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Columbia University
<u>Service Provider Agreement</u>
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Service Provider Agreement ("Agreement") dated as of _____, 20___ (the "Effective Date") between The Trustees of Columbia University in the City of New York ("Columbia") and _____ ("Service Provider").

1. <u>Scope</u>. Service Provider agrees to perform the services described in Attachment 1 (the "Services").

2. <u>Payments</u>. Conditioned upon Service Provider's performance of the Services in accordance with this Agreement, Columbia will pay Service Provider the amounts specified in Attachment 1 (the "Statement of Work"). The payments specified in Attachment 1 represent Columbia's total financial commitment to Service Provider for all Services and deliverables, and other obligations under this Agreement.

3. <u>Performance of Services</u>.

(a) Service Provider will perform the Services in a timely manner and in accordance with any project schedule set forth in Attachment 1. The parties agree that "time is of the essence" with respect to Service Provider's performance.

(b) Service Provider will assign qualified and experienced personnel to perform the Services. Where Attachment 1 identifies specific Service Provider personnel, these individuals will remain assigned to provide the Services throughout the term of this Agreement, in accordance with their roles and responsibilities identified in Attachment 1, unless otherwise approved in writing by Columbia. However, if Columbia objects to the manner of performance of any Service Provider personnel (including any third party contractors or agents of Service Provider), Service Provider will promptly take all necessary actions to rectify the objections, including, if requested by Columbia, the prompt removal of the individual from the provision of Services to Columbia. If it becomes necessary to replace any personnel, Service Provider will provide as a replacement a person with equivalent or better qualifications, as approved by Columbia (such approval not to be unreasonably withheld).

(c) Columbia will have a reasonable opportunity (not to exceed 30 days, unless otherwise specified in Attachment 1) to review all deliverables or Services provided to Columbia under this Agreement. If Columbia informs Service Provider of a deficiency in the deliverables or Services, Service Provider will promptly make corrections and re-submit them to Columbia for review and approval.   Service Provider will not charge Columbia for the time and expense in making corrections to deliverables that fail to comply with the requirements of this Agreement. If Service Provider is not able to timely make all appropriate corrections, Columbia may elect to terminate the applicable Statement of Work(s), in which event Service Provider will promptly refund any amounts previously paid by Columbia for work not performed in accordance with this Agreement. Nothing in this clause (c) will excuse Service Provider from meeting any delivery or project schedule set forth in Attachment 1.

(d)	Service Provider will provide timely and complete status and other reasonable reports to Columbia at least once each month or as otherwise required by Attachment 1. Status reports will identify anticipated or actual project delays or issues in reasonable detail. If Service Provider believes that Columbia is failing to perform any activity or obligation that will delay or interfere with Service Provider's performance of this Agreement, Service Provider will promptly notify Columbia's Project Manager in writing, and will cooperate with Columbia's efforts to resolve the matter. Columbia's failure to perform any activity or obligation will not excuse Service Provider's delay or nonperformance, unless Service Provider provides timely notice to Columbia in accordance with this Agreement.

4. Warranties.

(a)	Each of Service Provider and Columbia warrants that it has the requisite power and authority to enter into and perform its obligations under this Agreement. Service Provider warrants that it is not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental department or agency.

(b)	Service Provider warrants that it will perform the Services (i) in a diligent and highly professional manner, (ii) in accordance with applicable law; and (iii) through experienced individuals qualified to perform the Services. Service Provider will obtain all required governmental and third-party licenses, approvals, and permits appropriate for the provision of Services and deliverables.

(c)	Service Provider warrants that all deliverables will be developed in accordance with the quality standards of the applicable industry, and will meet in all respects the requirements set forth in Attachment 1. Service Provider further warrants that the Services and deliverables will not infringe or misappropriate the rights of any third party, and that Service Provider has all power and authority to convey ownership of the Services and deliverables to Columbia in accordance with this Agreement.

5. Confidentiality.

(a)	Service Provider will treat as confidential all data, records, accounts, and other information regarding Columbia and its affiliates that become known to Service Provider or is generated by Service Provider through its activities hereunder, including information regarding Columbia's and its affiliates' operations, policies, procedures, faculty, employees, students, information technology systems, and financial information and plans ("Columbia Confidential Information"). Columbia Confidential Information includes the Services and deliverables. Service Provider's confidentiality obligations include establishing and maintaining appropriate safeguards, procedures, and systems to avoid the unauthorized destruction, loss, alteration, access to, or disclosure of any Columbia Confidential Information, in accordance with the standards of the applicable industry and as otherwise required by applicable law.

(b)	Columbia will treat as confidential all of Service Provider's proprietary methodologies, software and materials that Service Provider provides to Columbia hereunder and which are marked "Confidential" or "Proprietary" ("Service Provider

Confidential Information"). In no event will Service Provider Confidential Information be deemed to include any Columbia Confidential Information.

