



## SOURCED TALENT MATCHING AGREEMENT

### AWS MARKETPLACE

This Sourced Talent Matching Agreement (“**Agreement**”) is by and between you, the entity acknowledging and agreeing to the terms of this Agreement (“**you**” or “**Client**”) and **Toptal, LLC**, a Delaware limited liability company, with a mailing address at 2810 N. Church St. #36879, Wilmington, DE 19802-4447 (“**Toptal**”).

In consideration of the mutual covenants, terms, and conditions set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the above-named parties agree as follows:

By accepting this Agreement, you acknowledge that you have read, understood, and agree to be bound by the terms and conditions herein. You further acknowledge that this Agreement, including any agreed TOP or SOW (defined below), is a contract between you and Toptal, even if it is electronic and is not physically signed by you and Toptal, and that the terms and conditions of this Agreement govern your receipt of the Service (defined below) and Toptal’s provision thereof. You represent that you have the authority to contractually bind the company, business, or other legal entity (“**Client Entity**”) on whose behalf you are accepting this Agreement, in which case, for clarification, the terms “**you**” or “**your**” or “**Client**” refer to such Client Entity. If you do not have such authority to contractually bind such client entity to this Agreement, or if you do not agree with the terms and conditions of this Agreement, you must not accept this Agreement, and you may not receive the Service.

#### **1. Service; Trial Period; Work and TOPs; Client Cooperation.**

1.1. **Service.** Toptal is a company that matches its clients with select freelancers and provides other outcome-based project work. More specifically, Toptal curates and operates a proprietary network of select independent contractors (individually and collectively, “**Talent**”). Toptal matches and sources such Talent to its clients on a time and materials, staff augmentation basis, or on a project-based, fixed fee basis. Client agrees that Toptal will find and match Talent in Toptal’s talent network using commercially reasonable efforts and make such Talent available to Client, facilitate payments between Client and Talent, and facilitate (if requested by Client) with on boarding or related administrative tasks in connection with a Talent engagement (the “**Service**”). If Client further sources any Talent sourced under this Agreement to any of Client’s end clients (each an “**End Client**”) or has such Talent work for or with such End Client, then the additional terms in **Exhibit A** will apply and be incorporated into this Agreement. If Client utilizes the Toptal-provided self-service platform, Marketplace, then the terms in **Exhibit B** (the “**Addendum**”) will apply and be incorporated into this Agreement, and for any conflicts with the Agreement, the Addendum will control.

1.2. **Work and TOPs.** Toptal will provide its Service (consisting of the matching and sourcing of the Talent as described above, or as otherwise agreed to by the parties) to Client in accordance with a statement of work or Talent Outline Plan (each, a “**TOP**”). All executed TOPs will be incorporated into this Agreement. Each TOP will provide a brief description of the work to be provided to Client by Talent (“**Work**”), as well as the TOP start date, the fees for the Work, the applicable Trial Period (as described below), and other relevant material information.

1.3. **Trial Period; Replacement Talent.** Client will have the benefit of a trial period (“**Trial Period**”) for the initial engagement of an individual Talent with Client provided under this Agreement. The length of the Trial Period will be five (5) business days unless otherwise agreed in a TOP. Client will be the sole judge of the performance, suitability, and capability of any Talent sourced to Client under this Agreement and may request the replacement of any Talent for any lawful reason if such Talent does not, in Client’s discretion, meet Client’s requirements. If Client is not satisfied with a Talent’s Work, and communicates the same in writing to Toptal during the Trial Period, then Toptal will not invoice Client for such Talent’s Work during the Trial Period and will, as Client’s sole remedy, provide Client with another Talent for an additional Trial Period. Client will describe in writing to Toptal the reasons for Client’s dissatisfaction with such Talent to enable Toptal to promptly source an acceptable replacement Talent. If Client does not provide Toptal with such timely written notice, the Talent will be deemed acceptable and Toptal will invoice Client for such Talent’s Work, including the Trial Period. If at any time Client requests that a Talent be replaced, or if a Talent becomes unavailable, then Toptal will, as its sole obligation and Client’s exclusive remedy, use commercially reasonable efforts to replace such Talent from among available Talent in Toptal’s talent network who are acceptable to Client. Such replacement Talent will be subject to a Trial Period if it is Talent’s initial engagement with Client under this Agreement.

