

## TALMIX CONSULTANT AGREEMENT

Last Updated: September 2016

### BACKGROUND

- A. The Independent Consultant (defined below) is exceptionally qualified and experienced in their field.
- B. Talmix (defined below) has developed relationships with Clients who may require Project Services from the Independent Consultant.
- C. Talmix is an online platform where the Independent Consultant and Clients have the ability to connect with each other with a view to agree terms for the provision of Project Services.
- D. This agreement sets out the terms on which Talmix agrees to facilitate the connection of the Independent Consultant to Clients (together referred to as the “parties”) through the Independent Consultant’s application available on the Platform.
- E. Talmix’s liability is limited as set out in clause 16.
- F. The Independent Consultant and Client are responsible for agreeing and entering into terms as between them.

### AGREED TERMS

#### 1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply to this agreement.

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

**Client(s):** means a client (or clients) of TALMIX’S.

**Fee Note:** as defined in clause 3.2.

**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, 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.

**Independent Consultant:** the person who enters into this agreement.

**Independent Consultant Fee:** the amount payable by the Client to the Independent Consultant in relation to any Project as specified in the relevant Project Agreement.

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

**Talmix:** means 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’s Commission:** the fee payable to Talmix by the Client in accordance with the Talmix Service Agreement.

**Talmix’s Service Agreement:** the agreement between Talmix and a Client.

**Platform:** the online platform developed and hosted by Talmix.

**Project:** an assignment to be undertaken by the Independent Consultant for a Client.

**Project Agreement:** the agreement between a Client and the Independent Consultant for the provision of the Project Services by the Independent Consultant to that Client.

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**Project Services:** the consulting services provided by the Independent Consultant to a Client as set out in the relevant Project Agreement.

**Project Term:** means the term of any Project Agreement.

- 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 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules. References to clauses and Schedules are to the clauses and Schedules of this agreement.
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 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.
- 1.6 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.
- 1.7 A reference to **writing** or **written** includes fax and e-mail.
- 1.8 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.9 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.

- 1.10 Unless the context otherwise requires, a reference to the Independent Consultant includes a reference to a person working on the Project Services on behalf of the Independent Consultant in any Capacity.

## 2. USE OF THE PLATFORM BY THE INDEPENDENT CONSULTANT

- 2.1 The Independent Consultant shall apply online to Talmix for access to the Platform and Talmix may, but is under no obligation to, allow the Independent Consultant to access the Platform, register their contact details and professional information and enter into correspondence with Clients with a view to provide Project Services to such Clients.
- 2.2 Talmix shall connect the Independent Consultant with Projects on the Platform and the Independent Consultant may make a proposal to the relevant Client in relation to a Project.
- 2.3 Once the Independent Consultant and Client have agreed the terms of a Project on the Platform, the Independent Consultant or Talmix shall generate a Project Agreement using the Platform which is to be signed by both parties.
- 2.4 The Independent Consultant shall not agree, or entice any Client to agree, terms for the provision of Project Services to Clients outside of the Platform unless Talmix agrees otherwise in writing.
- 2.5 The Independent Consultant shall notify Talmix immediately if a Client suggests agreeing for Project Services outside of the Platform and/or making payments in a way that circumvent Talmix's Commission for Projects.
- 2.6 For the purpose of clause 9.1(a), a breach of clause 2.4 shall constitute a material breach and the Independent Consultant shall

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pay to Talmix on demand or Talmix may deduct from any payment dues to the Independent Consultant 25 per cent of the Independent Consultant Fee for the relevant Project Services as liquidated damages. The parties confirm that this sum represents a genuine pre-estimate of Talmix's loss.

### 3. PAYMENT OF THE INDEPENDENT CONSULTANT FEE

- 3.1 The Independent Consultant Fee may be fixed or periodical and is agreed by the Client and the Independent Consultant. The Independent Consultant and the Client shall use the Platform for all material negotiations prior to agreeing the terms of the Project Agreement.
- 3.2 Where the Independent Consultant Fee is charged on a periodical basis, the Independent Consultant shall on or before the end of a Project Term prepare a summary of the total time and Independent Consultant Fee (**Fee Note**) for the Project and submit the Fee Note to the Client via the Platform. The Fee Note shall reflect the terms agreed in the Project Agreement. Any amendment to the scope of the Project Agreement must be agreed by the Independent Consultant and Client in writing or via the Platform.
- 3.3 Talmix shall charge the Client and the Client shall pay Talmix the Independent Consultant Fee together with Talmix's Commission in accordance with the Talmix Service Agreement.
- 3.4 The Independent Consultant shall submit an invoice to Talmix (including VAT where applicable) for the Independent Consultant Fee together with the Fee Note.
- 3.5 Save in respect of a dispute arising in accordance with clause 3.6, Talmix shall pay the Independent Consultant Fee to the

Independent Consultant within 30 days of the receipt of the invoice provided that Talmix has received:

- (a) payment of the corresponding amount; and
- (b) approval of the Fee Note,

from the Client prior to the expiry of the 30-day period.

