<i>(In thousands)</i>	2021	2020
Convertible senior notes—interest accrues from August 2021 and will be payable semiannually in arrears on February 15 and August 15 of each year, beginning February 2022, maturing August 2026; interest at 0.25% per annum	\$ 575,000	\$ —
First term loan—18 months of interest-only payments ended in March 2019 followed by 36 equal monthly installments of principal plus interest, maturing March 2022; interest at prime plus 0.25% per annum	—	6,250
Second term loan—17 months of interest-only payments ended in March 2019 followed by 42 equal monthly installments of principal plus interest, maturing September 2022; interest at prime plus 0.25% per annum	—	4,500
Total debt	575,000	10,750
Less: Unamortized debt issuance costs	(13,701)	(27)
Balance	561,299	10,723
Debt, current	—	(7,581)
Debt, noncurrent	\$ 561,299	\$ 3,142
Weighted-average interest rate	0.76 %	5.64 %

Term and Revolving Loans

The Loan Agreement, which was subsequently amended in November 2017, September 2018, March 2019, and August 2020, was terminated in August 2021. Under the Loan Agreement, the aggregate amount of the facility was up to \$49.0 million, consisting of a term loan in the original principal amount of \$15.0 million, which is referred to as the First Term Loan, a term loan in the original principal amount of \$9.0 million, which is referred to as the Second Term Loan and, together with the First Term Loan, as the Term Loans, and a revolving line of credit, which permitted borrowings of up to \$25.0 million subject to customary conditions.

In August 2021, the Company entered into an agreement, which is referred to as the Payoff Agreement, with its lender to fully repay the remaining outstanding principal amounts plus accrued and unpaid interest outstanding under its Term Loans and terminate the Loan Agreement. There were no amounts outstanding under the Company's revolving line of credit as of the date of termination. Pursuant to the Payoff Agreement, the full repayment of the Term Loans amounted to \$5.8 million, and as of August 5, 2021, the Loan Agreement, including the Term Loans and revolving line of credit, was terminated. As of December 31, 2021, no amounts remained outstanding under the Loan Agreement. The Company was in compliance with its covenants under the Loan Agreement as of August 5, 2021 and December 31, 2020.

During the year ended December 31, 2021, the Company repaid \$6.3 million and \$4.5 million related to the First Term Loan and the Second Term Loan, respectively. During the year ended December 31, 2020, the Company repaid \$5.0 million and \$2.6 million related to the First Term Loan and the Second Term Loan, respectively. Amortization expense related to the debt discount was immaterial for the years ended December 31, 2021, 2020, and 2019.

Convertible Senior Notes Due 2026

On August 10, 2021, the Company issued, at par value, \$575.0 million aggregate principal amount of 0.25% convertible senior notes due 2026. The issuance included the full exercise of an option granted by the Company to the initial purchasers of the Notes to purchase an additional \$75.0 million aggregate principal amount of Notes. The Notes were issued pursuant to and are subject to the terms and conditions of an indenture, which is referred to as the Indenture, between the Company and Wells Fargo Bank, National Association, as trustee. The Notes were offered and sold in a private offering to qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933, as amended.

The Notes are senior, unsecured obligations of the Company and will bear interest at a rate of 0.25% per year. Interest will accrue from August 10, 2021 and will be payable semiannually in arrears on February 15 and August 15 of each year, beginning on February 15, 2022, and the principal amount of the Notes will not accrete. The Notes will mature on August 15, 2026, unless earlier redeemed, repurchased, or converted in accordance with the terms of the Notes.

Holders may convert all or any portion of their Notes, in multiples of \$1,000 principal amount at the option of the holder (i) prior to the close of business on the business day immediately preceding May 15, 2026, only upon satisfaction of certain conditions and during certain periods specified below, and (ii) on or after May 15, 2026, at any time until the close of business on the second scheduled trading day immediately preceding the maturity date:

- during any calendar quarter commencing after the calendar quarter ending on December 31, 2021, if the last reported sale price of the Company's common stock is greater than or equal to 130% of the conversion price for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter of the conversion price on each applicable trading day;
- during the five consecutive business day period after any five consecutive trading day period, which is referred to as the Measurement Period, in which the trading price (as defined in the Indenture) per \$1,000 principal amount of Notes for each trading day of the Measurement Period was less than 98% of the product of the last reported sale price per share of the Company's common stock on such trading day and the conversion rate on such trading day;
- if the Company calls such Notes for redemption, at any time prior to the close of business on the second scheduled trading day immediately preceding the redemption date; and
- upon the occurrence of specified corporate events described in the Indenture.

Upon conversion, the Notes may be settled in shares of the Company's common stock, cash or a combination of cash and shares of the common stock, at the election of the Company. The Notes have an initial conversion rate of 15.1338 shares of common stock per \$1,000 principal amount of Notes, which is subject to adjustment in certain circumstances. This is equivalent to an initial conversion price of approximately \$66.08 per share of the Company's common stock. The conversion rate is subject to customary adjustments under certain circumstances in accordance with the terms of the Indenture. In addition, if certain corporate events that constitute a make-whole fundamental change (as defined in the Indenture) occur or if the Company issues a notice of redemption with respect to the Notes prior to the maturity date, then the conversion rate will, in certain circumstances, be increased for a specified period of time.

The Company may redeem for cash all or any portion of the Notes (subject to a partial redemption limitation), at the Company's option, on or after August 20, 2024, if the last reported sale price per share of the Company's common stock has been at least 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive) during any 30 consecutive trading day period (including the last trading day of such period) ending on, and including, the trading day immediately preceding the date on which the Company provides notice of redemption at a redemption price equal to 100% of the principal amount of the Notes to be redeemed, plus any accrued and unpaid interest, if any, to, but excluding, the redemption date. No sinking fund is provided for the Notes, which means that the Company is not required to redeem or retire the Notes periodically.

Upon the occurrence of a fundamental change (as defined in the Indenture), subject to certain conditions, holders have the right to require the Company to repurchase for cash all or a portion of their Notes at a price equal to 100% of the principal amount of the Notes to be repurchased, plus any accrued and unpaid interest thereon, if any, until, but excluding, the fundamental change repurchase date.

The Notes are the Company's senior unsecured obligations and rank senior in right of payment to any of the Company's existing and future indebtedness that is expressly subordinated in right of payment to the Notes; equal in right of payment to any of the Company's existing and future unsecured indebtedness that is not so subordinated; effectively junior in right of payment to any of the Company's existing and future secured indebtedness to the extent of the value of the assets securing such indebtedness; and structurally junior to all existing and future indebtedness and other liabilities (including trade payables) of the Company's subsidiaries.

The net proceeds from the issuance of the Notes were approximately \$560.1 million, after deducting debt issuance costs. The total debt issuance costs incurred and recorded by the Company amounted to \$14.9 million, which were recorded as a reduction to the face amount of the Notes and will be amortized to interest expense on a straight-line basis, which produces a materially consistent amount as the effective interest method over the contractual term of the Notes.

For the year ended December 31, 2021, interest expense was \$0.6 million and amortization of the issuance costs was \$1.1 million related to the Notes. As of December 31, 2021, the if-converted value of the Notes did not exceed the outstanding principal amount. As of December 31, 2021, the total estimated fair value of the Notes was \$538.3 million and was determined based on a market approach using actual bids and offers of the Notes in an

over-the-counter market on the last trading day of the period. The Company considers these assumptions to be Level II inputs in accordance with the fair value hierarchy described in "Note 4—Fair Value Measurements and Marketable Securities."

Capped Calls

In connection with the pricing of the Notes on August 5, 2021 and in connection with the full exercise by the initial purchasers on August 9, 2021 of their option to purchase additional Notes, the Company used approximately \$49.4 million of the net proceeds from the issuance of the Notes to enter into privately negotiated capped call transactions, which are referred to as the Capped Calls, with various financial institutions.

Subject to customary anti-dilution adjustments substantially similar to those applicable to the Notes, the Capped Calls cover the number of shares of the Company's common stock initially underlying the Notes. By entering into the Capped Calls, the Company expects to reduce the potential dilution to its common stock (or, in the event a conversion of the Notes is settled in cash, to reduce its cash payment obligation) in the event that at the time of conversion of the Notes its common stock price per share exceeds the conversion price of the Notes, with such reduction subject to a cap based on the cap price. If, however, the market price per share of common stock, as measured under the terms of the Capped Calls, exceeds the cap price of the Capped Calls, there would be dilution and/or there would not be an offset of such potential cash payments, in each case, to the extent that the then-market price per share of common stock exceeds the cap price of the Capped Calls. The initial cap price of the Capped Calls is \$92.74 per share of common stock, which represents a premium of 100% over the last reported sale price of the common stock of \$46.37 per share on August 5, 2021, and is subject to certain customary adjustments under the terms of the Capped Calls; provided that the cap price will not be reduced to an amount less than the strike price of \$66.08 per share.

The Capped Calls are separate transactions and are not part of the terms of the Notes. The Capped Calls meet the criteria for classification as equity and, as such, are not remeasured each reporting period and are included as a reduction to additional paid-in-capital within stockholders' equity.

Note 8—Preferred and Common Stock

Preferred Stock

As of December 31, 2021 and 2020, the Company was authorized to issue up to 10,000,000 shares of undesignated preferred stock, \$0.0001 par value per share. The Company did not have any outstanding shares of preferred stock as of December 31, 2021 and 2020.

Common Stock

Holders of common stock are entitled to one vote per share and are entitled to receive dividends, if any, on a pro rata basis whenever funds are legally available and when, as, and if declared by the Company's board of directors.

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Notes to Consolidated Financial Statements—Continued

As of December 31, 2021 and 2020, the Company was authorized to issue 490,000,000 shares of common stock. As of December 31, 2021 and 2020, the Company had reserved shares of common stock for future issuance as follows:

	2021	2020
Options issued and outstanding	4,264,068	4,858,590
RSUs and PSUs issued and outstanding	4,583,823	5,568,225
Warrant to purchase common stock	350,000	400,000
Remaining shares reserved for future issuances under 2018 Equity Incentive Plan	22,250,297	18,332,765
Remaining shares reserved for future issuances under 2018 Employee Stock Purchase Plan	3,033,401	2,419,154
Common stock issuable in connection with convertible senior notes	8,701,935	—
Total	43,183,524	31,578,734

Common Stock Warrant

In 2018, the Company established The Upwork Foundation initiative. The program includes a donor-advised fund created through the Tides Foundation. In 2018, the Company issued a warrant to purchase 500,000 shares of its common stock at an exercise price of \$0.01 per share to the Tides Foundation. The vesting and exercisability provisions of the warrant became effective upon the Company's initial public offering, which is referred to as the IPO, in October 2018. This warrant is exercisable as to 1/10th of the shares on each anniversary of the IPO, with proceeds from the sale of such shares to be donated in accordance with the Company's directive.

In each of 2019, 2020, and 2021 this warrant was exercised as to all 50,000 of the then-vested and exercisable shares. In lieu of a cash payment, the holder of the warrant surrendered shares of common stock to cover the exercise price. For the years ended December 31, 2021, 2020, and 2019, the Company recorded \$0.8 million, \$0.8 million, and \$0.7 million, respectively, of expense related to this warrant, which is included in general and administrative expense in the Company's consolidated statement of operations.

Note 9—Stock-Based Compensation

Equity Incentive Plans

2014 Equity Incentive Plan

In 2014, the Company's board of directors and stockholders each adopted the 2014 Equity Incentive Plan, which is referred to as the 2014 EIP. The total number of shares of common stock reserved and available for grant and issuance pursuant to such plan was originally 12,462,985 plus (i) shares that were then subject to outstanding option grants under the oDesk Corporation 2004 Stock Plan, the Elance 1999 Stock Option Plan, and the Elance 2009 Stock Option Plan, which are referred to collectively as the Prior Plans, but subsequently ceased to be subject to an award for any reason other than exercise of a stock option, (ii) shares that had been reserved but not subject to any outstanding awards under the Prior Plans and (iii) shares issued under the Prior Plans that were repurchased, forfeited, or used to pay employee withholding or exercise price obligations. Under the terms of the 2014 EIP, incentive stock options may be granted at prices not less than 100% of the fair value of the Company's common stock on the date of grant unless determined in writing by the Company's board of directors. The options granted under the 2014 EIP generally vest over a four-year period from the original date of grant and expire ten years from the original grant date.

2018 Equity Incentive Plan

In 2018, the Company's board of directors and stockholders each adopted the 2018 Equity Incentive Plan, which is referred to as the 2018 EIP, which became effective on the date immediately prior to the date of the IPO. A total of 10,701,505 shares of common stock were initially reserved for issuance pursuant to future awards under the 2018 EIP. On January 1 of each year, shares available for issuance are increased based on the provisions of the 2018 EIP. Any shares subject to outstanding awards under the 2014 EIP that are canceled or repurchased subsequent to the 2018 EIP's effective date are returned to the pool of shares reserved for issuance under the 2018 EIP. Awards granted under the 2018 EIP may be (i) incentive stock options, (ii) nonqualified stock options, (iii) RSUs, (iv) restricted stock awards, or (v) stock appreciation rights, as determined by the Company's board of directors or compensation committee at the time of grant.

Pursuant to the terms of the 2018 EIP, the number of shares available for grant was increased by 6,239,761 shares in January 2021.

Option Awards

The fair value of options with service- and performance-based conditions is determined using the Black-Scholes valuation model as of the grant date using the following assumptions:

Dividend Yield—The dividend yield is assumed to be zero as the Company has never paid dividends and has no current plans to do so.

Expected Term—The expected term represents the period that the Company's stock-based awards are expected to be outstanding. For awards containing only service conditions, the Company determines the expected term using the simplified method as the Company did not have sufficient historical information to develop reasonable expectations about future exercise patterns and post-vesting employment termination behavior at the time of grant. The simplified method deems the term to be the average of the time-to-vesting and the contractual life of the options. For performance-based awards, the Company uses relevant data, including past exercise patterns, if available, to determine the expected term.

Risk-Free Interest Rate—The risk-free interest rate is based on the United States Treasury yield curve in effect at the time of grant for zero-coupon U.S. Treasury notes with maturities approximately equal to the option's expected term.

Expected Volatility—Since the Company did not have a sufficient trading history of its common stock at the time of grant, the expected volatility is derived from the average historical stock volatilities of several unrelated public companies within the Company's industry that the Company considers to be comparable to its business over a period equivalent to the expected term of the stock option grants.

Fair Value of Common Stock—Given the absence of a public trading market prior to the IPO, the Company's board of directors considered numerous objective and subjective factors to determine the fair value of its common stock at each grant date. These factors included, but were not limited to: (i) independent contemporaneous third-party valuations of common stock; (ii) the prices for the Company's redeemable convertible preferred stock sold to outside investors; (iii) the rights and preferences of redeemable convertible preferred stock relative to common stock; (iv) the lack of marketability of its common stock; (v) developments in the business; and (vi) the likelihood of achieving a liquidity event, such as an initial public offering or sale of the Company, given prevailing market conditions. Subsequent to the IPO, the fair value of common stock is based on the closing price of the Company's common stock, as reported on The Nasdaq Global Select Market on the date of grant.

The following table summarizes activity under the Company's stock option plans:

	Number of Shares Underlying Outstanding Options	Weighted- Average Exercise Price	Weighted-Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value (in thousands)
Balances at December 31, 2020	4,858,590	\$ 3.83	5.80	\$ 149,046
Granted	1,500,000	38.80		
Exercised	(2,035,709)	3.53		
Forfeited and canceled	(58,813)	4.42		
Balances at December 31, 2021	<u>4,264,068</u>	16.29	6.37	76,025
Vested and exercisable as of December 31, 2021	2,542,329	4.02	4.80	76,626
Vested and expected to vest as of December 31, 2021	4,264,068	16.29	6.37	76,025

In 2021, the compensation committee of the Company's board of directors approved a stock option grant, which is referred to as the CEO Award, exercisable for up to 1,500,000 shares of the Company's common stock to Hayden Brown, the Company's President and Chief Executive Officer, under the 2018 EIP. The CEO Award is subject to a service-based vesting requirement, which is referred to as the Service Condition, and a performance-based vesting requirement, which is referred to as the Market Condition. In order for any shares subject to the CEO Award to be exercisable, both the Service Condition and the Market Condition must be satisfied with respect to such shares. The CEO Award vests with respect to the Service Condition in sixteen equal quarterly installments following the grant date, subject to Ms. Brown's continuous service to the Company as Chief Executive Officer, Executive Chairperson, or any C-level officer position. The CEO Award vests with respect to the Market Condition upon the achievement of certain volume weighted-average common stock price targets measured over any consecutive 90-day period between the grant date and April 18, 2026. The 90-day volume weighted-average common stock price targets, and the number of shares of the CEO Award that become vested with respect to the Market Condition upon the achievement of each such target, are reflected in the following table:

Stock Price	Number of Shares Vested
\$60	100,000
\$70	200,000
\$80	300,000
\$90	400,000
\$100	500,000

Stock-based compensation expense associated with the CEO Award will be recognized over the longer of the expected achievement period for the Market Condition and the Service Condition. The Market Condition period and the valuation of each tranche of the CEO Award were determined using a Monte Carlo simulation. In the event the Market Condition is met prior to the expected achievement period, any then-unrecognized compensation expense associated with the shares that have vested with respect to both the Market Condition and the Service Condition will be recognized immediately in the Company's consolidated statements of operations. For the year ended December 31, 2021, the Company recorded stock-based compensation expense of \$11.3 million related to the CEO Award. Stock-based compensation expense for the CEO Award is recorded as a component of general and administrative expense in the Company's consolidated statement of operations.

The Company estimated the fair value of the CEO Award using a Monte Carlo simulation. The Company estimates the expected term based on a future exercise assumption. The weighted-average derived service period for the CEO Award is 2.1 years. The risk-free interest rate is based on the United States Treasury yield curve in effect at the time of grant for zero-coupon U.S. Treasury notes. The expected volatility is derived from the average historical stock volatility of the Company over a period equivalent to the expected term of the CEO Award. The following assumptions were used to estimate the fair value of the CEO Award:

Dividend yield	— %
Risk-free interest rates	1.7 %
Expected volatility	65 %

In 2019, the Company entered into a transition agreement, which is referred to as the Transition Agreement, with Stephane Kasriel pursuant to which Mr. Kasriel tendered his resignation as the Company's President and Chief Executive Officer effective as of December 31, 2019. As a result, for the year ended December 31, 2019, the Company recorded \$3.5 million of additional stock-based compensation expense related to the Transition Agreement.

The fair values of the awards modified by the Transition Agreement were estimated using the Black-Scholes valuation model with the following assumptions:

Dividend yield	— %
Expected term (in years)	0.3 - 1.3
Risk-free interest rates	1.5% - 1.6%
Expected volatility	38% - 39%

For the years ended December 31, 2021, 2020, and 2019, the intrinsic value of options exercised was \$88.9 million, \$124.1 million, and \$73.0 million, respectively. The aggregate intrinsic value represents the difference between the

exercise price of the options and the closing price of the Company's common stock on The Nasdaq Global Select Market on the day prior to the date of exercise.

For the year ended December 31, 2021, the weighted-average grant-date fair value of options granted was \$19.19. The Company did not grant any stock option awards during the years ended December 31, 2020 and 2019. As of December 31, 2021, total unrecognized stock-based compensation cost was \$17.9 million, which is expected to be generally recognized on a straight-line basis over a weighted-average period of 1.8 years.

RSU and PSU Awards

The fair value of RSUs awarded to employees is based on the closing price of the Company's common stock, as reported on The Nasdaq Global Select Market on the date of grant. The following table summarizes the RSU and PSU activity and related information under the 2018 EIP:

	Number Outstanding	Weighted-Average Grant Date Fair Value
Unvested balance - January 1, 2021	5,568,225	\$ 12.20
Granted	2,075,311	51.53
Vested	(1,865,444)	16.37
Forfeited/canceled	(1,194,269)	16.42
Unvested balance - December 31, 2021	4,583,823	\$ 26.86

In 2021, the compensation committee of the Company's board of directors approved PSU grants to certain members of the Company's leadership team under the 2018 EIP. The number of PSUs that were earned by the recipients, which are referred to as Earned PSUs, was determined based on the Company's revenue achievement during the year ended December 31, 2021, which is referred to as the PSU Performance Condition. The Earned PSUs are subject to a time-based vesting requirement conditioned on the recipient of the PSU Award continuing to provide service to the Company for four years from the PSU Grant Date, which is referred to as the PSU Service Condition. The Earned PSUs will vest with respect to 25% of the Earned PSUs on the one-year anniversary of the PSU Grant Date and 1/16th of the Earned PSUs on a quarterly basis thereafter.

Stock-based compensation expense associated with the PSU Awards is a component of operating expenses in the Company's consolidated statements of operations and will be recognized over the longer of the expected achievement period for the PSU Performance Condition and the PSU Service Condition. The grant date fair value of the PSU Awards was determined using the Company's closing common stock price on the PSU Grant Date multiplied by the number of PSUs that were probable of being earned on the PSU Grant Date. At each interim reporting date prior to the date on which the compensation committee of the Company's board of directors certifies the PSU Performance Condition, the number of PSUs that are probable of being earned is reassessed and any changes are reflected in the total stock-based compensation expense associated with the PSU Awards.

For the year ended December 31, 2021, the weighted-average grant-date fair value of PSUs granted was \$56.42. During the year ended December 31, 2021, the Company recorded stock-based compensation expense of \$3.4 million related to the PSUs. As of December 31, 2021, unrecognized stock-based compensation cost was \$3.4 million, which is expected to be recognized over a weighted-average period of 1.8 years.

For the years ended December 31, 2021, 2020, and 2019, the weighted-average grant-date fair value of RSUs granted was \$51.37, \$10.96, and \$16.15, respectively. For the years ended December 31, 2021, 2020, and 2019, the fair value of RSUs vested was \$30.5 million, \$20.3 million, and \$2.6 million, respectively. As of December 31, 2021, there was \$108.1 million of unrecognized stock-based compensation expense related to outstanding RSUs to employees that is expected to be recognized over a weighted-average period of 3.1 years.

2018 Employee Stock Purchase Plan

In 2018, the Company's board of directors and stockholders each adopted the 2018 ESPP. A total of 1,700,000 shares of common stock was initially reserved for issuance under the 2018 ESPP. On January 1 of each year, shares available for issuance are increased based on the provisions of the 2018 ESPP. The 2018 ESPP allows eligible employees to purchase shares of the Company's common stock at a discount of up to 15% through payroll deductions of their eligible compensation, subject to any plan limitations. Except for the initial offering period, the 2018 ESPP provides for 24-month offering periods beginning November 15 and May 15 of each year, and each

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offering period consists of four 6-month purchase periods. Pursuant to the terms of the 2018 ESPP, in January 2021, the number of shares of common stock available for issuance was increased by 998,361 shares.

For the years ended December 31, 2021, 2020, and 2019, the assumptions used to determine the fair value of the shares to be awarded was estimated on the grant date using the Black-Scholes valuation model with the following assumptions:

	2021	2020	2019
Dividend yield	— %	— %	— %
Expected term (in years)	0.5 - 2.0	0.5 - 2.0	0.5 - 2.0
Risk-free interest rates	—% - 0.5%	0.1% - 0.2%	1.5% - 2.4%
Expected volatility	60% - 76%	50% - 82%	38%

On each purchase date, eligible employees may purchase the Company's common stock at a price per share equal to 85% of the lesser of (1) the fair market value of the Company's common stock on the offering date or (2) the fair market value of the Company's common stock on the purchase date. In the event the price is lower on the last day of any purchase period, that price is used as the purchase price for that purchase period.

Additionally, in the event the fair market value of the Company's common stock on the first day of a subsequent offering period is less than the fair market value of the Company's common stock on the offering date of the current offering period, the offering period resets, and the new lower price becomes the new offering price for a new 24 month offering period. During the year ended December 31, 2021, the Company issued 384,114 shares of common stock under the 2018 ESPP.

As of December 31, 2021, there was \$5.8 million of unrecognized stock-based compensation expense that is expected to be recognized over the remaining term of the respective offering periods.

Stock-Based Compensation

The following table summarizes the components of stock-based compensation expense recognized in the consolidated statements of operations for the years ended December 31, 2021, 2020, and 2019:

<i>(In thousands)</i>	2021	2020	2019
Cost of revenue	\$ 794	\$ 779	\$ 456
Research and development	16,232	9,783	6,471
Sales and marketing	5,923	4,440	2,609
General and administrative	30,643	10,506	9,262
Total	\$ 53,592	\$ 25,508	\$ 18,798

Stock-Based Compensation to Employees

Stock-based compensation expense related to employees for the year ended December 31, 2021 was \$12.7 million, \$38.8 million, and \$2.2 million related to stock option grants, RSU and PSU grants, and the 2018 ESPP, respectively. Stock-based compensation expense related to employees for the year ended December 31, 2020 was \$2.5 million, \$20.0 million, and \$3.2 million related to stock option grants, RSU grants, and the 2018 ESPP, respectively. Stock-based compensation expense related to employees for the year ended December 31, 2019 was \$8.5 million, \$7.9 million, and \$2.6 million related to stock option grants, RSUs, and the 2018 ESPP, respectively.

Note 10—Net Loss per Share

The following table sets forth the computation of the Company's basic and diluted net loss per share for the years ended December 31, 2021, 2020, and 2019:

<i>(In thousands, except share and per share data)</i>	2021	2020	2019
Numerator:			
Net loss	\$ (56,240)	\$ (22,867)	\$ (16,659)
Denominator:			
Weighted-average shares used to compute net loss per share, basic and diluted	127,163,591	118,698,567	109,814,604
Net loss per share, basic and diluted	<u>\$ (0.44)</u>	<u>\$ (0.19)</u>	<u>\$ (0.15)</u>

For the years ended December 31, 2021, 2020, and 2019, the following potentially dilutive shares were excluded from the computation of diluted net loss per share because including them would have been anti-dilutive:

	2021	2020	2019
Options to purchase common stock	4,264,068	4,858,590	15,140,579
Common stock issuable upon exercise of common stock warrants	350,000	400,000	450,000
Common stock issuable upon vesting of RSUs and PSUs	4,583,823	5,568,225	2,503,182
Common stock issuable in connection with employee stock purchase plan	329,650	540,580	1,651,263
Common stock issuable in connection with convertible senior notes	8,701,935	—	—
Total	<u>18,229,476</u>	<u>11,367,395</u>	<u>19,745,024</u>

Note 11—Income Taxes

For the years ended December 31, 2021, 2020, and 2019, the loss before income taxes consisted of the following:

<i>(In thousands)</i>	2021	2020	2019
Domestic	\$ (56,165)	\$ (22,748)	\$ (16,658)
Foreign	47	31	27
Total loss before income taxes	<u>\$ (56,118)</u>	<u>\$ (22,717)</u>	<u>\$ (16,631)</u>

For the years ended December 31, 2021, 2020, and 2019, the components of the income tax provision were as follows:

<i>(In thousands)</i>	2021	2020	2019
Current:			
Federal	\$ —	\$ (19)	\$ —
State	(120)	(127)	(26)
Foreign	(2)	(4)	(2)
Total current	<u>\$ (122)</u>	<u>\$ (150)</u>	<u>\$ (28)</u>
Deferred:			
Federal	\$ —	\$ —	\$ —
State	—	—	—
Foreign	—	—	—
Total deferred	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>
Total income tax benefit (provision)	<u>\$ (122)</u>	<u>\$ (150)</u>	<u>\$ (28)</u>

The Company had an effective tax rate of (0.21)%, (0.66)%, and (0.17)% for the years ended December 31, 2021, 2020, and 2019, respectively. The reconciliation of the statutory federal income tax rate to the Company's effective tax rate for the years ended December 31, 2021, 2020, and 2019 were as follows:

	2021	2020	2019
Tax at federal statutory rate	21.00 %	21.00 %	21.00 %
State tax, net of federal benefit	(0.19)	(0.49)	(0.27)
Stock-based compensation	44.13	94.02	51.45
Other items	(0.16)	(0.59)	(4.34)
Research and development credits	7.04	9.74	13.74
Net operating loss expiration	(8.08)	(14.00)	(18.33)
Change in valuation allowance	(63.95)	(110.34)	(63.42)
Effective tax rate	<u>(0.21) %</u>	<u>(0.66) %</u>	<u>(0.17) %</u>

Deferred income taxes reflect the tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. As of December 31, 2021 and 2020, the significant components of the Company's deferred tax assets and liabilities were as follows:

<i>(In thousands)</i>	2021	2020
Deferred tax assets:		
Net operating loss carryforwards	\$ 100,836	\$ 77,230
Stock-based compensation	5,617	230
Operating lease liability	5,296	5,555
Non-deductible accrued expenses, reserves and other	7,259	4,903
Research and development credits	17,044	11,352
Gross deferred tax assets	<u>136,052</u>	<u>99,270</u>
Valuation allowance	(132,162)	(92,390)
Total deferred tax assets	3,890	6,880
Deferred tax liabilities:		
Acquired intangible assets	—	(89)
Operating lease asset	(2,452)	(4,523)
Debt issuance cost	(75)	—
Depreciation and amortization	(1,363)	(2,268)
Total deferred tax liabilities	<u>(3,890)</u>	<u>(6,880)</u>
Net deferred tax assets	<u>\$ —</u>	<u>\$ —</u>

The change in valuation allowance for deferred tax assets was as follows for the periods presented:

<i>(In thousands)</i>						
Year Ended December 31,	Balance at Beginning of Year	Additions Charged to Costs & Expenses	Additions Charged to Other Accounts	Deductions	Balance at End of Year	
2021	\$ 92,390	\$ 39,772	\$ —	\$ —	\$ 132,162	
2020	63,542	28,848	—	—	92,390	
2019	49,439	14,103	—	—	63,542	

The Company records a full valuation allowance of \$132.2 million and \$92.4 million as of December 31, 2021 and 2020, respectively, against its net deferred tax assets. The Company determines its valuation allowance on deferred tax assets by considering both positive and negative evidence in order to ascertain whether it is more likely than not that deferred tax assets will be realized. Realization of deferred tax assets is dependent upon the generation of future taxable income, if any, the timing and amount of which are uncertain. Due to the history of losses the Company has generated in the past, the Company believes that it is not more likely than not that all of the deferred tax assets can be realized as of December 31, 2021. Accordingly, the Company has recorded a full valuation allowance on its deferred tax assets.

The Company has federal net operating loss, which is referred to as NOL, carryforwards of approximately \$444.6 million and \$343.1 million as of December 31, 2021 and 2020, respectively. The federal NOLs generated in the

years ended December 31, 2001 through 2017 began to expire in 2021, including \$21.6 million that expired in 2021 and \$23.0 million that will expire in 2022. NOLs originating before January 1, 2018, are eligible to offset taxable income, if not otherwise limited under Internal Revenue Code, which is referred to as IRC, §382 limitations. NOLs generated after December 31, 2017, have an infinite carryforward period and subject to 80% deduction limitation based upon pre-NOL deduction taxable income. The Company has California NOL carryforwards of approximately \$90.4 million and \$72.9 million as of December 31, 2021 and 2020, respectively. California NOLs generated in the years ended December 31, 2008 through 2018 will begin to expire in 2028. California NOLs generated before 2008 have expired in accordance the California Revenue Taxation Code and related regulations.

