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Revised: January 2024

Contract Guideline Statement

Contracts entered into on behalf of Swarthmore College must be reviewed and approved by designated College personnel to ensure compliance with established College guidelines regarding contract language and requirements. Elevated risk contracts must be signed by the department's Senior staff member or authorized designee. A financial manager or designee may execute contracts with a value up to \$50,000.00. A President's Staff Member, VP for Finance & Administration, and President are authorized to execute contracts with a value over \$50,000.00. Original contracts / agreements / releases should be maintained by the contracting department for a minimum of two years after the end of the contract period. Note that construction agreements should be retained for at least 12-14 years after construction has been completed. Retention periods for federal grants/contracts may vary and should comply with the retention period outlined by the granting agency.

Reason for Guidelines

Entering into a contract creates certain exposures of the College's resources and reputation. To protect against these exposures, departments that enter into a contract with outside parties should follow the guidelines outlined below. The contract guidelines provide guidance as to who has the responsibility and accountability to provide required reviews of proposed contracts as well as signatory authority on behalf of the College. These reviews are to be done in conjunction with a thorough departmental review to ensure that the contract meets the needs of the department initiating the contract while adhering to the guidelines set forth by the College. Contracts that are due to expire should be renegotiated by the department initiating the contract to ensure necessary changes and updates are made. Members of the Swarthmore College Contracts & Insurance Team are available, as needed, to assist departments in the drafting and review of contracts and agreements. We encourage you to call one of the team members if you have any questions or concerns.

Department of Facilities Management

The Department of Facilities Management at Swarthmore College has developed standard contract templates for use within the facilities and services area. Questions regarding the templates should be directed to the Associate Vice President for Sustainable Facilities Operation and Capital Planning at 610-328-8575.

Swarthmore College Contracts & Insurance Team

Office of the General Counsel:

Sharmaine LaMar, General Counsel 610-690-5675

Chris Kelly, Paralegal 610-690-6820

Finance & Investment Office:

Alice Turbiville, Assistant Vice President for
Finance and Controller 610-957-6040

Jennifer Kennedy, Finance & Administration Coordinator 610-328-8316

Purchasing Office

Chris Kane, Strategic Sourcing Manager (610) 690-5529

Definitions

Contract	A legally enforceable agreement between two or more parties.
Contract Review Checklist	A tool used by individuals initiating a contract to verify that all contracting guidelines have been addressed and completed.
Construction-based contracts	A contract related to the construction, renovation or maintenance of new and existing facilities. These contracts include construction, architectural and engineering services.
Contracts for entertainment	A contract to hire or provide entertainment services.
Contract for external funding of research projects & other activities	A contract between a governmental or private funding source and the College.
Contracts for professional services	A contract for the purchase or sale of professional services, such as consulting or legal services.
Contracts for the purchase of goods/services	A contract for the purchase of movable items, such as furniture and computers, and non-professional services, such as delivery of

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	office equipment and grounds work. Agreements for the purchase of goods/services can also be imbedded in another contract, such as a construction contract.
Contracts for the use of resources and/or facilities	A contract for the use of College resources and/or facilities, such as athletic fields, wedding photos, and summer camps.
Indemnification	Indemnification is an offer to pay for expenses related to a loss without holding another party responsible.
Insurance	Insurance provides the financial backing to provide for the payment of expenses that arise from an indemnification or for liability.
Signatory Authority	A financial manager or designee may execute contracts with a value up to \$50,000.00. A President's Staff Member, VP for Finance & Administration, and President are authorized to execute contracts with a value over \$50,000.00.
Use of contracts	The College requires contracts for activities that: <ul style="list-style-type: none">○ Commit the College to receive or spend funds○ Commit the College to purchase or provide goods or non-professional services○ Commit the College to provide or receive educational or other professional services○ Commit the College to hire entertainers or provide entertainment services○ Commit the College to obtain professional design and consulting services related to planning and construction.○ Otherwise utilize College resources and/or facilities
Contract Review Checklist:	The individual initiating a contract should complete the Contract Review Checklist before finalizing a contract on behalf of the College. This checklist is used as verification that all contract guidelines have been addressed and completed. Upon completion, the form should be attached to the contract and sent to the appropriate signatory to execute. (See pages 18-20 for a copy of the checklist)
Identification of the College	The College shall be identified as Swarthmore College in all contracts and agreements. The official address of the College shall be 500 College Avenue, Swarthmore, PA 19081-1397 in all contracts and agreements.

