

Talmix Talent Agreement

Last Updated: May 2020

TALMIX TALENT AGREEMENT This Talmix Talent Agreement (the “**Agreement**”) is a contract between you as Talent and Talmix (both as defined below).

Talmix is an online staffing platform which offers you as Talent the opportunity to offer your professional services to Talmix’s clients. .

Under this Agreement, Talmix provides services to you by sourcing of relevant opportunities to provide services to Talmix clients and functioning as the payment processor for you and Talmix clients. Before any services are provided to clients, a formal engagement agreement will be finalised between the relevant parties setting out details of the relevant services and applicable fees.

YOU UNDERSTAND THAT BY CHECKING THE BOX AND CLICKING THE “SUBMIT” BUTTON, YOU ARE AGREEING TO BE BOUND BY THIS AGREEMENT.

AGREED TERMS

1 DEFINITIONS AND INTERPRETATION

1.1 The definitions in this clause apply in this Agreement.

Brief: means a request for Talent issued by a Client to Talmix.

Capacity: as agent, consultant, director, employee, owner, partner, shareholder or in any other capacity.

Client(s): means a client (or clients) of Talmix.

Engagement: any services of any description to be undertaken by the Talent for a Client in response to a Brief.

Engagement Agreement: the agreement between a Client and the Talent for the provision of Engagement Services by the Talent to that Client in relation to a Brief and either being an Interim Engagement or a Permanent Engagement.

Engagement Services: the services provided by the Talent to a Client as set out in the relevant Engagement Agreement.

Engagement Term: means the term of any Engagement Agreement.

Force Majeure Event: means an event beyond either party’s reasonable control including but not limited to strikes, lock-outs or other industrial disputes, failure of a utility services or transport network, act of God, war, riot, civil commotion,

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malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

Insurance Policies: commercial general liability insurance cover, professional indemnity insurance cover, employer's liability insurance cover and public liability insurance cover.

Interim Engagement: where the Talent is engaged by the Client on a temporary basis, either by reference to a project, list of deliverables or time period. An Interim Engagement shall have a predefined end date.

Permanent Engagement: where the Talent is engaged by the Client for a permanent undefined period under a contract for services or employment contract.

Platform: the online platform developed and hosted by Talmix which is used to connect Clients with Talent.

Talent: an entity either in an individual capacity as an independent contractor or as a representative of a firm, introduced and supplied by Talmix to the Client to provide services to the Client. The Talent is not an employee of Talmix.

Talent Fee: the amount payable to the Talent in relation to any Engagement as specified in the relevant Engagement Agreement.

Talmix: the trading name of MBA & Company Consultancy Limited incorporated and registered in England and Wales with company number 6855749 whose registered office is at 9 Marshalsea Road, London, SE1 1EP.

Talmix Fee: the amount payable to Talmix by the Client in accordance with the Talmix Client Agreement.

Talmix Client Agreement: the Agreement between Talmix and a Client.

1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assignees.

1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.4 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.

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- 1.5 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
- 1.6 A reference to writing or written includes fax and e-mail.
- 1.7 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.8 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.9 Unless the context otherwise requires, a reference to the Talent includes a reference to any person working on the Engagement Services on behalf of the Talent in any Capacity.

2 USE OF THE PLATFORM BY THE TALENT

- 2.1 The Talent shall apply online to Talmix for access to the Platform and Talmix may, but is under no obligation to, allow the Talent to access the Platform, register their contact details and professional information and enter into correspondence with Clients with a view to provide Engagement Services to such Clients. Talmix reserves the right at its sole discretion to refuse access to the Platform to the Talent to the extent that the Talent provides insufficient, incomplete, or unsatisfactory registration or professional details. On admission to the Platform, the Talent is granted a limited, non-exclusive right to use the Platform solely for the purpose of connecting with Client's for the provision of Engagement Services.
- 2.2 Talmix shall connect the Talent with suitable Engagements on the Platform in response to a Brief and the Talent may make a proposal to the relevant Client in relation to an Engagement.
- 2.3 Once the Talent and Client have agreed the terms of an Engagement, the Talent shall enter into an Engagement Agreement with the Client using the Platform, or other medium.
- 2.4 The Talent shall not at any time agree, or entice any Client to agree, terms for the provision of Engagement Services to Clients outside of the Platform unless Talmix expressly agrees otherwise in writing.
- 2.5 The Talent shall notify Talmix immediately if a Client suggests agreeing for Engagement Services outside of the Platform and/or making payments in a way

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that circumvent Talmix's Fees for Engagements.

