

Guideline No. G-030

Subject: General Instructions on Form and Execution of Contracts

I. Approval Required.

In general, the Chancellor for the Central Office and for System-wide agreements, the President of an institution, or the Vice Chancellor for the Tennessee Technology Centers or designee is the final approving authority within the system for any contract which is prepared consistent with this guideline; except that the approval of the Chancellor, or designee, shall be required for i.) contracts, including grant agreements, which do not conform to this guideline, ii.) dual services agreements in which the Tennessee Board of Regents ("TBR") Central Office is the vending or procuring party, iii.) certain real property agreements (as provided in other policies and guidelines), iv.) any agreement required to be approved by the Chancellor under TBR Policy 1:03:02:10 Section 6, v.) the primary operating agreement between an institution and its foundation and any other agreement between the institution and its foundation which does not conform to the requirements of this guideline, vi.) banking and other financial services agreements required by the vendor, and vii.) any other agreement, including purchase orders, for more than \$249,999.99 in annual revenue or expense (Renewals of such agreements do not require approval at the Central Office if no substantive changes have been made; in addition, purchase orders issued pursuant to purchase orders and/or contracts which have already received approval by the Central office do not require additional submission to the Central Office); however, grants which conform to the requirements of this guideline do not have to be approved at the Central Office.

Agreements must be processed in compliance with applicable legislative fiscal review requirements, as they may be amended from time to time. Articulation agreements should be developed in compliance with instructions or guidance from the Central Office, Office of Academic Affairs. Generally, it is the responsibility of the institution to negotiate with the other party to bring an agreement into conformity with this guideline and determine that the terms are acceptable to the vendor before the agreement is sent to the Central Office for approval.

Each institution and technology center shall maintain a written contracts manual (may be in electronic format) which sets forth any procedures of the institution or technology center which are in addition to and necessary to comply with this guideline.

A. The purpose of a written contract is to embody the complete agreement in writing. Whether the document is called an agreement, contract, memorandum of agreement (or memorandum of understanding), or purchase order (see TBR Policy 4:02:10:00), it is subject to the requirements of this guideline. No relevant terms should be left to an unwritten "understanding" or verbal agreement; no oral representation of any official agent, or employee of either party, either before or after the execution of an agreement is binding on the parties. The document should be explicit and clearly state the rights and duties of each party and clearly identify all parties.

B. All relevant documents should be incorporated by reference, with the order of interpretation clearly set forth.

C. Amendments and addenda to existing contracts shall clearly state the additions, deletions and modifications to the contract, including a statement as to whether the new terms are in place of or in addition to terms expressed in the original contract. The Institution shall negotiate the terms, draft the amendments and/or addenda, execute them properly, then forward them to the Central Office for approval, if required, along with a copy of the original agreement and any prior amendment or addendum. If a signature from the Central Office is required before the other party and/or the institution have signed an agreement, the institution should include an explanation on the Contract Summary Sheet.

D. All necessary signature approval lines should be prepared by the institution, including that for the TBR.

1. If the other party or contractor is a corporation, its name must be stated in the contract exactly as it appears in its charter. The person signing on behalf of the corporation must have legal authority to do so, and his/her title/position should be shown on the signature page. If the other party is a state agency, signature approval lines are necessary for the Department Commissioner or official of equivalent rank.
2. The President/Director or designee must sign all institution contracts that do not require Central Office approval.

3. The President/Director or designee must sign all institution contracts required to be submitted to the Central Office. If the President/Director or designee's signature has been omitted from contracts prepared and delivered to the Central Office, such contracts may be returned to the Institution.
4. When approval by the Chancellor is not required, that signature blank should be marked "not applicable" or should be deleted.

E. Other Approvals Which May be Required

All inter-agency agreements with other Tennessee state agencies (except agreements with other TBR schools or UT), including dual service agreements for over \$1,500.00, must be approved by the Commissioner of the Department of Finance and Administration. Only Dual Service Agreements in which the Central Office is the vending or procuring party or which do not comply with the requirements of this guideline are required to be submitted to the Central Office.

F. Institutions should prepare a sufficient number of originals of all contracts as desired/required by the parties and an original for the Central Office if Central Office approval is required. Each of the originals of the contract shall bear the original signatures of the parties.

G. For contracts which do not require Central Office approval and for which the other party is agreeable to the use of electronic signatures, Institutions may use electronic signatures as permitted under Guideline B-095 and the Institution rules and procedures which have been adopted pursuant to B 095.

H. All contracts required to be submitted to the Central Office should be submitted prior to the beginning of the contract's original term or renewal.

All contracts from the technology centers which require Central Office approval shall be first submitted to the Office of the Vice Chancellor for Tennessee Technology Centers.

I. A contract cannot be extended or amended after the original term has expired.

J. A completed Contract Summary Sheet as well as all relevant attachments must accompany all agreements submitted to the Central Office for review. Contract Summary Sheets must be signed by an institution official verifying purchasing compliance, and a justification of non-competitive purchase form must be completed, if applicable.

K. Agreements containing blank spaces or omitting required contract provisions will be returned to the institution for correction and must be resubmitted to the Central Office for approval.

L. Food and Vending Services Contracts. Section III of this guideline and bidding requirements should be followed, as applicable, for food and vending services contracts. Note that State law prohibits an institution from establishing a vending contract for new or existing vending facilities, nor may the institution perform these services itself, without first notifying the Division of Blind Services for the State of Tennessee.

M. Telephone Systems. Section III of this guideline should be adapted and followed as applicable for telephone systems and services contracts.

N. Real property and lease agreements are covered by separate procedures found in Guidelines B-025 and B-026.

II. Required Contract Provisions.

Whenever possible, one of the form contracts in the following sections of this guideline should be followed in order to assure that an agreement conforms to the requirements of TBR policy and this guideline.

A. Purpose/Duties/Scope

Every contract must contain language regarding its purpose and the duties of the parties. For any contract that results from an RFQ or ITB, Institutions are not permitted to change the scope of the service(s) once a contract is awarded. (Department of General Services Purchasing Division, Agency Purchasing Procedures Manual, Revision Twelve, Approved by the Board of Standards, January 30, 2007).

B. Term of Agreement

“Contract Term - A contract shall be entered into for a period or contract term sufficient to adequately accomplish the state's procurement objectives, provided that the contract contains appropriate termination provisions for performance failures, funding changes, and state convenience. However, no contract term shall exceed sixty (60) months, except that for revenue contracts, no term shall exceed one hundred and twenty (120) months.”

Finance and Administration Regulations, Chapter 0620-3-3 and General Services Regulations, Chapter, 0690-3-1-03. Every agreement must provide a beginning and ending date or clear language as to how these dates will be determined. No contract may provide for automatic renewal unless the agreement is cancelable for convenience upon a specified period of days notice by the institution; in which case, the contract may renew automatically for up to five years total term if the agreement also contains annual legislative appropriation language or requires no expenditure of state funds. Institutions are encouraged to seek terms of longer than one year but not more than five years for clinical affiliation agreements (See Section 2 of this guideline). If a contract calls for payments or expenditures by the institution from funds appropriated for more than a single fiscal year, the following language (or equivalent language) must be added: "Continuation of this Agreement is subject to annual allotment of state and/or federal funds."

C. Payments

All agreements must provide that payments are to be made only upon submittal of invoices by the contractor, and after performance of the portion of the services which the invoiced amount represents, except that agreements with tax-exempt non-profit organizations may provide for periodic advance payments (see also III. D. of this Section for additional exceptions).

If the contractor is a non-resident alien, payment for any portion of the contract from any source will not be made by the institution until an Internal Revenue Service Individual Taxpayer Identification Number has been assigned to the contractor by the Internal Revenue Service and presented to the institution. Final payment shall not be made until the contractor has completed performance. Adequate documentation to support all payments must be maintained by the institution.

