



Middlebury

Contract Review Checklist

The Offices of Business Services and the General Counsel have created this checklist to assist Middlebury employees with negotiating and finalizing written contracts. The checklist outlines important provisions that should be included in most contracts. It also provides examples of model provisions and tips for negotiating provisions that protect the University against risk.

⊖ **Party Names:** Is each party clearly identified by official legal name?

Tip: Middlebury should be identified by its legal name: “President and Fellows of Middlebury College,” as opposed to the department, center or program name.

⊖ **Agreement and Consideration:** To indicate that the contract is binding, is there specific language regarding agreement and consideration?

Example: “For good and valuable consideration, the parties agree as follows:”

⊖ **Obligations:** Is there a detailed description of each party’s obligations, including the goods/services/facilities to be provided and a timetable for delivery/completion?

Tip: A detailed timetable with clear deliverables for each phase is essential for successfully managing the business relationship.

⊖ **Payment:** If applicable, do the payment terms adequately protect Middlebury?

Recommendation: Payment should be made with Middlebury’s PCard; otherwise, payment will be by check within 30 days of invoice receipt.

Tip: Best practice is to divide payments into sub-payments tied to key milestones. Advance deposit payments should not exceed 25% of the total contract amount. A significant portion of the contract amount, or preferably the balance, should be withheld until after delivery/completion to ensure Middlebury’s complete satisfaction.

Delivery: Do the delivery of goods/provision of services fall in the same fiscal year as the payment? This is required by accounting rules.

⊖ **Duration:** Is the contract’s duration specified?

Examples: Expiration upon delivery/completion; one-year; renewable by agreement; etc.

Tip: Automatic renewal provisions are not permitted.

⊖ **Termination:** Does the contract include a termination provision that adequately protects Middlebury?

Example: Middlebury's standard [termination provision](#).

Tip: Preferably, Middlebury should be able to terminate the contract with no obligation or penalty on 30-days notice or if delivery/completion is not satisfactory.

⊖ **Insurance:** Is Middlebury's standard [insurance provision](#) included?

Tip: Parties that come on our property to perform work must meet Middlebury's minimum liability insurance requirements throughout the project. Please see the Business Services' website if you have questions about Middlebury's insurance requirements.

⊖ **Indemnification:** Is Middlebury's standard [indemnification provision](#) included?

Tip: In almost all circumstances, the other party should agree to defend and indemnify Middlebury and its employees against liability for personal injury and property damage arising out of the party's performance under the contract. A "mutual" or "cross" indemnification provision is virtually meaningless in practice and should be avoided. Indemnification obligations are complex provisions with legal ramifications, and therefore, you are strongly encouraged to contact Business Services if the other party will not accept Middlebury's standard indemnification provision.

⊖ **Limitation of Liability:** Does the contract include a provision eliminating the other party's liability? Middlebury does not accept a full elimination of a vendor's liability. If there is a cap, you should ensure it is significantly more than the value of the contract and sufficient to avoid Middlebury losing money if the product or service is a failure.

Tip: In many (if not most) cases, the answer is "no." The other party will often try to exclude "consequential damages" and/or limit its liability to the total amount of the contract or specific types of damages. Because provisions eliminating or significantly the other party's liability do not protect Middlebury, they should generally be avoided. Please contact [Business Services](#) if you have any questions about liability limitation provisions. (See also "Warranty" below.)

⊖ **Governing Law:** Is the governing law of the contract specified?

Example: Middlebury's standard [governing law provision](#).

Tip: The contract should be governed by Vermont (or California for the Institute) law. If the vendor strongly opposes, suggest New York as an alternative. Contact Business Services if the vendor is requesting a different state.

⊖ **Dispute Resolution:** If the contract includes a provision requiring alternative dispute resolution (*e.g.*, mediation and/or arbitration), does it adequately protect Middlebury?

Tip: Alternative dispute resolution provisions are not necessarily beneficial. Middlebury's strong preference is to remove these provisions so that any dispute arising out of a contract may be resolved in a court with jurisdiction over the dispute. In most contracts, Vermont should be identified as the venue and jurisdiction for disputes (see "Governing Law" above). In the limited circumstances where it would be appropriate to include a dispute resolution provision, Middlebury would be amenable to mediation but not to arbitration. Please contact [Business Services](#) if you have any questions about dispute resolution provisions.

