

[XYZ letterhead]

[form of interim placement agreement]

[date]

[Client]

[address]

[city/state/zip]

Attention: [name, title]

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

Thank you for retaining [\_\_\_\_\_] ("XYZ"), a nonprofit focused on [\_\_\_\_\_], for placement of an interim [executive director]. This letter ("Agreement") describes our understandings about the placement and our working relationship. It refers to your organization as "you" or "[Client]" and to XYZ as "we" or "XYZ."

## **1. Interim Placement Services**

### **1.1 Scope**

You have selected to serve as your interim [Executive Director] ("Interim") the individual named in the Statement of Work ("SOW") attached as Exhibit A. The Interim will perform interim executive services ("Services") for the period and on the basis set out in the SOW.

### **1.2 Way of Working**

The Interim is an independent management professional we worked with you to identify for the position. The Interim is on site at your facility, operates under the direction of your Board, engages with the Board and staff, complies with your workplace policies and standards, and makes his or her own decisions. We encourage you to raise directly with the Interim any questions about or concerns you may have with his or her performance. That said, if you believe that the Interim is not performing adequately or otherwise have concerns about the placement, please let us know and we will work to promptly address the situation. You acknowledge that the effectiveness of an Interim depends in large part on cooperation and communication among Board, staff, and the Interim.

### **1.3 XYZ's Role**

XYZ's role going forward is to administer the payment process as described in Section 1.4 and to serve as a resource should any issues emerge in the relationship. We also can identify candidates should there be a need for a replacement or successor Interim.

### **1.4 Compensation**

You do not pay the Interim directly for Services. Instead, you pay us, and we will take care of payment of the Interim and the related paperwork. Your payments 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 15 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.

### **1.5 Scope changes**

If you wish to extend the duration of Services or number of hours worked by the Interim, please let us know and we will submit to you a written Change Order, in the form of Exhibit B, describing: (i) the additional Services or hours to be performed and (ii) the additional fees, if any, associated with such Services. If the Interim notifies us that the duration or hours specified in the SOW is insufficient to perform the Services, we will submit to you a Change Order setting out the proposed changes and associated fees. You will decide whether or not

to approve the additional Services. The Interim will not perform any Services or hours not authorized by you in the SOW or approved Change Order.

### **1.6 Effective Interim Placement**

We believe that interim placements are most successful if the Interim is not a candidate for the permanent position. While we do not consider it a best practice, should you wish to consider the Interim for a permanent position, please let us know. We may in our discretion replace the Interim during your search process with another individual we identify, and you approve, from our pool of Interims. In addition, should you hire the Interim for any permanent, contractual, or consultant position within your organization, you will pay us a fee equal to [ ]% of the first year's compensation for placing the Interim in the new position. This placement fee will be charged in lieu of the fee specified in Section 1.5 of the Interim Search Agreement. You agree to notify us upon any such hiring of the Interim and of the related compensation amount. Your payment will be due within 30 days of receipt of invoice from us.

### **1.7 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 persons, including the Interim and to candidates for replacement as appropriate, 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 and the Interim 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 the Interim.

### **1.8 Work Product**

XYZ may in the course of the placement 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 carrying out our responsibilities under this Agreement.

## **2. Relationship**

### **2.1 Independent Contractor Status**

XYZ is an independent contractor to you. The Interim is an independent contractor to XYZ. We have sole responsibility for all tax returns and payments required by any federal, state, or local tax authority in connection with our receipt of fees under this Agreement. We understand that you will not withhold income, social security, or obtain workers' compensation insurance on our or the Interim's 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.

### **2.2 Contracts with the Interim**

Our contract with the Interim includes confidentiality and work product provisions comparable to those in Sections 1.7 and 1.8. Please note that you are free to put in place your own confidentiality and intellectual property ownership agreements with the Interim. In addition, you confirm to us that you will treat the Interim in the same manner as you do your directors, officers, and executives under the indemnification provisions of your articles of incorporation and bylaws, and under your director and officer liability insurance.

### **2.3 Nature of Services**

For clarity and as you acknowledge, in carrying out the Services, the Interim does not act under our direct supervision and is not required or expected to review management or other decisions with us. The Interim acts as an executive of your organization. We are not responsible for the decisions or promises made by the Interim. While we are committed to ensuring your and the Interim's success, we understandably cannot guarantee specific financial, operating, or other results.