Sales/Ownership/Ethnicity Information. As part of the purchasing and contracting process, institutions shall attempt to collect: type of business, annual sales, business ownership and ethnicity information before payment is made to the vendor. Information shall be collected in accordance with TCA § 2-3-8 and Purchasing Policy No. 4:02:10:00.

D. Conflict of Interest

If the Contractor is an individual:

"The Contractor warrants that he/she is not and during the term of the contract will not become an employee of the State of Tennessee."

If the Contractor is an organization:

"The Contractor warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to any officer or employee of the State of Tennessee as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this contract." (Note that this provision must be omitted if the personal, professional and consultant service contract form in Section III of this guideline is used between TBR institutions or between a TBR institution and another state entity.)

E. Civil Rights Clause

"The parties agree to comply with Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Executive Order 11,246, the Americans with Disabilities Act of 1990 and the related regulations to each. Each party assures that it will not discriminate against any individual including, but not limited to, employees or applicants for employment and/or students because of race, religion, creed, color, sex, age, disability, veteran status or national origin.

The parties also agree to take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to their race, religion, creed, color, sex, age, disability, veteran status or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection available to employees and applicants for employment."

(The second paragraph may be omitted if the other party does not receive federal or state funds in excess of \$50,000.00 annually.)

F. Audit and Documentation Clause

"The Contractor shall maintain documentation for all charges against the state under this contract. The books, records and documentation of the Contractor insofar as they relate to work performed or money received under this contract, shall be maintained in conformity with generally accepted accounting principles for a period of three full years from the date of the final payment, and shall be subject to audit, at

any reasonable time and upon reasonable notice, by the Institution or the State Comptroller of the Treasury, or their duly appointed representatives, or a licensed independent public accountant."

(See Section III of this guideline for audit language for grants.)

No audit clause is required for a one time, fixed payment agreement.

G. Payment for Travel, Meals, Lodging

If a contractor is to be paid/reimbursed for travel, meals or lodging, such payment shall be in the amount of actual cost/per diem, and shall be expressly subject to the limits and rules set forth in TBR's General Travel Policies and Procedures, Policy No. 4:03:03:00.

H. Governing Law

Language shall be included which provides that the agreement is subject to the governing law of Tennessee, unless the other party will not accept this provision. In that case, the contract may be silent as to governing law.

I. Maximum payment clause

If the institution is required to make payments, the agreement must state the maximum dollar amount that may be paid under the agreement.

J. Illegal Immigrants

"Prohibition on Hiring Illegal Immigrants. Tennessee Public Chapter No. 878 of 2006, TCA 12-4-124, requires that Contactor attest in writing that Contractor will not knowingly utilize the services of illegal immigrants in the performance of this Contract and will not knowingly utilize the services of any subcontractor, if permitted under this Contract, who will utilize the services of illegal immigrants in the performance of this Contract. The attestation shall be made on the form, Attestation re Personnel Used in Contract Performance ("the Attestation"), which is attached and hereby incorporated by this reference.

If Contractor is discovered to have breached the Attestation, the Commissioner of Finance and Administration shall declare that the Contractor shall be prohibited from contracting or submitting a bid to any Tennessee Board of Regents institution or any other state entity for a period of one (1) year from the date of discovery of the breach. Contractor may appeal the one (1) year by utilizing an appeals process in the Rules of Finance and Administration, Chapter 0620."

The required attestation form is attached to this guideline as Appendix I.

This Section is applicable to all sample agreements in this guideline with the exception of clinical affiliation agreements, dual service agreements, use of facilities agreements, and non-credit instruction agreements.

III. Unacceptable Provisions.

The Director of Purchasing and Contracts in the Central Office and the Office of General Counsel are available for assistance in negotiating modifications with the vendor when the institution has been unable to secure agreement of the vendor. The institution may consult with the Director of Purchasing and Contracts in the Central Office or the Office of General Counsel prior to contacting the vendor regarding modification.

The following provisions should not be included in any contracts:

A. Provisions requiring the institution to pay taxes (TCA §§ 67-5-203 and 67-6-322), late penalties, cancellation fees, liquidated damages, incidental or consequential damages, or punitive or exemplary damages (Institution is liable for actual damages only TCA § 9-8-101 et seq.).

B. Payment of travel/per diem expenses in excess of maximum limitations set forth in TBR Policy 4:03:03:00.

C. Provisions designating the governing law of a state other than Tennessee.

D. Provisions requiring the institution to make deposits or payments before goods are received or services are performed (TCA § 12-4-703), except that the institution may pay for computer software or computer software/hardware maintenance and other similar maintenance services upon the signing of an agreement. (Such maintenance services are considered fully delivered upon execution of a contract because they are available regardless of whether or not the service is ever used.) Institutions may also make payment for subscriptions upon execution of an agreement. See also Section II. C. above.

E. Provisions requiring the institution to purchase or obtain liability, property or other insurance or a performance bond. If the institution is unable to negotiate for the deletion of such provisions, the Office of the General Counsel should be consulted as it may be possible to purchase insurance or a performance bond in appropriate circumstances.

F. Provisions requiring the institution to insure, guarantee, or indemnify or hold harmless any party from claims which may arise out of the agreement or be brought by third parties. (Tenn. Const. Art. I, §17; Tenn. Const. Art. II, §31; and Tennessee Rules of Finance and Administration Chapter 0620-3-3-.07 (13)).

G. Provisions requiring the institution to obtain or pay for outside labor of persons not employed by the institution (for example, union stage-hands, teamsters, etc.) are prohibited unless such cost is included as part of the total contract price.

H. Provisions requiring the institution to consent to binding arbitration by a third party of claims arising out of or relating to the agreement. (TCA §§ 86-301 and 20-13-103.)

I. Disclaimer of vendor's liability for incidental, exemplary, or consequential damages. Certain liability disclaimers are permissible subject to the provisions of TBR Purchasing Policy Sections XV H. and I., the provisions of Section 11 subsection Contract of Adhesion of this guideline, or approval of the Office of General Counsel.

J. Disclaimer by vendor of express or implied warranties of merchantability and fitness for a particular purpose. Certain warranty disclaimers are permissible subject to the provisions of TBR Purchasing Policy Sections XV H. and I., and the provisions of Section 11 subsection Contract of Adhesion of this guideline, or approval of the Office of General Counsel.

K. Limitation on dollar amount of damages recoverable by state from vendor, except that certain liability disclaimers are permissible subject to the provisions of TBR Purchasing Policy Sections XV H. and I., the provisions of Section 11 subsection Contract of Adhesion of this guideline, or approval of the Office of General Counsel.

L. Unless vendor or institution provides shipment protection in the institution's interest, passing of risk of loss or title to institution before delivery and/or installation of products.

M. Right of vendor to enter institution's premises without notice to remove equipment or product upon alleged default by institution.

N. Award of attorneys' fees or costs to vendor in the event of legal action against institution. (TCA § 9-8-307(d)).

O. Consent to jurisdiction in courts outside Tennessee.

P. Provisions requiring the institution to pay late charges, finance charges or interest in excess of that provided under the Tennessee Prompt Pay Act (TCA § 12-4-701 et seq.).

Q. Provisions permitting the vendor to take a secured interest in personal property under the agreement.

R. Limitation on time in which state may bring suit. (TCA § 28-3-109).

S. Provisions requiring confidentiality and nondisclosure that violate the Tennessee Open Records Act. (TCA § 10-7-101 et seq.).

IV. Reporting Requirements

Institutions shall report quarterly to the Office of Purchasing and Contracts at the Central Office the following information (in the format provided by the Central Office):

A. Small/Minority/Woman-Owned Business Report - in accordance with TCA § 12-3-8.

B. RFP Diversity Report – report of contracts issued from requests for proposal for goods and/or services pursuant to TCA § 12 -3-807(b).