2.6 For the purpose of clause 8.1a) breach of clause 2.4 shall constitute a material breach and the Talent shall pay to Talmix, on demand or Talmix may deduct from any payment dues to the Talent, 25 per cent of the fees for the relevant Engagement Services (or other services provided by the Talent as the case may be) as liquidated damages. The parties confirm that this sum is reasonable and proportionate and represents a genuine pre-estimate of Talmix's loss in respect of the Talent's use of the Platform and the provision of the Engagement Services.

2.7 Whilst Talmix endeavours to make the Platform available to Talent, it does not guarantee that the Platform will be available at all times.

2.8 The Talent shall keep a secure password for the use of the Platform. The Talent shall not access, store, distribute or transmit any viruses on the Platform, or any material that is unlawful, harmful, threatening, defamatory, obscene or racially offensive or that facilitates any illegal activity and Talmix reserves the right, without liability or prejudice to the Talent, to disable the Talent's access to the Platform in the event that the Talent breaches this clause. The Talent shall not access or use the Platform for any purpose other than as set out in this Agreement and shall not access all or any part of the Platform in order to build a competing service.

3 PAYMENT OF THE TALENT FEE

3.1 Where applicable, the Talent Fee for the specific Engagement Services shall be agreed by the Client and the Talent and set out in the relevant Engagement Agreement, along with any pre-agreed expenses claimable by the Talent. All amounts shall be specified and paid in the currency stated in the Engagement Agreement, which will be in GBP, EUR or USD. The Talent shall notify Talmix of the Talent Fee and any amendment to the scope of the Engagement Services and applicable Talent Fee must be agreed by the Talent and Client in writing or via the Platform. Where the Talent Fee is charged on a periodical basis through an Interim Engagement, the Talent shall, on or before the end of an Engagement Term, prepare a summary of the Talent Fee for the Engagement and submit the Talent Fee to the Client.

3.2 The Talent shall submit an invoice to Talmix (including VAT where applicable) for the Talent Fee, along with copies of receipts for any claimable expenses at intervals specified in the Engagement Agreement.

3.3 Talmix shall charge the Client and the Client shall pay Talmix the Talent Fee together with Talmix's Fee in accordance with the terms of the Talmix Client

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Agreement and the Talent's invoice.

- 3.4 Save in respect of a dispute arising in accordance with clause 3.5, Talmix shall pay the Talent Fee to the Talent within 30 days of the receipt of the Talent's invoice provided that Talmix has received payment of the corresponding amount from the Client and approval of the Talent Fee.
- 3.5 If the Client objects to the claimed amount, Talmix shall inform the Talent as soon as is reasonably practicable and the Talent shall co-operate fully, in good faith and in a timely fashion with Talmix to enable Talmix to establish the work completed by the Talent in relation to the Engagement.
- 3.6 If the Talent receives payment for all or part of the Talent Fee and/or expenses directly from the Client, the Talent shall immediately notify Talmix giving full details of the amounts received. Such amounts shall be deemed to have been paid by Talmix to the Talent and shall be set-off against the amounts that would otherwise have been due by Talmix to the Talent under this Agreement.

4 STATUS

- 4.1 The relationship of the Talent to Talmix shall be that of independent contractor and nothing in this Agreement shall render them an employee, worker, agent or partner of Talmix and the Talent shall not hold themselves out as such.
- 4.2 This Agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Talent shall be fully responsible for and shall indemnify Talmix for and in respect of:
- a) any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Engagement Services, where the recovery is not prohibited by law. The Talent shall further indemnify Talmix against all costs, expenses and any penalty, fine or interest incurred or payable by Talmix in connection with or in consequence of any such liability, deduction, contribution, assessment or claim; and
 - b) any liability arising from any employment-related claim or any claim based on or related to worker status (including all costs, expenses, legal fees, and any penalty, fine or interest incurred or payable by Talmix in connection with or in consequence of any such liability, deduction, contribution, assessment or claim) brought by or on behalf of the Talent

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against Talmix arising out of or in connection with the provision of the Engagement Services, use of the Platform or otherwise.