⊖ **Warranty:** Does the contract adequately protect Middlebury in the event the other party does not perform satisfactorily?

Examples:

- If goods do not work properly within 90-days of delivery, reserve the right to require the goods be fixed or to return the goods and receive a full refund.
- If performance is found to be unsatisfactory within 90-days of completion, reserve the right to require that the services be improved or to receive a full refund.
- Reserve the right to receive a price reduction for late delivery/completion or for poor performance.
- Reserve the right to recover significant, predictable losses resulting from the other party's poor performance (*e.g.*, costs of finding replacement goods or services). Note that such a provision may conflict with a limitation of liability provision, which requires careful review (see "Limitation of Liability" above).

Tip: Strongly-worded warranty provisions will motivate better performance and protect Middlebury if performance is substandard. Think through what problems could arise and how you would want to resolve them and then try to include provisions in the contract requiring that resolution. Please contact [Business Services](#) if you have any questions about warranty provisions.

⊖ **Intellectual Property Ownership:** If applicable, does the contract specify who owns the intellectual property developed under the contract?

Example: Middlebury's standard [intellectual property ownership](#) provision.

Tip: Generally, the contract should provide that all intellectual property rights arising out of the contract will belong to Middlebury and will be deemed works-for-hire under federal copyright law. Please contact Communications if you have questions about allowing use of our trademarks or logos. For software licenses, consult with ITS.

⊖ **Confidentiality:** Is Middlebury's [standard confidential information provision](#) included, if applicable?

Tip: If the contract involves Middlebury's disclosure of confidential or not publicly available information, including trade secrets and personally identifiable information about persons (living or dead), the other party must agree to protect the information, use it for the limited purposes of the contract, and destroy it upon termination of the contract. In some contracts, Middlebury will be required to protect the other party's confidential information as well. If you agree to a provision that requires protection of the other party's confidential information, it is incumbent upon you to make sure that the provision does not raise export control issues and that processes are in place in your department or office, and at Middlebury generally, to keep the other party's information confidential. Please contact [Business Services](#) if you have any questions about confidentiality provisions.

For contracts where Middlebury must disclose or give the other party access to information that is protected by law (such as personally identifiable information regulated by FERPA, HIPAA or other privacy requirements), consider incorporating or separately entering into the [Confidential Information Agreement](#) with the other party.

⊖ **Use of Middlebury's Name:** Is Middlebury's standard [name and trademark provision](#) included?

Tip: The contract should prohibit the use of Middlebury's name and trademarks without the prior written approval of Middlebury. Please contact [Business Services](#) for questions regarding the commercial use of Middlebury's name and trademarks. For all other questions about the use of Middlebury's name and trademarks, please contact [Communications](#).

⊖ **Independent Contractor:** Is there a provision stating that the other party is an independent contractor and not an employee of Middlebury?

Example: Middlebury's standard [independent contractor provision](#).

⊖ **Tax Exemption:** Does the contract acknowledge Middlebury's tax exempt status?

Example: Middlebury's standard [tax exemption provision](#).

⊖ **Nondiscrimination:** Is there a provision stating that the other party will comply with all applicable laws and regulations regarding nondiscrimination, equal employment opportunity, and affirmative action?

Example: Middlebury's standard [nondiscrimination provision](#).

⊖ **Conflict of Interest:** Does the contract provide that there are no real or apparent conflicts between the parties that would prevent them from entering into the contract?

Example: Middlebury's standard [conflict of interest](#) provision.

⊖ **Entire Agreement:** Is there a provision clarifying that the contract supersedes all other written or oral agreements between the parties and can be modified only by a written document signed by both parties?

Example: Middlebury's standard [entire agreement](#) provision.

⊖ **Signature Lines:** Is there a place for each party's authorized representative to sign the contract?

Tip: It is helpful to include the name, title, address, phone number, fax number and e-mail address of the person signing the contract under each signature line.

NOTE: *This checklist is for your general information and education only and does not constitute legal advice.*