Columbia University
Retained Agency Agreement

Retained Agency Agreement ("Agreement") dated as of , 20_ (the "Effective Date") between The Trustees of Columbia University in the City of New York ("CU") and______________ ("Agency").

1. Scope
This Agreement sets forth the terms and conditions under which Agency will conduct a search for a [INSERT POSITION] for CU's [INSERT CU SCHOOL or DEPARTMENT (the "Search"). CU authorizes Agency to place one (1) candidate pursuant to this Agreement. CU does not authorize Agency to conduct any additional searches.

2. CU Philosophy and Practices on Diversity
CU is committed to recruiting and hiring persons of diverse backgrounds and Agency will incorporate this philosophy when recruiting individuals for CU. While Agency shall refer candidates on the basis of merit, competence, and qualifications, without regard to race, colour, religion, sex, national origin, age, sexual orientation, marital or veteran status, physical or mental disability, or any other status protected by law, it will use its best efforts to identify, and assist CU in recruiting and hiring, exceptional, qualified and interested candidates with diverse backgrounds. Agency will document its efforts to show to Columbia’s satisfaction that it has used its best efforts to identify and assist CU in hiring candidates with diverse backgrounds. If Agency fails to document its efforts to Columbia’s satisfaction, Columbia may put Agency on notice of same and may withhold payment to Agency until Agency has cured its failure.

Furthermore, Agency shall insert the profile and relevant information and upload the related documents in the system called "Jobs at Columbia," to which Agency shall be provided access by CU. Failure to complete this task shall cause CU to withhold payment to Agency until Agency has cured its failure.

3. Communications
a. The authorized contacts for the Search shall be [INSERT NAME OF AGENCY CONTACT] for Agency, and [INSERT CU CONTACT] for CU. Agency shall use its research team and other Agency employees as required to fulfil its obligations under this Agreement.

b. Agency shall provide written progress reports and participate in status update meetings as reasonably requested by CU. At a minimum, Agency shall provide monthly progress reports to [INSERT CU CONTACT] containing the names of candidates contacted, candidates presented, status of interviews, and other relevant information concerning candidates and potential candidates.

4. Searches
a. Commencement
Agency shall not commence the Search prior to (A) receiving CU's formal search request, which will provide information regarding the actual position, title, anticipated
compensation, job description and minimum desired qualifications; (B) receiving
authorization from Columbia University Office of the President to proceed with the
Search upon execution of this Agreement and receipt of a CU Purchase Order; and
(C) having a comprehensive understanding of the Search and CU’s expectations.

b. Candidate Referrals

i. Agency shall introduce to CU only candidates who (A) are qualified for, and
interested in, the specified position for which the Search is being conducted; (B)
are aware that Agency is presenting his/her name and résumé at the time of
referral; (C) are not associated with CU or any of its affiliates; and (D) have not
already been introduced to CU for the same or different position via another
means. Agency understands and agrees that it has an affirmative duty to
determine whether the candidate meets the foregoing criteria prior to presenting
the candidate to CU.

ii. Agency shall provide each candidate it introduces to CU with job specifications,
defined roles and responsibilities, and key selection criteria.

iii. Résumés submitted to CU shall include, at a minimum, the following candidate
information: full name; complete address and phone number (unless prohibited
by candidate due to confidentiality concerns); educational background; a
sequential employment history beginning with the candidate’s most recent or
current position; and date of submission. Agency shall submit résumés directly
to [INSERT CU CONTACT]. Résumés submitted to someone else will not be
considered to have been submitted by Agency.

iv. CU shall retain for 180 days from the date of receipt each résumé that Agency
submits in accordance with the terms and conditions of this Agreement (the
“Representation Period”).

v. Agency shall not introduce any candidate referred to CU under this Agreement to
another employer or third party until CU notifies Agency in writing that CU is not
currently interested in hiring such candidate.

c. Performance Expectations

i. Agency agrees that as an integral part of its search services under this
Agreement, it shall be actively involved in CU’s recruiting and hiring of referred
candidates, unless CU requests otherwise. Such involvement shall include,
without limitation, thoroughly screening the candidate’s qualifications; meeting
with the candidate in person or by video conference prior to introducing him/her
to CU; arranging interview appointments between CU and the candidate;
checking the candidate’s employment references; assisting the candidate in the
decision-making process; supplying CU with relevant information about the
candidate; following-up on interview results; and performing such other related
services as may be reasonably requested by CU.