4.3 Talmix may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the Talent.

5 DUTIES AND OBLIGATIONS OF THE TALENT

5.1 The Talent shall provide the Engagement Services that are approved by the Client and as set out in the Engagement Agreement.

5.2 During the Engagement Term, the Talent shall provide the Engagement Services with all due care, skill and ability and use their best endeavours to promote the interests of the Client. The Talent shall comply with all applicable laws in the provision of the Engagement Services, including any Client policies that are notified to the Talent by the Client.

5.3 If the Talent is unable to provide the Engagement Services due to illness or injury, the Talent shall advise the Client and Talmix of that fact as soon as reasonably practicable. For the avoidance of doubt, no Talent Fee shall be payable under clause 3 in respect of any period during which the Engagement Services are not provided unless otherwise stated in the Engagement Agreement.

5.4 During the Engagement Term, the Talent shall use reasonable endeavours to ensure that they are available at all times on reasonable notice to provide such assistance or information as the Client may require.

5.5 Unless specifically authorised to do so by the Client in writing, the Talent shall not:

a) have any authority to incur any expenditure in the name of or for the account of the Client; or

b) hold themselves out as having authority to bind the Client.

6 OTHER ACTIVITIES

Nothing in this Agreement shall prevent the Talent from being engaged, concerned or having any financial interest in any Capacity in any other business, trade, profession or occupation during the Engagement Term provided that:

a) such activity does not cause a breach of any of the Talent's obligations under this Agreement or any Engagement Agreement; or

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- b) such activity does not relate to a business which is similar to or in any way competitive with the business of the Client or of Talmix without the prior written consent of the Client or Talmix (as the case may be).

7 TERM

7.1 This Agreement shall commence on the date of the Talent's application to access the Platform, and shall continue until either party gives to the other party one week written notice to terminate, such notice to expire on or after the end of any ongoing Engagement Term.

7.2 Notwithstanding clause 7.1 either party may terminate this Agreement with immediate effect in accordance with clause 8.

8 DEFAULT AND EARLY TERMINATION

8.1 Without affecting any other right or remedy available to it, Talmix may terminate this Agreement with immediate effect (and with no liability to make any further payment to the Talent other than in respect of amounts accrued before the termination date) by giving written notice to the Talent if:

- a) the Talent commits a material breach of any term of this Agreement and (if such a breach is remediable) fails to remedy that breach within 14 days of receipt of notice in writing to do so;
- b) the Talent repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with having the intention or ability to give effect the terms of this Agreement;
- c) the Talent, being an individual, is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed);
- d) the Talent is in the reasonable opinion of Talmix or the relevant Client negligent or incompetent in the performance of the Engagement Services;
- e) the Talent makes any arrangement with or for the benefit of its creditors, has a liquidator, receiver, administrator, administrative receiver, manager, trustee or similar officer appointed over any of its assets, ceases, or threatens to cease, to carry on business, or (being an individual) is the subject of a bankruptcy petition or order, or any event occurs, or proceeding is taken, with respect to the Talent in any part of the world that

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has an effect equivalent or similar to any of the events mentioned in this paragraph (e); or

- f) the Talent commits any fraud or dishonesty or acts in any manner which in the opinion of Talmix brings, or is likely to bring, the Talent or Talmix or a Client into disrepute or is materially adverse to the interests of Talmix or a Client.

8.2 The rights of Talmix under clause 8.1 are without prejudice to any other rights that it might have at law to terminate this Agreement or to accept any breach of this Agreement on the part of the Talent as having brought the agreement to an end. Any delay by Talmix in exercising its rights to terminate shall not constitute a waiver of these rights.

9 OBLIGATIONS AND EFFECT OF TERMINATION

9.1 On the termination of this Agreement or any Engagement Agreement:

9.1.1 the Talent's licence to the Platform shall immediately terminate and the Talent shall cease use of the Platform;

9.1.2 the Talent shall immediately deliver to the Client all Client property or Client confidential information in its possession or control and where requested shall sign a statement that it has complied fully with the obligations under this clause.

9.2 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect.

9.3 Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.

10 ANNOUNCEMENTS

Neither party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

11 DATA PROTECTION

Talmix will collect and process information relating to the Talent in accordance

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with its privacy notice.