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Legal Counsel Review	<p>If a contract/agreement includes provisions that pose a substantial risk to the College or new, non-standardized clauses, which the College representative is not familiar and/or comfortable with, the Office of the General Counsel should be contacted to ensure the contract/agreement protects the College and is consistent with all applicable laws.</p>
Mandatory clauses	<p>All contracts must contain certain clauses that are required to protect the College and its resources. These clauses include:</p> <p><i>Insurance:</i> The College requires certain levels of insurance coverage to be provided by other parties contracting with the College. The coverage required varies depending on the type of work, the level of risk to College buildings and people surrounding the work, and the amount of the contract. (Required coverage is outlined within the Swarthmore College Standard Terms and Provisions).</p> <p><i>Indemnification:</i> The College requires contracts to include an Indemnification clause. This clause is intended to protect the College from another's negligent acts. (Refer to Indemnification Requirements in the Swarthmore College Standard Terms and Provisions.)</p> <p><i>Independent Contractor Status:</i> The College requires contracts to include an independent contractor status clause. This clause guards against the other party alleging the contract constituted a joint venture or other employment arrangement that would make certain employee benefits and insurance coverage available to the contracted party. (Refer to Independent Contractor Status Requirements in the Swarthmore College Standard Terms and Provisions.)</p> <p><i>Force Majeure:</i> The College requires contracts to include a force majeure clause that addresses delay in performance caused by forces beyond the parties' control.</p> <p><i>Entire Agreement:</i> The College requires contracts to include an entire agreement clause that states the written contract is to be the whole agreement. No verbal or side agreements will be acceptable or enforceable.</p>

Governing Law: The College requires contracts to specify that the contract provisions are governed by the laws in the Commonwealth of Pennsylvania.

Venue: The College requires that contracts specify that the venue for any dispute be Pennsylvania Courts located in Delaware County, Pennsylvania or the United States District Court for the Eastern District of Pennsylvania.

Default: The College recommends that contracts/agreements include the following: 1/ wording that describes and/or defines what would constitute a “default”; 2/ a provision for remedy to the default, and 3/ a provision describing events that would result in a termination. The events of default or termination should be described clearly, and should be applied with equal force to both parties. Included in those events could be: unsatisfactory performance, non-payment, unexpected change in contract terms and others as applicable to the individual contract.

Limitation to the Use of the College’s Name and Logo: The College requires that contracts / agreements limit the use of the College’s name and logo.

Mandatory Exclusions

Automatic Renewal: Typically, the College does not allow contracts to contain an automatic renewal clause.

Single Indemnification Clauses to benefit the contracting party only: The College does not allow single indemnification clauses that only protect the contracting party and which exclude the College from the same protections.

Limitation of Liability: The College does not allow a contracting party to limit their potential liability. Limiting this recovery could adversely impact the College’s insurance coverage.

Responsibilities

Individual Initiating Contract

Make sure the contract conforms to College Contracting Guidelines.

Make sure the contract conforms to federal, state and local law.

Make sure an assessment has been made of the likely impact of the transaction on the College and the broader community and appropriate consultation has taken place with any constituencies that may be impacted by the transaction.

Make sure funds necessary for the contract have been allocated or are available within regularly approved budgets, special appropriations or restricted accounts.