ii. Without limiting anything to the contrary herein, Agency agrees that it will meet
the following performance guidelines: Within thirty (30) days after execution of
this Agreement, Agency shall identify for CU’s consideration at least one
candidate that meets the conditions set forth in section 4(b)(i) above. Thereafter,
Agency shall identify at least one new candidate per month who meets such conditions.

iii. CU retains sole discretion whether or not to interview, make an offer to, or hire any candidate introduced by Agency and to determine the compensation of such candidate. Agency does not have the authority to extend an offer of employment on behalf of CU to any candidate.

5. Fees

a. Retainer Fees

i. CU shall pay Agency a retainer fee of [INSERT DOLLAR AMOUNT] for the Search, payable in monthly instalments of [INSERT DOLLAR AMOUNT] each. The first payment shall be made upon execution of this Agreement and presentation of an invoice by Agency. Agency shall invoice CU for the remaining payments at thirty day intervals.

b. Placement Fees

i. Subject to section 6 below, Agency shall be entitled to a placement fee for a candidate introduced by Agency in accordance with the terms and conditions of this Agreement who (A) receives a written offer of employment from CU during the Representation Period; (B) accepts such offer of employment; and (C) actually commences employment with CU.

ii. The placement fee shall be equal to thirty percent (30%) of the candidate’s annualized starting base salary (excluding signing and other bonuses, incentive and commission payments, guaranteed bonuses, benefits, allowances for per diem, relocation costs, temporary housing costs, and other similar allowances); provided, that such placement fee shall be reduced by the aggregate amount of retainer fees previously paid by CU but not yet applied to a placement fee payment (the "Unapplied Retainer"). To the extent that a placement fee exceeds the Unapplied Retainer, CU shall pay such excess amount in accordance with the terms hereof, and such amount shall be applied to CU’s future retainer payments.

iii. Agency shall submit placement fee invoices after the successful candidate begins employment.

6. Exceptions to Placement Fee

a. Notwithstanding anything to the contrary in this Agreement, no placement fee shall be due or paid to Agency in connection with a candidate placement if CU determines, in its sole and exclusive discretion, that:

i. Agency has not complied with any term or condition of this Agreement in connection with the referral or placement of such candidate, including, without limitation, the requirements of section 4 hereof; or

ii. The candidate’s résumé was received by CU from another source or agency for the same or different position (including, but not limited to, from CU employees or the candidate directly), whether or not within the Representation Period, and CU determines that such other source made the effective referral; or

iii. Agency is in breach of any other term or condition of this Agreement.
b. CU shall make a good faith effort to promptly notify Agency if its representation of a candidate will not be recognized. However, the failure to give such notice shall not obligate CU in any way to pay a placement fee if such fee is not otherwise due according to the terms of this Agreement.

7. Expenses
Reasonable expenses directly related to the Search, such as staff and candidate travel, special research, and other directly related out-of-pocket costs, will be reimbursed by CU up to [INSERT DOLLAR AMOUNT] per month. Any additional expenses related to the Search must be pre-approved by [INSERT CU CONTACT] provided, that, in no event shall the aggregate amount of reimbursable expenses hereunder exceed [INSERT DOLLAR AMOUNT]. Agency shall invoice such expenses monthly. Invoices must include appropriate, original receipts and back-up documentation.

8. Invoices
All payments to be made by CU to Agency under this Agreement are subject to CU’s receipt of a correct, undisputed and appropriately documented invoice. Except for the initial retainer fee, such invoices will be paid within forty-five (45) days after receipt. Invoices shall be submitted to [INSERT CU CONTACT] at the address listed in section 18.

9. Guarantee
a. If, within one (1) year following the date on which a successful candidate begins his/her employment at CU, he/she separates from CU’s employ for any reason (whether involuntarily or voluntarily), Agency shall conduct a replacement search at no cost to CU. Agency’s guaranty in this regard shall be unconditional.

b. If Agency miscommunicates information about an employment offer to a candidate, including but not limited to relocation expenses, salary, bonus, benefits, or hiring or employment contingencies, causing CU to increase the financial aspect of its offer or otherwise incur additional costs, Agency shall pay CU an amount equal to such increase or additional costs upon written notice from CU.