C. Quarterly Contracts Report for Personal, Professional, and Consulting Contracts – in accordance with Fiscal Review Requirements, institutions shall submit the following two (2) reports*:

1. Contracts Ranging from \$2,000.00 to \$50,000.00
2. Contracts Ranging from \$50,000.00 to \$249,999.99

D. Senate Finance, Ways, and Means Report – institutions shall submit an annual report of all existing service contracts.

*dollar amounts reported for each contract shall be based on total term of contract, including all renewals.

V. The Chancellor or designee may approve exceptions to the requirements of this guideline in appropriate cases.

Section 2

CLINICAL AFFILIATION CONTRACTS

I. SCOPE

Clinical affiliation agreement - an agreement whereby an institution in the Tennessee Board of Regents System ("Institution") desires to enter into a mutually beneficial agreement with another party ("Affiliate") providing for the training/experience of students enrolled at the Institution at the other party's facility ("Facility").

II. GENERAL RULES

A. Generally, these agreements do not provide for monetary compensation to either the Institution, the other party or to any student; however, the form can be modified if any payment is to be made.

B. Health Records and Insurance. The Institution may provide health records of students (and faculty, if necessary) upon request by the Affiliate. Note: The Institution must give students/faculty prior written notice that they will be required by the Affiliate to obtain and provide health records in order to participate in clinical experience. The Affiliate may also require written evidence of professional liability insurance coverage from individual students (and faculty) participating in the experience. The Institution may give notice of the minimum amount of coverage that is required by the Affiliate of the students/faculty and that this coverage is required during the term of the student's/faculty's assignment at the clinical Facility.

C. Background Checks (faculty/staff and/or students). If criminal background checks of students are required by the Affiliate, the Institution shall notify students of this requirement prior to enrollment in the program or as soon as the requirement is known. Students will be informed by the Institution that the check must be completed within the 90 day period immediately prior to the student's initial clinical placement. It shall be the student's responsibility to make timely arrangements for the background check and to pay all costs associated with such checks.

If criminal background checks are required for Institutional faculty or staff, it shall be the Institution's responsibility to arrange for the background check, to pay all costs associated with such checks and to provide the results to the Affiliate.

It shall be the responsibility of Affiliate to set the eligibility standards for participation and to evaluate the results of the background checks. If Affiliate determines that a student or faculty /staff member shall not participate at its facility, Affiliate shall so notify that individual and the Institution. Institution shall take steps to ensure that this individual does not participate in the clinical program at the Affiliate.

If an Institutional faculty/staff member is also an employee of Affiliate or is an employee at another hospital, health care facility or health care organization, Affiliate will allow the faculty/staff member to provide on-site supervision and instruction for its clinical program without the necessity of undergoing an additional background check.

Recognizing that students enrolled in the _____ program at Institution will potentially participate in multiple clinical placements at multiple facilities, Affiliate agrees to accept the results of the background check done prior to the student's initial clinical placement if the student maintains continuous enrollment in the health care program and if the results of the background check are archived by the background check agency.

Institution shall inform students or faculty/staff members excluded from clinical placement on the basis of a criminal background check of any review or appeal process available pursuant to the Fair Credit Reporting Act or any other law or policy, if any.

Institutions may agree to language in clinical agreements regarding background checks in accordance with the guidance set out in this Section II. C.

D. HIPAA Compliance. Institutions are not business associates of the clinical Affiliates to which students are assigned for clinical experience; nor, under HIPAA, is a member of the Affiliate's workforce a business associate. For purposes of HIPAA, students are trainees and are, by definition, considered to be the "workforce" of the Affiliate. Therefore, entering into business associate agreements is not appropriate (at the same time, it should be noted that students are employees of neither the Institution nor the Affiliate).

Note – although HIPAA language is included in the form contract as the second and third paragraph of II. E.1., this HIPAA language may be omitted upon the request of the Affiliate. However, no HIPAA language which differs in substance may be included in the agreement without prior review by the Office of the General Counsel.

E. Agreements which comply with this guideline and which do not deviate in substance from the attached standard agreement may be executed by the Institution and should not be submitted to the Central Office for approval. In addition, agreements previously approved by the Central Office may be renewed without Central Office approval if no substantive changes are made.

III. UNACCEPTABLE PROVISION(S)

Any provision requiring students or faculty of the Institution to sign releases, waivers or hold harmless agreements relieving the Affiliate from legal liability for personal injury or property damage resulting from the negligence of the Affiliate or its employees.

Source and authority: TBR Policy 1:03:02:10

[Sample Clinical Affiliation Agreement](#)

Section 3

PERSONAL SERVICE, PROFESSIONAL SERVICE, AND CONSULTANT SERVICE CONTRACTS

I. SCOPE

A contract for personal service, professional service, or consulting service shall be used when the vendor's discretion or the form of the end product or service is critical to the performance. The following procedures shall not apply to:

A. Contracts for services required to be approved by the State Building Commission;

B. Contracts for legal services which are subject to T.C.A. Sections 8-6-106 and 8-6-301; all such contracts must originate in the Office of General Counsel prior to any action being taken to retain any legal or legally related services;

C. Contracts for utility services (see TBR Policy 4:02:10:00);

II. PROCEDURES FOR ENTERING INTO PERSONAL, PROFESSIONAL AND CONSULTANT SERVICE CONTRACTS

A. All purchases of personal, professional, and consultant services should be based, to the maximum extent practicable, on evaluation and consideration of vendor qualifications and cost, following the procedures and reporting requirements provided in TBR Purchasing Policy 4:02:10:00. Proposals for such services shall be analyzed on the basis of factors pertinent to the service in question. Contracts shall be awarded to the vendor who offers the best terms, and neither the price nor technical factors shall be the sole criterion, although price may be the criterion for determining which proposals to consider. (If more than five proposals are received, those quoting prices higher than the fifth lowest may be disregarded.)

Some factors which may be considered in evaluating proposals:

1. Prior experience;
2. Organization size and structure of vendor in relation to services to be performed;
3. Qualifications of staff to be assigned to perform the services;
4. Vendor's understanding of service to be performed;
5. Price by unit (or other measurement) of service. Cost must be weighed at least 25%.

III. RULES GOVERNING PERSONAL, PROFESSIONAL AND CONSULTANT CONTRACTS

A. Outside Contractors

A contract for services with a person or professional organization outside state government shall not be approved unless it is determined that the services are in fact needed, and they cannot be satisfactorily and economically performed by an agency of the state government. State policy prohibits personal, professional, or consulting contracts from creating an employer/employee relationship.

B. Contracts with Former and Present State Employees

Contracts with former state employees within six months of termination are prohibited. Institutions will not be allowed to contract with an individual who is, or within the past six months has been, a state employee. An individual shall be deemed a state employee until such time as all compensation and terminal leave has been paid. Contracts with a company or corporation in which a controlling interest is held by any state employee or the employee's spouse shall be considered, for the purpose of applying this rule, to be a contract with the individual. See also TBR Policy 1:02:03:10

C. Payments

All agreements must provide that payments are to be made only upon submittal of invoices by the contractor, after performance of the portion of the services which the invoiced amount represents, except that agreements with tax-exempt non-profit organizations may provide for periodic advance payments (see also Section I of this guideline). All agreements must require that periodic (monthly or quarterly) progress

reports be submitted to the institution, which reports must be evaluated and the work found to be sufficient according to the terms of the contract prior to approval of the next payment; provided that in the case of agreements with individuals where the services to be provided are brief in nature, and adequate performance of the services may be satisfactorily determined in the absence of progress reports, payments may be made after performance of the agreed upon services upon submission of invoices or other appropriate requests for payment indicating the services performed, the date of performance, and the amount payable pursuant to the agreement.

Sales/Ownership/Ethnicity Information. As part of the purchasing and contracting process, institutions shall attempt to collect: type of business, annual sales, business ownership and ethnicity information before payment is made to the vendor. Information shall be collected in accordance with TCA § 12-3-8 and TBR Purchasing Policy No. 4:02:10:00.