Make sure there is no conflict of interest on the part of the approving individual or any other individual or organization involved in the transaction. A copy of the College's staff conflict of interest policy can be found in the Employee Handbook at: <https://www.swarthmore.edu/human-resources/employee-handbook>.

Make sure any facility being utilized in conjunction with the contract is available and reserved through the appropriate channels.

Make sure all required reviews and approvals have been obtained before any commitment is made.

We strongly encourage the use of the Contract Review Checklist as part of the contract review process.

Forward completed contracts to contracts@swarthmore.edu. If that document does not address the specific type of contract under consideration, please consult with a member of the Contracts & Insurance Team.

SWARTHMORE COLLEGE STANDARD CONTRACT TERMS AND PROVISIONS

INSTRUCTIONS:

1. ***“OTHER PARTY” SHOULD BE REPLACED WITH NAME OF ENTITY.***
2. ***ELEVATED RISK CONTRACTS MUST BE SIGNED BY THE DEPARTMENT’S SENIOR STAFF MEMBER OR AUTHORIZED DESIGNEE.***

ASSIGNMENT

Neither party shall assign or delegate its rights and obligations under this Agreement or any part hereof without the prior written consent of the non-assigning or non-delegating party.

GOVERNING LAW/VENUE

All disputes regarding the construction, interpretation and the parties’ obligations under this Agreement shall be governed by the laws of Pennsylvania, notwithstanding any of that state’s laws to the contrary. Any lawsuit arising out of the terms and conditions of this Agreement must be brought in the Pennsylvania Courts located in Delaware County, Pennsylvania or the United States District Court for the Eastern District of Pennsylvania.

NON-DISCLOSURE AND CONFIDENTIALITY OF INFORMATION

Other Party agrees to keep confidential and not to disclose to third parties any information provided by the College pursuant to or learned by Other Party during the course of this Agreement, unless Other Party has received the prior written consent of College to make such disclosure. Other Party shall similarly obligate, in writing, any and all persons to whom such information is necessarily disclosed to maintain the information in strict confidence. This obligation of confidentiality does not extend to any information that: 1) Was in the possession of Other Party at the time of disclosure by College, directly or indirectly; 2) Is or shall become, through no fault of Other Party, available to the general public; or 3) Is independently developed and hereafter supplied to Other Party by a third party without restriction or disclosure. Other Party agrees that, if this confidentiality obligation is breached, the College shall be entitled to equitable relief, including injunctive relief and specific performance, in addition to all other rights and remedies otherwise available. The rights and obligations of the parties under this Section shall survive any expiration or termination of the Agreement.

[NOTE: ONLY Add this next FERPA paragraph within this provision into contracts or the College's contracts Addendum when contracting with a contractor, consultant, volunteer, or other party to whom the College has outsourced institutional services or functions that will include disclosure of personally identifiable information from student education records. Remove this note before sharing with Other Party***]***

Notwithstanding the above and to the extent that in its execution of this Agreement Other Party obtains student *education records* and then must use or re-disclose those *education records*, Other Party agrees to comply with all applicable requirements of the Family Educational Rights and Privacy Act ("FERPA" - 20 U.S.C. 1232g, 34 CFR Part 99), as amended or otherwise modified, which govern the use and re-disclosure of *personally identifiable information* from *education records*, including without limitation the requirements of 34 CFR §99.33(a). The terms, "education records" and "personally identifiable information" shall have the meanings given to them under FERPA and the accompanying regulations (see 34 CFR §99.3)

AMENDMENT

No modification or amendment of any provision of this Agreement shall be valid or effective unless made in writing and signed by a duly authorized officer or representative of each of the Parties.

FORCE MAJEURE

In the event that either party is unable to perform its obligations under this Agreement as a result of a force majeure, neither party shall be liable to the other for direct or consequential damages resulting from lack of performance. "Force Majeure" shall mean fire, earthquake, flood, act of God, epidemic or pandemic, strikes, work stoppages, or other labor disturbances, riots or civil commotions, acts of terrorism or other hostilities, litigation, war or other act of any power of government, governmental agency or authority, foreign nation, or any other cause like or unlike any cause above mentioned which is beyond the control of either party.