1.4. **Client Cooperation.** Client understands that the performance of all Work by Talent depends in significant part on Client’s actions. Talent will report directly to the designee of Client (“**Client Contact**”). Such Client Contact will provide such Talent with necessary information, assistance, specifications, and requirements for such Talent’s Work and will establish

the Client's expectations pursuant to reasonable and lawful instructions. The Client Contact will be responsible for setting, reviewing, and monitoring the project schedule, work schedules, code and/or other tangible results created by Talent and provided to Client under this Agreement ("**Work Output**"), and all other aspects of Talent's Work under a TOP and coordinating the same directly with the Talent. Talent will otherwise be responsible for the method, manner, and means of performing the Work. Client acknowledges and agrees that Toptal will not oversee Talent or the performance of Talent's Work and will not control or direct Talent. Accordingly, Client agrees that Toptal will not be in a position to – and expressly does not – warrant or guarantee the quantity, quality, or timeliness of the Work or that any Talent will meet any deadline established or desired by Client.

1.5. **No Paid Time Off.** Client will not be liable to pay for any vacation time or other personal days off that the Talent and Client agree Talent can take, provided that Client must notify Toptal in writing to enable proper invoicing for actual Talent time worked/not worked.

## **2. Fees; Billing.**

2.1. **Invoices; Payment Terms.** Client will submit payment to Toptal via the Amazon Web Services ("AWS") Marketplace and will be responsible to pay the fees as captured in the TOP or SOW, plus a convenience fee as determined by AWS. Depending on the Service, Toptal may submit a payment request to Client as agreed upon, or such amount may be included as part of Client's AWS bill for the applicable month in which the fees are incurred or if the charges are incurred after the monthly bill is generated then the charges will appear on the next AWS monthly bill. Client also agrees to pay all pre-approved (by Client), actual and reasonable travel, lodging, and other out-of-pocket expenses incurred in connection with the Service or the Work.

2.2. **Methods of Payment; Late Payments.** Amounts past due more than thirty (30) days will incur interest at a rate of 1.5% per month from the date they became due and payable. In the event of any action by Toptal to collect any unpaid, undisputed (in good faith) past due amounts, Client will reimburse Toptal's costs of collection, including attorneys' fees and arbitration or court costs.

3. **Limited Cooling Off Period for Introduced Talent.** Client agrees that Toptal would be considerably harmed if Toptal were to invest its time, energy, and resources to recruit, screen and curate its talent network and introduce its Talent to Client only for Client and Talent to circumvent Toptal and enter into a direct or indirect arrangement outside of Toptal. Therefore, Client agrees that it will not, directly itself or indirectly through others, encourage or solicit to hire, or otherwise hire or engage for the performance of services (except via Toptal under this Agreement) those individual Talent who Client is introduced to by or through Toptal in connection with this Agreement (i) during the period of time of such Talent's Work for Client under this Agreement and twelve (12) months

thereafter; or (ii) if Client elects not to engage such introduced Talent under or in connection with this Agreement, then within twelve (12) months of the date such Talent is first introduced by Toptal to Client (the relevant time period under (i) or (ii) with respect to such individual Talent, the "**Cooling Off Period**"). For the avoidance of doubt, this restriction is not a general non-solicitation provision and will not apply to Toptal's entire talent network but is narrowly tailored in scope and duration to apply to those individual Talent that are introduced to Client by or through Toptal. Client further agrees that during the applicable Cooling Off Period, it will not refer Talent to subsidiaries, parent companies, partnerships, holding companies, affiliated entities, or investors related to Client in any form without processing such request through Toptal's regular client intake processes. Client also agrees that it will not try to circumvent Toptal by inducing any such Talent to refer, provide names, or recruit other individuals or entities to work for, or provide services to, Client or any third parties (except via Toptal) nor will Client cooperate with any efforts of such Talent to do the same. For the further avoidance of doubt, any Cooling Off Period(s) applicable to any individual Talent(s) will survive termination of this Agreement until the expiry of such respective Cooling Off Period(s), if any.