D. In appropriate cases, the institution shall require the contractor to demonstrate proof of appropriate forms of insurance, and/or to provide a performance bond.

E. Institutions are responsible for monitoring the Title VI compliance of sub-recipients of federal funds.

F. Appropriate language regarding intellectual property rights should be included in contracts developed under this Section III. (TBR Policy 5:01:06:00.)

G. Any part of this guideline may be waived by the Chancellor or designee in the event of conflict with applicable federal regulations or provisions governing the use of federal grant funds.

H. Each institution shall maintain all necessary records to reflect compliance with this guideline and TBR Purchasing Policy, including records of all bids, proposals, or other offers for services submitted for each service contract.

I. Gramm Leach Bliley Act (GLBA) Language.

All contracts with service providers that, pursuant to the terms and/or nature of the agreement, will have access to the institution's customers' non-public financial information (e.g., personal information that is maintained by the institution to provide a financial product or service, such as a student loan) must include the following clause:

"Throughout the term of this Agreement, Service Provider shall implement and maintain 'appropriate safeguards,' as that term is used in § 314.4(d) of the FTC Safeguard Rule, 16 C.F.R. § 314, for all 'customer information,' as that term is defined in § 314.2(b) of the FTC Safeguard Rule, delivered to Service Provider by Institution pursuant to this Agreement. The Service Provider shall implement an Information Security Program ('the Program') as required by the FTC Safeguard Rule. Service Provider shall promptly notify the Institution, in writing, of each instance of (i) unauthorized access to or use of that nonpublic financial customer information that could result in substantial harm or inconvenience to a customer of the Institution or (ii) unauthorized disclosure, misuse, alteration, destruction or other compromise of that nonpublic financial customer information.

Service Provider shall forever defend and hold Institution harmless from all claims, liabilities, damages, or judgments involving a third party, including Institution's costs and attorney fees, which arise as a result of Service Provider's failure to meet any of its obligations under this provision. Service Provider shall further agree to reimburse the Institution for its direct damages (e.g., costs to reconstruct lost or altered information) resulting from any security breach, loss, or alteration of nonpublic financial customer information caused by the Service Provider or its subcontractors or agents.

Service Provider grants Institution the right to conduct on-site audits, as deemed necessary by the Institution, of the Service Provider's Program to ensure the integrity of the Service Provider's safeguarding of the Institution's customers' nonpublic financial information.

Institution retains the right to unilaterally terminate the Agreement, without prior notice, if Service Provider has allowed a material breach of its Program in violation of its obligations under the GLBA, if Service Provider has lost or materially altered nonpublic financial customer information, or if the Institution reasonably determines that Service Provider's Program is inadequate.

Within thirty (30) days of the termination or expiration of this Agreement, Service Provider shall, at the election of Institution, either: (1) return to the Institution or (2) destroy (and shall cause each of its agents to destroy) all records, electronic or otherwise, in its or its agent's possession that contain such nonpublic financial customer information and shall deliver to the Institution a written certification of the destruction."

J. Red Flags Language

Federal law (Section 114 of the Fair and Accurate Credit Transaction Act of 2003 amending the Fair Credit Reporting Act, 15 U.S.C. Sec. 1681m(e)) and the Federal Trade Commission rules concerning the prevention of identity theft (16CFR Part 681), commonly referred to as the Red Flags Rule ("the Rule"), require that institutions monitor the activities of their service providers if the service provider performs activities in connection with one or more covered accounts covered by the Rule. These activities can include such activities as opening or managing accounts, billing, providing customer service or collecting debts. In these situations, the service provider must apply the same standards as the institution would if the institution were performing those tasks.

Pursuant to TBR Policy 4:01:05:60, institutions must require, by contract, that the service provider either: 1.) have policies and procedures in place to comply with the Rule; or, 2.) review the institutional policy and report any red flags to the Program Administrator.

Add the following language to contracts as described in the immediately preceding paragraph:

Red Flags and Identity Theft. The Service Provider shall have policies and procedures in place to detect relevant Red Flags that may arise in the performance of the Service Provider's activities under the Agreement, or review the Institution's Red Flags identity theft program and report any Red Flags to the Institution.

If Service Provider maintains its own identity theft prevention program consistent with the guidance of the Red Flag Rules and validated by due diligence, the Service Provider shall have met the requirements of the first paragraph of this Section.

K. The first form contract in this Section III may be adapted for many purposes. For example, when a service contract is with another Tennessee state agency, the following items are not essential and may be omitted: the second paragraph of B. 3 and C. 1, 2, 3, 4, and 13. The second form contract in this Section III may be used any time the additional terms are appropriate. This form is included in the approved RFP format as the pro forma. Additionally, it is required to be used, if the other party is not insisting on using its own contract form, in the following instances: (1) for personal service contracts that result from an RFP process; (2) for personal service contracts which require Central Office approval; (3) for personal service contracts which require Fiscal Review approval; and (4) for all other service contracts, in which the institution's procurement and/or contracts office determines this form is appropriate.

GRANT AGREEMENTS

A. The President or designee of an institution is authorized to approve applications for grants from agencies or organizations; provided that, when matching funds or services in lieu of funds are required by the institution, no application shall be made unless the operating budget provides the funds and/or resources necessary for the project. The President is further authorized to accept the award of a grant and enter into agreements confirming grants, provided that the acceptance of grants and agreements confirming the award of grants shall be subject to the requirements of this guideline. Grants which conform to the requirements of this guideline do not require the approval of the Chancellor regardless of the amount of the grant.

B. The following procedures shall govern expenditures for personal, professional or consulting services pursuant to grant contracts:

Procedures

1. The institution shall conduct negotiations when possible to ensure that payments are appropriate to support the activity contemplated.
2. A written budget and work program shall be prepared and included in the grant agreement.

C. Contracts Representing Grants. Grant contracts not involving federal money must include the following provision:

"The contractor shall cause to be performed, in accordance with auditing standards prescribed by the Comptroller of the Treasury of the State of Tennessee, an audit of all its program(s) funded by this contract; provided, however, that any contract for such audit shall be subject to prior approval of the Comptroller of the Treasury of the State of Tennessee, and must be submitted on the standard contract to audit accounts' form published by the Comptroller of the Treasury. The audit may include and be combined with an audit of other programs of the contractor, and the existence of more than one contract between the contractor and any agency of the State of Tennessee shall not necessitate more than one (1) audit of the contractor's programs to be performed every two years."

Grant contracts involving Federal money must include the following provision:

“The Grantee shall prepare and submit, within nine (9) months after the close of the reporting period, an annual report of its activities funded under this grant to the commissioner or head of the granting agency, the Tennessee Comptroller of the Treasury, and the Commissioner of Finance and Administration. The annual report for any Grantee that receives \$300,000.00 or more in aggregate federal and/or state funding for all its programs shall include audited financial statements. All books of account and financial records shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller's duly appointed representative. When an audit is required, the Grantee may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit contract between the Grantee and the licensed independent public accountant shall be on a contract form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted auditing standards, the provisions of OMB Circular A-133, if applicable, and the Audit Manual for Governmental Units and Recipients of Grant Funds published by the Tennessee Comptroller of the Treasury. The Grantee shall be responsible for reimbursement of the cost of the audit prepared by the Tennessee Comptroller of the Treasury, and payment of fees for the audit prepared by the licensed independent public accountant. Payment of the audit fees of the licensed independent public accountant by the Grantee shall be subject to the provisions relating to such fees contained in the prescribed contract form noted above. Copies of such audits shall be provided to the State Granting Department, the Tennessee Comptroller of the Treasury, the Department of Finance and Administration, and shall be made available to the public.”