INDEMNIFICATION

Other Party agrees to defend, indemnify and hold Swarthmore College and its respective affiliates, contractors, officers, board of managers, trustees, employees and agents harmless from and against all third-party claims, liabilities, damages and expenses, including reasonable attorney's and other professional's fees, arising in the course of Other Party's performance under this Agreement.

NONDISCRIMINATION

Each party agrees to nondiscrimination, on the basis of sex, race, color, age, religion, national or ethnic origin, sexual orientation, gender identity or expression, pregnancy, marital status, medical condition, veteran status, disability, or any other legally protected category, of its own employees, students, faculty and staff. Specifically, sexual misconduct (of any kind, including but not limited to sexual assault, offensive touching or suggestive jokes/remarks), stalking, and physical assault are unacceptable and will not be tolerated. The parties agree that a violation of this provision by a party in the course of performance under this Agreement will be grounds for immediate termination by the other party. The parties also agree to include this provision in any agreements with third parties engaged in the performance of this agreement.

GENERAL INSURANCE REQUIREMENTS* (See Note)

Before any of the services outlined within this agreement are performed, LESSEE, at its own cost and expense, shall provide and maintain during the performance of its services hereunder, insurance as described below with insurers rated A-, Class X or better by A.M Best Company in a form satisfactory to Swarthmore College. LESSEE must submit a Certificate of Insurance (COI) that strictly conforms to the Swarthmore College Sample COI attached to this Agreement. A failure to submit a COI that fully conforms with the attached sample COI will render this Agreement immediately null and void. The COI must be submitted to Swarthmore College prior to or at the same time as execution of this Agreement. LESSEE warrants that its Insurance Carriers are accurately informed regarding the business activities of the LESSEE and intends to cover those business exposures.

All insurance policies (excepting Workers' Compensation and Employers Liability) maintained shall name SWARTHMORE, its subsidiary corporations, affiliates, agents, employees, officers and directors as Primary Additional Insured, on a Non Contributory basis. All policies shall

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include a Waiver of Subrogation. The insurance company, or LESSEE if the insurance company does not, will give 30 day notice of any cancellation or material change in coverage.

1. Workers' Compensation insurance prescribed by applicable state Workers' Compensation acts.
2. Employers' Liability insurance to include a minimum of \$500,000 limit per employee, per accident and \$500,000 in the aggregate.
3. Commercial General Liability insurance all on an occurrence basis with a minimum of 1,000,000 per occurrence limit for bodily injury, property damage, sexual misconduct, personal and advertisers injury; \$3,000,000 aggregate limit for products/completed operations; and a \$3,000,000 general aggregate limit. This Commercial General Liability insurance to include coverage for the hazards of Contractual Liability and Broad Form Property Damage.
 - a. A copy of the policy and/or endorsement providing the sexual misconduct coverage must be attached to the certificate of insurance.

[*NOTE: The Professional Liability provision below only applies to contracts involving consultants. Examples include: Architects and Engineers, mental, medical counselors and professionals, safety consultants, insurance brokers, financial planning, accountants, and any education related consultants.***]**

4. Professional Liability (Errors and Omissions) Insurance appropriate to the Consultant's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.
If the Consultant maintains higher limits than the minimums shown above, the College requires and shall be entitled to coverage for the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the College.

Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

- a. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
- c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

5. Business Automobile Liability insurance including comprehensive third party coverage for injury (including death) or property damage with a minimum combined single limit of \$1,000,000 per occurrence including coverage for owned, non-owned and hired vehicles.
6. Privacy Liability coverage with a limit of not less than USD \$1MM/claim. Such insurance shall include, without limitation, coverage for unauthorized access, denial of service attacks, computer viruses, transmission of malicious code, and failure of security; breach of privacy and the failure to protect and disclosure of personally identifiable information, payment card information and health information; violation of any federal, state or local law or regulation in connection with the protection of information including fines and penalties to the extent allowed by applicable law; notification and crisis management costs, identity theft monitoring and regulatory defense; disclosure of any third party's proprietary information including, without limitation, trade secrets, and; liability for interruption of SWARTHMORE COLLEGE's or any third party's business including, without limitation, claims for loss of use and loss of profits.

NOTE: The above represents the minimum insurance requirements that would be required by the College on non-construction contracts/agreements. Higher limits may be necessary and appropriate for more significant work, especially for those within Facilities & Services and for construction based work. Insurance requirements should be reviewed by the appropriate level of management prior to the contract/agreement being finalized.

LIMITATION OF LIABILITY

Nothing in this Agreement shall limit the liability of the Other Party under law or custom.

LIMITATION TO THE USE OF THE COLLEGE'S NAME

The College agrees that Other Party may use the College's name only in experience citations to current or prospective clients, but not in any public advertising, publications, social networking sites, or on the Internet, without the College's express prior written consent to the specific contemplated use. Such requests shall be directed to the College's Communications Office. This restriction shall extend to all tiers of sub-consultants/subcontractors of Other Party and any other party engaged by Other Party as a result of this Agreement.

Other Party shall not, without express prior written consent in each case, use any College trademark in advertising, publicity, promotional, or any other activities or context including social networking sites and the Internet.

CONFLICTS

Other Party represents that, to its knowledge, no Swarthmore College trustee, officer, employee or any other person affiliated with Swarthmore College and having involvement with this Agreement (1) has an undisclosed external affiliation with Other Party, and/or (2) that, to its knowledge, no Swarthmore College trustee, officer, employee or any other person affiliated with Swarthmore College and having involvement with this Agreement has received, was promised, or will receive any personal benefit of value in connection with this Agreement or performance contemplated hereunder. The parties agree to disclose any known external affiliation or relationship described above to the Swarthmore College General Counsel office <generalcounsel@swarthmore.edu> prior to execution of this agreement.

TAX EXEMPTION

The Parties acknowledge that Swarthmore College is a tax-exempt entity. Other Party will take all steps necessary to ensure that these exemptions are utilized to the maximum benefit of Swarthmore College.

COMPLIANCE WITH LAWS/POLICIES

Other Party warrants and certifies that in performance of this Agreement, it will comply with all applicable statutes, rules, regulations, including laws and regulations pertaining to the subject matter of this Agreement. [Other party also agrees to maintain compliance with WCAG 2.1 accessibility standards.] – **Note: For EIT contracts only.**

[NOTE: ONLY Add this next Certification of Compliance paragraph within this provision into contracts when contracting with a contractor, consultant, volunteer, or other party that will involve direct contact with minors. Remove this note before sharing with Other Party***]***

1. Certification of Compliance

Initials

By initialing beside this paragraph, Other Party certifies to the College that it has fully complied with any background screening and training that is required by applicable law including, without limitation, the Pennsylvania Child Protective Services Law (“CPSL”), 23 Pa. Cons. Stat. 6301, et seq., and has also complied with the *Swarthmore College Guidelines for Programs Involving Minors* for all of Sponsoring Organization’s employees, volunteers

_____ and independent contractors, whether paid or unpaid, having “*Direct Contact*” with Minors (persons under the age of 18) during performance of this Agreement.

NOTE: As used in this Certification, the term “Direct contact” has the same meaning as under the CPSL and refers to providing for “the care, supervision, guidance or control of children or routine interaction with children” (23 Pa. Cons. Stat. 6303).