## **4. Client Option to Buyout Toptal and Hire Talent Outside of Toptal.**

4.1. During the term of a TOP or Cooling Off Period applicable to a particular Talent, Client may elect to directly or indirectly engage or employ Talent outside of Toptal subject to: (a) Client's prior written notice to Toptal; (b) the right for Toptal to arrange for a reasonable wind-down period for the affected Talent; and (c) full payment by Client of the Buyout Fee (defined below). A wind-down period may be thirty (30) days but may be reasonably adjusted by Toptal based on such Talent's commitments to Toptal, or, if any, commitments to other Toptal clients.

4.2. With respect to each Client-Hired Talent, Toptal will invoice, and Client will pay Toptal a buyout fee of Fifty Thousand United States Dollars (USD \$50,000) within thirty (30) days of hiring or engaging such Talent outside of Toptal ("**Buyout Fee**").

4.3. As used herein, "**Client-Hired Talent**" means a Talent who: (1) is introduced to Client by Toptal and/or the Talent provides Work to Client, and (2) is hired or engaged directly by Client, or is engaged indirectly by Client via others, to provide services to Client outside of Toptal, during the Cooling Off Period applicable to such Talent.

4.4. For the avoidance of doubt, no Buyout Fee will be payable or owed in respect of an individual Talent following the expiration of the applicable Cooling Off Period for such Talent.

## **5. Termination.**

5.1. **Material Breach.** If there is a material breach of this Agreement or a particular TOP by a party, the other party may terminate this Agreement in its entirety or

the affected TOP(s) by giving the breaching party written notice and a ten (10) business day cure period.

5.2. **For Convenience.** Each party also may terminate this Agreement or a TOP at any time, with or without cause, upon ten (10) business days' prior written notice to the other party.

5.3. **Survival.** Sections 2, 3, 4, 5, 6.2, 6.3, 7, 8 and 9 will survive termination of this Agreement.

5.4. **Payment of Amounts Due or Accrued.** Upon termination of this Agreement or a TOP, Client will pay Toptal all amounts due or accrued under the Agreement or such TOP, as the case may be, as of the effective date of such termination.

## **6. Warranties & Disclaimer.**

6.1. **General.** Toptal represents and warrants that each Talent has been qualified under Toptal's proprietary talent screening system. Toptal and Client hereby represent and warrant that they each have full power, right, and authority to enter into this Agreement and to carry out its obligations.

6.2. **Not a Technology Development Contract.** Client acknowledges that this is not a technology development contract. Client is solely responsible for the development of Client's technology and products, including Talent's Work and Work Output that may be incorporated therein. Client agrees that it will provide Talent with all applicable Client processes, policies, and resources necessary for Talent's Work. Client is solely responsible for acquiring all rights and licenses to any software, code, tools, information, documentation, or other materials and intellectual property that Client acquires from third parties (excluding Talent) necessary for the Talent to complete the Work. **Except as stated in Sections 6 and 7, Client assumes all risks with respect to Client's technology and products, including all Work, Work Output and materials incorporated therein.**

6.3. **Except as provided in Section 6.1, Toptal makes no representation or warranty of any kind, express or implied, with respect to its Service, or Talent's Work and Work Output, arising from or relating to this Agreement. Toptal disclaims any other representations and warranties, including any implied warranties of merchantability, fitness for a particular purpose, non-infringement, and any representations or warranties arising from course of dealing, course of performance, or usage of trade.**

