



Middlebury

INDEPENDENT CONTRACTOR AGREEMENT

This Agreement is made by and between The President & Fellows of Middlebury College (“Middlebury”), a Vermont not-for-profit educational corporation, and _____ (“Contractor”), and is effective as of this _____ day of _____, 20____.

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

1. **ENTIRE AGREEMENT:** The following terms and conditions, and the attached Schedule A, shall constitute the complete and exclusive statement of the agreement between Middlebury and Contractor with respect to the services purchased hereunder (the “Services”). 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 Contractor’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 PURPOSE:** The general purpose of this Agreement is to engage the services of Contractor to: _____
_____. [Contractor will perform duties as directed by _____.] The surrounding facts and circumstances are more fully set forth in the attached Schedule A, incorporated herein.

3. **TERM:** The term of this Agreement shall be from ____/____/____ until ____/____/_____.

4. **TIMETABLE:** If applicable, the timetable set forth in the attached Schedule A shall be adhered to unless such period is otherwise extended by Middlebury. Contractor shall be responsible to Middlebury for any damage caused by the failure by Contractor to comply with the timetable.

5. **INDEPENDENT CONTRACTOR:** In performing hereunder, Contractor and its employees, agents, subcontractors and representatives shall be as independent contractors and not as employees or agents of Middlebury. All persons furnished or retained by Contractor in connection with this Agreement are so furnished or retained as Contractor’s employees or agents. Contractor shall not transact business, enter into agreements, or otherwise make commitments on behalf of Middlebury unless expressly authorized in writing by Middlebury. Neither Contractor nor its employees, agents, subcontractors or representatives shall be entitled to benefits provided by Middlebury to its employees, including but not limited to fringe benefits, worker’s compensation, health and unemployment insurance, and pension plans. Middlebury shall not pay or withhold federal, state, or local income or other payroll taxes on behalf of Contractor or its employees, agents, subcontractors or representatives. Contractor agrees to report and pay all applicable taxes. Contractor shall defend, indemnify and hold harmless Middlebury from and against any and all liability for the payment of taxes, interest and/or penalties, as well as damages and costs, including attorney’s fees, in connection with any claim or finding that Contractor and/or its employees, agents, subcontractors or representatives are employees of Middlebury.

6. **WARRANTIES:** Contractor warrants that all Services shall conform to the specifications of this Agreement and shall be performed in a professional and workmanlike manner. Contractor further warrants that the 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.
7. **FINAL INSPECTION AND ACCEPTANCE:** All Services shall be subject to Middlebury's final inspection and acceptance, notwithstanding any prior payment or preliminary inspection on the part of Middlebury. Middlebury shall provide written notice of its final acceptance within thirty (30) days from the date of the completion of the Services (the "Final Acceptance"). Middlebury's failure to provide such notice shall be deemed Final Acceptance. While Final Acceptance is pending, Middlebury may return to Contractor non-conforming Services and/or require Contractor to correct or replace such non-conforming Services, in each case at no cost to Middlebury. In the event Middlebury does not require any such correction or replacement, Contractor shall promptly refund all payments received for non-conforming Services that Middlebury returns. Such remedy shall not limit any other rights or remedies as may be available at law, in equity or under this Agreement. Middlebury is not required to accept partial or incomplete delivery. Acceptance of any part of the Services shall not bind Middlebury to accept any future delivery nor deprive Middlebury of any right Middlebury may have to return Services already accepted.
8. **PAYMENT AND INVOICES:** Contractor shall be paid [\$ _____] [at the rate of \$ _____ per hour, with the total amount paid under this Agreement not to exceed \$ _____,] for providing the Services. Middlebury shall remit payment to Contractor [net thirty (30) days after Final Acceptance] [pursuant to the schedule of progress payments for work performed set forth in the attached Schedule A], provided that Contractor sends an invoice for the billing period to _____.
Invoices must specify the Services provided (which must match the description in Paragraph 2 above), the location at which the Services were provided, the dates of and actual work performed during the billing period, and the specific dollar amount due. Contractor is an independent contractor and shall be solely responsible for all taxes, contributions and premiums with respect to the payments hereunder. If this Agreement contemplates reimbursement of Contractor's travel and/or other business expenses, Contractor agrees to obtain and comply with Middlebury's Travel Policies and Procedures and Middlebury's Expense Policies and Procedures, as applicable, and to provide Middlebury with a signed Business Expense Report, supported by original receipts, for reimbursement of actual expenses incurred. Foreign Nationals are subject to 30% withholding on payments received in the United States unless the foreign national claims a treaty exemption by submitting a Form 8233 or W8.
9. **TERMINATION:**
- a. Middlebury may terminate this Agreement at any time, in whole or in part, by written notice to Contractor. Upon receiving notice of termination, Contractor 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 Middlebury's convenience, Middlebury, after deducting any amount(s) previously paid, shall pay for all Services rendered by Contractor, as well as any reasonable costs incurred by Contractor, up to the time of termination but not including Contractor's lost profits. Under no circumstances shall Contractor be entitled to recover more than the price of the Services as stated in this Agreement. Upon receiving notice of Middlebury's termination for convenience, Contractor shall use its best efforts to reduce or mitigate any costs incurred in connection with the 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 Middlebury terminates this Agreement pursuant to this subparagraph b, Contractor shall also be obligated to pay any direct damages, including but not limited to all additional costs that Middlebury may incur in finding replacement Services, as well as any consequential and incidental damages incurred by Middlebury. In the event Contractor terminates this Agreement pursuant to this subparagraph b, Middlebury shall not be liable for consequential and incidental damages incurred by Contractor and in no circumstances shall Middlebury's liability exceed the price of the Services as stated in this Agreement.