_____ By initialing beside this paragraph, Other Party acknowledges receipt of the *Swarthmore College Guidelines for Programs Involving Minors and Swarthmore College Mandatory Child Abuse Reporting Policy*, and agrees to, at a minimum, implement policies, practices, and procedures that are comparable to and in compliance with these policies and guidelines for Other’s Party’s programs involving Minors occurring on College premises, or on behalf of the College in other locations.

_____ By initialing beside this paragraph, Other Party further agrees that its noncompliance with this Section is grounds for immediate termination of the Agreement by the College.

_____ *By initialing beside this paragraph, Other party agrees that the College has the authority to audit Other party's background clearance and training records AND (2) Other party agrees to share the following Swarthmore College policies and information with program participants and staff: Notice of Non-Discrimination, Title IX Sexual Assault and Harassment Policy, and Title IX Coordinator contact information.*

NON-WAIVER

If the College or Other Party waive any power, right, or remedy arising hereunder or under any applicable law, the waiver shall not be deemed a waiver of that power, right, or remedy upon a later recurrence of similar events. No act, delay or course of conduct by the College or Other Party shall be deemed to constitute a waiver by the College or Other Party. Any such waiver may only be effected by an express written waiver signed by the waiving Party.

NOTICES

All notices or communications required or permitted hereunder shall be in writing and shall be timely hand delivered or sent by recognized overnight carrier to the representatives set forth in **Subsection 1** and **Subsection 2** below or to such other address or attention as the recipient may have designated in writing. Any such notice or communication will be deemed delivered as follows: if hand delivered, on the day so delivered; and if sent by recognized overnight carrier, the next business day.

1. **College's Representative.** Unless notification is otherwise given in writing, the College's Representative shall be [***INSERT NAME AND CONTACT INFO***] . The College has empowered its representative to receive all notices and communications and to act in all respects for the College to the extent of the College's responsibilities under this Agreement. The College may change its Representative at any time, upon written notice to Other Party.
2. **Other Party's Representative.** Unless notification is otherwise given in writing, Other Party's representative shall be [***INSERT NAME AND CONTACT INFO***] . Other Party has empowered its representative to receive all notices and communications and to act in all respects for Other Party to the extent of Other Party's responsibilities under this Agreement. Other Party may change its Representative at any time, upon written notice to the College.

OWNERSHIP

[*THIS PROVISION IS ONLY NEEDED IF OTHER PARTY IS CREATING SOMETHING FOR THE COLLEGE***]**

Any and all works created by Other Party pursuant to this Agreement (the "Works") shall be deemed works made for hire and all present and future right, title, and interest in such Works, including, without limitation, all copyrights, shall belong to and shall be the sole and exclusive property of Swarthmore College.

Other Party shall also execute all papers and perform all such other acts as Swarthmore College may deem necessary to ensure that all such rights, interests, or title in such Works have been properly assigned to Swarthmore College or its designee.

Other Party represents and warrants that the Works created by Other Party pursuant to this Agreement do not infringe upon or misappropriate the rights, interests, or titles of any person or entity.

Other Party will defend, indemnify and hold harmless Swarthmore College from and against any and all liability should an infringement or misappropriation claim based on the Works be made against Swarthmore College, including but not limited to attorney's fees.

This provision shall survive expiration and termination of this Agreement.

INDEPENDENT CONTRACTOR

Other Party is an independent contractor and not an employee or agent of Swarthmore College. Other Party shall be solely responsible for any unemployment or disability insurance payments, or taxes/payments that may be required by Federal, State or local law with respect to any sums paid to Other Party hereunder. Other Party shall not be entitled to any College employee benefit of any nature whatsoever. Furthermore, the arrangements contemplated by this agreement shall not be deemed to constitute a partnership or joint venture between Other Party and Swarthmore College.

Other Party will defend, indemnify and hold harmless Swarthmore College from and against any and all liability for the payment of taxes, interest and/or penalties, as well as damages and costs, including but not limited to attorney's fees, in connection with any claim that Other Party is an employee of the College.