6.4. **Sanctions Status and OFAC Compliance.** The parties each represent and warrant that they are not, and to the knowledge of such party, none of such party's respective directors, officers, managers, members, or employees, or those of any of such party's subsidiaries, as the case may be, is a person who (a) is directly or indirectly owned or controlled by any person currently included on the List of Specially Designated Nationals (SDN) and Blocked Persons or the Foreign Sanctions Evaders List maintained by the United States Treasury Department's Office of Foreign

Asset Control (OFAC), or (b) is directly or indirectly owned or controlled by any person who is located, organized, or resident in a country or territory that is, or whose government currently is, the target of countrywide or territorial sanctions imposed by any United States government sanctions authority.

6.5. **Anti-Bribery.** The parties each represent and warrant that neither party, nor any of their respective directors, officers, managers, members, or employees, or to such party's knowledge, agents or any persons acting on such party's behalf, has directly or indirectly made any bribes or other payments in the form of cash, gifts, or otherwise, or taken any other action in violation of the U.S. Foreign Corrupt Practices Act or other applicable anti-bribery or anti-corruption laws.

## **7. IP Ownership & Licenses.**

7.1. **Assignment of Inventions; Client Ownership Rights.** Except for the licensed rights described in Section 7.2, Toptal assigns to Client all right, title, and interest owned by and vested in Toptal or the Talent, in and to all Work Output provided to Client together with all intellectual property rights Toptal or the Talent has (including, to the extent applicable, patents, copyrights, trade secrets, and moral rights). Toptal will reasonably assist Client, at Client's request and expense, to further evidence, record, perfect, and maintain, any rights assigned hereunder.

7.2. **Grant of License Rights to Client.** In addition to the provisions of Section 7.1, if intellectual property of Toptal or Talent is reasonably necessary to use Work Output, Toptal grants to Client a non-exclusive, royalty-free, perpetual, irrevocable, sublicensable, worldwide right and license to fully exercise and exploit Toptal's or Talent's intellectual property and to make derivative works of the same solely for the use of the Work Output obtained from the Talent.

## **8. Confidentiality.**

8.1. **Protection of Proprietary Information.** All business, technical or financial information disclosed by a party to the other party under this Agreement will be the "Proprietary Information" of the disclosing party. All Work Output provided by Talent to Client under this Agreement is the Proprietary Information of Client. The Proprietary Information of Toptal includes the names, contact information, Toptal's screening and selection criteria for, rates and particular skills of each Talent in Toptal's network. Each party will hold in confidence and not disclose or, except in performing its obligations under this Agreement, use any Proprietary Information of the disclosing party. Nothing, however, prohibits Toptal from reusing the know-how accumulated while providing the Service, or that Talent may retain providing the Work in their unaided memories, for Toptal's business including to provide services to Toptal's other clients. Memory is considered unaided with respect if a person (1) has not memorized any Proprietary Information to intentionally evade the confidentiality obligations contemplated by this Section; and (2) does not incorporate any

Proprietary Information of Client for the purpose of such reuse.

**8.2. Customary Exclusions.** Proprietary Information does not include any information the receiving party can document: (a) is or becomes generally available to the public without restriction through no fault of the receiving party; (b) was in the receiving party's possession or known by it without restriction prior to receipt from the disclosing party; (c) was rightfully disclosed to the receiving party by a third party without restriction; or (d) was independently developed by the receiving party without use or reference to any Proprietary Information. The receiving party may make disclosures required by law or court order if the receiving party provides (to the extent permitted by applicable law) the disclosing party with prompt, advance written notice of disclosure and an opportunity to limit or prevent disclosure.

