

[[XYZ letterhead]]

[form of executive search agreement]

[date]

[client]

[address]

[city/state/zip]

Attention: [name, title]

Dear [Mr./Ms.][name]:

Thank you for deciding to retain [\_\_\_\_\_] (“XYZ”), a nonprofit focused on [\_\_\_\_\_] , for executive search services. This letter (“Agreement”) describes our understandings about those services and our working relationship. It refers to your organization as “you” or “[Client]” and to XYZ as “we” or “XYZ.”

## **1. Executive Search Services**

### **1.1 Scope**

We will perform executive search and related services (“Services”) for you as described in the Statement of Work (“SOW”) attached as Exhibit A.

### **1.2 Communication**

We will communicate with you as frequently as necessary to ensure the search remains on track and is meeting your expectations. Should you have not hired a candidate within [six] months of the date of this Agreement, we will schedule a meeting with you to review the specifications for the position, search approach, and organizational context.

### **1.3 Cooperation**

You acknowledge that the efficiency and duration of an executive search engagement depends in large part on your readiness for an executive transition, the quality of the information you provide, and the availability of stakeholders for interviews, discussion, and decision-making. To that end, you will cooperate with XYZ in the performance by us of Services, including, without limitation, (i) providing us with timely access to organizational information and personnel, and ensuring the accuracy and completeness of the information you provide to us; (ii) establishing and maintaining the timeline by scheduling and keeping interview and meeting appointments; (iii) advising XYZ of any issues or information that could affect the success of the position; and (iv) maintaining confidentiality of candidate names and other information and of XYZ’s search processes.

### **1.4 Compensation**

Payment for the Services and reimbursements for expenses will be due as set forth in the SOW. Unless otherwise provided in the SOW, payment will be due within 30 days of receipt of invoice. [Interest of 1% per month will be due on any late payment from the due date until the amount is paid.] [We reserve the right to suspend the Services until your account balance is current.]

### **1.5 Replacement**

We work hard to present you with the best candidates for the position, but we understandably cannot guarantee the performance of the candidate you ultimately select. We can, however, in many circumstances help you if the candidate leaves the position. First, should the executive you hire leave within 12 months after his or her date of hire, XYZ, without charge, will work

with you for up to six months to fill the position through networking, candidate screening, and other assistance as may be appropriate. As you understand, we are not obligated to provide such assistance if circumstances at the time of departure are markedly changed from the time of hire, such as your moving the location of the organization, making a significant change in mission or scope, or entering into a merger or other significant strategic or organizational change. In addition, we are not so obligated if you have made misrepresentations to us or the candidate, or there emerges a significant organizational issue, such as a financial or legal issue, not disclosed to the candidate. Second, if the separation is a result of involuntary termination, we may provide such assistance only if you have maintained regular contact with us and given us an opportunity to help resolve any issues.

#### **[1.6 Hiring a Candidate for a Different Position**

If, during the search or during the one-year period following its completion or termination, you hire as an employee any candidate we present to you for any position other than the position that is the subject of the search, you will pay us a fee equal to \_\_\_% of the first year's compensation for the person in the new position. You agree to notify us upon any such hiring of a candidate and of the related compensation amount. Your payment will be due within 30 days of receipt of invoice from us.]

#### **[1.7 Hiring a Candidate After the End of the Search**

Should you cancel or terminate the search without hiring a candidate we presented or identified to you, but then within one year from cancellation hire someone we presented or identified for the position outlined in this Agreement, you agree to notify us upon any such hiring of the candidate, and we will bill you the fees as outlined in the SOW less any amounts you already paid prior to cancellation. Your payment will be due within 30 days of receipt of invoice from us.]

## **2. Confidentiality and Work Product**

### **2.1 Confidential Information**

We will use your Confidential Information (defined below) only in connection with our activities under this Agreement and will keep it confidential, using at least the same degree of care we use to prevent the unauthorized use or disclosure of our own confidential information. We may disclose Confidential Information only to potential candidates or other persons who need access to the information for the purposes contemplated by this Agreement, or as otherwise required by law. All Confidential Information furnished by you is and shall remain your property. "Confidential Information" means all information furnished to XYZ by you that is expressly marked or otherwise designated by you as "Confidential." It does not include information that is generally available to the public, information already known by us before entering into this Agreement, or information we independently develop. You consent to Confidential Information being provided to candidates for the position.

### **2.2 Work Product**

XYZ in performing Services may furnish you with reports, plans, or other written materials specifically prepared for you (the "Work Product"). Subject to the terms of this Agreement, you will own all such tangible Work Product. You acknowledge that we own and retain all right, title, and interest in and to any and all proprietary know-how and methodologies we use in creating the Work Product or in otherwise providing Services.

## **3. Relationship**

### **3.1 Independent Contractor**

XYZ is an independent contractor and is solely responsible for performing all of the Services. We will provide our own equipment and materials. We have sole responsibility for all tax returns and payments required by any federal, state, or local tax authority in connection with our performance of the Services and receipt of fees under this Agreement. We understand

that you will not withhold income, social security, or obtain workers' compensation insurance on our behalf. The arrangements contemplated by this Agreement do not create a partnership, joint venture, employment, fiduciary, or similar relationship for any purpose. Neither you nor we have the power or authority to bind or obligate the other to a third party or commitment in any manner.