SUBCONTRACTOR REQUIREMENTS

Other Party shall enter into written agreements with all subcontractors and subconsultants, which shall include:

1. A provision that the subcontractor or subconsultant assumes toward Other Party all of the obligations that Other Party assumes toward the College under this Agreement;
2. A provision that the subcontractor or subconsultant is not in privity with the College and shall not seek compensation directly from the College;
3. A provision that the College is a third-party beneficiary of the subcontract or agreement, entitled to enforce any rights thereunder for their benefit

NO AUTHORITY

Other Party shall have no authority to take any action, create any obligation, make any commitment, incur any indebtedness, or enter into any agreement that binds the College. The Other Party shall not in connection with any services provided to or on behalf of the College represent to any person or entity that the Other Party is associated with the College in any capacity other than that of an independent contractor.

SEVERABILITY

The terms of this Agreement are severable such that if any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable.

ENTIRE AGREEMENT

This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement, whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.

EFFECTIVE DATE

This Agreement shall become effective on the date the last party signs it and delivers it to the other party. Absent a termination pursuant to this Agreement, this Agreement will end upon full performance, or on *****INSERT TERMINATION PERIOD OR DATE, IF KNOWN*****, whichever is sooner.

TERMINATION

The College may terminate this agreement giving 10 days notice for any reason or no reason. Other Party agrees that a violation by Other Party of any of the terms, obligations, or certifications under this Agreement shall be grounds for immediate termination by the College.

ELECTRONIC SIGNATURES/COUNTERPARTS

The parties acknowledge and agree that this Agreement may be executed in counterparts, using electronic or facsimile signatures, and that such a signature shall be legally binding to the same extent as a written signature by a party's authorized representative. Each counterpart shall be deemed an original, and all of which together shall constitute one and the same instrument. Each party waives any legal requirement that this Agreement be embodied, stored or reproduced in tangible media, and agrees that an electronic reproduction shall be given the same legal force and effect as a signed writing.

DEFAULT

Any one of the following events shall be deemed to be an "Event of Default" hereunder by the defaulting party:

1. Failure by a party to perform and/or comply with the terms of this Agreement as specifically described herein.
2. Non-payment for services rendered, as described in this Agreement.
3. A unilateral change in contract terms, not agreed in writing by both parties.
4. Circumstances in which a court having jurisdiction over a party enters an order for relief in any involuntary case commenced against the applicable party as debtor under the Federal Bankruptcy Code or the entry of a court decree or order appointing a custodian, receiver, liquidator, assignee, trustee, or other similar official.

Upon the occurrence of an "Event of Default," the non-defaulting party shall notify the defaulting party in writing of the default and the defaulting party shall have thirty (30) days to cure the defect. In the event that the defaulting party does not cure the defect within the required time period, the non-defaulting party (1) shall have all the remedies afforded by law and in equity, and (2) shall have the right to terminate this Agreement.

SIGNATURE AUTHORITY

[*PLEASE NOTE THAT NO STUDENT MAY BIND SWARTHMORE COLLEGE TO A CONTRACT OR AGREEMENT. ONLY A DULY AUTHORIZED AGENT OR EMPLOYEE OF THE COLLEGE MAY BIND IT IN A CONTRACT.***]**

The individuals signing below hereby represent and warrant that they are duly authorized to execute and deliver this Agreement on behalf of their respective organizations and that this Agreement is legally binding upon each party, their successors and assigns.

Signatures:

Swarthmore College

[*ENTER OTHER PARTY NAME HERE***]**

By _____ By _____

Name _____ Name _____

Title _____ Title _____

Date _____ Date _____

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Today's Date: _____

Contract Due Date: _____

Department Initiating Contract: _____

Individual Responsible for Contract: _____

Contract Purpose/Consideration:

(What is the purpose of the proposed contract, and what are the terms of consideration? Consideration describes what is being provided, by whom and to whom, and at what cost.)