- 3.6 If the Client objects to the claimed time as set out in the Fee Note, Talmix shall inform the Independent Consultant as soon as is reasonably practicable and the Independent Consultant shall cooperate fully, in good faith and in a timely fashion with Talmix to enable Talmix to establish the number of hours, days, weeks or months completed by the Independent Consultant in relation to the Project.
- 3.7 If the Independent Consultant receives payment for all or part of the Independent Consultant Fee directly from the Client, the Independent Consultant shall immediately notify Talmix giving full details of the amounts received. Such amounts shall be deemed to have been paid by Talmix to the Independent Consultant and shall be set-off against the amounts that would otherwise have been due by Talmix to the Independent Consultant under this agreement.
- 3.8 Payment will be made in either GBP, EUR or USD as set out in the Project Agreement.

### 4. EXPENSES

- 4.1 If the Project Agreement provides for the reimbursement of expenses to the Independent Consultant, Talmix shall pay such expenses to the Independent Consultant within 30 days of the receipt of the invoice provided that Talmix has received:

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(a) payment of the corresponding amount; and

(b) approval of the Fee Note,

from the Client prior to the expiry of the 30-day period.

4.2 If the Client pays any expenses directly to the Independent Consultant, the Independent Consultant shall immediately notify Talmix giving details of the amounts paid and such payments shall be deemed to have been paid by Talmix and shall be set-off against the payments for expenses that would otherwise have been owed by Talmix to the Independent Consultant under this agreement.

### 5. STATUS

5.1 The relationship of the Independent Consultant 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 Independent Consultant shall not hold themselves out as such.

5.2 This agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Independent Consultant 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 Project Services, where the recovery is not prohibited by law. The Independent Consultant 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 Independent Consultant against Talmix arising out of or in connection with the provision of the Project Services.

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

### 6. DUTIES AND OBLIGATIONS FOR THE INDEPENDENT CONSULTANT

6.1 The Independent Consultant shall provide the Project Services that are approved by the Client and as set out in the Project Agreement.

6.2 During the Project Term, the Independent Consultant shall provide the Project Services with all due care, skill and ability and use their best endeavours to promote the interests of the Client.

6.3 If the Independent Consultant is unable to provide the Project Services due to illness or injury, the Independent Consultant shall advise the Client of that fact as soon as reasonably practicable. For the avoidance of doubt, no Independent Consultant Fee shall be payable under clause 3 in respect of any period during which the Project Services are not provided.

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- 6.4 During the Project Term, the Independent Consultant 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.
- 6.5 Unless they have been specifically authorised to do so by the Client in writing, the Independent Consultant 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.

### 7. OTHER ACTIVITIES

Nothing in this agreement shall prevent the Independent Consultant from being engaged, concerned or having any financial interest in any Capacity in any other business, trade, profession or occupation during the Project Term provided that:

- (a) such activity does not cause a breach of any of the Independent Consultant's obligations under this agreement; or
- (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).

### 8. TERM

- 8.1 This agreement shall commence on the date of the Independent Consultant'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 Project Term.

- 8.2 Notwithstanding clause 8.1 either party may terminate this agreement with immediate effect in accordance with clause 9.

### 9. DEFAULT AND EARLY TERMINATION

- 9.1 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 Independent Consultant other than in respect of amounts accrued before the termination date) by giving written notice to the Independent Consultant if:

- (a) The Independent Consultant 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 Independent Consultant 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 it having the intention or ability to give effect the terms of this agreement;
- (c) The Independent Consultant, 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);

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- (d) The Independent Consultant is in the reasonable opinion of Talmix or the relevant Client negligent or incompetent in the performance of the Project Services;
- (e) The Independent Consultant makes any arrangement with or for the benefit of his 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 Independent Consultant in any part of the world that has an effect equivalent or similar to any of the events mentioned in this paragraph (e); or
- (f) The Independent Consultant commits any fraud or dishonesty or acts in any manner which in the opinion of Talmix brings or is likely to bring the Independent Consultant or Talmix or a Client into disrepute or is materially adverse to the interests of Talmix or a Client.

9.2 The rights of Talmix under clause 9.1 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 Consultant 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.

### 10. EFFECT OF TERMINATION

10.1 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.

10.2 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.