10. Termination
a. The term of this Agreement shall be six months from the Effective Date or until the position specified in section 1 is filled, whichever is earlier.

b. Early Termination

i. CU may terminate this Agreement in its entirety or request that Agency cease searching for additional candidates at any time upon written notice to Agency. Agency shall immediately comply with such notice.

ii. The terms and conditions of this Agreement shall govern all résumés submitted and candidates placed by Agency hereunder prior to the date of expiration of this Agreement or notice of its early termination.

iii. If CU terminates this Agreement or requests that Agency cease searching for additional candidates for reasons other than Agency’s breach of this Agreement or Agency’s inappropriate conduct, the following retainer fees will be due or refunded, as applicable:
(a) If CU notifies Agency within 30 days after the Effective Date, CU shall pay only the first retainer instalment of [INSERT AMOUNT], plus reimbursable expenses incurred by Agency up to the date of notice.

(b) If CU notifies Agency between 31-90 days after the Effective Date, CU shall pay a pro-rated amount of the second or third retainer instalments, plus reimbursable expenses incurred by Agency up to the date of notice.

(c) If CU notifies Agency more than 90 days after the Effective Date, CU shall pay the entire retainer fee, plus reimbursable expenses incurred by Agency up to the date of notice.

(d) If, at the time of notice, CU has previously paid Agency the retainer fee amount that it would be obligated to pay pursuant to this subsection, no additional fees shall be due. If CU has previously paid retainer fees in excess of the amount due, however, Agency shall immediately refund such excess fees to CU.

iv. In the event that CU terminates this Agreement or requests that Agency cease searching for additional candidates because of Agency's breach of this Agreement or its inappropriate conduct, CU shall not owe any additional retainer fees to Agency, and Agency shall refund a pro-rated amount of CU’s previously paid retainer fees. CU shall reimburse Agency for its reimbursable expenses incurred up to the date of notice.

11. Confidentiality

11.1 All information, including Personal Information (as defined below), written, electronic or oral, relating to the business, operations, plans, services, facilities, processes, software, methodologies, technologies, intellectual property, research and development, clients and suppliers, partners, principals, employees, consultants and authorized agents of the disclosing party that is supplied by or on behalf of the disclosing party to the other party or otherwise acquired by the other party during the course of dealings between the parties or otherwise, shall be deemed “Confidential Information.”

11.1 Use, Dissemination and Protection Obligations. In consideration of the disclosures hereunder, each party shall keep in confidence the other’s Confidential Information as set forth in this Agreement. To this end:

11.1.1 Each party shall use the other’s Confidential Information only for the purposes of the particular business objective or written agreement pursuant to which a given item of Confidential Information was disclosed. Upon the completion of the business objective or the termination of any written agreement pursuant to which a given item of Confidential Information was disclosed, or upon the demand of the disclosing party, an authorized officer of the recipient shall promptly, at the election of the disclosing party, either return to the disclosing party or destroy (including permanently deleting such Confidential Information from all computer records) all Confidential Information in the recipient’s
possession or control relating to such business objective or written agreement, and shall certify to the disclosing party as to such return or destruction.

11.1.2 Neither party may disclose the other’s Confidential Information to third persons without the disclosing party’s prior written consent, provided that each party may disclose the other’s Confidential Information to its employees and authorized agents, subcontractors and consultants on a need-to-know basis. Each party shall be responsible for ensuring that any of its employees, authorized agents, subcontractors and consultants who receive Confidential Information have executed written agreements with the party sufficient to enable it to comply with the foregoing obligations.

11.2.3 The recipient of Confidential Information shall exercise the same degree of care with respect to the disclosing party’s Confidential Information as the recipient normally takes to safeguard and preserve its own proprietary information, provided that in no event shall the degree of care be less than a reasonable degree of care. Upon discovery of any prohibited use or disclosure, the recipient of Confidential Information shall immediately notify the disclosing party in writing and shall make its best efforts to prevent any further prohibited use or disclosure; however, such remedial actions shall in no manner relieve the recipient’s obligations or liabilities for breach hereunder.

