



GENERAL TERMS & CONDITIONS

1. **ENTIRE AGREEMENT:** The following General Terms & Conditions and the attached Contract (collectively, this “Agreement”) shall constitute the complete and exclusive statement of the agreement between The President and Fellows of Middlebury College (“Buyer”) and _____ (“Seller”) with respect to the goods and/or services purchased hereunder (the “Goods” and/or “Services” as the case may be). This Agreement may be modified only pursuant to a written instrument signed by authorized representatives of both parties. The invalidity in whole or in part of any provision of this Agreement shall not affect the validity of other provisions. To the extent that Seller’s terms and conditions, if any, shall conflict with this Agreement, the latter shall control. Either party’s failure to insist upon the performance of any term of this Agreement shall not be construed as a waiver of that party’s present or future right to such performance and each party’s obligations in respect thereto shall continue in full force and effect. The headings in this Agreement have been inserted solely for convenient reference and shall be ignored in its construction.
2. **GENERAL WARRANTIES:** Seller warrants that all Goods shall conform to the specifications of this Agreement and shall be merchantable, free from defects (including defects in design and fit), free of all liens and encumbrances, and suitable for the intended purposes. Seller warrants that all Services shall conform to the specifications of this Agreement and shall be performed in a professional and workmanlike manner. Seller further warrants that the Goods and/or Services shall comply with all applicable laws, rules and regulations and shall not infringe any intellectual, property, proprietary or contractual right of any third party. These warranties shall remain in effect until the later of (i) one year following Buyer’s final acceptance of the Goods or Services or (ii) the expiration of Seller’s standard warranty period. The foregoing warranties are in addition to, and shall not limit, any other warranties or buyer protections that exist by operation of law.
3. **PRICE WARRANTY:** Seller warrants that the price(s) for the Goods or Services stated herein are no less favorable than those extended to any other customer (whether government or commercial) for the same or similar goods or services in similar quantities. In the event Seller reduces its price(s) for such goods or services before Seller fully performs under this Agreement, Seller agrees to reduce the prices stated herein accordingly. Seller further warrants that the prices stated herein are complete, and that no additional charges of any type, including but not limited to shipping costs, shall be added without Buyer’s express written consent.
4. **TIMELY PERFORMANCE:** Time is of the essence such that Buyer shall have an unrestricted right to reject the Goods or Services should Seller fail to meet the delivery date and conditions specified in this Agreement. Such failure shall be deemed a material breach of this Agreement.
5. **FINAL INSPECTION AND ACCEPTANCE:** All Goods or Services shall be subject to Buyer’s final inspection and acceptance, notwithstanding any prior payment or preliminary inspection on the part of Buyer. Buyer shall provide written notice of its final acceptance within thirty (30) days from the date of the delivery of the Goods or the completion of the Services (including any required installation of the Goods), whichever is later (the “Final Acceptance”). Buyer’s failure to provide such notice shall be deemed Final Acceptance. While Final Acceptance is pending, Buyer may return to Seller any non-conforming Goods or Services and/or require Seller to correct or replace such non-conforming Goods or Services, in each case at no cost to Buyer. In the event Buyer does not require any such correction or replacement, Seller shall promptly refund all payments received for non-conforming Goods or Services that Buyer returns. Such remedies shall not limit any other rights or remedies as may be available at law, in equity or under this Agreement. Buyer is not required to accept partial or incomplete delivery. Acceptance of any part of the Goods and/or Services shall not bind Buyer to accept any future delivery nor deprive Buyer of any right Buyer may have to return Goods and/or Services already accepted.
6. **PAYMENT AND INVOICES:** Buyer’s standard payment term for payment in full by check or Purchasing Card (PCard) is net thirty (30) days from the date an invoice is received by its Accounts Payable Department. For non PCard purchases, buyer encourages ACH payment that may be set up by contacting accountspayable@middlebury.edu. Seller shall mail invoices to Purchasing Agent noted in Contract. If Contract is a Purchase Order, the Purchase Order numbers must appear on all invoices, packing slips, shipping documents and labels. All taxes must be itemized on the invoice. The terms and conditions of this Agreement supersede any terms that may be included on Seller’s invoice. Alternatively, credit(s) may be accepted by Buyer, if so negotiated. Any change to the amount due under an original Contract that exceeds 10% or \$25.00 shall require a formal change order prior to Seller’s performance of additional work or the additional items. If this Agreement contemplates reimbursement of Seller’s travel and/or other business expenses, Seller agrees to obtain and comply with Buyer’s Travel Policies and Procedures as applicable, and to provide Buyer with an itemized statement, supported by original receipts, for reimbursement of actual expenses incurred.
7. **TERMINATION:**
 - a. Buyer may terminate this Agreement at any time, in whole or in part, by written notice to Seller. Upon receiving notice of termination, Seller shall immediately cease all performance hereunder and shall cause its suppliers and subcontractors (if any) to