12 CONFIDENTIAL INFORMATION, INSIDER INFORMATION AND INTELLECTUAL PROPERTY

12.1 The Talent acknowledges that through the provision of Engagement Services and access to the Platform, it may have access to confidential information of the Client or Talmix. In addition to any provisions outlined in the Engagement Agreement, the Talent acknowledges and agrees that it shall not at any time use or disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of Talmix or a Client, or use such information for any purpose other than for the purpose of its obligations under this Agreement or any applicable Engagement Agreement. This restriction does not apply to:

a) any use or disclosure authorised by a Client or Talmix or required by law;

b) any information which is already in, or comes into, the public domain otherwise through the Talent's unauthorised disclosure.

12.2 The Talent acknowledges that unless otherwise specified in an Engagement Agreement, any and all intellectual property generated by the Talent in the course of providing the Engagement Services during an Engagement shall automatically on creation belong to the relevant Client.

13 WARRANTIES

13.1 The Talent warrants and represents that all information that it gives or has given to Talmix in connection with this Agreement, including without limitation in respect of their identity, personal details, qualifications, training and experience, is true, accurate and complete.

13.2 The Talent agrees to update and keep updated Talmix and the Client if there is any change to the information provided in accordance with clause 13.1.

14 TALENT'S LIABILITY

The Talent shall have personal liability and shall indemnify Talmix in respect of all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Talmix arising out of or in connection with any breach of the terms of this Agreement by the Talent, including any negligent or reckless act, omission or default in the provision of the Engagement Services for a Client and shall accordingly maintain

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in force during the terms of this Agreement full and comprehensive Insurance Policies.

15 LIMITATION OF LIABILITY

15.1 Nothing in this Agreement shall limit or exclude Talmix's liability for:

- a) death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
- b) fraud or fraudulent misrepresentation; and
- c) any other liability which cannot be limited or excluded by applicable law.

15.2 Talmix shall have no liability to the Talent whatsoever in respect of any Engagement other than for the payment of any Talent Fee received from Clients under this Agreement, and the Talent agrees that its sole course of action in connection with any Engagement (other than in respect of the payment of Talent Fees received from Clients under this Agreement) shall be against the relevant Client.

15.3 Talmix gives no warranties whatsoever in relation to any Client, Engagement or the Platform and shall have no liability to the Talent in respect of any acts or omissions of any Client or the employees, officers or agents of any Client. Talmix does not guarantee that the use of the Platform will result in Engagements and has no obligation to provide the Talent with any connection to Clients other than in accordance with this Agreement.

16 ENGAGEMENT AND OTHER DEALINGS

Neither party shall assign, transfer, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed, provided that Talmix shall have the right to assign this Agreement to a subsidiary, holding or parent company (and any of their subsidiaries) of Talmix on prior written notice to the Talent.

17 NO PARTNERSHIP OR AGENCY

17.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute any party the agent of the other party, or authorise any party to make or enter into any commitments for or on behalf of the other party.

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17.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

18 ENTIRE AGREEMENT

18.1 This Agreement constitutes the entire agreement between the parties in respect of the subject matter and any Engagements and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

18.2 Where the Talent has signed both an online contract and a physical contract, the terms of the physical contract shall prevail.

19 INSURANCE

The Talent shall maintain at its sole expense adequate Insurance Policies covering the performance of the Engagement Services by the Talent.

20 VARIATION

No variation of this Agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties.

21 THIRD PARTIES

21.1 The terms of this Agreement including but not limited to clause 12 and clause 13 are enforceable against a person acting on behalf of the Talent in any Capacity.

21.2 Except as expressly provided in clause 21.1, no person other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of the terms of this Agreement.

22 ASSIGNMENT AND OTHER DEALINGS

22.1 The Talent shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

22.2 Talmix may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this Agreement.

23 SEVERANCE

23.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to

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or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

23.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

24 FORCE MAJEURE

Neither party shall be liable to the other party as a result of any delay or failure to perform its obligations under this Agreement as a result of a Force Majeure Event.

25 GOVERNING LAW AND JURISDICTION

25.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non- contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

25.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

26 COUNTERPARTS

This Agreement may be signed in duplicate, each of which, when signed, shall be original, and all the duplicates together shall constitute the same agreement. Faxed or scanned signatures shall be as effective as original signatures.