11.3 Limitations on Obligations. This Agreement shall not restrict disclosure or use of Confidential Information that:

11.3.1 was, at the time of receipt, otherwise known to the recipient without restrictions as to use or disclosure;

11.3.2 was in the public domain at the time of disclosure or thereafter enters into the public domain through no breach of this Agreement by the recipient;

11.3.3 becomes known to the recipient from a source other than the disclosing party, which source has no duty of confidentiality with respect to the information;

11.3.4 is independently developed by the recipient without reliance on or access to any of the disclosing party’s Confidential Information; or

11.3.5 is required to be disclosed by a government agency or bureau, by a court of law or equity with competent jurisdiction over the recipient, provided that the recipient will first have provided the disclosing party with prompt written notice of such required disclosure and will take reasonable steps to allow the disclosing party to seek a protective order with respect to the Confidential Information required to be disclosed. The recipient will reasonably and promptly cooperate with and assist the disclosing party, at the disclosing party’s expense, in connection with obtaining such protective order.

11.4 Personal Information. Agency agrees to provide the additional protections set forth below for any Personal Information (defined below) obtained from CU or in connection with the provision of services, functions, and/or transactions to be provided
under this Agreement. “Personal Information” means any individually identifiable information about CU or CU Affiliate customers, clients, employees, students or other individuals about whom Agency receives identifiable information in connection with the provision of services, functions, and/or transactions to be provided under this Agreement. Personal Information is included within the definition of Confidential Information as stated above in this Agreement (and is subject to the provisions of this Agreement protecting Confidential Information), but also shall be subject to the additional protections set forth in this Clause 11.4, including its sub-clauses.

11.4.1 Agency agrees that it will use and disclose Personal Information only in connection with the services, functions, and/or transactions to be provided under this Agreement, or as required by law and not in violation of applicable law. No other use or disclosure of this information is permitted without the express written consent of CU.

11.4.2 The “Limitations on Obligations” set forth in Clause 11.3 of this Agreement shall not apply to Personal Information. All Personal Information obtained from CU, any CU Affiliate or in connection with the provision of services to CU or CU Affiliate pursuant to this agreement shall be protected pursuant to this Clause 11.4, including its sub-clauses.

11.4.3 Agency will require any of its affiliates, subsidiaries, subcontractors and agents, who may receive any CU Personal Information or Confidential Information related to any agreement or services being provided by Agency to CU, to provide reasonable assurance, evidenced by written contract, that such affiliate, subsidiary, subcontractor or agent will comply with the same privacy and security obligations as Agency with respect to such Personal Information or Confidential Information.

11.4.4 Agency will report to CU any privacy or security Incident of which it becomes aware. An “Incident” is defined as an unauthorized access, use, disclosure, modification or destruction of information or interference with any Personal Information or Confidential Information. Agency will deliver the written report to the designated contacts in Section 17 of this Agreement not more than five (5) days after Agency learns of such non-permitted or violating use or disclosure. Agency’s report will include information concerning the nature and impact of the Incident and Agency’s steps to mitigate said impact. Agency shall cooperate as reasonably requested by CU, in order to further investigate and resolve the Incident.

11.4.6 Agency shall allow CU the right to audit Agency’s privacy and security policies and practices (at CU’s reasonable discretion and expense) and shall, at CU’s request, provide an annual summary of such policies and certify that it is in compliance with its obligations regarding CU’s Personal Information and Confidential Information.

11.4.7 Agency’s obligations to protect the confidentiality and security of the Personal Information it created, received or maintained for or from CU will be continuous and survive termination, cancellation or expiration of this Agreement.
11.5 **No Warranty.** THE PARTIES HEREBY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY AND ALL OF THEIR RESPECTIVE CONFIDENTIAL INFORMATION. NEITHER PARTY SHALL BE LIABLE IN DAMAGES OF ANY KIND AS A RESULT OF THE OTHER PARTY’S RELIANCE ON OR USE OF ANY CONFIDENTIAL INFORMATION, UNLESS SUCH RELIANCE OR USE IS EXPRESSLY PERMITTED IN A WRITTEN AGREEMENT SIGNED BY BOTH PARTIES.

11.6 **No License.** No license or conveyance of any rights held by either party under any discoveries, inventions, patents, trade secrets, copyrights, or other form of intellectual property is granted or implied by this Agreement or by the disclosure of any Confidential Information pursuant to this Agreement.