D. Grant Contracts. Procurement by grantee--grant contracts which provide for reimbursement for the cost of procuring goods, materials, supplies, equipment or services shall contain the following provision: “If the terms of this contract allow reimbursement for the cost of procuring goods, materials, supplies, equipment or services, such procurement shall be made on a competitive basis (including the use of competitive bidding procedures), when practicable.”

E. Federally Funded Grant Contracts. Procurement by contractor--when a grant contract provides that the contractor may make purchases and be reimbursed for its cost with funds derived wholly or partially from federal sources, the following clause or one of substantially the same effect should be included: “Reimbursement for the cost of procuring goods, materials or services shall be subject to the contractor's compliance with applicable federal procurement requirements.”

F. Federally Funded Contracts. Compliance with federal regulations--if federal funds are used to support the contract, the following clause must be included:

“The contractor shall comply with all applicable federal regulations in the performance of duties under this contract.”

Source: Finance and Administration Regulations, Chapter 0620-3-3

Sample Agreements

[Sample Personal Service, Professional Service, and Consultant Service Contract](#)

[Pro Forma Contract](#)

The following agreements are an option to the standard contract. They should be used for presenting or participating in a seminar/webinar, and can only be used for events costing \$5,000 or less.

[Contract for Workshop/Seminar](#)

[Workshop/Seminar Participation Agreement](#)

Section 4

DUAL SERVICES AGREEMENTS

I. SCOPE

This guideline is applicable to agreements whereby an institution in the Tennessee Board of Regents System or any agency of state government desires to procure the services of an employee of another institution or state agency or to provide the services of one of its employees to other institutions or state agencies. See TBR Policy 5:01:05:00.

II. GENERAL RULES

A. Job priorities. It is the policy of the Tennessee Board of Regents that a full-time employee of an institution must devote his or her full working time to his or her position; therefore, any agreement which diminishes an employee's availability for the performance of his or her duties will not be approved, except

as provided in this guideline. In general, the services to be performed are of an infrequent or short term nature.

B. Overtime. If the work to be performed constitutes overtime or extra services for the employee involved and if the vendor institution receives payment from the procuring agency or institution and desires that the employee be compensated for such work, then compensation must be made pursuant to one of the following methods: (i) for faculty workload reduction or extra compensation; or (ii) for other employees, compensatory time, overtime payment, workload reduction, or temporary salary adjustment.

III. ESSENTIAL CONTENTS OF THE AGREEMENT

The form agreement at the end of this section contains all required elements; however, a few elements are described below:

A. A brief description of the services provided or secured from the state agency concerned.

B. Include the name and social security number of the employee providing the services.

C. In describing the terms of the agreement, include a statement of the rate and means of compensation to be paid by the procuring agency or institution to the employer agency or institution (the vending party), including when payment will be made and to what address invoices are to be sent.

D. Conditions governing employee services and methods of compensation.

A letter or other notice from the procuring party that the services have been provided and the submission of an invoice from the vendor party are required prior to payment for services rendered when:

1. An employee of another institution is to be compensated for services other than as a temporary part-time employee; or
2. Compensation is to be paid to another institution or state agency for services to be performed pursuant to an agreement.

E. Number 7 of the form agreement may be omitted in dual services agreements: between TBR institutions, between TBR and UT, and between TBR and any other state entity; however, some state entities may require this provision.

IV. RULES, GOVERNING DUAL SERVICES AGREEMENTS WITH OTHER STATE AGENCIES (OTHER THAN THE UNIVERSITY OF TENNESSEE AND TENNESSEE BOARD OF REGENTS INSTITUTIONS)

A. No payment shall be made by a Tennessee Board of Regents institution directly to an employee of another state agency for services of any nature. Any payment or transfer of funds for such services shall be between the institution and the state agency.

B. Approvals - all dual services agreements of this kind require the signature of:

1. An authorized official of the institution or agency procuring the services.
2. In addition, if compensation exceeds \$1,500.00 to any state agency employee, other than UT or between TBR institutions, approval is required by the Department of Finance and Administration.
3. Regardless of amount involved, a copy of each agreement must be filed with the Department of Personnel and the Department of Finance and Administration.

C. No dual services agreement which conforms to the requirements of this guideline shall require the approval of the Central Office, except dual services agreements in which the Central Office is either the vendor or procuring party.

V. RULES GOVERNING DUAL SERVICES AGREEMENTS WITH THE UNIVERSITY OF TENNESSEE INSTITUTIONS

A. When the agreement concerns an institution in the Tennessee Board of Regents System and a University of Tennessee institution, the agreement may take one of two forms. The contract may be either:

1. Between the employee involved and the other institution pursuant to the provisions in B. below; or
2. Between the two institutions involved, pursuant to the provisions in G. below.

B. Contracts between an employee of one system and a procuring institution in the other system are permitted only in the following situations:

1. When the services to be performed are of an infrequent or short term nature.
2. Payment will not exceed the maximum rate provided in TBR Policy No. 5:01:05:00 (Outside Employment and Extra Compensation).
3. When the services to be performed involve teaching or instruction by an employee, the maximum services permitted shall be as provided in TBR Policy No. 5:01:05:00 (Outside Employment and Extra Compensation).

Contracts under this Section B. may be between the employee and the institution or between institutions. If payment is made directly to the employee, the employee shall be treated as a temporary part-time employee of the procuring institution.

Dual services agreements under this Section V B., between an employee and the procuring institution, are the only dual services agreements in which an employee may be a party, and the employee's signature is only required on dual services agreements in which an employee is a party.

C. When an agreement is made directly between the employee and the institution as discussed in V B., the employee must obtain the written approval of his or her supervisor and dean or director; and the procuring institution must provide written notice of the agreement to the employer institution. A copy of the agreement must be forwarded to the vendor party's Human Resource Office.

D. Any payment made to an exempt employee of a TBR institution by a University of Tennessee institution should be treated as, and counted toward the maximum of, extra compensation for such employee as described in TBR Policy No. 5:01:05:00.

E. Any compensation paid shall not exceed the rate the procuring institution or agency normally pays for such services.

F. Conflicts of interest must be avoided.

G. In all dual services agreements covered by Section V other than those set forth in paragraph V B.:

1. A memorandum of agreement must be signed between the two institutions involved.
2. Any payment or transfer of funds for such services must be between the two institutions, and must not involve the individual employee.
3. No employee of an institution may be a party to such agreement.

VI. RULES GOVERNING DUAL SERVICES AGREEMENTS BETWEEN TENNESSEE BOARD OF REGENTS INSTITUTIONS

A. When one TBR institution procures the services of an employee of another TBR institution, the agreement shall take the following form:

1. The agreement shall be between the institutions involved, pursuant to the provisions in B. below.
2. Blanket dual services agreements are allowed. For example, if an institution is employing twenty (20) individuals from another TBR institution, one blanket agreement which includes the names and rates of compensation may be used.
3. Payment shall only be made after performance. The procuring institution shall be required to send a copy of the agreement and notice to the vending institution that the services have been completed, and the vendor institution will then invoice the procuring institution for payment.

B. Contracts between the TBR institutions are permitted in the following situations:

1. When the services are of an infrequent or short term nature; and
2. When the services to be performed involve teaching or instruction by an employee not in excess of the maximum permitted under TBR Policy No. 5:01:05:00.

C. Any payment made by the procuring institution to another institution shall be treated as, and counted toward the maximum of, extra compensation for an exempt employee as described in TBR Policy No. 5:01:05:00.

D. Any compensation paid shall not exceed the rate the procuring institution normally pays for such services.

E. Conflicts of interest must be avoided.

Source and Authority: TBR Policy No. 5:01:05:00; Section 36 of Chapter 732 of the Public Acts of 1976, and the rules of the Department of Finance and Administration.