The Company has federal research and development credits, which are referred to as Credits, of approximately \$19.1 million and \$12.0 million as of December 31, 2021 and 2020, respectively. In 2021, \$0.1 million of federal research and development credits expired and the remaining carryforward is subject to expiration through 2041. The Company has California Credits of approximately \$13.6 million and \$13.1 million as of December 31, 2021 and 2020, respectively. California Credits have an infinite carryforward period.

Utilization of the NOL and Credit carryforwards that were generated prior to January 1, 2018 may be subject to a substantial annual limitation due to ownership changes that may have occurred or that could occur in the future, as required by IRC §382 and §383, as well as similar state provisions.

Uncertain Tax Positions

As of December 31, 2021, the Company's total amount of unrecognized tax benefits was \$15.4 million, none of which would impact the Company's effective tax rate, if recognized.

For the years ended December 31, 2021, 2020, and 2019, the activity related to the unrecognized tax benefits were as follows:

<i>(In thousands)</i>	2021	2020	2019
Gross unrecognized tax benefits—beginning balance	\$ 13,338	\$ 12,782	\$ 10,973
Increase related to tax positions taken during prior year	697	131	—
Decrease related to tax positions taken during prior year	(148)	—	(164)
Increase related to tax positions taken during current year	1,635	608	1,973
Decrease related to expiration of unrecognized tax benefit	(131)	(183)	—
Gross unrecognized tax benefits—ending balance	<u>\$ 15,391</u>	<u>\$ 13,338</u>	<u>\$ 12,782</u>

The Company recognizes interest and penalties related to uncertain tax positions in income tax expense. To the extent accrued interest and penalties do not ultimately become payable, amounts accrued will be reduced and reflected as a reduction of the provision for income taxes in the period that such determination is made. As of December 31, 2021, the Company did not currently recognize any penalties or interest charges relating to uncertain tax positions. The Company does not anticipate the recorded reserves to change significantly in the next 12 months.

The Company is subject to taxation in the United States and various other state and foreign jurisdictions. Due to certain tax attribute carryforwards, the tax years 2001 to 2021 remain open to examination by the major taxing jurisdictions in which the Company is subject to tax. As of December 31, 2021, the Company was not under examination by the Internal Revenue Service or any state or foreign tax jurisdiction.

Note 12—Segment and Geographical Information

The Company operates as one operating and reportable segment for purposes of allocating resources and evaluating financial performance.

The following table sets forth total revenue by type of service for the years ended December 31, 2021, 2020, and 2019:

<i>(In thousands)</i>	2021	2020	2019
Marketplace			
Basic, Plus, and other	\$ 427,476	\$ 317,942	\$ 253,099
Enterprise	34,864	20,210	15,185
Managed services	40,457	35,476	32,278
Total	<u>\$ 502,797</u>	<u>\$ 373,628</u>	<u>\$ 300,562</u>

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Notes to Consolidated Financial Statements—Continued

The Company generates its revenue from talent and clients. The following table sets forth total revenue by geographic area based on the billing address of its talent and clients for the years ended December 31, 2021, 2020, and 2019:

<i>(In thousands)</i>	2021	2020	2019
Talent:			
United States	\$ 74,890	\$ 60,861	\$ 50,154
India	42,277	33,109	27,369
Philippines	32,918	22,924	19,660
Rest of world	146,894	109,805	90,259
Total talent	296,979	226,699	187,442
Clients:			
United States	153,003	107,359	87,241
Rest of world	52,815	39,570	25,879
Total clients	205,818	146,929	113,120
Total	\$ 502,797	\$ 373,628	\$ 300,562

Substantially all of the Company's long-lived assets were located in the United States as of December 31, 2021 and 2020.

Note 13—401(k) Plan

The Company offers the Upwork Retirement Savings Plan, which is referred to as the Retirement Plan, a defined contribution plan that allows employees to contribute a portion of their salary, subject to the annual limits. Under the Retirement Plan, eligible employees may defer a portion of their pretax salaries, but not more than the statutory limits. The Retirement Plan provides for a discretionary employer cash matching contribution. The Company makes matching cash contributions equal to 50% of each dollar contributed, subject to a maximum contribution of \$5,000 annually per participant. The Company's total expense for the matching contributions was \$2.5 million, \$2.5 million, and \$2.0 million for the years ended December 31, 2021, 2020, and 2019, respectively.

Item 9. Changes In and Disagreements With Accountants on Accounting and Financial Disclosure.

None.

Item 9A. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, which we refer to as the Exchange Act, as of December 31, 2021. Our Chief Executive Officer and Chief Financial Officer concluded that, as of December 31, 2021, our disclosure controls and procedures were effective to provide reasonable assurance that information we are required to disclose in the reports we file or submit under the Exchange Act is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosures, and is recorded, processed, summarized, and reported within the time periods specified in the rules and forms of the SEC.

Management's Report on Internal Control Over Financial Reporting

Our management, including our Chief Executive Officer and Chief Financial Officer, is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act). Our management conducted an assessment of the effectiveness of our internal control over financial reporting as of December 31, 2021 based on the criteria set forth in *Internal Control—Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework). Based on that assessment, our management concluded that our internal control over financial reporting was effective as of December 31, 2021.

PricewaterhouseCoopers LLP, our independent registered public accounting firm, has audited the effectiveness of our internal control over financial reporting as of December 31, 2021. This report appears on page [70](#).

Changes in Internal Control over Financial Reporting

There were no changes to our internal control over financial reporting that occurred during the quarter ended December 31, 2021 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations on Effectiveness of Internal Controls

An effective internal control system, no matter how well designed, has inherent limitations, including the possibility of human error or overriding of controls, and therefore can provide only reasonable assurance with respect to reliable financial reporting. Because of its inherent limitations, our internal control over financial reporting may not prevent or detect all misstatements, including the possibility of human error, the circumvention or overriding of controls, or fraud. Effective internal controls can provide only reasonable assurance with respect to the preparation and fair presentation of financial statements.

Item 9B. Other Information.

None.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections.

None.

PART III

Item 10. Directors, Executive Officers and Corporate Governance.

The information required by this item will be included in our Proxy Statement for the 2022 Annual Meeting of Stockholders, which we refer to as the Proxy Statement, to be filed with the SEC within 120 days of the fiscal year ended December 31, 2021, and is incorporated herein by reference.

Item 11. Executive Compensation.

The information required by this item will be included in our Proxy Statement to be filed with the SEC, within 120 days of the year ended December 31, 2021, and is incorporated herein by reference.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

The information required by this item will be included in our Proxy Statement to be filed with the SEC, within 120 days of the year ended December 31, 2021, and is incorporated herein by reference.

Item 13. Certain Relationships and Related Transactions, and Director Independence.

The information required by this item will be included in our Proxy Statement to be filed with the SEC, within 120 days of the year ended December 31, 2021, and is incorporated herein by reference.

Item 14. Principal Accountant Fees and Services.

The information required by this item will be included in our Proxy Statement to be filed with the SEC, within 120 days of the year ended December 31, 2021, and is incorporated herein by reference.

Item 15. Exhibits and Financial Statement Schedules.

(a) The following documents are filed as part of this report:

(1) Financial Statements.

Our consolidated financial statements are listed in the "Index to Consolidated Financial Statements" under Part II, Item 8 of this Annual Report on Form 10-K.

(2) Financial Statement Schedules.

All schedules are omitted because they are not applicable or because the required information is shown in the consolidated financial statements and notes.

(3) Exhibits.

Exhibit Index

Exhibit Number	Exhibit Title	Incorporated by Reference				
		Form	File No.	Exhibit	Filing Date	Filed Herewith
3.1	Restated Certificate of Incorporation.	10-Q	001-38678	3.1	November 8, 2018	
3.2	Amended and Restated Bylaws.	8-K	001-38678	3.1	December 22, 2020	
4.1	Form of Common Stock Certificate.	S-1	333-227207	4.1	September 6, 2018	
4.2	Amended and Restated Investors' Rights Agreement, dated August 19, 2014, by and among Upwork and certain security holders of Upwork, as amended.	S-1	333-227207	4.2	September 6, 2018	
4.3	Warrant, dated May 1, 2018, by and between Upwork and Tides Foundation.	S-1	333-227207	4.4	September 6, 2018	
4.4	Description of Securities Registered Under Section 12 of the Exchange Act.					
4.5	Indenture, dated as of August 10, 2021, between Upwork Inc. and Wells Fargo Bank, National Association, as trustee.	8-K	001-38678	4.1	August 10, 2021	
4.6	Form of 0.25% Convertible Senior Notes due 2026 (included in Exhibit 4.5).	8-K	001-38678	4.2	August 10, 2021	
10.1*	Form of Indemnification Agreement by and between Upwork and each of its directors and executive officers.	S-1	333-227207	10.1	September 6, 2018	
10.2*	oDesk 2004 Stock Plan, as amended, and forms of equity agreements thereunder.	S-1	333-227207	10.2	September 6, 2018	
10.3*	2014 Equity Incentive Plan, as amended, and forms of equity agreements thereunder.	S-1	333-227207	10.3	September 6, 2018	
10.4*	2018 Equity Incentive Plan and forms of award agreements thereunder.	S-1	333-227207	10.4	September 6, 2018	
10.5*	2018 Employee Stock Purchase Plan and enrollment forms thereunder.	S-1	333-227207	10.5	September 6, 2018	
10.6*	Offer Letter, dated February 25, 2015, by and between Upwork and Elizabeth Nelson.	S-1	333-227207	10.13	September 6, 2018	
10.7*	Offer Letter, dated August 3, 2018, by and between Upwork and Gary Steele.	S-1	333-227207	10.16	September 6, 2018	
10.8*	Upwork Performance Bonus Plan.	10-Q	001-38678	10.2	May 8, 2019	
10.9*	Offer Letter, dated June 17, 2019 by and between Upwork and Leela Srinivasan.	10-Q	001-38678	10.2	August 7, 2019	
10.10*	Change in Control and Severance Agreement, dated December 8, 2019, by and between Upwork and Hayden Brown.	10-K	001-38678	10.8	March 2, 2020	
10.11*	Amended and Restated Offer Letter, dated December 8, 2019, by and between Upwork and Hayden Brown.	10-K	001-38678	10.11	March 2, 2020	
10.12*	Change in Control and Severance Agreement, dated May 29, 2018, by and between Upwork and Randall Eric Gilpin.	10-Q	001-38678	10.1	August 4, 2020	
10.13*	Amended and Restated Offer Letter, dated May 29, 2018, by and between Upwork and Randall Eric Gilpin.	10-Q	001-38678	10.2	August 4, 2020	
10.14*	Offer Letter, dated July 10, 2020, by and between Upwork Inc. and Jeff McCombs.	10-Q	001-38678	10.1	November 4, 2020	
10.15*	Change in Control and Severance Agreement, dated August 4, 2020, by and between Upwork Inc. and Jeff McCombs.	10-Q	001-38678	10.2	November 4, 2020	

X

10.16*	Offer Letter, dated October 13, 2020, by and between Upwork Inc. and Anilu Vazquez-Ubarri.	10-K	001-38678	10.21	February 24, 2021	
10.17*	Stock Option Agreement, dated January 18, 2021, by and between Upwork Inc. and Hayden Brown.	10-Q	001-38678	10.1	May 4, 2021	
10.18	Form of Capped Call Transaction Confirmation.					
10.19	Lease Agreement, dated May 14, 2014, by and between Upwork and CLPF, as amended.	8-K	001-38678	10.1	August 10, 2021	
21.1	List of Subsidiaries.					X
23.1	Consent of PricewaterhouseCoopers LLP, independent registered public accounting firm.					X
24.1	Power of Attorney (included on signature page to Annual Report).					X
31.1	Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.					X
31.2	Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.					X
32.1#	Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.					X
32.2#	Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.					X
101.INS	Inline XBRL Instance Document - the instance document does not appear in the interactive data file because its XBRL tags are embedded within the inline XBRL document.					X
101.SCH	Inline XBRL Taxonomy Extension Schema Document.					X
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.					X
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.					X
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.					X
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.					X
104	Cover Page Interactive Data File - the cover page from the Registrant's Annual Report on Form 10-K for the year ended December 31, 2021 is formatted in Inline XBRL.					X

* Indicates a management contract or compensatory plan.

This certification is deemed not filed for purposes of Section 18 of the Exchange Act, or otherwise subject to the liability of that section, nor shall it be deemed incorporated by reference into any filing under the Securities Act or the Exchange Act.

Item 16. Form 10-K Summary.

None.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this Annual Report on Form 10-K to be signed on its behalf by the undersigned, thereunto duly authorized.

Date: February 15, 2022

Upwork Inc.
By:

/s/ Hayden Brown

Hayden Brown
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Hayden Brown and Jeff McCombs, and each of them, as his or her true and lawful attorneys-in-fact, proxies, and agents, each with full power of substitution, for him or her in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact, proxies, and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully for all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact, proxies, and agents, or their or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, this Annual Report on Form 10-K has been signed below by the following persons on behalf of the Registrant in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Hayden Brown</u> Hayden Brown	President, Chief Executive Officer, and Director (Principal Executive Officer)	February 15, 2022
<u>/s/ Jeff McCombs</u> Jeff McCombs	Chief Financial Officer (Principal Financial and Accounting Officer)	February 15, 2022
<u>/s/ Gregory C. Gretsch</u> Gregory C. Gretsch	Director	February 15, 2022
<u>/s/ Kevin Harvey</u> Kevin Harvey	Director	February 15, 2022
<u>/s/ Thomas Layton</u> Thomas Layton	Director	February 15, 2022
<u>/s/ Elizabeth Nelson</u> Elizabeth Nelson	Director	February 15, 2022
<u>/s/ Leela Srinivasan</u> Leela Srinivasan	Director	February 15, 2022
<u>/s/ Gary Steele</u> Gary Steele	Director	February 15, 2022
<u>/s/ Anilu Vazquez-Ubarri</u> Anilu Vazquez-Ubarri	Director	February 15, 2022

**DESCRIPTION OF THE REGISTRANT'S SECURITIES REGISTERED
PURSUANT TO SECTION 12 OF THE SECURITIES EXCHANGE ACT OF 1934**

As of December 31, 2021, Upwork Inc. (“we,” “us,” or “our”) had one class of securities registered under Section 12 of the Securities Exchange Act of 1934, as amended: our common stock.

The following summary of the terms of our common stock is based upon our restated certificate of incorporation, our amended and restated bylaws, and applicable provisions of the Delaware General Corporation Law (the “DGCL”). The summary is not complete, and is qualified by reference to our restated certificate of incorporation and our amended and restated bylaws, which are filed as exhibits to this Annual Report on Form 10-K and are incorporated by reference herein. We encourage you to read our restated certificate of incorporation, our amended and restated bylaws, and the applicable provisions of the DGCL for additional information.

Capitalization

Our authorized capital stock consists of 500,000,000 shares of capital stock, including 490,000,000 shares of common stock, \$0.0001 par value per share, and 10,000,000 shares of undesignated preferred stock, \$0.0001 par value per share.

Common Stock

Dividend Rights

Subject to preferences that may apply to any shares of preferred stock outstanding at the time, the holders of our common stock are entitled to receive dividends out of funds legally available if our board of directors, in its discretion, determines to issue dividends and then only at the times and in the amounts that our board of directors may determine.

Voting Rights

Holders of our common stock are entitled to one vote for each share of common stock held on all matters submitted to a vote of stockholders. Our restated certificate of incorporation does not provide for cumulative voting for the election of directors. As a result, the holders of a majority of our voting shares can elect all of the directors then standing for election. Our restated certificate of incorporation establishes a classified board of directors that is divided into three classes with staggered three-year terms. Only one class of directors will be elected at each annual meeting of our stockholders, with the other classes continuing for the remainder of their respective three-year terms.

No Preemptive or Similar Rights

Our common stock is not entitled to preemptive rights, and is not subject to redemption or sinking fund provisions.

Right to Receive Liquidation Distributions

Upon our liquidation, dissolution, or winding-up, the assets legally available for distribution to our stockholders would be distributable ratably among the holders of our common stock and any participating preferred stock outstanding at that time, subject to prior satisfaction of all outstanding debt and liabilities and the preferential rights of and the payment of liquidation preferences, if any, on any outstanding shares of preferred stock.

Preferred Stock

Our board of directors is authorized, subject to limitations prescribed by Delaware law, to issue preferred stock in one or more series, to establish from time to time the number of shares to be included in each series, and to fix the designation, powers, preferences, and rights of the shares of each series and any of its qualifications, limitations, or restrictions, in each case without further vote or action by our stockholders. Our board of directors can also increase or decrease the number of shares of any series of preferred stock, but not below the number of shares of that series then outstanding, without any further vote or action by our stockholders. Our board of directors may authorize the issuance of preferred stock with voting or conversion rights that could adversely affect the voting power or other rights of the holders of our common stock. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions and other corporate purposes, could, among other things, have the

effect of delaying, deferring, or preventing a change in our control and might adversely affect the market price of our common stock and the voting and other rights of the holders of our common stock.

Anti-Takeover Provisions

The provisions of Delaware law, our restated certificate of incorporation, and our amended and restated bylaws could have the effect of delaying, deferring, or discouraging another person from acquiring control of our company. These provisions, which are summarized below, may have the effect of discouraging takeover bids.

Delaware Law

We are subject to the provisions of Section 203 of the DGCL regulating corporate takeovers. In general, DGCL Section 203 prohibits a publicly held Delaware corporation from engaging in a business combination with an interested stockholder for a period of three years following the date on which the person became an interested stockholder unless:

- prior to the date of the transaction, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;
- the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding, but not the outstanding voting stock owned by the interested stockholder, (i) shares owned by persons who are directors and also officers and (ii) shares owned by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- at or subsequent to the date of the transaction, the business combination is approved by the board of directors of the corporation and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66.67% of the outstanding voting stock that is not owned by the interested stockholder.

Generally, a business combination includes a merger, asset or stock sale, or other transaction or series of transactions together resulting in a financial benefit to the interested stockholder. An interested stockholder is a person who, together with affiliates and associates, owns or, within three years prior to the determination of interested stockholder status, did own 15% or more of a corporation's outstanding voting stock. We expect the existence of this provision to have an anti-takeover effect with respect to transactions our board of directors does not approve in advance. We also anticipate that DGCL Section 203 may also discourage attempts that might result in a premium over the market price for the shares of common stock held by stockholders.

Restated Certificate of Incorporation and Amended and Restated Bylaws Provisions

Our restated certificate of incorporation and our amended and restated bylaws include a number of provisions that could deter hostile takeovers or delay or prevent changes in control of our management team, including the following:

- *Board of Directors Vacancies.* Our amended and restated bylaws and our restated certificate of incorporation authorize only our board of directors to fill vacant directorships resulting from any cause or created by the expansion of our board of directors. In addition, the number of directors constituting our board of directors may be set only by resolution adopted by a majority vote of our entire board of directors. These provisions prevent a stockholder from increasing the size of our board of directors and gaining control of our board of directors by filling the resulting vacancies with its own nominees. This makes it more difficult to change the composition of our board of directors but promotes continuity of management.
- *Classified Board of Directors.* Our restated certificate of incorporation provides that our board of directors is classified into three classes of directors, with directors in each class serving for a term of three years. The existence of a classified board of directors could delay a successful tender offeror from obtaining majority control of our board of directors, and the prospect of that delay might deter a potential offeror.
- *Directors Removed Only for Cause.* Our restated certificate of incorporation provides that stockholders may remove directors only for cause and only with the affirmative vote of the holders of at least two-thirds of the voting power of the then-outstanding shares of our outstanding common stock.
- *Supermajority Requirements for Amendments of Our Restated Certificate of Incorporation and Amended and Restated Bylaws.* Our restated certificate of incorporation further provides that the affirmative vote of holders of at least two-thirds of the voting power of our outstanding common stock will be required to amend certain provisions of our restated certificate of incorporation. The affirmative vote of holders of at least two-thirds of the voting power of our outstanding common stock is required to amend or repeal our amended and restated bylaws, although our amended and restated bylaws may be amended by a majority vote of our board of directors.
- *Stockholder Action; Special Meeting of Stockholders.* Our restated certificate of incorporation provides that our stockholders may not take action by written consent, but may only take action at annual or special meetings of our stockholders. As a result, holders of our capital stock would not be able to amend our amended and restated bylaws or remove directors without holding a meeting of our stockholders called in accordance with our amended and restated bylaws. Our restated certificate of incorporation and our amended and restated bylaws provide that special meetings of our stockholders may be called only by a majority of our board of directors, the Chairperson of our board of directors, our Chief Executive Officer, our President, or our Lead Independent Director, thus prohibiting a stockholder from calling a special meeting. These provisions might delay the ability of our stockholders to force consideration of a proposal or for stockholders to take any action, including the removal of directors.

- *Advance Notice Requirements for Stockholder Proposals and Director Nominations.* Our amended and restated bylaws provide advance notice procedures for stockholders seeking to bring business before our annual meeting of stockholders or to nominate candidates for election as directors at our annual meeting of stockholders. Our amended and restated bylaws also specify certain requirements regarding the form and content of a stockholder's notice. These provisions might preclude our stockholders from bringing matters before our annual meeting of stockholders or from making nominations for directors at our annual meeting of stockholders if the proper procedures are not followed. We expect that these provisions might also discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer's own slate of directors or otherwise attempting to obtain control of our company.
- *Proxy Access.* Our amended and restated bylaws provide that, in certain circumstances, a stockholder or group of up to 20 stockholders may include director candidates that they have nominated in our annual meeting proxy materials. Such stockholder or group of stockholders need to own 3% or more of our outstanding common stock continuously for at least three years. The number of stockholder-nominated candidates appearing in any of our annual meeting proxy materials cannot exceed the greater of two individuals or 20% of our board of directors. The nominating stockholder or group of stockholders is also required to deliver certain information, and each nominee is required to meet certain qualifications, as described in more detail in the amended and restated bylaws.
- *No Cumulative Voting.* The DGCL provides that stockholders are not entitled to the right to cumulate votes in the election of directors unless a corporation's certificate of incorporation provides otherwise. Our restated certificate of incorporation and amended and restated bylaws do not provide for cumulative voting.
- *Issuance of Undesignated Preferred Stock.* Our board of directors has the authority, without further action by the stockholders, to issue up to 10,000,000 shares of undesignated preferred stock with rights and preferences, including voting rights, designated from time to time by our board of directors. The existence of authorized but unissued shares of preferred stock enables our board of directors to render more difficult or to discourage an attempt to obtain control of us by means of a merger, tender offer, proxy contest, or other means.
- *Choice of Forum.* Our restated certificate of incorporation provides that the Court of Chancery of the State of Delaware is the sole and exclusive forum for: (i) any derivative action or proceeding brought on our behalf; (ii) any action asserting a claim of breach of a fiduciary duty owed to us by or our stockholders, or other wrongdoing by, any of our directors, officers, stockholders, employees, or agents; (iii) any action

asserting a claim against us arising pursuant to any provision the DGCL, our restated certificate of incorporation, or our amended and restated bylaws or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware; (iv) any action to interpret, apply, enforce or determine the validity of our restated certificate of incorporation or our amended and restated bylaws; or (v) any action asserting a claim against us that is governed by the internal affairs doctrine. Our amended and restated bylaws also provide that the federal district courts of the United States would be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act of 1933, as amended (the "Federal Forum Provision"). In December 2018, the Delaware Court of Chancery found that provisions such as the Federal Forum Provision are not valid under Delaware law. In light of this decision of the Delaware Court of Chancery, we do not intend to enforce the Federal Forum Provision in our amended and restated bylaws unless and until there is a final determination by the Delaware Supreme Court regarding the validity of provisions such as the Federal Forum Provision. To the extent the Delaware Supreme Court makes a final determination that provisions such as the Federal Forum Provision are not valid as a matter of Delaware law, our board of directors intends to amend our amended and restated bylaws to remove the Federal Forum Provision.

Exchange Listing

Our common stock is listed on The Nasdaq Global Select Market under the symbol "UPWK."

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is Computershare Trust Company, N.A.

**OFFICE LEASE
SUMMARY OF LEASE TERMS**

475 Brannan Street
San Francisco, California

- A. Date: May 14, 2014
- B. Landlord: CLPF-475 Brannan Street, L.P.,
 a Delaware limited partnership
- Landlord's address for notices: c/o Clarion Partners, LLC
 [Paragraph 22(j)] 9155 E. Nichols Avenue, Suite 150
 Centennial, Colorado 80112
 Attention: Michael J. Duffy
- With a copy to:
- CBRE, Inc.
 475 Brannan Street, Ste. 124
 San Francisco, California 94107
 Attention: Property Manager
- C. Tenant: Elance-oDesk, Inc.,
 a Delaware corporation
- Tenant's address for notices: Elance-oDesk, Inc.
 475 Brannan Street, Ste. 400
 San Francisco, California 94107
 Attention: _____
- With a copy to:
- Elance-oDesk, Inc.
 441 Logue Ave.
 Mountain View, CA 94043
 Attention: General Counsel
- D. Floor on which Premises are situated: 4th floor; Suite 400
 [Paragraph 1(f)]
- E. Rentable area of Premises: 13,907 rentable square feet.
 [Paragraph 1(f)]
- F. Tenant's Percentage Share: 5.69%
 [Paragraph 1(j)]

G.	Base Year: [Paragraph 1(a)]	2014	
H.	Term; [Paragraph 2]	60 months	
I.	Basic Monthly Rental: [Paragraph 3(a)]	Months 1 – 12	\$74,170.67
		Months 13 – 24:	\$76,395.79
		Months 25 – 36:	\$78,690.44
		Months 37 – 48:	\$81,043.04
		Months 49 – 60:	\$83,476.77
J.	Amount of Letter of Credit: [Paragraph 3(e)]	\$500,860.00.	
K.	Brokers: [Paragraph 22(p)]	Colliers International ("Landlord's Broker") Cresa ("Tenant's Broker")	
L.	Exhibits and addenda: [Paragraph 22(t)]	Exhibit A - Floor Plan Exhibit B - Building Rules and Regulations Exhibit C - Tenant Work Letter Exhibit D - Commencement Date Memorandum	

The provisions of the Lease identified above in brackets are those provisions where references to particular Lease Terms appear. Each such reference shall incorporate the applicable Lease Terms. In the event of any conflict between the Summary of Lease Terms and the Lease, the latter shall control.

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475 BRANNAN STREET

OFFICE LEASE

THIS LEASE is dated for reference purposes only as of May 14, 2014, between **CLPF-475 BRANNAN STREET, L.P.**, a Delaware limited partnership ("Landlord"), and **ELANCE-oDESK, INC.**, a Delaware corporation ("Tenant").

WITNESSETH:

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises described in Paragraph 1(f) below, for the term and subject to the terms, covenants, agreements and conditions hereinafter set forth.

1. DEFINITIONS.

In addition to terms that are defined elsewhere in this Lease, unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified:

(a) The term "Base Year" and "Tax Base Year" shall each mean the calendar year set forth in Paragraph G of the Summary of Basic Lease Terms.

(b) The term "Building" shall mean the office building containing approximately 244,389 rentable square feet located at 475 Brannan Street in San Francisco, California.

(c) The term "Expense Year" shall mean each calendar year in which any portion of the Lease term falls, through and including the calendar year in which the term expires; provided, however, that Landlord, upon notice to Tenant, may change the Expense Year from time to time to any other twelve (12) consecutive month period, and, in such event, Tenant's Percentage Share of increases in Real Property Taxes and Operating Expenses over the Base Year amounts shall be equitably adjusted for any Expense Year involved in any such change.

(d) The term "Land" means the parcel(s) of land on which the Building and the adjacent below-grade parking lot ("Parking Lot") are located.

(e) The term "Operating Expenses" shall mean the total costs and expenses incurred by Landlord in connection with the management, operation, maintenance, repair and ownership of the Real Property (as defined in Paragraph 1(g) hereof), including, without limitation, the following costs: (1) salaries, wages, bonuses and other compensation (including hospitalization, medical, surgical, retirement plan, pension plan, union dues, parking privileges, life insurance, including group life insurance, welfare and other fringe benefits, and vacation, holidays and other paid absence benefits) relating to employees of Landlord or its agents to the extent engaged in the management, operation, repair, or maintenance of the Real Property and costs of training such employees; (2) payroll, social security, workers' compensation, unemployment and similar taxes with respect to such employees of Landlord or its agents to the extent engaged in the management, operation, repair, or maintenance of the Real Property, and the

cost of providing disability or other benefits imposed by law or otherwise, with respect to such employees to the extent engaged in the management, operation, repair, or maintenance of the Real Property; (3) uniforms (including the cleaning, replacement and pressing thereof) provided to such employees; (4) premiums and other charges incurred by Landlord with respect to fire, earthquake, other casualty, boiler and machinery, theft, rent interruption, liability insurance, any other insurance as is deemed necessary or advisable in the reasonable judgment of Landlord, or any insurance required by the holder of any Superior Interest (as defined in Paragraph 15), all in such amounts as Landlord determines to be appropriate, and the actual costs incurred in repairing an insured casualty to the extent of the deductible amount under the applicable insurance policy; (5) water charges and sewer rents or fees; (6) license, permit and inspection fees and charges, the cost of contesting any governmental enactments that may affect Operating Expenses, and the costs incurred in connection with any transportation system management program or similar program; (7) sales, use and excise taxes on goods and services purchased by Landlord in connection with the operation, maintenance or repair of the Real Property and building systems and equipment; (8) telephone, telegraph, postage, stationery supplies and other expenses incurred in connection with the operation, maintenance, or repair of the Real Property; (9) management fees and expenses (including fees and expenses for accounting, financial management, data processing and information services) and costs of tenant service programs; (10) repairs to and physical maintenance of the Real Property, including building systems and appurtenances thereto and normal repair and replacement of worn-out equipment, facilities and installations, but excluding the replacement of major building systems (except to the extent otherwise included as an Operating Expense pursuant to this Paragraph 1(e)); (11) janitorial (excluding janitorial service to the Premises and the premises of other tenants), window cleaning, security services, extermination, water treatment, rubbish removal, plumbing and other services and inspection or service contracts for elevator, electrical, mechanical, sanitary, heating, ventilation and air conditioning, and other building equipment and systems or as may otherwise be necessary or proper for the operation or maintenance of the Real Property; (12) supplies, tools, materials and equipment used in connection with the operation, maintenance or repair of the Real Property; (13) accounting, legal and other professional, consulting or service fees and expenses; (14) painting the exterior or the public or common areas of the Building and the cost of maintaining and replacing the sidewalks, landscaping and other common areas of the Real Property; (15) all costs and expenses for electricity, chilled water, air conditioning, water for heating, gas, fuel, steam, heat, lights, sewer service, communications service, power and other energy related utilities required in connection with the operation, maintenance and repair of the Real Property, including the Premises and the premises of other tenants to the extent not separately metered; (16) the cost of any capital improvements made by Landlord to the Real Property or capital assets acquired by Landlord during the term of this Lease required under any governmental law, regulation or insurance requirement, such cost or allocable portion to be amortized over the useful life thereof, together with interest on the unamortized balance at a rate per annum equal to the Reference Rate (as defined in Paragraph 3(c)) charged at the time such capital improvements or capital assets are constructed or acquired or such higher rate as may have been paid by Landlord on funds borrowed for the purpose of constructing or acquiring such capital improvements or capital assets, but in either case not more than the maximum rate permitted by law at the time such capital improvements or capital assets are constructed or acquired; (17) the cost of any capital improvements made by Landlord to the Building or capital assets acquired by Landlord during the term of this Lease for the protection of the health and

safety of the occupants of the Real Property or that are designed to reduce other Operating Expenses, such cost or allocable portion thereof to be amortized over the useful life thereof (except that Landlord may include as an Operating Expense in any calendar year a portion of the cost of such a capital improvement or capital asset equal to Landlord's estimate of the amount of the reduction of other Operating Expenses in such year resulting from such capital improvement or capital asset), together with interest on the unamortized balance at a rate per annum equal to the Reference Rate charged at the time such capital improvements or capital assets are constructed or acquired or such higher rate as may have been paid by Landlord on funds borrowed for the purpose of constructing or acquiring such capital improvements or capital assets, but in either case not more than the maximum rate permitted by law at the time such capital improvements or capital assets are constructed or acquired; (18) the cost of furniture, window coverings, carpeting, decorations, landscaping and other customary and ordinary items of personal property provided by Landlord for use in common areas of the Real Property or in the Building office (to the extent that such Building office is dedicated to the operation and management of the Real Property), such costs to be amortized over the useful life thereof; (19) the cost of any capital improvements made by Landlord to the Real Property or capital assets acquired by Landlord during the term of this Lease to the extent that the cost of any such improvement or asset is less than five thousand dollars (\$5,000); (20) the cost of any capital improvements made by Landlord to the Real Property or capital assets acquired by Landlord during the term of this Lease that have a useful life of five (5) years or less (and the cost of which is not otherwise included in Operating Costs pursuant to this Paragraph 1(e)), such cost to be amortized over the useful life thereof, together with interest on the unamortized balance at a rate per annum equal to the Reference Rate charged at the time such capital improvements or capital assets are constructed or acquired or such higher rate as may have been paid by Landlord on funds borrowed for the purpose of constructing or acquiring such capital improvements or capital assets, but in either case not more than the maximum rate permitted by law at the time such capital improvements or capital assets are constructed or acquired; (21) any such expenses and costs resulting from substitution of work, labor, material or services in lieu of any of the above itemizations, or for any such additional work, labor, services or material resulting from compliance with any governmental laws, rules, regulations or orders applicable to the Real Property or any part thereof; (22) property management office rent or rental value; and (23) cost of operation, repair and maintenance of the Parking Lot, including resurfacing, restriping and cleaning.