11.7 **Injunctive Relief and Damages.** The parties hereby acknowledge that, due to the unique nature of the Confidential Information, the disclosing party’s remedies at law are inadequate and that the disclosing party will suffer irreparable harm in the event of breach or threatened breach of any provision of this Agreement. Accordingly, in such event, the disclosing party shall be entitled to seek preliminary and final injunctive relief without a requirement to post bond, as well as any and all other applicable remedies at law or in equity, including the recovery of damages.

11.8 **Waivers.** The failure of either party at any time or times to require performance of any provision of this Section 9 shall in no manner affect its rights at a later time to enforce the same. No waiver by either party of any condition or term shall be deemed to be a continuing waiver of such condition or term or any other condition or term.

11.9 **Survival.** All obligations created by this Section 11 shall survive change or termination of the parties’ business relationship.

12. **No Solicitation**

As a means reasonably calculated to protect against disclosure of the Confidential Information and other legitimate interests of CU, Agency agrees not to, directly or indirectly, on its or another's behalf, solicit, recruit, employ or respond to inquiries from any CU partner, principal or employee for the term of this Agreement and for six (6) months thereafter, unless authorized by CU or unless such person involuntarily separated from CU’s employ; provided, that, if CU terminates this Agreement other than for Agency’s breach of this Agreement or inappropriate conduct, this non-solicitation obligation shall not apply.

13. **Remedies**

Agency acknowledges and agrees that any breach or threatened breach of sections 11 or 12 of this Agreement by Agency or its representatives will cause CU irreparable harm for which monetary damages will be inadequate, and Agency agrees that CU shall be entitled to an injunction to restrain Agency or its representatives from any such breach or threatened breach. CU shall be entitled to reimbursement of costs and expenses, including, without limitation, reasonable attorneys’ fees and expenses, incurred by CU in connection with such
action. Nothing in this Agreement shall be construed as preventing CU from pursuing any legal or equitable remedy available to it.

14. No Publicity

Neither CU nor Agency shall use the other party’s name or refer to the other party directly or indirectly in any media release, public announcement or public disclosure relating to the Agreement or its subject matter, including in any promotional or marketing materials, lists, referral lists, or business presentations, without written consent from the other party for each such use or release. Such consent shall be withheld or given in that party’s sole discretion, provided however that such consent may be revoked in its reasonable judgment at any time.

Each party agrees not to use, in advertising or otherwise, any of the other party's trade names, logos, trademarks, service marks, or other indicia of origin for any purpose relating to this Agreement without the other party's prior written consent. Such consent shall be withheld or given in that party’s sole discretion, provided however that such consent may be revoked in its reasonable judgment at any time.

15. Indemnity

15.1 Agency will indemnify, hold harmless and defend CU, its trustees, officers, faculty, agents, and employees against any and all damages, suits, actions, claims, liabilities, losses, judgments, costs and expenses (collectively “Losses”) arising out of or relating to third party claims based on (i) any personal or bodily injury (including death) or property damage caused by Agency's negligent, wilful, or unlawful acts or omissions or breach of this Agreement, (ii) breach of Agency’s confidentiality obligations, or (iii) an infringement or misappropriation of any, trade secret, copyright, right of publicity or right of privacy.

15.2 CU shall be responsible for the accuracy, completeness and propriety of information concerning its organization, products, services, industry and the like which it furnishes to Agency. It will be CU's responsibility to review all materials prepared by Agency under this Agreement to confirm that representations with respect to CU's organization, products services and industry are accurate and supportable by objective data then possessed by CU.

(b) CU will provide prompt written notice to Agency of any claim that Agency is obligated to indemnify under this Agreement. Service Agency will be permitted to control the defense of the claim and any related settlement negotiations, and CU will cooperate (at Agency’s expense) with the defense and settlement of the claim. In seeking to settle a claim, Agency may not purport to accept or expose CU to any liability, or admit to any fault, unless approved in writing in advance by an authorized representative of CU. CU will have the right, at its option and expense, to participate in the defense of any suit or proceeding through counsel of its own choosing.