**8.3. Return of Proprietary Information.** As requested by the disclosing party, the receiving party will (and Toptal will use commercially reasonable efforts to cause Talent to) promptly return to the disclosing party (or, at disclosing party's election, destroy) all Proprietary Information of the other party (including furnishing Work Output to Client, provided Client has paid Toptal all undisputed, in good faith, fees due). Despite the foregoing, the receiving party is not required to destroy any Proprietary Information stored in a party's backup/disaster recovery systems or required to be retained to comply with applicable law or regulatory requirements. All such retained information will be subject to the terms of this Section 8 for as long as such information is held by the receiving party.

## **9. General.**

**9.1. Publicity.** Toptal may refer to Client on Toptal's website or other marketing material which displays customers of Toptal, or may use Client as a reference; provided, however, that Client may decline or revoke this permission, by emailing [optout@toptal.com](mailto:optout@toptal.com). Toptal will cease such publicity on its website within ten (10) business days of its receipt of such opt-out notice. The parties may issue a public statement relating to this Agreement at any time following the first successful Trial Period upon each party's reasonable prior review and written consent.

**9.2. Relationship of Parties; Taxes.** Toptal is an independent contractor of Client and the parties are not authorized to and will not attempt to bind the other party. Client acknowledges that the Talent to be sourced to it under this Agreement are independent contractors and not employees of Toptal. Toptal is only responsible to remit the fees and compensation payable to the Talent and payment of Toptal's income taxes in connection with this Agreement. Client is responsible for all other taxes and assessments, if any, in respect of this Agreement or any Work or Work Output, including, without limitation, any sales, value-added, use or similar taxes, duties, or levies. Client will pay the full invoice amount and will not withhold

therefrom any amount based on any tax, duty, levy, or assessments.

**9.3. Choice of Law; Dispute Resolution; Venue.** This Agreement is made under, and will be governed, construed, and enforced in accordance with, the laws of the State of New York, USA, without giving effect to principles of choice or conflicts of law that would result in the application of the laws of any other jurisdiction. To the maximum extent permitted by law, any dispute, claim, or controversy arising out of or relating to this Agreement, including the negotiation, breach, termination, enforcement, interpretation, or validity thereof, or the scope or applicability of this agreement to arbitrate, will be submitted to Judicial Arbitration and Mediation Services, Inc. ("JAMS") for binding arbitration in New York, New York, USA by a single arbitrator. The arbitrator will be selected by JAMS in an impartial manner determined by it. The language of the arbitration will be English. Any arbitration conducted pursuant to the terms of this Agreement will be governed by the Federal Arbitration Act (FAA) (9 U.S.C. §1 et seq.) and will be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules (or in accordance with the JAMS International Arbitration Rules if Client, as reflected in the information about Client included above in this Agreement, is an entity organized under the laws of a jurisdiction outside the USA and has a principal place of business outside the USA, or is an individual with a permanent residence outside of the USA). The arbitrator will have complete authority to render any and all relief, legal and equitable, appropriate under the FAA or New York law. This arbitration provision will not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. Without limiting the foregoing and in furtherance thereof, judgment on an arbitration award may be entered in any court of competent jurisdiction. If any matter arising under or related to this Agreement, including its negotiation, breach, termination, enforcement, interpretation, or validity, or the scope or applicability of this agreement to arbitrate, is not arbitrable as a matter of applicable law (or if a party attempts to assert a claim in court against the other party over any matter arising under or relating to this Agreement), then the federal or state courts sitting in New York, New York USA will have exclusive jurisdiction. The parties hereby submit to the exclusive jurisdiction of such federal or state court and irrevocably waive any claim of inconvenient forum. **The parties hereby irrevocably waive any right to trial by jury.**

## **9.4. No Consequential Damages; Limitations of Liability.**

**9.4.1. No Consequential Damages.** NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS OR THE LIKE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, SUCH PARTY'S PERFORMANCE HEREUNDER, THE USE OR

INABILITY TO USE ANY SERVICE, WORK, OR WORK OUTPUT, OR ANY INTERRUPTION OR DISRUPTION OF OR BY ANY OF THE FOREGOING, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE CAUSE OF ACTION (WHETHER IN CONTRACT, TORT, BREACH OF WARRANTY OR OTHERWISE).

