



Middlebury

CONFIDENTIAL INFORMATION AGREEMENT

This Agreement is made by and between The President and Fellows of Middlebury College, a Vermont not-for-profit educational organization (“Middlebury”) and _____ (“Service Provider”), and is effective as of this ____ day of _____, _____. Middlebury and Service Provider mutually agree to the terms of this Agreement whereby Middlebury will provide the following data and information: ¹

to Service Provider for the following purposes: ²

Such data and information shall be provided to Service Provider for a defined period, starting on the effective date of this Agreement and ending [no later than [_____ _]] [upon termination of the agreement between Service Provider and Middlebury dated _____].

If any conflict exists between the terms of this Agreement and any prior agreement, the terms of this Agreement shall govern.

1. **DEFINITION: “Covered Data and Information”** will include all data and information provided by Middlebury to Service Provider specifically for the aforementioned purposes as well as any data and information that Service Provider may derive from such data and information[, including without limitation, paper and electronic student education record information provided by Middlebury, as well as any data provided by Middlebury’s students to Service Provider³]. Covered Data and Information is not intended to include data and information that is already known to the public or rightfully obtained without restriction from other sources. Any Covered Data and Information provided by Middlebury prior to the execution of this Agreement will be considered in the same manner and subject to the same treatment as Covered Data and Information made available after the execution of this Agreement.
2. **ACKNOWLEDGMENT OF ACCESS TO COVERED DATA AND INFORMATION:** Service Provider acknowledges that this Agreement allows the Service Provider access to Covered Data and Information.

¹ If Service Provider possesses, handles, transmits or stores credit card data on behalf of Middlebury, insert “‘Cardholder Data’ and ‘Sensitive Authentication Data,’ as such terms are defined by the PCI Security Standards Council (see https://www.pcisecuritystandards.org/security_standards/glossary.php).”

² If Service Provider possesses, handles, transmits or stores credit card data on behalf of Middlebury, insert “For providing credit and debit card authorization, processing and settlement services, completing credit and debit card transactions, providing fraud control services and for uses specifically required by law, but not for marketing or any other purposes.”

³ Include bracketed language if Service Provider will have access to FERPA information.

3. **PROHIBITION ON UNAUTHORIZED USE OR DISCLOSURE OF COVERED DATA AND INFORMATION:** Service Provider agrees to hold the Covered Data and Information in strict confidence. Service Provider shall not use or disclose Covered Data and Information received from or on behalf of Middlebury except as permitted or required by this Agreement, as required by law or with Middlebury's prior written consent. Service Provider agrees not to use Covered Data and Information for any purpose other than the aforementioned purposes. Service Provider shall only disclose Covered Data and Information to those within Service Provider's organization who need to use it in performance of Service Provider's services for Middlebury. Service Provider agrees to notify Middlebury in advance of any disclosure pursuant to a court order or subpoena, and within one (1) business day of receipt of the order or subpoena, so as to afford Middlebury an opportunity to contest the disclosure or seek an appropriate protective order.
4. **SAFEGUARD STANDARD:** Service Provider agrees that it will protect the Covered Data and Information it receives from or on behalf of Middlebury according to commercially acceptable standards and no less rigorously than it protects its own confidential data and information of similar nature.
5. **RETURN OR DESTRUCTION OF COVERED DATA AND INFORMATION:** Upon termination, cancellation, expiration or other conclusion of this Agreement:
 - a. Service Provider shall return to Middlebury or, if return is not feasible, destroy all Covered Data and Information in whatever form or medium that Service Provider received from or created on behalf of Middlebury. This provision shall also apply to all Covered Data and Information that is in the possession of subcontractors or agents of Service Provider. In such case, Service Provider shall retain no copies of such information, including any compilations derived from and allowing identification of Covered Data and Information. Service Provider shall complete such return or destruction as promptly as possible, but not more than thirty (30) days after the effective date of the conclusion of this Agreement. Within such thirty (30) day period, Service Provider shall certify in writing to Middlebury that such return or destruction has been completed.
 - b. If Service Provider believes that the return or destruction of Covered Data and Information is not feasible, Service Provider shall provide written notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction is not feasible, Service Provider shall extend the protections of this Agreement to Covered Data and Information received from or created on behalf of Middlebury, and limit further uses and disclosures of such Covered Data and Information, for so long as Service Provider maintains the Covered Data and Information.
6. **SUBCONTRACTORS AND AGENTS:** Service Provider agrees that Covered Data and Information will not be shared, sold, or licensed with any third party, with the exception of approved subcontractors and approved agents, without the express written approval of Middlebury. If Service Provider provides any Covered Data and Information which was received from, or created for, Middlebury to a subcontractor or agent, then Service Provider shall require such subcontractor or agent to agree to the same restrictions and conditions as are imposed on Service Provider by this Agreement.
7. **MAINTENANCE OF THE SECURITY OF ELECTRONIC INFORMATION:** Service Provider shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted Covered Data and Information received from, or on behalf of, Middlebury.
8. **REPORTING OF UNAUTHORIZED DISCLOSURES OR MISUSE OF COVERED DATA AND INFORMATION:** Service Provider shall report to Middlebury any use or disclosure of Covered Data and Information not authorized by this Agreement or in writing by Middlebury. Service Provider shall make the report to Middlebury within one (1) business day after Service Provider learns of such use or disclosure. Service Provider's report shall identify:
 - a. The nature of the unauthorized use or disclosure;
 - b. The Covered Data and Information used or disclosed;