stop all work in connection with this Agreement. If such termination is for Buyer's convenience, Buyer, after deducting any amount(s) previously paid, shall pay for all Services rendered or Goods provided by Seller, as well as any reasonable costs incurred by Seller, up to the time of termination but not including Seller's lost profits. Under no circumstances shall Seller be entitled to recover more than the price of the Goods or Services as stated in this Agreement. Upon receiving notice of Buyer's termination for convenience, Seller shall use its best efforts to reduce or mitigate any costs incurred in connection with the Goods or Services.

- b. Either party may, without prejudice to any other rights or remedies provided at law, in equity or under this Agreement, by written notice to the other party, terminate this Agreement in whole or in part under any of the following circumstances:
- i. If the non-terminating party applies for bankruptcy, makes an assignment for the benefit of creditors, or is in receivership; OR
 - ii. If the non-terminating party fails to perform any of the terms of this Agreement and so fails to cure such failure within thirty (30) days after receiving notice from the terminating party; OR
 - iii. If the non-terminating party fails to make progress such that the terminating party has reason to question the non-terminating party's ability to perform and the non-terminating party fails to provide adequate assurance of its ability to perform within a period of thirty (30) days after receiving notice from the terminating party.

In the event Buyer terminates this Agreement pursuant to this subparagraph b, Seller shall also be obligated to pay any direct damages, including but not limited to all additional costs that Buyer may incur in finding replacement Goods and/or Services, as well as any consequential and incidental damages incurred by Buyer. In the event Seller terminates this Agreement pursuant to this subparagraph b, Buyer shall not be liable for consequential and incidental damages incurred by Seller and in no circumstances shall Buyer's liability exceed the price of the Goods or Services as stated in this Agreement.