To the extent costs and expenses described above relate to both the Real Property and other property, such costs and expenses shall, in determining the amount of Operating Expenses, be allocated as Landlord may determine to be appropriate.

Operating Expenses shall not include the following: (i) depreciation on the Building; (ii) debt service; (iii) rental under any ground or underlying lease; (iv) interest (except as expressly provided in this Paragraph 1(e)); (v) Real Property Taxes; (vi) attorneys' fees and expenses incurred in connection with lease negotiations with prospective Building tenants; (vii) the cost of any improvements or equipment that would be properly classified as capital expenditures (except for any capital expenditures expressly included in Operating Expenses pursuant to this Paragraph 1(e)); (viii) the cost of decorating, improving for tenant occupancy, painting or redecorating portions of the Building to be demised to tenants; (ix) advertising expenses relating to vacant space; (x) real estate brokers' or other leasing commissions; or (xii) costs of utilities for tenants' premises if separately metered.

(f) The term "Premises" shall mean the space in the Building designated by cross-hatching on the floor plan attached hereto as Exhibit A (exclusive of the areas, if any, shown by shading) and situated on the floor of the Building specified in Paragraph D of the Summary of Lease Terms, together with the appurtenant right to the use, in common with others, of lobbies, entrances, stairs, elevators and other public portions of the Building. Landlord and Tenant agree that the Premises contain the number of square feet of rentable area specified in Paragraph E of the Summary of Lease Terms. All the outside walls and windows of the Premises and any space in the Premises used for shafts, stacks, pipes, conduits, ducts, electric or other utilities, sinks or other Building facilities, and the use thereof and access thereto through the Premises for the purposes of operation, maintenance and repairs, are reserved to Landlord.

(g) The term "Real Property" shall mean, collectively, the Land, the Building, the Parking Lot, and the other improvements on the Land.

(h) The term "Real Property Taxes" shall mean all taxes, assessments (whether general or special), excises, transit charges, housing fund assessments or other housing charges, levies or fees, ordinary or extraordinary, unforeseen as well as foreseen, of any kind, which are assessed, levied, charged, confirmed or imposed on the Real Property or any part thereof, on the Landlord with respect to the Real Property, on the act of entering into this Lease or any other lease of space in the Real Property, on the use or occupancy of the Real Property or any part thereof, with respect to services or utilities consumed in the use, occupancy or operation of the Real Property, or on or measured by the rent payable under this Lease or in connection with the business of renting space in the Real Property, including, without limitation, any gross income tax, gross receipts tax or excise tax levied with respect to the receipt of such rent, by the United States of America, the State of California, the City and County of San Francisco, any political subdivision, public corporation, district or other political or public entity or public authority, and shall also include any other tax, fee or other excise, however described, that may be levied or assessed in lieu of, as a substitute (in whole or in part) for, or as an addition to, any other Real Property Taxes. Real Property Taxes shall include reasonable attorneys' fees, costs and disbursements incurred in connection with proceedings to contest, determine or reduce Real Property Taxes.

Real Property Taxes shall not include income, franchise, transfer, inheritance or capital stock taxes, unless, due to a change in the method of taxation, any of such taxes is levied or assessed against Landlord in lieu of, as a substitute (in whole or in part) for, or as an addition to, any other charge that would otherwise constitute a part of Real Property Taxes. Landlord and Tenant acknowledge and agree that certain other buildings exist or encroach upon the Land, that Tenant shall have no liability as to any item of Real Property Taxes attributable or allocable to, or assessed against, buildings other than the Building and that Landlord's good faith determination of the proper allocation of any item of Real Property Taxes allocable to buildings other than the Building shall be binding on Landlord and Tenant.

(i) The term "Rental" shall include the Basic Monthly Rental set forth in Paragraph I of the Summary of Lease Terms, all additional rent, and any other costs or charges payable by Tenant to Landlord hereunder.

(j) The term "Tenant's Percentage Share" shall mean the percentage figure specified in Paragraph F of the Summary of Lease Terms.

2. TERM.

(a) Subject to Paragraph 2(c) hereof, the term of this Lease (the "Term") shall commence on the date (the "Commencement Date") that Landlord is deemed to have delivered possession of the Premises to Tenant with the Tenant Improvements substantially completed and, unless ended sooner as herein provided, shall expire on the last day of the sixtieth (60th) full calendar month following the Commencement Date. Landlord and Tenant hereby agree to confirm the actual Commencement Date and Expiration Date promptly after the commencement of the Term, by executing and delivering to each other counterparts of a Commencement Date Memorandum in the form of Exhibit D attached hereto, but the Term of this Lease shall commence on the Commencement Date and end on the Expiration Date whether or not such amendment is executed.

(b) Landlord shall cause to be constructed or installed in the Premises the Tenant Improvements in accordance with the terms of the Work Letter. Landlord shall deliver possession of the Premises to Tenant following substantial completion of the Tenant Improvements. Tenant shall have three (3) days following delivery of the Premises to inspect the same and to identify in writing any portion of Landlord's Work still to be completed by Landlord (the "Punch List"). If Tenant has not delivered the Punch List to Landlord within such time, Tenant shall be deemed to have accepted the Premises and the Tenant Improvements as delivered by Landlord. Landlord shall be deemed to have delivered possession to Tenant on the earliest of (i) the date that Landlord gives notice to Tenant that the Tenant Improvements are substantially completed as evidenced by a Certificate of Occupancy or other governmental authorization to occupy the Premises, and that the Premises are available for occupancy by Tenant, subject only to Punch List items that do not prevent Tenant from using the Premises for its intended use, (ii) the date on which the Tenant Improvements would have been substantially completed but for Tenant Delay (as defined in Section 9.2 of Exhibit "C"), or (iii) the date upon which Tenant actually occupies, or commences operation from, the Premises.

(c) Landlord estimates that it will deliver the Premises to Tenant on or about July 1, 2014. If Landlord fails to deliver the Premises to Tenant within three (3) months after such date (such three (3) month period being extended day-for-day for each day of Tenant Delay) and does not cure such failure within fifteen (15) days of Tenant's written notice thereof ("Tenant's Delivery Notice"), Tenant shall have the option to terminate this Lease upon written notice to Landlord within fifteen (15) days of the expiration of Tenant's Delivery Notice. If Tenant does not exercise its option to terminate the Lease under this Paragraph 2(c), this Lease thereafter shall not be void or voidable and no obligation of Tenant shall be affected by Landlord's failure to deliver the Premises. Regardless of whether Tenant exercises its option to terminate under this Paragraph 2(c), in no event shall Landlord be liable to Tenant for any loss or damage resulting from Landlord's failure to deliver the Premises.

(d) Landlord shall provide Tenant access to the Premises two (2) weeks prior to the anticipated date of delivery of the Premises for the purpose of preparing the Premises for occupancy. Tenant's early occupancy shall be subject to all the provisions of this Lease except

those regarding the payment of Rent. Such early possession shall not advance the Expiration Date.

(e) Provided Tenant is not in default beyond any applicable grace and cure periods under the Lease at the time Landlord receives the Renewal Notice (as defined herein) nor, at Landlord's sole option, at the time the Extension Term is to commence and provided further that the net worth of Tenant is no less than its net worth upon the date of this Lease, Tenant shall have the option to renew this Lease with respect to the entire Premises then leased by Tenant upon the expiration of the initial Term for one (1) additional term of five (5) years (the "Extension Term"), by delivering notice to Landlord of Tenant's option to extend (the "Renewal Notice") at least nine (9) months but no more than twelve (12) months prior to the end of the initial Term. If Tenant exercises its right to extend, the Term shall be extended for an additional five (5) years, and Tenant shall continue to lease the Premises on all of the terms and conditions of this Lease, except that (i) Landlord may adjust the insurance coverages and policy limits required of Tenant, (ii) Basic Monthly Rental for the Extension Term shall increase to the Fair Market Rental Rate (as defined below), (iii) Landlord may adjust Tenant's Percentage Share to reflect re-measurement of the Premises or other portions of the Building and/or to reflect changes in Landlord's standard common area load factor, and (iv) Tenant shall have no further renewal option.

(f) For the purposes of the Lease, the term "Fair Market Rental Rate" as used herein shall mean the annual rent per square foot that a willing tenant would pay, and a willing landlord would accept, in arm's length bona fide negotiations if the space in question were leased during the renewal term in question on the terms and conditions of the Lease, based to the extent practicable on rental rates for the period of the Extension Term as established by leases recently or then being entered into for comparable space in the Building, and taking into account any effect on rental rates which may arise by reason of the amount of space leased by Tenant, the commencement date of the Extended Term, the length of the Extended Term, the use of the Premises, the location and floor level of the Premises, and other pertinent facts. Notwithstanding anything to the contrary in the foregoing, in determining Fair Market Rental Rate for the Premises for the Extended Term, no consideration shall be given to any allowances or other concessions that may be prevalent in the market at the time the Fair Market Rental Rate is being negotiated by the parties hereto. Landlord shall determine the Fair Market Rental Rate by using its good faith judgment. Landlord shall provide written notice of such amount within thirty (30) days after Tenant provides the notice to Landlord exercising Tenant's extension option. Tenant shall have thirty (30) days ("Tenant's Review Period") after receipt of Landlord's notice of the new rental rate within which to accept such rental rate or to reasonably object thereto in writing. In the event Tenant objects, Landlord and Tenant shall attempt to agree upon such Fair Market Rental Rate, using their good faith efforts. If Landlord and Tenant fail to reach agreement within thirty (30) days following Tenant's Review Period (the "Outside Agreement Date"), then each party shall place in a separate sealed envelope its final proposal as to the Fair Market Rental Rate, and such determination shall be submitted to arbitration in accordance with subsections (i) through (iv) below. Failure of Tenant to so object in writing within Tenant's Review Period shall conclusively be deemed its approval of the Fair Market Rental Rate determined by Landlord. In the event that Landlord fails to timely generate the initial written notice of Landlord's opinion of the Fair Market Rental Rate that triggers the negotiation period of this Paragraph 2(e), then Tenant may commence such negotiations by providing the initial notice, in which event Landlord shall have thirty (30) days ("Landlord's Review Period") after receipt of Tenant's notice of the

new rental rate within which to accept such rental rate. In the event Landlord fails to accept in writing such rental rate proposed by Tenant, then such proposal shall be deemed rejected, and Landlord and Tenant shall attempt in good faith to agree upon such Fair Market Rental Rate, using their good faith efforts. If Landlord and Tenant fail to reach agreement within thirty (30) days following Landlord's Review Period (which shall be, in such event, the "Outside Agreement Date" in lieu of the above definition of such date), then each party shall place in a separate sealed envelope its final proposal as to Fair Market Rental Rate and such determination shall be submitted to arbitration in accordance with subsections (i) through (iv) below. If the final determination of the Fair Market Rental Rate has not been made prior to the date on which Tenant's obligation to pay Basic Monthly Rental during the Extension Term commences, then, from such date until the date the final determination is made ("Interim Period"), Tenant shall pay estimated Basic Monthly Rental for the Premises at the rate applicable to the Premises during the last month of the initial Term. Once the final determination of the Fair Market Rental Rate has been made, if the Basic Monthly Rental payable by Tenant for the Premises pursuant to the Fair Market Rental Rate exceeds the Basic Monthly Rental paid by Tenant during the Interim Period, Tenant shall pay the excess to Landlord concurrently with Tenant's next installment of Basic Monthly Rental.

(i) Landlord and Tenant shall meet with each other within ten (10) business days of the Outside Agreement Date and exchange the sealed envelopes and then open such envelopes in each other's presence. If Landlord and Tenant do not mutually agree upon the Fair Market Rental Rate within ten (10) business days of the exchange and opening of envelopes, then, within twenty (20) business days of the exchange and opening of envelopes, Landlord and Tenant shall agree upon and jointly appoint a single arbitrator who shall by profession be a real estate appraiser who shall have been active over the ten (10) year period ending on the date of such appointment in the leasing of office properties in the vicinity of the Real Property. Neither Landlord nor Tenant shall consult with such appraiser as to his or her opinion as to Fair Market Rental Rate prior to the appointment. The determination of the arbitrator shall be limited solely to the issue of whether Landlord's or Tenant's submitted Fair Market Rental Rate for the Premises is the closest to the actual Fair Market Rental Rate for the Premises as determined by the arbitrator, taking into account the requirements of this Paragraph 2(e). Such arbitrator may hold such hearings and require such briefs as the arbitrator, in his or her sole discretion, determines is necessary. In addition, Landlord or Tenant may submit to the arbitrator (with a copy to the other party) within ten (10) business days after the appointment of the arbitrator any market data and additional information relevant to the determination of Fair Market Rental Rate ("FMRR Data"), and the other party may submit a reply in writing within ten (10) business days after receipt of such FMRR Data.

(ii) The arbitrator shall, within thirty (30) days of his or her appointment, reach a decision as to whether the parties shall use Landlord's or Tenant's submitted Fair Market Rental Rate and notify Landlord and Tenant of such determination.

(iii) The decision of the arbitrator shall be binding upon Landlord and Tenant.

(iv) If Landlord and Tenant fail to agree upon and appoint an arbitrator, then the appointment of the arbitrator shall be made by the Presiding Judge of the San Francisco Superior Court, or, if he or she refuses to act, by any judge having jurisdiction over the parties.

(v) The cost of arbitration shall be paid by Landlord and Tenant equally.

3. RENTAL; LETTER OF CREDIT.

(a) Beginning on the Commencement Date, Tenant agrees to pay to Landlord as Basic Monthly Rental for the Premises the sums specified in Paragraph I of the Summary of Lease Terms. Notwithstanding the foregoing, Basic Monthly Rent shall be abated for the first (1st) full calendar month of the Term. Tenant shall pay Basic Monthly Rent for any first fractional month as set forth in subparagraph (b) below.

(b) Basic Monthly Rental shall be paid to Landlord, in advance, on or before the first day of each and every successive calendar month during the term hereof. In the event the term of this Lease commences on a day other than the first day of a calendar month, or ends on a day other than the last day of a calendar month, then the Basic Monthly Rental for the first and/or last fractional months of the term shall be appropriately prorated. All such prorations shall be made on the basis of a 360-day year consisting of twelve 30-day months. For purposes of Rent adjustment under the Lease, the number of months is measured from the first day of the calendar month in which the Commencement Date falls.

(c) Rental shall be paid to Landlord without notice, demand, deduction or offset in lawful money of the United States in immediately available funds or by good check as described below at the following addresses: (i) if by Wire and ACH Payments: JP Morgan Chase, Account title: CLPF - 475 Brannan Street L.P., ABA #021-000-021, Account #473901978; if by Regular mail: CLPF - 475 Brannan Street, L.P., P.O. Box 101248, Pasadena, California 91189-0005; or (iii) if by Overnight mail: JP Morgan Chase, 2710 Media Center Dr., Building #6, Suite #120, Los Angeles, California 90065, Attn: CLPF - 475 Brannan Street L.P. Payments made by check must be drawn either on a California financial institution or on a financial institution that is a member of the federal reserve system. All amounts of Rental, if not paid when due, shall bear interest from the due date until paid at an annual rate of interest (the "Interest Rate") equal to the lesser of (i) the maximum annual interest rate allowed by law on such due date for business loans (not primarily for personal, family or household purposes) not exempt from the usury law, or (ii) a rate equal to the sum of five (5) percentage points over the publicly announced reference rate (the "Reference Rate") charged on such due date by the San Francisco Main Office of Bank of America, N.A. (or any successor bank thereto) (or if there is no such publicly announced rate, the rate quoted by such bank in pricing ninety (90) day commercial loans to substantial commercial borrowers). In addition, Tenant acknowledges that late payment by Tenant to Landlord of Rental will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult to fix. Such costs include, without limitation, processing and accounting charges, and late charges that may be imposed on Landlord by the terms of any encumbrance and/or note secured by an encumbrance covering the Premises. Therefore, if any installment of Rental due from Tenant is not received within ten (10) days of the date due, Tenant shall pay to Landlord an additional sum of ten percent (10%) of the

overdue Rental as a late charge; provided that, if Rental is not paid when due three (3) times during the term of this Lease and if Landlord shall have notified Tenant in writing that Tenant shall thereafter be entitled to no further grace periods, then thereafter Tenant shall not be entitled to such ten (10) day grace period, and such late charge shall be assessed on any Rental not paid by 5:00 p.m. on the date due. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment of Rental by Tenant. Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount, or prevent Landlord from exercising any of the other rights and remedies available to Landlord.

(d) Upon execution of this Lease, Tenant shall pay Landlord an amount equal to one (1) month's Basic Monthly Rental, which amount Landlord shall apply to the Basic Monthly Rental for the second (2nd) full calendar month of the Term.

(e) Tenant acknowledges that Landlord would not lease the Premises to Tenant without receipt by Landlord of an irrevocable unconditional standby letter of credit, and renewals, replacements, and supplements thereof, in a form reasonably acceptable to Landlord from a national banking association or another financial institution reasonably acceptable to Landlord ("Bank") to serve as security for Tenant's obligations under this Lease. Tenant agrees to cause a Bank to execute and deliver to Landlord, concurrent with the mutual execution of this Lease, an irrevocable letter of credit as provided in this Section 3(e). Such letter of credit and all renewals, replacements and supplements to such letter of credit shall: (i) provide that, if Landlord notifies Bank of a default by Tenant under this Lease (which default has not been cured by Tenant within any applicable cure period) and the amount owed by Tenant to Landlord as a result of such default (the "Delinquent Amount"), then Bank shall pay as proceeds of the draw to Landlord a sum equal to the Delinquent Amount; (ii) be in the initial amount of Five Hundred Thousand Eight Hundred Sixty and no/100 Dollars (\$500,860.00); (iii) be issued for a minimum period of one year; (iv) be transferable and (v) provide that Tenant shall cause the then existing letter of credit to be extended or renewed for an additional year or a replacement letter of credit to be issued to Landlord and delivered to Landlord at least thirty (30) days prior to the expiration date of the then existing letter of credit. Simultaneously with the delivery of the replacement letter, Landlord will deliver the existing letter of credit to Tenant. Tenant shall be permitted to reduce the amount of the letter of credit on the last day of the thirteenth (13th), twenty-fifth (25th), thirty-seventh (37th) and forty-ninth (49th) full calendar months after the Commencement Date, respectively, in the amount of \$83,476.77 each from the amount the letter of credit then held by Landlord, so long as no event of default by Tenant under the Lease then currently exists as the relevant reduction date. If a renewal, replacement or supplementary letter of credit is not timely delivered to Landlord, Tenant shall be in immediate, irrevocable default under this Lease (without any cure period), Landlord shall be entitled to exercise all remedies available to Landlord under this Lease, and Landlord shall be permitted to draw the full amount under the letters of credit. The sole condition precedent to payment by Bank to Landlord under letters of credit given shall be the receipt by Bank from Landlord of a written certification sworn under oath by Landlord that a default by Tenant (which default has not been cured by Tenant within any applicable cure period) has occurred under this Lease. In the event of a sale of the Premises and this Lease, upon the request of the transferee thereof, Tenant shall, at Landlord's expense, if any, cause to be issued to the transferee a replacement letter of credit (on the same terms and conditions provided above) so that the letter of credit given under this Lease shall at all times be payable to the Landlord under this Lease. It is agreed that this provision shall apply to every transfer or assignment of this Lease made by the then Landlord under this Lease. It is expressly understood that the reentry of the Premises by

Landlord after a default on the part of Tenant prior to the expiration of the term of this Lease shall not be deemed a termination of this Lease so as to entitle Tenant to revoke the letter of credit, and the letter of credit shall be retained and remain in the possession of Landlord until the end of the term of this Lease and all the Lease's renewals and extensions (except as otherwise provided in this Section 3(e)). Actions by Landlord against Tenant for breach of this Lease shall in no way be limited or restricted by the amount of the letter of credit and resort to such letter of credit shall not waive any other rights or constitute an election of remedies which Landlord may have. Landlord's receipt of funds after a partial draw under this Section 3(e) shall not constitute a binding determination of whether or not Tenant is in default under this Lease or the amount to which Landlord is entitled as a result of any default by Tenant. If Landlord draws on a letter of credit given under this Section 3(e) as a result of the failure of Tenant to deliver to Landlord a renewal, replacement or supplementary letter of credit within thirty (30) days prior to the expiration date of the current letter of credit, then the funds drawn by Landlord under the letter of credit will constitute a security deposit and will serve as security for the full and faithful performance by Tenant of each and every term, covenant and condition of this Lease. Landlord may use or apply such security deposit for the payment of all Delinquent Amounts, subject to Tenant's rights to challenge the existence of a default and the calculation of Delinquent Amounts. Such security deposit will not constitute an advance rental deposit or a measure of Landlord's damages in case of Tenant's default. Upon application of any part of the security deposit by Landlord under this Section 3(e), Tenant shall pay to Landlord on demand the amount so applied in order to restore the security deposit to its original amount. Tenant shall not be entitled to any interest on such security deposit. Upon termination of the original Landlord's or any successor owner's interest in the Premises or the Building, the original Landlord or such successor owner shall be released from further liability with respect to the security deposit upon the original Landlord's or such successor owner's complying with California Civil Code Section 1950.7 and Landlord's transfer of the security deposit to such successor owner or the credit of the amount of the security deposit to such successor owner. Subject to the foregoing and the terms of this Lease, Tenant hereby waives the provisions of Section 1950.7 of the California Civil Code, and all other provisions of law, now or hereafter in force, which establish a time frame within which a landlord must refund a security deposit under a lease, and/or provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by Tenant or to clean the Premises, it being agreed that Landlord may, in addition, claim those sums reasonably necessary to compensate Landlord for any other loss or damage caused by the default of Tenant under this Lease, including without limitation all damages or rent due upon termination of this Lease pursuant to Section 1951.2 of the California Civil Code. Actions by Landlord against Tenant for breach of this Lease will in no way be limited or restricted by the amount of the security deposit, and resort to such security deposit will not waive any other rights or constitute an election of remedies which Landlord may have.

4. TENANT'S SHARE OF OPERATING EXPENSES AND REAL PROPERTY TAXES; ADDITIONAL RENT.

(a) In addition to the Basic Monthly Rental payable during the Term of this Lease, commencing January 1, 2015 and continuing throughout the remaining Term of this Lease (including the Extension Term, if applicable) Tenant shall pay to Landlord, as additional rent, Tenant's Percentage Share of: (i) the amount, if any, by which Operating Expenses paid or incurred by Landlord in any calendar year subsequent to the Base Year exceed the amount of Operating Expense allocable to the Base Year; and (ii) the amount, if any by which Real Property Taxes paid or incurred by Landlord in any calendar year subsequent to the Base Year exceed the

amount of Real Property Taxes allocable to the Tax Base Year. Notwithstanding the foregoing, if the Building is less than one hundred percent (100%) occupied in the Base Year, the Tax Base Year or in any other Expense Year during the Term, then Operating Expenses for the Base Year, Real Property Taxes for the Tax Base Year or such other Expense Year shall be adjusted, for purposes of the foregoing calculations to the amounts that they would have been if the Building had been one hundred percent (100%) occupied. If it shall not be lawful for Tenant to reimburse Landlord for any increase in Real Property Taxes as defined herein, then the Basic Monthly Rental payable to Landlord prior to the imposition of such increases in Real Property Taxes shall be increased to net Landlord the same net Basic Monthly Rental after imposition of such increases in Real Property Taxes as would have been received by Landlord prior to the imposition of such increases in Real Property Taxes.

(b) Commencing January 1, 2015 and continuing throughout the remainder of the Lease Term (including the Extension Term, if applicable), Tenant shall pay to Landlord, as additional rent, one-twelfth (1/12th) of Tenant's Percentage Share of increases in Operating Expenses over the Base Year and Real Property Taxes over the Tax Base Year for such Expense Year on or before the first day of each calendar month of such Expense Year, in advance, in an amount estimated by Landlord in notices delivered to Tenant. If Landlord fails to deliver such an estimate to Tenant prior to the commencement of any Expense Year, then Tenant shall continue to pay Tenant's Percentage Share of increases in Operating Expenses and Real Property Taxes on the basis of the prior Expense Year's estimate until the first day of the next calendar month after such notice is given, provided that on such date Tenant shall pay to Landlord the amount of such estimated adjustment payable to Landlord for prior months during the Expense Year in question, less any portion thereof previously paid by Tenant. Landlord may revise its estimate of Tenant's Percentage Share of increases in Operating Expenses and Real Property Taxes for any Expense Year from time to time by giving written notice of such revision to Tenant, in which event subsequent payments by Tenant for such Expense Year shall be based on Landlord's revised estimate. The failure or delay by Landlord to provide Tenant with Landlord's estimate of Tenant's Percentage Share of increases in Operating Expenses and Real Property Taxes or Landlord's annual statement (as described in subparagraph 4(c) below) for any Expense Year shall not constitute a default by Landlord hereunder, or a waiver by Landlord of Tenant's obligation to pay Tenant's Percentage Share of increases in Operating Expenses or Real Property Taxes for such Expense Year or of Landlord's right to send to Tenant such an estimate or annual statement, as the case may be.

(c) Within ninety (90) days after the close of each Expense Year or as soon after such ninety (90) day period as practicable, Landlord shall deliver to Tenant a statement of the amounts payable under Paragraph 4(a) above for such Expense Year and such statement shall be final and binding upon Landlord and Tenant. If on the basis of such statement Tenant owes an amount that is more than the estimated payments for such Expense Year previously made by Tenant, Tenant shall pay the deficiency to Landlord within fifteen (15) days after delivery of the statement. If on the basis of such statement Tenant has paid to Landlord an amount in excess of the amounts payable under Paragraph 4(a) above for the preceding Expense Year and Tenant is not in default in the performance of any of its covenants under this Lease, then Landlord, at its option, shall either promptly refund such excess to Tenant or credit the amount thereof to the Basic Monthly Rental next becoming due from Tenant until such credit has been exhausted.

(d) If Tenant disputes the amount of Operating Expenses due hereunder, Tenant shall have the right, after payment to Landlord of the amount in dispute, and after reasonable notice and at reasonable times, to inspect Landlord's accounting records relating to such Operating Expenses at Landlord's accounting office. If, after such inspection Tenant still disputes the amount of additional rent owed, Tenant shall have the right to cause Landlord's books and records with respect to such Operating Expenses for such year to be audited by certified public accountants selected by Tenant and subject to Landlord's reasonable right of approval; provided that any auditor selected by Tenant must be a nationally or regionally recognized firm whose compensation shall in no way be contingent upon or correspond to the financial impact on Tenant resulting from such review or audit. Tenant agrees to pay the cost of such audit unless Landlord and Tenant determine that Landlord's original statement overstated Operating Expenses by more than five percent (5%). If Landlord and Tenant determine that Landlord has overcharged Tenant, then within thirty (30) days after the results of such audit are made available to Landlord, Landlord shall reimburse Tenant the amount of such overcharge. No such audit shall be conducted if any other tenant has conducted an audit for the time period Tenant intends to audit and Landlord furnishes to Tenant a copy of the results of such audit. No audit shall be conducted at any time that Tenant is in default of any of the terms of the Lease beyond any applicable notice and cure period. Tenant's right to dispute the amount of Operating Expenses shall continue for a period of one hundred eighty (180) days following Landlord's delivery of the statement with respect to such Expense Year, after which such statement shall be conclusively presumed to be accurate and binding upon Landlord and Tenant.

(e) If this Lease expires or terminates on a day other than the last day of an Expense Year, the amounts payable by Tenant under Paragraph 4(a) above with respect to the Expense Year in which such expiration or termination occurs shall be prorated on the basis that the number of days from the commencement of such Expense Year, to and including such expiration or termination date, bears to three hundred sixty (360). The expiration or termination of this Lease shall not affect the obligations of Landlord and Tenant pursuant to Paragraph 4(c) above to be performed after such expiration or termination.

(f) It is the intention of Landlord and Tenant that the Basic Monthly Rental paid to Landlord throughout the term of this Lease shall be absolutely net of all increases in Real Property Taxes over the Tax Base Year and Operating Expenses over the Base Year and the foregoing provisions of this Paragraph 4 are intended to so provide.

5. OTHER TAXES PAYABLE BY TENANT. Tenant shall reimburse Landlord within thirty (30) days after demand for any and all taxes payable by Landlord (other than net income taxes and Real Property Taxes) whether or not now customary or within the contemplation of the parties hereto:

(a) imposed upon, measured by or reasonably attributable to the cost or value of Tenant's equipment, furniture, fixtures and other personal property located in the Premises or by the cost or value of any leasehold improvements made in or to the Premises by or for Tenant, regardless of whether title to such improvements shall be in Tenant or Landlord;

(b) imposed upon or measured by the Basic Monthly Rental payable hereunder, including, without limitation, any gross income tax or excise tax levied by the City and

County of San Francisco, the State of California, the federal government or any other governmental body with respect to the receipt of such rental;

(c) imposed upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion thereof; or

(d) imposed upon this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises.