### 11. 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.

### 12. DATA PROTECTION

12.1 The Independent Consultant consents to Talmix holding and processing data relating to them for legal, personnel, administrative and management purposes and in particular to the processing of any "sensitive personal data" (as defined in the Data Protection Act 1998) relating to the Independent Consultant.

12.2 The Independent Consultant consents to Talmix making such information available to Clients and potential Clients, to those who provide products or services to Talmix (such as advisers), regulatory authorities, governmental or quasi-governmental organisations and to potential purchasers of Talmix or any part of its businesses.

12.3 The Independent Consultant consents to the transfer of such information to Talmix's business contacts outside the European Economic Area in order to further its business interests.

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- 12.4 To the extent that any data or information held or disclosed by either party is personal data within the meaning of the Data Protection Act 1998 or equivalent legislation in the territory where the Independent Consultant is located, each party agrees that:
- (a) it will process such data and information only in accordance with the other party's instructions; and
  - (b) it will take such technical and organisational measures against unauthorised or unlawful processing of such data and information and against accidental loss or destruction of, or damage to, such data and information as are appropriate to the other party as data controller.

### 13. CONFIDENTIAL INFORMATION, INSIDER INFORMATION AND INTELLECTUAL PROPERTY

- 13.1 Either party undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 13.2.
- 13.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 13.2; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- 13.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under this agreement.
- 13.4 The Independent Consultant acknowledges that during the course of a Project Term they may have access to: a) confidential information of the Client. The Independent Consultant agrees to enter into and adhere to confidentiality provisions contained in the relevant Project Agreement; and b) inside information about the Client or the Client's business contacts. Inside information is broadly defined as: specific and precise information, not made public, likely to have a significant effect on any securities (stocks & shares for example) if it were to be made public and relating to particular securities. The Independent Consultant shall not use or disclose to any person either during or at any time after a Project Term any inside information which may come to their knowledge in the course of providing the Project Services. It is an offence under Section 52 of the Criminal Justice Act 1993 to deal in securities when in possession of inside information or have inside information and encourage another person to deal.
- 13.5 The Independent Consultant acknowledges that any and all intellectual property generated by the Independent Consultant in the course of providing the Project Services during a Project Term belongs to the relevant Client in accordance with the provisions of the relevant Project Agreement.

### 14. WARRANTIES

- 14.1 The Independent Consultant 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 the their

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identity, personal details, qualifications, training and experience, is true, accurate and complete.

- 14.2 The Independent Consultant agrees to update and keep updated Talmix and the Client if there is any change to the information provided in accordance with clause 14.1.

### 15. INDEPENDENT CONSULTANT'S LIABILITY

The Independent Consultant agrees to fully 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: a) breach of clause 13; or b) breach of the warranties set out in clause 14.

### 16. LIMITATION OF LIABILITIES

- 16.1 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.
- 16.2 Talmix shall have no liability to the Independent Consultant whatsoever in respect of any Project other than for the payment of any Independent Consultant Fee received from Clients under this agreement, and the Independent Consultant agrees that its sole course of action in connection with any Project (other than in

respect of the payment of Independent Consultant Fees received from Clients under this agreement) shall be against the relevant Client.

- 16.3 Talmix gives no warranties whatsoever in relation to any Client, Project or the Platform and shall have no liability to the Independent Consultant in respect of any acts of omissions of any Client or the employees, officers or agents of any Client. Talmix has no obligation to provide the Independent Consultant with any connection to Client or Projects other than in accordance with this agreement.

### 17. PROJECT 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 being 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 Independent Consultant.

### 18. NO PARTNERSHIP OR AGENCY

- 18.1 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.
- 18.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.



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### 19. ENTIRE AGREEMENT

- 19.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 19.2 Where the Independent Consultant has signed both an online contract and a physical contract, the terms of the physical contract shall prevail.

### 20. INSURANCE

The Independent Consultant shall maintain at its sole expense adequate Insurance Policies covering the performance of the Project Services by the Independent Consultant.

### 21. 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.

### 22. THIRD PARTIES

- 22.1 The terms of this agreement including but not limited to clause 13 and clause 14 are enforceable against a person acting on behalf of the Independent Consultant in any Capacity.
- 22.2 Except as expressly provided in clause 22.1, 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.

### 23. ASSIGNMENT AND OTHER DEALINGS

- 23.1 The Independent Consultant 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.
- 23.2 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.

### 24. SEVERANCE

- 24.1 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 or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- 24.2 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.

### 25. 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.

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### 26. GOVERNING LAW AND JURISDICTION

26.1 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.

26.2 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).

### 27. 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.

This agreement has been entered into on the date stated at the beginning of it.