9.4.2. Limitation of Liability. NOTWITHSTANDING ANY OTHER PROVISION IN OR MADE A PART OF THIS AGREEMENT, AND EXCEPT ONLY WITH RESPECT TO LIABILITIES THAT MAY NOT BE LIMITED OR EXCLUDED AS A MATTER OF APPLICABLE STATUTORY OR CASE LAW, THE AGGREGATE LIABILITY OF EACH PARTY WITH REGARD TO OR ARISING UNDER THIS AGREEMENT WILL IN NO EVENT EXCEED THE FEES PAID BY CLIENT TO TOPTAL UNDER THIS AGREEMENT DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH SUCH CLAIM FIRST ARISES; PROVIDED THAT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 9.4.2. WILL NOT BE CONSTRUED OR INTERPRETED TO LIMIT CLIENT'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT.

9.4.3. Indemnification. Client agrees to indemnify, defend and hold harmless Toptal and Toptal's affiliates and each of their respective officers, managers, members, employees and agents for and against all claims, actions, damages, and liabilities, including reasonable attorneys' fees, taxes and fines, arising out of or relating to any actual or alleged (a) infringement or misappropriation of a third party's intellectual property, data privacy, or other rights, (b) violation of applicable law, and (c) gross negligence, willful misconduct, or fraud, by you, your affiliates or End Clients in connection with this Agreement.

9.5. Limitations on Assignment. Neither party will have the right to assign this Agreement to another party without the other party's written consent, except that either party may, upon written notice to the other party (and without the other party's consent), assign this Agreement in its entirety to a parent company, any subsidiary of a parent company, or an affiliate in a common control group in connection with a corporate reorganization, entity conversion, acquisition, merger, or sale of or substantially all of its assets; provided that such assignee agrees in writing to be bound by the terms and conditions of this Agreement.

9.6. No Third-Party Beneficiaries. This Agreement is solely intended for the benefit of the parties hereto and their respective successors and permitted

assignees and is not intended to benefit, and may not be enforced by, any other entity or person, including, without limitation, any Talent or End Client, as the case may be.

9.7. Complete Agreement; Amendments. This Agreement, inclusive of all TOPs, constitutes the entire understanding between the parties regarding the subject matter of this Agreement. This Agreement will take precedence over any TOP unless and solely to the extent that the parties state in such TOP that they intend to override a specific term of this Agreement. No waiver, change to, or amendment of this Agreement or a TOP will be effective unless it is in writing and signed by the parties.

9.8. Notices. Any notices to Toptal in connection with this Agreement will be made by email transmitted to [legal@toptal.com](mailto:legal@toptal.com), with a copy via nationally recognized carrier to: "Attn: Contract Administration" at Toptal's address above. Notices to Client will be made by email or nationally recognized carrier to the Client's address set forth above (or such other address subsequently requested by Client to be associated with Client's account) and will be deemed to have been given when sent by Toptal to the email or delivered by such nationally recognized carrier at the mailing address associated with Client's account.

9.9. Negotiation and Drafting. Each party has had the opportunity to review and negotiate this Agreement. Neither party will be deemed the drafter of this Agreement for the purposes of interpreting any ambiguity in this Agreement. The section and subsection headings used in this Agreement are for convenience only and will not be used in interpreting this Agreement.

9.10. Severability. If any provision of this Agreement is determined to be illegal or unenforceable, that provision will be first revised to give the maximum permissible effect to its original intent or, if such revision is not permitted under applicable law or decisional case law, that specific provision will be eliminated so that this Agreement will otherwise remain in full force and effect and enforceable.

9.11. Authority to Bind. The parties warrant that the individuals signing this Agreement in their representative capacity have the authority, and are duly authorized, to execute this Agreement on behalf of the party for which they are signing and to bind such party.