[Sample Dual Services Agreement](#)

Section 5

USE OF CAMPUS FACILITIES

(General use by non-affiliated organizations)

I. SCOPE

Use this guideline for agreements for short-term rental or use of campus facilities for activities by non-affiliated organizations. Such agreements include, but are not limited to, those for musical performances, speakers, conventions, exhibits, etc. This guideline does not apply to lease of property for residential use and/or commercial lease of property (See TBR Guideline B-026). See also Section 6 of this guideline.

II. GENERAL RULES

A. All use of campus facilities and agreements providing for such use must comply fully with TBR Policy No. 3:02:02:00.

B. All agreements providing for campus-based performances and any other agreements subject to Sections 5 and 6 of this guideline with a value exceeding \$249,999.99 must be submitted to the Central Office for approval.

C. Agreements which deviate from this guideline must be submitted to the Central Office for approval.

D. All use of campus facilities must be related to the mission of the institution.

E. The agreement should include as parties, each non-affiliated individual or organization who has direct responsibility for fulfilling terms of the agreement or who is to share in the revenue.

F. The agreement may not require the institution to make future commitments beyond the end of the agreement for exclusive dealing.

Source and authority: TBR Policy No: 3:02:02:00

[Sample Use of Campus Facilities Agreement](#)

Section 6

ADDITIONAL FORMS FOR USE OF SPACE

(Special alternative agreement forms)

I. SCOPE

Below are additional/alternative approved, forms for short-term lease or use of TBR space, and the applicable terms and conditions for each, as well as the instructions for filling them out.

A. [MUTUAL USE AGREEMENT](#)

Involving a Tennessee Board of Regents Institution

B. [TRANSIENT USE AGREEMENT](#)

Involving a Tennessee Board of Regents Institution

C. [TENANT USE AGREEMENT](#)

Between Two Tennessee Board of Regents Institutions

D. [MUTUAL OR TRANSIENT USE](#) Terms and Conditions For an Agreement Involving a Tennessee Board of Regents Institution

E. [TENANT USE](#) Terms and Conditions For an Agreement between Two Tennessee Board of Regents Institutions

F. [INSTRUCTIONS](#) for filling out Use Agreements

II. [TYPES OF AGREEMENTS NOT COVERED:](#)

A. Leases subject to State Building Commission oversight, identified at TBR web site in the Facilities section.

B. Event-Oriented Use Agreements For short-term use of facilities for a specific event, such as a concert, festival, special competition, or single-day educational events, the requirements continue to be those set forth in TBR Policy 3:02:02:00 and in Section 5 (above) of this guideline.

III. TYPES OF AGREEMENTS COVERED:

A. Tenant Use Agreements Which are arrangements similar to a lease, but occurring between two TBR institutions.

B. Transient Use Agreements

1. Provide short-term, continuing, non-exclusive use of facilities, such as evening use of high school space as a teaching extension site for a semester.

1. Distinct from the event-oriented Use Agreement under TBR Policy

2. 3:02:02:00 and Section 5 of this guideline.

2. Can be for TBR use of non-TBR facilities, or non-TBR use of TBR facilities.

C. Mutual Use Agreements

1. Similar to Transient Use, except that both parties make use of each other's spaces.

2. Between two TBR institutions or one TBR institution and a non-TBR entity.

3. Instead of financial compensation, the consideration is the mutual use of each other's facilities.

IV. APPROVALS

Tenant, Transient, and Mutual Use Agreements are simplified versions of the standard lease, designed for the less-formal arrangements described above. They are not subject to most SBC and TBR lease approval processes when properly used in their intended circumstances, but may still be subject to review and/or approval in the TBR Central Office (as provided in TBR Policy 1:03:02:10, TBR Policy 3:01:02:10, TBR Guideline B-026 and TBR Guideline G-030), and are subject to the signature requirements set forth in TBR Policy 1:03:02:10, TBR Policy 3:01:02:10, TBR Guideline B-026 and TBR Guideline G-030 for other use agreements.

V. APPLICABLE TERMS AND CONDITIONS

Standard Terms and Conditions are provided containing the "boilerplate" fixed provisions, so that the agreement forms focus on the permissible variables, and editing is less likely to result in the insertion of unacceptable clauses or removal of necessary ones.

Section 7

CONTRACTS FOR ACQUISITION OF HARDWARE, SOFTWARE AND RELATED SERVICES

I. SCOPE

This guideline applies to purchases, rentals, leases, licenses, trades or gifts of computer hardware (equipment) and software or related services for data processing or audio visual purposes and music performance license agreements. Acquisition of computer systems involving the purchase of hardware with the development of application software shall be made in accordance with this guideline.

II. GENERAL RULES

A. Each acquisition by an institution should be documented in writing in the form of a purchase order issued by the institution and/or a contractual agreement to formalize acceptance of a vendor's bid and delivery of products or services.

B. All institutional acquisitions of hardware, software, and related services must comply with this guideline. It is the responsibility of the institution to negotiate changes in all vendor provided agreements so that such agreements comply with this guideline.

If vendor does not provide an agreement, the attached standard agreement may be used for software licenses and, with appropriate adaptation, for equipment purchases. If maintenance contractors do not provide an agreement, the standard agreement for personal service contracts should be adapted for use as a maintenance contract.

The Office of General Counsel is available for assistance in negotiating modifications with the vendor. The institution may wish to consult General Counsel prior to contacting the vendor regarding modification.

C. All agreements subject to this Section 7 which exceed \$249,999.99 or which do not comply with this guideline shall be subject to the express approval of the Chancellor of the Tennessee Board of Regents. Institutions must negotiate deletion of all unacceptable provisions and must attempt to secure the agreement of the vendor prior to submission to the TBR Central Office for approval.

D. The TBR Central Office has negotiated master agreements with several vendors permitting purchases thereunder by all institutions in the TBR system. These agreements contain terms and conditions that have already been approved by the TBR Central Office. Whenever acquiring data processing related products, TBR institutions should first consult the Director of Purchasing and Contracts in the TBR Central Office to see what may be available pursuant to any existing agreements. Whenever acquiring audio visual related software, TBR institutions may wish to first consult the TBR media consortium.

E. Testing of Hardware, Software or Related services

Agreements authorizing the institution to conduct experimentation or testing of hardware, software or related services shall require the written approval of the Chief Information Officer in the TBR Central Office. This category includes agreements which permit the experimental use of such products or services without warranty at little or no cost to the institution and for the benefit of the vendor. In relation to such agreements:

1. The institution may not agree to use such experimental products or services in place of existing ones for ordinary academic or administrative purposes.
2. The institution may not agree to hold the vendor harmless from any liability, notwithstanding the fact that the state may not be paying for the use of the experimental products or services.

F. Bidding Process

Generally, contracts for the acquisition of hardware and software should be awarded pursuant to the bidding process. Service agreements are also subject to the bidding process.

1. All requests for proposals (bids), invitations to bid and bid specifications must comply with TBR Policy 4:02:10:00 and this guideline and must clearly state all contractual provisions and requirements including the mandatory provisions.
2. The bidding process must comply with TBR Policy 4:02:10:00.
3. All bid specifications must be incorporated by reference in all contracts awarded pursuant to the bidding process. The following language should be included in the contract:

The contract documents consist of this Agreement, the Institution's purchase order no. _____, the Institution's request for bids no. _____ (or Institution's request for proposals no. _____), Contractor's bid dated _____ (or Contractor's proposal dated _____) and any addenda and/or amendments to this Agreement hereafter executed. In the event that provisions of the contract documents conflict, priority of interpretation shall be as follows: addenda and/or amendments (latest addendum or amendment with first priority), the Agreement, the Institution's purchase order, the Institution's request for bid (or Institution's request for proposals), and the Contractor's bid (or the Contractor's proposal).

4. All bid specifications and all other relevant contract documents must be attached to contracts that are submitted to the TBR Central Office for approval.

G. Software Licensing and Warranties

See also the provisions of TBR Purchasing Policy Sections XV H. and I., and Section 11 of this guideline.