- c. Upon termination of this Agreement, Buyer, in addition to any other rights or remedies available at law, in equity or under this Agreement, may require Seller to transfer title to and deliver to Buyer, in the manner and to the extent directed by Buyer, any completed or partially completed Goods as well as any plans, drawings, or other materials that Seller has specifically produced or acquired for the performance of this Agreement ("Performance Materials"). Payment for such Goods or Performance Materials shall be at the price specified in this Agreement or as otherwise agreed upon by the parties.
8. **FORCE MAJEURE:** Except with respect to defaults of Seller's subcontractors, Seller shall not be liable for any excess costs incurred by Buyer if Seller's failure to perform arises out of causes beyond the control and without the fault or negligence of Seller and despite the best efforts of Seller. Such causes include acts of God, acts of Buyer, acts of a government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes and freight embargoes. If failure to perform is caused by default of Seller's subcontractor, and if such default arises out of causes beyond the control of both Seller and its subcontractor, and without the fault or negligence of and despite the best efforts by either of them, Seller shall not be liable for any excess costs for failure to perform, unless the goods, materials or services to be furnished by Seller's subcontractor were reasonably obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedule.
9. **BUYER EQUIPMENT:** All materials, tools, equipment and other property either furnished by Buyer to Seller or individually paid for by Buyer ("Buyer Equipment") shall remain the property of Buyer, but Seller shall assume all risks of and be entirely responsible for any losses or damages arising from its use of Buyer Equipment. Upon completion or termination of this Agreement, Seller shall promptly return all Buyer Equipment in the condition in which Seller received it, taking into account reasonable wear and tear.
10. **INTELLECTUAL PROPERTY:** All copyright, trademark, patent and other intellectual property rights that arise directly from Seller's performance hereunder shall belong to Buyer, including but not limited to any works of authorship that Seller creates pursuant to this Agreement, which works shall be deemed works-for-hire under federal copyright law.
11. **SOFTWARE:** With respect to any software provided under this Agreement, Seller grants to Buyer a worldwide, royalty-free, perpetual license to make back-up copies of such software and to copy, modify and otherwise appropriate such software for Buyer's internal and non-commercial purposes.
12. **CONFIDENTIAL INFORMATION:** Seller shall treat as confidential all non-public information disclosed by Buyer in connection with this Agreement, including but not limited to written or oral communications, education records (as defined under the Family Educational Rights and Privacy Act of 1974 (FERPA)), personal data, plans, specifications, and other data (collectively, "Confidential Information"), and shall take appropriate measures to protect the Confidential Information. The terms and conditions of this Agreement shall also be deemed Confidential Information. Seller shall not use or disclose Confidential Information except as permitted or required by this Agreement, as required by law or with Buyer's prior written consent, and shall only disclose it to those within Seller's organization who need to use it in performance of this Agreement. Seller agrees to notify Buyer in advance of any disclosure pursuant to a court order or subpoena. Upon completion or termination of this Agreement, Seller shall return or destroy all such Confidential Information (except for this Agreement), or otherwise dispose of it as Buyer may approve. This provision is not intended to restrict Seller's right to use or disclose information that is already known to the public or rightfully obtained without restriction from other sources. Seller shall defend, indemnify and hold harmless Buyer from and against any and all claims, demands, damages, liabilities, expenses, losses of every nature and kind, including but not limited to attorney's fees and costs, sustained or

alleged to have been sustained by Buyer as a result of any disclosure or use of any Confidential Information in violation of this Agreement.

For contracts where Buyer must disclose or give Seller access to information that is protected by law (such as personally identifiable information regulated by FERPA, HIPAA or other privacy requirements), Buyer shall be required to sign Seller's standard Confidentiality Agreement or the equivalent.¹

13. **USE OF MIDDLEBURY NAME OR MARKS:** Seller shall not use Buyer's name or trademarks in connection with any advertising, marketing or other promotional efforts or materials without the prior written approval of Buyer.
14. **INDEPENDENT CONTRACTOR:** In performing hereunder, Seller and its employees, agents, subcontractors and representatives shall be as independent contractors and not as employees or agents of Buyer. All persons furnished or retained by Seller in connection with this Agreement are so furnished or retained as Seller's employees or agents. Seller shall not transact business, enter into agreements, or otherwise make commitments on behalf of Buyer unless expressly authorized in writing by Buyer. Neither Seller nor its employees, agents, subcontractors or representatives shall be entitled to benefits provided by Buyer to its employees, including but not limited to fringe benefits, worker's compensation, health and unemployment insurance, and pension plans. Buyer shall not pay or withhold federal, state, or local income or other payroll taxes on behalf of Seller or its employees, agents, subcontractors or representatives. Seller agrees to report and pay all applicable taxes.
15. **APPLICABLE LAW/VENUE:** All disputes regarding the construction, interpretation and the parties' obligations under this Agreement shall be governed by the laws of the State of Vermont, notwithstanding any of that state's laws to the contrary. The venue and jurisdiction for the resolution of any such disputes shall be Addison County, Vermont.
16. **INDEMNIFICATION:** Seller shall defend, indemnify and hold harmless Buyer, its officers, employees, trustees, agents and representatives from and against any and all claims, demands, damages, liabilities, expenses, losses of every nature and kind, including but not limited to attorney's fees and costs, (collectively, "Claims") sustained or alleged to have been sustained in connection with or arising out of the performance hereunder of Seller, its agents, employees, subcontractors and consultants, even in the event Buyer is alleged or found to be partially negligent. However, Seller shall not be obligated to so indemnify Buyer in the event Buyer is proven to be solely negligent.

