



Swarthmore College Standard Contract Terms and Provisions

<u>Provisions</u>	Page
Assignment	1
Governing Law/Venue.....	1
Non-Disclosure and Confidentiality of Information.....	1
Amendment.....	2
Force Majeure	2
Indemnification	2
Insurance	2
Limitation of Liability.....	3
Limitation to the Use of the College's Name	3
Conflicts.....	3
Tax Exemption.....	3
Compliance with Laws/Policies.....	3-4
Non-Waiver.....	4
Notices	4
Ownership	5
Independent Contractor.....	5
Subcontractor Requirements.....	5
No Authority	6
Severability	6
Entire Agreement.....	6
Effective Date and Term or Agreement.....	6
Termination.....	6
Electronic Signature/Counterparts	6
Default, Remedies & Termination.....	6-7
Signature Authority.....	7

Swarthmore College Standard Contract Terms and Provisions

Instructions: “Other Party” Should be Replaced with Name of Entity

a. 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.

b. Governing Laws/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.

c. 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 confidentially 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)

d. 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.

e. 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, strikes, work stoppages, or other labor disturbances, riots or civil commotions, acts of terrorism or other hostilities, litigation, war or other act of any foreign nation, power of government, or governmental agency or authority, or any other cause like or unlike any cause above mentioned which is beyond the control of either party.

f. Indemnification

The Parties agree to defend, indemnify and hold each other and their respective affiliates, contractors, officers, directors, trustees, employees and agents harmless from and against all claims, liabilities, damages and expenses, including reasonable attorney's and other professional's fees, arising out of or related to their own intentional or negligent acts or omissions.

g. 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 also agree to include this provision in any agreements with third parties engaged in the performance of this agreement.

h. Insurance

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.

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.
4. 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.
5. All insurance policies (excepting Workers' Compensation and Employers Liability) maintained shall name Swarthmore College, its subsidiary corporations, affiliates, agents, employees, officers and directors as Primary Additional Insured on a noncontributory basis.

i. Limitation of Liability

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

j. 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.

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.

k. 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) is affiliated with the Other Party, and (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 anything of value in connection with this Agreement or performance contemplated hereunder.

l. 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.

m. 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 2.0 AA accessibility standards.

Certification of Compliance

Initials

By initialing beside this paragraph, Other Party certifies to the College that it has fully complied with the 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.

n. 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.

o. 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.

p. Ownership [*THIS PROVISION IS ONLY NEEDED IF OTHER PARTY IS CREATING ASOMETHING 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.

q. 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.

r. 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

s. No Authority

The 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.

t. 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.

u. 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.

v. Effective Date and Term of Agreement

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 the Termination Provision or prior written consent of both parties, this Agreement will end upon full performance of the Agreement, or on *****INSERT TERMINATION PERIOD OR DATE, IF KNOWN*****, whichever is sooner.

w. Termination

Either Party 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.

x. Electronic Signature/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.

y. Default, Remedies & Termination

Any one of the following events shall be deemed to be an “Event of Default” hereunder:

1. Failure by either party to perform 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 any of the parties 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 (1) shall have all the remedies afforded by law and in equity, and (2) shall have the right to terminate this Agreement.

z. 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 organization and that this Agreement is binding upon each party and organization in accordance with its terms.

Signatures:

Swarthmore College
HERE*]**

[*ENTER OTHER PARTY NAME**

By _____

By _____

Name_____

Name_____

Title_____

Title_____

Date _____

Date _____