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

XYZ serves multiple clients. You acknowledge the possibility and agree that we or the Interim 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.

### **2.5 Publicity**

You agree that, subject to Section 1.7 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.

### **2.6 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. [XYZ's total liability in respect of an engagement will not exceed that which you have paid or will pay us in fees under the applicable SOW, except that no such limitation will apply in respect of liabilities involving our gross negligence, willful misconduct, or fraud.]

## **3. Term and Termination**

### **3.1 Term and Termination**

This Agreement becomes effective on the date it is executed by the last to sign. You may terminate this Agreement at any time by giving 30 days written notice to XYZ. In addition, you and we may terminate this Agreement upon a material breach by the other; such a termination will be effective five days after giving written notice to that effect. You acknowledge that your failure to pay on time may result in the suspension or termination of the Services.

### **3.2 Effect of Termination**

Termination of the Agreement will have these consequences: (i) the Interim will stop performing Services; (ii) upon your written request, we will return to you or destroy all copies of written Confidential Information furnished to us; and (iii) you will pay us for Services performed and reimbursable expenses incurred through the effective date of termination as invoiced by us. You will pay us within 30 days after the later of receiving our invoice or the effective date of termination. Sections 1.6, 1.7, 1.8, 2.5, 2.6, 3.2, and 4 will survive any termination of this Agreement.

## **4. General Provisions**

### **4.1 Entire Agreement; Amendment**

This Agreement, together with the SOW and any Change Orders, represents the final and exclusive agreement between you and us regarding our provision of Services to you. Any additional Services that are the subject of Change Orders will be covered by this Agreement. 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. Any modifications to the SOW must be made through a Change Order signed by you and us.

**4.2 Assignment**

Neither party may assign any rights or delegate any duties under the Agreement without the other party's prior written approval, provided, however, that either party may, without obtaining the approval of the other party, freely assign its rights and delegate its duties (either directly or by operation of law) under this Agreement to any affiliate or successor of that party by merger, sale of assets, or otherwise.

**4.3 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.

**4.4 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:

## Interim data

Name	
Address	
Telephone	
E-mail address	

## XYZ data

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

## Services

Engagement start date	
Engagement completion date	
Monthly Hours	
Description of Services (if applicable)	Interim will perform such duties and responsibilities as is customary of a[n] [executive director] of a nonprofit organization of similar size and operations. [add any specific deliverables and list responsibilities not included in engagement]

## Compensation

<b>Basis</b>	<p>[On the day Client signs this SOW, Client will pay XYZ a security deposit in the amount of [\$X,000] to secure performance of Client's payment obligations under this SOW and the Interim Placement Agreement. If Client fails to pay XYZ on time, XYZ may apply all or any part of this security deposit to pay the fees and other charges that may be owed. XYZ will refund remaining security deposit amounts, without interest, to Client when this SOW terminates].</p> <p>OR</p> <p>[Client will pay XYZ a retainer of \$__ by _____. XYZ will apply that fund to pay fees and other charges as they are incurred. Client acknowledges that the retainer is not an estimate of total fees and costs, but merely an advance for security.]</p>
<b>Expense reimbursement</b>	<p>Client will reimburse Interim for reasonable out-of-pocket travel expenses directly related to the Interim Services (ground transportation, mileage, etc.), provided Interim submits original receipts (or reasonable documentation) for expenses monthly. Interim will notify Client if circumstances will prevent Interim from providing receipts within the expected time period. Approved expenses include mileage at IRS rate, public transportation, parking, meals/hotel/airfare if approved in advance. Other expenses must have prior written approval in order to be reimbursed.</p>
<b>Invoicing</b>	

## Other terms (if applicable)

<b>[topic]</b>	[state other terms]
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This document is a Statement of Work ("SOW") contemplated by the Interim Placement Agreement, dated \_\_\_\_\_, 20\_, between XYZ and [Client].

Agreed and confirmed as of the date stated above in this SOW:

**[XYZ]**

**[Client]**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## Exhibit B Change Order

Original SOW date	
Interim name	
Reason for and nature of change in Services	
Modified hours (if applicable)	
Modified Project completion date (if applicable)	
Modified compensation terms (if applicable)	

This document is a Change Order, dated \_\_\_\_\_, 20\_\_, between XYZ and [Client].

Agreed and confirmed as of the date stated above in this Change Order:

**[XYZ]**

**[Client]**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_