- c. Who made and who received the unauthorized use or disclosure;
- d. What Service Provider has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and
- e. What corrective action Service Provider has taken or shall take to prevent future similar unauthorized use or disclosure.

Notwithstanding the foregoing, Service Provider shall provide such other information, including a written report, as reasonably requested by Middlebury.

9. **AUDITS:** Middlebury reserves the right to perform audits at its expense to the extent necessary to ensure compliance with the terms of this Agreement. Service Provider agrees to reasonably cooperate in the performance of such audits. Further, upon request of Middlebury, Service Provider shall provide Middlebury with copies of any and all policies and procedures of Service Provider to protect Covered Data and Information received from Middlebury. This may include copies of pertinent language in contracts with subcontractors in accordance with Section 6.

10. **REMEDIES:**

- a. In addition to the rights of the parties established by the underlying agreement, if Middlebury reasonably determines in good faith that Service Provider has materially breached any of its obligations under this Agreement Middlebury, in its sole discretion, shall have the right to:
 - i. Exercise any of its rights to reports, access and inspection under this Agreement; and/or
 - ii. Require Service Provider to submit to a plan of monitoring and reporting, as Middlebury may determine necessary to maintain compliance with this Agreement; and/or
 - iii. Provide Service Provider with a fifteen (15) day period to cure the breach; and/or
 - iv. Terminate this Agreement immediately if Service Provider has breached a material term of this Agreement and cure is not possible.

Before exercising any of these options, Middlebury shall provide written notice to Service Provider describing the violation and the action it intends to take.

- b. Service Provider acknowledges that breach of this Agreement will give rise to irreparable injury to Middlebury, inadequately compensable in damages. Accordingly, Middlebury may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available to Middlebury. Service Provider acknowledges and agrees that the covenants contained herein are necessary for the protection of legitimate interests of Middlebury and are reasonable in scope and content.

11. **INDEMNITY:** Service Provider shall defend, indemnify and hold Middlebury harmless from all claims, liabilities, damages, or judgments involving a third party, including Middlebury's costs and attorney's fees, which arise as a result of Service Provider's failure to meet any of its obligations under this Agreement, even in the event Middlebury is alleged or found to be partially negligent. However, Service Provider shall not be obligated to so indemnify Middlebury if Middlebury is proven to be solely negligent.

12. **FERPA:** To the extent that Service Provider has access to "Education Records," as defined by the Family Educational Rights & Privacy Acts of 1974 ("FERPA"), it is deemed and shall function as a "school official" with "legitimate educational interests" when fulfilling its responsibilities under this Agreement, and both parties agree that Middlebury has "direct control" over the use of "Education Records" as these terms are defined under FERPA. Service Provider will comply with its obligations under FERPA, including but not limited to the limitations on re-disclosure of personally identifiable information from education records set forth in FERPA and applicable regulations (34 CFR § 99.33 (a)(2)) and with the terms set forth below. 34 CFR 99.33 (a)(2) states that the officers, employees and agents of a party that receives education record

information from Middlebury may use the information, but only for the purposes for which the disclosure was made. If the Family Policy Compliance Office of the U.S. Department of Education determines that Service Provider improperly disclosed personally identifiable information obtained from Middlebury's education records, Middlebury may not allow Service Provider access to education records for at least five years.⁴]

13. **APPLICABLE LAW:** 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.
14. **MISCELLANEOUS:** This Agreement may not be modified except by a writing signed by the parties hereto. If any provision of this Agreement is held to be unenforceable, all other provisions will continue in full force and effect. Each party warrants that it has the authority to enter into this Agreement and that entering into this Agreement is not restricted or prohibited by any existing agreement to which it is a party.
15. **SURVIVAL:** The respective rights and obligations of Service Provider under Sections 5, 6, 7, 8, 10 and 11 shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Confidential Information 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

Service Provider

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Phone: _____

Email: _____

Address: _____