In the event that it shall not be lawful for Tenant to so reimburse Landlord, the Basic Monthly Rental payable to Landlord under this Lease shall be revised to net Landlord the same income after imposition of any such tax upon Landlord as would have been received by Landlord hereunder prior to the imposition of any such tax.

6. USE. Tenant agrees to use the Premises for general office purpose, and Tenant agrees not to use or permit the use of the Premises or any part thereof for any other purpose. Tenant agrees not to do or permit to be done in or about the Premises or the Building, or to bring or keep or permit to be brought or kept in or about the Premises or the Building, anything that is prohibited by or will in any way conflict with any law, statute or governmental regulation now or hereafter in effect, or that would subject Landlord or Landlord's agents to any liability, or that is prohibited by the standard form of fire insurance policy, or that will in any way increase the existing rate of (or otherwise affect) fire or any other insurance on the Building or any of its contents. If any act or omission of Tenant results in any such increase in premium rates, Tenant shall pay to Landlord, as additional rent, upon demand the amount of such increase. Tenant agrees not to do or permit to be done anything in, on or about the Premises or the Building that will in any way obstruct or interfere with the rights of other tenants or occupants of the Building, or injure or annoy them, or use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose. Tenant agrees not to cause, maintain or permit any nuisance in, on or about the Premises or the Building, or to use or permit to be used any loudspeaker or other device, system or apparatus that can be heard outside the Premises without the prior written consent of Landlord or to permit any objectionable odors, bright lights or electrical or radio interference that may annoy or interfere with the rights of other tenants of the Building or the public. Tenant agrees not to commit or suffer to be committed any waste in or upon the Premises. The provisions of this Paragraph 6 are for the benefit of Landlord only and shall not be construed to be for the benefit of any tenant or occupant of the Building.

7. COMPLIANCE WITH LAWS/ENVIRONMENTAL MATTERS.

(a) Landlord shall deliver the Premises to Tenant in substantial compliance with all laws, statutes, ordinances and governmental rules, regulations or requirements in effect as of the date of this Lease and shall keep the Building, the common areas thereto, and the Parking Lot in compliance thereof. Tenant agrees at its sole cost and expense to promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now or hereafter constituted; with any direction or occupancy certificate issued pursuant to law by any public officer; and with the provisions of all recorded documents affecting the Premises, insofar as any thereof relates to or affects the condition, use or occupancy of the Premises, excluding structural

changes not related to or affected by Tenant's improvements, acts or particular use of the Premises. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant (whether Landlord be a party thereto or not) that Tenant has violated any such law, statute, ordinance or governmental rule, regulation, requirement, direction or provision, shall be conclusive of that fact as between Landlord and Tenant. If Tenant's use or operation of the Premises or any of Tenant's equipment therein requires a governmental permit, license or other authorization or any notice to any governmental agency, Tenant shall promptly provide a copy thereof to Landlord.

(b) Tenant shall not bring or keep, or permit to be brought or kept, in the Premises or in or on the Real Property any "hazardous substance" (as hereinafter defined). Tenant shall not manufacture, generate, treat, handle, store or dispose of any hazardous substance in the Premises or in or on the Real Property, or use the Premises for any such purpose, or emit, release or discharge any hazardous substance into any air, soil, surface water or groundwater comprising the Premises or the Real Property, or permit any person using or occupying the Premises to do any of the foregoing. Tenant shall comply, and shall cause all persons using or occupying the Premises to comply, with all "environmental laws" (as hereinafter defined) applicable to the Premises, the use or occupancy of the Premises or any operation or activity therein. Tenant shall, within ten (10) days after Tenant's receipt thereof, give written notice to Landlord of any notice or other communication (oral or written) regarding any (i) actual or alleged violation of environmental laws by Tenant or with respect to the Premises, (ii) actual or threatened release of any hazardous substance from the Premises, or (iii) the existence of any hazardous substance in or on the Premises or regarding any actual or threatened investigation, inquiry, lawsuit, claim, citation, directive, summons, proceeding, complaint, notice, order, writ or injunction relating to any of the foregoing. Tenant shall indemnify and defend Landlord against and hold Landlord harmless from all claims, demands, liabilities, damages, fines, encumbrances, liens, losses, costs and expenses, including reasonable attorneys' fees and disbursements, and costs and expenses of investigation, arising from or related to the existence on or after the Commencement Date of hazardous substances from the Premises as a result of contamination caused by Tenant or the existence on or after the Commencement Date of a violation of environmental laws by Tenant with respect to the Premises. To the extent Tenant has an indemnification obligation under this Paragraph 7(b), Tenant shall, to the reasonable satisfaction of Landlord, perform all remedial actions necessary to remove any hazardous substances in or on the Premises on or after the Commencement Date or to remedy actual or threatened migration from the Premises of any hazardous substances or to remedy any actual or threatened violation of environmental laws. This Paragraph 7(b) shall survive termination of this Lease. As used in this Lease, "hazardous substance" shall mean any substance or material that is described as a toxic, hazardous, bio-hazardous, corrosive, ignitable, flammable or reactive substance, waste or material or a pollutant or contaminant, or words of similar import, in any of the environmental laws, and includes asbestos, petroleum, petroleum products, polychlorinated biphenyls, radon gas, radioactive matter, and chemicals that may cause cancer or reproductive toxicity. As used in this Lease, "environmental laws" shall mean all federal, state and local laws, ordinances, rules and regulations now or hereafter in force, as amended from time to time, in any way relating to or regulating human health or safety, or industrial hygiene or environmental conditions, or protection of the environment, or pollution or contamination of the air, soil, surface water or groundwater.

(c) Tenant shall immediately furnish Landlord with any (i) notices received from any insurance company or governmental agency or inspection bureau regarding any unsafe or unlawful conditions within the Premises, and (ii) notices or other communications sent by or on behalf of Tenant to any person relating to environmental laws or hazardous substances.

(d) California law requires landlords to disclose to tenants the existence of certain hazardous substances. Accordingly, the existence of gasoline and other automotive fluids, asbestos containing materials, maintenance fluids, copying fluids and other office supplies and equipment, certain construction and finish materials, tobacco smoke, cosmetics and other personal items must be disclosed. Gasoline and other automotive fluids are found in the Parking Lot. Cleaning, lubricating and hydraulic fluids used in the operation and maintenance of the Building are found in the utility areas of the Building not generally accessible to Building occupants or the public. Many Building occupants use copy machines and printers with associated fluids and toners, and pens, markers, inks, and office equipment that may contain hazardous substances. Certain adhesives, paints and other construction materials and finishes used in portions of the Building may contain hazardous substances. Although smoking is prohibited in the public areas of the Building, these areas may from time to time be exposed to tobacco smoke. Building occupants and other persons entering the Building from time to time may use or carry prescription and non-prescription drugs, perfumes, cosmetics and other toiletries, and foods and beverages, some of which may contain hazardous substances.

(e) As an inducement to Landlord to enter into this Lease, Tenant hereby represents and warrants that: (i) Tenant is not, nor is it owned or controlled directly or indirectly by, any person, group, entity or nation named on any list issued by the Office of Foreign Assets Control of the United States Department of the Treasury ("OFAC") pursuant to Executive Order 13224 or any similar list or any law, order, rule or regulation or any Executive Order of the President of the United States as a terrorist, "Specially Designated National and Blocked Person" or other banned or blocked person (any such person, group, entity or nation being hereinafter referred to as a "Prohibited Person"); (ii) Tenant is not (nor is it owned or controlled, directly or indirectly, by any person, group, entity or nation which is) acting directly or indirectly for or on behalf of any Prohibited Person; and (iii) neither Tenant (nor any person, group, entity or nation which owns or controls Tenant, directly or indirectly) has conducted or will conduct business or has engaged or will engage in any transaction or dealing with any Prohibited Person, including without limitation any assignment of this Lease or any subletting of all or any portion of the Premises or the making or receiving of any contribution of funds, goods or services to or for the benefit of a Prohibited Person. Tenant covenants and agrees (a) to comply with all requirements of law relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect, (b) to immediately notify Landlord in writing if any of the representations, warranties or covenants set forth in this Section 8(e) are no longer true or have been breached or if Tenant has a reasonable basis to believe that they may no longer be true or have been breached, (c) not to use funds from any Prohibited Person to make any payment due to Landlord under the Lease and (d) at the request of Landlord, to provide such information as may be requested by Landlord to determine Tenant's compliance with the terms hereof. Any breach by Tenant of the foregoing representations and warranties shall be deemed an Event of Default by Tenant under this Lease and shall be covered by the indemnity provisions of Section 13 above. The representations and warranties contained in this subsection shall be continuing in nature and shall survive the expiration or earlier termination of this Lease.

(f) The provisions of this Paragraph 7 are for the benefit of Landlord only and shall not be construed to be for the benefit of any tenant or occupant of the Building.

8. ALTERATIONS; LIENS.

(a) Tenant agrees not to make or suffer to be made any alteration, addition or improvement to or of the Premises (hereinafter referred to as "Alterations"), or any part thereof, without the prior written consent of Landlord. Notwithstanding the foregoing, Landlord's consent shall not be required for any Alterations which are strictly cosmetic in nature and (i) do not modify or affect the Premises' or Building's structure or the electrical, plumbing, heating, ventilation and air conditioning, mechanical, security, life safety or other systems serving the Building, (ii) are not visible from the exterior of the Premises, (iii) do not require the issuance of a building permit, (iv) do not require work to be performed inside the walls or above the ceiling of the Premises, and (v) do not require any substantial modifications to the Premises (collectively, "Cosmetic Alterations"); provided that the aggregate cost of any such Cosmetic Alterations does not exceed Seventy Thousand Dollars (\$70,000.00) in any twelve (12) month period during the Term and provided, further that Tenant shall give Landlord not less than fifteen (15) days prior written notice of any Cosmetic Alterations (which notice shall be accompanied by reasonably adequate evidence that such Cosmetic Alteration meet the criteria contained in this Section 8(a)), such Cosmetic Alterations shall comply with all other provisions of this Section 8, and Landlord shall be permitted to enter the Premises to post notices of non-responsibility and other like notices or to observe the work performed by or on behalf of Tenant. Any Alterations made by Tenant, including without limitation any partitions (movable or otherwise) or carpeting, shall become a part of the Building and belong to Landlord; provided, however, that equipment, trade fixtures and movable furniture shall remain the property of Tenant. If Landlord consents to the making of any Alterations, the same shall be designed and constructed or installed by Tenant at its expense (including expenses incurred in complying with applicable laws, including laws relating to the handling and disposal of asbestos-containing materials). Tenant shall use a general contractor, subcontractors, engineers and architects that are on Landlord's approved list of design and construction professionals. All Alterations shall be made in accordance with plans and specifications approved in writing by Landlord and shall be designed and constructed in compliance with all applicable codes, laws, ordinances, rules and regulations. The design and construction of any Alterations shall be performed in accordance with Landlord's applicable rules, regulations and requirements. Under no circumstances shall Landlord be liable to Tenant for any damage, loss, cost or expense incurred by Tenant on account of Tenant's plans and specifications, Tenant's contractors or subcontractors, design of any work, construction of any work, or delay in completion of any work. Tenant shall pay to Landlord a fee in the amount of five percent (5%) of the cost of the Alterations for Landlord's review of plans and its management and supervision of the progress of the work. All sums due to such contractors, if paid by Landlord due to Tenant's failure to pay such sums when due, shall bear interest payable to Landlord at the Interest Rate until fully paid. Upon the expiration or sooner termination of this Lease, Tenant, at its expense, shall promptly remove any Alterations made by Tenant which are designated by Landlord to be removed at the time such Alterations were approved (or, with respect to Cosmetic Alterations not requiring Landlord's consent as described above, at the time Tenant notified Landlord of such Cosmetic Alterations) and repair any damage to the Premises caused by such removal. Tenant shall use the general contractor designated by Landlord for such removal and repair. In no event

shall Tenant be obligated to remove the Tenant Improvements described in Section 2.1 of Exhibit C attached hereto.

(b) Tenant agrees to keep the Premises and the Real Property free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant. Tenant shall promptly and fully pay and discharge all claims on which any such lien could be based. In the event that Tenant does not, within ten (10) days following the recording of notice of any such lien, cause the same to be released of record, Landlord shall have, in addition to all other remedies provided herein and by law, the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All sums paid by Landlord for such purpose, and all expenses incurred by it in connection therewith, shall be payable to Landlord by Tenant, as additional rent, on demand, together with interest at the Interest Rate from the date such expenses are incurred by Landlord to the date of the payment thereof by Tenant to Landlord. Landlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law, or which Landlord shall deem proper for the protection of Landlord, the Premises, the Building, or the Real Property, from mechanic's and materialmen's and like liens. Tenant shall give Landlord at least ten (10) days' prior written notice of the date of commencement of any construction on the Premises in order to permit the posting of such notices.

9. MAINTENANCE AND REPAIR.

(a) By taking possession of the Premises, Tenant accepts the Premises as being in the condition in which Landlord is obligated to deliver the Premises, subject to Punch List items as described in Section 3 of Exhibit C. Tenant, at its expense, shall at all times keep the Premises and every part thereof and all equipment, fixtures and improvements therein in good and sanitary order, condition and repair, damage thereto by fire, the perils of the extended coverage endorsement excepted, and Tenant waives all rights under, and benefits of, subsection 1 of Section 1932 and Sections 1941 and 1942 of the California Civil Code and under any similar law or ordinance now or hereafter in effect. Upon the expiration or sooner termination of this Lease, Tenant shall surrender the Premises and (unless designated by Landlord to be removed in accordance with Paragraph 8 above) all Alterations thereto to Landlord in the same condition as when received, ordinary wear and tear (except such as Tenant is obligated to repair to keep the Premises in good condition and repair) and damage thereto by fire, the perils of the extended coverage endorsement excepted. It is agreed that Landlord has no obligation, and has made no promises, to alter, add to, remodel, improve, repair, decorate or paint the Premises or any part thereof and that no representations respecting the condition of the Premises, the Building or the Real Property have been made by Landlord to Tenant except as may be specifically set forth herein. No representation or warranty, express or implied, is made with respect to (i) the condition of the Premises or the Building, (ii) the present or future suitability or fitness of the Premises for Tenant's intended or permitted use, (iii) the degree of sound transfer within the Building, (iv) the absence of electrical or radio interference in the Premises or the Building, (v) the condition, capacity or performance of electrical or communications systems or facilities, or (vi) the absence of objectionable odors, bright lights or other conditions that may affect Tenant's use and enjoyment of the Premises or the Building.

(b) Landlord agrees to make all necessary repairs to the structure, the exterior, and the public and common areas of the Building and the building systems therein, and to maintain the same in reasonably good order and condition. Any damage arising from the acts of Tenant, its agents, employees, contractors or invitees shall be repaired by Landlord at Tenant's sole expense. Tenant shall pay Landlord on demand the cost of any such repair.

10. SERVICES.

(a) Provided that Tenant is not in default in the performance or observance of any of the terms, covenants or conditions of this Lease to be performed or observed by Tenant and the Lease has not terminated, Landlord, subject to the terms of this Paragraph 10 and the Building Rules and Regulations attached hereto as Exhibit B and subject to applicable laws, regulations and rules of public utilities, shall furnish to the Premises water, electrical power and elevator service suitable for the use of the Premises for ordinary office purposes; heating and air conditioning suitable for the comfortable use and occupation of the Premises (assuming normal office use thereof and subject to any restrictions on use as may be prescribed by any applicable policies or regulations of any utility or governmental agency) during normal business hours (specifically, 7:00 a.m. to 7:00 p.m.), excluding weekends and holidays. Tenant may request that after-hours heating and air conditioning be supplied to the Premises by having an authorized representative of Tenant contact the Building's manager. The cost of after-hours heating and air conditioning is currently \$60.00 per hour. Tenant agrees to pay, as additional rent, promptly on demand any and all costs incurred by Landlord (as reasonably determined by Landlord) in connection with providing any additional or excessive (i.e., amounts in excess of normal office use during normal business hours) utilities or services Landlord may provide. Unless otherwise specifically provided in this Lease, all means of distribution of all utilities within the Premises shall be supplied by Tenant at its expense, and Tenant shall bear the cost of water, gas, electricity, sewerage and other utilities. Landlord reserves the right to install, at Tenant's expense, a separate meter in the Premises for electricity. Tenant agrees that at all times it will cooperate fully with Landlord and abide by all regulations and requirements that Landlord may prescribe for the proper functioning and protection of the Building heating, ventilating and air conditioning systems. Landlord shall not be liable for and Tenant shall not be entitled to any abatement or reduction of Rental by reason of Landlord's failure to furnish any of the foregoing or any other utilities or services when such failure is caused by accident, breakage, repairs, strikes, lockouts or other labor disturbances or disputes of any character, by the limitation, curtailment, rationing or restrictions on use of electricity, gas or any form of energy, or by any other cause, similar or dissimilar, beyond the reasonable control of Landlord. No such failure and no interruption of utilities or services from any cause whatsoever shall constitute an eviction of Tenant, constructive or otherwise, or impose upon Landlord any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by Tenant. Tenant hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable existing or future law, ordinance or governmental regulation permitting the termination of this Lease due to such failure or interruption. Landlord shall not be liable under any circumstances for injury to or death of any person or damage to or destruction of property, however occurring, through or in connection with or incidental to the furnishing of or the failure to furnish any of the foregoing utilities or services or any other utilities or services. Tenant shall at Tenant's sole cost and expense provide janitorial service to the Premises using the same janitorial contractor that provides janitorial service to the balance of the Building.

(b) Landlord makes no representation to Tenant regarding the adequacy or fitness of the heating, air conditioning or ventilation equipment in the Building to maintain temperatures that may be required for, or because of, any of Tenant's equipment that uses other than the fractional horsepower normally required for office equipment, and Landlord shall have no liability for loss or damage suffered by Tenant or others in connection therewith. If Tenant's use of the heating, air conditioning or ventilation system exceeds normal office use and thereby causes damages to any of the air conditioning units or other equipment, the cost to repair or replace any such units or equipment due to such use shall be paid by Tenant to Landlord, as additional rent, upon demand by Landlord. If the temperature otherwise maintained in any portion of the Premises by the heating, air conditioning or ventilation system is affected as a result of (i) any lights, machines or equipment (including without limitation electronic data processing machines) used by Tenant in the Premises, (ii) the occupancy of the Premises by more than one person per two hundred (200) square feet of rentable area therein, (iii) an electrical load for lighting or power in excess of the limits per square foot of rentable area of the Premises specified in Paragraph 10(c) below, or (iv) any rearrangement of partitioning or other improvements, Landlord shall have the right to install supplementary air conditioning units or other equipment Landlord deems appropriate in the Premises, and the cost thereof, including the cost of installation, operation and maintenance thereof, shall be paid by Tenant to Landlord, as additional rent, upon demand by Landlord.

(c) Tenant agrees it will not, without the written consent of Landlord, use any equipment, apparatus or device in the Premises (including, without limitation, electronic data processing machines, computers or machines using current in excess of 110 volts) that will, individually or in the aggregate, in any way cause the amount of electricity, water or heating, ventilation or air conditioning supplied to the Premises to exceed the amount usually furnished or supplied to premises being used as general office space, or connect with electric current (except through existing electrical outlets in the Premises) or with water pipes any equipment, apparatus or device for the purposes of using electric current or water. Landlord shall not, in any way, be liable or responsible to Tenant for any loss or damage or expense that Tenant may incur or sustain if, for any reasons beyond Landlord's reasonable control, either the quantity or character of electric service is changed or is no longer available or suitable for Tenant's requirements. Tenant covenants that at all times its use of electric current shall never exceed the capacity of the feeders, risers or electrical installations of the Building. If submetering of electricity in the Building will not be permitted under future laws or regulations, the Basic Monthly Rental will then be equitably adjusted to include an additional payment to Landlord reflecting the cost to Landlord for furnishing electricity to the Premises.

(d) Tenant shall give reasonable notice in making any request for utilities required outside of normal business hours. Tenant agrees to pay, as additional rent, promptly on demand any and all costs incurred by Landlord in connection with providing any additional utilities and services Landlord may provide.

(e) In the event any governmental authority having jurisdiction over the Real Property or the Building promulgates or revises any law, ordinance or regulation or building, fire or other code or imposes mandatory or voluntary controls or guidelines on Landlord or the Real Property or the Building relating to the use or conservation of energy or utilities or the reduction of automobile or other emissions (collectively "Controls") or in the event Landlord is required or

elects to make alterations to the Real Property or the Building in order to comply with such mandatory or voluntary Controls, Landlord may, in its sole discretion, comply with such Controls or make such alterations to the Real Property or the Building related thereto. Such compliance and the making of such alterations shall not constitute an eviction of Tenant, constructive or otherwise, or impose upon Landlord any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by Tenant.

11. SECURITY; ACCESS; CONTROL.

(a) Landlord shall have the right from time to time to adopt such policies, procedures and programs as it shall, in Landlord's sole discretion, deem necessary or appropriate for the security of the Building, and Tenant shall cooperate with Landlord in the enforcement of, and shall comply with, the policies, procedures and programs adopted by Landlord insofar as the same pertain to Tenant, its agents, employees, contractors and invitees. Tenant acknowledges that the safety and security devices, services and programs provided by Landlord from time to time, if any, may not prevent theft or other criminal acts, or insure the safety of persons or property, and Tenant expressly assumes the risk that any safety device, service or program may not be effective or may malfunction or be circumvented. In all events and notwithstanding any provision of this Lease to the contrary, Landlord and the other Indemnitees (defined below) shall not be liable to Tenant, and Tenant hereby waives any claim against the Indemnitees to the maximum extent permitted by law, for (i) any unauthorized or criminal entry of third parties into the Premises or the Building, (ii) any injury to or death of persons, or (iii) any loss of property in and about the Premises or the Building by or from any unauthorized or criminal acts of third parties, regardless of any action, inaction, failure, breakdown, malfunction and/or insufficiency of the security services provided by Landlord, or any allegation of active or passive negligence on the part of Landlord or the other Indemnitees. Tenant shall obtain insurance coverage to the extent Tenant desires protection against criminal acts and other losses.

(b) In no event shall Landlord be liable for damages resulting from any error with regard to the admission to or the exclusion from the Building of any person. In the case of invasion, mob, riot, public demonstration or other circumstances rendering such action advisable in Landlord's opinion, Landlord reserves the right to prevent access to the Building during the continuance of the same by such action as Landlord may deem appropriate, including closing doors.

(c) In the event of any picketing, public demonstration or other threat to the security of the Building that is attributable in whole or in part to Tenant, Tenant shall reimburse Landlord for any costs incurred by Landlord in connection with such picketing, demonstration or other threat in order to protect the security of the Building, and Tenant shall indemnify and hold Landlord harmless from and protect and defend Landlord against any and all claims, demands, suits, liability, damage or loss and against all costs and expenses, including reasonable attorneys' fees incurred in connection therewith, arising out of or relating to any such picketing, demonstration or other threat. Tenant agrees not to employ any person, entity or contractor for any work in the Premises (including moving Tenant's equipment and furnishings in, out or around the Premises) whose presence may give rise to a labor or other disturbance in the Building and, if necessary to prevent such a disturbance in a particular situation, Landlord may require Tenant to employ union labor for the work.

(d) Subject to (i) all of the terms and conditions of this Lease, including the Rules and Regulations attached hereto as Exhibit B, (ii) emergency situations or other matters outside the reasonable control of Landlord, and (iii) the requirements of applicable laws, Tenant shall have access to and use of the Building twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year throughout the Term.

12. ASSIGNMENT AND SUBLETTING.

(a) Tenant shall not, either voluntarily or by operation of law, (i) assign or transfer this Lease or any interest herein, (ii) sublet the Premises, or any part thereof, or (iii) enter into a license agreement or other arrangement whereby the Premises, or any portion thereof, are held or utilized by another party (each of the foregoing defined herein as a "Transfer"), without the express prior written consent of Landlord, which consent Landlord shall not unreasonably withhold, condition or delay. Any such act (whether voluntary or involuntary, by operation of law or otherwise) without the consent of Landlord pursuant to the provisions of this Paragraph 12 shall, at Landlord's option, be void and/or constitute an Event of Default under this Lease. Consent to any Transfer shall neither relieve Tenant of the necessity of obtaining Landlord's consent to any future Transfer nor relieve Tenant from any liability under this Lease.

By way of example and without limitation, the failure to satisfy any of the following conditions or standards shall be deemed to constitute reasonable grounds for Landlord to refuse to grant its consent to the proposed Transfer:

- (1) The proposed Transferee must expressly assume all of the provisions, covenants and conditions of this Lease on the part of Tenant to be kept and performed.
- (2) The proposed Transferee must satisfy Landlord's then-current credit and other standards for tenants of the Building and, in Landlord's reasonable opinion, have the financial strength and stability to perform all of the obligations of the Tenant under this Lease (as they apply to the transferred space) as and when they fall due.
- (3) The proposed Transferee must be reasonably satisfactory to Landlord as to character and professional standing.
- (4) The proposed use of the Premises by the proposed Transferee must be, in Landlord's opinion: (A) lawful; (B) in compliance with Paragraph 6 of this Lease; (C) appropriate to the location and configuration of the Premises; (D) unlikely to cause an increase in insurance premiums for insurance policies applicable to the Building; (E) a use not requiring any new tenant improvements that Landlord would be entitled to disapprove pursuant to Paragraph 8 hereof; (F) unlikely to cause any material increase in services to be provided to the Premises; (G) unlikely to create any materially increased burden in the operation of the Building, or in the operation of any of its facilities or equipment; and (H) unlikely to impair the dignity, reputation or character of the Building.
- (5) The proposed use of the Premises must not result in the division of the Premises into more than two (2) parcels or tenant spaces.

(6) At the time of the proposed Transfer, an Event of Default (as defined in Paragraph 18(a) below) shall not have occurred and be continuing, and no event may have occurred that with notice, the passage of time, or both, would become an Event of Default.

(7) The proposed Transferee shall not be a governmental entity or hold any exemption from the payment of ad valorem or other taxes that would prohibit Landlord from collecting from such Transferee any amounts otherwise payable under this Lease.

(8) The proposed Transferee shall not be a then present tenant or affiliate or subsidiary of a then present tenant in the Building unless there is no other suitable space available in the Building.

(9) Landlord shall not be negotiating with, and shall not have at any time within the past thirty (30) days negotiated with, the proposed Transferee for space in the Building.

(b) Except in the event of a proposed Transfer pursuant to Paragraphs 12(e) or 12(f) below, Landlord shall have no obligation to consent or consider granting its consent to any proposed Transfer unless Tenant has first delivered to Landlord a written offer to enter into such Transfer with Landlord, which offer shall include the base rent and other economic terms of the proposed Transfer, the date upon which Tenant desires to effect such Transfer and all of the other material terms of the proposed Transfer ("Tenant's Offer"). Landlord shall have twenty (20) days from receipt of Tenant's Offer within which to notify Tenant in writing of Landlord's decision to accept or reject such Transfer on the terms set forth in Tenant's Offer. If Landlord does not accept Tenant's Offer within such period, Tenant shall deliver to Landlord a second notice of such offer. If Landlord does not accept Tenant's offer within five (5) days after receipt of such second notice, Tenant may enter into such Transfer with any bona fide independent third-party Transferee (as defined in Paragraph 12(c) below) within ninety (90) days of the end of such twenty (20) day period, so long as such Transfer is for the same base rent offered to Landlord in Tenant's Offer and such Transfer otherwise contains terms not more than five percent (5%) more favorable economically to the Transferee than the terms stated in Tenant's Offer, taking into account all rent concessions, tenant improvements, and any other terms that have an economic impact on the Transfer; provided, however, that the prior written approval of Landlord for such Transfer must be obtained, and the other provisions of this Paragraph 12 must be complied with, all in accordance with this Paragraph 12. If Landlord accepts Tenant's Offer, Landlord and Tenant shall enter into an agreement for such Transfer within thirty (30) days of the date Landlord makes its election. If Landlord accepts Tenant's Offer, then (i) Landlord may enter into a new lease, sublease or other agreement covering the Premises or any portion thereof with the intended Transferee on such terms as Landlord and such Transferee may agree, or enter into a new lease or agreement covering the Premises or any portion thereof with any other person or entity, and in any such event, Tenant shall not be entitled to any portion of the profit, if any, that Landlord may realize on account of such new lease or agreement, (ii) Landlord may, at Landlord's sole cost, construct improvements in the subject space and, so long as the improvements are suitable for general office purposes, Landlord shall have no obligation to restore the subject space to its original condition following the termination of a sublease, and (iii) Landlord shall not have any liability for any real estate brokerage commission(s) or with respect to any of the costs and

expenses that Tenant may have incurred in connection with its proposed Transfer, and Tenant agrees to indemnify, defend and hold harmless Landlord from and against any and all claims (including, without limitation, claims for commissions) arising from such proposed Transfer.

Except in the event of a proposed Transfer pursuant to Paragraphs 12(e) or 12(f) below, in the case of a proposed assignment of this Lease or a sublease of substantially the entire Premises for substantially the balance of the term of this Lease, then in addition to the foregoing rights of Landlord, Landlord shall have the right, by notice to Tenant within fifteen (15) days after receipt of Tenant's Offer, to terminate this Lease, which termination shall be effective as of the date on which the intended assignment or sublease would have been effective if Landlord had not exercised such termination right. If Landlord elects to terminate this Lease, then from and after the date of such termination, Landlord and Tenant each shall have no further obligation to the other under this Lease with respect to the Premises except for matters occurring or obligations arising hereunder prior to the date of such termination.

Landlord's foregoing rights and options shall continue throughout the entire term of this Lease.

(c) Tenant shall, in each instance of a proposed Transfer, give written notice to Landlord at least sixty (60) days prior to the effective date of any proposed Transfer, specifying in such notice (i) the nature of the proposed Transfer, (ii) the portion of the Premises to be transferred, (iii) the intended use of the transferred Premises, (iv) all economic terms of the proposed Transfer, (v) the effective date thereof, (vi) the identity of the transferee under the proposed Transfer (the "Transferee"), (vii) current financial statements of the Transferee, and (viii) detailed documentation relating to the business experience of the Transferee (collectively, "Tenant's Notice"). Tenant also shall promptly furnish Landlord with any other information reasonably requested by Landlord relating to the proposed Transfer or the proposed Transferee. Within thirty (30) days after receipt by Landlord of Tenant's Notice and any additional information and data requested by Landlord, Landlord shall notify Tenant of Landlord's determination to either (i) consent to the proposed Transfer, or (ii) refuse to consent to such proposed Transfer.

(d) Fifty percent (50%) of all of the following ("Excess Rental") shall be paid by Tenant to Landlord immediately upon receipt thereof by Tenant: (i) consideration paid or payable by Transferee to Tenant as consideration for any such Transfer; and (ii) rents received in connection with the Transfer by Tenant from Transferee in excess of the Rental payable by Tenant to Landlord under this Lease, less reasonable, documented, out-of-pocket costs paid by Tenant to third parties for brokerage commissions, tenant improvement costs and legal fees in connection with the subject Transfer (amortized equally over the term of the Sublease (in the case of a Sublease) or the remaining term of the Lease (in the case of an assignment)). If there is more than one sublease under this Lease, the amounts (if any) to be paid by Tenant to Landlord pursuant to the preceding sentence shall be separately calculated for each sublease and amounts due Landlord with regard to any one sublease may not be offset against rental and other consideration pertaining to or due under any other sublease. Upon Landlord's request, Tenant shall assign to Landlord all amounts to be paid to Tenant by any Transferee and shall direct such Transferee to pay the same directly to Landlord, in which case Landlord shall pay to Tenant fifty percent (50%) of such Excess Rental promptly upon Landlord's receipt thereof.