1. Generally, the legal right to use software is obtained in the form of a license agreement. The permissible use of the software is governed solely by the terms and conditions stated in the license agreement. A standard form software license agreement is attached and should be used when the vendor does not provide an agreement. Vendor provided license agreements must be amended to conform to this guideline.
2. Limited warranty. Unless internet service / access is a specific service to be paid for and provided under an agreement, no warranty regarding the internet is required, and the vendor may disclaim warranties regarding the internet.
3. If software is provided at a nominal cost or free, and the vendor has not offered any warranty, the Institution should ask for language that the vendor warrants that the vendor has the right to license the software as provided in the agreement.

4. Agreements authorizing the institution to conduct experimentation or testing of hardware, software or related services shall require written approval of the TBR Central Office. This category includes agreements which permit the experimental use of such products or services without warranty, at little or no cost to the institution and for the benefit of the vendor. In relation to such agreements:
 - a. The institution may not agree to use such experimental products or services in place of existing ones for ordinary academic or administrative purposes.
 - b. The institution may not agree to hold the vendor harmless from any liability, notwithstanding the fact that the state may not be paying for the use of the experimental products or services.

H. Related Services

Agreements for related services include those for maintenance and support services.

1. Service agreements may be included as part of an acquisition agreement for hardware or software or may be a totally separate agreement with the same vendor or with a non-related vendor.
2. Service agreements are in the nature of personal services irrespective of the form of the service and must comply fully with Section 3 of this guideline for personal service agreements as well as this Section.

I. Music performance license agreements (See also, sample agreement under Section 5 above.)

1. A music performance license agreement grants a non-exclusive license to perform publicly or permit the public performance of copyrighted musical compositions to which BMI, ASCAP, or SESAC (music licensing organizations) has the right to grant a license. Music performances which are under the sponsorship, control, authority or receive direct or indirect approval of the institution will require a license.
2. In the event that an affiliated or non-affiliated group wishes to perform or sponsor a performance on campus of such music, the following provisions or equivalent language must be included in the contract:
3. The performer hereby gives assurances that he/she has obtained all necessary copyright and royalty licenses from ASCAP, BMI, SESAC, any other performing rights organization or the copyright owner for the performance(s) presented under the terms of this agreement.
4. The performer agrees to indemnify, hold harmless, and defend the institution and the State of Tennessee from and against any and all claims, demands or suits which may be brought for copyright infringement allegedly arising in the course of the performance(s) presented under the terms of this agreement. Such indemnification shall extend to both criminal and civil actions and shall include any loss, damage, penalty, court costs or attorneys' fees incurred by the institution.
5. The institution/state shall promptly notify the performer of any such claim brought against the state. The settlement or compromise of any claim brought against the state shall be subject to the approval of the appropriate state officials, as required by T.C.A. § 20-13-103.

[Sample Software License Agreement](#)

Section 8

INTELLECTUAL PROPERTY AGREEMENTS

I. SCOPE

TBR Policy 5:01:06:00, Intellectual Property, sets out the approved procedures governing TBR intellectual property issues. In addition, resource information and approved form/sample agreements are provided at the TBR web site in the General Counsel section.

II. FORM CONTRACTS

Form/Sample contracts provided in the General Counsel section of the TBR website can be found at the following links:

[Invention Disclosure Form](#)

[Copyrightable Works Disclosure Form](#)

[IP Agreement](#)

[Employee Work for Hire Agreement](#)

[Copyright License Agreement](#)

[Partial Assignment of Copyright Ownership Agreement](#)

[Joint Ownership of Copyright Agreement](#)

III. RESEARCH AGREEMENT

An agreement form which may be used for sponsored research contracts and which contains key provisions / issues that should be covered / considered if the other party proposes to use its own contract form is provided below.

Source: TBR Policy 5:01:06:00

[Sample Intellectual Property/Research Agreement](#)

Section 9

CONTRACTS FOR DEPOSIT AND INVESTMENT OF FUNDS

I. SCOPE

This guideline shall be used for the deposit and investment of all funds, regardless of source, which are received by a TBR institution or technology center. Where the term "bank" or "banking institution" is used in this guideline, it refers to all financial institutions including savings and loan associations.

II. GENERAL RULES

A. Each TBR institution is authorized by the TBR to enter into one contract for the deposit of funds for the institution's general operating account, one Tennessee insurance account, and one payroll account at a bank or banking institution authorized under Tennessee law to accept state deposits. Each Technology Center is authorized to have one imprest checking account. No additional accounts of this nature will be approved for opening or maintained by any Institution or technology center unless specifically approved by the Chancellor or designee.

B. Petty Cash Funds

1. The president of each Institution is authorized to establish one or more checking accounts for the deposit and disbursement of petty cash funds, provided that no such account shall exceed five hundred dollars (\$500.00)
2. The president may designate a custodian of the funds. If the custodian has accepted responsibility for the funds in writing, and has agreed to repay any shortages or expended funds not properly accounted for from the account, then the custodian may be designated in the agreement as the signatory authority for the account, and the custodian or the chief business officer of the Institution shall be authorized to withdraw funds from the account.

C. Complimentary non-interest bearing accounts are prohibited and will not be approved.

D. All agreements between a banking institution and an institution of the TBR are subject to the express written approval of the President or designee or the Vice Chancellor for Tennessee Technology Centers or designee and the Chancellor of the TBR or designee, as appropriate.

E. All documents required by a banking institution shall be obtained, reviewed, and negotiated to ensure that the documentation complies with TBR policy.

III. ESSENTIAL CONTENTS OF THE AGREEMENT

The "Banking Agreement" at the end of this section should form the basis of the agreement; however, a few additional elements are described below:

A. Facsimile Signatures - Facsimile signatures may be used on instruments of withdrawal unless the withdrawal exceeds one percent (1%) of the State appropriation to the institution for the year or ten thousand dollars (\$10,000.00), whichever is greater, in which case the withdrawal must bear the original signature of the president or the chief business officer.

B. A provision which states the purpose of the account and that the amount of funds to be deposited and maintained in the active (checking) account will be reasonably related to the number of checks to be processed through the account during any month and other servicing costs, if any.

C. A provision identifying the nature and level of services to be provided by the banking institution and the cost, if any, for these services. Such services should include but are not limited to:

1. the provision of standard services for processing checks and deposits in accounts;
2. the provision of the required collateral security for all deposits;
3. the provision of a branch office of the bank within a specified distance from the campus;

4. the provision of interest on savings accounts at a rate equal to the maximum rate offered by other banking Institutions in the county, with the ability to transfer funds between active and savings accounts upon a specified minimum notice;
5. the provision of investment services;
6. the provision of account reconciliation services;
7. the provision related to Automatic Clearing House debits and credits including direct deposit; and
8. the provision of safe deposit box services.

(Any additional services provided must also conform to TBR and state laws regulating public funds.)

D. A provision which states that funds of the institution will only be invested in a bank or savings and loan savings account or certificate of deposit or in bonds, notes or treasury bills of the United States which are backed by the full faith and credit of the United States or bonds or obligations guaranteed as to principal and interest by the United States or any of its agencies.

E. In addition, agreements with savings and loan associations must state that the savings and loan agrees to comply with the collateral security requirements of TBR Policy 4:01:01:10 and state law and that the savings and loan will provide upon request:

1. an opinion of legal counsel that the association has the authority to collateralize public funds;
2. a resolution adopted by the board of directors authorizing such investments; and
3. appropriate written instructions for the transfer of funds.

Source and Authority: TCA Chapter 4 of Title 9; TBR Policy 4:01:01:10.

[Sample Banking Agreement](#)

Section 10

NON-CREDIT INSTRUCTION AGREEMENT

I. SCOPE

This section is applicable to revenue-generating agreements whereby an institution in the TBR system provides non-credit instruction/training for business and industry.