- c. Upon termination of this Agreement, Middlebury, in addition to any other rights or remedies available at law, in equity or under this Agreement, may require Contractor to transfer title to and deliver to Middlebury, in the manner and to the extent directed by Middlebury, any goods, plans, drawings, or other materials that Contractor has specifically produced or acquired for the performance of this Agreement ("Performance Materials"), if applicable. Payment for such Performance Materials shall be at the price specified in this Agreement or as otherwise agreed upon by the parties.
10. **FORCE MAJEURE:** Except with respect to defaults of Contractor's subcontractors, Contractor shall not be liable for any excess costs incurred by Middlebury if Contractor's failure to perform arises out of causes beyond the control and without the fault or negligence of Contractor and despite the best efforts of Contractor. Such causes include acts of God, acts of Middlebury, acts of a government in either its sovereign or contractual capacity, fires, floods, epidemics, pandemics, quarantine restrictions, strikes, freight embargoes and other causes that are out of Contractor's direct control. If failure to perform is caused by default of Contractor's subcontractor, and if such default arises out of causes beyond the control of both Contractor and its subcontractor, and without the fault or negligence of and despite the best efforts by either of them, Contractor shall not be liable for any excess costs for failure to perform, unless the goods, materials or services to be furnished by Contractor's subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the required delivery schedule.
11. **OWNERSHIP:** Middlebury shall own all data, information and other work arising directly from Contractor's performance hereunder. Middlebury shall at all times have access to review the ongoing work of Contractor for purposes of inspecting same and determining that work is being performed in accordance with the terms of this Agreement. Immediately upon termination of this Agreement for any reason, all such data, information and other work, in whatever form, shall be turned over to Middlebury.

Any works of authorship developed in the course of performance under this Agreement shall be deemed works-for-hire under federal copyright law and all ownership rights to such copyrightable works shall be the property of Middlebury. Should any works of authorship not constitute works-for-hire under federal copyright law, Contractor hereby grants, transfers, assigns and conveys to Middlebury and its successors and assigns, Contractor's entire right, title, and interest in and to such works or any part thereof, including but not limited to the following rights: to reproduce; to prepare derivative works; to distribute by sale, license or other transfer; to perform publicly; to display; and to secure copyrights and renewals, reissues and extensions of any such copyrights in the United States of America or any foreign country.