If this Lease is assigned, whether or not in violation of the terms of this Lease, Landlord may collect rent from the assignee. If the Premises or any part thereof is sublet, Landlord may, upon an Event of Default by Tenant hereunder, collect rent from the subtenant. In either event, Landlord may apply the amount collected from the assignee or subtenant to Tenant's monetary obligations hereunder. Neither Landlord's collection of rent from a Transferee nor any course of dealing between Landlord and any Transferee shall constitute or be deemed to constitute Landlord's consent to any Transfer.

(e) Notwithstanding anything to the contrary contained in this Paragraph 12, Tenant may assign this Lease or sublet the Premises without the need for Landlord's prior consent if such assignment or sublease is to any parent, subsidiary or affiliate business entity which the initially named Tenant controls, is controlled by or is under common control with (each, an "Affiliate") provided that: (i) at least thirty (30) days prior to such assignment or sublease, Tenant delivers to Landlord the financial statements or other financial and background information of the assignee or sublessee as required for other transfers; (ii) if the transfer is an assignment, the assignee assumes, in full, the obligations of Tenant under this Lease (or if a sublease, the sublessee of a portion of the Premises or term assumes, in full, the obligations of Tenant with respect to such portion); (iii) the financial audited net worth of the assignee or sublessee as of the time of the proposed transfer is equal to or greater than the financial audited net worth of the Originally Named Tenant upon the date of this Lease and is sufficient for such assignee or sublessee to fulfill its obligations pursuant to such assignment or sublease; (iv) Tenant remains fully liable under this Lease; and (v) unless Landlord consents to the same, the use of the Premises set forth herein remains unchanged. As used in this section, "control" (including, with its correlative meanings, "controlled by" and "under common control with") shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies through ownership of at least fifty-one (51%) of the securities or partnership or other ownership interests of the entity subject to control.

(f) Notwithstanding anything to the contrary contained in this Paragraph 12, Tenant may engage in Approved Reorganizations (as defined below), without the express consent of Landlord; provided that (a) at least ten (10) days prior to the effective date of the Approved Reorganization, Tenant shall furnish Landlord with the name of the transferee and a written certification from an officer of Tenant certifying that the assignment or sublease qualifies as an Approved Reorganization, (b) no Event of Default exists under this Lease during the period commencing on the date of Tenant's request and ending on the effective date of the Approved Reorganization, and (c) there is no change in use of the Premises. To the extent that legal requirements or confidentiality requirements do not permit Tenant to give Landlord prior notice of an Approved Reorganization, then Tenant may in lieu of the prior notice required under this Section give Landlord notice within ten (10) days after the effective date of the Approved Reorganization, together with the name of the transferee and a written certification from an officer of Tenant certifying that the assignment or sublease qualifies as an Approved Reorganization. As used herein, the term "Approved Reorganizations" means any merger, reorganization or consolidation of Tenant (whether or not Tenant is the surviving entity), or the sale of substantially all of the assets or stock of Tenant, in each case as a going concern, where (1) Tenant's successor (together with Tenant, so long as Tenant remains liable under this Lease) shall have a net worth following consummation of such transaction, as reasonably determined by Landlord in accordance with generally accepted accounting principles, that is at least equal to the

net worth, on the date of this Lease, of the original named Tenant, and (2) Tenant's successor shall have a net worth following consummation of such transaction, as reasonably determined by Landlord in accordance with generally accepted accounting principles, that is sufficient to meet the remaining obligations of Tenant under this Lease.

(g) A sale, transfer or assignment of a general partner's interest or any portion thereof in Tenant, if Tenant is a partnership, or a sale, transfer or assignment of fifty percent (50%) or more of the voting stock of Tenant if Tenant is a corporation, whether such sale, transfer or assignment occurs in a single transaction or a series of transactions, shall be deemed a Transfer and require Landlord's consent in accordance with the procedures specified in Paragraph 12(c) above.

(h) Tenant agrees that any instrument by which Tenant assigns this Lease or any interest therein or sublets or otherwise Transfers all or any portion of the Premises shall expressly provide that the Transferee may not further assign this Lease or any interest therein or sublet the sublet space without Landlord's prior written consent (which consent shall be subject to the provisions of this Paragraph 12), and that the Transferee shall comply with all of the provisions of this Lease and that Landlord may enforce the Lease provisions directly against such Transferee. No permitted subletting by Tenant shall be effective until there has been delivered to Landlord a counterpart of the sublease in which the subtenant agrees to be and remain jointly and severally liable with Tenant for the payment of rent pertaining to the sublet space and for the performance of all of the terms and provisions of this Lease; provided, however, that the subtenant shall be liable to Landlord for rent only in the amount set forth in the sublease. No permitted assignment shall be effective unless and until there has been delivered to Landlord a counterpart of the assignment in which the assignee assumes all of Tenant's obligations under this Lease arising on or after the date of the assignment. The failure or refusal of a subtenant or assignee to execute any such instrument shall not release or discharge the subtenant or assignee from its liability as set forth above.

(i) If Landlord consents to a Transfer hereunder and this Lease contains any renewal options, expansion options, rights of first refusal, rights of first negotiation or any other rights or options pertaining to additional space in the Building, such rights and/or options shall not run to the Transferee, it being agreed by the parties hereto that any such rights and options are personal to the original Tenant named herein and may not be transferred.

(j) Notwithstanding any provision of this Lease to the contrary, Tenant shall not mortgage, encumber or hypothecate this Lease or any interest herein without the prior written consent of Landlord, which consent shall not be unreasonably withheld. Any such act without the prior written consent of Landlord (whether voluntary or involuntary, by operation of law or otherwise) shall, at Landlord's option, be void and/or constitute an Event of Default under this Lease.

(k) The voluntary or other surrender of this Lease or of the Premises by Tenant or a mutual cancellation of this Lease shall not work a merger, and at the option of Landlord any existing subleases may be terminated or be deemed assigned to Landlord in which latter event the subleases or subtenants shall become tenants of Landlord.

(l) Tenant shall pay to Landlord the amount of Landlord's actual out-of-pocket-third party cost of processing each proposed Transfer which requires Landlord's consent (including, without limitation, attorneys' and other professional fees; collectively "Processing Costs"), and the amount of all direct and indirect expenses incurred by Landlord arising from the assignee or sublessee taking occupancy of the subject space (including, without limitation, costs of freight elevator operation for moving of furnishings and trade fixtures, security service, janitorial and cleaning service, and rubbish removal service). Notwithstanding anything to the contrary herein, Landlord shall not be required to process any request for Landlord's consent to a Transfer until Tenant has paid to Landlord the amount of Landlord's estimate of the Processing Costs and all other direct and indirect costs and expenses of Landlord and its agents arising from the assignee's or subtenant's taking occupancy.

13. WAIVER; INDEMNIFICATION. Landlord will not be responsible for or liable to Tenant for any loss or damage that may be occasioned by or through the acts or omissions of persons occupying adjoining premises or any part of the premises adjacent to or connected with the Premises or any part of the Building or for any loss or damage resulting to Tenant or its property from burst, stopped or leaking water, gas, sewer or steam pipes or falling plaster, or electrical wiring or for any damage or loss of property within the Premises from any causes whatsoever, including but not limited to theft, and/or acts or threatened acts of terrorism, damage or injury due to mold, excepting only losses or damages resulting from the gross negligence or willful misconduct of Landlord. Landlord will not be liable under any circumstances to Tenant for any incidental or consequential damages. Tenant agrees to indemnify and hold Landlord, Landlord's agents, the members, shareholders, constituent partners and/or other owners of Landlord or any agent of Landlord, and all contractors, officers, directors and employees of any thereof (collectively, "Indemnitees"), and each of them, harmless from and to protect and defend each Indemnitee against any and all claims, demands, suits, liability, damage or loss and against all costs and expenses, including reasonable attorneys' fees incurred in connection therewith, (a) arising out of any injury or death of any person or damage to or destruction of property occurring in, on or about the Premises, from any cause whatsoever, unless caused solely by the gross negligence or willful misconduct of such Indemnitee, or (b) occurring in, on or about any facilities (including without limitation elevators, stairways, passageways or hallways) the use of which Tenant has in common with other tenants, or elsewhere in or about the Real Property or in the vicinity of the Real Property, when such claim, injury or damage is caused in whole or in part by the gross negligence or willful misconduct of Tenant, its former or current agents, contractors, employees, invitees, or subtenants or other persons in or about the Real Property by reason of Tenant's occupancy of the Premises, or (c) arising from any failure of Tenant to observe or perform any of its obligations hereunder. If any action or proceeding is brought against any of the Indemnitees by reason of any such claim or liability, Tenant, upon notice from Landlord, covenants to resist and defend at Tenant's sole expense such action or proceeding by counsel reasonably satisfactory to Landlord. Landlord agrees to indemnify and hold harmless Tenant and Tenant's employees, agents, partners, officers, directors, and shareholders from and against any and all third party claims arising in or on the common areas of the Building and the Project, from any cause whatsoever, unless caused solely by the gross negligence or willful misconduct of Tenant or Tenant's employees, agents, partners, officers, directors, and shareholders, or arising from any breach or default in the performance of any obligation on Landlord's part to be performed under the terms of this Lease. The provisions of this Paragraph shall survive the

termination of this Lease with respect to any claims or liability occurring prior to such termination.

14. INSURANCE.

(a) Tenant, at Tenant's expense, agrees to keep in force during the Term of this Lease:

(i) Commercial general liability insurance which insures against claims for bodily injury, personal injury, advertising injury, and property damage based upon, involving, or arising out of the use, occupancy, or maintenance of the Premises and the Property. Such insurance shall afford, at a minimum, the following limits:

Each Occurrence	\$1,000,000
General Aggregate	2,000,000
Products/Completed Operations Aggregate	1,000,000
Personal and Advertising Injury Liability	1,000,000
Fire Damage Legal Liability	100,000
Medical Payments	5,000

Any general aggregate limit shall apply on a per location basis. Tenant's commercial general liability insurance shall include Landlord, its trustees, officers, directors, members, agents, and employees, Landlord's mortgagees, and Landlord's representatives, as additional insureds. This coverage shall be written on the most current ISO CGL form or similar equivalent, shall include contractual liability, premises-operations and products-completed operations and shall contain an exception to any pollution exclusion which insures damage or injury arising out of heat, smoke, or fumes from a hostile fire. Such insurance shall be written on an occurrence basis and contain a standard separation of insureds provision.

(ii) Business automobile liability insurance covering owned, hired and non-owned vehicles with limits of \$1,000,000 combined single limit per occurrence.

(iii) Workers' compensation insurance in accordance with the laws of the state in which the Premises are located with employer's liability insurance in an amount not less than \$1,000,000.

(iv) Umbrella/excess liability insurance, on an occurrence basis, that applies excess of the required commercial general liability, business automobile liability, and employer's liability policies with the following minimum limits:

Each Occurrence	\$5,000,000
Annual Aggregate	\$5,000,000

These limits shall be in addition to and not including those stated for the underlying commercial general liability, business automobile liability, and employers liability insurance required herein. Umbrella/Excess liability policies shall be following form.

(v) All risk property insurance or Special Form including theft, sprinkler leakage and boiler and machinery coverage on all of Tenant's trade fixtures, furniture, inventory and other personal property in the Premises, and on any alterations, additions, or improvements made by Tenant upon the Premises all for the full replacement cost thereof. Tenant shall use the proceeds from such insurance for the replacement of trade fixtures, furniture, inventory and other personal property and for the restoration of Tenant's improvements, alterations, and additions to the Premises. Landlord shall be named as loss payee with respect to alterations, additions, or improvements of the Premises where the tenant cannot remove at the end of the lease term wherein ownership then reverts to the landlord.

(vi) Business income and extra expense insurance with limits not less than one hundred percent (100%) of all income and charges payable by Tenant under this lease for a period of twelve (12) months.

(b) All policies required to be carried by Tenant hereunder shall be issued by an insurance company licensed or authorized to do business in the state in which the Property is located with a rating of at least "A-: X" or better as set forth in the most current issue of Best's Insurance Reports, unless otherwise approved by Landlord. Tenant shall not do or permit anything to be done that would invalidate the insurance policies required herein. Liability insurance maintained by Tenant shall be primary coverage on behalf of Landlord, its trustees, officers, directors, members, agents, and employees, Landlord's mortgagees, and Landlord's representatives and any policies of Landlord, its trustees, officers, directors, members, agents, and employees, Landlord's mortgagees, and Landlord's representatives shall be non-contributory. Certificates of insurance, acceptable to Landlord, evidencing the existence and amount of each insurance policy required hereunder shall be delivered to Landlord prior to delivery or possession of the Premises and ten (10) days following each renewal date. Certificates of insurance shall evidence that Landlord, its trustees, officers, directors, members, agents, and employees, Landlord's mortgagees, and Landlord's representatives are included as additional insureds on liability policies and that Landlord is included as loss payee on the property insurance as stated in Section 14(a)(v) above. Further, each policy shall contain provisions giving Landlord and each of the other additional insureds at least thirty (30) days prior written notice of cancellation, non-renewal or material change in coverage.

(c) In the event that Tenant fails to provide evidence of insurance required to be provided by Tenant in this Lease, prior to the Commencement Date and thereafter during the Term, within ten (10) days following Landlord's request thereof, and thirty (30) days prior to the expiration of any such coverage, Landlord shall be authorized (but not required) to procure such coverage in the amount stated with all costs thereof to be chargeable to Tenant and payable upon written invoice thereof.

(d) The limits of insurance required by this Lease, or as carried by Tenant, shall not limit the liability of Tenant or relieve Tenant of any obligation thereunder, except to the extent provided for under Section 4 below. Any deductibles selected by Tenant shall be the sole responsibility of Tenant.

(e) Tenant insurance requirements stipulated in Section 14(a) are based upon current industry standards. Landlord reserves the right to require additional coverage or to increase limits as industry standards change.

(f) Should Tenant engage the services of any contractor to perform work in the Premises, Tenant shall ensure that such contractor carries commercial general liability, business automobile liability, umbrella/excess liability (following form), worker's compensation and employers liability coverages in substantially the same amounts as are required of Tenant under this Lease. Contractor shall include Landlord, its trustees, officers, directors, members, agents and employees, Landlord's mortgagees and Landlord's representatives as additional insureds on the liability policies required hereunder. All policies required to be carried by any contractor shall be issued by and binding upon an insurance company licensed or authorized to do business in the state in which the Property is located with a rating of at least "A-: X" or better as set forth in the most current issue of Best's Insurance Reports, unless otherwise approved by Landlord. Certificates of insurance, acceptable to Landlord, evidencing the existence and amount of each insurance policy required hereunder shall be delivered to Landlord prior to the commencement of any work in the Premises. Further, each policy will contain provisions giving Landlord and each of the other additional insureds with at least thirty (30) days' prior written notice of any cancelation, non-renewal or material change in coverage. The above requirements shall apply equally to any subcontractor engaged by contractor.

(g) Landlord waives any and all rights of recovery against Tenant for or arising out of damage to, or destruction of the Premises to the extent that Landlord's property insurance policies then in force insure against such damage or destruction and permit such waiver and only to the extent of insurance proceeds actually received by Landlord for such damage or destruction. Tenant waives any and all rights of recovery against Landlord for or arising out of damage to or destruction of any property of Tenant to the extent that Tenant's property insurance policies then in force or the policies required by this Lease, whichever is broader, insure against such damage or destruction.

15. PROTECTION OF LENDERS.

(a) This Lease shall be subject and subordinate at all times to all ground or underlying leases that may now or hereafter exist affecting the Building or the Real Property, or both, and to the lien of any mortgage or deed of trust in any amount or amounts whatsoever now or hereafter placed on or against the Building or the Real Property, or both, or on or against Landlord's interest or estate therein (such mortgages, deeds of trust and leases are referred to herein, collectively, as "Superior Interests"), all without the necessity of any further instrument executed or delivered by or on the part of Tenant for the purpose of effectuating such subordination. Notwithstanding the foregoing, Tenant covenants and agrees to execute and deliver, upon demand, such further instruments evidencing such subordination of this Lease to any such Superior Interest as may be required by Landlord.

(b) Notwithstanding the foregoing, in the event of a foreclosure of any such mortgage or deed of trust or of any other action or proceeding for the enforcement thereof, or of any sale thereunder, this Lease shall not be terminated or extinguished, nor shall the rights and possession of Tenant hereunder be disturbed, if no Event of Default then exists under this Lease,

and Tenant shall attorn to the person who acquires Landlord's interest hereunder through any such mortgage or deed of trust.

(c) Within ten (10) days after Landlord's written request, Tenant shall deliver to Landlord, or to any actual or prospective holder of a Superior Interest ("Holder") that Landlord designates, such financial statements as are reasonably required by such Holder to verify the financial condition of Tenant (or any assignee, subtenant or guarantor of Tenant). Tenant represents and warrants to Landlord and such Holder that each financial statement delivered by Tenant shall be accurate in all material respects as of the date of such statement. All financial statements shall be confidential and used only for the purposes stated herein.

(d) If Landlord is in default, Tenant shall accept cure of any default by any Holder whose name and address shall have been furnished to Tenant in writing. Tenant may not exercise any rights or remedies for Landlord's default unless Tenant gives notice thereof to each such Holder and the default is not cured within thirty (30) days thereafter or such greater time as may be reasonably necessary to cure such default. A default that cannot reasonably be cured within said 30-day period shall be deemed cured within said period if work necessary to cure the default is commenced within such time and proceeds diligently thereafter until the default is cured.

(e) If any prospective Holder should require, as a condition of any Superior Interest, a modification of the provisions of this Lease, Tenant shall approve and execute any such modifications promptly after request, provided no such modification shall relate to the Rental payable hereunder or the length of the term hereof or otherwise materially alter the rights or obligations of Landlord or Tenant hereunder.

16. ENTRY BY LANDLORD.

(a) Landlord reserves, and shall at all times have, the right to enter the Premises to inspect them; to supply janitorial service and any other service to be provided by Landlord hereunder; to submit the Premises to prospective purchasers, mortgagees or tenants; to post notices of nonresponsibility; and to alter, improve or repair the Premises and any portion of the Building as permitted or provided hereunder, all without abatement of Rental; and may erect scaffolding and other necessary structures in or through the Premises where reasonably required by the character of the work to be performed; provided, however, that any such entrance or work shall not unreasonably interfere with Tenant's use of the Premises. If such entry is made as aforesaid, Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned by such entry. For each of the foregoing purposes, Landlord shall at all times have and retain a key and/or other access device with which to unlock all of the doors in, on and about the Premises (excluding Tenant's vaults, safes and similar areas designated in writing by Tenant in advance and approved by Landlord); and Landlord shall have the right to use any and all means that Landlord may deem proper to open said doors in an emergency in order to obtain entry to the Premises, and any entry to the Premises obtained by Landlord by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into or a detainer of the Premises, or any portion thereof.

(b) Landlord also shall have the right at any time to change the arrangement or location or times of access of entrances or passageways, doors and doorways, and corridors, elevators, stairs, toilets or other public parts of the Building, and to change the name, number or designation by which the Building is commonly known, and none of the foregoing shall be deemed an actual or constructive eviction of Tenant, nor shall it entitle Tenant to any reduction of Rental hereunder or result in any liability of Landlord to Tenant.

17. ABANDONMENT. Tenant shall not vacate or abandon the Premises or any part thereof at any time during the term hereof for a period of more than ninety (90) consecutive days (excepting periods of renovation or restoration of the Premises due to casualty). Tenant understands that if Tenant leaves the Premises or any part thereof vacant, the risk of fire, other casualty and vandalism to the Premises and the Building will be increased. Accordingly, such action by Tenant shall constitute an immediate Event of Default hereunder regardless of whether Tenant continues to pay Basic Monthly Rental and other Rental under this Lease. If Tenant abandons, vacates or surrenders all or any part of the Premises or is dispossessed of the Premises by process of law, or otherwise, any movable furniture, equipment, trade fixtures, or other personal property belonging to Tenant and left on the Premises shall at the option of Landlord be deemed to be abandoned and, whether or not the property is deemed abandoned, Landlord shall have the right to remove such property from the Premises and charge Tenant for the removal and any restoration of the Premises as provided in Paragraph 8(a). Landlord may charge Tenant for the storage of Tenant's property left on the Premises at such rates as Landlord may from time to time reasonably determine, or, Landlord may, at its option, store Tenant's property in a public warehouse at Tenant's expense. Notwithstanding the foregoing, neither the provisions of this Paragraph 17 nor any other provision of this Lease shall impose upon Landlord any obligation to care for or preserve any of Tenant's property left upon the Premises, and Tenant hereby waives and releases Landlord from any claim or liability in connection with the removal of such property from the Premises and the storage thereof and specifically waives the provisions of California Civil Code Section 1542 with respect to such release. Landlord's action or inaction with regard to the provisions of this Paragraph 17 shall not be construed as a waiver of Landlord's right to require Tenant to remove its property, restore any damage to the Building caused by such removal or make any restoration required pursuant to Paragraph 8(a) hereof.

18. DEFAULT AND REMEDIES.

(a) The occurrence of any one or more of the following events (each an "Event of Default") shall constitute a breach of this Lease by Tenant:

(i) Tenant fails to pay any Basic Monthly Rental or additional monthly rent under Paragraph 4 hereof as and when such rent becomes due and payable and such failure continues for more than three (3) business days after Landlord gives written notice thereof to Tenant; provided, however, that after the second such failure in a calendar year, only the passage of time, but no further notice, shall be required to establish an Event of Default in the same calendar year; or

(ii) Tenant fails to pay any additional rent or other amount of money or charge payable by Tenant hereunder as and when such additional rent or amount or charge becomes due and payable and such failure continues for more than ten (10) days after Landlord

gives written notice thereof to Tenant; provided, however, that after the second such failure in a calendar year, only the passage of time, but no further notice, shall be required to establish an Event of Default in the same calendar year; or

(iii) Tenant fails to perform or breaches any other agreement or covenant of this Lease to be performed or observed by Tenant as and when performance or observance is due and such failure or breach continues for more than thirty (30) days after Landlord gives written notice thereof to Tenant; provided, however, that if, by the nature of such agreement or covenant, such failure or breach cannot reasonably be cured within such period of thirty (30) days, an Event of Default shall not exist as long as Tenant commences with due diligence and dispatch the curing of such failure or breach within such period of thirty (30) days and, having so commenced, thereafter prosecutes with diligence and dispatch and completes the curing of such failure or breach within a reasonable time; or

(iv) Tenant (A) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (B) makes an assignment for the benefit of its creditors, (C) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Tenant or of any substantial part of Tenant's property, or (D) takes action for the purpose of any of the foregoing; or

(v) Without consent by Tenant, a court or government authority enters an order, and such order is not vacated within thirty (30) days, (A) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Tenant or with respect to any substantial part of Tenant's property, or (B) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, or (C) ordering the dissolution, winding-up or liquidation of Tenant; or

(vi) This Lease or any estate of Tenant hereunder is levied upon under any attachment or execution and such attachment or execution is not vacated within thirty (30) days; or

(vii) Tenant vacates or abandons the Premises.

(b) If an Event of Default occurs, Landlord shall have the right at any time to give a written termination notice to Tenant and, on the date specified in such notice, Tenant's right to possession shall terminate and this Lease shall terminate. Upon such termination, Landlord shall have the right to recover from Tenant:

(i) The worth at the time of award of all unpaid rent that had been earned at the time of termination;

(ii) The worth at the time of award of the amount by which all unpaid rent that would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided;

(iii) The worth at the time of award of the amount by which all unpaid rent for the balance of the term of this Lease after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; and

(iv) All other amounts necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform all of Tenant's obligations under this Lease or that in the ordinary course of things would be likely to result therefrom.

The "worth at the time of award" of the amounts referred to in clauses (i) and (ii) above shall be computed by allowing interest at the maximum annual interest rate allowed by law for business loans (not primarily for personal, family or household purposes) not exempt from the usury law at the time of termination or, if there is no such maximum annual interest rate, at the rate of eighteen percent (18%) per annum. The "worth at the time of award" of the amount referred to in clause (iii) above shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). For the purpose of determining unpaid rent under clauses (i), (ii) and (iii) above, the rent reserved in this Lease shall be deemed to be the total rent payable by Tenant under Articles 3 and 4 hereof; for purposes of computing Tenant's Percentage Share of increases in Operating Expenses and Real Property Taxes over the Base Year for the calendar year in which the default occurs and each future calendar year or portion thereof in the Lease Term, Tenant's Percentage Share of increases in Operating Expenses and Real Property Taxes shall be assumed to be equal to the amount thereof for the calendar year prior to the year in which the default shall occur, increased annually at a rate equal to the average rate of increase, if any, in such items from the Commencement Date through the time of award.

(c) Even though Tenant has breached this Lease, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession, and Landlord shall have all of its rights and remedies, including the right, pursuant to California Civil Code Section 1951.4, to recover all rent as it becomes due under this Lease. Acts of maintenance or preservation or efforts to relet the Premises or the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession unless written notice of termination is given by Landlord to Tenant.

(d) The remedies provided for in this Lease are in addition to all other remedies available to Landlord at law or in equity, by statute or otherwise. All costs incurred by Landlord in connection with collecting any Rent or other amounts and damages owing by Tenant pursuant to the provisions of this Lease, or to enforce any provision of this Lease, including reasonable attorneys' fees from the date such matter is turned over to an attorney, whether or not one or more actions are commenced by Landlord, shall also be recoverable by Landlord from Tenant. If any notice and grace period required under subparagraphs 18(a)(i), (ii) or (iii) was not previously given, a notice to pay rent or quit, or to perform or quit, as the case may be, given to Tenant under any statute authorizing the forfeiture of leases for unlawful detainer shall also constitute the applicable notice for grace period purposes required by subparagraphs 18(a)(i), (ii) or (iii). In such case, the applicable grace period under subparagraphs 18(a)(i), (ii) or (iii) and under the unlawful detainer statute shall run concurrently after the one such statutory notice, and the failure of Tenant to cure the default within the greater of the two (2) such grace periods shall

constitute both an unlawful detainer and an Event of Default entitling Landlord to the remedies provided for in this Lease and/or by said statute.

(e) In the event that Tenant's right of possession of the Premises is terminated prior to the end of the initial Term by reason of an Event of Default by Tenant, then immediately upon such termination, an amount shall be due and payable by Tenant to Landlord equal to the unamortized portion as of that date (which amortization shall be based on an interest rate of eleven percent (11%) per annum) of the sum of (a) the cost of Landlord's Work (if any), (b) the Allowance (if any), (c) the value of any free Rent (i.e., the Rent stated in this Lease to be abated as an inducement to Tenant's entering into this Lease) enjoyed as of that date by Tenant, and (d) the amount of all commissions paid by Landlord in order to procure this Lease.

(f) Landlord shall, in all circumstances, have the obligation to use commercially reasonable efforts to mitigate its damages.

19. DAMAGE BY FIRE OR OTHER CASUALTY.

(a) If the Premises are partially destroyed or damaged by fire or other casualty, Landlord shall, subject to Paragraph 19(b), 19(c), 19(d) and 19(e) below, promptly repair such damage if, in Landlord's judgment, such repair can be completed within ninety (90) days under the laws and regulations of the state, federal, county and municipal authorities having jurisdiction, and this Lease shall remain in full force and effect, provided that if there shall be damage to the Premises from any such cause and such damage is not the result of the act, neglect, default or omission of Tenant, its agents, employees, contractors or invitees, Tenant shall be entitled to a reduction of Basic Monthly Rental while such repair is being made in the proportion that the area of the Premises rendered untenable by such damage bears to the total area of the Premises. Tenant's right to a reduction of Basic Monthly Rental under this Paragraph 19 shall be Tenant's sole remedy in connection with any such damage.

(b) If such repairs, in Landlord's judgment, cannot be completed within ninety (90) days, or if such damage occurs during the last six (6) months of the term of this Lease, Landlord shall have the option either (i) to repair such damage, this Lease continuing in full force and effect, but with the Basic Monthly Rental proportionately reduced (subject to the condition set forth in Paragraph 19(a) above), or (ii) to give notice to Tenant at any time within thirty (30) days after the occurrence of such damage terminating this Lease as of a date specified in such notice, which termination date shall not be less than thirty (30) nor more than sixty (60) days after the giving of such notice. If such notice of termination is so given, the Lease and all interest of Tenant in the Premises shall terminate on the date specified in such notice, and the Basic Monthly Rental, reduced (subject to the condition set forth in Paragraph 19(a) above) in proportion to the area of the Premises rendered untenable by the damage, shall be paid up to the date of such termination, Landlord hereby agreeing to refund to Tenant any Rental theretofore paid for any period of time subsequent to the termination date.

(c) If the Building is damaged by fire or other casualty to the extent that the repair cost would exceed twenty percent (20%) or more of its replacement value, or if more than twenty percent (20%) of the rentable area of the Building is affected by fire or other casualty and repairs to the Building cannot, in Landlord's judgment, be completed within ninety (90) days, or if

insurance proceeds sufficient to complete the repairs are not available due to exercise of rights of a Holder to collect such proceeds, then in any such case, whether the Premises are damaged or not, Landlord shall have the right, at its option, to terminate this Lease by giving Tenant notice thereof within thirty (30) days of such casualty specifying the date of termination, which termination date shall not be less than thirty (30) nor more than sixty (60) days after the giving of such notice.

(d) If the Premises are damaged by fire or other casualty not resulting in whole or in part from the negligence or willful misconduct of Tenant or its employees, agents, contractors or subtenants and the repair to the Premises cannot, in Landlord's judgment, be completed within one hundred eighty (180) days, assuming the availability of labor and materials, then Tenant at its option may terminate this Lease. Tenant's notice to Landlord of Tenant's election to terminate the Lease under the preceding sentence must be delivered to Landlord within thirty (30) days after the occurrence of such damage, and the termination shall be effective as of a date specified in such notice, which termination date shall be no less than thirty (30) nor more than sixty (60) days after the giving of such notice. In the event of a termination of the Lease by Tenant under this Paragraph 19(d), the Basic Monthly Rental shall be reduced in the same manner as provided under Paragraph 19(b) above. If Tenant shall notify Landlord as to Tenant's election to terminate this Lease, Landlord shall have the right by giving Tenant notice within twenty (20) days of Landlord's receipt of Tenant's election notice, to relocate Tenant in substantially similar space in the Building or in another building in the general vicinity of the Building within thirty (30) days of the date of Tenant's notice to Landlord, in which case the Lease then shall be deemed to have not been terminated. If Landlord so elects to relocate Tenant, Landlord shall bear the cost of moving Tenant to such other space, Tenant shall continue to pay Basic Monthly Rental and other Rental to Landlord as provided herein and Landlord shall bear the cost of any rental in excess thereof for such other space. Tenant's occupancy of such other space shall not exceed one (1) year from the commencement of such occupancy. In the event Landlord cannot complete repairs to the Premises within one (1) year from the date of Tenant's commencement of occupancy in such other space, Landlord shall notify Tenant in writing not later than sixty (60) days prior to the expiration of such one-year period and upon expiration of such one-year period, this Lease shall terminate. In the event Landlord can complete such repairs within such one-year period, Landlord shall so notify Tenant in writing and shall move Tenant back into the Premises as soon as practicable after such repairs have been completed. The cost of moving Tenant back into the Premises shall be borne by Landlord.