II. GENERAL RULES

The institution is responsible for the administration of fees, charges, and refunds in accordance with TBR Guideline B-060.

III. ESSENTIAL CONTENTS OF THE AGREEMENT

The form agreement at the end of this section contains all required elements; however, a few elements are described below:

- A. The program title name, a brief description of the program, Continuing education Units (CEUs) awarded, if applicable, the name of the instructor, if applicable, conducting the course, and the dates, times, and location of the course.
- B. The minimum and maximum number of participants and the program fee that will be invoiced to company.
- C. Other provisions should be specific to include such elements as deliverables by the institution including textbooks, instructional materials, CEU records/transcripts for participants, and/or certificates awarded, etc.
- D. Specific requirements of the company should be included such as safety and security of institutional equipment, additional fee assessments outside of the instructional costs, documents/information necessary for instruction, etc.

[Sample Non-Credit Instruction Agreement up to \\$50,000](#)

[Sample Non-Credit Instruction Agreement above \\$50,000](#)

Section 11

Contract for Workshops/Seminars (Up to \$5,000.00)

Workshop/Seminar Participation Agreement

I. SCOPE

This section provides sample contracts which may be used for two purposes. The first sample agreement may be used when the institution contracts with a service provider to provide a workshop or seminar and the payment to the service provider will not exceed \$5,000.00. The second sample agreement may be used when the institution contracts with an individual to make a payment to that individual for attending a specific workshop or seminar (for example, a grant may provide for such payments to be made out of grant funds).

II. GENERAL RULES

These forms are provided for use **ONLY** as described above and may be used instead of the personal services agreement or *Pro Forma*, for the specified purposes, or the personal services agreement form or *Pro Forma* agreement may be used for these purposes.

III. ESSENTIAL CONTENTS OF THE AGREEMENT

The form agreements at the end of this section contain all required elements.

[Sample Contract for Workshop/Seminar up to \\$5,000](#)

[Sample Workshop/Seminar Participation Agreement](#)

Section 12

NEGOTIATING WITH THE NOTWITHSTANDING CLAUSE /CONTRACTS OF ADHESION

It will be a rare contract that does not require some negotiating unless we draft it ourselves. Upon receiving a contract, mark or circle all impermissible clauses and prepare an amendment to the contract that addresses each impermissible clause. In most cases, you will also need to include our standard language concerning non-discrimination, auditing, etc. found in this guideline. If you are unsure whether a clause is impermissible, please call the Director of Purchasing and Contracts or the Office of General Counsel for guidance.

Keep a record of your contract negotiations with the company, including telephone calls, emails and other correspondence. Before suggesting the notwithstanding clause as an alternative, you may want to ask the Office of General Counsel to contact the company to explain the legal problems.

If the company refuses to amend the contract in accordance with our requirements, the Attorney General's office has approved the use of the notwithstanding clause if the company is the sole source of the product (or all vendor's require the limitation language), the product is indispensable to the institution's need, and the notwithstanding clause is inserted in the contract immediately following the impermissible clause. (The Attorney General's Office has not approved any other use or placement of the notwithstanding clause.)

Another consideration is the amount of risk assumed by the institution in the event the product fails to perform. In many instances, replacement of the product is an acceptable remedy. In others, such as the malfunction of software, the failure to perform may make the institution very vulnerable to costly damages. The notwithstanding clause only sets forth the state's position in the event the matter goes to court; it doesn't improve your available remedies.

NOTWITHSTANDING CLAUSE:

Notwithstanding anything in this section to the contrary, any provision or provisions of this section will not apply to the extent they are (it is) finally determined by a court of competent jurisdiction, including appellate review if pursued, to violate the laws or Constitution of the State of Tennessee.

The notwithstanding clause is also called a severability clause. Many contracts contain such a clause in the "General" provisions. It means that if the matter goes to court, and the court finds the hold harmless clause, for example, unconstitutional, then the court will delete or sever the hold harmless provision from the contract; and the rest of the contract will remain in effect. Without a severability clause, the court will find the entire contract null and void if it contains unconstitutional provisions.

The second reason for the notwithstanding clause is to put the company on notice that we will challenge the legality/constitutionality of the provision should the occasion arise.

Use of the notwithstanding clause as provided in this Section 11 does not require Central Office approval.

Therefore, when negotiating with the notwithstanding clause, your file should show:

1. Documentation of attempts to negotiate out impermissible language;
2. The need for the item or service;
3. The fact that vendor is the sole source (or that all vendors require the limitation language); and

4. The notwithstanding clause inserted in the contract immediately following the impermissible clause and a letter to the company showing a clear understanding of the clause.*

*Sample language for the letter: Please be advised that the state considers the provision concerning (description of impermissible clause) void under Tennessee law, and the state reserves the right to challenge such provision should the occasion arise.

5. NOTE: if the provisions of TBR Purchasing Policy Sections XV H. and I. have been followed to address limitation of liability or warranty language, the notwithstanding clause is not necessary and should NOT be used.

CONTRACT OF ADHESION

One last opportunity to purchase or accept goods or services is if the contract is an adhesion contract. An adhesion contract must meet all the following criteria:

1. A standard form contract or license;
2. Offered to the consumer on a 'take it or leave it' basis;
3. The consumer has no realistic opportunity to negotiate different terms; and
4. The desired product or service cannot be obtained except by agreeing to the form contract.

General Rule

To obtain approval of a contract of adhesion, the institution must document the following steps:

1. Documentation of attempt to negotiate needed changes in the contract and the vendor's refusal to agree to any* changes;
2. The need for the item or service(s);
3. The fact that the vendor is the sole source (or that all vendors require the impermissible language); and
4. A copy of a letter to the company (which the company has agreed to accept) stating that the institution regards the agreement as a contract of adhesion.

In order to facilitate acquisition of contracts of adhesion for necessary electronic subscriptions, computer software, and other goods and services, the initiating department must route these contracts through the institutional procurement and/or contracts office. The following procedures are required for approval:

1. For contracts of adhesion up to \$5,000 not requiring signature -procedures, documentation and reporting required under this Section 11 shall not apply.
2. For such contracts or licenses costing more than \$5,000 but less than \$25,000 - Steps 1 through 4 in the General Rule above must be followed. These contracts or licenses must be approved by the President or designee. The file documentation shall be maintained at the institutional level, and central office approval is not required.
3. For such contracts or licenses costing \$25,000 or more - Steps 1 through 4 in the General Rule above must be followed, and approval by the Chancellor or designee is required.

The purchasing officer, contract officer, or other designated official at each institution must maintain a record of all software and other acquisitions over \$5,000, and those under \$5,000 requiring signature, made

pursuant to this guideline G-030, Section 11, Contracts of Adhesion and supply the record upon request to the Chancellor or designee.

*In appropriate instances, the President or designee, or the Chancellor or designee, as applicable, may approve a contract as a contract of adhesion when the vendor has agreed to some change(s), but the contract still contains impermissible language; documentation as required above must be maintained.

November 12, 1985, Presidents' Meeting; August 15, 1989, Presidents' Meeting; November 8, 1995, Presidents' Meeting; May 14, 1996 Presidents' Meeting; November 12, 1996, Presidents' Meeting; August 5, 1997 Presidents' Meeting, November 5, 1997 Presidents' Meeting; February 17, 1998 Presidents' Meeting & March 27, 1998 Board Meeting; November 4, 1998 Presidents' Meeting, November 7, 2001 Presidents Meeting. August 16, 2005 Presidents' Meeting, August 16, 2006 Presidents' Meeting; May 15, 2007 Presidents' Meeting, February 12, 2008 Presidents' Meeting; Presidents Meeting, November 5, 2008; Presidents Meeting, February 17, 2009; Presidents Meeting, August 11, 2009; Presidents Meeting August 17, 2010.

[Appendix I](#)