Any patentable invention conceived or reduced to practice in the course of performance under this Agreement shall be the property of Middlebury. All trademark or other intellectual property rights arising directly from Contractor's performance under this Agreement shall be the property of Middlebury.

Whether a copyright, patent, trademark or other intellectual property right shall be maintained or registered in the United States of America or any foreign country shall be at the sole discretion of Middlebury. Contractor agrees to cooperate fully with Middlebury in the preparation and execution of all documents necessary or incidental to the protection and preservation of the rights granted herein to Middlebury. Contractor warrants and represents that the Services provided hereunder will not infringe, individually or collectively, any copyright, patent, trademark or other intellectual property right of any third party.

12. **MIDDLEBURY EQUIPMENT:** All materials, tools, equipment and other property either furnished by Middlebury to Contractor or individually paid for by Middlebury ("Middlebury Equipment") shall remain the property of Middlebury, but Contractor shall assume all risks of and be entirely responsible for any losses or damages arising from its use of Middlebury Equipment. Upon completion or termination of this Agreement, Contractor shall promptly return all Middlebury Equipment in the condition in which Contractor received it, taking into account reasonable wear and tear.
13. **CONFIDENTIAL INFORMATION:** Contractor shall treat as confidential all non-public information disclosed by Middlebury 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)), records defined under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), personal data, plans, specifications, and other personal or sensitive data (collectively, "Confidential Information"). The terms and conditions of this Agreement shall also be deemed Confidential Information. Contractor shall ensure that all Confidential Information is properly collected, stored, processed, secured, monitored, archived or destroyed in compliance with Federal, State and applicable international privacy laws. Contractor shall not disclose Confidential Information to any third party except as Middlebury authorizes and shall only disclose it to those within Contractor's organization who need to use it in performance of this Agreement. Upon completion or termination of this Agreement, Contractor shall return or destroy all such Confidential Information (except for this Agreement), or otherwise dispose of it in accordance with Federal, State and applicable international privacy laws, or as Middlebury may approve. This provision is not intended to restrict Contractor's right to use or disclose information that is already known to the public or rightfully obtained without restriction from other sources. Contractor shall defend, indemnify, and hold harmless Middlebury 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 Middlebury as a result of any disclosure or use of any Confidential Information in violation of this Agreement.
14. **USE OF MIDDLEBURY NAME OR MARKS:** Contractor shall not use Middlebury's name or trademarks in connection with any advertising, marketing or other promotional efforts or materials without the prior written approval of Middlebury.
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:** Contractor shall defend, indemnify and hold harmless Middlebury, 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 Contractor, its agents, employees, subcontractors and consultants, even in the event Middlebury is alleged or found to be partially negligent. However, Contractor shall not be obligated to so indemnify Middlebury in the event Middlebury 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 Middlebury in

connection with Middlebury’s use of any goods or materials that Contractor specifically produces for the performance of this Agreement, Contractor shall not only indemnify Middlebury as set forth above but also, upon Middlebury’s request, shall procure for Middlebury the right to continue to use such goods or materials, or replace or modify such goods or materials, such that the alleged infringement is removed; provided, however, that such alleged infringement does not arise solely from Middlebury’s alteration or modification of the goods or materials.

17. INSURANCE: Contractor shall maintain and keep in force at Contractor’s expense the following minimum insurance coverages:

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|--|----------------------------|
| 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 | \$2,000,000 |
| Aggregate | \$2,000,000 |
| d. Automobile Liability: Combined Single Limit | \$1,000,000 |
| e. Contracts in excess of 5,000,000 | Umbrella coverage required |

If Contractor is required to maintain a professional license in order to practice his/her profession, Contractor will be required to maintain professional liability insurance in the amount of \$2 million per occurrence/aggregate. Professions this applies to, but is not limited to, include architects, engineers, attorneys, physicians, nurses and physical therapists. This sample list of professions is representative only and is not meant to be complete.