(e) Notwithstanding any of the provisions of this Lease, Landlord shall in no event be required to repair any injury or damage by fire or other cause whatsoever to, or to make any repairs or replacements of, any panelings, decorations, partitions, railings, ceilings, floor coverings, equipment, trade or office fixtures or any other property of, or improvements (including the Tenant Improvements and any Alterations) installed on the Premises by or at the election of, Tenant. Tenant hereby agrees to promptly repair any damage to the Tenant Improvements and any Alterations at its sole cost and expense in the event that Landlord is required to, or elects to, repair the remainder of the Premises pursuant to Paragraphs 19(a) or 19(b) above.

(f) Tenant hereby waives the provisions of subsection 2 of Section 1932, subsection 4 of Section 1933, and Sections 1941 and 1942 of the California Civil Code.

20. EMINENT DOMAIN.

(a) If all or part of the Premises shall be taken by any public or quasi-public authority under the power of eminent domain or conveyance in lieu thereof, this Lease shall terminate as to any portion of the Premises so taken or conveyed on the date when title or the right to possession vests in the condemnor.

(b) If (i) a part of the Premises shall be taken by any public or quasi-public authority under the power of eminent domain or conveyance in lieu thereof; and (ii) Tenant is reasonably able to continue the operation of Tenant's business in that portion of the Premises remaining; and (iii) Landlord elects to restore the Premises to an architectural whole, then this Lease shall remain in effect as to said portion of the Premises remaining, and the Basic Monthly Rental payable from the date of the taking shall be reduced in the same proportion as the area of the Premises taken bears to the total area of the Premises. If, after a partial taking, Tenant is not reasonably able to continue the operation of its business in the Premises or Landlord elects not to restore the Premises as hereinabove described, then this Lease may be terminated by either Landlord or Tenant by giving written notice to the other party within thirty (30) days of the date of the taking. Such notice shall specify the date of termination, which termination date shall be not less than thirty (30) nor more than sixty (60) days after the date of said notice.

(c) If a portion of the Building is taken, whether any portion of the Premises is taken or not, and Landlord determines that it is not economically feasible to continue operating the portion of the Building remaining, then Landlord shall have the option for a period of thirty (30) days after such determination to terminate this Lease. If Landlord determines that it is economically feasible to continue operating the portion of the Building remaining after such taking, then this Lease shall remain in effect, with Landlord, at Landlord's cost, restoring the Building to an architectural whole.

(d) Landlord shall be entitled to any and all payment, income, rent, award, or any interest therein whatsoever that may be paid or made in connection with such taking or conveyance, and Tenant shall have no claim against Landlord or otherwise for the value of any unexpired term of this Lease or for the value of any improvements in or to the Premises. Tenant hereby assigns any such claim to the Landlord. Notwithstanding the foregoing, to the extent that the same shall not diminish Landlord's recovery for such taking, Tenant shall have the right to make a claim directly to the entity expressing the power of eminent domain for moving expenses and for loss or damage to Tenant's trade fixtures, equipment and movable furniture.

(e) Tenant hereby waives sections 1265.110 through 1265.160 of the California Code of Civil Procedure.

21. HOLDING OVER. Any holding over after the expiration or other termination of the term of this Lease with the prior written consent of Landlord delivered to Tenant shall be construed to be a tenancy from month-to-month at the Basic Monthly Rental in effect on the date of such expiration or termination (subject to adjustment as provided in Paragraph 3(a) hereof) on the terms, covenants and conditions herein specified so far as applicable. Any holding over after the expiration or other termination of the term of this Lease without the prior written consent of Landlord shall be construed to be a tenancy at sufferance on all the terms set forth herein, except

that the Basic Monthly Rental shall be an amount equal to one hundred fifty percent (150%) of the Basic Monthly Rental payable by Tenant immediately prior to such holding over. Acceptance by Landlord of Rental after the expiration or termination of this Lease shall not constitute a consent by Landlord to any such tenancy from month to month or result in any other tenancy or any renewal of the term hereof. The provisions of this Paragraph are in addition to, and do not affect, Landlord's right to re-entry or other rights hereunder or provided by law.

22. MISCELLANEOUS.

(a) Any liability of Landlord (including without limitation Landlord's members, partners, shareholders, affiliates, agents, and employees) to Tenant under this Lease shall be limited to the equity interest of Landlord in the Building, and Tenant agrees to look solely to such interest for the recovery of any judgment, it being intended that Landlord and such other persons shall not be personally liable for any deficiency or judgment. Notwithstanding any other provision of this Lease, Landlord shall not be liable for any consequential damages, nor shall Landlord be liable for loss of or damage to artwork, currency, jewelry, bullion, unique or valuable documents, securities or other valuables, or for other property not in the nature of ordinary fixtures, furnishings and equipment used in general office activities and functions. Wherever in this Lease Tenant (a) releases Landlord from any claim or liability, (b) waives or limits any right of Tenant to assert any claim against Landlord or to seek recourse against any property of Landlord or (c) agrees to indemnify Landlord against any matters, the relevant release, waiver, limitation or indemnity shall run in favor of and apply to Landlord, its agents, the constituent shareholders, partners or other owners of Landlord or its agents, and the directors, officers, and employees of Landlord and its agents and each such constituent shareholder, partner or other owner.

(b) In the event of a sale or conveyance of the Building by Landlord, the transferor shall thereby be released from any further liability under this Lease, and, in such event, Tenant agrees to look solely to the successor in interest of such transferor in and to the Building and this Lease. Tenant agrees to attorn to the successor in interest of such transferor. If Tenant provides Landlord with any security for Tenant's performance of its obligations hereunder, and Landlord transfers, or provides a credit with respect to, such security to the grantee or transferee of Landlord's interest in the Real Property, Landlord shall be released from any further responsibility or liability for such security.

(c) Tenant shall, at any time and from time to time within ten (10) days following request from Landlord, execute, acknowledge and deliver to Landlord a statement in writing, (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified is in full force and effect), (ii) certifying that there are not, to Tenant's knowledge, any uncured defaults on the part of the Landlord hereunder and that Tenant has no defenses to or offsets against its obligations under this Lease, or specifying such defaults, defenses or offsets if any are claimed, (iii) certifying the date that Tenant entered into occupancy of the Premises and that Tenant is open for business in the Premises, (iv) certifying the amount of the Basic Monthly Rental and the Rental payable under Paragraph 4(a) and the date to which Rental is paid in advance, if any, and certifying that Tenant is entitled to no rent abatement or other economic concessions not specified in the Lease (v) evidencing the status of this Lease as may be required either by a

lender making a loan affecting, or a purchaser of, the Premises, the Building, the Real Property or any interest therein from Landlord, (vi) certifying the amount of the Deposit, if any, (vii) certifying that all Improvements to be constructed in the Premises by Landlord are completed (or specifying any obligations of Landlord respecting Improvements), and (viii) certifying such other matters relating to this Lease and/or the Premises as may be requested by a lender making a loan to Landlord or a purchaser of the Premises, the Building, the Real Property or any interest therein from Landlord. Any such statement may be relied upon by, and shall upon Landlord's request be addressed to, any prospective purchaser or encumbrancer of all or any portion of the Real Property or any interest therein. Tenant shall, within ten (10) days following request of Landlord, deliver such other documents including Tenant's financial statements as are reasonably requested in connection with the sale of, or loan to be secured by, the Real Property or any part thereof or interest therein. Tenant's failure to deliver said statement in the time required shall be conclusive upon Tenant that: (i) the Lease is in full force and effect, without modification except as may be represented by Landlord, (ii) there are no uncured defaults in Landlord's performance and Tenant has no right of offset, counterclaim or deduction against Rental under the Lease and (iii) no more than one month's Basic Monthly Rental has been paid in advance.

(d) On or before April 1 of each year throughout the Term, Tenant shall deliver to Landlord Tenant's financial statements ("Financial Statements") for the fiscal year of Tenant ended on the previous December 31, which Financial Statements shall include a combined balance sheet of Tenant and its combined subsidiaries as at the end of such fiscal year, a combined statement of operations of Tenant and its combined subsidiaries for such fiscal year, and a certificate of Tenant's auditor (or, if audited Financial Statements are not available, then a certificate of Tenant's Chief Financial Officer) to the effect that such Financial Statements were prepared in accordance with generally accepted accounting principles, consistently applied, and fairly present the financial condition and operations of Tenant and its combined subsidiaries for and as at the end of such fiscal year.

(e) All terms and covenants of this Lease to be performed or observed by Tenant shall be performed or observed by Tenant at Tenant's expense and without any reduction of Rental. If Tenant fails to pay any Rental hereunder or fails to perform any other term or covenant hereunder on its part to be performed, and such failure shall continue for ten (10) days (or such shorter period as may be reasonable under emergency circumstances) after written notice thereof by Landlord, Landlord, without waiving or releasing Tenant from any obligation of Tenant hereunder, may make any such payment or perform any such other term or covenant on Tenant's part to be performed but shall not be obligated to do so. All sums so paid by Landlord and all necessary costs of such performance by Landlord, together with interest thereon at the Interest Rate from the date of such payment or performance by Landlord, shall be paid (and Tenant covenants to make such payment) to Landlord on demand by Landlord, and Landlord shall have (in addition to any other right or remedy of Landlord) the same rights and remedies in the event of non-payment thereof by Tenant as in the case of failure by Tenant in the payment of Rental hereunder.

(f) Tenant agrees to faithfully observe and to comply with the Building Rules and Regulations attached hereto as Exhibit B and incorporated herein by this reference, and all modifications of and additions thereto from time to time put into effect by Landlord that are

applicable to all tenants of the Building and of which Tenant shall have notice. Landlord shall not be responsible to Tenant for the non-performance by any other tenant or occupant of the Building of any of said Building Rules and Regulations. In the event any of the Building Rules and Regulations conflict with any express provision of this Lease, the provisions of this Lease shall govern.

(g) In case any suit or other proceeding shall be brought for an unlawful detainer of the Premises or for the recovery of any Rental due under the provisions of this Lease or because of the failure of performance or observance of any other term or covenant herein contained on the part of Landlord or Tenant, including any proceeding or action in a bankruptcy case, the unsuccessful party in such suit or proceeding shall pay to the prevailing party therein reasonable attorneys' fees and costs, which shall include fees and costs of any appeal, all as fixed by the Court. If Landlord or Tenant should be named as a defendant in any suit brought against the other in connection with Tenant's occupancy of the Premises under this Lease, the party defendant primarily responsible for the bringing of such suit shall pay to the other party its costs and expenses incurred in such suit and reasonable attorneys' fees.

(h) If any action or proceeding between Landlord and Tenant to enforce the provisions of this Lease (including an action or proceeding between Landlord and the trustee or debtor in possession while Tenant is a debtor in a proceeding under any bankruptcy law) proceeds to trial, Landlord and Tenant hereby waive their respective rights to a jury in such trial.

(i) The failure of Landlord to object to or to assert any remedy by reason of Tenant's failure to perform or observe any covenant or term hereof or Landlord's failure to assert any rights by reason of the happening or non-happening of any condition hereof shall not be deemed a waiver of its right to assert and enforce any remedy it may have by reason of such failure on the part of Tenant or the happening or non-happening of such condition or a waiver of its rights to enforce any of its rights by reason of any subsequent failure of Tenant to perform or observe the same or any other term or covenant or by reason of the subsequent happening or non-happening of the same or any other condition. No custom or practice that may develop between the parties hereto during the term hereof shall be deemed a waiver of, or in any way affect, the right of Landlord to insist upon performance and observance by Tenant in strict accordance with the terms hereof. The acceptance of Rental hereunder by Landlord shall not be deemed to be a waiver of any preceding failure of Tenant to perform or observe any term or covenant of this Lease, other than the failure of Tenant to pay the particular Rental so accepted, irrespective of any knowledge on the part of Landlord of such preceding failure at the time of acceptance of such Rental. Landlord's acceptance of partial payment of rent does not constitute a waiver of any rights, including without limitation any right Landlord may have to recover possession of the Premises.

(j) Tenant agrees that no diminution or shutting off of light, air or view by any structure that may be erected (whether or not by Landlord) on property adjacent to the Building shall in any way affect this Lease, entitle Tenant to any reduction of Rental hereunder or result in any liability of Landlord to Tenant.

(k) All notices, demands, requests, advices or designations ("Notices") that may be or are required to be given by either party to the other hereunder shall be in writing. All Notices by Landlord to Tenant shall be sufficiently given, made or delivered if personally served (including delivery by messenger or nationally-recognized overnight mail courier) on Tenant by leaving the same at the Premises, or if sent by United States certified or registered mail, postage prepaid, addressed to Tenant at Tenant's address for notices as set forth in the Summary of Lease Terms. All Notices by Tenant to Landlord shall be sufficiently given, made or delivered if personally served (including delivery by messenger or nationally-recognized overnight mail courier) on Landlord, or sent by United States certified or registered mail, postage prepaid, addressed to Landlord at Landlord's address for notices specified in Paragraph B of the Summary of Lease Terms. Each Notice shall be deemed received on the date of the personal service or three (3) days after the mailing thereof, in the manner herein provided, as the case may be.

(l) Tenant agrees that it shall not, without first obtaining the written consent of Landlord (which consent may be withheld in Landlord's sole and absolute discretion): (i) use the name of the Building for any purpose other than as the address of the business conducted by Tenant in the Premises; or (ii) use for any purpose any image of, rendering of, or design based on, the exterior appearance or profile of the Building.

(m) This Lease shall in all respects be governed by and construed in accordance with the laws of California. If any provision of this Lease shall be invalid, unenforceable or ineffective for any reason whatsoever, all other provisions hereof shall be and remain in effect.

(n) The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The term "Landlord" or any pronoun used in place thereof includes the plural as well as the singular and the successors and assigns of Landlord. The term "Tenant" or any pronoun used in place thereof includes the plural as well as the singular and individuals, firms, associations, partnerships and corporations, and their and each of their respective heirs, executors, administrators, successors and permitted assigns, according to the context hereof. The provisions of this Lease shall inure to the benefit of and bind Landlord and Tenant and their respective heirs, executors, administrators, successors and permitted assigns. The term "person" includes the plural as well as the singular and individuals, firms, associations, partnerships and corporations. Words used in any gender include the other gender. If there be more than one Tenant the obligations of Tenant hereunder are joint and several. The Paragraph headings of this Lease are for convenience of reference only and shall have no effect upon the construction or interpretation of any provision hereof.

(o) Time is of the essence of this Lease with respect to the payment of Rental and the performance of all obligations.

(p) Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for a lease, and this instrument is not effective as a lease or otherwise until its execution and delivery by both Landlord and Tenant.

(q) Landlord shall pay any and all commissions payable to Landlord's Broker in connection with the execution of this Lease pursuant to a separate agreement. Landlord's

Broker shall pay Tenant's Broker any commissions payable to Tenant's Broker pursuant to a separate agreement between Landlord's Broker and Tenant's Broker. Tenant agrees to protect, defend, indemnify and hold Landlord harmless from any and all claims, loss, cost, damage and/or expense (including, without limitation, attorneys' fees and court costs) by any real estate broker or salesperson or other entity or party for a commission or finder's fee as a result of Tenant's entering into this Lease, other than the Brokers identified in Paragraph K of the Summary of Lease Terms.

(r) Landlord agrees to list Tenant's name on the directory board in the lobby of the Building and on the Building standard signage in the elevator lobby and to provide Building standard signage on the door to the Premises, at Landlord's cost and expense; provided, however, any change to the initial listing or any additional listings shall be at Tenant's cost and expense. Tenant shall have no right to occupy the Premises under any name other than the name of Tenant under this Lease or a fictitious business name registered to Tenant. Landlord's acceptance of any name for listing on the directory board, the standard signage or any exterior sign shall in no event be, or be deemed to be, nor will it substitute for, Landlord's consent, as required by this Lease, to any sublease, assignment, or other occupancy of the Premises.

(s) If Tenant is a corporation (or other business organization), Tenant and each person executing this Lease on behalf of Tenant represents and warrants to Landlord that (a) Tenant is duly incorporated (or organized) and validly existing under the laws of its state of incorporation (or organization), (b) Tenant is qualified to do business in California, (c) Tenant has full right, power and authority to enter into this Lease and to perform all of Tenant's obligations hereunder, and (d) the execution, delivery and performance of this Lease has been duly authorized by Tenant and each person signing this Lease on behalf of the Tenant is duly and validly authorized to do so.

(t) This Lease may not be amended or modified in any respect whatsoever, except by an instrument in writing signed by Landlord and Tenant.

(u) The Exhibits and Addenda referenced in the Summary of Lease Terms are a part of this Lease and are incorporated herein by this reference. In the event of any discrepancy between the Lease and any such Exhibit or Addendum, the Exhibit or Addendum shall control. This Lease is the entire and integrated agreement between Landlord and Tenant with respect to the subject matter of this Lease, the Premises and the Building. There are no oral agreements between Landlord and Tenant affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, offers, agreements and understandings, oral or written, if any, between Landlord and Tenant or displayed by Landlord to Tenant with respect to the subject matter of this Lease, the Premises or the Building. There are no representations between Landlord and Tenant or between any real estate broker and Tenant other than those expressly set forth in this Lease and all reliance with respect to any representations is solely upon representations expressly set forth in this Lease.

23. ERISA. To satisfy compliance with the Employee Retirement Income Security Act of 1974, as amended, Tenant represents and warrants to Landlord that:

(a) Tenant is not an "employee benefit plan" (as that term is defined in Section 3(3) of ERISA); and

(b) Tenant is not acquiring the Property as a plan asset subject to ERISA but for Tenant's own investment account; and

(c) Tenant is not a "party in interest" (as that term is defined in Section 3(14) of ERISA) to the Virginia Retirement System; and

(d) Tenant agrees to keep the identity of the Virginia Retirement System confidential, except to the extent that Tenant may be required to disclose such information as a result of (i) legal process, or (ii) compliance with ERISA or other Laws governing Tenant's operations.

24. PARKING.

(a) During the Lease Term, Tenant may lease, on a non-exclusive basis, up to fourteen (14) parking spaces. On or before the Commencement Date, Tenant shall advise Landlord of the amount of parking spaces Tenant desires to lease, which number shall remain fixed during the Term ("Tenant's Allotted Spaces"). Tenant shall pay the Parking Rental (as defined below) for each of Tenant's Allotted Spaces. The use of Tenant's Allotted Spaces shall be for the parking of motor vehicles used by Tenant, its officers, employees and customers only, and shall be subject to all applicable laws and the reasonable, uniform and non-discriminatory rules and regulations adopted by Landlord from time to time for the use of the Parking Lot. The Parking Rental payable by Tenant hereunder shall include all taxes imposed on the use of the parking spaces by any governmental or quasi-governmental authority. Parking Rental shall be due and payable in advance, as additional rent, on the first day of each month during which parking spaces are leased hereunder. Parking spaces may not be assigned or transferred separate and apart from this Lease, and upon the expiration or earlier termination of this Lease, Tenant's rights with respect to all leased parking spaces shall immediately terminate. Tenant and its agents, employees, contractors, invitees or licensees shall not unreasonably interfere with the rights of Landlord or others entitled to similar use of the Parking Lot. Access to the Parking Lot will generally be available on a twenty-four (24) hour basis, with in and out privileges. In addition to Tenant's Allotted Spaces, Tenant shall have the right to lease up to six (6) additional parking spaces in the Parking Lot on a month-to-month basis. Tenant shall pay the Parking Rental for each of the additional spaces leased.

(b) The Parking Lot shall be subject to the reasonable control and management of Landlord, who may, from time to time, establish, modify and enforce reasonable, uniform and non-discriminatory rules and regulations with respect thereto. Landlord reserves the right to change, reconfigure, or rearrange the parking areas, to reconstruct or repair any portion thereof, and to restrict the use of any parking areas and do such other acts in and to such areas as Landlord deems necessary or desirable without such actions being deemed an eviction of Tenant or a disturbance of Tenant's use of the Premises and without Landlord's being deemed in default hereunder; provided that Landlord shall use commercially reasonable efforts to minimize (to the extent consistent with applicable laws) the extent and duration of any resulting interference with Tenant's parking rights. Landlord may, in its sole discretion, convert the Parking Lot to a

reserved and/or controlled parking facility, or operate the Parking Lot (or a portion thereof) as an attendant assisted and/or valet parking facility.

(c) If parking spaces are not assigned pursuant to the terms of this Lease, Landlord reserves the right at any time to assign parking spaces in a reasonable manner, and Tenant shall thereafter be responsible for insuring that its employees park in the designated areas. Tenant shall, if requested by Landlord, comply with all reasonable parking practices and otherwise furnish Landlord with such information as Landlord reasonably requests. Landlord shall not be liable for any damage of any nature to, or any theft of, vehicles or the contents thereof in or about the Parking Lot. At Landlord's request, Tenant shall cause its employees and agents using Tenant's parking spaces to execute an agreement confirming the foregoing.

(d) "Parking Rental" shall mean (\$290) per space for the first month of the Term, and thereafter the current parking rental rate per parking space being charged by Landlord for monthly parking in the Parking Lot.

25. ADA COMPLIANCE. Landlord and Tenant acknowledge that, in accordance with the provisions of the Americans with Disabilities Act (the "ADA"), responsibility for compliance with the terms and conditions of Title III of the ADA may be allocated as between Landlord and Tenant. In this regard and notwithstanding anything to the contrary contained in this Lease, Landlord and Tenant agree that the responsibility for compliance with the ADA and state disability access laws (including, without limitation, the removal of architectural and communications barriers and the provision of auxiliary aids and services to the extent required) shall be allocated as follows: (i) Tenant, at its expense, shall be responsible for compliance with the provisions of Title II and Title III of the ADA and state disability access laws as such laws relate to any construction, renovations, alterations and repairs made within the Premises if such construction, renovations, alterations, and repairs are made by Tenant; (ii) Landlord shall be responsible for compliance with the provisions of Titles II and III of the ADA and state disability access laws for all construction, renovations, alterations, and repairs that Landlord is required, under this Lease, to make within the Premises, whether (pursuant to the relevant provisions of this Lease) at Landlord's or Tenant's expense; and (iii) Landlord, at its expense, shall be responsible for compliance with the provisions of Title III of the ADA and state disability access laws for all exterior and interior areas of the Building not included within the Premises. Landlord and Tenant shall each use reasonable efforts to notify the other of any alteration to the Premises which might impact accessibility under federal and state disability access laws. Landlord agrees to indemnify Tenant and hold Tenant harmless from and against any claims, damages, costs, and liabilities arising out of Landlord's failure, or alleged failure, as the case may be, to comply with the ADA or state disability access laws, to the extent such compliance has been allocated to Landlord herein, which indemnification obligation shall survive the expiration or termination of this Lease if this Lease has not been terminated by reason of a default by Tenant. Tenant agrees to indemnify Landlord and hold Landlord harmless from and against any claims, damages, costs, and liabilities arising out of Tenant's failure, or alleged failure, as the case may be, to comply with the ADA or state disability access laws, to the extent such compliance has been allocated to Tenant herein, which indemnification obligation shall survive the expiration or termination of this Lease if this Lease has not been terminated by reason of a default by Landlord. Landlord and Tenant each agree that the allocation of responsibility for ADA and state disability access law compliance shall not require Landlord or Tenant to

supervise, monitor or otherwise review the compliance activities of the other with respect to its assumed responsibilities for ADA and state disability access law compliance as set forth in this paragraph. Landlord shall, in complying with the ADA and state disability access laws (to the extent such compliance has been allocated to Landlord herein), be entitled to rely upon representations made to, or information given to, Landlord by Tenant in regard to Tenant's use of the Premises, Tenant's employees, and other matters pertinent to compliance with the ADA and state disability access laws. The indemnity of Tenant set forth above shall apply as to any liability arising against Landlord by reason of any misrepresentation or misinformation given by Tenant to Landlord. The allocation of responsibility for ADA and state disability access law compliance between Landlord and Tenant, and the obligations of Landlord and Tenant established by such allocation, shall supersede any other provisions of this Lease that may contradict or otherwise differ from the requirements of this paragraph.

26. ACCESSIBILITY DISCLOSURE. Pursuant to California Civil Code 1938, Landlord hereby advises Tenant that the Premises have **not** undergone inspection by a Certified Access Specialist and Tenant hereby acknowledges that the Premises have not been certified to meet all construction related accessibility standards pursuant to Civil Code Section 55.53.

[Signatures on following page]

IN WITNESS WHEREOF, Landlord and Tenant have executed and delivered this Lease as of the day and year first above written.

LANDLORD:

**CLPF-475 BRANNAN STREET L.P.,
a Delaware limited partnership**

By: CLPF - 475 BRANNAN STREET GP, LLC
Its general partner

By: Clarion Lion Properties Fund Holdings. L.P.,
Its sole member

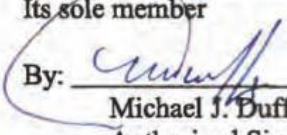
By: CLPF-Holdings, LLC,
Its general partner

By: Clarion Lion Properties Fund Holdings REIT, LLC,
Its sole member

By: Clarion Lion Properties Fund, LP,
Its managing member

By: Clarion Partners LPF GP, LLC,
Its general partner

By: Clarion Partners, LLC,
Its sole member

By: 
Michael J. Duffy
Authorized Signatory

Date: 5/21/14

TENANT:

**ELANCE-oDESK, INC.,
a Delaware corporation**


By: 
Name: S. THOLEN
Title: CEO

EXHIBIT A
FLOOR PLAN

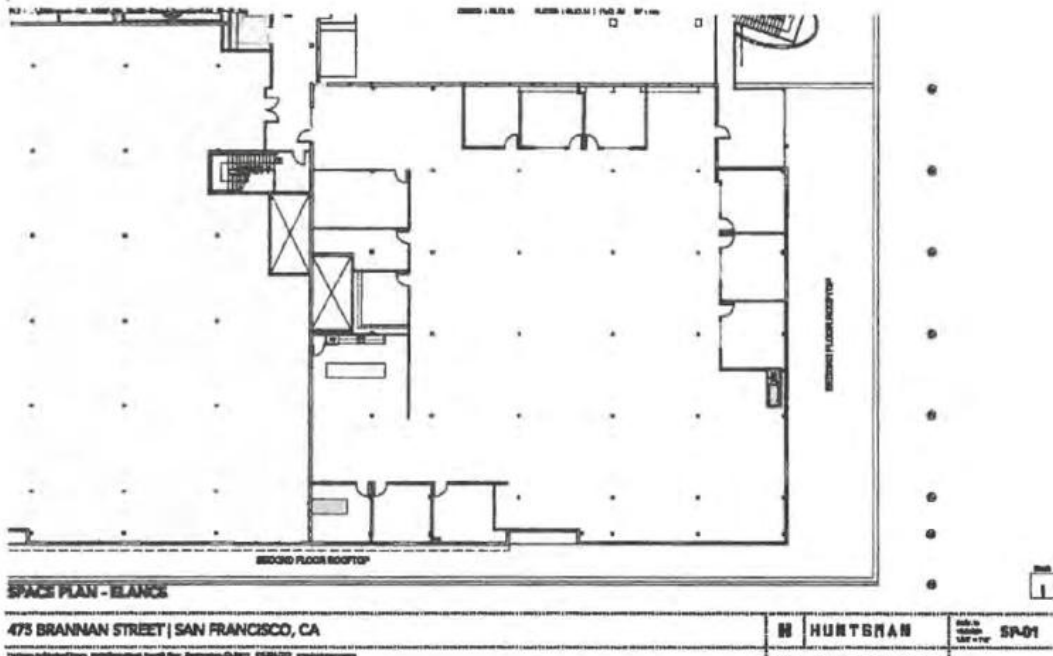


EXHIBIT B
BUILDING RULES AND REGULATIONS

1. Sidewalks, halls, passages, exits, entrances, elevators, escalators and stairways shall not be obstructed by tenants or used by them for any purpose other than for ingress to and egress from their respective premises. The halls, passages, exits, entrances, elevators, escalators and stairways are not for the use of the general public and Landlord shall in all cases retain the right to control and prevent access thereto by all persons whose presence, in the judgment of Landlord, would be prejudicial to the safety, character, reputation and interests of the Building and its tenants.

2. No sign, placard, picture, name, advertisement or notice, visible from the exterior of leased premises shall be inscribed, painted, affixed or otherwise displayed by any tenant either on its premises or any part of the Building without the prior written consent of Landlord, and Landlord shall have the right to remove any such sign, placard, picture, name, advertisement, or notice without notice to and at the expense of the tenant.

If Landlord shall have given such consent to any tenant at any time, whether before or after the execution of the Lease, such consent shall in no way operate as a waiver or release of any of the provisions hereof or of such Lease, and shall be deemed to relate only to the particular sign, placard, picture, name, advertisement or notice so consented to by Landlord and shall not be construed as dispensing with the necessity of obtaining the specific written consent of Landlord with respect to any other such sign, placard, picture, name, advertisement or notice.

No signs will be permitted on any entry door unless the door is glass. All glass door signs must be approved by Landlord. Signs or lettering shall be printed, painted, affixed or inscribed at the expense of the tenant by a person approved by Landlord.

3. The bulletin board or directory of the Building will be provided exclusively for the display of the name and location of tenants only, and Landlord reserves the right to exclude any other names therefrom. Landlord reserves the right to restrict the amount of directory space utilized by Tenant.

4. No curtains, draperies, blinds, shutters, shades, screens or other coverings, hangings or decorations shall be attached to, hung or placed in, or used in connection with, any window on any premises without the prior written consent of Landlord. In any event, with the prior written consent of Landlord, all such items shall be installed inside of Landlord's standard draperies and shall in no way be visible from the exterior of the Building. No articles shall be placed or kept on the window sills so as to be visible from the exterior of the Building.

5. Landlord reserves the right to exclude from the Building between the hours of 7 P.M. and 7 A.M. and at all hours on Saturdays, Sundays and holidays all persons who do not present a pass to the Building signed by Landlord. Landlord will furnish passes to persons for whom any tenant requests the same in writing. Each tenant shall be responsible for all persons for whom it requests passes and shall be liable to Landlord for all acts of such persons.

Landlord shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Building of any person.

During any invasion, mob, riot, public excitement or other circumstance rendering such action advisable in Landlord's opinion, Landlord reserves the right to prevent access to the Building by closing the doors, or otherwise, for the safety of tenants and protection of the Building and property in the Building.

6. No tenant shall employ any person or persons other than the janitor of Landlord for the purpose of cleaning the premises unless otherwise agreed to by Landlord in writing. Except with the written consent of Landlord, no person or persons other than those approved by Landlord shall be permitted to enter the Building for the purpose of cleaning the same. No tenant shall cause any unnecessary labor by reason of such tenant's carelessness or indifference in the preservation of good order and cleanliness. Landlord shall in no way be responsible to any tenant for any loss of property on the premises, however occurring, or for any damage done to the property of any tenant by the janitor or any other employee or any other person. Janitorial service shall include ordinary dusting and cleaning by the janitor assigned to such work and shall not include beating or cleaning of carpets or rugs or moving of furniture or other special services. Janitorial service will not be furnished on nights when rooms are occupied after 9:30 p.m. Window cleaning shall be done only by Landlord, and at such intervals and such hours as Landlord shall deem appropriate.