## Exhibit A

### End Client Terms

In accordance with Section 1.1 of the Agreement, these additional terms and conditions ("**End Client Terms**") will only apply if Client further sources any Talent sourced under this Agreement to any End Client or has such Talent work for or with such End Client.

1. **General Application.** Client acknowledges and agrees that these End Client Terms supplement the terms and conditions in the main body of the Agreement and do not replace, limit, or diminish any of Client's obligations therein.
2. **Cooling Off Period and Buyout.** Client will be responsible for any violation by End Client of the terms in Section 3 (Limited Cooling Off Period for Introduced Talent) and Section 4 (Client Option to Buyout Toptal and Hire Talent Outside of Toptal) of the Agreement, including, without limitation, for payment of any Buyout Fee(s) resulting from End Client directly or indirectly engaging or employing Client-Hired Talent.
3. **Representations.** Client represents, warrants and agrees that (i) End Client will not further source Talent, whether to another entity, individual, organization or otherwise, and End Client will only engage Talent to provide services for End Client's internal business purposes, and (ii) Client has obtained substantially similar representations as are set forth in Sections 6.4 and 6.5 of the Agreement from each End Client to whom any Talent is sourced through Client.
4. **Confidentiality.** Client may disclose to End Client only that portion of the Proprietary Information of Toptal required to be disclosed solely for purposes of Client receiving the Services and/or End Client receiving the Work, provided that End Client is bound by a written agreement with confidentiality and use restrictions at least as stringent as those set forth in the Agreement and applicable to End Client's receipt and use of such Proprietary Information.
5. **Indemnification.** CLIENT WILL INDEMNIFY, DEFEND AND HOLD HARMLESS TOPTAL AND ITS MEMBERS, MANAGERS, EMPLOYEES, AGENTS AND REPRESENTATIVES FROM AND AGAINST ANY END CLIENT CLAIMS AND DAMAGES ARISING, DIRECTLY OR INDIRECTLY, FROM THIS AGREEMENT, THE SERVICE, THE WORK AND/OR TALENT. THE LIMITATIONS OF LIABILITY SET FORTH IN SECTION 9.4.2. OF THE AGREEMENT WILL NOT BE CONSTRUED OR INTERPRETED TO LIMIT CLIENT'S FOREGOING INDEMNIFICATION OBLIGATION.



## Exhibit B

### Toptal Marketplace Addendum

The additional terms and conditions will only apply when Client utilizes Toptal Marketplace, a self-service platform provided by Toptal which allows clients to connect and engage directly with one or more Marketplace Talent (the "**Marketplace Service**").

1. **General Application.** This Exhibit B, Toptal Marketplace Addendum ("**Addendum**"), including the replacement of the definition of Service, will apply to Client's use of Toptal Marketplace. This Addendum modifies the Sourced Talent Matching Agreement currently in place between Client and Toptal (the "**Agreement**"), to which this **Exhibit B** is or will become an attachment. Client and Toptal acknowledge and agree that, as permitted by and in accordance with the Agreement, this Addendum is intended to modify specific terms in the Agreement solely for the Marketplace Service. Section numbers referenced in this Addendum refer to Toptal's standard agreement and therefore such Section references may vary in a particular Client Agreement. Client and Toptal acknowledge and agree that any such variance shall not affect the parties' intent to modify the specific term(s).

2. **Definitions.** The terms in this Addendum, including in this Section, will have the definitions given herein for purposes of the Marketplace Service and this Addendum. Terms used herein and not otherwise defined, will have the definitions given them in the Agreement.

"**Buyout Fee**" is defined as the amount set forth in the platform for a particular Marketplace Talent.