(c) During and after the term of this Agreement, neither party will use or disclose the other party's Confidential Information, except for the purpose of providing, receiving or using the Services in accordance with this Agreement, or as may be required by law, regulation or court order. Service Provider will obtain from all subcontractors and agents authorized to perform the Services under this Agreement a signed written statement agreeing to the confidentiality provisions herein.

(d) The obligations of confidentiality under this Section do not apply to any information to the extent it: (i) was known to the receiving party prior to such party's receipt of or access to that information under this Agreement, (ii) was or becomes a matter of public information or publicly available through no act or failure to act on the part of the receiving party, (iii) is acquired from a third party entitled to disclose the information without obligation of confidentiality, or (iv) is developed independently and without use of the disclosing party's Confidential Information.

6. Ownership Rights.

(a) All deliverables to be provided under this Agreement, and any invention, improvement, discovery, or innovation (whether or not patentable) made, conceived or actually reduced to practice by Service Provider in the performance of Services hereunder, (collectively the "Work Product") will be owned exclusively by Columbia, including all proprietary and intellectual property rights therein. To the fullest extent permissible under law, the Work Product will be a "work made for hire" for the University. To the extent not automatically vested in Columbia, Service Provider hereby assigns to Columbia all right, title and interest in and to the Work Product, including, without limitation, copyright, patent, and trade secret rights. Upon Columbia's request, Service Provider will execute any additional documents necessary for Columbia to perfect its ownership rights.

(b) Notwithstanding the foregoing, Service Provider will retain ownership of its pre-existing and proprietary materials and other intellectual property that may be incorporated into the Work Product, provided that Service Provider will inform Columbia in writing before incorporating any pre-existing material or pre-existing intellectual property into the Work Product. Service Provider hereby grants Columbia a perpetual, irrevocable, royalty-free, worldwide right and license (with the right to sublicense) to freely use, make, have made, reproduce, disseminate, display, perform, and create derivative works based on such pre-existing materials and intellectual property as may be incorporated into the Work Product or otherwise provided to Columbia in the course of performing the Services.

7. Indemnity.

(a) Service Provider will indemnify, hold harmless and defend Columbia, its trustees, officers, faculty, students, agents, and employees against any and all damages, suits, actions, claims, liabilities, losses, judgments, costs and expenses arising out of or relating to (i) any personal or bodily injury (including death) or property damage caused by Service Provider's negligent, willful, or unlawful acts or omissions or

breach of this Agreement, (ii) breach of Service Provider's confidentiality obligations, or (iii) an infringement or misappropriation of any third party intellectual property or proprietary rights (including, without limitation, trademark, trade secret, copyright or patent) by the Services or Work Product.

(b)   Columbia will provide prompt written notice to Service Provider of any claim that Service Provider is obligated to indemnify under this Agreement. Service Provider will be permitted to control the defense of the claim and any related settlement negotiations, and Columbia will cooperate (at Service Provider's expense) with the defense and settlement of the claim. In seeking to settle a claim, Service Provider may not purport to accept or expose Columbia to any liability, or admit to any fault, unless approved in writing in advance by an authorized representative of Columbia. Columbia 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.

8.   Disputes.

(a) The parties will make good faith efforts to resolve any dispute concerning this Agreement prior to commencing litigation.

(b)   Columbia will not be deemed in breach of this Agreement for withholding any portion of payment that Columbia is disputing in good faith.   Columbia will, however, make prompt payment of any portion of an amount not under dispute.

(c)   The laws of the State of New York will govern all rights, duties, and obligations arising from or relating in any manner to this Agreement, without regard to conflict of laws principles. Any and all claims arising from or relating to this Agreement will be heard either in United States or New York State courts located in the City and County of New York.

9.   Use of Name.   Service Provider will not use the name, insignia, or symbols of Columbia, its faculties or departments, or any variations or combination thereof, or the name of any trustee, faculty member, other employee, or student of Columbia for any purpose whatsoever without Columbia's prior written consent.

10.   Term and Termination.

(a) The term of this Agreement is from _____ __, 20__ to _____ __, 20__, unless otherwise terminated in accordance with this Section. The Statement of Work will begin on the Effective Date and will end when Service Provider and Columbia have completed their obligations there under, unless otherwise stated in the Statement of Work.

(b)   Columbia may terminate this Agreement in whole or in part at any time without cause upon at least 15 days written notice to Service Provider. If this Agreement is a subcontract (with Columbia being the contractor to another party, and Service Provider being Columbia's subcontractor), then Columbia may immediately terminate this Agreement upon written notice to Service Provider if the prime contract is terminated for any reason.

(c) Columbia may terminate this Agreement for Service Provider's breach upon at least 10 days written notice to Service Provider, unless during such notice period Service Provider fully cures the breach to Columbia's reasonable satisfaction.