16. Insurance

(a) Agency will maintain, at its own cost and expense, the following types and amounts of insurance with insurers rated "A" "VII" or better by A.M. Best and licensed in the State of New York:

1) Commercial General Liability insurance, written on an occurrence basis including, but not limited to, coverage for contractual liability, products and completed operations, bodily injury and broad form property damage liabilities with liability limits not less than $1,000,000 per
occurrence and annual aggregate. Products and completed operations insurance shall be maintained for 3 years following termination of this Agreement.

2) When working on-site at CU facilities or at CU sponsored events,

Workers’ Compensation and Employers Liability insurance, covering each employee of Agency engaged in the performance of work under this Agreement, with minimum limits of liability in accordance with applicable state law in the case of Workers’ Compensation insurance, and with not less than the following limits of liability in the case of Employers Liability insurance: Workers’ Compensation - Coverage A — Statutory; Employers Liability - Coverage B- Each Accident $1,000,000; Policy Limit - $1,000,000; Each Employee by Disease - $1,000,000.

Automobile Liability insurance covering all owned, non-owned and hired vehicles used in connection with the performance of work under this Agreement, with a combined single limit of liability for bodily injury and property damage of not less than $2,000,000 per occurrence.

Professional Liability insurance, including personal injury the Agency shall maintain limits not less than $1,000,000 per occurrence and annual aggregate covering the errors and omissions of the Agency.

Each of the policies required by subsections (1) and (2.ii) above shall provide that the insurance company pay the costs of defense (including attorneys’ fees) of any suit or proceeding against CU University or its trustees, officers, agents, or employees, alleging any omission or act relating to this Agreement, and seeking damages on account thereof, even if such suit is groundless, false or fraudulent. These insurances shall be primary and shall be written to cover claims incurred, discovered, manifested or made during or after the expiration of this Agreement. Insurance procured by Agency shall not reduce or limit Agency’s obligation to indemnify and defend CU University or Agency’s liabilities for claims made or suits brought which result from or are in connection with the performance of this Agreement. Any insurance CU University may purchase shall be excess and non-contributory.

(b) Prior to commencement of the work, Agency will deliver certificates of insurance to the University providing evidence of the coverage required above. Each certificate of insurance, with the exception of Workers’ Compensation and Employers Liability Insurance, shall name The Trustees of CU University in the City of New York, its trustees, officers, agents and employees as additional insured. Certificates of insurance are to be sent to the Director of Service Agreements, CU University, Purchasing Office, 615 West 131st Street, 3rd Floor, New York, NY 10027. Agency shall provide CU University with thirty (30) days written notice prior to any policy cancellation or reduction in coverage below the minimum requirements of this Agreement.

17. Compliance with Laws

Agency hereby represents and warrants that it is duly licensed under, and compliant with, all applicable laws and regulations.

18. Independent Contractor

Agency will be acting as an independent contractor in performing this Agreement. Agency agrees that its employees and agents are not CU’s employees, principals, partners or agents. Neither CU nor Agency has the authority to bind the other party. Agency will be responsible
for payment of all wages and taxes associated with the employment of its personnel and payments it receives under this Agreement.

19. Notices

All notices shall be sent to:

In the case of CU:

CU University
615 West 131st Street
3rd Floor
New York, NY 10027
Attn: Joseph Harney, Vice President, Procurement
with a copy to:

CU University Office of the General Counsel
412 Low Library
Mail Code 4308
535 West 116th Street
New York, NY 10027

In the case of Agency:
[INSERT AGENCY ADDRESS]

All notices shall be sent by overnight mail and deemed received by the other party on the next business day.

20. No Contravention

Each of CU and Agency represents and warrants that each party’s entering into and performing under this Agreement does not violate or cause a breach of any arrangements it has with third parties.

21. Miscellaneous

Agency may not assign or delegate its responsibilities under this Agreement. This Agreement is the complete and final understanding of CU and Agency as to its subject matter; supersedes all prior and contemporaneous written or oral representations, communications, agreements, discussions, arrangements, and understandings between CU and Agency as to the same subject matter; shall be governed by and construed under the laws of the state of New York, without references to principles of conflicts of law; and may not be changed except in a writing signed by both parties. Jurisdiction and venue for any action relating to this Agreement shall be in New York County, New York.

ACCEPTED AND AGREED:

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