### **3.2 Nature of Services**

For clarity, we have not been engaged to, and will not, perform management functions or make management decisions on your behalf, and we have no responsibility for your decisions or actions. You are responsible for making your own evaluations and decisions regarding our recommendations, and the final selection of a candidate is your responsibility.

### **3.3 Acknowledgement of XYZ's Multiple Clients**

XYZ serves multiple clients. You acknowledge the possibility and agree that we may have served, may currently be serving, or may in the future serve other organizations whose interests may be adverse to yours, including parties with whom you (i) compete for funding or other revenue sources and (ii) have a current or potential programming or commercial relationship. We of course will respect our confidentiality obligations to you in carrying out those assignments.

### **3.4 Publicity**

You agree that, subject to Section 2 of this Agreement, we may in our discretion identify you as a client in internal and external communications, including on our website and in our outreach materials.

### **[3.5 Limitation of Liability**

Neither you nor XYZ will be liable to the other for any incidental, special, consequential, exemplary, punitive, or indirect damages arising out of or otherwise related to this Agreement, even if the other party has been apprised of the likelihood of such damages, including any consequential or other damages arising from termination or resignation of the selected candidate. As noted, XYZ is confident in its process but understandably cannot guarantee the successful performance of any candidate or any specific financial or operating outcomes after a hire, and XYZ is not responsible for the decisions made by the hired candidate. [Our work in seeking to replace the candidate as contemplated by Section 1.5 will be the extent of our obligation with respect to a candidate who resigns or whom you terminate.] [In any case, XYZ's total liability in respect of an engagement will not exceed that which you have paid us in fees under this Agreement, except that no such limitation will apply in respect of liabilities involving the gross negligence, willful misconduct, or fraud of XYZ.] ]

## **4. Term and Termination**

### **4.1 Term**

This Agreement has a term of 12 months. Should you not have hired a candidate during that period, we will review the assignment with you in detail and, if both parties mutually agree, we will continue the search upon determination of appropriate adjustments in the specification, search approach, and additional fees as may be set out in a Change Order.

### **4.2 Canceling the Search**

You may cancel the search and this Agreement at any time for any reason by giving 30 days written notice to us. In addition, you and we may each terminate this Agreement upon a material breach by the other; such a termination will be effective 5 days after giving written notice to the other party. We reserve the right to suspend the Services until your account balance is current.

### **4.3 Effect of Termination**

Termination of the Agreement will have these consequences: (i) we will terminate search

activities and so advise potential candidates as appropriate and (ii) upon your written request, we will return to you or destroy all copies of written Confidential Information furnished to us. Prior payments of fees to XYZ are not refundable under any circumstance. We will invoice you for expenses not yet reimbursed, and you will pay us within 30 days after receipt of invoice. Sections 1.6, 1.7, 2, 3.4, 3.5, 4.3, and 5 will survive any termination of this Agreement.

**5. General Provisions**

**5.1 Entire Agreement; Amendment**

This Agreement represents the final and exclusive agreement between you and us regarding our provision of Services to you. This Agreement may be changed only as described in a written document signed by you and us which refers specifically to this Agreement and says that it is changing this Agreement.

**5.2 Severability; Waiver**

If any provision of this Agreement is held illegal, invalid, or unenforceable, all other provisions of this Agreement will nevertheless be effective, and the illegal, invalid, or unenforceable provision will be considered modified such that it is valid to the maximum extent permitted by law. Any waiver of the provisions of this Agreement must be in writing and signed by the party granting the waiver. Waiver of any breach or provision of this Agreement will not be considered a waiver of any later breach or of the right to enforce any provision of this Agreement.

**5.3 Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

\* \* \* \* \*

Please confirm that this letter correctly and completely describes our agreement by signing where indicated below and returning the signed letter to us.

We very much look forward to working with you.

Very truly yours,

**[XYZ]**

By: \_\_\_\_\_  
[name and title]

**Confirmed, accepted and agreed as of \_\_\_\_\_, 20\_:**

**[client]**

By: \_\_\_\_\_  
[name and title]

# Exhibit A Statement of Work

## Client data and contact person

Client name	
Client address	
Client telephone	
Client contact person	Name: Title: E-mail: Telephone:

## XYZ data and contact person

XYZ address	
XYZ contact person	Name: Title: E-mail: Telephone:
XYZ EIN number	

## Executive Search

Position to be Filled	
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## Compensation and Payment

Basis	The fee for the Services is \$____,000. One-third of the fee is due upon the signing of this Agreement. One-third of the fee is due at the time of the first candidate interviews. One-third of the fee is due upon [your making of an offer to a candidate] [a candidate accepting your offer].
Expense reimbursement	You will reimburse us, at our cost, for meals during interview days, advertising expenses, report and material production, communication costs (postage, express mail, etc.), mileage, background check services, and purchase of materials relevant to the search. There is no charge for phone expenses (local or long distance). Ancillary expenses such as facility rental charges and catering are your responsibility. Meetings may be held at XYZ at no charge.
Invoicing	We will invoice you monthly for our reimbursable expenses.

## Other terms (if applicable)

[topic]	[state other terms]
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## Scope of Services

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[insert]