(d) Service Provider may terminate this Agreement for Columbia's breach for failure to pay any amounts then due upon at least 30 days written notice to Columbia, unless during such notice period Columbia fully cures the breach.

(e) If Columbia terminates this Agreement without cause, Columbia will promptly pay Service Provider for its Services performed through the effective date of termination, in accordance with the terms of this Agreement.

(f) In the event of any termination, or at any time upon Columbia's request, Service Provider will: (i) immediately return to Columbia any Columbia proprietary materials and information in Service Provider's possession or control, including without limitation all Columbia Confidential Information and any deliverables then under development; and (ii) at Columbia's request, cooperate with Columbia in the transition of the work performed under this Agreement to Columbia or its designee.

(g) Any provisions of this Agreement (including, but not limited to, confidentiality and indemnity obligations) that by their nature extend beyond termination will remain in effect in accordance with their terms.

11. <u>Insurance</u>.

(a) Service Provider 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, personal injury, 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 Columbia facilities or at Columbia sponsored events,

(i) Workers' Compensation and Employers Liability insurance, covering each employee of Service Provider 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.

(ii) 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.

3) Professional Liability insurance, the Service Provider shall maintain limits not less than $5,000,000 per occurrence and annual aggregate covering the errors and omissions of the Service Provider.

4) If the Service Provider or any of its employees or agents will have physical or electronic care, custody or control over any money, securities, precious metals, artifacts or other property owned by or due to Columbia, Service Provider shall carry Commercial Crime/Fidelity insurance with minimum limits of $5,000,000 per loss against acts caused by Employee Dishonesty. Additionally, if Service Provider will be collecting, processing or recording any payment transactions including credit, debit, ATM, check or vouchers, on behalf of Columbia, Service Provider shall also carry Commercial Crime/Fidelity insurance with minimum limits of $5,000,000 per loss against acts caused by Forgery, Fraud, and Computer Crime.

5) 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 Columbia 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 Service Provider shall not reduce or limit Service Provider's obligation to indemnify and defend Columbia University or Service Provider's liabilities for claims made or suits brought which result from or are in connection with the performance of this Agreement. Any insurance Columbia University may purchase shall be excess and non-contributory.

(b) Prior to commencement of the work, Service Provider will deliver certificates of insurance to the University providing evidence of the coverage required above. Each certificate of insurance shall provide for a 30-day written notice of cancellation or material change and, with the exception of Workers' Compensation and Employers Liability Insurance, shall name The Trustees of Columbia 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, Columbia University, Purchasing Office, 615 West 131st Street, 3rd Floor, New York, NY 10027.

12. Payment Card Industry ("PCI").

(a) In order to ensure the security of credit card holder information and data accessed by or provided to Service Provider in connection with the Agreement (collectively, "Cardholder Data"), Service Provider hereby agrees to be solely responsible for compliance with, and to adhere, and to ensure that any third parties providing any services under the Agreement adhere, to all applicable Payment Card Industry ("PCI") Data Security standards and requirements with respect to Cardholder Data, including, without limitation, the following:

(1) Service Provider must be compliant with and maintain certification of compliance with Payment Card Industry (PCI) Data Security Standards at all times. This specifically includes the conduct of annual PCI Data Security Standards Compliance Self-

Assessments and quarterly independent third party Compliant Perimeter Scans. Service Provider agrees to provide promptly from time to time at the request of Merchant current evidence, in form and substance reasonably satisfactory to Merchant, of compliance with these data security standards which has been properly certified by an authority recognized by the payment card industry for that purpose.

(2) Service Provider acknowledges and agrees that it is responsible for the security of all Cardholder Data and that it shall maintain and protect, in accordance with all applicable federal, state, local and PCI laws, rules and regulations, including the security rules and requirements of Merchant's financial institutions, the major credit card associations and credit card companies, the security of all Cardholder Data.

(3) Service Provider acknowledges that it has no ownership interest in the Cardholder Data and that all Cardholder Data is the property of the applicable payment card brand, acquirer or merchants ("Card Company Affiliates"). Service Provider shall only use Cardholder Data for assisting Card Company Affiliates in completing transactions, supporting loyalty programs, providing fraud control services or for other uses specifically required by law.

(4) Service Provider represents and warrants that it has a system in place to ensure the continuity of its business and the security of all Cardholder Data in the event of a major disruption, disaster or failure.

(5) Service Provider shall notify Merchant of any known or suspected security breach of its system or facilities containing Cardholder Date immediately, but not later than within twenty-four hours after discovery. Service Provider agrees that, upon Merchant's request in the event of a security intrusion, Service Provider will (i) provide a PCI representative or a PCI approved third party designated by Merchant with full cooperation and access to conduct a thorough security review, which review shall include, at a minimum, validation of Service Provider's compliance with the PCI Data Security Standard for protecting Cardholder Data, and (ii) fully cooperate with Merchant in the preparation and transmittal of any notice Merchant may deem appropriate or required by law to be sent to affected third parties regarding the known or suspected security breach.