If any Claims alleging infringement of intellectual property rights, including but not limited to Claims of patent or copyright infringement or misappropriation of trade secrets, are brought against Buyer in connection with Buyer's use of the Goods or Services, Seller shall not only indemnify Buyer as set forth above but also, upon Buyer's request, shall procure for Buyer the right to continue to use such Goods or Services or replace or modify such Goods or Services such that the alleged infringement is removed; provided, however, that such alleged infringement does not arise solely from Buyer's alteration or modification of the Goods or Services.

17. **INSURANCE:** Seller shall maintain and keep in force at Seller's expense the following minimum insurance coverages:

a. Workers Compensation	Statutory
b. Employer's Liability	\$1,000,000
c. Commercial General Liability, to include: Contractual; Premises Operations; Products and Completed Operations; Independent Contractors/Vendors and Personal Injury; Bodily Injury and Property Damage;	
Each Occurrence	\$1,000,000
Aggregate	\$1,000,000
d. Automobile Liability: Combined Single Limit	\$1,000,000
e. Contracts in excess of 5,000,000	Umbrella coverage required

The Automobile Liability insurance shall cover any vehicle used by Seller if required in performing Services hereunder.

All policies shall be underwritten by a carrier rated at least "A-" in Best's Key Rating Guide. "The President and Fellows of Middlebury College, including its officers, employees and agents" shall be named as additional insureds in the General Liability policy specified above. Certificate(s) evidencing the above insurance coverages—with a statement that Buyer is an additional insured and that the insurance afforded is primary insurance as to any other valid and collectible insurance in force—shall be sent to Purchasing Agent, before Seller's performance begins. Renewal certificates shall be provided annually until Seller's performance has been completed and accepted. Evidence of Workers Compensation, Employer's Liability and Automobile Liability insurance is not mandatory if Seller will not be doing business on, or making visits or deliveries to, Buyer's property.

Seller shall be solely responsible for payment of premiums and deductibles for all of the required insurance. Should any of the required insurance policies be cancelled or materially changed, Seller shall provide thirty (30) days prior written notice to Buyer's Risk Management Department. Seller shall not change the levels of coverage or permit coverage to expire until all the Services or work have been completed and accepted. Seller shall not enter upon Buyer's property to perform hereunder unless Seller is and remains insured in accordance with the above requirements. Seller shall indemnify Buyer for any loss suffered by Buyer for the failure of Seller to be so insured.

Seller shall assess its own risk hereunder. If Seller in its sole discretion deems it appropriate and/or prudent, Seller shall maintain higher limits and/or broader insurance coverages than the minimum required by Buyer above. Seller shall not be relieved of any liability or other obligations hereunder by reason of its failure to obtain or maintain insurance in sufficient amounts, duration or types.