Contract Terms: Commencement Date _____
 Expiration Date _____
 Total Cost _____

Reviews/Approvals: A financial manager or designee may execute contracts with a value up to \$50,000.00. A President's Staff Member, VP for Finance & Administration, and President are authorized to execute contracts with a value over \$50,000.00. Elevated risk contracts must be signed by the department's Senior staff member or authorized designee.

I. Initial Review

_____ Have you read the contract in its entirety and agree that it meets the needs of your department?
_____ Are all attachments and exhibits references in the contract attached?

II. Identification of Parties

_____ Is the College properly identified (contracting party should be **Swarthmore College, 500 College Avenue, Swarthmore, PA 19081-1397**)?
_____ Is the other party properly identified?
_____ Are abbreviated and designated descriptions of the parties consistent throughout the contract?

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III. Consideration/Business Terms

- _____ Is the consideration properly and accurately stated?
_____ If payments are to be made by the College, does the contract specify when payments are due and where they should be remitted to?
_____ Are funds available/budgeted for this contract?

IV. Duties and Obligations

- _____ Where will the proposed contract activities take place?

_____ Is each obligation described with sufficient clarity so that the parties know what is being performed and how it will be performed?
_____ If applicable, does the contract properly identify the responsibility for National, State and Local code requirements (United States of America, Commonwealth of Pennsylvania and Borough of Swarthmore)?

V. Terms and Termination

- _____ Does the contract contain a clearly ascertainable starting and ending date?
_____ Have you ensured there is no automatic renewal clause?

VI. Insurance Clause

- _____ Is there an insurance requirement clause in the contract?
_____ If yes, are the requirements consistent with the College requirements?
_____ Does the contract require exchange of information by way of Certificates of Insurance?
_____ Is the other party required to name the College as an additional insured?
_____ Has a copy of any required Certificate of Insurance been obtained?

VII. Indemnity

- _____ Does the contract contain an indemnity clause?
_____ If yes, is the indemnity clause consistent with the College requirements?

VIII. Default

- _____ Does the contract provide for termination in the event of default?
_____ Are the instances establishing default described with clarity and specificity?
_____ Are the following included in the list of instances resulting in default?
_____ Unsatisfactory Performance
_____ Non-payment
_____ Unexpected change in contract terms
_____ Is the ability to terminate in the event of default applied with equal force to both parties?
_____ Is there a provision for written notification of default to the defaulting party?

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IX. Force Majeure

- _____ Does the contract contain a force majeure clause?
_____ Does the force majeure clause address delay in performance caused by forces beyond the parties' control?

X. Miscellaneous Provisions

- _____ Does the contract contain an entire agreement clause?
_____ Is the contract governed by the Laws of the Commonwealth of Pennsylvania?
_____ Does the contract contain a clause to limit the other parties use of the College's name and logo?
_____ Are the necessary facilities available for this contract? Has Facilities Management been involved in the negotiations of fees and services related to the contract? See the Space Use Policy and Rentals site at: <https://www.swarthmore.edu/facilities-management/space-use-policy-and-rentals> for more information.

XI. Venue

- _____ Does the contract contain a venue clause?
_____ Does the venue clause specify that the venue for any dispute be in the Pennsylvania Courts located in Delaware County, Pennsylvania or the United States District Court for the Eastern District of Pennsylvania?

XII. Execution

- _____ Does the person signing the contract have the authority to sign on behalf of the College?
_____ Does the other party's representative have the authority to sign on behalf of the other party?

XIII. Obligation beyond fiscal year

- _____ Does the contract extend beyond the current fiscal year?
_____ If the contract does extend beyond the fiscal year, what is the dollar allocation/split between the current and the future fiscal year(s)?
Current year through 6/30/xx = _____
7/1/___ - 6/30/___ = _____
7/1/___ - 6/30/___ = _____

Reviewer:

Sign: _____ Print: _____ Date: _____