The Automobile Liability insurance shall cover any vehicle used by Contractor 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 Middlebury 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 and verified by Middlebury’s Business Services Office, Assistant Treasurer, 152 Maple Street, Suite 102, Middlebury, VT 05753, before Contractor’s performance begins. Renewal certificates shall be provided annually until Contractor’s performance has been completed and accepted. Evidence of Workers Compensation, Employer’s Liability and Automobile Liability insurance is not mandatory if Contractor will not be doing business on, or making visits or deliveries to, Middlebury’s property.

Contractor 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, Contractor shall provide thirty (30) days prior written notice to Middlebury’s Business Services Office at 802-443-5504. Contractor shall not change the levels of coverage or permit coverage to expire until all the Services have been completed and accepted. Contractor shall not enter upon Middlebury property to perform hereunder unless Contractor is and remains insured in accordance with the above requirements. Contractor shall indemnify Middlebury for any loss suffered by Middlebury for the failure of Contractor to be so insured.

Contractor shall assess its own risk hereunder. If Contractor in its sole discretion deems it appropriate and/or prudent, Contractor shall maintain higher limits and/or broader insurance coverages than the minimum required by Middlebury above. Contractor 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. **FEDERAL AND STATE FUNDS:** If the Purchase Order indicates that Middlebury is paying for the Services with funds received from the federal government, Contractor hereby acknowledges that any such Services are or may be subject to a number of regulations and Middlebury requirements. In the case of funds received from the federal government, such regulations and Middlebury 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 Terms and Conditions. These additional federal and state regulations and Middlebury requirements are hereby incorporated by reference fully as if they were set forth at length herein. Contractor shall be solely responsible for obtaining and complying with any and all Middlebury requirements.
19. **CONFLICTS AND ETHICAL STANDARDS OF CONDUCT:** Contractor affirms that, to the best of Contractor's knowledge, there exist no conflicts of interests between Contractor and Middlebury or its employees. In the event of change in Contractor's interests, Contractor shall inform Middlebury regarding any conflicts of interest that arise or are likely to arise as a result of such change. Contractor 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, Middlebury determines that Contractor is in violation of any representation under this Paragraph, Middlebury may cancel this Agreement upon written notice to Contractor, and Middlebury shall have no further obligation to Contractor.
20. **EQUAL OPPORTUNITY EMPLOYER:** Middlebury 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, Middlebury 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. 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.

Contractor 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.

- 21. **COMPLIANCE WITH SARBANES-OXLEY:** To the extent that Contractor is a company regulated or covered by the Sarbanes-Oxley Act, as amended, compliance with Sarbanes-Oxley is a condition of doing business with Middlebury and failure to be in compliance shall be considered a material breach of this Agreement
- 22. **SALES AND EXCISE TAX EXEMPTIONS:** As a 501(c)(3) non-profit educational institution designated by the Internal Revenue Service, Middlebury is exempt from most Federal and State taxes. Contractor shall take all steps necessary to ensure that these exemptions are utilized to the maximum benefit of Middlebury. Contractor shall not charge Middlebury any tax for which an exemption is applicable.
- 23. **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.
- 24. **MISCELLANEOUS:** Each notice, request or demand given or required to be given pursuant to this Agreement shall be in writing and shall be deemed sufficiently given if deposited in the United States mail, with first-class postage prepaid, and addressed to the intended recipient at the address set forth below or such other address as the parties may agree upon. Contractor warrants that it will comply with all federal, state and local laws applicable to its performance hereunder. The parties warrant that they have the authority to enter into this Agreement and that entering into this Agreement is not restricted or prohibited by any existing agreement to which they are parties.
- 25. **ENTIRE AGREEMENT:** The terms and conditions herein constitute the entire agreement and understanding by and between the parties and shall supersede all other communications, negotiations, arrangements, and agreements either oral or written, with respect to the subject matter herein.
- 26. **AMENDMENT:** This Agreement shall be amended from time to time upon written mutual agreement between the Parties.

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

The President and Fellows of Middlebury College	Contractor
By:	By:
Name:	Name:
Title:	Title:
Address:	Address:
Email:	Email:
Phone:	Phone:
Date:	Date:

Schedule A

Detail and explanation of the Agreement between Middlebury and Contractor:

Project Description:

[Timetable:]

[Payment Schedule:]