18. **DELIVERY:** Delivery is to be made only to the destination stated in the Contract and must be made between 8:30 A.M. and 4:00 P.M., Monday through Friday, legal and Buyer holidays excluded, unless otherwise stated in the Contract. The quantity term set forth in the Contract shall be complied with strictly as stated. Seller is responsible for maintaining and providing proof of delivery. If the Contract is a Purchase Order, Buyer's Purchase Order numbers must appear on all invoices, packing slips, shipping documents and labels.
19. **RISK OF LOSS:** Seller shall bear the risk of loss of, or damage to, all Goods until they are accepted by Buyer as set forth above in Paragraph 5.
20. **FREIGHT:** Buyer's freight terms are F.O.B. Destination, Freight Prepaid and Allowed. If shipment is indicated on the Contract as F.O.B. Seller's plant, Seller will prepay the freight charges and, if mutually agreed to, add them to the invoice. Separate freight invoices will not be accepted. Collect shipments will be returned at Seller's expense unless otherwise instructed by Buyer.
21. **HAZARDOUS AND REGULATED MATERIAL:** Seller shall package, label, transport and ship hazardous materials, items containing hazardous materials and any other regulated materials, in accordance with all applicable federal, state, and local laws, rules, ordinances and regulations, and shall furnish any appropriate documentation or Material Data Safety Sheets. Prior to each shipment of any hazardous or regulated materials, Seller shall notify Buyer of the nature of such shipment by such means of communication as will allow for the proper preparation for acceptance of the delivery and shall identify same on all shipping documents. Seller shall be solely responsible for notifying carriers and other handlers of any risks inherent in any such shipments.
22. **FEDERAL AND STATE FUNDS:** If the attached Contract indicates that Buyer is paying for the Goods or Services with funds received from the federal government, Seller hereby acknowledges that any such Goods or Services are or may be subject to a number of regulations and Buyer requirements. In the case of funds received from the federal government, such regulations and Buyer requirements include, but are not limited to, Department of Labor Regulations implementing Executive Order 13496 at 29 CFR Part 471, Appendix A to Subpart A; the Office of Management and Budget's Circular A-110; Federal Acquisition Regulations (FAR); Defense Federal Acquisition Regulations (DFAR); Public Law 95-507; and Middlebury's purchase orders or written agreement for the government contracts or grants. These additional federal and state regulations and Buyer requirements are hereby incorporated by reference fully as if they were set forth at length herein. Seller shall be solely responsible for obtaining and complying with any and all Buyer requirements.
23. **CONFLICTS AND ETHICAL STANDARDS OF CONDUCT:** Seller affirms that, to the best of Seller's knowledge, there exist no conflicts of interests between Seller and Buyer or its employees. In the event of change in Seller's interests, Seller shall inform Buyer regarding any conflicts of interest that arise or are likely to arise as a result of such change. Seller hereby represents that it has neither received nor given gifts or gratuities to any member of the Middlebury community, nor participated in any other unethical conduct in connection with this Agreement. If, at any time, Buyer determines that Seller is in violation of any representation under this Paragraph, Buyer may cancel this Agreement upon written notice to Seller, and Buyer shall have no further obligation to Seller.
24. **EQUAL OPPORTUNITY EMPLOYER: Buyer is an Equal Opportunity Employer. Pursuant to Executive Orders 11246 and 11375, Section 503 of the Rehabilitation Act of 1973 and Section 402 of the Vietnam-Era Veterans Readjustment Act of 1974, Buyer has developed Affirmative Action Plans that have been filed with and approved by the U.S. Department of Labor's Office of Federal Contract Compliance Programs, and are available for review upon request. The Seller/Contractor (and subcontractor, if applicable) shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

Seller also warrants that it will comply with all applicable executive orders, and federal, state, and local laws, regulations, and rules, and, Middlebury policies, as appropriate, relating to nondiscrimination, equal employment opportunity, and affirmative action.

25. **COMPLIANCE WITH SARBANES-OXLEY:** To the extent that Seller is a company regulated or covered by the Sarbanes-Oxley Act, as amended, compliance with Sarbanes-Oxley is a condition of doing business with Buyer and failure to be in compliance shall be considered a material breach of this Agreement.

26. **SALES AND EXCISE TAX EXEMPTIONS:** As a non-profit educational institution, Buyer is exempt from Federal Excise Tax under Public Law No. 85-859 (Exemption No. A110656) and from Vermont Sales Taxes (No.490-030-179298F-01 and certain other states' taxes as may be applicable, unless otherwise stated on the face of the Contract. Seller shall take all steps necessary to ensure that these exemptions are utilized to the maximum benefit of Buyer. Seller shall not charge Buyer any tax for which an exemption is applicable.
27. **EXPORT COMPLIANCE:** Seller must comply with U.S. export control laws and regulations. If any of the Goods (including any technical data included in any material provided with the Goods) are controlled by Export Administration Regulations (EAR) or International Traffic in Arms Regulations (ITAR), Seller shall notify Buyer prior to shipment in writing that includes the Export Control Classification Number (ECCN) or U.S. Munitions List (USML) category, and receive express written consent of Buyer to accept such export controlled Goods prior to shipment.
28. **ASSIGNMENTS AND SUBCONTRACTING:** Neither party shall assign or delegate its rights and obligations under this Agreement without the prior written consent of the non-assigning or non-delegating party.
29. **SURVIVAL:** This Paragraph and Paragraphs 1, 2, 3, 7, 8, 9, 10, 11, 12, 0, 14, 15, 16, 17, 24 and 28 hereunder shall survive the termination of this Agreement for any reason.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized representatives as of the date first set forth above.

The President and Fellows of Middlebury College

[Seller]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Phone: _____

Email: _____

Address: _____