7. No tenant shall obtain for use upon its premises ice, drinking water, food, beverage, towel or other similar services, or accept barbering or bootblacking services in its premises, except from persons authorized by Landlord, and at hours and under regulations fixed by Landlord.

8. Each tenant shall see that the doors of its premises are closed and securely locked and must observe strict care and caution that all water faucets or water apparatus are entirely shut off before the tenant or its employees leave such premises, and that all utilities shall likewise be carefully shut off, so as to prevent waste or damage, and for any default or carelessness the Tenant shall make good all injuries sustained by other tenants or occupants of the Building or Landlord. On multiple-tenancy floors all tenants shall keep the door or doors to the Building corridors closed at all times except for ingress and egress.

9. No tenant shall alter any lock or install a new or additional lock or any bolt on any door of its premises without the prior written consent of Landlord. If Landlord shall give its consent, the tenant shall in each case furnish Landlord with a key for any such lock.

10. Landlord will furnish Tenant without charge two (2) keys to each door lock provided in the Premises by Landlord. Landlord may make a reasonable charge for any additional keys. Tenant shall not have any such keys copied or any keys made. Each tenant, upon the termination of the tenancy, shall deliver to Landlord all the keys of or to the Building, offices, rooms and toilet rooms that shall have been furnished to the Tenant or that the Tenant shall have had made. In the event of the loss of any keys so furnished by Landlord, Tenant shall pay Landlord therefor.

11. The toilet rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein, and the expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the tenant who, or whose employees or invitees, shall have caused it.

12. No tenant shall use or keep in its premises or the Building any kerosene, gasoline or inflammable or combustible fluid or material or use any method of heating or air conditioning other than that supplied by Landlord.

13. No tenant shall use, keep or permit to be used or kept in its premises any foul or noxious gas or substance or permit or suffer such premises to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Building by reason of noise, odors and/or vibrations or interfere in any way with other tenants or those having business therein. No animals or birds shall be brought or kept in or about any premises or the Building.

14. No cooking shall be done or permitted by any tenant on its premises, except that the preparation of coffee, tea, hot chocolate and similar items for tenants and their employees shall be permitted, nor shall such premises be used for lodging.

15. Except with the prior written consent of Landlord, no tenant shall sell, or permit the sale, at retail of newspapers, magazines, periodicals, theater tickets or any other goods or merchandise in or on any premises, nor shall any tenant carry on, or permit or allow any employee or other person to carry on, the business of stenography, typewriting or any similar business in or from any premises for the service or accommodation of occupants of any other portion of the Building, nor shall the premises of any tenant be used for the storage of merchandise or for manufacturing of any kind, or the business of a public barber shop, beauty parlor, or any business or activity other than that specifically provided for in such tenant's lease.

16. Landlord will direct electricians as to where and how telephone, telegraph and electrical wires are to be introduced or installed. No boring or cutting for wires will be allowed without the prior written consent of Landlord. The location of telephones, call boxes and other office equipment affixed to all premises shall be subject to the written approval of Landlord. All electrical appliances must be grounded and must meet UL Label Standards.

17. No tenant shall install any radio or television antenna, loudspeaker or any other device on the exterior walls or roof of the Building.

18. No tenant shall lay linoleum, tile, carpet or any other floor covering so that the same shall be affixed to the floor of its premises in any manner except as approved in writing by Landlord. The expense of repairing any damage resulting from a violation of this rule or the removal of any floor covering shall be borne by the tenant by whom, or by whose contractors, employees or invitees, the damage shall have been caused.

19. No furniture, freight, equipment, packages or merchandise shall be received in the Building or carried up or down the elevators, except between such hours, through such entrances and in such elevators as shall be designated by Landlord. Landlord reserves the right to require that moves be scheduled and carried out during non-business hours of the Building. Landlord shall have the right to prescribe the weight, size and position of all safes and other heavy equipment brought into the Building. Safes or other heavy objects shall, if considered necessary by Landlord, stand on wood strips of such thickness as is necessary to properly distribute the weight thereof. Landlord will not be responsible for loss of or damage to any such safe or property from any cause, and all damage done to the Building by moving or maintaining any such safe or other property shall be repaired at the expense of the tenant.

20. No tenant shall overload the floor of its premises or mark, or drive nails, screw or drill into, the partitions, woodwork or plaster or in any way deface such premises or any part thereof.

21. There shall not be used in any space, or in the public areas of the Building, either by any tenant or others, any hand trucks except those equipped with rubber tires and side guards. No other vehicles of any kind shall be brought by any tenant into or kept in or about any premises in the Building.

22. Each tenant shall store all its trash and garbage within the interior of its premises. No material shall be placed in the trash boxes or receptacles if such material is of such nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage in the City of San Francisco without violation of any law or ordinance governing such disposal. All trash, garbage and refuse disposal shall be made only through entryways and elevators provided for such purposes and at such times as Landlord shall designate.

23. Tenant agrees not to employ any person, entity or contractor for any work in the Premises (including moving Tenant's equipment and furnishings in, out of or around the Premises) whose presence may give rise to a labor or other disturbance in the Building, and, if necessary to prevent such a disturbance in a particular situation, Landlord may require Tenant to employ union labor for the work.

24. Canvassing, soliciting, distribution of handbills and other written materials and peddling in the Building are prohibited and each tenant shall cooperate to prevent the same.

25. Landlord shall have the right, exercisable without notice and without liability to any tenant, to change the name and address of the Building.

26. The requirements of tenants will be attended to only upon application at the office of the Building. Employees of Landlord shall not perform any work or do anything outside of their regular duties unless under special instructions from Landlord, and no employee will admit any person (tenant or otherwise) to any office without specific instructions from Landlord.

27. Landlord may waive any one or more of these Rules and Regulations for the benefit of any particular tenant or tenants, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of any other tenant or tenants, nor prevent Landlord from thereafter enforcing any such Rules and Regulations against any or all tenants of the Building.

28. These Rules and Regulations may be changed from time to time, as Landlord may deem appropriate, and are in addition to, and shall not be construed to in any way modify, alter or amend, in whole or in part, the terms, covenants and conditions of the Lease.

EXHIBIT C

TENANT WORK LETTER

This Tenant Work Letter ("Tenant Work Letter") shall set forth the terms and conditions relating to the construction of the Premises. All references in this Tenant Work Letter to "the Lease" shall mean the relevant portions of the Lease to which this Tenant Work Letter is attached as Exhibit C.

SECTION 1

EXISTING IMPROVEMENTS

Landlord has previously constructed improvements to the Premises (the "Existing Improvements"), and Tenant shall accept the Existing Improvements and any existing systems in the Premises in their current "As-Is" condition existing as of the date of the Lease and the Commencement Date. Landlord shall install in the Premises certain "Tenant Improvements" (as defined below) pursuant to the provisions of this Tenant Work Letter. Except for Landlord's obligation to construct the Tenant Improvements described below, Landlord shall not be obligated to make or pay for any alterations or improvements to the Premises, the Building or the Project.

SECTION 2

TENANT IMPROVEMENTS

2.1 Tenant Improvements. All work required to be performed by Landlord or Landlord's contractor pursuant to this Agreement is hereinafter referred to as the "Landlord's Work." Notwithstanding Section 1 above, Landlord shall cause to be designed and constructed, at Landlord's cost except as otherwise specified herein, following improvements in the Premises according to a mutually approved space plan (the "Tenant Improvements"):

Demolish the board room, which is currently located on the south facing wall as you enter the suite. Repair/transition the ceiling with a mutually agreed upon solution.

Reconfigure the board room, which is currently located on the north facing wall as you enter the suite, by creating a straight glass wall, as opposed to the existing curved glass wall.

Demolish the existing glass on both sides of "Hallway 419" (near kitchen).

Replace the existing door on the west wall of the kitchen with drywall. Repaint to match all renovated areas described above.

Install mutually agreed upon cabinets and countertops in kitchen.

Repaint to match all renovated areas described above.

Provide and install new building standard carpeting throughout the Premises including new flooring in the kitchen.

Provide, in a mutually agreed upon manner, sufficient electrical and data outlets for an open plan user. Data cable and electrical wiring shall be the responsibility of Tenant.

2.2 Final Plans. Upon the execution of the Lease by both parties, Landlord and Tenant shall prepare a mutually acceptable space plan (the "Space Plan") for the Tenant Improvements. If Landlord and Tenant have not agreed upon a Space Plan within fifteen (15) days after the execution of the Lease, a day of Tenant Delay (as defined below) shall be assessed for each day in excess of such fifteen (15) day period required to complete the Space Plan. Upon completion of the Space Plan, Landlord shall cause to be prepared such plans, drawings, and specifications (collectively, the "Plans") as may be necessary to obtain a building permit for construction of the Tenant Improvements.

SECTION 3

ACCEPTANCE OF PREMISES

3. Acceptance of Premises. Landlord shall deliver the Premises to Tenant upon final inspection and/or approval of the same by the municipality having jurisdiction over the construction of the Tenant Improvements. Tenant shall accept delivery of the Premises subject to Landlord's obligation to complete the Punch List items.

SECTION 4

CONTRACTORS; MATERIALS

4. Contractors; Materials. Except as otherwise herein provided or as may be otherwise approved by Landlord, all construction of the Tenant Improvements, including work to be performed at Tenant's expense, if any, shall be performed by Landlord's contractors. Tenant acknowledges that all improvements described in the Space Plan, including, without limitation, all wall covering, woodwork (if any), fixtures, paint, floor coverings, and other finishes are contemplated to be of building standard quality, as determined by Landlord from time to time for general tenant improvement work in the Project ("Building Standard"). Landlord shall not under any circumstances be required to provide or pay for any furniture, trade fixtures, equipment, or other personal property of Tenant, or any other item which is not to be permanently affixed to the Premises and made a part thereof or which is not Building Standard.

SECTION 5

EXTRA WORK

5.1 In General. Except as expressly approved in writing by Landlord pursuant to the provisions of this Section 5, Landlord shall not be required to perform any additional or nonstandard work over and above that which is Building Standard, nor shall Landlord be

required to revise the final Plans or any portion of the Tenant Improvements which have been constructed (all such additional, nonstandard, or revised work is hereinafter collectively referred to herein as "Extra Work"). Tenant may request Landlord, in writing, to perform any Extra Work desired by the Tenant. Tenant acknowledges that any delays in the completion of the Tenant Improvements caused by the review of any request for, as well as any approval and/or performance of, Extra Work shall constitute a Tenant Delay as described in Section 9.2 below, regardless of whether or not the Extra Work is actually performed.

5.2 Procedure. Any request by Tenant for Extra Work which would require a change to the final Plans shall be accompanied by all necessary additional and/or revised Plans for such Extra Work, which revised Plans shall be prepared at Tenant's expense by Landlord's architect. Landlord shall respond in writing to any request by Tenant for the performance of Extra Work. Any approval of such request may, in Landlord's sole discretion, be conditioned upon any or all of the following: (i) payment by Tenant, in advance, of all estimated costs of such Extra Work, along with a reasonable work review fee and Landlord's six percent (6%) construction management fee; (ii) the written acknowledgment by Tenant that any additional time required to perform such Extra Work shall constitute a Tenant Delay, and (iii) any other conditions which Landlord may find to be reasonable under the circumstances. If Tenant shall fail to meet any such conditions precedent to the performance of Extra Work within three (3) days following Landlord's notice to Tenant of same, the proposed Extra Work shall be deemed disapproved by Tenant, and Landlord shall not be obligated to perform any portion thereof.

SECTION 6

EARLY ENTRY

6. Entry Made at Tenant's Sole Risk. Upon the prior written consent of Landlord, and at such times as are acceptable to Landlord in Landlord's sole discretion, Tenant and its approved contractors shall have the right to enter the Premises during the construction of the Tenant Improvements without payment of rent, for the following purposes only: (a) to perform such work or decoration as is to be performed by or under the direction or control of Tenant; (b) to review the progress of the construction of the Tenant Improvements for the purpose of coordinating Tenant's move into the Premises; and (c) to install Tenant's furniture, fixtures, and equipment; provided that such entry or performance of work shall not interfere in any manner with the conduct of Landlord's Work. Any entry into the Premises by Tenant, its agents, contractors, and employees during the construction of the Tenant Improvements shall be at the sole risk of Tenant, and Tenant hereby releases Landlord, its agents, contractors, and employees, from any and all liability, cost, damage, expense, and claim for injury (including bodily injury, death or property damage) (collectively, "Claims") incurred or suffered by Tenant in or about the Premises during the construction of the Tenant Improvements. Tenant hereby indemnifies, defends, and holds Landlord, its agents, contractors, and employees, harmless from and against any and all claims, including attorneys' fees and costs, made against Landlord by any party, or incurred by Landlord, as a result of any entry into or inspection of the Premises made by Tenant, its agents, contractors, employees, or invitees, during the construction of the Tenant Improvements.

SECTION 7

TENANT'S CONTRACTORS

7.1 Approval Required. Tenant shall not permit any contractor to perform work in the Premises in connection with the Tenant Improvements (including such work as is described in Section 6 above) or for any other purpose without the express prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion. Landlord may require Tenant to furnish a payment and performance bond for the performance of any work to be performed by or for Tenant, which bond shall be posted prior to the commencement of any such work. Any such contractors approved by Landlord for the performance of any work in the Premises prior to occupancy by Tenant shall be subject to the supervision of Landlord's contractor. Landlord shall be entitled to receive a reasonable work review fee for all of such work, and such fee shall be increased in the event of any change orders resulting in increases in the contract price for such work. The foregoing requirements shall apply to all work performed in the Premises for the benefit of Tenant prior to delivery of the Premises to Tenant, including, but not limited to, installation of telephone equipment, electrical devices and attachments, and all installations (other than Landlord's Work) affecting floors, walls, woodwork, trim, windows, ceilings, equipment, or any other physical portion of the Premises. All materials and workmanship used in the construction by Tenant or Tenant's contractors of any improvements in the Premises shall be of a quality that is at least Building Standard. Notwithstanding any provision to the contrary in the Lease, this Work Letter, or any other document comprising the Lease, Landlord shall have no responsibility whatsoever for the correction of any defect in Landlord's Work which has been covered by Tenant or any of Tenant's contractors.

7.2 Contractor Requirements. Tenant's contractors, if any, shall comply with all rules and regulations which Landlord may generally impose from time to time upon subcontractors in the building. Tenant shall require all contractors and subcontractors performing construction or alterations to the Premises to, prior to commencing any such work, furnish Landlord with original certificates of insurance evidencing that such contractors and subcontractors carry: (i) workers compensation insurance in such amounts as may be required by law; (ii) liability insurance (including owned and non-owned automobile liability) with limits of no less than \$1,000,000; (iii) employers' liability insurance with limits of at least \$1,000,000; and (iv) umbrella/excess liability insurance with limits of not less than \$4,000,000. All liability policies of any such contractor shall name Landlord and its managing agent as additional insureds; be primary to and non-contributory with any liability insurance carried by Landlord and its managing agent, and shall contain contractual liability and cross liability endorsements in favor of Landlord, and its managing agent. Any such contractor shall agree in writing, prior to the commencement of any work, to indemnify, protect, defend, and hold Landlord and its managing agent harmless from and against any claims, liability, damage, actions, losses, and costs (including attorneys' fees) arising out of such contractor's negligence, willful misconduct, or the performance of such contractor's work.

7.3 No Warranty. Landlord's supervision and/or approval of any contractor or any contractor's work shall not under any circumstances constitute a warranty or representation that such work was properly performed or designed or create any liability for payment for such work

by Landlord. Rather, Tenant acknowledges that such supervision by Landlord is for the sole benefit of Landlord and the property wherein the Premises are located.

SECTION 8

TENANT'S LIABILITIES

8. Tenant's Liabilities. Landlord shall have no liability for any loss of or damage to any of Tenant's or Tenant's contractors' fixtures or property installed or left in the Premises or the Project, and Tenant shall be fully responsible for same. Tenant shall be responsible at its own expense for the prompt removal of all rubbish and refuse left by Tenant's contractors and in connection with the delivery of Tenant's personal property into the Premises. Tenant shall be liable for the repair of any damage to the Tenant Improvements occurring during any entry into the Premises by Tenant, its agents, contractors, employees, or invitees.

SECTION 9

DELAY

9.1 Force Majeure Delays. The term "Force Majeure Delay" shall mean any delay in the completion of the Tenant Improvements which is attributable to any: (1) delay or failure to perform attributable to any strike, lockout or other labor or industrial disturbance, civil disturbance, judicial order, act of a public enemy, war, riot, sabotage, blockade, embargo, inability to secure customary materials, supplies, or labor through ordinary sources by reason of regulation or order of any governmental agency; (2) delay attributable to inability to secure building permits and approvals; (3) delay in completing working drawings or other necessary components of final Plans, and/or delay in the construction of the Tenant Improvements despite Landlord's diligent efforts to complete same, because of changes in any laws or regulations subsequent to the execution date hereof (including, without limitation, the Americans with Disabilities Act of 1990) or changes in the interpretation of any such law by the applicable building department; or (4) delay attributable to lightning, earthquake, fire, storm, hurricane, tornado, flood, washout, explosion, or any other cause beyond the reasonable control of Landlord. Notwithstanding any provision of the Lease to the contrary, any prevention, delay, or stoppage due to any Force Majeure Delay shall excuse Landlord's performance hereunder for a period of time equal to any such prevention, delay or stoppage, and Tenant shall have no right to terminate this Lease as a result thereof.

9.2 Tenant Delay. The term "Tenant Delay" shall mean, with respect to the completion of the Tenant Improvements, delay which is attributable to any: (1) delay in the giving of authorizations or approvals by Tenant; (2) delay attributable to the negligent or willfully wrongful acts or failures to act of Tenant, its agents or contractors; (3) delay attributable to the interference of Tenant, its agents or contractors with the completion of Landlord's Work, including delays resulting from entry into the Premises by such persons as contemplated in Section 6 above; (4) any extension of time required to complete the Tenant Improvements because of changes to the Plans or the Tenant Improvements requested by Tenant, including any delays caused by requests for Extra Work pursuant to Section 5, above; (5) any delay in obtaining a certificate of occupancy for the Premises as a result of the failure of any contractor

hired by Tenant to complete any portion of the Tenant Improvements prior to the completion of Landlord's Work; (6) delay in completion of the Space Plan; (7) delay attributable to obtaining LEED or any other special certification for the Tenant Improvements; or (8) any other circumstance reasonably attributable to Tenant, its employees, agents or contractors which delays completion of the Tenant Improvements. In the event of any Tenant Delay, the date of delivery of the Premises to Tenant by Landlord shall be deemed, for the purpose of determining the Commencement Date and Tenant's obligation to pay Base Rent and all other amounts due under the Lease, to be one day earlier than the actual date of such delivery for each day in which any Tenant Delay occurs.

EXHIBIT D
COMMENCEMENT DATE MEMORANDUM

THIS MEMORANDUM is entered into as of _____, ____ by and between CLPF-475 BRANNAN STREET L.P., a Delaware limited partnership ("Landlord"), and ELANCE-oDESK, INC., a Delaware corporation ("Tenant"), with respect to that certain Office Lease dated as of _____, 2014 (the "Lease") respecting certain premises (the "Premises") located in the building known as 475 Brannan Street, San Francisco, California.

Pursuant to Paragraph 2(a) of the Lease, Landlord and Tenant hereby confirm and agree that the Commencement Date (as defined in the Lease) is _____, 20__ and that the Expiration Date (as defined in the Lease) is _____, 20__. This Memorandum supplements, and shall be a part of, the Lease.

IN WITNESS WHEREOF, Landlord and Tenant have executed and delivered this Memorandum as of the day and year first above written.

LANDLORD:

CLPF-475 BRANNAN STREET L.P.,
a Delaware limited partnership

By: CLPF - 475 BRANNAN STREET GP, LLC
Its general partner
By: Clarion Lion Properties Fund Holdings. L.P.,
Its sole member
By: CLPF-Holdings, LLC,
Its general partner
By: Clarion Lion Properties Fund Holdings REIT, LLC,
Its sole member
By: Clarion Lion Properties Fund, LP,
Its managing member
By: Clarion Partners LPF GP, LLC,
Its general partner
By: Clarion Partners, LLC,
Its sole member

By: _____
Michael J. Duffy
Authorized Signatory

Date: _____

TENANT:

ELANCE-oDESK INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____



Cresa San Francisco
275 Battery Street, Suite 1050
San Francisco, CA 94111
415.394.1020 tel
415.694.5730 fax

The Tenant's Advantage
cresa.com

May 11, 2015

Brian Levey
Upwork
SVP & General Counsel
441 Logue Avenue
Mountain View, CA 94043

Re: FIRST AMENDMENT TO LEASE dated May 1, 2015, by and between CLPF-475 BRANNAN STREET, L.P., as Landlord, and Upwork (fka ELANCE-oDESK, INC.) as Tenant.

Brian,

Enclosed please find one original of the fully executed First Amendment to your San Francisco office lease.

Jamie and I very much enjoyed working with you and the Upwork team to secure the expansion space at 475 Brannan Street to support your continued growth in San Francisco. If you have any questions, you can reach me at 415.395.4464.

Best,

A handwritten signature in cursive script that reads "Janna C. Luce".

Janna C. Luce | LEED AP | Lic. 01255526
Senior Vice President

cc: Jamie Saunders, Cresa

FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE ("First Amendment"), dated as of the 1st day of May, 2015, is between **CLPF-475 BRANNAN STREET, L.P., a Delaware limited partnership** ("Landlord") and **ELANCE-oDESK, INC., a Delaware corporation** ("Tenant").

RECITALS

A. Landlord and Tenant entered into that certain Office Lease dated May 14, 2014 (the "Lease"), pursuant to which Landlord leased unto Tenant and Tenant leased from Landlord approximately 13,907 rentable square feet of office space ("Suite 400") located on the fourth floor of the building commonly known as 475 Brannan Street, San Francisco, California (the "Building"), as more particularly described in the Lease.

B. Tenant desires to expand its premises to include additional space located on the fourth floor of the Building which contains approximately 18,480 rentable square feet of space ("Suite 430"), as depicted on Exhibit A-1 attached hereto and incorporated herein by this reference. Landlord agrees to so expand Tenant's premises upon the terms and conditions outlined in this Amendment.

AGREEMENT

NOW, THEREFORE, for and in consideration of the facts mentioned above, the mutual promises set forth below and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties hereto do agree as follows:

1. Effective Date. This First Amendment shall be effective as of the date set forth above ("Effective Date"). Except as otherwise set forth herein, the amendments to the Lease outlined below regarding the expansion of Tenant's premises to include Suite 430 shall be effective on the date Landlord delivers Suite 430 to Tenant as set forth in Paragraph 7 (the "Suite 430 Expansion Date").

2. Capitalized Terms. All capitalized terms used in this First Amendment which are not defined herein shall have the meanings for such terms which are set forth in the Lease.

3. Premises. As of the Suite 430 Expansion Date, Suite 430, which contains approximately 18,480 rentable square feet of space, shall become part of the Premises, the description of the Premises set forth in the Summary of Lease Terms shall be modified to include Suite 430, the Rentable Area of the Premises set forth in the Summary of Lease Terms shall be modified to include the rentable square footage of Suite 430, and Exhibit A to the Lease shall be

supplemented with Exhibit A-1 attached hereto and incorporated into the Lease by this reference and thereafter all references in the Lease to Exhibit A shall be deemed to also refer to Exhibit A-1. In addition, as of the Suite 430 Expansion Date, the description of the Premises set forth in the Summary of Lease Terms shall be deleted and replaced with the following:

“D. Floor on which Premises are situated: 4th floor; Suite 400
[Paragraph 1(f)] and Suite 430”

Further, as of the Suite 430 Expansion Date, the Rentable area of the Premises set forth in the Summary of Lease Terms shall be deleted and replaced with the following:

“E. Rentable area of the Premises: 32,387 rentable square feet”
[Paragraph 1(f)]

5. Base Rent. Tenant shall continue to pay Basic Monthly Rental for Suite 400 as set forth in the Lease. Beginning on October 1, 2015 (the “Suite 430 Rent Commencement Date”), Tenant shall also pay Basic Monthly Rental for Suite 430 according to the following schedule:

<u>Period</u>	<u>Suite 430 Basic Monthly Rental</u>	<u>Total Basic Monthly Rental</u>
10/1/15 – 9/30/16	\$112,420.00	\$188,815.79
10/1/16 – 9/30/17	\$115,792.60	\$194,483.04
10/1/17 – 9/30/18	\$119,266.37	\$200,301.81
10/1/18 – 6/30/19	\$122,844.36	\$206,321.13

Notwithstanding the foregoing, if the Suite 430 Expansion Date has not occurred by May 1, 2015, Tenant's Basic Monthly Rental obligation for Suite 430 commencing October 1, 2015, shall be abated on a day-for-day basis for each day after May 1, 2015, that the Suite 430 Expansion Date has not occurred. Further, if Tenant commences business operations from Suite 430 prior to September 1, 2015 (which shall not include Tenant's work performed pursuant to the Work Letter, defined in Paragraph 8 below, installation of furnishings and equipment, preliminary testing of equipment, and minor storage of related materials), there shall be added to Tenant's Basic Monthly Rental obligation for Suite 430 due October 1, 2015, the sum of \$3,747.33 for each day prior to September 1, 2015, that Tenant conducts business operations from Suite 430.

6. Tenant's Percentage Share for Suite 430. Provided that the Suite 430 Rent Commencement Date has occurred, beginning January 1, 2016, and continuing thereafter for the remainder of the Term, in addition to its obligation to pay Tenant's Percentage Share of increases

in Operating Expenses over the Base Year and Real Property Taxes over the Tax Base Year as provided in Paragraph 4 of the Lease, Tenant shall pay to Landlord, as additional rent, 7.56% of: (i) the amount, if any, by which Operating Expenses paid or incurred by Landlord in any calendar year subsequent to calendar year 2015 ("Suite 430 Base Year") exceed the amount of Operating Expense allocable to the Suite 430 Base Year; and (ii) the amount, if any, by which Real Property Taxes paid or incurred by Landlord in any calendar year subsequent to the Suite 430 Base Year exceed the amount of Real Property Taxes allocable to the Suite 430 Base Year ("Tenant's Suite 430 Share"). Tenant's obligation to pay Tenant's Suite 430 Share shall be subject to the terms and conditions set forth in Paragraph 4 of the Lease governing Tenant's obligation to pay its Percentage Share for Suite 400.

7. Delivery and Condition of Suite 430. Landlord shall deliver Suite 430 in its "as-is and broom clean" condition. Tenant acknowledges and agrees that Landlord has agreed to lease Suite 430 on the express condition that Tenant accept Suite 430 in its as-is condition and that neither Landlord nor any representative of Landlord has made any other representation or warranty with respect to the condition of Suite 430. Notwithstanding the foregoing, Landlord, at its expense, shall be responsible for compliance with the provisions of Title III of the ADA and state disability access laws (including, without limitation, the removal of architectural and communications barriers and the provision of auxiliary aids and services to the extent required) for all exterior and interior areas of the Building not included within the Premises. Landlord estimates that it will deliver Suite 430 to Tenant on or about May 1, 2015. If Landlord fails to deliver Suite 430 to Tenant within three (3) months after such date and does not cure such failure within fifteen (15) days of Tenant's written notice thereof ("Tenant's Delivery Notice"), Tenant shall have the option to terminate this First Amendment upon written notice to Landlord within fifteen (15) days of the expiration of Tenant's Delivery Notice. If Tenant does not exercise its option to terminate the First Amendment under this Paragraph 7, this First Amendment thereafter shall not be void or voidable and no obligation of Tenant shall be affected by Landlord's failure to timely deliver Suite 430. Regardless of whether Tenant exercises its option to terminate under this Paragraph 7, in no event shall Landlord be liable to Tenant for any loss or damage resulting from Landlord's failure to deliver the Suite 430.

8. Suite 430 Improvements. Landlord and Tenant agree to the provisions set forth in the work letter annexed hereto as Exhibit "C-1" ("Work Letter") and the Space Plan, as defined in Exhibit "C-1" and annexed hereto as Exhibit "C-2". Tenant agrees to construct within Suite 430 the Suite 430 Improvements described in the Work Letter and the Space Plan upon and subject to the provisions thereof. Landlord further agrees that it shall not require Tenant to remove the Suite 430 Improvements from Suite 430 at the end of the Term.

9. Accessibility Disclosure. Pursuant to California Civil Code 1938, Landlord hereby advises Tenant that Suite 430 has **not** undergone inspection by a Certified Access Specialist and Tenant hereby acknowledges that Suite 430 has not been certified to meet all construction related accessibility standards pursuant to Civil Code Section 55.53.

10. Renewal Option. Landlord and Tenant acknowledge that the option to extend the Term of the Lease provided in Paragraph 2(e) thereof, if successfully exercised, shall apply to both Suite 400 and Suite 430.

11. Parking. Beginning on the Suite 430 Rent Commencement Date, and continuing throughout the Lease Term, Tenant may lease, on a non-exclusive basis, up to fifteen (15) parking spaces in addition to those leased by Tenant pursuant to Paragraph 24 of the Lease. On or before the Suite 430 Rent Commencement Date, Tenant shall advise Landlord of the amount of additional parking spaces Tenant initially desires to lease, which number shall remain fixed during the Term ("Tenant's Suite 430 Allotted Spaces"); provided, however, that if Tenant's Suite 430 Allotted Spaces are fewer than fifteen (15), then Tenant shall have the right from time to time, subject to the rights of other tenants within the Building, to increase (but not decrease) Tenant's Suite 430 Allotted Spaces; provided that in no event shall Tenant's Suite 430 Allotted Spaces exceed fifteen (15) parking spaces. Tenant shall pay the Parking Rental (as defined in Paragraph 24 of the Lease) for each of Tenant's Suite 430 Allotted Spaces. The use of Tenant's Suite 430 Allotted Spaces shall be for the parking of motor vehicles used by Tenant, its officers, employees and customers only, and shall be subject to all applicable laws and the reasonable, uniform and non-discriminatory rules and regulations adopted by Landlord from time to time for the use of the Parking Lot, and all terms and conditions set forth in Paragraph 24 of the Lease.

12. Additional Security. On or before the Suite 430 Expansion Date, Tenant shall deliver to Landlord an irrevocable unconditional standby letter of credit in the initial amount of \$992,237.48 from a Bank and in the form required by Paragraph 3(e) of the Lease (the "Substitute Letter"). Simultaneously with the delivery of the Substitute Letter, Landlord will deliver to Tenant the existing letter of credit held by Landlord. The Substitute Letter shall be held by Landlord as security for Tenant's faithful performance of all of the terms, covenants, conditions, and obligations required to be performed by Tenant under the Lease. Tenant shall be permitted to reduce the amount of the Substitute Letter on August 31, 2015, by \$83,476.77, and by the amount of \$206,321.13 on August 31, 2016, August 31, 2017 and August 31, 2018, respectively, so long as no event of default by Tenant under the Lease then currently exists as of the relevant reduction date. Such reduction schedule shall be in lieu of, and not in addition to, the reduction schedule set forth in Paragraph 3(e) of the Lease. All other terms and conditions of Paragraph 3(e) applicable to the letter of credit shall apply to the Substitute Letter.