"**Marketplace Service**" (also defined above) is a self-service platform provided by Toptal which allows clients to connect and engage directly with one or more Marketplace Talent. Accordingly, Toptal will **not** assist Client in finding and matching a Marketplace Talent nor facilitate Client on-boarding or related administrative tasks in connection with any Marketplace Talent engagement. However, Toptal will facilitate payments between Client and Marketplace Talent. All references to Service in the Agreement will be replaced by "Marketplace Service."

"**Marketplace Talent**" is defined as a freelancer available through Toptal's Marketplace who has successfully completed Toptal's identity verification screening, English language assessment and minimum skills-based requirements of the Marketplace screening system. Notwithstanding the foregoing, Marketplace Talent may not have been assessed or qualified under other additional aspects of Toptal's proprietary screening system applicable to Toptal Talent, and, accordingly, **Toptal makes no representation or warranty that any Marketplace Talent has been so qualified or screened, including without limitation, the representation in Section 6.1 (General) of the Agreement.** All references to Talent in the Agreement will be replaced by "Marketplace Talent."

3. **Engagement Details.** Notwithstanding anything to the contrary in Section 1.2 (Work and TOPs), or any other section of the Agreement relating to executing a TOP, the details of each Marketplace Talent engagement will be available to and agreed by Client electronically on the platform. Client acknowledges that any agreement to engagement terms on the platform (including electronic acceptance of engagement details) forms a contract between Client and Toptal, even if it is electronic and is not physically signed by Client, and that only individuals with signing authority for Client will agree to such terms of engagement on the platform.

4. **No Trial Period or Replacement Talent.** There will be no Trial Period for any Marketplace Talent, and no obligation for Toptal to, and Toptal will not, replace any Marketplace Talent for any reason, including without limitation, if Client is not satisfied with the selected Marketplace Talent or the Marketplace Talent becomes unavailable. Accordingly, Section 1.3 (Trial Period; Replacement Talent) of the Agreement, or any other section of the Agreement relating to Trial Period or replacement of Talent, will not apply to the Marketplace Service.

5. **Change in Buyout Fee.** The Buyout Fee set forth in Section 4.2, or any other section of the Agreement, will be replaced in its entirety and substituted with, in lieu thereof, the Buyout Fee amount agreed in the platform.

6. **Liability Disclaimer and Client Indemnification.** TOPTAL HAS NO LIABILITY FOR (AND WILL NOT MEDIATE OR OTHERWISE ASSIST WITH RESOLVING) ANY DISAGREEMENT, DISPUTE, CLAIM, OR CONTROVERSY THAT MAY ARISE BY AND BETWEEN CLIENT AND ANY MARKETPLACE TALENT, INCLUDING, WITHOUT LIMITATION, AS IT RELATES TO ANY PAYMENTS, WORK OR WORK OUTPUT. CLIENT WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS TOPTAL, ITS AFFILIATES AND THEIR RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS, MEMBERS, MANAGERS, CONTRACTORS, AGENTS, SUCCESSORS OR ASSIGNS FROM AND AGAINST ANY AND ALL LIABILITIES, LOSSES, DEMANDS, DAMAGES, FEES, INCLUDING ATTORNEYS' FEES, EXPENSES, COSTS OF

DEFENSE, AND/OR OTHER AMOUNTS RELATING TO OR ARISING FROM ANY SUCH DISAGREEMENT, DISPUTE, CLAIM OR CONTROVERSY BETWEEN OR AMONG CLIENT AND ANY MARKETPLACE TALENT. THE OBLIGATIONS IN THIS SECTION TO INDEMNIFY TOPTAL SHALL BE EXCLUDED FROM ANY LIMITATION OF LIABILITY IN THE AGREEMENT THAT WOULD OTHERWISE SERVE TO LIMIT OR CAP CLIENT'S INDEMNIFICATION OBLIGATIONS, INCLUDING, WITHOUT LIMITATION SECTION 9.4.2 (LIMITATION OF LIABILITY), AND SUCH INDEMNITY SHALL SURVIVE THE TERMINATION OF THE AGREEMENT.