(6) Service Provider agrees that, notwithstanding anything to the contrary in the Agreement, Merchant may terminate the Agreement immediately upon notice to Service Provider in the event Service Provider fails to maintain the confidentiality of any Cardholder Data.

13. <u>Notices</u>.

(a) All progress reports to be delivered to Columbia shall be addressed as follows:

(b) All other written notices to be delivered to Columbia shall be addressed to:

Columbia University
615 West 131st Street
3rd Floor
New York, NY 10027
Attn: Joseph Harney
           Vice President, Procurement

with a copy to:
Columbia University
Office of the General Counsel
412 Low Library
Mail Code 4308
535 West 116th Street
New York, NY 10027

(c) All written notices to be delivered to Service Provider shall be addressed to:

(d) Either party may change its addressee or other information by providing written notice thereof to the other party.

13. <u>Other</u>.

(a)   Service Provider and its agents, contractors and employees entering upon Columbia's premises will take all proper and sufficient precautions and safeguards against the occurrence of any accidents, injuries (including death) or damages to any person or property.

(b)   Neither of us will attempt to assign this Agreement, in whole or in part, without the prior written consent of the other.   Service Provider may not subcontract any of its obligations hereunder without Columbia's prior written consent. Any attempt to assign or subcontract without consent is void.   Any approved subcontracts will be subject to all conditions of this Agreement, and Service Provider will be responsible for the performance of its subcontractors to the full extent as if employed directly by Service Provider.

(c)   This Agreement does not create any right or cause of action for any third party.

(d)   Service Provider will perform the Services in accordance with all applicable laws, rules and regulations, including equal employment opportunity and import and export control laws and regulations.   If Services are funded through a government grant or contract, Service Provider will comply with all laws, regulations, standards, and rules applicable to such grant or contract, as if they were fully set forth in this Agreement.

(e) If any provision of this Agreement is held to be invalid or unenforceable, but would be valid and enforceable if appropriately modified, then such provision will apply with the modification necessary to make it valid and enforceable in accordance with its objectives. In any case, the remaining provisions of this Agreement will remain in full force and effect.

(f) The failure or delay of either party to insist on strict performance of any term or condition, or to exercise any right or remedy in this Agreement, is not intended, and will not be construed as, a waiver of any such right or remedy.

(g) Service Provider will maintain accurate and current accounting and financial records concerning its activities under this Agreement. Columbia or its designated representatives will have the right to audit (at Columbia's expense) Service Provider's books, records and operations to confirm compliance with its obligations under this Agreement.

(h) Service Provider warrants that there exists no actual, potential or appearance of conflict between Service Provider's family, businesses, or financial interest and Service Provider's performance of the Services. Service Provider represents that it has not offered (and will not offer during the term of this Agreement) any compensation, reward, gift, favor, service, outside employment, reimbursement of expenses, loan, ownership interest, or anything else of monetary value, to any officer, employee, student, or faculty member of Columbia as an inducement to entering into or continuing under this Agreement. Service Provider will notify Columbia in writing of any change in conditions that might give the appearance of a conflict of interest. Service Provider will support and safeguard Columbia's legitimate interests in any dealings with third parties.

(i) Service Provider is an independent contractor with respect to Columbia, and nothing in this Agreement constitutes the parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking, or allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever. Neither Service Provider nor its employees or agents will be entitled to any benefits applicable to Columbia's employees. Service Provider will be solely responsible for its compliance with all laws, regulations, and rules regarding employment of its personnel, and for any claims made by personnel or other individuals assigned by Service Provider to provide the Services, including any wages, benefits, workers' compensation, health and unemployment insurance, and pension contributions.

(j) This Agreement is the complete agreement between Columbia and Service Provider regarding its subject matter, and replaces any prior oral or written communications between them. Any modification to this Agreement must be made in writing and signed by authorized representatives of both parties. Any variance from or addition to the terms and conditions of this Agreement in any present or future invoice or other document delivered by Service Provider will be void and of no effect unless agreed to in writing by an authorized representative of Columbia.

(k)   In case of a conflict between the provisions set forth above and the Statement of Work or other attachment to this Agreement, the provisions set forth above will govern, unless otherwise specifically agreed in writing.

This Agreement may be signed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

Each of the parties has caused this Agreement to be executed on its behalf by its duly authorized representative.

Signed: Signed:

"Service Provider"   The Trustees of Columbia University
                                                          in the City of New York

By:_____   By:_____

Name:_____   Name:_____

Title:_____   Title:_____

Date:_____   Date:_____