13. Tenant's Proposed Name Change. Landlord hereby acknowledges Tenant intends to change both its legal name and its trade name. Notwithstanding Paragraph 22(r) of the Lease to the contrary, upon providing Landlord written evidence of the change in its legal name and written evidence of the right to use a fictitious business name registered to Tenant, Tenant shall have the right occupy the Premises under its new legal name and/or a legally recognized fictitious business name. Tenant shall promptly inform Landlord of the legal name and/or legally recognized fictitious business name Tenant desires to have displayed on the directory board in the lobby of the Building

and on the Building standard signage in the elevator lobby and on Building standard signage on the door to the Premises and Landlord shall, at Landlord's sole cost and expense, install such new signage one time.

14. Brokers. Landlord hereby represents and warrants to Tenant that it has dealt with no broker, finder or similar person in connection with this First Amendment other than Colliers International ("Landlord's Broker"), and Tenant hereby represents and warrants to Landlord that it has dealt with no broker, finder or similar person in connection with this First Amendment, other than Cresa Partners ("Tenant's Broker"). Landlord shall pay any and all commissions payable to Landlord's Broker in connection with the execution of this First Amendment pursuant to a separate agreement. Landlord's Broker shall pay Tenant's Broker any commissions payable to Tenant's Broker pursuant to a separate agreement between Landlord's Broker and Tenant's Broker. Landlord and Tenant shall each defend, indemnify and hold the other harmless with respect to all claims, causes of action, liabilities, losses, costs and expenses (including without limitation attorneys' fees) arising from a breach of the foregoing representation and warranty.

15. Temporary Subleasing. Notwithstanding the provisions of Paragraphs 12(b) and (c) and (d) of the Lease, if Tenant desires to sublease all or a portion of Suite 400; provided such sublease term does not exceed eighteen (18) months to a proposed Transferee, then Tenant shall have a one-time opportunity to enter into such a sublease without application of Landlord's rights under Paragraph 12(b) of the Lease in connection with such sublease, including the right to recapture the proposed subleased space pursuant to Paragraph 12(b) of the Lease. All other terms of Paragraph 12 shall apply to such proposed sublease and Landlord's rights under Paragraph 12(b) shall apply to any other proposed sublease.

16. Prohibited Persons and Transactions. Landlord and Tenant (each a "Representing Party") represents to the other that neither Representing Party nor any of its subsidiaries or, to the knowledge of the Representing Party, any , affiliate or representative of the Representing Party is an individual or entity ("Person") currently the subject of any sanctions administered or enforced by the United States Department of Treasury's Office of Foreign Assets Control ("OFAC"), or other relevant sanctions authority (collectively, "Sanctions"), nor is the Representing Party located, organized or resident in a country or territory that is the subject of Sanctions; and the Representing Party represents and covenants that it has not knowingly engaged in, is not now knowingly engaged in, and shall not engage in, any dealings or transactions with any Person, or in any country or territory, that is the subject of Sanctions.

17. No Further Modifications. Except as otherwise set forth in this First Amendment, the terms and conditions of the Lease remain unchanged and in full force and effect.

18. Counterparts. This First Amendment may be executed in counterparts, each of which shall be deemed an original, and all of which when executed and delivered shall together constitute one and the same instrument.

19. Authority. Each party represents that the person executing this First Amendment for such party is acting on behalf of such party and is duly authorized to execute this First Amendment for such party.

20. Entire Agreement. This First Amendment, together with the Lease, constitute the entire and complete agreement of the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements, statements, promises, understandings, arrangements, and commitments.

[Signatures on following page.]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Lease as of the date first written above.

LANDLORD:

**CLPF-475 BRANNAN STREET L.P.,
a Delaware limited partnership**

By: CLPF - 475 BRANNAN STREET GP, LLC
Its general partner

By: Clarion Lion Properties Fund Holdings. L.P.,
Its sole member

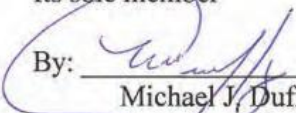
By: CLPF-Holdings, LLC,
Its general partner

By: Clarion Lion Properties Fund Holdings REIT, LLC,
Its sole member

By: Clarion Lion Properties Fund, LP,
Its managing member

By: Clarion Partners LPF GP, LLC,
Its general partner

By: Clarion Partners, LLC,
Its sole member

By: 
Michael J. Duffy
Authorized Signatory

Date: 5/4/15

TENANT:

**ELANCE-oDESK, INC.,
a Delaware corporation**


By: 
Name: Brian Levey
Title: Secretary

Exhibit "C-1"

Work Letter

This WORK LETTER (the "Agreement") is hereby made a part of that certain First Amendment to Lease (the "First Amendment") made and entered into by and between **CLPF-475 BRANNAN STREET, L.P., a Delaware limited partnership** ("Landlord") and **ELANCE-ODESK, INC., a Delaware corporation** ("Tenant"). All terms used herein which are defined in the Lease or any addendum or other Exhibits attached thereto shall have the same meanings herein as are ascribed to such terms in such documents. Landlord and Tenant hereby agree as follows with respect to the construction of initial improvements in Suite 430.

1. COMPLETION AND APPROVAL OF PLANS.

1.1 Space Plan. Tenant shall cause to be constructed at Tenant's cost and expense, except as otherwise specified in paragraph 2 below, improvements in Suite 430 (the "Suite 430 Improvements") in accordance with the preliminary plan prepared by Huntsman Architecture attached hereto as Exhibit "C-2". All wall coverings, woodwork (if any), paint, floor coverings, and other finishes of the Suite 430 Improvements shall be of building standard quality, as determined by Landlord ("Building Standard") from time to time for general tenant improvement work in the Project. Tenant acknowledges that Landlord has made no representation or warranty whatsoever concerning (i) the actual cost to design and construct the Suite 430 Improvements or (ii) the extent to which the actual cost or final configuration of the Suite 430 Improvements will be affected by the adoption of new federal, state, or local laws or the implementation of any regulations or building requirements under new or existing laws, including, without limitation, the Americans With Disabilities Act and any fire and life safety laws or regulations.

1.2 Final Plans. Tenant shall cause to be prepared such plans, drawings, and specifications (collectively, the "Plans") as may be necessary to obtain a building permit for construction of the Suite 430 Improvements. Upon completion thereof, the Plans shall be submitted to Landlord for approval. Landlord shall notify Tenant, in writing, within five (5) business days following receipt by Landlord of the Plans if Landlord disapproves of any portion thereof. Such disapproval shall be communicated with sufficient specificity to enable Tenant to revise the Plans in a manner acceptable to Landlord. If Landlord objects to any portion of the Plans, Tenant shall cause the same to be revised accordingly, and shall resubmit the revised Plans to Landlord for approval within five (5) business days of Tenant's receipt of Landlord's objections. Landlord shall have two (2) days to approve or disapprove of the revised Plans. The foregoing process shall continue until the Plans are approved by Landlord.

1.3 Requested Changes. If Tenant desires to make any changes to the final Plans following approval thereof, Tenant must obtain Landlord's prior written consent. All such requests for changes and consent shall be subject to the procedures set forth in paragraph 5 hereof.

2. COST OF IMPROVEMENTS.

2.1 Tenant's Cost; Allowance. Tenant shall bear all costs of designing and constructing the Suite 430 Improvements, except that Landlord shall provide a construction allowance (the "Allowance") to be applied to such costs in an amount not to exceed the lesser of (i) the cost of designing and constructing the Suite 430 Improvements as set forth in the Plans initially approved by Landlord, or (ii) Four Hundred Sixty Two Thousand and No/100s Dollars (\$462,000.00). Additionally, Landlord shall reimburse Tenant for its costs of preparing the Space Plan, pricing plans, and field surveys, costs of preparing the Plans and all working drawings, and costs of obtaining building permits, whether such costs were incurred prior to or after the Effective Date of the First Amendment, which reimbursement obligation shall be capped at Ninety Two Thousand Four Hundred and No/100s Dollars (\$92,400.00) ("the "Design Allowance"). The costs of constructing the Suite 430 Improvements shall include, without limitation costs of labor and materials used in such construction, Landlord's three percent (3%) construction management fee based upon hard costs of constructing the Suite 430 Improvements (which fee shall be capped at \$13,860.00), and all other costs of such construction including a conditional use permit (if required) and occupancy permits. No portion of the Allowance may be used for furniture, fixtures, or equipment, or for any non-permanent improvement to Suite 430.

2.2 Costs in Excess of the Allowance. Tenant shall pay all costs of designing the Suite 430 Improvements to the extent that the cost thereof exceeds the Design Allowance. Tenant shall pay all costs of constructing the Suite 430 Improvements to the extent that the cost thereof exceeds the Allowance.

2.3 Payment of Allowances. Landlord shall disburse the Design Allowance (after deducting Landlord's actual and reasonable design and review costs related to the Space Plan and the Plans paid to any unaffiliated third parties) and the Allowance (after deducting Landlord's 3% construction management fee) in accordance with the following terms and conditions. Upon completion of the Suite 430 Improvements, Tenant shall submit to Landlord written request for reimbursement for the cost of designing and constructing the Suite 430 Improvements. Such written request must detail work performed and materials supplied in performing the Suite 430 Improvements, all of which shall be subject to reasonable substantiation by Landlord, or an architect or other representative retained by Landlord. Except as provided below, payment for such costs shall be made to Tenant within thirty (30) days after Landlord's receipt of the written request and the following supporting materials: receipts evidencing payment of all amounts due and a sworn affidavit or lien waiver from each of Tenant's designers, contractors, subcontractors, workers, and suppliers stating that they have been paid in full for all work performed and materials and equipment supplied by them on Suite 430 ("Payment Request"). Should the cost to design the Suite 430 Improvements exceed the Design Allowance, Tenant shall be solely

responsible for the payment of such overage. Should the cost to construct the Suite 430 Improvements exceed the Allowance, Tenant shall be solely responsible for the payment of such overage. Should the cost to design the Suite 430 Improvements be less than the Design Allowance, Landlord shall have no obligation to pay or credit to Tenant any portion of such unused Design Allowance. Should the cost to construct the Suite 430 Improvements be less than the Allowance, Landlord shall have no obligation to pay or credit to Tenant any portion of such unused Allowance. Tenant shall submit the Payment Request to Landlord on the date (the "Payment Request Deadline Date") that is the later of (i) December 31, 2015, or (ii) the date that is the eight (8) month anniversary of the Suite 430 Expansion Date. Landlord shall have no obligation to disburse any portion of the Design Allowance or the Allowance for which a Payment Request has not been received by the Payment Request Deadline Date.

3. ACCEPTANCE OF SUITE 430. Tenant acknowledges and agrees that Landlord will be delivering Suite 430 in its "as-is" condition and Tenant acknowledges that neither Landlord, its asset manager, property manager, nor any employee or agent of said entities have made any representation or warranty with respect to the condition of Suite 430

4. CONTRACTORS; MATERIALS.

4.1 Approval Required. The Suite 430 Improvements shall be constructed by a general contractor selected by Tenant ("Contractor"), with Landlord reserving the right to approve such Contractor and all subcontractors, such approvals being in writing, and not unreasonably withheld. The Contractor and all subcontractors shall employ union laborers. Tenant shall not permit any other contractor or subcontractor to perform work in Suite 430 in connection with the Suite 430 Improvements without the express prior written consent of Landlord. Any such contractors approved by Landlord for the performance of any work in Suite 430 prior to occupancy by Tenant shall be subject to the supervision of Landlord's contractor.

4.2 Contractor Requirements. Tenant's contractors shall comply with all rules and regulations which Landlord may generally impose from time to time upon contractors and subcontractors in the building. Tenant shall require all contractors and subcontractors performing construction or alterations to Suite 430 to, prior to commencing any such work, furnish Landlord with original certificates of insurance evidencing that such contractors and subcontractors carry: (i) workers compensation insurance in such amounts as may be required by law; (ii) liability insurance (including owned and non-owned automobile liability) with limits of no less than \$1,000,000; (iii) employers' liability insurance with limits of at least \$1,000,000; and (iv) umbrella/excess liability insurance with limits of not less than \$4,000,000. All such liability policies shall (i) name Landlord, its asset manager and property manager as additional insureds; (ii) be primary to and non-contributory with any insurance policies carried by Landlord or such asset or property manager; and (iii) contain contractual liability and cross liability endorsements in favor of Landlord, its asset manager and property manager. Each such contractor shall agree in writing, prior to the commencement of any work, to indemnify, protect, defend, and hold Landlord, its asset manager and property manager harmless from and against any claims,

liability, damage, actions, losses, and costs (including attorneys' fees) arising out of such contractor's negligence, willful misconduct, or the performance of such contractor's work.

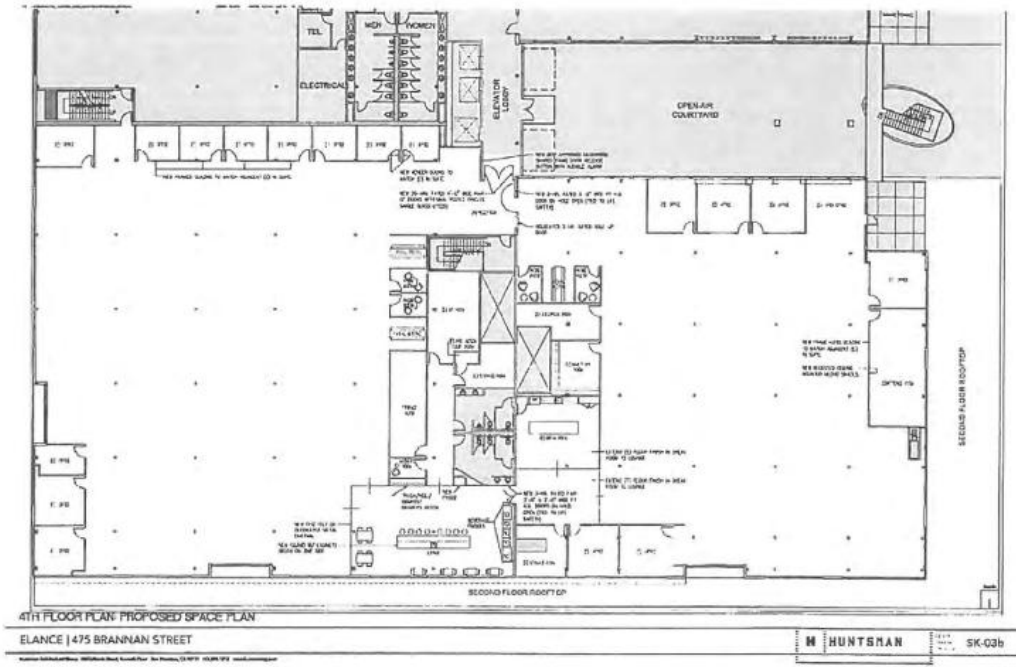
4.3 No Warranty. Landlord's supervision and/or approval of any contractor or any contractor's work shall not under any circumstances constitute a warranty or representation that such work was properly performed or designed or create any liability for payment for such work by Landlord. Rather, Tenant acknowledges that such supervision by Landlord, regardless of whether Landlord earns a fee for same, is for the sole benefit of Landlord and the property wherein Suite 430 is located.

5. EXTRA WORK.

5.1 In General. Except as expressly approved in writing by Landlord pursuant to the provisions of this paragraph 5, Tenant shall not revise the final Plans or any portion of the Suite 430 Improvements which have been constructed (all such revised work is hereinafter collectively referred to herein as "Extra Work"). Tenant may request Landlord, in writing, to approve any Extra Work desired by the Tenant.

5.2 Procedure. If any request by Tenant for Extra Work would require a change to the final Plans such revised Plans shall be performed by Tenant at Tenant's expense. Landlord shall respond in writing to any request by Tenant for the approval of Extra Work. Any approval of such request may, in Landlord's reasonable discretion, be conditioned upon any conditions which Landlord may find to be reasonable under the circumstances. If Tenant shall fail to meet any such conditions precedent to the performance of Extra Work within three (3) days, or such longer period of time if reasonably necessary to perform, provided that Tenant commences such effort to meet the condition within three (3) days, following Landlord's notice to Tenant of same, the proposed Extra Work shall be deemed disapproved by Landlord, and Tenant shall not be permitted to perform any portion thereof.

Exhibit "C-2" Space Plan



SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE ("Second Amendment"), dated as of the 7th day of September, 2018 ("Effective Date"), is between **CLPF-475 BRANNAN STREET, L.P., a Delaware limited partnership** ("Landlord") and **UPWORK INC., a Delaware corporation** ("Tenant").

RECITALS

A. Landlord and Tenant, formerly known as Elance-oDesk, Inc., entered into that certain Office Lease dated May 14, 2014 (the "Original Lease"), as amended by that certain First Amendment to Lease ("First Amendment") dated as of May 1, 2015 (collectively, the "Lease"), pursuant to which Landlord leased unto Tenant and Tenant leased from Landlord 32,387 rentable square feet of office space (the "Premises") located on the fourth floor of the building commonly known as 475 Brannan Street, San Francisco, California (the "Building"), as more particularly described in the Lease.

B. The Term of the Lease is to expire on June 30, 2019; however, Tenant desires to extend the Term of the Lease for an additional sixty-two (62) month period. Landlord agrees to so extend the Term of the Lease upon the terms and conditions outlined in this Second Amendment.

AGREEMENT

NOW, THEREFORE, for and in consideration of the facts mentioned above, the mutual promises set forth below and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties hereto do agree as follows:

- 1. Effective Date.** This Second Amendment shall be effective as of the Effective Date.
- 2. Capitalized Terms.** All capitalized terms used in this Second Amendment which are not defined herein shall have the meanings for such terms which are set forth in the Lease.
- 3. Term.** As of the Effective Date, the Term of the Lease shall be extended through 11:59 p.m. on August 31, 2024 ("Expiration Date"), unless sooner terminated pursuant to the terms of the Lease. The period from July 1, 2019 (the "Extension Commencement Date") through the Expiration Date, as extended hereby, is referred to herein as the "Extended Term."
- 4. Basic Monthly Rental.** During the Extended Term, Tenant shall pay to Landlord as Basic Monthly Rental for the Premises, without prior notice or demand, the amounts set forth in the following schedule:

<u>Period</u>	<u>Annual Rate P/S/F</u>	<u>Basic Monthly Rental</u>	<u>Monthly Abatement</u>	<u>Net Basic Monthly Rental</u>
7/1/19 – 8/31/19	\$90.00	\$242,902.50	\$242,902.50	\$ 0.00
9/1/19 – 6/30/20	\$90.00	\$242,902.50	\$ 0.00	\$242,902.50
7/1/20 – 6/30/21	\$92.70	\$250,189.57	\$ 0.00	\$250,189.57
7/1/21 – 6/30/22	\$95.48	\$257,692.55	\$ 0.00	\$257,692.55
7/1/22 – 6/30/23	\$98.35	\$265,438.45	\$ 0.00	\$265,438.45
7/1/23 – 6/30/24	\$101.30	\$273,400.25	\$ 0.00	\$273,400.25
7/1/24 – 8/31/24	\$104.33	\$281,577.97	\$ 0.00	\$281,577.97

5. Base Year. As of the Extension Commencement Date, Paragraph G of the Summary of Lease Terms attached to the Original Lease shall be deleted in its entirety and replaced with the following:

"G. Base Year: 2019
[Paragraph 1(a)]"

6. Tenant's Share of Operating Expenses and Real Property Taxes. Tenant shall continue to pay additional rent for the Premises under Paragraph 4 of the Original Lease (as amended by Paragraph 6 of the First Amendment); except that as of the Extension Commencement Date and for the duration of the Extended Term, (a) Tenant's Percentage Share for the Premises (as set forth in Paragraph F of the Summary of Lease Terms attached to the Original Lease and Paragraph 6 of the First Amendment) shall be deleted in their entirety and replaced with "13.25%",¹ and (b) Tenant shall pay to Landlord, as additional rent, Tenant's Percentage Share of (i) the amount, if any, by which Operating Expenses paid or incurred by Landlord in any calendar year subsequent to the 2019 calendar year exceed the amount of Operating Expenses allocable to the 2019 calendar year, and (ii) the amount, if any, by which Real Property Taxes paid or incurred by Landlord in any calendar year subsequent to the 2019 calendar year exceed the amount of Real Property Taxes allocable to the 2019 calendar year.

7. Condition of Premises.

a. General Conditions. Tenant acknowledges and agrees that Landlord has agreed to extend the Term of the Lease on the express condition that Tenant accepts the Premises in their as-is condition and that neither Landlord nor any representative of Landlord has made any representation or warranty with respect to the condition of the Premises, except as specifically set forth in the Lease. Should Tenant elect to perform any improvements to the Premises, such improvements shall be at Tenant's cost and shall be governed by Paragraph 8 of the Original Lease.

8. Security. Landlord and Tenant acknowledge that Landlord holds an irrevocable unconditional standby letter of credit in the amount of \$496,118.45 from a Bank and in the form

¹ This is intended only to consolidate the Tenant's Percentage Share (5.69% from the Original Lease and 7.56% for the Suite 430 space from the First Amendment).

required by Paragraph 3(e) of the Original Lease (the "Substitute Letter"). Notwithstanding anything in the First Amendment to the contrary, the parties agree that the Substitute Letter may be reduced by \$214,540.48 on August 31, 2018, such that the Substitute Letter shall be in an amount of not less than of \$281,577.97 during the Extended Term. All other terms and conditions of said Paragraph 3(e) applicable to the letter of credit shall continue to apply to the Substitute Letter.

9. Option to Extend. Tenant shall have the right to further extend the Term of the Lease pursuant to the Paragraph 2(e) of the Original Lease, provided that (a) each reference in the Lease to the "Extension Term" is hereby changed to "Second Extension Term" and (b) each reference in Paragraphs 2(e) and 2(f) of the Original Lease to the "Term" or "initial Term" are hereby changed to "Extension Term" and each reference to the "Extension Term" or "Extended Term" are hereby changed to the "Second Extension Term."

10. Right of First Notification.

(a) Landlord shall give Tenant a written notice (the "Availability Notice") from time to time when Landlord first determines that Other Space (as defined below) will become Available (as defined below). As used herein, "Other Space" means all leasable space contiguous to the Premises. As used herein, "Available" means that the space (i) is not part of the Premises, (ii) is not then subject to a lease, and (iii) is not, as of the Effective Date, subject to any rights of tenants to renew their lease or expand their premises as set forth in their lease.

(b) Landlord is only obligated to give an Availability Notice once as to any specific Other Space; provided that if Landlord leases any Other Space after Tenant has received an Availability Notice and that space again becomes Available after the expiration of that lease, then Landlord shall again give Tenant an Availability Notice with respect to that Other Space after that space again becomes Available.

(c) Tenant's rights and Landlord's obligations under this Paragraph 10 are expressly subject to and conditioned upon there not existing (i) an Event of Default by Tenant under the Lease, or (ii) a sublease of any portion of the Premises, at the time of delivery of an Availability Notice.

(d) It is understood and agreed that Tenant's rights under this Paragraph 10 are personal to Tenant, any Affiliate, or any transferee pursuant to an Approved Reorganization, as defined in Paragraphs 12(e) and 12(f) of the Original Lease, and not otherwise transferable. Except for the foregoing, in the event of any assignment of the Lease, this expansion right shall automatically terminate and shall thereafter be null and void.

11. Assignment. As of the Effective Date, Paragraph 12(g) of the Original Lease shall be deleted and replaced with the following:

"(g) A sale, transfer or assignment of a general partner's interest or any portion thereof in Tenant, if Tenant is a partnership, or a sale, transfer or assignment of fifty percent (50%) or more of the voting stock of Tenant if Tenant is a corporation, whether such sale, transfer or assignment occurs in a single transaction or a series of

transactions, shall be deemed a Transfer and require Landlord's consent in accordance with the procedures specified in Paragraph 12(c) above. Notwithstanding anything to the contrary in this Lease, as amended from time to time, an initial public offering of Tenant's stock shall not be deemed a Transfer. Further, if Tenant becomes a public company, the sale of Tenant's stock on a securities exchange registered with the U.S. Securities and Exchange Commission under Section 6 of the Securities Exchange Act of 1934 (or any successor law) shall not be deemed a Transfer."

12. Financial Statements. Notwithstanding anything to the contrary in Paragraph 22(d) of the Original Lease, in the event that Tenant becomes a public company, all such Financial Statements may be in the form of Tenant's annual report so long as Tenant is a publicly traded company.

13. Notices. Landlord's address stated in Paragraph B of the Summary of Lease Terms attached to the Original Lease shall be deleted and replaced with the following:

"Landlord's address for notices:
[Paragraph 22(j)]

c/o Clarion Partners, LLC
601 S. Figueroa Street, Suite 3600
Los Angeles, California 90017
Attention: Michael J. Duffy

With a copy to:

CBRE, Inc.
475 Brannan Street, Ste. 124
San Francisco, California 94107
Attention: Property Manager"

Tenant's address stated in Paragraph C of the Summary of Lease Terms attached to the Original Lease shall be deleted and replaced with the following:

"Tenant's address for notices:

Upwork Inc.
475 Brannan Street, Ste. 430
San Francisco, California 94107
Attention: Legal

With a copy to:

Upwork Inc.
441 Logue Ave
Mountain View, California 94043
Attention: Legal
With an electronic copy to:

legalnotices@upwork.com"

14. Brokers. Landlord hereby represents and warrants to Tenant that it has dealt with no broker, finder or similar person in connection with this Second Amendment other than Colliers International ("Landlord's Broker"), and Tenant hereby represents and warrants to Landlord that it has dealt with no broker, finder or similar person in connection with this Second Amendment, other than Cresa ("Tenant's Broker"). Landlord shall pay any and all commissions payable to Landlord's Broker in connection with the execution of this Second Amendment pursuant to a separate agreement. Landlord's Broker shall pay Tenant's Broker any commissions payable to Tenant's Broker pursuant to a separate agreement between Landlord's Broker and Tenant's Broker. Landlord and Tenant shall each defend, indemnify and hold the other harmless with respect to all claims, causes of action, liabilities, losses, costs and expenses (including without limitation attorneys' fees) arising from a breach of the foregoing representation and warranty.

15. Accessibility Disclosure. Pursuant to California Civil Code 1938, Landlord hereby advises Tenant that the Premises have **not** undergone inspection by a Certified Access Specialist and Tenant hereby acknowledges that the Premises have not been certified to meet all construction related accessibility standards pursuant to Civil Code Section 55.53. Pursuant to California Civil Code 1938(e): "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

16. Prohibited Persons and Transactions. Landlord and Tenant (each a "Representing Party") represents to the other that neither Representing Party nor any of its subsidiaries or, to the knowledge of the Representing Party, any affiliate or representative of the Representing Party is an individual or entity ("Person") currently the subject of any sanctions administered or enforced by the United States Department of Treasury's Office of Foreign Assets Control ("OFAC"), or other relevant sanctions authority (collectively, "Sanctions"), nor is the Representing Party located, organized or resident in a country or territory that is the subject of Sanctions; and the Representing Party represents and covenants that it has not knowingly engaged in, is not now knowingly engaged in, and shall not engage in, any dealings or transactions with any Person, or in any country or territory, that is the subject of Sanctions.

17. No Further Modifications. Except as otherwise set forth in this Second Amendment, the terms and conditions of the Lease remain unchanged and in full force and effect. In the event of any conflict between the terms of the Lease and the terms of this Second Amendment, the terms of this Second Amendment shall control. This Amendment shall be binding upon and inure to the benefit of Landlord, Tenant and their respective successors and permitted assigns.

18. Counterparts. This Second Amendment may be executed in counterparts, each of which shall be deemed an original, and all of which when executed and delivered shall together constitute one and the same instrument.

19. Authority. Each party represents that the person executing this Second Amendment for such party is acting on behalf of such party and is duly authorized to execute this Second Amendment for such party.

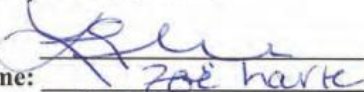
20. Entire Agreement. This Second Amendment, together with the Lease, constitute the entire and complete agreement of the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements, statements, promises, understandings, arrangements, and commitments.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to Lease as of the date first written above.

TENANT:

**UPWORK INC.,
a Delaware corporation**

By: 
Name: Zoe Harte
Title: SVP, HR

[Signatures continue on following page]

LANDLORD:

**CLPF-475 BRANNAN STREET L.P.,
a Delaware limited partnership**

By: CLPF - 475 BRANNAN STREET GP, LLC
Its general partner

By: Clarion Lion Properties Fund Holdings. L.P.,
Its sole member


By: CLPF-Holdings, LLC,
Its general partner

By: Clarion Lion Properties Fund Holdings REIT, LLC,
Its sole member

By: Clarion Lion Properties Fund, LP,
Its managing member

By: Clarion Partners LPF GP, LLC,
Its general partner

By: Clarion Partners, LLC,
Its sole member

By: 
Michael J. Duffy
Authorized Signatory

Date: 9/13/10

Subsidiaries of Upwork Inc.

<u>Name of Subsidiary</u>	<u>Jurisdiction</u>
Elance, Inc.	Delaware
Upwork Global Inc.	California
Upwork Talent Group Inc.	Delaware
Upwork Escrow Inc.	Delaware
Elance Limited	Ireland
UPW Holdco, Inc.	Delaware
Upwork Payments Inc.	Delaware

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-8 (Nos. 333-227684, 333-230140, 333-236839, and 333-253406) of Upwork Inc. of our report dated February 15, 2022 relating to the financial statements and the effectiveness of internal control over financial reporting, which appears in this Form 10-K.

/s/ PricewaterhouseCoopers LLP

San Jose, California

February 15, 2022

**CERTIFICATION PURSUANT TO RULE 13a-14(a) OR 15d-14(a) OF THE SECURITIES EXCHANGE ACT OF 1934, AS ADOPTED PURSUANT TO SECTION 302 OF
THE SARBANES-OXLEY ACT OF 2002**

I, Hayden Brown, certify that:

1. I have reviewed this Annual Report on Form 10-K of Upwork Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

- a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
- b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 15, 2022

/s/ Hayden Brown
Hayden Brown
Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION PURSUANT TO RULE 13a-14(a) OR 15d-14(a) OF THE SECURITIES EXCHANGE ACT OF 1934, AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Jeff McCombs, certify that:

1. I have reviewed this Annual Report on Form 10-K of Upwork Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

- a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
- b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 15, 2022

/s/ Jeff McCombs

Jeff McCombs

Chief Financial Officer

(Principal Financial and Accounting Officer)

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906
OF THE SARBANES-OXLEY ACT OF 2002**

I, Hayden Brown, Chief Executive Officer of Upwork Inc. (the "Company"), do hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

- the Annual Report on Form 10-K of the Company for the year ended December 31, 2021 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company for the periods presented therein.

Date: February 15, 2022

/s/ Hayden Brown

Hayden Brown

Chief Executive Officer

(Principal Executive Officer)

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906
OF THE SARBANES-OXLEY ACT OF 2002**

I, Jeff McCombs, Chief Financial Officer of Upwork Inc. (the "Company"), do hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

- the Annual Report on Form 10-K of the Company for the year ended December 31, 2021 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company for the periods presented therein.

Date: February 15, 2022

/s/ Jeff McCombs

Jeff McCombs

Chief Financial Officer

(Principal Financial and Accounting Officer)